

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to York County

Honorable Walton J. McLeod, IV, Circuit Court Judge

ORLANDO M. COLEMAN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-001887

APPENDIX

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County of York	)	2014-GS-46-3857
	)	2014-GS-46-3857
	)	
State of South Carolina,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Orlando M. Coleman.	)	
	)	
	)	
_____	)	

January 12th - 13th, 2015
York, South Carolina

BEFORE:

THE HONORABLE J. MARK HAYES, II, JUDGE; and a jury.

APPEARANCES:

SHARON OHAYON, ASSISTANT SOLICITOR
ERIN JOYNER, ASSISTANT SOLICITOR
Attorney for the State

ASHLEY ANDERSON, ASSISTANT PUBLIC DEFENDER
MELISSA INZERILLO, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

AMINAH R. HARDY, CM
Official Court Reporter

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P R O C E E D I N G S

MS. ANDERSON: Your Honor, one typo I did on the defense potential --

THE REPORTER: Are we on the record? On the record?

THE COURT: Yeah.

THE REPORTER: Okay.

MS. ANDERSON: -- we wrote it as Terry Watson. That should be Terry Watts. Just wanted to clarify that.

THE COURT: Watts?

MS. ANDERSON: Watts.

THE COURT: Okay. All right. Let me be sure I pronounce these --

MS. ANDERSON: And, Your Honor, the defense has listed Alyssa Westcott. The state has Alyssa Pruitt. We believe that may actually be the same person. I'm not sure which of the names we would want. The married name or -- because we think you may want to consolidate that witness so it's not two separate people it looks like

THE COURT: So what's her name now? Patterson-Westcott?

MS. ANDERSON: No. I believe it's just Alyssa Pruitt.

THE COURT: So there's no Westcott involved?

MS. ANDERSON: We think Pruitt may be the

1 correct on that.

2 THE COURT: Okay. All right. Let me see if I
3 can pronounce the first name, it's MINOR [REDACTED]?

4 MS. ANDERSON: Oh, that's MINOR [REDACTED].

5 THE COURT: MINOR [REDACTED]? Delissa Patterson?

6 MS. ANDERSON: Delissa Patterson, yes.

7 THE COURT: B. P. [REDACTED]?

8 MS. ANDERSON: Pronounced B. P. [REDACTED].

9 THE COURT: B. P. [REDACTED]? Alyssa Pruitt?

10 MS. ANDERSON: Alyssa Pruitt, yes.

11 THE COURT: San -- San --

12 MS. ANDERSON: Sanadia.

13 THE COURT: Sanadia.

14 MS. ANDERSON: Sanadia and her last name is
15 Catoe and, I guess, she's not Ingram. The next three are
16 not Ingram's; they're just Catoe's.

17 THE COURT: So there's -- take Ingram out?

18 MS. ANDERSON: Yes.

19 THE COURT: Okay. On both of them?

20 MS. ANDERSON: Yes. All three. There's three.

21 THE COURT: Amanazhaee?

22 MS. ANDERSON: Amanazhaee.

23 THE COURT: Amanazhaee. Arkevious?

24 MS. ANDERSON: Arkevious.

25 THE COURT: Arkevious? Puja?

1 MS. ANDERSON: Yes.

2 THE COURT: Amin?

3 MS. ANDERSON: Yes.

4 THE COURT: Laurie Caldwell?

5 MS. ANDERSON: Yes.

6 THE COURT: Ryan Thomas?

7 MS. ANDERSON: Yes.

8 THE COURT: Corey Riley? Arthur Philson?

9 Carlos Culbreath?

10 MS. ANDERSON: Yes.

11 THE COURT: Michael Jensen? Terry Watts?

12 Officer Bradley Sims?

13 MS. ANDERSON: Yes, Your Honor.

14 THE COURT: Okay. All right. Any of those

15 people present? Okay. All right. And then what I do is

16 I'll just announce. I won't go into any great detail.

17 I'll just have the defendant stand and announce who he is,

18 present him to the jury and read out that there's two

19 charges and since they're both identical I'll just say two

20 charges of and then just sort of read out the indictments

21 to which he's pled not guilty to. Then I'm going to ask

22 them about related by blood or marriage to him, close

23 personal friends. Then I'll go through the list of

24 witnesses. Ask them about relationships, friendships,

25 working with them. Have them stand. Then I'll have y'all

1 to introduce yourselves to the jury. Stand up and
2 introduce yourselves and anybody, any other lawyers that
3 will be helping you through the case and then I'll ask the
4 questions and that will be it.

5 Now I do not have a list of jurors.

6 COURT CLERK: I laid --

7 THE COURT: Or is there one up here somewhere?

8 COURT CLERK: Yeah. I laid one up there. Right
9 there.

10 THE COURT: Oh, right there, okay. And this is
11 five and ten? Five and ten? The strikes?

12 MS. ANDERSON: Yes, Your Honor.

13 THE COURT: Okay. And I notice one of the
14 questions did -- one of the questions related to prior
15 media exposure. Had there been media coverage of this?

16 MS. ANDERSON: Yes, Your Honor. It was when
17 Mr. Coleman was initially arrested back in 2013. There
18 was media coverage.

19 THE COURT: Okay. All right. Okay. We got
20 enough room we just put it on one side of the courtroom?

21 MS. ANDERSON: Yes, sir. Your Honor, the open
22 row to the first few --

23 THE COURT: Okay.

24 MS. ANDERSON: -- on that side.

25 THE COURT: All right. Then I guess we're

1 ready, Madam Clerk. I'll step down. Just let -- I'll be
2 right in the back. Just let me know when they're here.

3 THE COURT: All right. We'll do two.

4 (The jury panel entered the courtroom.)

5 THE COURT: My name is Mark Hayes. I'm a
6 circuit court judge. I reside in Spartanburg but this
7 week I am -- it's my privilege to be holding court here in
8 York County.

9 We are now going to begin the jury selection in
10 the case of the state of South Carolina versus Orlando
11 Coleman. But before I -- I've got some questions to ask
12 you but before I ask you these questions I need for you to
13 please rise, raise your right hand, and let the Clerk of
14 Court administer the oath to you. Please stand.

15 (The jury panel was sworn.)

16 THE COURT: Thank you, ladies and gentlemen.
17 Again, ladies and gentlemen we're now going to begin the
18 trial of the case of Orlando -- the state versus Orlando
19 Coleman. Mr. Coleman, if you would please stand and face
20 the ladies and gentlemen of the jury.

21 Ladies and gentlemen, this is Mr. Orlando
22 Coleman. Mr. Coleman is charged with -- by way of
23 indictment with two counts of criminal sexual conduct with
24 a minor and the allegations -- generally the allegations
25 are that between August 24, 2010 and January 15, 2012,

1 here in York County, Mr. Coleman did commit a criminal
2 offense of criminal sexual conduct with a minor -- with
3 the minor being Defendant -- with the minor being MINOR
4 [REDACTED].

5 Ladies and gentlemen, if you -- Mr. Coleman has
6 pled not guilty to both of these charges and therefore I
7 need to ask you some questions that relate to your service
8 on this jury. Ladies and gentlemen, if you are related by
9 blood or marriage to Mr. Coleman or if you have a close
10 personal or social relationship with Mr. Coleman, I need
11 for you to please stand at this time. All right.

12 Ladies and gentlemen, I'm going to now read off
13 a list of potential witnesses who may be called as part of
14 the trial of this case. I need for you to please listen
15 to all of these names, because after I read all these
16 names I am going to ask you to stand if you're related by
17 blood or marriage to any of these individuals or if you
18 have a close personal or social relationship with any of
19 these individuals. I would also ask that you please stand
20 if you have ever been employed -- a fellow employee with
21 any of these individuals.

22 Here are a list of potential witnesses who may
23 be called as part of the trial of this case. I would also
24 ask that if any of these witnesses are present in the
25 courtroom that the witness please stand when I call your

1 name. MINOR [REDACTED], Delissa Patterson, B. P. [REDACTED]
2 [REDACTED], Alyssa Pruitt, Sanadia Catoe, Amanazhaee Catoe,
3 Arkevious Catoe, Puja Amin, Laurie Caldwell, Ryan Thomas
4 of the Rock Hill Police Department, Corey Riley of the
5 Rock Hill Police Department, Arthur Philson of the Rock
6 Hill Police Department, Carlos Culbreath of the Rock Hill
7 Police Department, Lori Fewell, Shannon Smarr, Michael
8 Jensen, Terry Watts, Officer Bradley Sims of the Rock Hill
9 Police Department.

10 Ladies and gentlemen, I need for you to please
11 stand if you're related by blood or marriage to any of
12 those individuals or if you have a close personal or
13 social relationship with any of those individuals or if
14 you have, by chance, been a fellow employee/co-employee
15 with any of those individuals, please stand at this time.

16 Ladies and gentlemen, at this time I'm going to
17 ask that the lawyers who will be participating in the
18 trial of this case to please stand and introduce
19 themselves to you. Yes, ma'am.

20 MS. OHAYON: Sharon Ohayon.

21 MS. JOYNER: My name is Erin Joyner. I'm with
22 the Solicitor's Office here in York County.

23 MS. ANDERSON: My name is Ashley Anderson. I'm
24 an attorney with the York County Public Defender's Office
25 and my co-counsel, Melissa Inzerillo. This is our

1 investigator, Barton O'Kelly, also of the Public
2 Defender's Office.

3 THE COURT: Thank you very much. Ladies and
4 gentlemen, if you have ever -- if you are related by blood
5 or marriage to any of the attorneys that are participating
6 in the trial of this case or if you have a close personal
7 or social relationship with any of the attorneys that will
8 be participating in the trial of this case, I need for you
9 to please stand at this time.

10 Ladies and gentlemen, if you have ever been
11 prosecuted as a defendant by the 16th Circuit Solicitor's
12 Office or if you have ever held the status of a victim of
13 a crime that was handled by the 16th Circuit Solicitor's
14 Office, I need for you to please stand at this time.

15 PROSPECTIVE JUROR: Excuse me, say that again?

16 THE COURT: Yes, ma'am. If you have ever been
17 prosecuted as a defendant, being prosecuted against by the
18 16th Judicial Circuit Solicitor's Office or if you've ever
19 held the status of a victim of a case that was handled by
20 the 16th Circuit Solicitor's Office, I need for you to
21 please stand at this time.

22 PROSPECTIVE JUROR: The 16th being this one?

23 THE COURT: Ma'am, if you would please stand.

24 PROSPECTIVE JUROR: I'm sorry.

25 THE COURT: That's all right. I can't take

1 questions from the members of the jury because I have to
2 be sure that the questions that are asked and the answers
3 that are given doesn't in some way poison the jury panel.
4 And so I -- if you have a particular question that you
5 feel like it's important enough for me to answer that
6 might be private to you, please raise your hand and I will
7 bring you up and answer that privately for you. All
8 right. What's your juror number?

9 PROSPECTIVE JUROR: 223.

10 THE COURT: All right. Ma'am, you want to come
11 forward? Lawyers.

12 Yes, ma'am, Ms. Tremper (phonetic.)

13 PROSPECTIVE JUROR: My family was the victim of
14 a home invasion and the solicitor's office prosecuted
15 them. So does that apply here?

16 THE COURT: Yes, ma'am. So the fact that that
17 has occurred, would that in any way affect your ability to
18 give both the state and defense a fair and impartial trial
19 in the event you were selected as a member of the jury?

20 PROSPECTIVE JUROR: No, it would not.

21 THE COURT: Okay. Thank you for sharing that
22 with us.

23 THE COURT: Also ladies and gentlemen -- yes,
24 sir. Your juror number?

25 PROSPECTIVE JUROR: My juror number is 188.

1 THE COURT: And you're responding affirmatively
2 to the question that I asked?

3 PROSPECTIVE JUROR: Perhaps. I need to come
4 approach.

5 THE COURT: All right. What's your juror number
6 again?

7 PROSPECTIVE JUROR: 188.

8 THE COURT: Come forward.

9 Yes, sir, you're Mr. Richter?

10 PROSPECTIVE JUROR: Richter. My son was
11 involved in a rear end -- was rear-ended by a drunk
12 driver. His case was handled by the 16th circuit.

13 THE COURT: Okay. And your question?

14 PROSPECTIVE JUROR: My question is is that in
15 any way make me unsuitable?

16 THE COURT: That's for me to determine. What I
17 need you to do is respond to the questions so I can ask
18 then whether or not the fact that has occurred in any way
19 affect your ability to give both the state and the defense
20 a fair and impartial trial.

21 PROSPECTIVE JUROR: No, it would not.

22 THE COURT. Thank you for sharing that with us.

23 All right. Ladies and gentlemen, has any member of
24 the jury panel or a member of their immediate family ever
25 been represented by the 16th Circuit Public Defender's

1 Office? If so, I need for you to please stand at this
2 time. All right. Your juror number?

3 PROSPECTIVE JUROR: 237.

4 THE COURT: And you're Mr. Wherry?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: Sir, the fact that has occurred
7 would that in any way affect your ability to give both the
8 state and the defense a fair and impartial trial in the
9 event you're selected as a member of this jury?

10 PROSPECTIVE JUROR: No, sir.

11 THE COURT: Thank you, sir. You may be seated.
12 Have you or any member of your immediate family ever been
13 accused of committing a criminal sexual offense or have
14 your or a member of your immediate family ever been the
15 victim of an act of criminal sexual conduct? If so,
16 please stand at this time.

17 THE COURT: Yes, sir. Your juror number again?

18 PROSPECTIVE JUROR: 237.

19 THE COURT: And Mr. --

20 PROSPECTIVE JUROR: Wherry.

21 THE COURT: -- Wherry, thank you. The fact that
22 that has occurred, would that, in any way, affect your
23 ability to give both the state and the defense a fair and
24 impartial trial in the event you're selected as a member
25 of this jury?

1 PROSPECTIVE JUROR: No, sir.

2 THE COURT: Thank you, sir. You may be seated.

3 And I think I've covered it but just to be sure, has
4 anybody -- any member of the jury panel or member of their
5 immediate family ever been represented by any of the
6 attorneys that are involved in this case outside of the
7 capacity of either being with the Solicitor's Office or
8 with the Public Defender's Office? If so, please stand at
9 this time.

10 Any member of the jury panel or member of their
11 immediate family presently or in the past been employed
12 with any city, county, state, or federal law enforcement
13 agency or victim-/witness-assistance program? If so,
14 please stand at this time.

15 All right. Yes, sir. Your juror number?

16 PROSPECTIVE JUROR: 136.

17 THE COURT: You're Mr. Mata?

18 PROSPECTIVE JUROR: Yes, sir.

19 THE COURT: The fact that that has occurred
20 would that in any way affect your ability to give both the
21 state and defense a fair and impartial trial in the event
22 you're selected as a member of this jury?

23 PROSPECTIVE JUROR: No, Your Honor.

24 THE COURT: Thank you, sir. You may be seated.

25 Yes, sir. Your juror number?

1 PROSPECTIVE JUROR: 126.

2 THE COURT: 126. You're Mr. Lewis?

3 PROSPECTIVE JUROR: Yes, sir.

4 THE COURT: Sir, the fact that that has occurred
5 would that in any way affect your ability to give both the
6 state and the defense a fair and impartial trial in the
7 event you're selected as a member of this jury?

8 PROSPECTIVE JUROR: No, sir.

9 THE COURT: All right. Is there any member of
10 the jury panel who has seen any type of potential news
11 coverage whether in the newspaper, television, radio, or
12 electronically about anything involving this case? If so,
13 please stand at this time.

14 Has any member of the jury panel formed or
15 expressed an opinion about any issue or matter that is
16 involved in this case? If so, please stand at this time.

17 Is there any member of the jury panel aware of
18 any bias or prejudice towards either the state or the
19 defendant in this case? If so, please stand at this time.

20 Is there any member of the jury panel that is a
21 member of the grand jury which issued the indictments in
22 this case? If so, please stand at this time.

23 Is there any member of the jury panel who is a
24 member of or a contributor to any group, which has as its
25 primary concern the promotion of law enforcement or

1 victim's rights? Now these groups would include, but
2 certainly be not limited to, such groups as MADD, SADD or
3 CAVE, Citizens Against Violent Crime. If so, please stand
4 at this time.

5 Does any member of the jury panel know of any
6 reason whatsoever why he or she should not serve as a
7 juror in this case with particular emphasis being placed
8 on your ability to be fair and impartial to both the state
9 and the defendant? If so, please stand at this time.

10 Does the state have any additional questions?

11 MS. OHAYON: Your Honor, just state's number 2.

12 THE COURT: Has any member of the jury panel or
13 your immediate family ever been the victim of or accused
14 of or investigated for or arrested for any type of offense
15 or allegation involving children? If so, please stand at
16 this time.

17 All right. Does the state have any additional
18 questions?

19 MS. OHAYON: No, Your Honor.

20 THE COURT: Does the defense have any additional
21 questions?

22 MS. ANDERSON: No, Your Honor.

23 THE COURT: All right. Ladies and gentlemen,
24 what we will do now is proceed with the jury striking
25 process. I will tell you if this is your first time ever

1 serving on jury duty or else if you haven't served on jury
2 duty in probably about 10, 15 years this process goes a
3 lot faster these days. I was actually holding court in
4 Union County last week and we had a computer glitch and
5 the clerk's system could not hook up with the system out
6 of Columbia, and we had to resort to what we used to do
7 which is that we have an actual barrel that we brought out
8 and we put all of your names on a piece of paper and began
9 to cut them up and put your names in the barrel so that we
10 would draw them out one at a time. I mean, it used to be
11 jury selection in a case would take an entire day just to
12 physically get the names done.

13 Well, now we have it so that it's all in the
14 computer processing and we're now going to randomly --
15 we've randomly selected a list of names and we're now
16 going to go through what's called the striking process to
17 where both the state and the defense will have an
18 opportunity to agree to have you serve on this jury or ask
19 that you not serve on this jury.

20 Don't take it personal. If they say no, we
21 don't want this person on this jury, there's any number of
22 reasons why they do this. But if you do get selected, I'm
23 going to ask, if you would when we call your name out to
24 please bring any personal belongings that you might have
25 with you like pocketbook, coats, or books or whatever and

1 come up and stand right here in front of this clerk of
2 court and face the counsel tables. So whenever they call
3 your number out please just come up and stand with the
4 bailiff.

5 Yes, ma'am, Madam Clerk.

6 MADAM CLERK: Number 126, Michael Lewis. What
7 say you for the state?

8 MS. OHAYON: One moment. Please present this
9 juror.

10 MADAM CLERK: Defense?

11 MS. ANDERSON: Please excuse this juror.

12 MADAM CLERK: You are excused from this case.
13 Number 139, Russell McCarter. What say you for the state?

14 MS. OHAYON: Please present the juror.

15 MADAM CLERK: Defense?

16 MS. ANDERSON: Please seat this juror.

17 MADAM CLERK: Please have a seat in the jury
18 box.

19 Number 212, Brent Snellenbarger. What say you
20 for the state?

21 MS. OHAYON: Please present the juror.

22 MADAM CLERK: Defense?

23 MS. ANDERSON: Please excuse this juror.

24 MADAM CLERK: You are excused from this case.

25 Number 75, Jeanette Gilliam. What say you for the state?

1 MS. OHAYON: Please present the juror.

2 MADAM CLERK: Defense?

3 MS. ANDERSON: Please seat this juror.

4 MADAM CLERK: Please have a seat in the jury
5 box. Number 79, William Gregory. What say you for the
6 state?

7 MS. OHAYON: Please present this juror.

8 MADAM CLERK: Defense?

9 MS. ANDERSON: Please seat this juror.

10 MADAM CLERK: Please have a seat in the jury
11 box.

12 Number 237, Scott Wherry. What say you for the
13 state?

14 MS. OHAYON: Please excuse this juror from
15 serving in this case.

16 MADAM CLERK: You are excused from this case.

17 Number 188, Richard Richter. What say you for
18 the state?

19 MS. OHAYON: Please present the juror.

20 MADAM CLERK: Defense?

21 MS. ANDERSON: Please excuse this juror.

22 MADAM CLERK: You are excused from this case.

23 Number 118, Laura Koppenhofer. What say you for
24 the state?

25 MS. OHAYON: Please present the juror.

1 MADAM CLERK: Defense?

2 MS. ANDERSON: Please excuse this juror.

3 MADAM CLERK: You are excused from this case.

4 Number 68, Kenneth Forinash. What say you for
5 the state?

6 MS. OHAYON: Please present the juror.

7 MADAM CLERK: Defense?

8 MS. ANDERSON: Please seat this juror.

9 MADAM CLERK: Please have a seat in the jury
10 box.

11 Number 136, Richard Mata. What say you for the
12 state?

13 MS. OHAYON: Please present the juror.

14 MADAM CLERK: Defense?

15 MS. ANDERSON: Please excuse this juror.

16 MADAM CLERK: You are excused from this case.

17 Number 89, Todd Heath. What say you for the
18 state?

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

20 (A bench conference was held within the presence but not
21 the hearing of the jury panel.)

22 MS. OHAYON: Please excuse this juror from
23 service on this case.

24 MADAM CLERK: You are excused from this case.

25 Number 209, Gary Smith. What say you for the

1 state?

2 MS. OHAYON: Please present this juror.

3 MADAM CLERK: Defense?

4 MS. ANDERSON: Please excuse this juror.

5 MADAM CLERK: You are excused from this case.

6 Number 182, Sereirath Pou. What say you for the

7 state?

8 MS. OHAYON: Please present the juror.

9 MADAM CLERK: Defense?

10 MS. ANDERSON: Please excuse this juror.

11 MADAM CLERK: You are excused from this case.

12 Number 164, Brian Miserendino. What say you for

13 the state?

14 MS. OHAYON: Please present the juror.

15 MADAM CLERK: Defense?

16 MS. ANDERSON: Please seat this juror.

17 MADAM CLERK: Please have a seat in the jury

18 box.

19 Number 42, Susan Clayton. What say you for the

20 state?

21 MS. OHAYON: I'm sorry. What was that number?

22 MADAM CLERK: 42.

23 MS. OHAYON: Thank you.

24 MADAM CLERK: What say you for the state?

25 MS. OHAYON: Please present this juror.

1 MADAM CLERK: Defense?

2 MS. ANDERSON: Please seat this juror.

3 MADAM CLERK: Please have a seat in the jury
4 box.

5 Number 242, Terri Wilkinson. What say you for
6 the state?

7 MS. OHAYON: Please present this juror.

8 MADAM CLERK: Defense?

9 MS. ANDERSON: Please seat this juror.

10 MADAM CLERK: Please have a seat in the jury
11 box.

12 Number 34, Laureen Carver. What say you for the
13 state?

14 MS. OHAYON: Please present this juror.

15 MADAM CLERK: Defense?

16 MS. ANDERSON: Please excuse this juror.

17 MADAM CLERK: You are excused from this case.

18 Number 131, Otis Love. What say you for the
19 state?

20 MS. OHAYON: Please present this juror.

21 MADAM CLERK: Defense?

22 MS. ANDERSON: Please seat this juror.

23 MADAM CLERK: Please have a seat in the jury
24 box.

25 Number 187, Otis Love. What say you for the

1 state?

2 MS. OHAYON: Please present this juror.

3 MADAM CLERK: Defense?

4 MS. ANDERSON: Please seat this juror.

5 MADAM CLERK: Please have a seat in the jury
6 box.

7 Number 144, Pamela McCullough. What say you for
8 the state?

9 MS. OHAYON: Please present this juror.

10 MADAM CLERK: Defense?

11 MS. ANDERSON: Please seat this juror.

12 MADAM CLERK: Please have a seat in the jury
13 box.

14 Number 165, Faith Oliver. What say you for the
15 state?

16 MS. OHAYON: Please present the juror.

17 MADAM CLERK: Defense?

18 MS. ANDERSON: Please seat this juror.

19 MADAM CLERK: Please have a seat in the jury
20 box.

21 Number 178, Jeffrey Perkins. What say you for
22 the state?

23 MS. OHAYON: Please present the juror.

24 MADAM CLERK: Defense?

25 MS. ANDERSON: Please seat this juror.

1 MADAM CLERK: Please have a seat in the jury
2 box.

3 This will be for the first alternate. Number
4 125, John Lee. What say you for the state?

5 MS. OHAYON: Please present the juror.

6 MADAM CLERK: Defense?

7 MS. ANDERSON: Please seat this juror.

8 MADAM CLERK: Please have a seat in the jury
9 box. And this is for the second alternate. Number 160,
10 Sandy Motz. What say you for the state?

11 MS. OHAYON: Please present the juror.

12 MADAM CLERK: Defense?

13 MS. ANDERSON: Please excuse this juror.

14 MADAM CLERK: You are excused from this case.

15 Number 55, Emamnuel Delafuente. What say you
16 for the state?

17 MS. OHAYON: Please present the juror.

18 MADAM CLERK: Defense?

19 MS. ANDERSON: Please seat this juror.

20 MADAM CLERK: Please have a seat in the jury
21 box.

22 THE COURT: Anything concerning the manner and
23 method of selection of the jury from either the state or
24 the defense?

25 MS. OHAYON: No, Your Honor.

1 MS. ANDERSON: No, Your Honor.

2 THE COURT: All right. Thank you. Ladies and
3 gentlemen, congratulations. You got selected to be our
4 next jury for the week. For those of you in the back of
5 the courtroom, unfortunately you did not get selected. So
6 at this time I'm going to let you return back to the jury
7 assembly room and they will give you further instructions
8 but I do want to thank you for your time and your patience
9 while we went through this process.

10 If you will, when you leave the courtroom,
11 please do so quietly. We're going to continue to work in
12 here but thank you very much. You may go back to the jury
13 assembly room.

14 (The jury panel left the courtroom.)

15 All right. Ladies and gentlemen,
16 congratulations on being selected our first jury in this
17 particular courtroom. I appreciate your patience and your
18 time while we went through the qualification, through the
19 voir dire process and also through the jury selection
20 process. You have now been selected to be jurors in this
21 case. I need to give you some preliminary instructions.
22 One of the things that you'll be called on to do in this
23 case is you will have to reach a verdict in this case.
24 Your verdict will be based upon the evidence that is
25 presented during the course of this trial and the law that

1 I instruct you towards the end of this trial.

2 Until you actually begin your deliberations,
3 which will be at the end of the trial, you are not to have
4 any discussions with anyone about anything involving the
5 case. That includes like in the evening when you go home.
6 You can't talk to your family, you can't talk to your
7 co-workers, anybody. Just can't have any discussions with
8 anyone about anything involving the case until the end of
9 the case when you begin your deliberations, including you
10 cannot have any discussions among yourselves about
11 anything involving the case until the very end of the case
12 when you begin your deliberations. I tell you that so
13 that if during on breaks or at lunch or when you go back
14 to the jury deliberation room, do not begin discussing the
15 case among yourselves. Only time you will do that is at
16 the end when you begin your deliberation.

17 I also want to inform you and hopefully this
18 type of instruction will not be a burden to you. Maybe it
19 will be a help to you. When you begin your deliberations
20 and you begin to make your decisions, you will make those
21 decisions based solely on what you hear and receive in
22 this courtroom. You already received -- I've introduced
23 you to the name of the defendant, I've introduced myself
24 to you, the lawyers have introduced themselves to you.
25 You've heard the type of charge that it is. You cannot

1 leave this courtroom and do any type of independent
2 research or investigation into anything involving the case
3 nor into anybody that is participating in this case. So
4 don't go home and turn on the computer, do a Google search
5 about me or one of the lawyers or about the case or
6 anything. If you -- or if you know one of the witnesses,
7 like guys I think I might know that person. Might have
8 been to high school with them. Don't go try to look them
9 up in your annual. Just don't do any type of independent
10 research or investigation into anything that involves this
11 case because the decision that you have to make in this
12 case, in your deliberation, has to be based on the
13 information and evidence you receive during the course of
14 this trial. So allow me and allow the lawyers to actually
15 educate you as to what will be the basis of information
16 that you will use in making the decisions that you do.

17 Need to also let you know that there will be,
18 time to time, when I have to do things that are involved
19 with this trial outside of your presence. I'm not doing
20 that or no one's excluding you because they're trying to
21 keep a secret from you or trying to hide something from
22 you but there are times, as I will explain to you later,
23 that I am the judge of the law of this case and you are
24 the judge of the facts of this case. I have no opinion on
25 what the law is in this case. I can't have any opinion

1 about what the facts are in this case. That is solely a
2 matter left up to you. But in discussing matters of law
3 that I, that's in my job description, that I have to rule
4 on whether certain laws apply or not, I have to make
5 comments about the facts of the case and I have to make
6 those facts (sic) outside of your presence so that you
7 will not be influenced by anything that I say in making
8 decisions that are based on the law that I will apply.

9 I tell you that because in just a few minutes
10 the bailiff is going to show you where the jury
11 deliberation room is, he's going to show you how to get in
12 and out of the courthouse and your work for the day will
13 be over because there are matters of law that I have to
14 take up with the lawyers that has to be done outside of
15 your presence. I've discussed with the lawyers how much
16 time it may take us for me to make those decisions related
17 to the law that's going to apply to this case and it's
18 going to take quite some time. So I'm not going to hold
19 you hostage in the back and feed you supper tonight and
20 inconvenience the lives anymore than what it's already
21 been inconvenienced by your service on jury. So we're
22 going to call your work for the day over.

23 But remember, don't have any discussions with
24 anyone about anything involving the case, don't do any
25 type of independent research involving the case, and I'm

1 going to ask, if you would, be back in the jury
2 deliberation room by 1:30 tomorrow and at that time we
3 should be in a position to actually start the trial of the
4 case.

5 But again, thank you very much for your service.
6 You may go with the bailiff and he will show you how to
7 exit and enter the courthouse. But thank you very much.

8 (The jury panel left the courtroom at 4:42 p.m.)

9 THE COURT: All right. The schedule, the game
10 plan is still for y'all to continue to work on those
11 evidentiary issues. Then when we get back together do you
12 think if we started at 10:00 that would give us enough
13 time?

14 MS. OHAYON: Yes, sir.

15 THE COURT: Okay.

16 MS. ANDERSON: Yes, sir.

17 THE COURT: All right. Well, let's reconvene at
18 10:00 in the morning and if y'all get any of the videos
19 that you think I need to watch and I get here before then
20 and you want to bring them back there, I can just watch
21 them back there before we actually took the bench. So you
22 can just bring them back to me.

23 But thank you-all very much. We'll stand at
24 ease.

25 MS. OHAYON: Thank you, Your Honor.

1 (Court was adjourned at 4:43 p.m. on January 12th, 2015
2 and resumed at 10:19 a.m. on January 13th, 2015.)

3 THE COURT: We'll go back on the record in the
4 matter of state versus Orlando Coleman. We're here on a
5 couple pretrial matters.

6 DETECTIVE RYAN THOMAS, after being duly sworn,
7 testified as follows:

8 DIRECT EXAMINATION

9 BY MS. JOYNER:

10 Q Detective, can you please state your full name for
11 the record?

12 A Detective Ryan Thomas.

13 Q What is your occupation?

14 A I am a detective for the Rock Hill Police
15 Department.

16 Q How long have you been a detective with the Rock
17 Hill Police Department?

18 A Just over a year and a half.

19 Q How long total have you been involved in law
20 enforcement?

21 A Eight years.

22 Q Back in September of 2013, were you a detective?

23 A I was.

24 Q And in September of 2013, did you become involved in
25 an investigation investigating allegations made by

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EXAMINATION BY MS. OHAYON

1 MINOR [REDACTED] against Orlando Coleman?

2 A I did.

3 Q Okay. On September 25, 2013, did you speak with
4 Mr. Coleman at his house located at [REDACTED] Cedarview Court?

5 A I did.

6 Q How did you come to be at Mr. Coleman's house?

7 A After I received the case, I attempted to make
8 contact with Mr. Coleman. I went to his house and no one
9 was home, so I left my business card with a request to
10 call me. He did call me back. I asked if it would be
11 okay if I came to his house to speak with him. He said
12 yes, come on over. We agreed upon a time and I drove
13 there to meet him.

14 Q Okay. Do you remember did you meet with him the
15 same day that you spoke with him on the telephone or was
16 it a different day?

17 A I believe it was the same day, yeah.

18 Q Same day. When you arrived at his house, was there
19 anybody else present that you could tell?

20 A No.

21 Q And at the point in time that you went to
22 Mr. Coleman's house on September 25th, had a warrant been
23 issued?

24 A No.

25 Q Were you there to arrest Mr. Coleman?

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1 A No.

2 Q Or otherwise take him into custody?

3 A No.

4 Q Okay. At all times when you were speaking with
5 Mr. Coleman, was he free to discontinue the meeting and
6 leave or ask you to leave?

7 A Yes.

8 Q At any point in time when you were speaking with him
9 on September 25th, did you make him any promises?

10 A No.

11 Q Did you threaten him in any way?

12 A No.

13 Q Did you have your service weapon with you?

14 A Yes.

15 Q Did you draw that weapon?

16 A No.

17 Q Okay. Now did you -- on September 25th, did you
18 Mirandize Mr. Coleman?

19 A No.

20 Q Was that because he was not being taken into
21 custody?

22 A Correct.

23 Q Now, when you went to Mr. Coleman's house on
24 September 25th, did you bring with you a recording device?

25 A I did.

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1 Q And did you record your interactions with
2 Mr. Coleman?

3 A Yes, I did.

4 Q Okay. And in general, did you advise Mr. Coleman
5 about the nature of the allegations?

6 A Immediately when I got there.

7 Q Okay. And did you record your entire interaction
8 with Mr. Coleman on September 25th?

9 A Yes.

10 Q Now, at some point did you seek a warrant for
11 Mr. Coleman?

12 A I did.

13 Q And I should -- let me go back, back to September
14 25h just briefly. When you met with Mr. Coleman on
15 September 25th, did he appear to understand that you were
16 a police officer?

17 A Yes.

18 Q Did he appear to understand the nature of the
19 allegations that you were discussing?

20 A Yes, I described them.

21 Q Did he appear to be under the influence of anything?

22 A No.

23 Q Did he appear to be of average intelligence?

24 A Yes.

25 Q Okay. Now going to October 8, 2013, on that date

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EXAMINATION BY MS. OHAYON

1 was Mr. Coleman placed under arrest?

2 A He was.

3 Q And did you speak with him that day?

4 A I did.

5 Q Where did you speak with him?

6 A At the Rock Hill Law Center.

7 Q Was that following his arrest by another officer?

8 A Post-arrest, yes.

9 Q Okay. And where did you speak with him?

10 A We have an interview room in our detective division.
11 He was in that room.

12 Q Can you describe for the judge and the Court what
13 that room looks like?

14 A It's a small 10x10 room, white walls. There's two
15 doors and there's one corner desk with a computer and the
16 chair that I sit in at that desk and there are two chairs
17 off sort of to my left as I'm sitting down by where
18 Mr. Coleman sat.

19 Q Okay. Had you brought him from the booking area,
20 the holding area?

21 A I brought him out of the jail to that room.

22 Q Okay. Was he in handcuffs at the time?

23 A Best of my recollection he was in handcuffs because
24 he was in an unsecured area.

25 Q Now, was there anybody else that was involved in

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EXAMINATION BY MS. OHAYON

1 bringing Mr. Coleman from the jail with -- for you?

2 A Not to that room, no.

3 Q Was there anybody else in that room with the two of
4 you?

5 A No.

6 Q Okay. When you brought Mr. Coleman, he was clearly
7 in custody at that point?

8 A Yes.

9 Q Okay. I'm showing you what's been marked as an
10 exhibit, state's Exhibit 1. Do you recognize that
11 document?

12 A I do.

13 Q And was that a document that Mr. Coleman executed it
14 in your presence --

15 A He did.

16 Q -- on October 8th?

17 A Yes.

18 Q Okay. So is that a Miranda warning?

19 A It is.

20 Q And did you advise Mr. Coleman of his Miranda
21 warnings before speaking with him about the case?

22 A Yes.

23 Q Could you please -- did you read those warnings or
24 did you allow him to read those?

25 A I read them out loud.

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1 Q Okay. Can you please read the first paragraph to
2 the Court?

3 A "Before we ask you any questions, you must
4 understand your rights. You have the right to remain
5 silent. Anything you say can be used against you in
6 Court. You have the right to talk to an attorney for
7 advice before we ask you any questions and to have him
8 with you during questioning. You have this right to the
9 advice and presence of an attorney even if you cannot
10 afford to hire one. We have no way of appointing you an
11 attorney, but one will be appointed by the Court for you
12 if you wish. If you wish, you may answer questions
13 without the presence of an attorney and you may stop
14 answering anytime you desire until an attorney is
15 present."

16 Q And again, did you read that aloud?

17 A I did.

18 Q Okay. Was he able to read aloud with you or read
19 silently with you?

20 A Yeah. I have it on the desk right here between
21 myself and him when I read this.

22 Q And did he appear to understand that warning as it
23 was read to him?

24 A He appeared to, yes.

25 Q Again, on October 8th --

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1 A Yes.

2 Q -- when you were reading these warnings to
3 Mr. Coleman, at that time was he under the influence?

4 A No.

5 Q Did he appear to you?

6 A He did not appear to be under the influence.

7 Q Okay. Did he appear to understand the warnings as
8 you gave them to him?

9 A He did.

10 Q Okay. And again, as previously, did he appear to be
11 of average intelligence?

12 A Yes, he did.

13 Q Is there a second set of warnings on that paper?

14 A There are.

15 Q Okay. Can you please read those?

16 A "I have read or have read to me the statement of my
17 rights shown above. I understand what my rights are and
18 I'm willing to make a statement. I do not want an
19 attorney at this time. I understand and know what I'm
20 doing. I know that the person talking to me is a police
21 officer and I understand what he is talking about."

22 Q Did you read that out loud to Mr. Coleman as well?

23 A I did.

24 Q And did he appear to understand what you were
25 reading?

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EXAMINATION BY MS. OHAYON

1 A He did.

2 Q Did he agree to sign that form?

3 A He did agree to sign it.

4 Q And are both of those signatures -- were both of
5 those signatures -- well, actually, is state's Exhibit 1
6 -- is that a truthful copy of the form --

7 A Yes.

8 Q -- that was executed on that day?

9 A Yes.

10 MS. JOYNER: Your Honor, for purposes of this
11 Jackson v. Denno hearing, we'd ask to enter state's
12 Exhibit 1.

13 MS. ANDERSON: No objection.

14 THE COURT: Without objection be state's 1.

15 (state's Exhibit No. 1 was marked and admitted.)

16 BY MS. JOYNER:

17 Q Again, that final paragraph he signed and stated he
18 will give a statement; is that correct?

19 A Yes.

20 Q Okay. Now, did you reduce -- ultimately did Mr. --
21 did you reduce to writing your conversation with
22 Mr. Coleman that day or a written statement for him to
23 sign?

24 A Did I do a written statement?

25 Q Yeah, did he do a written statement that day?

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1 A No.

2 Q Okay. How long would you say that you spoke with
3 Mr. Coleman that day?

4 A It was approximately an hour and a half.

5 Q Okay. And at any point during that hour and a half
6 did he say I want to stop, I don't wish to speak with you
7 any further?

8 A Never.

9 Q At any point did he ask for a lawyer?

10 A Never.

11 Q At any point did he ask to take a break either to
12 use the bathroom or get a drink?

13 A Never.

14 Q At any point during that hour and a half, did you
15 threaten him in any way?

16 A No.

17 Q Did you make any promises to him?

18 A No.

19 Q Did you have your service weapon on you?

20 A No, ma'am.

21 Q Okay. Did you audio record your questioning of the
22 defendant on October 8th?

23 A Yes.

24 Q Okay. I'm showing you what's been marked for
25 exhibit purposes as Court's Exhibit 1. Do you recognize

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EXAMINATION BY MS. OHAYON

1 that disk?

2 A I do.

3 Q And what is contained on that disk?

4 A The two recordings that we've mentioned here today.

5 Q Okay. Are they complete and total recordings of
6 both of your interactions with Mr. Coleman?

7 A They are.

8 Q Okay. Did you have a chance to look at those prior
9 to the hearing today?

10 A Yes.

11 Q Okay. And they are truthful and accurate
12 representations?

13 A They are.

14 MS. JOYNER: Your Honor, we'd ask to enter
15 Court's Exhibit 1 for purposes of the -- I'm sorry --
16 yeah, Court's for -- Court's Exhibit 1 for purpose of the
17 hearing?

18 MS. ANDERSON: No objection.

19 THE COURT: Without objection and that one is
20 Court's 1?

21 MS. JOYNER: Yes, sir, Your Honor, and we'd like
22 to play it at this time.

23 (Court's Exhibit Number 1 was marked.)

24 THE COURT: All right. Without objection?

25 MS. ANDERSON: No, Your Honor.

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EXAMINATION BY MS. OHAYON

1 MS. JOYNER: Okay. Well, first, Your Honor, I'm
2 going to open the file titled 130925-009.

3 (Audio recording was played in open court.)

4 BY MS. JOYNER:

5 Q And Officer, are you able to tell us from that
6 walking sound that this is the recording from September
7 25th?

8 A This is it.

9 (Audiotape was played in open court.)

10 Q. Just for clarification for the Court, were you
11 investigating allegations against multiple allegation or
12 suspect or just Mr. Coleman?

13 A. Just Mr. Coleman.

14 Q. Why did you tell him that multiple people were under
15 investigation?

16 A. We -- when go through interrogation interview
17 training, one of the techniques they train us on is to add
18 some elements to the story when you're questioning the
19 suspect that are not true to see if they will run with
20 those ideas because you know that those ideas are not
21 true, you made them up and if they're agreeing with them
22 and giving explanations for them. It locks them into a
23 lie. So that's a technique we're in trained in to use.

24 Q. Now, at the point the tape cuts off, is that when you
25 left his home?

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1 A. Yes, I was walking out the door. I packed up there.

2 Q. Did you see or speak with him again until

3 October 8th the day you -- the second --

4 A. No, I believe he left one maybe one voicemail between
5 then and the arrest date. And I don't believe I spoke to
6 him directly -- definitely not in person until...

7 Q. The next recording the titled 13-1008-001.

8 (Audio recording was played in open court.)

9 Q Detective, on the recording of the second one it
10 sounds like someone maybe brought him to you. Could that
11 be correct?

12 A The transition from the booking area --

13 Q Uh-huh.

14 A -- to the room is -- I set that up.

15 Q Okay.

16 A Yeah. I don't know if somebody was guarding in the
17 back hall and I don't know who brought him to the jail.

18 Q Okay. Now, at the time the defendant gave both of
19 these statements to you, was he 19 years old?

20 A Yes.

21 Q Okay. And the statements indicate some type of
22 formal education up into his late teen years; is that
23 correct

24 A Yes.

25 MS. JOYNER: Those are all the questions we

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CROSS-EXAMINATION BY MS. ANDERSON

1 have.

2 CROSS-EXAMINATION

3 BY MS. ANDERSON:

4 Q Detective, starting with the first interrogation
5 back in September --

6 A Yes, ma'am.

7 Q -- so I'll start there, is that -- you indicated
8 that was Mr. Coleman's residence, correct?

9 A Yes.

10 Q Okay. And you testified on direct that you had your
11 weapon on you. Were you in uniform or do you wear sort of
12 plain clothes like you're dressed today?

13 A It would be a shirt and tie just like this.

14 Q Okay. Was your badge being worn at the time as
15 well?

16 A On my hip.

17 Q Okay. And I think it was on tape, but you did
18 identify yourself to Mr. Coleman as a detective with the
19 police department?

20 A Yes, ma'am.

21 Q And you indicated as well on direct that you brought
22 a recording device with you?

23 A Uh-huh.

24 Q Where was that placed during the interview?

25 A We were sitting around a -- or like next to a coffee

JACKSON V. DENNO - DETECTIVE RYAN THOMAS -
CROSS-EXAMINATION BY MS. ANDERSON

1 table and I had a -- my notebook and I just sat it, you
2 know, right there on top where my notebook and paperwork
3 was.

4 Q Okay. Did you specifically tell Mr. Coleman that
5 you were recording the interview?

6 A I don't believe so, no.

7 Q Did you ask him, basically, for consent or ask him
8 permission or any sort of questioning him about --

9 A No, no.

10 Q And the purpose of that interview was essentially to
11 look into some potential criminal allegations, correct?

12 A Yes.

13 Q Okay. And that was with Mr. Coleman or with Orlando
14 the suspect, correct?

15 A Yes.

16 Q And that was your purpose in going there?

17 A Yes.

18 Q And you did identify to him that you were looking
19 into some sort of allegations of a young girl being
20 touched, correct?

21 A Yes.

22 Q And told him, fairly on in the interview, that his
23 name had come up in some capacity?

24 A Yes.

25 Q And in your interview with him -- the solicitor

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CROSS-EXAMINATION BY MS. ANDERSON

1 asked you this -- you had initially told him there were
2 multiple allegations against multiple guys, correct?

3 A Correct.

4 Q And you indicated on direct that was not accurate.
5 That was something you had made up for the purposes of the
6 interview?

7 A Yes, ma'am.

8 Q And that was basically -- you testified that that
9 was basically an interrogation technique you previously
10 been trained to use, correct?

11 A Yes.

12 Q And the purpose of that interrogation technique
13 would be to try to get an incriminating statement out of
14 someone, correct?

15 A To see if they are going to tell the truth in the
16 rest of the questioning or not.

17 Q Okay. Well, the purpose -- the purpose of your
18 interrogation with Mr. Coleman was essentially to try to
19 get him to admit something, correct?

20 A Oh, absolutely.

21 Q And so when you went into this interview your
22 perception or your opinion of the truth would be an
23 admission of guilt, correct?

24 A Yes.

25 Q Okay. And so in the discussions, at some point, I

JACKSON V. DENNO - DETECTIVE RYAN THOMAS -
CROSS-EXAMINATION BY MS. ANDERSON

1 think part of your technique there was some discussions
2 about well what if she came on to you or there was some
3 sort of line of questioning you sort of fed Mr. Coleman.
4 Again, had he said anything or admitted to that or said
5 that, that would not have changed your perception of his
6 guilt, correct?

7 A If he had said anything to the --

8 Q To the effect of answering any of your questions on
9 the victim coming onto him right there like that?

10 A Right. Because those things -- that was part of
11 what I made up so if he had admitted to that I would have
12 known it's not true.

13 Q Okay. And -- in other words, his deny or his was
14 not going to change your view of the case in that you
15 believed he was responsible?

16 A I was willing to hear anything that he could bring
17 up that would, you know, support his not being, you know,
18 guilty of this charge which is, you know, one reason we
19 interview people.

20 Q Okay. He did deny the allegation multiple times in
21 the course of the interview, correct?

22 A I believe two specific times he denied it.

23 Q Okay. And that's in the first one and that was not
24 persuasive to you though, correct?

25 A No.

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CROSS-EXAMINATION BY MS. ANDERSON

1 Q And you also referenced in the first interview,
2 saying that you had talked to other guys in the
3 neighborhood. Do you recall had you actually talked to
4 other individuals?

5 A No. B. P. was the only other individual that
6 information had been fed to me from.

7 Q Okay. And you -- that was B. P. which was MINOR's
8 brother, correct?

9 A Correct.

10 Q And have you talked to B. P.?

11 A Not at that point, no.

12 Q Okay. So the reference again of telling Mr. Coleman
13 you had talked to B. P., that had not actually taken
14 place?

15 A Correct.

16 Q Was the only information you had regarding B. P.
17 from Delissa Patterson?

18 A Yes.

19 Q Okay. So you never talked to B. P. --

20 A No, ma'am.

21 Q -- yourself?

22 MS. ANDERSON: I beg the Court's indulgence.

23 BY MS. ANDERSON:

24 Q And now moving onto the October interrogation, the
25 second one we referenced, in that one was when you said

JACKSON V. DENNO - DETECTIVE RYAN THOMAS -
CROSS-EXAMINATION BY MS. ANDERSON

1 Mr. Coleman had been arrested at that point, correct?

2 A Yes.

3 Q Okay. And it's referenced in the case as well but
4 just to be clear, in the course of Mr. -- you were not the
5 one who actually took Mr. Coleman into custody?

6 A No, ma'am.

7 Q Okay. And -- but you were aware that the officer
8 who took Orlando into custody did employ a taser, correct?

9 A Yes.

10 Q Okay. And a taser, of course, uses some sort of
11 electrical current, sort of basically --

12 A Yes, ma'am.

13 Q -- I guess typically, what, maybe involuntary muscle
14 contractions or --

15 A Yeah, it takes over --

16 Q -- technically muscle --

17 A -- it takes over control of your muscles while the
18 cycle's processing.

19 Q In other words, there's a physical effect from the
20 use of the taser on the person it's used on?

21 A During the duration of the cycle only.

22 Q Okay. And Mr. Coleman -- also there had been some
23 sort of physical struggle as well?

24 A Yes, ma'am.

25 Q And there's a reference, something on the tape that

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CROSS-EXAMINATION BY MS. ANDERSON

1 he had some sort of bleeding or injury or something?

2 A His knee was scraped, yeah.

3 Q Okay.

4 A Bleeding.

5 Q Do you recall how long -- after, basically, the
6 period of time in between your interview started and
7 Mr. Coleman being taken into custody, what period of time
8 that was? The length?

9 A I would say 45 minutes, maybe an hour, right in that
10 range.

11 Q In that time period, where was Mr. Coleman prior to
12 that?

13 A I -- well, he would have been transported in some
14 sort of a marked police car and I don't know -- I don't
15 remember if he had time to actually be put back in a jail
16 cell and re-brought back out or if he came from just the
17 booking area or sally port area. I don't know if he went
18 beyond that point but --

19 Q Okay.

20 A -- otherwise he would have been brought to the room
21 to sit down in the room.

22 Q Okay. Do you know whether the marked police car has
23 any video of the transport?

24 A I don't believe they recorded that transport. If
25 they did, we weren't notified about it.

JACKSON V. DENNO - DETECTIVE RYAN THOMAS -
CROSS-EXAMINATION BY MS. ANDERSON

1 Q In the time period between him being brought into
2 the police department and coming into your -- the
3 interview room, did he see any sort of medical personnel,
4 nurse, anything like that?

5 A I think that perhaps, if I remember correctly, they
6 had already given him a Band-Aid or already wiped out that
7 one scrap because at the end of the interview I said if
8 you need another Band-Aid or something I -- they must have
9 already given him something for it.

10 Q Okay.

11 A We usually don't let someone just sit there and
12 bleed during an interview.

13 Q Do you recall if there was any sort of medical
14 checkup in terms of just the use of taser to ensure there
15 were no problems?

16 A No. Only if there are more than two cycles or if
17 the individual requests medical attention.

18 Q Okay. And at that period of time when there's a
19 reference sort of in the tape about bond hearing and that
20 nature, he had not been yet before a judgment bond
21 hearing, correct?

22 A No, ma'am.

23 Q And the normal process with bond hearings with Rock
24 Hill, correct, at that time is also when someone is also
25 when someone is screened or assessed for an attorney; is

JACKSON V. DENNO - DETECTIVE RYAN THOMAS -
CROSS-EXAMINATION BY MS. ANDERSON

1 that correct?

2 A Yes, ma'am.

3 Q And the state's Exhibit Number 1 that you referenced
4 the signature for that actually warns the person that Rock
5 Hill Police Department cannot get them an attorney at this
6 point?

7 A Correct.

8 Q So in other words, he would have had no access to an
9 attorney during this window of time, correct?

10 A No, ma'am.

11 Q And you testified on direct that he was handcuffed
12 in the interview room; is that correct?

13 A To the best of my recollection, he was.

14 Q Okay. Do you recall, did he sign the form
15 handcuffed, was he unhandcuffed?

16 A Yes, ma'am. Most people do handcuffed.

17 Q Okay. So he would have remained handcuffed at the
18 signed the form as well?

19 A Yes, ma'am.

20 Q So at no point during the duration of this
21 interview, which I timed it an hour, ten minutes and 45
22 seconds -- 43 seconds, excuse me, he would have remained
23 handcuffed the entire time?

24 A Yeah. We were in an unsecured area.

25 Q And the questions you asked were referencing things

JACKSON V. DENNO - DETECTIVE RYAN THOMAS -
CROSS-EXAMINATION BY MS. ANDERSON

1 he said before. Just to be completely clear, in this
2 second interview, that was referencing to questions or
3 answers you had from the first interview, correct?

4 A Yes, ma'am.

5 Q And that would be the September 25, 2013, interview?

6 A Yes.

7 Q All right. So the statements you were referencing
8 were the listen to the tape beforehand, that was the tape
9 from that prior interview on September 25th?

10 A Correct.

11 Q Okay.

12 MS. ANDERSON: Beg the Court's indulgence.

13 BY MS. ANDERSON:

14 Q And the purpose of this second interrogation is also
15 an attempt to get a statement from Mr. Coleman, correct?

16 A Yes, ma'am.

17 Q And you were also using some interrogation
18 techniques in the course of this one as well?

19 A Yes, ma'am.

20 Q Okay. In one it seems like you were using
21 statements or questions you asked in the prior interview,
22 correct?

23 A Correct.

24 Q And asking them about those or attempting to sort of
25 say reference that to those and have him respond to that?

JACKSON V. DENNO - DETECTIVE RYAN THOMAS -
CROSS-EXAMINATION BY MS. ANDERSON

1 A Yes, ma'am.

2 Q Okay. Perhaps also seeing if he would answer
3 consistently with what he answered in the prior --

4 A Of course.

5 Q And you had listened to the interview at the time,
6 correct?

7 A Yes.

8 Q And he references, at some point, asking to hear it
9 and you say you'll let him it afterwards?

10 A Yes, ma'am.

11 Q In other words -- so he did not see your notes or
12 hear the first interview at the time you interviewed him
13 the second time?

14 A Correct. Correct.

15 Q And ultimately there's no other statements or
16 interviews beyond these two that we've heard, correct?

17 A Correct.

18 Q And no written statements?

19 A No, ma'am.

20 Q And you believe -- I believe you made some notes
21 from your listening of the -- or --

22 A Right. My personal notes, yeah.

23 Q And those were included, I think, with your case
24 file summary?

25 A Yes.

JACKSON V. DENNO - DETECTIVE RYAN THOMAS -
CROSS-EXAMINATION BY MS. ANDERSON

1 Q And there are no other notes outside of that that
2 will be your notes you reference?

3 A No, ma'am.

4 Q Okay. Did you have any other statements from any
5 other witnesses that you reference in connection with
6 this?

7 A No, ma'am.

8 Q Any other documents, leases, utility records,
9 anything of that nature?

10 A No, ma'am.

11 Q So nothing else used in term of formulating -- no
12 external records used to formulate any of these questions.
13 Does that make sense?

14 A Well, no. There's a -- there's a lot of, you know,
15 internal research we do for databases and whatnot that I
16 don't necessarily print out and put in a folder to --

17 Q Okay.

18 A -- to help me come to those conclusions.

19 Q Do you recall what that would have been in this
20 case, if any?

21 A Oh, we look at utility records, DMV records, things
22 of that nature.

23 Q Do you have notes as to what your review of those
24 records showed?

25 A Well, I said it in the audio that the utilities had

JACKSON V. DENNO - DETECTIVE RYAN THOMAS - REDIRECT
EXAMINATION BY MS. JOYNER

1 his mother, I believe, I believe his mother, holding
2 power. So there was some -- something there in his
3 utilities or DMV records that confirmed to me, during my
4 investigation, that, you know, they did, indeed, live
5 there.

6 Q Okay. And that was the summer of 2011?

7 A '11.

8 Q Is that what your investigation focused on?

9 A '11, yeah.

10 Q But you don't have the specific records in your case
11 file?

12 A I don't think they're in there.

13 MS. ANDERSON: Your Honor, that's all the
14 questions I have.

15 THE COURT: Any redirect limited to what she
16 went into?

17 MS. JOYNER: Just briefly.

18 REDIRECT EXAMINATION

19 BY MS. JOYNER:

20 Q Did Mr. Coleman, in the second interview, the
21 October 8th interview, did he appear during your interview
22 to be in any kind of pain?

23 A No.

24 Q And we have the complete recording; is that correct?

25 A Yes.

JACKSON V. DENNO - DETECTIVE RYAN THOMAS - REDIRECT
EXAMINATION BY MS. JOYNER

1 Q So there's no off the -- there was no unreported
2 request for medical attention or to cease or unable to
3 continue?

4 A No. In fact, I asked him if he was okay.

5 Q And did -- again, did he appear at the October 8th
6 interview to understand what was going on?

7 A Yes.

8 Q Did you have any concerns while you were doing the
9 interview that the prior incident, resisting a taser, had
10 affected his ability to understand what was going on?

11 A No.

12 MS. JOYNER: I don't have anything further for
13 this witness.

14 THE COURT: Thank you, sir. You may step down.

15 THE WITNESS: Thank you, Your Honor.

16 MS. JOYNER: We don't have any other witnesses
17 beyond this point, Your Honor.

18 MS. ANDERSON: May it please the Court? Your
19 Honor, I think I'll separate this for clarity which
20 interview I'm talking about. Your Honor, as to the first
21 which is the one testified to take place on September 25,
22 2013, the first recording that was heard, Your Honor my
23 position would be that it was clearly testified that he
24 did not issue Miranda warnings in this case.

25 I would argue that this is a situation where

1 practically speaking, where a reasonable person of viewing
2 that essentially Mr. Coleman was in custody at the time
3 such as would have triggered a requirement under the law
4 through Miranda warning. The detective did go there,
5 identified himself as a detective with the Rock Hill
6 Police Department, he was wearing a badge, did have a
7 weapon and did sort of, early on in the interview,
8 indicate that his purpose in coming was to investigate
9 potential criminal allegation of which Mr. Coleman was a
10 suspect and had been implicated.

11 The detective used, in his direct and cross,
12 indicated he used interrogation techniques that he'd been
13 taught as part of his law enforcement training which, for
14 the purposes, essentially getting the statement, this case
15 getting an incriminating statement and those would have
16 been used -- standard technique such are used in a normal,
17 custodial interrogation. That would have given it the
18 same sort of tone, content, nature and sort of as they
19 say, setting of the case.

20 It is true Mr. Coleman was at his residence, but
21 I would think at the point that the detective is
22 essentially telling him he's a suspect in a criminal case
23 and at some point the detective in the course used the
24 sort of language such as, "You need to prove to me you
25 didn't do this," I think changes the sort of setting of it

1 into a custodial situation.

2 Mr. Coleman is 19 at the time, there's no one else at
3 the house and he's sort of essentially going through an
4 interview where the detective is using interrogation
5 techniques in attempting to get him to make an
6 incriminating statement.

7 Your Honor, the detective's testimony as well is
8 that he did believe Mr. Coleman to be responsible and
9 essentially was going into this interview for the purpose
10 of investigating that and considering Mr. Coleman to be a
11 suspect and believing Mr. Coleman to be guilty, I would
12 say that would also go into the nature of this and
13 changing it into -- from a voluntary sort of questioning
14 into a custodial interrogation for which Miranda was
15 clearly not given.

16 Your Honor, as to the second hearing where
17 Miranda was given, I would point out the use of the taser
18 on Mr. Coleman prior to this. It was the detective's
19 testimony that he had not been checked out physically for
20 that. We do know there are some physical effects and you
21 may be -- even it seems I think interpretation to possibly
22 hear some of that in Mr. Coleman's voice in the initial
23 part of that.

24 Your Honor, I would also point out that with the
25 second interrogation that the officer, detective,

1 essentially using information clearly from the first
2 interrogation in order to get statements in the second
3 one. There's a lengthy sort of period of that where the
4 detective is referencing statements made or elicited
5 during the first interview to which Miranda was not given
6 and using that in an attempt to either see if Mr. Coleman
7 says something consistently or changes or makes more
8 statements about that. That essentially sort of
9 intertwines the two interrogations in that sense, and I
10 think with the first one being done without Miranda sort
11 of pulls in and taints the second one even though
12 Miranda's given, because information solicited from the
13 first, non-Mirandized interrogation is being used to
14 solicit statements in the second.

15 Ultimately, Mr. Coleman denies these allegations
16 in both of these statements. However, it's the
17 detective's attempt to say or position of claiming that
18 some of the statements are incriminating or suspicious.

19 Understanding that we'll deal with the content
20 of that later in further discussions about redaction but
21 that would be my argument. The two statements -- both
22 statements should ultimately not be found to be admissible
23 against Mr. Coleman in this case.

24 MS. OHAYON: Your Honor, the state's position
25 taking the first statement from September 25th, the

1 state's position is he's clearly not in custody at this
2 point. The fact that he's being interviewed by a police
3 officer I don't think magically transforms a noncustodial
4 situation into a custodial situation. He was not in
5 custody. His freedom was in no way -- he was not deprived
6 of his freedom in any significant way. He was not
7 confined to the room; you're not allowed to leave. It's
8 very clear that the officer contacted him and said can I
9 talk to you. He calls the officer back and says yes, come
10 on over. The sit down in the living room, they talk.
11 There's no warrant at the time. He's not arrested at the
12 time.

13 The officer leaves on September 25th and doesn't see
14 Mr. Coleman again until October 8th when he's arrested.
15 And so we ask the Court to make a finding that he's not in
16 custody. I did not anticipate an argument on this point
17 but I think that, you know, there's so much case law out
18 there: Routine traffic stop questions, you're not in
19 custody. You know, a juvenile questioned in a principal's
20 office by a school official with police present, not in
21 custody. A defendant questioned in her own bedroom under
22 United States versus Parker. Judge, I have not read that
23 case but it was a key cite. Not in custody. I don't
24 think there was any question that he was not in custody at
25 the time that he gave that statement.

1 Your Honor, as to the second recording, the
2 second statement, which was given on October 8, 2013, he's
3 clearly -- no question he's in custody at this point, Your
4 Honor. However, and I think this now becomes Miranda
5 question and he is Mirandized and that is on recording.
6 It is a signed Miranda waiver.

7 As to any concerns regarding Mr. Coleman in his
8 ability to understand, Your Honor, I point out to the
9 Court while Mr. Coleman is a young man, he's 19 at the
10 time that he gives the interviews, he -- by no means does
11 he come across in either of these recordings as being a
12 person who is unintelligent. The officer testified that
13 he appeared to be of average intelligence. My personal
14 opinion and I think the Court would hold this probably
15 hold this opinion is that he does sound intelligent on the
16 recordings. He does appear to understand what is going
17 on, understand who the police officer is, he's clearly
18 identified to him in both settings.

19 As to education, he's clearly had some formal
20 education is referenced in both statements. And again,
21 he's had prior involvement with law enforcement that's
22 clearly referenced in the first recording and he's already
23 discussed -- discussed with the officer that that -- he
24 has cooperated in another investigation and gone to the
25 court -- or to the police station and given a statement to

1 another detective in another investigation. And there's
2 certainly no indication that he's in any way intoxicated.
3 He doesn't sound impaired. And I would submit that for
4 both -- for both recordings that there seems to be nothing
5 wrong with Mr. Coleman's ability to understand and
6 communicate with the officer at all.

7 Regarding -- specifically regarding the second
8 recording and the argument that -- regarding the closeness
9 in time between the time that he resisted arrest and was
10 tased to the time of his interview, Your Honor, again, no
11 obvious distress in his conversations with the officer.
12 The officer said that he did not appear to be in any pain.
13 We have the complete recording. He never requested to the
14 officer that he wished to stop for medical purposes and he
15 didn't seem in any way affected in that second interview
16 from his prior interactions with the other police officer.

17 So we respectfully submit to the Court that you
18 heard the recordings. There's -- I don't hear on those
19 recordings anything that interferes with the
20 voluntariness. We clearly have a person who is of average
21 intelligence, not intoxicated, capable of understanding
22 what's going on. There's no conduct of the police officer
23 by way of threat or promises that would affect the
24 voluntariness of the statement. As to the second
25 statement, when he's in custody, he's given Miranda in

1 accordance with the law.

2 The state's position is, again, as to the first
3 interview, he's simply not in custody. Miranda was not
4 required. There's nothing -- but as to that first
5 interview, though, absent the Miranda which the officer
6 was not required to give because he wasn't in custody,
7 there's no conduct by the officer in that first incident
8 that would anywhere -- in any way, you know, be of
9 constitutional issues regarding the voluntariness of
10 Mr. Coleman's statements in that instance. No threats, no
11 physical violence, nothing of that kind.

12 So the state's position is that we ask the Court
13 to find, as to the first incident, that he was not in
14 custody; as to the second incident, that he was properly
15 Mirandized. We'd ask the Court to allow both these
16 statements, subject to any redactions, into evidence.

17 THE COURT: Any reply?

18 MS. ANDERSON: No.

19 THE COURT: All right. My understanding of
20 Jackson v. Denno is I have to make a ruling as to the -- a
21 showing of voluntariness has been made by a preponderance
22 of the evidence. I do not believe, from my understanding
23 of the case law, that the first interrogation would have
24 required Miranda to have been given. As to the second
25 statement -- as to the second part of what I heard, I also

1 do not believe that there has been a constitutional
2 violation in that burden of proof has been met to say that
3 the statements could be admissible.

4 Now, with that being said, I would not want the
5 state nor the defense to read that I have ruled on the
6 admissibility of the substance of what's in those
7 statements because I have heard a lot of things that I
8 would require y'all to actually establish that that would
9 be permissible for it to be admitted to a jury. So I
10 don't want my ruling and my ruling that -- as soon as
11 y'all got finished and I could rule to be an indication as
12 to the admissibility of the substance of those statements.

13 All right. What do -- timewise, we have the
14 jury showing up in less than 50 minutes. We will have --
15 I've got staff I've got to take care of, I've got to get
16 them lunch. What do y'all propose to do? Y'all to go in
17 the back? Let's go in the back and talk about it.

18 (A recess was taken from 12:39 p.m. to 2:34 p.m.)

19 THE COURT: You may be seated. Okay. I have
20 had the bailiff to thank the jury for coming in but asked
21 them to return at 9:30 in the morning, so that's taken
22 care of.

23 We're reconvening on the matter of the state
24 versus Orlando Coleman for purposes of additional pretrial
25 matters. Be more than happy to hear from the defense.

1 MS. ANDERSON: Your Honor, I think just to go
2 ahead -- I think we may can run through the other defense
3 motions in limine just to get those taken care of. I
4 handed up a copy of those to the Court as well as to the
5 state, but I think we can kind of dispense with those and
6 then go into the redaction matter.

7 THE COURT: All right. I've got defense motions
8 in limine. The first one being number 1, motion to
9 determine if the state has complied with Rule 5 and Brady.
10 Motion to determine if all discovery has been turned over
11 to the defense.

12 MS. OHAYON: Yes, it has, Your Honor. We sent
13 the defense all the discovery was sent -- several Brady
14 e-mails as well.

15 THE COURT: Okay. You require anything else?

16 MS. ANDERSON: No, Your Honor.

17 THE COURT: Motion to determine the prior record
18 of the defendant that the state would intend to introduce
19 should he choose to testify.

20 MS. OHAYON: Your Honor, I think that the
21 defense and the state agree. There's just one conviction
22 of shoplifting and he has nothing else and that would be
23 the only thing to be introduced should he chose to
24 testify.

25 MS. ANDERSON: That's my understanding, Your

1 Honor. The only thing, if I could ask, is if the state
2 could get just a copy of that disposition just to get that
3 -- just to verify that, so that is my understanding as
4 well.

5 MS. OHAYON: That's not a problem.

6 THE COURT: Okay. We have a motion for a list
7 of witnesses as well as the criminal histories of any of
8 the state's non-law enforcement witnesses not already
9 disclosed by the state.

10 MS. OHAYON: Your Honor, we have already turned
11 over the witness list and I -- as far as my recollection
12 was that we ran everybody's rap sheet listed under
13 children -- most of them are children -- we ran everyone's
14 rap sheet and they did not have anything that would be --
15 that could be used and I will double check that just in
16 case, but I believe that we turned everything over that we
17 could turn over.

18 THE COURT: Okay. All right. Motion for
19 sequestration during trial, witnesses for the state and
20 the defense.

21 MS. OHAYON: The only thing the state would
22 request is that the case agent be permitted to stay during
23 the duration of the case and, as well, the victim has a
24 right to be here; however, because she's a minor child, we
25 are going to request that her mom be permitted to be here

1 as well. Both the victims, MINOR [REDACTED] and Delissa
2 Patterson, her mom, are on the witness list.

3 THE COURT: And what was the mother's first
4 name?

5 MS. OHAYON: Delissa Patterson.

6 THE COURT: Okay.

7 MS. OHAYON: And, Your Honor, we are also going
8 to request, if it's permissible, after the witness is done
9 testifying, should that witness choose to stay, for
10 instance, you know, the victim's brother, B. P. [REDACTED], who is
11 also a minor child, should they wish to stay, if they can
12 sit in the courtroom as well after they're done with their
13 testimony.

14 THE COURT: All right. You have the case agent,
15 which was the gentleman that testified earlier. He is
16 going to stay and then have any objection to the mom being
17 substituted for the young child?

18 MS. ANDERSON: No, Your Honor.

19 THE COURT: All right. And have any objection
20 to the -- once the witnesses have testified, allowing them
21 to sit in the courtroom?

22 MS. ANDERSON: Your Honor, I think as long as
23 there's not any anticipation they would be called in reply
24 or rebuttal, I have no problem with that.

25 MS. OHAYON: Okay.

1 THE COURT: Okay. The state indicates agreement
2 to that. All right. Motion to determine the existence
3 and admissibility of any prior bad acts and/or other bad
4 acts the state may seek to introduce under Rule 404(b) of
5 the South Carolina rules of evidence.

6 MS. OHAYON: Your Honor, we have no intention of
7 providing any sort of Lyle or prior bad acts as evidence.

8 MS. ANDERSON: Your Honor, just to put on the
9 record, that was my understanding from the state as well,
10 but just to put on the record that one thing that
11 specifically encompassed or intended with that motion was
12 the reference to another allegation made against
13 Mr. Coleman he was not charged for. The state's indicated
14 they don't intend to introduce anything of that or go into
15 that under Lyle, but just to put that on the record so
16 that that clear -- that was one thing I encompassed in
17 that motion.

18 THE COURT: And that's your understanding as
19 well?

20 MS. OHAYON: Yes, Your Honor.

21 THE COURT: Okay. Motion to exclude testimony
22 regarding any additional allegations for which the
23 defendant is not presently on trial.

24 MS. OHAYON: I think assuming that refers to the
25 resisting arrest charge. We're not going forward with the

1 resisting arrest charge and we do not intend to put in our
2 case in chief any evidence of flight as guilt.

3 THE COURT: Anything else that you meant on that
4 one?

5 MS. ANDERSON: That was what my question was
6 about and that does cover that, Your Honor.

7 MS. OHAYON: Your Honor, just on that point.
8 Because it's part of his statement, I guess we'll get to
9 that as well when the statement comes in, there is part of
10 the statement where he talks about him being tased. I
11 think there was a little bit of cross-examination of the
12 case agent about whether he had been tased and whether he
13 received medical attention. Any sort of records to that
14 taser we would also ask not to come in because then it
15 goes to whether he was resisting or not.

16 MS. ANDERSON: Your Honor, we would -- I did ask
17 that for the purposes of the Jackson v. Denno. I was not
18 planning to elicit any of that testimony in front of the
19 jury.

20 THE COURT: All right. So no resisting and no
21 tasing evidence, okay. Motion to determine the existence
22 of and the admissibility of any and all statements alleged
23 by the defendant which the state intends to use at trial.

24 MS. OHAYON: I do believe that other than the --
25 other than the two recordings that we are going to discuss

1 shortly, there's nothing else that -- that he didn't make
2 any other statements so we're not planning to introduce
3 anything else. But if I may, before we enter that
4 territory we can just do a couple more things for the
5 state? I do have the petition for the expert witness that
6 we had been discussing if I may approach? I showed it to
7 the defense before. Thank you.

8 THE COURT: Okay.

9 MS. OHAYON: And I just would like to put on the
10 record that we previously discussed plea negotiations and
11 plea negotiations have been rejected back -- I believe it
12 was in September of 2013. Our last offer was a choice of
13 assault and battery in the first degree with either time
14 served and sex offender registry or eight years and no sex
15 offender registry.

16 We also discussed the potential of him perhaps
17 pleading to a certain amount of time and leaving sex
18 offender registry up to the judge, to determine whether
19 the judge would sentence him to the registry or not. But
20 all of the offers that the state has made has been
21 rejected previously on the record and there were no open
22 plea offers at this time.

23 THE COURT: All right.

24 MS. ANDERSON: I did discuss all the offers that
25 were made with Mr. Coleman. He considered all of those,

1 talked with us about it, he did -- it was his decision
2 that he wished to reject all the offers. Did appear in
3 front of the judge to indicate that on the record as well.
4 Had no questions that he was made aware of and the options
5 and made the decision to proceed on the trial.

6 THE COURT: Okay. All right. Anything else?

7 MS. OHAYON: I believe that is it, Your Honor.
8 Thank you.

9 THE COURT: Okay. Lawyers approach a moment.

10 (A bench conference was held.)

11 THE COURT: All right. We will now proceed -- I
12 believe now we have some issues related to some objections
13 or -- y'all desire the Court to rule on the admissibility
14 of some of the videotaped evidence in the case; is that
15 correct?

16 MS. OHAYON: That is correct, Your Honor.

17 MS. ANDERSON: Yes.

18 THE COURT: All right.

19 MS. OHAYON: Your Honor, I know the defense is
20 going to have a longer list of objections than I believe
21 the state is. I mean, probably not object to most of it
22 coming in, but there is some talk about the defendant says
23 he sees the victim and her cousin's about two years older
24 than her sort of in a position where maybe she was
25 performing oral sex on him or was about to perform oral

1 sex on him. That type of -- that whole type of
2 questioning and answering about her being like sexually
3 promiscuous, we would move to strike based on rape shield.
4 And I do believe that other -- that is our only objection
5 and I'm sure that there's certain objections that defense
6 will have that we will agree to, but other than that,
7 that's all we have.

8 MS. ANDERSON: Your Honor, at this point I
9 wouldn't anticipate going into it. I think the only
10 difference would be if there became some sort of issue
11 regarding the child testifying or how she would know
12 certain acts or behaviors or understand. You know, it
13 might be relevant at that point. Assuming none of that
14 would become any sort of issue, then I wouldn't anticipate
15 trying to go into that.

16 THE COURT: Well, let me be sure if I understand
17 the state's -- we're talking about what the information
18 that's heard on the audio?

19 MS. OHAYON: That is correct.

20 THE COURT: Okay. So the state is or I recall
21 her testimony that suggested that she or another -- maybe
22 her testimony was that she or perhaps maybe someone that
23 she was close to had been seen performing -- suggest oral
24 sex on someone. Is it just that, or does it also include
25 the statements that were made talking about slapping on

1 the backsides and anything like that?

2 MS. OHAYON: That does not -- that talk about
3 the slapping of -- you know seeing his friend --

4 THE COURT: Uh-huh.

5 MS. OHAYON: -- pops some butts or something
6 like that, I don't think that was referring to girls young
7 as --

8 THE COURT: Okay.

9 MS. OHAYON: -- our victim is here, and I don't
10 think that was referring at all to -- that was in the
11 beginning of the conversation.

12 THE COURT: Okay.

13 MS. OHAYON: I'm talking more about him -- that
14 he saw MINOR about to, you know, suck his thing --

15 THE COURT: Uh-huh.

16 MS. OHAYON: -- in reference to Key, which is
17 Arkevious, it's her cousin who's two years older than her.

18 THE COURT: Okay.

19 MS. OHAYON: And there's some talk about her
20 wearing short shorts and revealing clothing. Just that I
21 think is rape shield and I really think we're limited to
22 that section.

23 THE COURT: Okay. Short shorts, revealing
24 clothing will come out.

25 MS. ANDERSON: I'm not sure that that would fall

1 specifically under, the shorts.

2 THE COURT: The short part?

3 MS. ANDERSON: And I think my -- I think my
4 position would be if it comes in some sort of issue of
5 them saying this must have happened because she wouldn't
6 have known otherwise or something of that nature. If the
7 door kind of -- that sort of was crossed, then I think it
8 would be argument at that point that it might be
9 admissible or it might be relevant to explain that there
10 is another explanation for why she might understand this.
11 Assuming none of that was sort of going to be made an
12 issue then, you know, I've agreed that that would fall
13 under the statute.

14 THE COURT: Okay. So for right now we're
15 definitely do -- y'all are in agreement that the prior --
16 any alleged prior acts of the victim that would suggest
17 that she was sexually active, that that would not come in?

18 MS. ANDERSON: Yes, Your Honor.

19 THE COURT: Okay. Does the state have any other
20 concerns?

21 MS. OHAYON: At this time I don't -- I don't
22 think that there's anything else that we would seek to
23 have redacted.

24 THE COURT: Okay. Is the defense ready on their
25 issues?

1 MS. ANDERSON: Yes, Your Honor. And I apologize
2 to the Court. I do not have specific time on everything.
3 I can get that. Based on whatever the Court rules, I'll
4 be more than happy to help --

5 THE COURT: Uh-huh.

6 MS. ANDERSON -- the state would pinpoint a time
7 in terms of doing the redaction. My position would be
8 that any of the references to the resisting arrest
9 allegations, the discussion, particularly the second
10 interview regarding the resisting arrest, fighting the
11 officer, agreeing that the use of the taser, any items
12 being packed up in flight since the state has agreed that
13 they're not going to go into that in their case in chief
14 that any mention to any of that will be redacted.

15 Also, I'm just doing this in sort of a blanket
16 one initially, any mention to the other allegation in the
17 past against the reference made several times of
18 discussion and both of the interviews of him being accused
19 of this before or references to knowing things because
20 he's been accused of this before, any sort of reference to
21 that other allegation since the state's indicated they're
22 not seeking to introduce that as any prior bad act
23 evidence, then I would request any mention of that in
24 either statement being redacted.

25 There's some other specific that I could go into

1 and the state I believe had agreed that those were for
2 primarily agreed that references to those would be subject
3 to redaction.

4 MS. OHAYON: Yes. And also -- so we are going
5 to -- agree to the resisting arrest, use the taser, the
6 items that were packed, any mention of the prior
7 allegation and with that as well there's a time where the
8 officer says you don't have a bad record and there's a
9 time where the defendant says I've never been to court
10 before. Those parts of it I think come out as well as
11 prior allegations and prior record.

12 THE COURT: Okay.

13 MS. ANDERSON: Your Honor, I also move -- there
14 are several references in both of the videos of a
15 discussion of the -- of Mr. Coleman being called a creeper
16 or some people saying -- calling him pedophile. Some of
17 that is linked to -- it's not clear timewise when it is.
18 My position would be that would fall sort of in this
19 character evidence that wouldn't be subject to come in
20 unless the defense put Mr. Coleman's character into an
21 issue, but that would not be admissible during the state's
22 case in chief. So I would request that any sort of
23 mention of people calling him a pedophile or creeper that
24 that the discussion of both of those, I would be
25 requesting any mention of that discussion be redacted from

1 the tapes.

2 MS. OHAYON: Your Honor, the state's position is
3 that essentially the defendant knows that in the
4 neighborhood that he's being called a creeper and he says
5 in his statement that this is why he stays away from
6 children, this is why he doesn't try to play with them,
7 and then admits also that he does play with them and he
8 does put himself in a position where he can be determined
9 a pedophile. And I think that it goes into his statement,
10 I think it goes into his credibility, I think there's a
11 little bit of inconsistencies in there and I also -- I
12 don't believe it goes -- the state would not seek to
13 introduce that as -- that those statements about him being
14 a creeper and him being a pedophile is true, that he is a
15 creeper and that he is a pedophile, more that those are
16 his state of mind. He knows that people might think that
17 of him and he still puts himself in the positions that he
18 does with hanging out with the little kids.

19 There's specific instances where he says -- at
20 one point he says no, I never put her on my lap because
21 then people would get the wrong idea and then later says
22 well, when she crawled on my lap I would push her off and
23 she jumped -- she went on my lap a few times. So it's
24 inconsistent in those respects. There's also a time where
25 he references at the end of the summer when he was living

1 at Paces River that he was in the pool and that they were
2 swimming around and that there were kids crawling on him,
3 and all of a sudden the kids stopped -- they would go to
4 their parents and then they would stop playing with him,
5 he would leave and come back. And then the second
6 interview when the detective questions him about that he
7 goes well, that, I wasn't talking about the summer at
8 Paces River. I was just talking about this past summer.

9 And I see that, you know, it's -- I see it as a
10 bit of a gray area in the sense that it could go towards
11 his character as being generally creepy or being a
12 pedophile, but also goes to his defense of I don't put
13 myself in that position, I don't hang around with little
14 kids, except I do.

15 MS. ANDERSON: Well, Your Honor, my position is
16 that's exactly what character is, a reference to, at some
17 point a rumor that some people may be saying back to him
18 -- this about him in the neighborhood. So I think, one,
19 it's very sort of, I guess, the reliability of the
20 statement because we don't even know where it came from,
21 who has said it, when it was said. I think it would be
22 something that -- it's character evidence. It's some sort
23 of rumor that this may be his reputation at some point,
24 not clear where it is. It's not linked in any way to any
25 interaction with MINOR in this case. There's

1 nothing about that that links it to that interaction, some
2 of which is -- he said happened recently. It's not even
3 linked to something several years ago.

4 So my position would be that it falls under the
5 Rule for 404 that it's not admissible by the prosecution
6 unless the defense has put that in there and they're
7 rebutting it and, at this point, that being the state's
8 case in chief that it would just be inadmissible character
9 evidence. The prejudice is extreme because it's sort of
10 relying on -- using sort of prejudice of some kids in the
11 neighborhood may be saying this about him without knowing
12 why they're saying that or what it's linked to. That's
13 certainly very prejudicial and will give the jury perhaps
14 the misperception that that is a -- arguing that character
15 evidence makes it something to prove that these
16 allegations are true or to make that these allegations
17 happened. So my position would be it falls squarely under
18 character evidence not being admissible and it's more
19 prejudicial than it is probative certainly.

20 MS. OHAYON: Just that we're not introducing it
21 to say that he is a creeper or that he is a pedophile or
22 that people in the neighborhood actually do believe that
23 but that is his state of mind. In his own interview, he's
24 saying people think this of me. So if it's true or not
25 true, that is his impression of what people think of him

1 and it's his impression that keeps him -- or so he says
2 keeps him from hanging around and playing with little kids
3 and from putting himself in situations that would be, you
4 know, perceived as inappropriate or to be creepy or like a
5 pedophile. Except that he then says -- after that he's
6 inconsistent because he then admits that he does put
7 himself in those situations. He does play with those
8 children, he does allow MINOR to be on his lap, he
9 mentions her cousins being in his lap.

10 So we're not presenting it as is he a creeper or a
11 pedophile, no. That is his own state of mind of what's
12 going on. It's his own defense that he is not putting
13 himself in those situations, but then changes his
14 statement later to say that he is.

15 THE COURT: Okay. I'm not -- I'm going to agree
16 with the defense at this juncture because when I heard it
17 I thought, okay, that's not -- that most likely is not
18 going to come in because it would be a conviction of him
19 due to the fact that that's what people think even though
20 he -- he thinks that's what people think. I don't believe
21 that there is -- that there is a distinction of him saying
22 what he believes people think and actually what people
23 think. So that would lead to, I'm afraid, a conviction
24 based upon some type of character as opposed to the actual
25 evidence that's in the case in chief.

1 As far as a ruling that the state couldn't bring
2 it up as a defense, I don't know yet because I haven't
3 heard what exactly their defense would be, how they would
4 use that. So if they open the door to it I still think
5 there's a high degree of potential prejudice from that
6 coming in without it being -- without a lot of probative
7 value, but I'm not going to make that ruling at this time
8 because I don't know what -- how that they might present
9 that as a defense.

10 MS. OHAYON: Thank you.

11 MS. ANDERSON: Your Honor, the other sort of --
12 another category, there were several references in the
13 case of the -- that I would submit would account -- would
14 amount to basically the detective vouching for the
15 credibility of the alleged victim in this case. One of
16 him saying basically that the forensic videos -- basically
17 saying that she did lie about it and that he can prove it.
18 A reference at one point on the second video that -- when
19 the detective is relating what he says that **MINOR** reacts
20 but then the detective indicting all those things a girl
21 of her age cannot fake. So my argument would be that the
22 detective is not allowed to vouch for the credibility of
23 the victim in any sort of statement that he believes her
24 100 percent or the forensic video shows she's not lying or
25 that she cannot fake these reactions would amount to

1 vouching for her credibility and that those -- any of
2 those references should be redacted from the tape.

3 MS. OHAYON: Your Honor, the state agrees that
4 the officer vouching for the victim's credibility, you
5 know, saying -- any instances where he says "I think she's
6 telling the truth" or part where the forensic video's been
7 designed to prove the truth or whatever. We do believe
8 that that -- we agree with that, that that should be taken
9 out. But anything where the detective may state his own
10 opinion about whether he believes that the defendant is
11 lying or that the defendant is guilty, I think that is
12 different in that officer's opinion of the defendant, not
13 vouching for the victim.

14 THE COURT: All right. Just want to be sure
15 that I'm clear and I say this primarily for those who
16 might be present who might testify subsequently. I know
17 we had this discussion in the back. I had a very
18 substantial criminal sexual conduct with a minor case
19 previously many years ago and I was -- and I actually
20 allowed a witness to testify as to things that the child
21 victim had said and it led to an inference that the person
22 who took the stand was, in fact, vouching or making more
23 credible what the child said in the video.

24 I ended up getting reversed on that in a very stern
25 opinion. And my nonofficial knowledge of the history of

1 that case is that then it went back for another trial. It
2 end up that the person never was convicted of it. So I
3 just say that because if you're going to testify, remember
4 that when I make rulings and your lawyers advise you as to
5 certain things like the judge says you can't do this and
6 judge says you can't do this, try not to do that because
7 when I make my rulings I'm doing it so that maybe we can
8 have some finality to this case.

9 So I agree with the state in regards to I think the
10 detective's statements about the testing is designed to
11 prove that she's telling the truth or that I believe that
12 she's telling the truth, all that definitely would not be
13 permissible for the detective to testify or for anyone to
14 testify in this case.

15 What does the defense say about her arguments in
16 related to mischaracterization of the defendant's
17 statements?

18 MS. ANDERSON: I think the -- what I would have
19 issue with is specifically -- I think the specific
20 incidence of when -- if it's -- trying to think of the
21 specific instance of when -- if the detective is
22 referencing something based on my experience I believe you
23 or I don't, I think he -- you know, he'd be allowed to
24 testify to that. Specifically the second interview, the
25 detective begins talking about some sort of training he

1 went that he calls body language that tells people based
2 -- whether they're telling the truth or not. My position
3 on that would be that sort of -- he is essentially sort of
4 offering a sort of opinion testimony as if he's an expert
5 with some sort of a science. I don't know what the
6 science, or lack, thereof, is within this but -- but that
7 is not just sort of a based on my investigation, based on
8 my experience, based on my gut instinct; that at that
9 point the detective, in that instance, is offering sort of
10 essentially an expert opinion based on some sort of
11 scientific or some sort of training or research and then
12 that would be -- unless he had been qualified as an expert
13 in that, that that would be inadmissible because that is
14 essentially giving the -- his opinion more weight than I
15 think it should be allowed just based on the fact of him
16 just testifying through his investigation.

17 So as to that section of where he is basing his
18 belief on whether or not Mr. Coleman's is telling the
19 truth on his prior training in some sort of area of law
20 enforcement technique or science, I would move for that to
21 be held out because I think that crosses the line into
22 some sort of expert testimony that unless he's qualified
23 in that expertise, I don't think he would be allowed to
24 testify to on the stand.

25 MS. OHAYON: We -- our -- the state's position

1 is that that is all the detective's strategy. The
2 detective has lied to the defendant about there being
3 other allegations and other suspects and other -- whatever
4 the case may be. Not everything the detective was saying
5 in those recordings was accurate and all of it was, as
6 testified during the Jackson v. Denno hearing, his
7 testimony, all of it was for the purposes of getting some
8 sort of confession or some sort of incriminating statement
9 and was all his strategy. It wasn't necessarily that he
10 was making his opinion known to a future jury or something
11 that this is what he thinks. It was just to get the
12 defendant to make some sort of incriminating statement.

13 Now, is this something that during his
14 testimony, while he's on the stand, the state can
15 certainly flesh out with questioning about what is
16 accurate, what was actually true, what was not true and,
17 you know, what was just strategy.

18 MS. ANDERSON: Your Honor, I think the risk is
19 that that gets given more weight based on if the jury
20 hears this sort of discussion of I have been through this
21 training and this what this training tells me, I think
22 that the -- how that sounds like and how it's presented is
23 that he has some expert training or particular knowledge
24 or expertise, and I think that risk is that gives that
25 opinion extra weight that would ordinarily only be

1 afforded an expert who could testify as to their expertise
2 and being qualified or not as an expert, that the jury
3 could assess it that way. It's sort of added context and
4 it's just sort of heard on the tape and I think the jury's
5 hearing essentially what he's saying he has some sort of
6 expertise in this area and I think the risk is that it
7 gives it extra weight based on that without being able
8 really to cross-examine or question as to his
9 qualifications to make such a statement.

10 THE COURT: All right. Let me see if I could
11 make a few statements and y'all can give me some guidance.
12 What I was -- one of the things that I was concerned about
13 with what the officer was stating was the manner in which
14 he was stating it. He was actually jumping from being a
15 fact witness into actually telling the jury how they need
16 to actually view the witness and that when he went into
17 that body language explanation, it was -- I was concerned
18 that he's then crossed over and he's now doing the
19 function of that jury in being able to use their common
20 sense, experience to be able to eyeball a witness and
21 evaluate that witness.

22 I felt like that crossed that line. But I was
23 having difficulty seeing, okay, but he is a police
24 officer, he's trained, he knows how to conduct proper
25 investigations and he's able to do things that, let's say,

1 create stories to test his veracity to allow it so that
2 there was a fine line as to when does that stop that is
3 permissible, when does it start to where it actually
4 crosses over?

5 I share the defense's concern, but I'm not
6 hearing that y'all articulated to me exactly where -- I
7 mean, maybe y'all know where that line is and I've just
8 not heard it yet or not understood it but if -- I think
9 the defense is correct in also saying -- that the
10 prosecution's correct that they get to go into it some but
11 they don't get to go into it to the degree that the
12 officer stated in the video.

13 MS. OHAYON: The officer also stated in the
14 recording that, you know, he had -- the police department
15 has many years of experience --

16 THE COURT: Uh-huh.

17 MS. OHAYON: -- and so he -- trained in what
18 they do every day and so I do think that that is a bit of
19 a fine line and I think that goes to strategy and that's
20 something that, you know, the defense can cross him on
21 whether he is actually an expert or not and whether, you
22 know -- and maybe definitely the judge can instruct the
23 jury that, you know, this officer is not an expert in body
24 language, he's not an expert in this and this was just his
25 strategy to use in questioning as he will testify that it

1 was his strategy.

2 But if Your Honor's still uncomfortable with
3 that, maybe we can redact the portion where he says "I
4 took a training in body language" and redact that portion
5 out but not the rest where he talks about the rest of, you
6 know, his strategy. We take out the part where he says I
7 took this training. I think that would satisfy this
8 issue.

9 MS. ANDERSON: Well, and I think I'm looking at,
10 as well, if you can back up a couple of minutes is when he
11 starts some sort of this "pretend we're in court" and you
12 know, I have issues with that because he's going what it
13 sounds like to the jury, which seems to me he's sort of
14 invading the province of telling the jury this is how, you
15 know, it goes and this is how the law is. I mean, to me
16 it sort of stretches beyond just a general discussion this
17 is how it goes in court and these people testifying, the
18 jury makes a decision. To me it sort of -- to me it
19 crosses a line over into the detective saying, Well,
20 here's what the jury's going to think and here's how
21 they're going to think and here's how, you know, it's
22 going to be in court, which I think sort of runs the risk
23 of the jury is the judge of the facts and the credibility
24 and Your Honor instructs them as to that, so I think if
25 you start there and then it sort of transitions into this

1 training that if he's not an expert in it, then I don't
2 think you should be allowed to essentially offer a
3 conclusive expert opinion in it which is, I think, even if
4 you redact out the "I've been to this training," he's
5 telling them I've been through this training with the
6 claim that it tells you whether someone's telling the
7 truth or not.

8 So I think that doesn't fix the issue that if he's
9 not an expert in that, I think this is an instance where
10 he is offering it based on some sort of -- it's not based
11 on just experience or his instinct or something like that.
12 I don't think it's characterized that way on the tape. I
13 mean, I think he could testify on direct of the state of
14 what techniques he used or things like that. I'm just
15 concerned with the way that this follows this whole
16 discussion of the sort of here's what the jury's going to
17 think when we get in court and then here's my opinion
18 based on this training. I think it's still -- that, to
19 me, I think does cross the line over on this section.

20 THE COURT: All right. Let me make a couple of
21 comments. I agree, I agree, I agree. When you have a
22 witness that takes the stand and uses that language of
23 this is how a jury is going to see it and you play that in
24 front of the jury, that is highly and, I think, improperly
25 suggestive to that jury is that okay, if you disagree with

1 -- you can't disagree with me how to look at this because
2 I know how this thing's done, I've been through it before
3 and so you've got to view this evidence with the way this
4 witness acts in this particular way and you've got to
5 agree with me. I think that's very inappropriate. I
6 think completely objectionable.

7 But I also don't believe the officer did anything
8 inappropriate or incorrect in dealing with trying to
9 elicit information from someone that he is investigating
10 possibly having committed a crime. I think an officer can
11 go in there and say I know what a jury's going to do.
12 Jury's going to look at you and they're going to think
13 that you're guilty as sin. That is -- from my limited
14 knowledge of police interrogation tactics, that's
15 completely appropriate, he can say those things, but I
16 don't think that's proper to actually be presented in
17 front of a jury.

18 So that's where I'm -- that's where maybe I'm not
19 being as articulate as I can be, but that's where the line
20 needs to be drawn with what's in that tape and what's not
21 in that tape. I don't want -- I think as the state
22 presents the officer, the defense has the right to
23 cross-examine the officer however they want to and as
24 fully as they want to but I would caution the defense.
25 I'm saying that those things will not come in but if you

1 -- but if the defense opens the door to them, the state
2 might not have any other recourse than to allow -- then to
3 get those things in and that would be troubling to me.
4 The fact that the jury then would actually be told by a
5 witness from the witness stand how they're supposed to
6 think and how they're supposed to act as opposed to just
7 presenting the facts to them and letting the jury apply
8 those things and come to their own decisions. Because I
9 think that's a really bad invasion of their territory as
10 being the fact finder.

11 MS. OHAYON: Just so that I'm clear --

12 THE COURT: Uh-huh.

13 MS. OHAYON: -- does that mean that I'm
14 redacting just the -- just the part that the officer is
15 saying -- just redacting those parts, but leaving the
16 answers that the defendant is giving, or am I to redact a
17 whole question and answer?

18 THE COURT: I guess --

19 MS. OHAYON: If the answer doesn't reference --
20 because I didn't think at any point the defendant ever
21 says your training or whatever.

22 THE COURT: Uh-huh.

23 MS. OHAYON: I don't think the defendant ever
24 mentions anything about that. So if I just redacted what
25 the officer said in reference to pretend you're in court

1 and in the part where he says --

2 THE COURT: Uh-huh.

3 MS. OHAYON: -- "I've never been in court" and
4 the -- that whole section there and the part where he says
5 "I've been through this training, it's called body
6 language," but leaving whatever the answer is?

7 THE COURT: Uh-huh.

8 MS. OHAYON: Those parts can come in?

9 THE COURT: And I'm going to say yes because I'm
10 -- and I'm -- I made -- I tried to make a lot of notes
11 while I watched the video and I'm also calling on my own
12 memory so both my notes and my memory could be wrong.
13 When the officer was making those types of statements and
14 comments, I don't recall that the defendant actually
15 engaged in a discussion about your training or your
16 expertise or what you do. I think the defendant's
17 comments continued to be in response to the substantive --
18 what the officer was trying to get to substantively. So I
19 -- I think you are looking at it correctly. I think the
20 actual question or those statements can be removed but yet
21 still the defendant's responses to those and it still make
22 some logical sense to the jury.

23 MS. OHAYON: I'm going to try to --

24 THE COURT: Uh-huh.

25 MS. OHAYON: -- beg the Court's indulgence.

1 THE COURT: It's all right.

2 MS. OHAYON: Try to make sure and go through
3 everything I had notes on.

4 THE COURT: And I don't -- y'all might have
5 mentioned it in the back to me but I don't think we
6 mentioned it out here. If I have I'm sorry, I missed it.
7 Did we talk about the information about the cell phone?

8 MS. OHAYON: Your Honor, I don't know that we
9 mentioned it here; however, the state at this point --
10 we've looked through, there's like 3,000 photos --

11 THE COURT: Uh-huh.

12 MS. OHAYON: -- we've looked through everything.
13 We don't see anything that we would put in our case in
14 chief. We've turned everything over save for about two
15 images that were child porn. We deleted those images.
16 They appeared a few times. Other than that we've turned
17 everything over and if it comes up, if it gets opened up,
18 I think at that point we might address potentially putting
19 it in if however -- if somehow somebody opens up the door
20 to that but we don't think that it's something that can be
21 brought in in our case in chief and it's not our intention
22 to do so.

23 THE COURT: Okay.

24 MS. ANDERSON: And, Your Honor, that's my
25 discussion from talking as well. You know, I don't plan

1 to go into anything of it and I guess, you know, if we
2 redact any or even to mention any items were taken from
3 him or anything of that nature. So I don't plan to go
4 into it. Obviously understanding that if somehow they
5 open the door, we would revisit it at that point, but at
6 this point I don't plan to mention or to go into at all.
7 So at this point I suppose from the redaction as part of
8 the case in chief with the understanding if somehow it
9 came in later.

10 MS. OHAYON: I wouldn't want it redacted in the
11 sense that, you know, he's just talking about him having
12 two cell phones there. I don't think that part should be
13 redacted. Just if we do end up getting into it later
14 on -- there's nothing wrong or incriminating about him
15 having cell phones so -- or prejudicial. So that we can
16 actually -- if it happens that a door's open somehow to us
17 being able to present evidence from that cell phone, that
18 it's not the first time the jury's hearing about the fact
19 that cell phones were taken from the defendant. But the
20 part where he talks about -- I can redact the whole thing
21 about the -- that picture on his Kik that Austin sent him
22 that the girl was probably 15 or 16. I mean, that is a
23 prior bad act potentially and we're not charging him with
24 that, so that's something that can be redacted.

25 But just the mention of him -- of his phones being

1 taken, I don't think that's mentioned of phones being
2 taken into custody or being, you know, searched. I don't
3 think that part should be redacted necessarily.

4 MS. ANDERSON: Well, I guess it sort of goes
5 right into after the discussion of anything on this phone
6 that's going to make you look like a pedophile and that
7 follows a discussion, again, on the resisting arrest. So
8 I just -- I guess want to make sure in terms of --

9 MS. OHAYON: Right before that, right before
10 that -- I have it marked as 5739, I wrote "starts talking
11 about the cell phones" and then 5835, "is there anything
12 that's going to make you look like a pedophile?" So I
13 guess that minute in between where they're just talking
14 about the cell phones and I can redact his phone number
15 obviously just so that the jury understands that the cell
16 phones were taken when he was arrested, you know, and then
17 "is there anything that's going to make you look like a
18 pedophile," we can redact that part out.

19 MS. ANDERSON: Okay. So my concern is if we're
20 not going to go anything on the phone, then I don't
21 necessarily know why at this point the jury would need to
22 know they've taken phones into evidence. I don't
23 necessarily know the relevance of that unless it became an
24 issue later of just the fact of phones were signed over.
25 We're not going to discuss anything that was found on

1 them. I don't necessarily, at that point, what the
2 relevance would be in putting that in would be without any
3 discussion of what was done with the phones or anything
4 about the phone.

5 MS. OHAYON: Well, then perhaps we can resolve
6 this by I will redact it from his statement and we'll just
7 ask the officer on the stand if any cell phones were taken
8 and searched and if anything of value to this case was
9 recovered? I mean, the answer is no because we're not
10 putting it in our case in chief just so -- I just don't
11 want there to be an argument. You know, the officer could
12 have searched his phone, maybe there was something on his
13 -- you know, I mean, not that I think that that isn't an
14 argument that they will make but just --

15 THE COURT: Okay. All right. I have been
16 involved in the case. I do see a valid reason for them to
17 ask the question about were there other things taken or
18 the cell phones taken. It goes to, at some point, the
19 jury might wonder as to the thoroughness of the
20 investigation so they did look. But I do share the
21 defense's concern. If you ask that other question about
22 anything there that would suggest that you're a pedophile,
23 I think that crosses that line that -- it would be
24 inappropriate. So I would allow the question about cell
25 phones being taken but not to suggest a pedophile --

1 relates to pedophile.

2 MS. ANDERSON: Your Honor, one thing, and this
3 may be a little premature in a way because I don't know in
4 what order the state's going to call witnesses, just raise
5 issue on the second statement somewhere right around 1041
6 there's a discussion about -- I think reference Ms.
7 Patterson's impression you were living there, so possibly
8 a hearsay objection, but I don't know what order the state
9 would call them in, if Ms. Patterson would have already
10 testified at that point. I'm not clear if that's the
11 detective relating something she specifically said. I'm
12 just not clear from the context of that, but just in an
13 attempt to raise any possible issue, I'm going to raise
14 that as well.

15 MS. OHAYON: I'm not clear. I have under 1041
16 "I don't remember what happened but I talked to my mother
17 about it and she said we weren't even living over there
18 when that went down." That -- he's talking about his own
19 mother.

20 MS. ANDERSON: Well, it references -- then
21 there's a statement made. It's the one where you were
22 still living at Paces River before you went to the school
23 you were talking about. Then the statement I had moved
24 before then. Then a statement, well, you were either
25 still hanging around the tennis court. The mom's

1 impression is that you were still living there. Then a
2 statement of it was two years or two years ago, very
3 difficult to remember. So I just don't know specifically
4 as to whether that specific statement or, you know, the
5 mother will have already testified at that point. So just
6 raising that as a possible hearsay issue.

7 MS. OHAYON: Just a couple of things. We're not
8 offering it for the truth of that -- the mom's impression
9 was that she was still living there. It's I think more
10 that they were trying to figure out if they were talking
11 about the same summer. I would have to probably listen to
12 that specifically because I didn't write down any notes
13 about it because it didn't strike me as hearsay or
14 something that I might -- you know, might be in question.
15 But I have to listen to it again to see exactly what
16 context it's in.

17 But I also -- I mean, eventually the mom will testify
18 and I believe our intention is to put her before the
19 officer anyway. But again, I mean all of our witnesses
20 are over the place now, so I don't want to guarantee
21 something that I have no control over. But even so, if we
22 put that in first then the mom testifies after anyway, she
23 would still be subject to cross.

24 THE COURT: All right. I've got -- so you're
25 talking about a statement that was made by the defendant

1 as to what someone else told him?

2 MS. ANDERSON: It was by the detective --

3 THE COURT: By --

4 MS. ANDERSON: -- and I'm not clear -- is that
5 something specific -- I'm just not clear the origin from
6 that.

7 THE COURT: Oh, this is that part where the
8 detective is trying to explain the geography of where he
9 lives at the time of the event?

10 MS. ANDERSON: I think it's the discussion of
11 whether the mothers knew each or not. It's in the context
12 -- in that discussion. I think that's where that --

13 MS. OHAYON: Well, that's what I have. That's
14 my interpretation as well. It's sort of like oh, your
15 moms were hanging out and the defendant sort of arguing
16 about whether or not the mom's did hang out then and
17 ultimately they come to conclusion that they knew each
18 other from Paces River. At the very least they knew each
19 other from there, and I just -- I don't know exactly the
20 point that she's talking about. I'd have to listen to it
21 again.

22 THE COURT: Okay. Listen to it again and see if
23 y'all can come to agreement. Otherwise, if the detective
24 is saying something that someone else told them, I think
25 that probably would not be admissible because that's

1 pretty much hearsay upon hearsay. But if there's some
2 other reason, I would be more than happy to hear from it.

3 MS. OHAYON: Okay.

4 THE COURT: And so it might be a good idea that
5 if you got that person coming to testify maybe, be sure
6 you elicit that information from that person.

7 MS. OHAYON: Is that -- I mean, is it possible
8 for us to play it real quick because we have the time, you
9 said around 10:41, so --

10 MS. ANDERSON: And I think it's just -- yeah, if
11 we start it around 10:41 that should pick it up.

12 MS. OHAYON: Okay.

13 MS. ANDERSON: I'm just going to have the record
14 reflect that that was Court's Exhibit 1 and the file is
15 131008-001. I'm going to skip to about 10:41 or 10:39
16 because it's...

17 (Audio recording played in open court.

18 MS. ANDERSON: I'm just going to pause that
19 there. Is that what you're talking about? The mom's
20 impression was that he was still -- it doesn't sound to me
21 like it was a statement that the mom said to him, you know
22 what I mean? It sounds more like they were discussing a
23 certain time and the impression is they were looking there
24 at that time. I don't necessarily know that mom said yes,
25 he was living there.

1 THE COURT: Yeah, so far I'm not hearing -- I'm
2 not hearing it phrased as what I have concern about. So,
3 so far if I were -- if I were asked to exclude or exclude,
4 I would say include it.

5 MS. OHAYON: Okay.

6 MS. ANDERSON: Yes, Your Honor. I'm not for
7 sure if I've covered this one, but I tried to cover any
8 sort of category --

9 THE COURT: Uh-huh.

10 MS. ANDERSON: -- I could think of. There's a
11 few references. I have one. It's around 28 minutes of
12 the second interview. I think there's a few of talking
13 about, and this one's not phrased that way, where the --
14 of the detective's saying something like prove to me you
15 didn't do this. There's a reference at 2835 of the way I
16 do it I tell the police everything they needed to know so
17 I could get that name cleared. I think my concern would
18 be that some of those of the sort of burden shifting of
19 them having to prove to the detective or -- by connotation
20 and essentially to the jury to prove his innocence. So my
21 concern would just be the way it's phrased of proving I
22 didn't do this, so that would be my concern and so there
23 were a few of those instances in the audio.

24 MS. OHAYON: And since we have it open, Your
25 Honor, if we could just go to that and play that because I

1 don't have the full quote from where it started.

2 MS. ANDERSON: Again, I don't know if that's the
3 language -- what would the language prove. I'm looking to
4 see if I can find that one specifically. I'm starting at
5 2736.

6 (Audio recording played in open court.)

7 MS. ANDERSON: I think that is the quote that
8 they are referring to. I'm trying to find your notes,
9 Your Honor. I think there was a statement in the first
10 interview that was referenced about proving your case and
11 I think that was the specific language as well as the
12 before. I'm trying to see if I can find it. I apologize,
13 Your Honor. I can't find exactly the note of what I was
14 referencing. I'd have to go back and check on it.

15 THE COURT: Okay. See if possibly y'all can
16 locate exactly what you're talking about and take a look
17 at it. Let me tell you, I made some notes of that
18 give-and-take between the officer and the defendant was
19 taking place and I did have some concerns that the
20 officer, the way that he was phrasing some questions, that
21 if it was actually heard by the jury. He used "an
22 innocent man wouldn't prove" or "innocent man would do
23 so-and-so" or that if had these allegations that an
24 innocent man would do certain things.

25 Leads to a problem that if then an argument is

1 made to the jury that nullifies -- let's say the defendant
2 doesn't testify, then nullifies his right to come to court
3 and require the state to prove his guilt beyond a
4 reasonable doubt and me telling the jury that he does not
5 have to testify at all, when I've got a witness that is
6 already making those statements, phrasing them in legal
7 terminology that the jury hears that destroys that
8 constitutional connection -- protection that the defendant
9 has.

10 Again, I see nothing wrong with it as being used
11 as an investigative tool, but I have a big concern about
12 those exact words being phrased as such being placed in
13 front of a jury when I'm going to use a lot of that same
14 terminology in the closing instructions I give to that
15 jury.

16 So take a look at it. I've expressed to y'all
17 where my concern is and see if maybe a suggestion if it
18 could be done to remove it from the audiotape and maybe
19 elicit -- if that type of questioning is important by the
20 state to get it from the police officer, maybe have the
21 police officers testify to it in court and maybe watch
22 those buzz words of innocent and proven guilty and those
23 types of things that suggest a legal standard. Because
24 when I instruct them -- I've told them they will be -- I'm
25 the judge on the law so if they start -- if any witness,

1 not only the police officer, but any witness starts using
2 these legal terminologies, my ears go up and I start
3 listening very carefully to how they're phrasing that to
4 be sure that what they say is not inconsistent or contrary
5 to what I will tell them at the end of this trial when I
6 charge them on the law. So maybe if y'all could take a
7 look at that to be sure that my concerns are addressed
8 like that.

9 MS. ANDERSON: And, Your Honor, the only other I
10 think category of thing I had on the list is there's some
11 reference to kind of other kids crawling on Mr. Coleman or
12 kids crawling on me. At one point -- it's around 3152 of
13 the second interview there's a reference of kids crawling,
14 I was knocking them off. The detective said there's
15 nothing wrong with that. I guess my concern with that is
16 sort of tied in with the concern of the pedophile rumors
17 and creepers and the things like that we've already
18 requested be held out of -- I understand the state's
19 eliciting the statements about the -- MINOR in his lap
20 and that's something that goes to their case.

21 My concern about the other kids that aren't sort
22 of at issue here is a concern that it creates sort of an
23 inference of Mr. Coleman's just got all these kids all the
24 time and it's tied in a little bit with that sort of the
25 discussion of the impressions other people may have of him

1 or the rumor, pedophile rumor, the general character
2 stuff. So my concern would be kind of what the possible
3 prejudice of that or possible connotations of that. Also
4 a little bit of a relevance since it really doesn't affect
5 the state's argument as to the person -- the case here
6 which is with alleging MINOR [REDACTED]. So I would
7 just -- the reference to sort of other kids that aren't --
8 Ms. Patterson aren't related to that of just the removal
9 of those references.

10 MS. OHAYON: Your Honor, the state is going to
11 object to that because it's not hearsay, it's not
12 character evidence. It is literally the defendant's own
13 statement, his own words saying kids are crawling all over
14 me and in reply to that the officer doesn't even think
15 well, that makes you look like a pedophile. He's saying
16 there's nothing wrong with that. So I think that there's
17 nothing wrong with it coming in and, you know, in terms of
18 it's not the same as the rumors from the area where he's
19 creepy or it's the pedophile. It's literally him saying
20 that children crawl on him and sometimes children are in
21 his lap and I think that for the state, our argument is
22 that it gives more credibility to the fact that MINOR [REDACTED]
23 would have sat on his lap and maybe she wouldn't have been
24 the only one and maybe nobody would have really paid
25 attention to the fact that MINOR [REDACTED] was sitting on his lap

1 because kids got on his lap all the time.

2 So that's, you know, an argument that the state
3 would like to make in terms of talking about whether there
4 are witnesses or any witnesses who may have seen that. It
5 wouldn't have been something to stand out for anyone if
6 what he normally does is goes out, hangs out with kids,
7 they all play together and they sit on his lap and there's
8 never an issue with it then why would this time stand out?

9 MS. ANDERSON: I guess one thing is is I'm
10 concerned about what inference the state wants to draw
11 from that since it's not really related and, you know, is
12 it going to be an attempt to prove or to argue that this
13 makes it this more likely because this statement was made
14 or this likely that the -- MINOR 's version of this, you
15 know -- I think that's my concern. Is what -- what is the
16 inference they try to make with that or what -- you know
17 for the purpose of wanting it in, what is that inference
18 they're seeking to draw with that and whether that crosses
19 the line of trying to argue because this was said well
20 this happened all the time and so that makes it more
21 likely that perversion in this happened as they've said.
22 I think that's where my concern lies in what inference or
23 what arguments are the state going to make out of that or
24 try to construe or stretch that or expand that out to be.

25 MS. OHAYON: We certainly have no intention of

1 arguing to the jury oh, these kids, you know, hang out on
2 him and crawl on him and sit on his lap, that must mean
3 he's a pedophile. But he does deny MINOR sitting on
4 his lap at the very beginning, in the first statement when
5 the officer asks him originally, and then he later goes on
6 to admit that children always crawl on him, children are
7 always on his lap and then he also admits that MINOR
8 sat on his lap. And it's our argument, one of our
9 arguments, that we would like to make is why would he
10 remember MINOR sitting on his lap if all the kids
11 always sit on his lap? And at first he's denying that she
12 sat on his lap. Now he's admitting yeah, she sat on my
13 lap and she sat on my lap a few times. I can't remember
14 how many times, but she did. And I don't think that that
15 goes to his character, it doesn't go to the hearsay, to
16 the rumors, and the state does not intend, in any sort of
17 argument or in front of the jury at all saying that
18 because he has children crawling all over him and children
19 sitting in his lap, therefore, he is a pedophile.

20 THE COURT: I mean, I tend to agree with the
21 state if they've presented and the way that they're
22 arguing that they're going to present it. Now I would
23 have concern if the state -- I've read about cases and
24 I've heard arguments made where they'll make a plea to the
25 jury that, okay, it happened to this one child but okay,

1 we've got to protect all these other children and put him
2 in jail. That would be a completely inappropriate
3 reversible argument if I didn't sustain the objection to
4 that. So as long as the argument or the inference were --
5 didn't go in that direction, I don't see anything
6 objectionable to that coming in as being a version of the
7 facts of what took place.

8 MS. ANDERSON: Yes, Your Honor.

9 MS. OHAYON: And if the defense doesn't have
10 anything else? Were those everything? Did you guys have
11 everything?

12 MS. ANDERSON: I think that covers the major
13 categories. I mean, I'm more than happy to sit with the
14 state and try to sort out the specifics and if we come to
15 any disagreement on that, address that with Your Honor
16 with the specific times and things like that. But that
17 was the sort of -- I tried to cover the category of things
18 that would be at issue and that we could then pull out
19 what relates to those.

20 MS. OHAYON: Yeah, the -- I think that covers
21 everything. I can't remember anything that has been
22 mentioned to me before then that we haven't covered here.
23 So if -- the state's only going to request either maybe
24 like a list of times so that I can get that to our IT
25 person and if there is a disagreement and, you know, she

1 thinks it falls under something you said was
2 inadmissible --

3 THE COURT: Okay.

4 MS. ANDERSON: -- you know, we would address it.

5 THE COURT: You can do that.

6 MS. OHAYON: We can do that.

7 THE COURT: Okay. Anything else before we go
8 off the record?

9 MS. OHAYON: Your Honor, just to ask the defense
10 what time they think they can get that to us so that we
11 can get that to our IT because it does take quite a bit of
12 time to go through the redactions and make sure that it's
13 been redacted properly.

14 MS. ANDERSON: I mean, I'll go back to my office
15 and start working on it. We may can split one person --
16 one of us do one tape and one do the other and just try to
17 get back to you, you know, as quickly as we can.

18 THE COURT: Okay.

19 MS. ANDERSON: I've got some of the numbers. I
20 just want to get the specific numbers and make sure I'm
21 not missing -- I wrote most of the start times and --

22 MS. OHAYON: Right.

23 MS. ANDERSON: -- not completion times. So I'm
24 still working on that.

25 THE COURT: Based on what I'm fixing to tell

1 you, we might have a little bit more time. Okay.

2 Anything else before we go off the record?

3 MS. ANDERSON: No, we'll take care of it.

4 THE COURT: Okay.

5 MS. OHAYON: Oh, wait.

6 THE COURT: I still want to talk to counsel back
7 in chambers.

8 MS. ANDERSON: Okay.

9 THE COURT: But make the announcement here so
10 that people that y'all might not be able to talk to.
11 There is some -- we'll go off the record.

12 (A recess was held from 3:45 p.m. to 3:47 p.m.)

13 THE COURT: Yes. We'll put that on the record
14 that am going to review the forensic video.

15 MS. OHAYON: And I will get that to you because
16 I'm not sure if I left -- may have --

17 THE COURT: Okay.

18 MS. OHAYON: -- left that in my office or -- I
19 don't see it here right now.

20 THE COURT: All right. And may I see the -- a
21 lawyer from each side in the back? At least one.

22

23 (Whereupon, the proceedings were concluded.)

24

25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

I, Aminah R. Hardy, CM, Official Court Reporter for the 16th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and partial Transcript of Record of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 12th - 13th day of January, 2015.

June 23rd, 2015

Aminah R. Hardy

Aminah R. Hardy, CM

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) SIXTEENTH JUDICIAL CIRCUIT
 COUNTY OF YORK) CASE NO.: 2014-GS-46-03857
 03858
 STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
)
 VS) (DAY 1 - VOLUME I)
)
 ORLANDO MARTINEZ COLEMAN) (PAGES 1 - 65)

March 16, 2015
 YORK, SOUTH CAROLINA

BEFORE THE HONORABLE ROGER COUCH

APPEARANCES:

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 16TH Circuit Court Reporter

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E-X-H-I-B-I-T-S

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1 MS. O'HAYON - May it please the Court.

2 THE COURT - Yes, ma'am, you may call the cases.

3 MS. O'HAYON - Your Honor, we call the State vs.
4 Orlando Coleman, Indictment Number 2014-GS-46-03857 and
5 3858.

6 THE COURT - All right. Counselor, I have been
7 presented with copies of the indictments. The two
8 indictments are both for criminal sexual conduct with a
9 minor in the first degree, and they are, I think, different
10 -- just one second -- (pause) -- they involve the same
11 victim. Is that right?

12 MS. O'HAYON - That is correct, Your Honor.

13 THE COURT - Okay. Now, has your client been
14 arraigned on these indictments?

15 MS. ANDERSON - Yes, Your Honor, he has.

16 THE COURT - And I assume he's pleading not
17 guilty?

18 MS. ANDERSON - That is correct, Your Honor.

19 THE COURT - And demanding a trial by a jury. Is
20 that also correct?

21 MS. ANDERSON - Yes, Your Honor.

22 THE COURT - All right. Now, we had a brief
23 conference in my chambers at which time the attorneys made
24 me aware that this case had been pre-tried earlier by Judge
25 Mark Hayes and that Judge Hayes had made several rulings.

1 Could you put that on the record what has occurred so we
2 have a historical context in the record, please, ma'am?

3 MS. O'HAYON - Yes, Your Honor. It was the week
4 of January 12th that we started the case -- took it to
5 essentially just a pre-trial. There was a Denno hearing
6 done and there were two statements made by the defendant,
7 one that was made at his home, and that was recorded, and
8 one that was made after he was arrested and that was
9 recorded. That second one was made with the Miranda
10 warnings read to the defendant. The Judge ruled that both
11 of the statements were admissible, however, there were
12 portions of the statements that were going to be
13 inadmissible for different reasons; part of it was
14 essentially burden-shifting; part of it was vouching for
15 the credibility of the witness and the State and defense
16 has worked extensively on creating a redacted copy of those
17 statements that take everything out and then just ---

18 THE COURT - And that redaction is in your belief
19 in accordance with Judge Hayes's ruling.

20 MS. O'HAYON - Yes, Your Honor, and we've
21 discussed that with defense counsel and defense counsel has
22 also agreed. It's come to our attention this weekend that
23 there were a few clips of some things that were still in
24 the recordings that may have been questionable or may have
25 violated that ruling. Specifically, I went through it

1 earlier today, and I have started the redactions and will
2 complete them later today. There is a redaction where the
3 officer testi -- states that he took a body language
4 seminar. That's around a minute -- some time before minute
5 13 that I will be redacting. There's a statement made by
6 the officer, you can hardly defend yourself around minute
7 13 that will be redacted. There's a statement made by the
8 officer that says there's an enormous amount of evidence
9 against you. I will be redacting that as well. This
10 officer also says something, I want to know a hundred
11 percent. I'll redact that as well, and then finally around
12 minute 25 the officer says she is traumatized by it. She
13 was okay until you moved in, something along those lines,
14 and that I'm redacting as well.

15 THE COURT - All right. Now, does the defense
16 agree then with the newly redacted version of the
17 statement?

18 MS. ANDERSON - Your Honor, what I think I'd like
19 to do is, the solicitor and I keep working and when she
20 gets it to where she's at, just sort of the two of us talk
21 to just make sure that there's anything -- I'll go back and
22 look at my notes or even listen to the tapes as well, but I
23 think we'll keep working. I agree with those redactions.
24 I just want to make sure there's nothing else that would
25 fall under that same ambit, but I'll clear that with ---

1 THE COURT - Well, I'll ask you to continue to
2 work on that and once you've completed that, report back to
3 the Court and we'll make then a -- set the record straight
4 as to what will be admitted.

5 MS. ANDERSON - Yes, Your Honor, thank you.

6 THE COURT - All right, so we'll leave that open
7 at this time.

8 MS. O'HAYON - Okay, thank you, Your Honor.

9 THE COURT - All right, any other matters -- I
10 believe there is a list of motions in limine that I have
11 received from the defense. Does the State have any
12 motions?

13 MS. O'HAYON - Just briefly, Your Honor. We've
14 already discussed and agreed on -- we discussed this in
15 chambers as well. There is going to be forensic
16 interviewer. She will be here tomorrow morning, so we can
17 do her pre-trial hearing tomorrow before we bring the jury
18 in. There's also an expert that we plan to bring in and we
19 can do that pre-trial right before the expert testifies.

20 THE COURT - The nature of that expert is?

21 MS. O'HAYON - She will testify about delayed
22 reporting and children behavior.

23 THE COURT - I see. All right, and the defense's
24 motions?

1 MS. ANDERSON - Yes, Your Honor. May it please
2 the Court. Your Honor, the first motion was motion to
3 determine if the State has complied with Rule 5 and Brady
4 and motion to determine if all discovery has been turned
5 over to the defense.

6 THE COURT - The State agree that that's occurred?

7 MS. O'HAYON - Yes, Your Honor.

8 THE COURT - All right. Your Honor, the second
9 motion is a motion to determine the prior record of the
10 defendant the State would intend to introduce should he
11 choose to testify. We had covered this motion previously.
12 My understanding is his only prior conviction is a
13 magistrate level shop-lifting offense, but just to have the
14 State certify there is no other ---

15 MS. O'HAYON - Yes, Your Honor.

16 THE COURT - Is that correct?

17 MS. O'HAYON - That's correct.

18 THE COURT - All right.

19 MS. ANDERSON - Your Honor, a third motion was a
20 motion for a list of witnesses as well as the criminal
21 histories of any of the State's non-law enforcement
22 witnesses not already disclosed by the State. I have at
23 this point received a witness list and so just prior to
24 those individuals testifying to have received their
25 criminal history, ---

1 THE COURT - All right.

2 MS. ANDERSON - --- would ask for those as well.

3 THE COURT - The State in agreement to ---

4 MS. O'HAYON - Yes, Your Honor.

5 THE COURT - All right.

6 MS. ANDERSON - Your Honor, the fourth motion will
7 be a motion of sequestration during trial of the witnesses
8 for the State and defense.

9 THE COURT - Any objections from the State?

10 MS. O'HAYON - Just, Your Honor, the victim's
11 mother as her -- as the guardian of the victim and as the
12 representative of the victim should -- we believe should be
13 allowed to sit and watch the entire trial. Also ---

14 THE COURT - The victim is -- I think I was told
15 nine years old?

16 MS. O'HAYON - That is correct, Your Honor.

17 THE COURT - So any objection to the mother being
18 in the courtroom?

19 MS. ANDERSON - No, Your Honor.

20 MS. O'HAYON - And, Your Honor, just as well the
21 case agent when -- the case agent is not here today ---

22 THE COURT - And who is that?

23 MS. O'HAYON - Detective Ryan Thomas.

24 THE COURT - All right. I'll allow those two
25 individuals to stay; other than that, all witnesses should

1 remain outside of the courtroom until called to testify.
2 They should not discuss their testimony among themselves or
3 with anyone else either before or after testifying. That
4 Order will continue until the end of the trial.

5 MS. ANDERSON - Thank you, Your Honor. Your
6 Honor, the fifth motion was motion to determine the
7 existence of and the admissibility of any and all
8 statements allegedly made by the defendant which the State
9 intends to use at trial. As you've already heard, there's
10 been a discussion of that. I would like to put on the
11 record that the Jackson vs. Denno hearing was hearing on
12 January 13th of 2015 in front of The Honorable Mark Hayes.
13 There was testimony by Detective Ryan Thomas for the State.
14 There was also two -- there was a Court's Exhibit, Court
15 Exhibit Number 1 of the disk of the two recordings in their
16 unredacted original state. I have spoken to the State
17 regarding entering that into the record as a Court's
18 Exhibit.

19 THE COURT - Any objection to that being put in?

20 MS. O'HAYON - No, Your Honor.

21 THE COURT - Let's have it marked as a Court's
22 Exhibit, and it'll be held by the Court Reporter.

23 MS. ANDERSON - Your Honor, and at the ---

24 THE COURT - Just one second until she does mark
25 it.

1 (WHEREUPON, DOCUMENT MARKED AS COURT'S EXHIBIT
2 NUMBER 1.)

3 THE COURT - All right, yes, ma'am.

4 MS. ANDERSON - Yes, Your Honor, and further I'll
5 put in the record the Court Reporter presiding over that
6 matter was Aminah, A-m-i-n-a-h, Hardy. Your Honor, during
7 that hearing, on behalf of Mr. Coleman the defense did make
8 a motion to suppress both the September 25th, 2013 statement
9 which is sort of the -- references the first statement and
10 the October 8th, 2013 statement which is the second
11 statement made at the Rock Hill Law Center. Judge Hayes
12 did deny both those motions and then we further -- he
13 explained on the record his ruling was as to the general
14 admissibility because of the redactions, the content having
15 to be worked out. Your Honor, and we will -- in an attempt
16 to not re-litigate that matter that's already been re-
17 litigated, I think that both parties will be abiding by
18 that ruling, but I would just ask for the record that the
19 record for this case can incorporate all of the defenses'
20 prior arguments, objections made, motions made, and that
21 all the testimony should it need to be looked at would be
22 incorporated as part of this ---

23 THE COURT - All right, I'll direct that the
24 record does include that information.

1 MS. ANDERSON - Thank you, Your Honor. Your
2 Honor, the sixth motion, motion to exclude any testimony
3 regarding additional allegations for which the defendant is
4 not presently on trial and within that a motion to exclude
5 testimony of alleged flight evidence intertwined with an
6 un-indicted charge that is not at issue in this trial.
7 Your Honor, Mr. Coleman was originally charged with a
8 resisting arrest. He's not at this point been indicted.
9 The State did not notice me to go to trial on that. At the
10 prior pre-trial the State indicated they would not be
11 seeking to introduce any of that evidence or elicit any
12 testimony about the allegations of the resisting arrest or
13 any potential flight evidence in connection with that.

14 THE COURT - Is that still the case, Ms. O'Hayon?

15 MS. O'HAYON - Yes. Your Honor, we don't intend
16 to put in ---

17 THE COURT - All right, yes, ma'am?

18 MS. ANDERSON - Your Honor, the seventh motion is
19 motion to quash the indictment pertaining to the second
20 alleged incident on the ground the indictment and the
21 information provided by the State regarding this incident
22 fails to provide sufficient notice to adequately and
23 effectively defend against the allegations. I had to
24 phrase it this way as to -- both indictments, Your Honor,
25 as to the same sort of time/date range, so I'm not sure as

1 to which specific one pertains to the second alleged
2 incident. That's the way I phrased it with that. Your
3 Honor, my position would be based on the fact that the
4 initial sort of report in the allegation of the case in
5 which I anticipate -- let me back up that. The initial
6 police report indicated an allegation of two incidents
7 occurring some time around the summer of 2011. During the
8 course of the State's work on the case and preparation of
9 the case, they have turned over to me information from
10 subsequent meeting with witnesses and I think have
11 disclosed all -- any inconsistencies that were disclosed to
12 them. During the course of that, the timeline of when this
13 is allegedly happened has shifted over time. The more
14 recent communications have been that the allegations are
15 now as to -- which I would anticipate would be testified to
16 but do not know for certain until it happens -- is that one
17 incident was alleged to have happened between May 13th, 2011
18 and some time in I believe November of 2011. That would
19 correspond to the time according to a lease obtained by the
20 State that Mr. Coleman and his mother resided at Pace's
21 River Apartment which is the alleged incident site. That
22 then -- that would be the first incident. As to the second
23 alleged incident, that is now being indicated to have
24 occurred some time after Mr. Coleman moved out of Pace's
25 Rivers Apartment some time perhaps within a timeframe I

1 suppose of after November until June 2000 -- June 15, 2012,
2 the end date on indictment which is my understanding of
3 when the Pattersons moved out of Pace's River. Your Honor,
4 based on the sort of recent case law, my argument would
5 just be that as to the shifting of the date puts the
6 defense at difficulty. I understand the limitations of
7 these cases, that it is frequently difficult to date -- to
8 pinpoint a specific day of the week, a specific date, but
9 when it becomes sort of a shifting sort of what year, what
10 season, as a sort of a shifting over the course of the
11 case, that that would arise to a level that the defense
12 cannot or has difficulty comparing a defense because we
13 don't know when we're defending against. If there's
14 potential alibi defense, we couldn't pinpoint that, and
15 we're not exactly sure at this point as to which time range
16 as to the second alleged incident would be.

17 MS. O'HAYON - Your Honor, the -- I've tried to
18 get the nine year old victim to narrow down the timeline,
19 however, she can't remember dates. We've been able to
20 narrow it down based on the fact that the defendant moved
21 in in May, 2011; he moved out some time I believe actually
22 in January of 2012 or maybe the end of December, 2011.
23 That's how far the lease goes. And the victim's family did
24 not leave, did not move out until June of 2012. Her
25 statement was that one incident happened, he went away and

1 came back and then the second incident happened. I'm not
2 certain what he went away and came back means, because she
3 doesn't know where he went away, and so that I have no way
4 of tracking down where it is he went away to, and so I
5 don't -- I can't narrow down the timeline any more than
6 that, so I've asked her before, you know, in an attempt to
7 get any sort of information about season and about, you
8 know, whether she was in school, whether she was not in
9 school, whether -- she doesn't really remember those
10 details consistently. She just remembers that they were
11 outside playing, so the weather must've been nice enough
12 for them to be outside playing.

13 MS. ANDERSON - And, Your Honor, if I could just
14 for the -- I reference -- I have the case in front of me
15 now, just to put on the record, the case I was referencing
16 was State vs. Mark Baker, Opinion No. 27497, which was
17 filed by the Court of Appeals of South Carolina on February
18 the 11th, 2015. I apologize for missing that.

19 THE COURT - 2000 and what? 15?

20 MS. ANDERSON - 15, Your Honor.

21 MS. O'HAYON - And, Your Honor, the defendant's
22 own statement to law enforcement is that he did live there
23 and then that he had went away and came back and had hung
24 out with her after he had gone away and come back.

1 THE COURT - But his statement doesn't give you
2 any indication as to when the second coming was?

3 MS. O'HAYON - He doesn't say when he went away
4 and came back. It's just -- and I don't want to make any
5 assumptions based off his statement. The way his statement
6 sounds is he lived there, they moved out and then he
7 started coming back and hanging out with people there, and
8 then he left again to go to some challenge academy in July.
9 At that point in July, the victim's family has already
10 moved out, so he's definitely there again some time in 2012
11 after he has moved out. He's still hanging out with her.

12 THE COURT - So you're taking the position that
13 the first of the indictments numerically is the first
14 incident?

15 MS. O'HAYON - Yes, and she remembers the first --
16 -

17 THE COURT - And the second numerically is the
18 second incident, both of which occurred at some point in
19 time between May 13th 2011 -- your allegation is -- and June
20 15th, 2012.

21 MS. O'HAYON - Correct.

22 THE COURT - Okay. I think I understand the
23 situation. I'll take a look at the case.

24 MS. ANDRESON - Yes, Your Honor.

1 THE COURT - I'm familiar with the case but hadn't
2 read it in detail as far as this is concerned, so I'll take
3 a look at it. All right, other motions?

4 MS. ANDERSON - Yes, Your Honor, motion eight
5 would be motion to determine the existence and
6 admissibility of any prior bad acts and other bad acts the
7 State may seek to introduce under Rules 403(B) of the South
8 Carolina Rules ---

9 THE COURT - State intend to use any Lyle
10 evidence?

11 MS. O'HAYON - Your Honor, we don't believe that
12 the evidence we tend to introduce will be considered Lyle,
13 because we don't believe it's a prior bad act, and so I did
14 out of an abundance of caution inform the defense attorney
15 this is the type of information that I'm planning to
16 present so you are aware of it. I don't think it's
17 considered a prior bad act, but I don't want there to be
18 any sort of ---

19 THE COURT - So what is it?

20 MS. O'HAYON - Essentially there are two
21 maintenance workers that -- who used to work at Pace's
22 River when the defendant was living there at the time, and
23 they remember observing -- and they don't remember his
24 name, so we can't -- I can't link him to that by his name,
25 but we do believe it's the same defendant based on other

1 evidence, but they remember seeing him hanging around
2 younger kids, younger females, either in the breezeways or
3 sitting on the electrical box. Sometimes they were sitting
4 and straddling him, and we believe that this testimony is
5 not a bad act in and of itself. It's no allegations of any
6 criminal sexual conduct, however, in the defendant's own
7 statement, he states to the police that he never hangs
8 around with little kids, he doesn't let little kids like
9 jump on him or sit on his lap, and then -- so this
10 testimony would be ---

11 THE COURT - So are you intending to use this as
12 reply testimony, perhaps ---

13 MS. O'HAYON - No, Your Honor.

14 THE COURT - --- or in your case in chief?

15 MS. O'HAYON - In our case in chief in order to
16 impeach the defendant's statement. We also want to use it
17 ---

18 THE COURT - So he's already made that statement.

19 MS. O'HAYON - We'll be presenting it -- the
20 testimony after we present the defendant's statement.

21 THE COURT - I see, okay.

22 MS. O'HAYON - We also believe that it goes to
23 corroborate the victim's testimony, that they were, in
24 fact, in the breezeway, and that they were, in fact, at the

1 tennis courts sitting by the electrical box, because they
2 have seen him with younger kids in those areas.

3 MS. ANDERSON - Your Honor, my position would be
4 that this is alleged other bad acts, bad act evidence.
5 Absence something that links the individuals -- this case
6 as to being the alleged victim, then it's simply evidence
7 of other acts. I think that the allegation is that there's
8 something improper about the activity and so that it does
9 corroborate other bad act evidence. To give a little
10 context, the unredacted portion of the video -- or excuse
11 me -- audio interviews, there are several discussions
12 regarding children climbing over Mr. Coleman or jumping on
13 him in the pool. There's a line of discussion on the tape
14 that Judge Hayes ruled admissible of the defendant
15 explaining that at certain times people -- kids have told
16 him their parents call him a pedofile or a creeper, so
17 there's sort of allegation of him being around kids
18 amounting to something improper. That was ruled to be sort
19 of inadmissible character evidence unless there was somehow
20 it opened the door to it, so ---

21 THE COURT - Well, they're kind of saying that he
22 opened the door to it through his statement where he said -
23 - what'd you say he said?

24 MS. O'HAYON - Your Honor, he stated that he did
25 not hang around with any little kids, that he did not hang

1 around -- that he always chased girls older than him, he
2 did not hang around with kids that were younger in the
3 neighborhood.

4 MS. ANDERSON - Well, there was that statement,
5 but there was other statements of playing with little kids,
6 little kids climbing all over him, so I don't think it's a
7 categorical denial all through his statement of ever being
8 around younger children. At some point during the course
9 of his statement he -- the officer asked him if the -- if
10 Ms. Patterson ever sat on his lap and he said she may have
11 and I pushed her off, so there's an admission of that that
12 she may have sat on his lap. He denies anything improper
13 happening or any improper touching, so I don't think it
14 goes in his statement that there was any sort of categoral
15 (sic) -- categorical denial of him ever being involved with
16 children in this case. I just think absent something that
17 links up the individuals -- and I don't know how old these
18 females are alleged to be, but my client was 17 at the
19 time, so he was also -- you know, he wasn't as a 40 year
20 person or a 30 year old person playing with children. This
21 is someone who's a teenager and a child himself, so I think
22 absent something that links the other individuals involved
23 as being the alleged victim, then I do think it's other bad
24 act evidence, and there's no charges arising from that, no
25 convictions arising from that, and so I think it's just

1 sort of this open door of general character evidence of he
2 hung around children in a way someone thought was improper.
3 That sort of I think crossed into this sort of general
4 creepy evidence.

5 THE COURT - Well, it may go to his credibility if
6 he's giving statements that he didn't do that, and -- of
7 course, now you weren't clear as to whether or not this
8 witness is going to be able to identify him as the person
9 who did anything.

10 MS. O'HAYON - Your Honor, we're able to link it
11 to being him. They remember which apartment number he
12 lived in, which was his apartment number. They don't
13 remember his name, and I'm not a hundred percent certain
14 that they would be able to see him today and identify him
15 in Court, so I don't want to make that promise, but they do
16 -- they do remember him. He's also the only person where
17 anybody -- anybody in the front office knew of this person
18 of this age hanging out with girls of this age. Not only
19 that, ---

20 THE COURT - All right, well, I'm going to ask
21 that you not present any of that testimony or evidence to
22 the jury until we have a chance to take a proffer from that
23 particular witness, and then we'll take that issue up at
24 that time.

1 MS. O'HAYON - Your Honor, the maintenance workers
2 are here today. If that is something that we can take care
3 of pre-trial, they are here today and be able to do that.

4 THE COURT - Well, we may have. Right now though
5 I just -- I don't want to make a ruling until I've heard
6 whether or not they can even identify him, whether they may
7 have seen more than one person doing this. Sounds like to
8 me we're going to have to tie up some loose ends before it
9 comes in evidence ---

10 MS. O'HAYON - They're ---

11 THE COURT - So we'll try to tie up the loose ends
12 before we get there.

13 MS. ANDERSON - And, Your Honor, just -- I think
14 my motions nine and ten are essentially wrapped in with
15 that. My understanding is Dwayne Boepple -- if I'm saying
16 that correctly -- and Raymond Lowery are the two witnesses
17 at issue, so the motion number nine ---

18 THE COURT - All right.

19 MS. ANDERSON - --- as to that, that sort of falls
20 in with that. As well, motion ten, again regarding any in-
21 Court identification raised on a prior out-of court, again
22 that was with as to the unknown of whether either Mr.
23 Boepple or Mr. Lowery would ---

24 THE COURT - I think I've ruled in your favor I'm
25 not.

1 Ms. ANDERSON - Yes, Your Honor. Your Honor, 11
2 was motion to restrict any witness from offering testimony
3 that amounts to bolstering and/or vouching for the
4 credibility of the victim. Your Honor, I think that would
5 be dealt with in any sort of proffer as to the expert
6 witness and/or the forensic interviewer ---

7 THE COURT - I think we're planning on doing that
8 in the morning.

9 MS. ANDERSON - Yes, Your Honor. And I think we
10 have already covered in the sort of redaction discussion
11 regarding the case agent, Detective Thomas. There was some
12 initial vouching or bolstering as to that. I think that's
13 covered in terms of -- my anticipation is that the State is
14 -- he won't be testifying as to anything that was said on
15 the tape. And then, Your Honor, additionally, we said we
16 would handle the admissibility of the out-of-court
17 statement or the forensic video tomorrow, so that would be
18 my motions.

19 THE COURT - That's right. Okay. All right, any
20 other matters that we need to take up pre-trial at this
21 time?

22 MS. O'HAYON - Your Honor, I -- you know, forgive
23 me, I think I missed it. You had made a ruling
24 specifically about the second alleged indictment. Have you
25 made a ruling about ---

1 THE COURT - I'm going to -- my law clerk is
2 reading the case that was quoted to me right now. I think.
3 And he and I are going to talk about it in a second.
4 Anything else?

5 MS. O'HAYON - No, Your Honor. If you want to do
6 the proffers of the maintenance workers, we can ---

7 THE COURT - I want to read this case first.

8 MS. O'HAYON - Okay, that's fine. All right,
9 thank you.

10 THE COURT - All right, I'll take a short recess.
11 Thank you.

12 MS. ANDERSON - Yes, sir, Your Honor.

13 (WHEREUPON, RECESS TAKEN)

14 THE COURT - All right, we're back on the record
15 in the case of the State of South Carolina vs. Orlando
16 Martinez Coleman. I've had an opportunity to review the
17 indictments and question in this case as well as have gone
18 over the case of State vs. Baker, a recent Supreme Court
19 case dealing with the sufficiency of indictments. The
20 Court notes that the two indictments in this case, that is,
21 specifically, they are amended indictments that were in
22 cases 2014-3857 and 3858 are both for the offense of
23 criminal sexual conduct with a minor in the first degree.
24 In reading the two indictments, both indictments read
25 exactly the same. There's no differentiation between the

1 two indictments as to what specific event or allegations
2 are being made as to when they occurred within the
3 timeframe of May 13, 2011 to June 15 of 2012. Now, in
4 reviewing the Baker case and presented with questions
5 concerning the appropriateness of an indictment, the Court
6 is charged with determining whether the offense stated in
7 the indictment is stated with sufficient certainty in
8 particularly so as to enable the Court to know what
9 judgment to pronounce and the defendant to know what he is
10 called upon to answer and whether or not he may a plea
11 (sic) an acquittal or a conviction thereon, and then
12 secondly whether it apprises the defendant in the elements
13 of the offense that is intended to be charged. In doing
14 that, the Court went on to quote from the State v. Gentry
15 and State v. Tumbleston, as well as State vs. Wade, and it
16 said that in determining whether an indictment meets the
17 sufficiency standard, the Trial Court must look at the
18 indictment with a practical eye in view of all surrounding
19 circumstances. In doing so I am to look at the surrounding
20 circumstances that existed pre-trial in order to determine
21 whether a given defendant has been prejudiced or taken by
22 surprise and hence unable to combat the charges against
23 him. So what I'm -- in our discussions earlier, it's clear
24 to me that this case has somewhat morphed, I guess, as it's
25 gone along. There was one indictment that's been replaced

1 by these amended indictments, so I'm going to ask the State
2 to put on the record the process through which the
3 indictment process has proceeded in this case, so as I can
4 take a look at the all surrounding circumstances including
5 pre-trial matters that have gone into the creation of the
6 indictments. So I'll ask the State to go over that with
7 me. Once the State's completed that, I'll be happy to hear
8 from the defense on this matter. Yes, ma'am?

9 MS. O'HAYON - Thank you, Your Honor. The case
10 came in originally as one charge, one warrant. In the
11 incident report it did allege two different incidents, a
12 staircase incident and a tennis court incident. While
13 discussing plea offers, I had offered to the defense that
14 if he pleads to the one charge, I will not indict the
15 second charge; I will not make him plead to a second
16 charge. It would just be the one charge and that's it, but
17 if he were to reject that offer, that I did intend to go to
18 trial on two counts, one for each, the staircase and for
19 the tennis court. When I had originally indicted the case,
20 I indicted it as two indictments. That was back in
21 December. The original indictments were both pretty much
22 essentially the same thing as the amended indictment except
23 that they started back in 2010, and I based the indictment
24 based on the one consistent thing that I knew, was that the
25 victim lived there during both incidents. At the time I

1 didn't know when the defendant had moved into Pace's River,
2 so I could not narrow it down. So the original indictments
3 were for 2010 to 2012. After we attempted to take it to
4 trial the first time on January 12th, I was able to get a
5 hold of a lease that -- for the defendants when he lived at
6 Pace's River and the lease started in May of 2011. At that
7 point I knew that it could not have happened before then,
8 because he was not living then. (sic) So I had amended the
9 indictment in February after, you know, telling the defense
10 attorneys that I was going to amend the indictment to
11 narrow it down. So I've narrowed it down at this point to
12 May of 2011 into June of 2012 from the time that the
13 defendant moved in to the time that the victim moved out.
14 It's always been a possibility that at least one of the
15 incidents happened in 2012. The only thing that I can
16 differentiate in terms of time is that the victim says, one
17 incident happened, the defendant went away for some time,
18 and then he came back and the second incident happened.
19 She's not clear about where he went away, because she
20 doesn't -- she doesn't know where he went away, and so she
21 doesn't know when it is or where he went to and when he
22 came back.

23 THE COURT - Now, as to the two indictments that
24 I'm presented with, you referred to one of them as a
25 staircase incident and one as a tennis court incident.

1 MS. O'HAYON - Correct.

2 THE COURT - Does the victim differentiate it as
3 to which occurred first?

4 MS. O'HAYON - Yes, Your Honor, the victim ---

5 THE COURT - Which occurred first?

6 MS. O'HAYON - The staircase incident.

7 THE COURT - And then the second incident was at a
8 tennis court.

9 MS. O'HAYON - Correct.

10 THE COURT - Okay. So numerically, I think -- you
11 had told me that the first incident would be covered by
12 3857 and that the second incident would be 3858.

13 MS. O'HAYON - Correct, Your Honor.

14 THE COURT - Okay. I'll hear from the defense
15 concerning this matter as far as the lead-up to the issues
16 of the indictments, what knowledge you may have and what,
17 if any, prejudice might exists to the defendant given the
18 status of the indictments.

19 MS. ANDERSON - Yes, Your Honor. May it please
20 the Court. Your Honor, to give the background somewhat
21 from the defense perspective, as the State wrestles, (sic)
22 there was originally one charge, one warrant. That warrant
23 on the top of the warrant stated an alleged incident date
24 of September 11, 2011 -- excuse me -- September 1st, 2011.
25 During the discovery, the incident report that I received,

1 it did allege two different incidents. Those indicated as
2 being during the summer of 2011, and that would've been the
3 sort of discovery back around the time of -- around the
4 case coming in in October or November of 2013. The State -
5 --

6 THE COURT - Now, given that incident report, is
7 that what's been referred to as the staircase incident?

8 MS. ANDERSON - Yes, Your Honor, and the incident
9 report did mention one alleged location date of staircase
10 and one as tennis courts.

11 THE COURT - And the first one in the summer of
12 2011 would've been the staircase incident?

13 MS. ANDERSON - Both are alleged to have taken
14 place during the summer of 2011 in the ---

15 THE COURT - In the incident report.

16 MS. ANDERSON - In the -- I was also provided a
17 copy of the forensic interview, which the date of that
18 interview was September 24th, 2013. In the interview
19 there's an allegation of two different incidents made by
20 the child with the first date being alleged on a stairs and
21 a second being alleged on a tennis court with no discussion
22 of time range, date, year, month, day of the week, anything
23 of that nature. Over the course of this case I was made
24 aware that the State alleged the two different incidents,
25 would particularly look at the two different indictments,

1 however, at this point I was still operating under the
2 assumption that the time range was some time in a range of
3 summer of 2011. Based on that, we began investigating the
4 case in regard to that, looking at any possible defenses,
5 any sort of documentation, witnesses, anything of that
6 nature, and that sort of resulted ultimately in obtaining
7 the lease and that. In September of 2014 the solicitor did
8 disclose to me that she had met with the child in
9 preparation of the case, that there were two incidents
10 alleged, the staircase incident and the tennis court
11 incident is how they were termed, that the child at that
12 point -- I believe I'm citing this correctly -- my notes
13 say that they were around the range of January to June of
14 2012, and that at that point as to the second alleged
15 incident, the tennis court incident, during one meeting the
16 child indicated she had been riding her scooter that day,
17 and during the second that she was pretty sure she was not
18 riding her scooter that day. The State did turn all of
19 that over to me as potential Brady evidence or inconsistent
20 statements. In January of 2015 received more notification
21 from the State that the State believed that the child was
22 saying she believed it happened in 2012, that that was
23 based on her saying she was in first grade and her school
24 year for first was 2011 to 2012, also mentioning some
25 activities around her birthday in April, but that when the

1 State looked into it, it was referenced to a movie -- going
2 to seeing the movie, Hop, but when the State looked into
3 it, that actually was in 2011-2012, so that the State
4 disclosed that the child was alleged (sic) in 2012, but
5 they believed she was actually referencing a time period in
6 2011. So again, still at that point, the defense was
7 operating on the assumption that both the indictments
8 alleged incidents in a time range in the year 2011. There
9 was a statement -- again, a correspondence from the State
10 again in January of this year indicating a reference of the
11 child possibly thinking it happened once before her
12 birthday and one after, that the child could not give any
13 indication of a season when it happened, a day of the week,
14 could not remember whether or not she was in school at the
15 time. There was also information regarding she was not
16 allowed to play outside without I believe adult supervision
17 until her cousins moved in who had moved in, I believe,
18 some time a time period possibly from March to June 2011.
19 And again, at that point my understanding is the State's
20 theory was still both alleged to have happened in 2011. At
21 that point, I believe, Your Honor, and I don't want to be
22 incorrect, that was just prior to the start of the first
23 time we began this trial on January of 2012. We started
24 through the pre-trial; the jury was not sworn; I became ill
25 during the course of that trial and Judge Hayes continued

1 that trial at that time. We were scheduled to start
2 another trial date in February ---

3 THE COURT - That was in 2015.

4 MS. ANDRESON - Of this year, yes, Your Honor.

5 THE COURT - Okay.

6 MS. ANDERSON - That was delayed through Court
7 being cancelled due to weather issues. At some point in
8 course of that -- and I don't have the specific notes as to
9 dates -- I apologize to the Court -- but at some point the
10 State contacted me. We talked again about the two
11 allegations, the two allegations by the child, and that
12 became at this point an allegation of one incident
13 occurring in 2011 and then another incident possibly in
14 2012. That became the sort of the child referencing that
15 Mr. Coleman went away and came back. So at that point the
16 sort of defense's understanding of the case or the
17 allegations changed sort of prior to all of the prior
18 defense work of believing that the allegations were alleged
19 in a -- some sort of six month roughly time period in 2011
20 to the them now being split over the course of two years.
21 The documentation -- the documentation regarding I think
22 utility records, as well as a lease provided by the State,
23 does indicate that the Colemans resided in Pace's River
24 from May of 2011 to November of 2011, so at that point the
25 case changes to put other potential allegations, a second

1 incident as being alleged some time after that, which puts
2 the defense in a different position of where defending
3 against allegations alleged where he's residing there. He
4 was 17 years old at the time. He did not have a driver's
5 license, did not have a vehicle, so to have it some sort of
6 after he's left and no longer lives there is a different
7 situation in terms of preparing a defense when we do not
8 know what month it was alleged to have happened in, what
9 day of the week, whether it was during a school year,
10 whether it was a weekend, whether it was during a time
11 period where Mr. Coleman had access to transportation,
12 whether it was during a time period when his mother was at
13 -- all these sort of variables of even as to potential
14 alibi defense as to whether he was even on the property at
15 the time that the child could have alleged it happened. So
16 that's the basis of my motion as to the second incident,
17 because the second incident is the one that has
18 dramatically changed over the course of the case even after
19 the point of preparing of the defense, and while the State
20 has turned that information on ---

21 THE COURT - Well, there's never been a -- the
22 victim's never claimed a specific date for the second
23 incident. Is that right?

24 MS. ANDERSON - Not a specific date, no. There
25 has been time ranges ---

1 THE COURT - There's been efforts to try to
2 identify what date, ---

3 MS. ANDERSON - Yes, Your Honor.

4 THE COURT - --- and that may have changed given -
5 - her story may have changed. I don't know what changed.

6 MS. ANDERSON - Yes, Your Honor.

7 THE COURT - But something changed. All right.
8 Go ahead. I'm sorry. I just didn't think there had ever
9 been a definite date set for either incident.

10 MS. ANDERSON - No, Your Honor. I think the
11 closest is that there have been given about six month time
12 ranges, some pinpointing through other events I think that
13 the State has relayed as to the cousins moving in, Mr.
14 Coleman's residency there, the Patterson's residency there,
15 her birthday events around there, so I think there -- it's
16 gotten within a certain few months at times has been what's
17 relayed but never a specific date, day of the week, time of
18 day, anything of that nature.

19 THE COURT - All right. I'll hear from the State.

20 MS. O'HAYON - So most -- most of that has gone
21 pretty much exactly as defense has stated, however, I -- we
22 did -- I do want to just pull up the e-mail from September
23 that I had sent her.

24 THE COURT - September of last year?

1 MS. O'HAYON - September of last year. Correct.

2 One moment. The one that she's referencing where I had met
3 with the victim and e-mailed her about the Brady issues of
4 her riding with the scooter, not riding with the scooter
5 and mentioned to her that the victim -- the victim herself
6 keeps saying 2012, but she references incidents that
7 happened in 2011. She referenced a birthday gift in 2011,
8 saying that she had received in 2012, but her mom tells us
9 that she received in 2011. She references to go to see a
10 movie in theaters that was not released in 2012, was
11 released in April around her birthday of 2011. So when I
12 first told defense counsel this, I said, she keeps saying
13 2011, I think -- originally I'd said it happened in 2012.
14 As I continued to investigate I found that those incidents
15 actually happened in 2011, I said, I actually think these
16 incidents she's talking about are 2011 -- some ---

17 THE COURT - Hence you have alleged about a one
18 year period in the indictment.

19 MS. O'HAYON - Yes, it's about a 13 month period.
20 And prior to our first attempt to taking this to trial in
21 January, I had mentioned -- we asked the victim why she
22 keeps saying 2012, and she says, because I was in first
23 grade and her first grade school year was from 2011 to
24 2012. Our indictments have always alleged into 2012. It's
25 always been into June of 2012 since December. That has

1 never changed and it's -- I've never narrowed it down to
2 only 2011 since I've indicted it. So -- and I know the
3 incident report originally says summer of 2011 and
4 originally I may have said something where all of the
5 incidents she's talking about happened in 2011, but the
6 indictment was always into 2012 knowing that a child does
7 not know exactly -- knowing that she says first of 2012 and
8 second of all that she doesn't know dates and times, so she
9 might think to -- you know, to herself 2012 and maybe she's
10 right. So I've always indicted it into 2012 knowing that
11 there's a potential, and as soon as I knew that it happened
12 only after he moved in and I found out when that was, I
13 narrowed it down even more.

14 THE COURT - All right, anything further from the
15 State?

16 MS. O'HAYON - No, Your Honor.

17 THE COURT - Defense?

18 MS. ANDERSON - No, Your Honor.

19 THE COURT - All right. As I stated, I am trying
20 to follow the direction in State vs. Baker, and that is,
21 that in making the determination I do have to determine the
22 sufficiency and the particularity of the indictment, such
23 that the defendant knows what he's called upon to answer
24 and whether he may plead an acquittal or a conviction, and
25 at the same time, I am aware of the concern of the dissent

1 in that case, in that quite often small children are
2 confused as to dates, times, places and are unable to
3 specifically state those matters and statements that they
4 give. I'm making an effort at this time to look at the
5 surrounding circumstances that existed pre-trial, and it
6 does appear that the State has made a good faith effort to
7 try to narrow the timeframe which has been alleged and has
8 done so and has a reasonable basis for doing that. I also
9 need to determine whether or not the nature of the
10 indictment serves in any way to prejudice the defendant or
11 take him by surprise against putting him in a position to
12 where he's unable to combat the charges against him. It's
13 going to be my finding that the indictments as stated are
14 sufficient in that regard given the nature of this
15 particular investigation, the development of the facts as
16 they have been developed in what appears to be a good faith
17 effort on the part of the State to narrow the scope of the
18 allegations. I am concerned with the fact that the two
19 indictments, while the attorneys may be aware of what they
20 refer to, basically are the same indictment. So therefore,
21 I am going to amend the indictments only slightly so that
22 the first in number, that is, case number 3857 -- I'm just
23 going to put in parenthesis under where it says criminal
24 sexual conduct with a minor in the first degree, I'm going
25 to refer to that as the staircase incident, and then under

1 that, the same caption in the second indictment I'm going
2 to put in parenthesis tennis court incident so that there
3 is a clear indication as to which -- given the indictments
4 the way they read, if I presented these to a jury and they
5 were required to write separate verdicts on each
6 indictment, I find them to be confusing as they now exists,
7 and I think there needs to be some identification even for
8 the jury as to which incident we're referring to in each of
9 the indictments. So while the attorneys may be aware of
10 that, I do find that that amendment would not change the
11 allegations themselves or the elements that the defendant
12 is required to meet or the dates, but it would provide some
13 differentiation between the indictments for clarity sake,
14 so I will make that amendment myself. All right, anything
15 further before we go into jury selection from the State?

16 MS. O'HAYON - No, Your Honor.

17 THE COURT - From the defense?

18 MS. ANDERSON - No, Your Honor.

19 THE COURT - All right. You can bring the jury
20 panel around. And I believe I understood that the defense
21 has no separate witness list. Is that correct?

22 MS. ANDERSON - That's correct, Your Honor.

23 THE COURT - All right, thank you. The victim's
24 name, how do you correctly pronounce the victim's name?

25 MS. O'HAYON - MINOR [REDACTED].

1 THE COURT - MINOR ?

2 MS. O'HAYON - Yes.

3 THE COURT - Thank you.

4 MS. O'HAYON - Your Honor, there's a couple of
5 names here that are a little bit difficult to pronounce if
6 you want me to do the pronunciation.

7 THE COURT - Oh, you talking about on the witness
8 list?

9 MS. O'HAYON - Yes, Your Honor.

10 THE COURT - Dwayne Boepple?

11 MS. O'HAYON - I think it's Boepple.

12 THE COURT - Boepple? Okay.

13 MS. O'HAYON - I think so.

14 THE COURT - I'll try to get that one right.

15 Amazhanee Catoe Ingram?

16 MS. O'HAYON - Amazhanee.

17 THE COURT - Why don't I let you call them out. I
18 can see now there's going to be a problem. There's a Puja?

19 MS. O'HAYON - Yes, that's correct.

20 THE COURT - And you say the victim is MINOR ?

21 MS. O'HAYON - MINOR .

22 THE COURT - MINOR . That's a long I. I'm just
23 going to ask you to go over the proposed witness list.

24 I'll let you call those out.

25 MS. O'HAYON - Okay. Thank you.

1 THE COURT - You're more familiar with them than I
2 am. I want to be sure I do pronounce it correctly if I did
3 that.

4 (WHEREUPON, BRIEF PAUSE)

5 MS. ANDERSON - And, Your Honor, I don't know what
6 your plans are regarding the alternate. We would ask that
7 if possible just to have two alternates just in case ---

8 THE COURT - Any objection?

9 MS. O'HAYON - No, Your Honor, we actually join
10 that motion.

11 MS. ANDERSON - We've had a few incidents in the
12 last couple of months so we want to make sure -- thank you,
13 Your Honor.

14 THE COURT - I understand.

15 MS. ANDERSON - Thank you, Your Honor.

16 (WHEREUPON JURY PANEL ENTERS THE COURTROOM)

17 THE COURT - Good afternoon, ladies and gentlemen.
18 I've not had the pleasure of meeting you yet today. My
19 name is Roger Couch. I am a Circuit Court Judge. I am a
20 Circuit Court Judge who is a resident Judge in the Seventh
21 Judicial Circuit. Seventh Judicial Circuit is Spartanburg
22 and Cherokee Counties. You've already met Judge Cole this
23 morning. He is one of my fellow Judges in the Seventh
24 Circuit, and he and I both have the pleasure of sitting
25 this week in a term of Circuit Court, General Sessions

1 Court here in York County. I want to thank you very much
2 for your patience this afternoon. We're about to begin the
3 trial of the case of the State of South Carolina vs.
4 Orlando Martinez Coleman. I have been presented with two
5 indictments in this case. Let me explain to you, an
6 indictment is the document that brings the case into this
7 Court. It informs this Court of the charge to be tried.
8 It informs the defendant of the charge that's been lodged
9 against him. However, it is nothing more than that. It is
10 a notice document. It cannot be used by a jury in any
11 manner whatsoever in determining the guilt or the innocence
12 of a defendant charged in the document. I'm going over
13 these documents with you at this point in time so that
14 you'll know a little bit more about what's been alleged in
15 this case, because in just a few minutes I'll be asking you
16 some questions that pertain specifically to this case and
17 the information that I give you might assist you in more
18 fully answering the questions that I'm about to ask you
19 that pertain to this case. Now, I'm not going to read the
20 indictments in full. Both indictments allege the same
21 offense, different incidents, that is, criminal sexually
22 conduct with a minor in the first degree. The indictments
23 that I have received are in cases number 2014-GS-46-3857
24 and 3858. Now, the indictments allege that on or about or
25 between the dates of May 13 of 2011 and June 15 of 2012 in

1 York County, South Carolina, that the Defendant, Orlando
2 Martinez Coleman, did commit the criminal offense of
3 criminal sexual conduct with a minor in the first degree in
4 that he did engage in a sexual battery with a minor victim
5 who was less than 11 years of age at the time of the
6 incident. It does allege a sexual battery occurred as a
7 result of the defendant's actions with a victim known as
8 MINOR [REDACTED], and that allegedly occurred in
9 violation of Code Section 16-3-655(A) (1) of the Code of
10 Laws of South Carolina, 1976, as amended. So those two
11 indictments allege those offenses on those alleged dates,
12 and again, I go over that with you simply so that you'll
13 know a little bit more about what's been alleged, and it
14 may assist you in more fully answering the questions I'm
15 about to ask you. Now, before we begin to question you, I
16 do want the attorneys that are involved in the trial of
17 this case to introduce themselves to you and in the case of
18 the defense I would ask that the defendant be introduced to
19 you as well. So first of all for the State, if you'll
20 introduce yourselves to the jury panel for me.

21 MS. O'HAYON - Sharon O'Hayon for the Solicitor's
22 office.

23 MS. JOYNER - My name is Erin Joyner.

24 THE COURT - And for the defense.

1 MS. ANDERSON - My name is Ashley Anderson with
2 the public defender's office. This is my co-counsel,
3 Melissa Inzerillo, our investigator, Barton O'Kelly and our
4 client, Orlando Coleman.

5 THE COURT - Sir, if you'll stand and face the
6 jury panel so that they can put a face with that name.

7 (MR. COLEMAN COMPLIES)

8 THE COURT - Thank you very much. Now, ladies and
9 gentlemen, it's very important that the information that
10 you provide during my questioning is truthful, honest and
11 complete information. It's information that the attorneys
12 are going to use to exercise the strikes that the law
13 allows them to take in selecting a jury panel for this
14 case. So it's important that that information be accurate
15 information. For that reason it's necessary that you be
16 sworn concerning the responses that you're about to give to
17 the Court in this matter. Madam Clerk, if you would,
18 please, swear the potential jury panel for me.

19 (WHEREUPON JURY PANEL IS SWORN BY THE DEPUTY
20 CLERK.)

21 THE COURT - Now, if there was any member of the
22 potential jury panel who either failed or refused to take
23 the oath that was just administered by the Clerk, please
24 stand.

25 (NO RESPONSE)

1 THE COURT - It appears that all potential jurors
2 have been sworn concerning their responses to this Court.
3 Now, as I go through my questioning, I'll be asking that if
4 you have a response to my questions, that you please stand.
5 I'll need to get your name and your juror number on the
6 record before I discuss any potential response that you
7 might have to my questioning as we go through this process.
8 My first question is, has any member of this jury panel
9 ever been related by marriage or are you related by blood
10 to either the Defendant, Orlando Coleman, or the alleged
11 victim, MINOR [REDACTED]? If that's true, please stand.

12 (NO RESPONSE)

13 THE COURT - Has any member of this jury panel
14 ever had a close personal or a social relationship with
15 either the Defendant, Orlando Coleman, or the alleged
16 victim, MINOR [REDACTED]? If that's true, please
17 stand.

18 (NO RESPONSE)

19 THE COURT - As to the attorneys that are involved
20 in this case, has any member of the jury panel ever been
21 represented by any of the attorneys involved in this case,
22 or have they ever appeared on the other side of a legal
23 matter from you? If that's true, please stand.

24 (NO RESPONSE)

1 THE COURT - Has any member of this jury panel
2 ever been related by marriage or are you related by blood
3 or have you ever had a close social or a personal
4 relationship with any of the attorneys that are involved in
5 this trial? If that's true, please stand.

6 (NO RESPONSE)

7 THE COURT - Now, at this time I'm going to ask
8 that the attorney for the State to read over a list of
9 potential witnesses in this case. I want you to listen
10 carefully to these names. When she's finished, I'll be
11 asking you some questions about these individuals. Ma'am,
12 if you'll proceed with reading the witness list, please.

13 MS. O'HAYON - MINOR [REDACTED], Delissa
14 Patterson, B. P. [REDACTED], Alyssa Pruitt, Puja Amin,
15 Laurie Caldwell, Ryan Thomas with Rock Hill Police
16 Department, Raymond Lowery, Dwayne Boepple, Sanadia Catoe
17 Ingram, Amazhanee Catoe Ingram, Arkevious Catoe Ingram,
18 Corey Riley with Rock Hill PD, Arthur Philson with Rock
19 Hill PD and Carlos Culbreath with Rock Hill PD.

20 THE COURT - Thank you, ma'am. Now, as to the
21 individuals who have now been identified to you as possible
22 witnesses in this case, has any member of the jury panel
23 ever been related by marriage or are you related by blood
24 or have you ever had a close social or a personal
25 relationship with anyone who's been identified as a

1 possible witness in this case? If that's true, please
2 stand.

3 (JUROR STANDS)

4 THE COURT - Sir, I need your name and number.

5 JUROR - Juror #77, Jeff Field.

6 THE COURT - Yes, sir, your situation?

7 JUROR - Corey with Rock Hill Police Department.

8 THE COURT - How do you know him?

9 JUROR - His wife was good friends of mine and we
10 have good social ---

11 THE COURT - All right, well, let's assume that he
12 would be called as a witness in this case and you were on
13 the jury. If that were to occur, would the fact that you
14 have some knowledge or relationship to him, would that
15 affect your ability to be fair and impartial to both the
16 State and the defense in this case?

17 JUROR - No, sir.

18 THE COURT - Thank you. You can be seated.
19 Anyone else?

20 (NO RESPONSE)

21 THE COURT - Has any member of the jury panel or a
22 member of your immediate family ever been accused of,
23 investigated for or arrested for an offense involving
24 matters that were sexual in nature? If that's true, please
25 stand.

1 (JUROR STANDS)

2 THE COURT - Name and number, please ma'am.

3 JUROR - Patricia Welch, juror 239.

4 THE COURT - Your situation, ma'am.

5 JUROR - My husband is serving time in prison for
6 sexual assault right now.

7 THE COURT - All right, would that fact affect
8 your ability to be fair and impartial if you were selected
9 as a juror on this case?

10 JUROR - No, sir.

11 THE COURT - Thank you, ma'am. You can be seated.
12 Anyone else?

13 (NO RESPONSE)

14 THE COURT - Has any member of the jury panel or a
15 member of your immediate family ever been accused of or
16 investigated for or arrested for an offense involving
17 children? If that's true, please stand.

18 (NO RESPONSE)

19 THE COURT - Does any member of the jury panel
20 have any beliefs, religious or otherwise, which would in
21 any way prevent you from being able to serve on a jury and
22 render a verdict according to the law and evidence? If
23 that's true, please stand.

24 (NO RESPONSE)

1 THE COURT - Is there any member of the jury panel
2 who themselves or a member of your immediate family who has
3 ever been employed by, volunteered with any city, state,
4 federal, law enforcement agency or victim or witnesses'
5 assistance program? If that's true, please stand.

6 (JURORS STAND)

7 THE COURT - Yes, ma'am, your name and number?

8 JUROR - Ramona Simpson, 207.

9 THE COURT - Yes, ma'am.

10 JUROR - Is that any state's police?

11 THE COURT - Any state law enforcement agency or
12 federal. Could be a -- even military would be a federal --
13 -

14 JUROR - One of my sons used to be a policeman in
15 Charlotte, ---

16 THE COURT - I see.

17 JUROR - --- but it's been about 10 years ago.

18 THE COURT - All right, now would that fact affect
19 your ability to be fair and impartial to both sides in this
20 case?

21 JUROR - No, sir.

22 THE COURT - Thank you, ma'am. Sir, name and
23 number?

24 JUROR - Christopher Mcbrayer, 128 (sic).

25 THE COURT - Yes, sir, your situation?

1 JUROR - My father-in-law was a police officer for
2 25 years.

3 THE COURT - All right, would that affect your
4 impartiality if you were to sit on this jury?

5 JUROR - Would not.

6 THE COURT - Thank you, sir. Anyone else?

7 (JURORS STAND)

8 THE COURT - Sir, name and number?

9 JUROR - Rhett Eckhardt, number 66.

10 THE COURT - Yes, sir.

11 JUROR - My father-in-law was also on the police
12 force.

13 THE COURT - All right, would that affect your
14 impartiality if you were to be selected?

15 JUROR - No, sir.

16 THE COURT - Thank you, sir. Ma'am, name and
17 number?

18 JUROR - Sharon Huffman, 117.

19 THE COURT - Yes, ma'am.

20 JUROR - My son-in-law's in the air force.

21 THE COURT - Is in a law enforcement agency?

22 JUROR - No, air force currently.

23 THE COURT - Just in the air force. What I was
24 referring to if he was in the law enforcement ---

25 JUROR - Gotha.

1 THE COURT - --- in the military -- military
2 police.

3 JUROR - No.

4 THE COURT - All right, thank you, ma'am. You can
5 be seated. Thank him for his service. Has any member of
6 the jury panel either presently or in the past ever been
7 employed by, volunteered with, any city, county, state or
8 federal prosecutor's office or prosecutor's victim
9 assistance program? If that's true, please stand.

10 (NO RESPONSE)

11 THE COURT - Has any member of the jury panel
12 gathered or received any information from any source such
13 that it would've caused you to either form or express an
14 opinion one way or the other about any matter or issue that
15 might be involved in the trial of this case? So if you've
16 gathered any information that it would've caused you to
17 either form or express an opinion, please stand.

18 (NO RESPONSE)

19 THE COURT - Is there any member of the jury panel
20 who is aware of any bias or prejudice that you might have,
21 either for or against either the State or the defense in
22 this matter? If that's true, please stand.

23 (NO RESPONSE)

24 THE COURT - Is there any member of the jury panel
25 who is a member of or contributor to any group which has as

1 its primary concern the promotion of law enforcement and/or
2 victim's rights? These groups would include but not be
3 limited to such groups as Mothers Against Drunk Driving,
4 Students Against Drunk Driving, Citizens Against Violent
5 Crimes, the South Carolina Trooper's Association, the South
6 Carolina Sheriff's Association or other similarly oriented
7 organization? If you're a member of or a contributor to
8 such a group, please stand.

9 (JURORS STAND)

10 THE COURT - Sir, I need a name and number.

11 JUROR - Walter Ruth, 198.

12 THE COURT - Your situation, sir?

13 JUROR - I've given money to the Trooper's
14 Association in the past.

15 THE COURT - All right. All right, would that
16 fact affect your ability to be fair and impartial if you
17 were selected on the jury?

18 JUROR - No, sir.

19 THE COURT - Thank you, sir. Ma'am, name and
20 number?

21 JUROR - Danielle Center, 40. I work Keystone
22 Substance Abuse Services.

23 THE COURT - All right, would that fact affect
24 your ability to be fair and impartial in this trial?

25 JUROR - No.

1 THE COURT - Thank you, ma'am. Sir, name and
2 number?

3 JUROR - 193, Andrew Robinson.

4 THE COURT - Yes, sir.

5 JUROR - Donate to the Fraternal Order of Police.

6 THE COURT - All right, would that affect your
7 ability to be fair and impartial in this case?

8 JUROR - No, sir.

9 THE COURT - Thank you. Anyone else?

10 (NO RESPONSE)

11 THE COURT - Does any member of this jury panel
12 know of any reason whatsoever why he or she should not
13 serve as a juror in this case with particular emphasis
14 being placed upon your ability to be both fair and
15 impartial to both the State and the defendant? If you know
16 of such a reason, please stand.

17 (JUROR STANDS)

18 THE COURT - Name and number, sir?

19 JUROR - Raymond Atkinson, 5.

20 THE COURT - Yes, sir?

21 JUROR - I had a younger brother who was molested
22 when he was one.

23 THE COURT - All right, would that affect your
24 impartiality, sir?

25 JUROR - Possibly.

1 THE COURT - All right, then I'm going to excuse
2 you from the trial of the case. Again, your name and
3 number is?

4 JUROR - Raymond Atkinson, juror number 5.

5 THE COURT - Thank you, sir. You no longer have
6 to answer my questions, but you just be seated, please.

7 JUROR - Yes, sir.

8 THE COURT - Thank you very much.

9 (JUROR STANDS)

10 THE COURT - Name and number, ma'am?

11 JUROR - Debra Rankin, number 183.

12 THE COURT - Yes, ma'am.

13 JUROR - I'm currently employed as a cottage
14 parent at a residential school where the girls that I am in
15 care of have mostly been sexually molested.

16 THE COURT - All right, would that affect your
17 impartiality in this matter?

18 JUROR - It possibly could.

19 THE COURT - All right, I'll excuse you from the
20 trial of the case. You can be seated. You no longer have
21 to answer my questions. Anyone else?

22 (NO RESPONSE)

23 THE COURT - Any further questions from the State?

24 MS. O'HAYON - No, Your Honor.

25 THE COURT - Any from the defense?

1 MS. ANDERSON - No, Your Honor.

2 THE COURT - All right, I'll declare the remaining
3 members of the panel are qualified to serve as jurors in
4 this case.

5 (DISCUSSION IS HELD BETWEEN THE COURT AND THE
6 DEPUTY CLERK WHICH WAS NOT REPORTED.)

7 THE COURT - All right, the strikes in this case
8 will be five for the State, 10 for the defense. We're
9 going to pick two alternates, the State having one strike,
10 defense having two strikes for each alternate. When you're
11 name is called, I'm going to ask that you come forward.
12 You'll need to come down front where the bailiff here will
13 be standing. You'll come stand with the bailiff, face the
14 back door of the courtroom. At that time the parties will
15 be in a position to exercise their strikes. If you have
16 personal belongings you brought with you, bring those with
17 you, because if you're selected to serve on the jury,
18 you'll have a seat in the jury box over here to my right.
19 You won't be going back to your seat, so please bring
20 anything that you have with you forward when your name is
21 called. Madam Clerk, you can begin the jury selection
22 process.

23 DEPUTY CLERK - Number 122, Aguila Jackson. What
24 say you for the State?

25 MS. O'HAYON - Present the juror.

1 DEPUTY CLERK - Defense?

2 MS. ANDERSON - Please seat this juror.

3 DEPUTY CLERK - Have a seat in the jury box.

4 (JUROR SEATED)

5 DEPUTY CLERK - Number 26, Victoria Bragg. What
6 say you for the State?

7 MS. O'HAYON - Please present this juror.

8 DEPUTY CLERK - Defense?

9 MS. ANDERSON - Please seat this juror.

10 DEPUTY CLERK - Have a seat in the jury box.

11 (JUROR SEATED)

12 DEPUTY CLERK - Number 33, Aaron Brooks. What say
13 you for the State?

14 MS. O'HAYON - Please present the juror.

15 DEPUTY CLERK - Defense?

16 MS. ANDERSON - Please seat this juror.

17 (JUROR SEATED)

18 DEPUTY CLERK - Number 39, Steven Carter. What
19 say you for the State?

20 MS. O'HAYON - Please present the juror.

21 DEPUTY CLERK - Defense?

22 MS. ANDERSON - Please seat this juror.

23 (JUROR SEATED)

24 DEPUTY CLERK - Number 219, James Thomason. What
25 say you for the State?

1 MS. O'HAYON - Please present the juror.

2 DEPUTY CLERK - Defense?

3 MS. ANDERSON - Please seat this juror.

4 (JUROR SEATED)

5 DEPUTY CLERK - Number 17, Julius Blackmon. What
6 say you for the State?

7 MS. O'HAYON - Please excuse the juror.

8 DEPUTY CLERK - You're excused in this case.

9 Number 138, Ezell Long.

10 MS. JOYNER - Madam Clerk, can you please give me
11 the number again?

12 DEPUTY CLERK - 138. What say you for the State?

13 MS. O'HAYON - Please present the juror.

14 DEPUTY CLERK - Defense?

15 MS. ANDERSON - Please seat this juror.

16 (JUROR SEATED)

17 DEPUTY CLERK - Number 223, Terry Thrower. What
18 say you for the State?

19 MS. O'HAYON - Please present the juror.

20 DEPUTY CLERK - Defense?

21 MS. ANDERSON - Please seat the juror.

22 (JUROR SEATED)

23 DEPUTY CLERK - Number 220, Susan Thompson. What
24 say you for the State?

25 MS. O'HAYON - Please present the juror.

1 DEPUTY CLERK - Defense?

2 MS. ANDERSON - Please seat the juror.

3 (JUROR SEATED)

4 DEPUTY CLERK - Number 37, Amber Campbell. What
5 say you for the State?

6 MS. O'HAYON - Please present the juror.

7 DEPUTY CLERK - Defense?

8 MS. ANDERSON - Please excuse this juror.

9 DEPUTY CLERK - Number 193, Andrew Robinson. What
10 say you for the State?

11 MS. O'HAYON - Please present the juror.

12 DEPUTY CLERK - Defense?

13 MS. ANDERSON - Please excuse the juror.

14 DEPUTY CLERK - Number 50, Robin Cumbess. Rhonda.
15 What way you for the State?

16 MS. O'HAYON - Please present the juror.

17 DEPUTY CLERK - Defense?

18 MS. ANDERSON - Please excuse this juror.

19 DEPUTY CLERK - Number 61, Ricky Doran. What say
20 you for the State?

21 MS. O'HAYON - Please present the juror.

22 DEPUTY CLERK - Defense?

23 MS. ANDERSON - Please seat this juror.

24 (JUROR SEATED)

1 DEPUTY CLERK - Number 66, Rhett Eckhardt. What
2 say you for the State?

3 MS. O'HAYON - Please present the juror.

4 DEPUTY CLERK - Defense?

5 MS. ANDERSON - Please excuse this juror.

6 DEPUTY CLERK - Number 180, Robert Quick. What
7 say you for the State?

8 MS. O'HAYON - Please present the juror.

9 DEPUTY CLERK - Defense?

10 MS. ANDERSON - Please seat this juror.

11 (JUROR SEATED)

12 DEPUTY CLERK - Number 12, Sarah Benfield. What
13 say you for the State?

14 MS. O'HAYON - Please present the juror.

15 DEPUTY CLERK - Defense?

16 MS. ANDERSON - Please seat this juror.

17 (JUROR SEATED)

18 DEPUTY CLERK - Number 159, Donald Mull. What say
19 you for the State?

20 MS. O'HAYON - Please present the juror.

21 DEPUTY CLERK - Defense?

22 MS. ANDERSON - Please excuse the juror.

23 DEPUTY CLERK - Number 101, Laura Whiting. What
24 say you for the State?

25 MS. O'HAYON - Please present the juror.

1 DEPUTY CLERK - Defense?

2 MS. ANDERSON - Please seat this juror.

3 (JUROR SEATED)

4 THE COURT - We're now selecting the first
5 alternate.

6 DEPUTY CLERK - Number 236, Ethan Wagner. What
7 say you for the State?

8 MS. O'HAYON - Please present the juror.

9 DEPUTY CLERK - Defense?

10 MS. ANDERSON - Please seat this juror.

11 (JUROR/ALTERNATE SEATED)

12 THE COURT - Second alternate.

13 DEPUTY CLERK - Number 148, Christopher Mcbrayer.
14 What say you for the State?

15 MS. O'HAYON - Please present this juror.

16 DEPUTY CLERK - Defense?

17 MS. ANDERSON - Please excuse this juror.

18 DEPUTY CLERK - Number 40, Danielle Center. What
19 say you for the State?

20 MS. O'HAYON - Please present the juror.

21 DEPUTY CLERK - Defense?

22 MS. ANDERSON - Please excuse this juror.

23 DEPUTY CLERK - Number 110, Shedricka Heyward.

24 What say you for the State?

25 MS. O'HAYON - Please present this juror.

1 DEPUTY CLERK - Defense?

2 MS. ANDERSON - Please seat this juror.

3 (JUROR/ALTERNATE SEATED)

4 THE COURT - Any objections to the jury selection
5 process from the State?

6 MS. O'HAYON - No, Your Honor.

7 THE COURT - Any objections from the defense?

8 MS. ANDERSON - No, Your Honor.

9 THE COURT - All right, ladies and gentlemen,
10 those of you who have not been selected as jurors in the
11 case, you need to call back at 1:00 o'clock tomorrow
12 afternoon. They'll have additional instructions for you at
13 that point in time, so we're releasing you at this point in
14 time to go home. Thank you for your patience and your
15 cooperation this afternoon. 1:00 o'clock tomorrow
16 afternoon please call back in. Thank you very much.

17 (REMAINING JURY PANEL EXITS THE COURTROOM)

18 THE COURT - All right, ladies and gentlemen,
19 you've been selected as jurors on this case, and I am
20 mindful of the fact that it's about eight or nine minutes
21 til five, so we're going to stop at this point in time for
22 the afternoon. I'll be allowing you, of course, to go
23 home, and during your absence or the time that you're away
24 from the courthouse there's some instructions I want you to
25 follow for me, and let me be sure I'm real clear about

1 this, because when you return to the courthouse in the
2 morning, I'll be asking you whether you've been able to
3 follow my instructions, and I trust that all of you will
4 follow my instructions in this regard. As I've said,
5 you've been selected as jurors in this case and when you
6 return, you'll be taking an oath concerning your
7 responsibilities as jurors. That oath is that you will
8 decide the issues joined in this case using the law and the
9 evidence that's been presented during this trial. Now, the
10 only place you're going to hear the evidence and the law is
11 in this courtroom during this trial. I will tell you now
12 it would be a violation of your oath as a juror for you to
13 try to gather any information about this case from any
14 source outside of this courtroom. Now, I realize that
15 people have the ability using computers and smart phones,
16 things of that nature to gather information about -- just
17 about anything in the world, but I'm going to instruct you
18 not to try to gather any information about this case on
19 your own. Now, during the trial you'll hear evidence
20 presented from the witness stand here and the evidence that
21 comes into the record through that testimony and I'll be
22 charging you concerning the law that you're to apply at the
23 close of the trial, so all of the information you need to
24 render a fair and a true verdict in this case will be given
25 to you during the trial in this Court, so again, I'll

1 caution you for the third time, don't try to gather any
2 information about this case from any source outside of the
3 courtroom. You should not listen to, watch or read any
4 media reports about this case. So if you happen to be
5 listening to the radio or watching television, something
6 comes up about this case, walk away, turn it off, but don't
7 listen to it, don't watch it, because I'm going to tell you
8 the sources outside of this courtroom for information will
9 have information in them that a jury should not consider at
10 all in reaching a verdict in a case under the rules that
11 govern the admission of evidence during a trial by a jury.
12 We've gone to a lot of trouble this afternoon to pick a
13 jury with an open mind about this case, and I'm going to
14 caution you, and you'll get tired of hearing me say this,
15 but I'll caution you every time you walk out of this
16 courtroom not to discuss this case even among yourselves.
17 I hope you realize that even the most innocent conversation
18 that you might have with a friend, a family member or an
19 acquaintance about the issues involved in this case or the
20 people that are involved in this case, if you had those
21 discussions, those discussions might begin to color your
22 decision in this case, and at this point in time you
23 haven't heard the first word of argument, you haven't heard
24 the first word of evidence. No one's explained anything to
25 you about the law, but those discussions might begin to

1 color your decision. I want you to keep an open mind about
2 this case, not to try to decide anything about this case
3 until such times as you've heard all the arguments by the
4 lawyers, all the evidence from the witnesses and my charge
5 to you concerning the law to be applied to that
6 information. You'll only get those instructions to begin
7 those discussions at the end of the trial. So don't
8 discuss the case with anyone. The next thing I'm going to
9 tell you is that it's a crime in this State for someone to
10 try to influence the decision of a jury. So if someone
11 should contact you about your service on this jury, do not
12 discuss that with them, report that upon your return to the
13 courthouse. I'll assure you that I'll see that the
14 appropriate action is taken to investigate that matter
15 thoroughly. So don't discuss the case with anyone. Don't
16 allow anyone to discuss it with you. Don't attempt to
17 gather any information about this case from any source
18 outside of the courtroom, and don't listen to, watch or
19 read any media reports about the case. I'll be asking you
20 about those instructions when you come back. I trust
21 you'll follow my directions in that regard. Now, we're
22 going to resume your portion of the trial. I want you to
23 be in the jury room in use for this trial by 10:00 o'clock
24 in the morning. As you leave, the bailiffs will show you
25 where to come back, how to return and get back to that jury

1 room. I hope you have a good evening tonight. Come back
2 ready to participate in the trial fully, and again, I'll be
3 asking you about my instructions when you return. Again, I
4 want to thank you for your cooperation thus far. At this
5 time the bailiff will show you out. Thank you very much.

6 (WHEREUPON, JURY PANEL EXITS THE COURTROOM)

7 THE COURT - All right, we had discussed being
8 ready to start with the other pre-trial matters at 9:30 in
9 the morning. Are we going to be ready then?

10 MS. O'HAYON - Yes, Your Honor. I'll have the
11 maintenance workers come back tomorrow morning.

12 THE COURT - Okay. All right. Defense will be
13 ready?

14 MS. ANDERSON - Yes, Your Honor.

15 THE COURT - All right, 9:30 in the morning. I
16 believe the defendant is in custody at this time. He'll
17 remain in custody during the trial.

18 MS. ANDERSON - Yes, Your Honor.

19 THE COURT - Thank you very much. Court's in
20 recess.

21 MS. ANDERSON - Thank you, Your Honor.

22 (COURT IN RECESS FOR THE DAY AT 4:55 P.M.)

23

24

25

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
CASE NO.: 2014-GS-46-03857
03858
STATE OF SOUTH CAROLINA)
TRANSCRIPT OF RECORD
VS) (DAY 2 - VOLUME II)
ORLANDO MARTINEZ COLEMAN) (PAGES 66 - 247)

March 17, 2015
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE ROGER COUCH

APPEARANCES:

SHARON O'HAYON, ASSISTANT SOLICITOR
YORK, SOUTH CAROLINA

ERIN JOYNER, ASSISTANT SOLICITOR
YORK, SOUTH CAROLINA

ATTORNEYS FOR THE STATE

ASHLEY ANDERSON, ASSISTANT PUBLIC DEFENDER
YORK, SOUTH CAROLINA

MELISSA INZERILLO, ASSISTANT PUBLIC DEFENDER
YORK, SOUTH CAROLINA

ATTORNEYS FOR THE DEFENDANT

SHIRLEY BROOM
16TH Circuit Court Reporter

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1 THE COURT - All right, we're on the record in the
2 case of the State of South Carolina vs. Orlando Coleman.
3 The first issue that we wanted to deal with this morning, I
4 believe, was the State's intention to call Laurie B.
5 Caldwell as an expert in the case. I believe the defense
6 is objecting to that. Is that correct?

7 MS. ANDERSON - Yes, Your Honor.

8 THE COURT - All right, I'll hear from the State
9 concerning Ms. Caldwell.

10 MS. O'HAYON - Your Honor, there is a few
11 scheduling issues, mainly the detective has mandatory
12 training that he's to be in this afternoon, so we were
13 hoping to do the maintenance workers pre-trial this
14 morning, start the case and then do the pre-trial for the
15 expert witness this afternoon right before she comes in.
16 She's scheduled to be in this afternoon.

17 THE COURT - All right.

18 MS. O'HAYON - If that would be ---

19 THE COURT - Well, I mean I -- I understood that
20 she was going to be here this morning yesterday, but
21 apparently that's not possible. So you want to do what
22 this morning?

23 MS. O'HAYON - The issue with the maintenance
24 workers and the potential Lyle, whether -- whether it is

1 Lyle or not and whether the maintenance workers are going
2 to be permitted to testify.

3 THE COURT - All right, defense ready to take that
4 up?

5 MS. ANDERSON - Yes, Your Honor.

6 THE COURT - All right, you may call your first
7 witness.

8 MS. O'HAYON - The State calls Raymond Lowery.

9 THE COURT - Sir, come to the stand.

10 RAYMOND LOWERY, AFTER BEING FIRST DULY SWORN
11 TESTIFIES AS FOLLOWS -

12 THE COURT - Sir, if you'll have a seat in the
13 witness stand, please. State your name, please, sir.

14 MR. LOWERY - Raymond C. Lowery.

15 THE COURT - Thank you. You may want to pull that
16 microphone over in front of you.

17 (WHEREUPON WITNESS COMPLIES)

18 THE COURT - There we go. Thank you, sir.

19 MR. LOWERY - Yes, sir.

20 THE COURT - Your witness, counsel.

21 MS. O'HAYON - Thank you, Your Honor.

22 THE COURT - Yes, ma'am.

23 DIRECT EXAMINATION

24 BY MS. O'HAYON -

25 Q Mr. Lowery, did you used to work for Pace's River?

1 A Yes, ma'am.

2 Q Where is that located?

3 A It's in Pace's River Avenue. It's in Rock Hill, South
4 Carolina.

5 Q And what was your job there?

6 A I was actually the area service manager.

7 Q And what is -- just briefly what does that mean? Like
8 what were your job duties?

9 A I was over all the maintenance there and I also -- I
10 had over properties there and here in Charlotte, in
11 Charlotte and Atlanta. I was a area service manager. That
12 was my home base. I was there for 20 years.

13 Q Okay. Did you work mainly in an office setting, or
14 were you outside working in apartments or around the actual
15 community?

16 A No, it was mostly general maintenance, out in the
17 field, you know. I had a staff of eight guys there.

18 Q And you said you'd been working there for 20 years?

19 A Yes, ma'am.

20 Q Were you working there in 2011 and 2012?

21 A Yes, ma'am, sure.

22 Q Do you remember tenants that lived at 1807 Pace's
23 River Avenue Number 4-[REDACTED]?

24 A Yes, ma'am.

25 Q Okay. What do you remember about those tenants?

1 A Well, I mean it was a lady and her son that lived
2 there. You know, she was -- I mean I remember she was a
3 heavy-set lady. She had a lot of problems walking. You
4 know, I remember times we was in her apartment working and
5 like she'd be at the stove cooking; she had like a walker
6 she'd usually set in do her cooking, and, you know, I
7 remember her son, he uh -- at the time, also.

8 Q Well, what do you remember about her son?

9 A Well, uh -- you know, I know he uh -- you know, he
10 didn't ride the bus with the regular kids. He rode a
11 separate bus that picked him up every day. You know,
12 basically -- he didn't -- he didn't actually get along with
13 the older kids. It seems like they were always arguing,
14 him and the older kids, so he basically played with all the
15 smaller kids in the complex.

16 Q Okay. About -- when you say smaller kids, about what
17 age are we talking about?

18 A Ten and less, small children.

19 Q And do you remember anything specifically about him
20 playing with kids of that age?

21 A Yes, because basically they played -- lot of it was
22 like just in one area. They lived over here in a 4
23 building; you had 6 and 7 building over here, and right in
24 front of -- there's like a corner there; 6 was this way; 7
25 was this way. There's a green box sitting right there like

1 in the corner of it, a power box. When I say a green box,
2 it's a big power box, and they played a lot around that
3 area there around that power box. You know, I'm -- it's
4 certain things -- they would get out there and he'd have
5 the kids swinging them, ride them on his back, had him on
6 his shoulders, you know, generally chasing all the little
7 kids around. One particular time is what -- when I had
8 said something to him was in the breezeways in front of 7
9 building, because the breezeways are closed off. You know,
10 you can go in through the back and the front. The
11 apartments are set up one here, one here, one in the back
12 of the breezeway and one, you know, two in the back and two
13 right there in the front. I remember him setting on the
14 steps and it was just one certain little girl, that little
15 girl he played with a lot -- she was real light skin. I --
16 you know -- she was real light skin, a little small girl,
17 had long, real curly, wavy hair, but it was probably about
18 mid-way, and uh -- when I rode by -- because right across
19 the -- right across from there also -- they's buildings are
20 here -- right across is my car wash and shop, my paint shop
21 and they's also a car -- car wash there, two-bay car wash.
22 So when we come around -- you know, we -- lot of us be at
23 that shop at different times, and all the guys -- everybody
24 there knowed it and they were sort of watching and -- but
25 he was in the breezeway with the little girl setting on his

1 lap and uh -- so -- when I went around, that's where she
2 was setting, then the next -- and it was probably ten
3 minutes later, you know, we was in the shop, we was all
4 over there -- you know, ain't going to lie to you -- we was
5 all over there smoking a cigarette, taking a break; I come
6 back out; he was setting there. He was still setting on
7 the steps and the little girl had her -- was like behind
8 him, because you know how you setting on -- it's a set of
9 steps -- so he was setting in the steps, the little girl
10 was behind him with her arms around his neck, you know, and
11 that's when I went and said something to him. I told him
12 you need to get out of that breezeway, that that didn't
13 look good, him in there with that little girl, and, you
14 know. They got up and left and went out there and started
15 playing, but, you know, he didn't go home. He just went
16 out there and they started playing at that time, you know,
17 and um -- so there's a number of different times that I met
18 him throughout that time, was, you know, around the pool
19 area, you know, and stuff like that, so I mean I -- I knew
20 who he was and knew where he lived and all.

21 Q Okay, and he played -- you said that there was this
22 one girl in particular, but he played with other little ---

23 A Oh, yes, it was all -- all the little kids. Yes.
24 They would all get out there, and they would be running
25 around and, you know, -- and he never looked good. That's

RAYMOND LOWERY - DIRECT BY MS. O'HAYON

1 why I said -- the whole staff was basically watching -- you
2 know, just pretty much everybody knowed about it, even the
3 office, because people had complained. I had went to the
4 office raising sand the day I ran him out of the breezeway,
5 and, you know, so that type of deal. Everybody was
6 watching this certain boy.

7 MS. O'HAYON - One moment. Beg the Court's
8 indulgence.

9 Q Looking around the courtroom today, do you see that
10 male that we were -- that you were just talking about that
11 you had seen in the breezeway?

12 A Right -- like I said, he was a heavy-set little guy.
13 He was -- you know, I really -- it would be hard -- I mean
14 looking around a courtroom -- I mean -- you know, you
15 looking three or four years ago -- I know he was a little
16 heavy-set guy. You know, -- not really. I mean, you know,
17 I couldn't really say. It's been a while since I remember
18 seeing him. You know, it's been a while.

19 Q But you remember that he lived in number 4-█.

20 A He lived in 4-█, and I -- the boy that I'm telling
21 you about now lived in 4-█ with his mother.

22 MR. O'HAYON - I have no further questions. If
23 you could please answer any questions defense counsel may
24 have.

25 MR. LOWERY - Yes, ma'am.

1 THE COURT - Your witness, Ms. Anderson.

2 CROSS EXAMINATION

3 BY MS. ANDERSON -

4 Q Mr. Lowery, do you -- this, I guess, breezeway
5 incident that you described, ---

6 A Yes, ma'am.

7 Q --- do you recall what year that occurred?

8 A What year it occurred?

9 Q Yes.

10 A That would've been -- it would've been probably the
11 summer of '12.

12 Q So okay, summer of 2012?

13 A Yes, it was warm weather. I mean so I wouldn't say --
14 it could've been summer, right before, you know, in that
15 area, because I remember when he moved out, because I left
16 there April of 2013 and when they moved out, there was
17 three guys that moved in that apartment, and it was around
18 that time, you know, so I mean ---

19 Q Okay.

20 A --- you know, I usually know who moved in and moved
21 out, because I had to keep count of that. I had to make
22 sure the apartments were ready when they moved in. I had
23 to walk them for damages when they moved out so ---

24 Q Okay. All right, and so to make sure I got it
25 straight, you left in April, 2013. Is that what you said?

1 A That is correct.

2 Q Okay. And your memory is this incident was some time
3 late spring or early summer of 2012. Is that accurate?

4 A Yes, so -- you know, it - because the kids was all
5 outside playing, and they would be out there every day
6 after school. It was during -- it was during warmer
7 weather, you know.

8 Q Okay. And you do not -- you do not know the boy you
9 talked about, his name, correct?

10 A Ma'am?

11 Q You don't recall his name?

12 A Not off a hand, no, ma'am. I just know we -- you know
13 -- you know, I remember him coming and missing his bus, him
14 come up and asking me if I'd take him to school at the
15 office and stuff like that.

16 Q Okay.

17 A A time or two he'd missed his bus and when we would --
18 I'd say to him outside, you know, run them out of the pool
19 area -- I mean, you know, there's been -- you know, I
20 remember a couple of times with it, but a lot of times it
21 was just watching him because of, you know ---

22 Q Okay. And so the way you can identify him is that he
23 lived in building 4, apartment [REDACTED].

24 A That is correct.

1 Q Okay. And at the time you encountered him on the
2 breezeway was when he was living, your recollection is, in
3 apartment [REDACTED].

4 A Yes, ma'am.

5 Q Okay.

6 A And they was actually in front -- I mean I can tell
7 you they was in front -- it was building 7 and 7-101 right
8 in front of it ---

9 Q Okay.

10 A --- was the apartment they was in front of.

11 Q And the girl that you said you saw with the -- with
12 the boy ---

13 A Yes, ma'am.

14 Q --- you described as a light-skinned in complexion?

15 A Yes, ma'am.

16 Q Okay. And had long curly hair?

17 A Yes, ma'am.

18 Q Do you recall approximate age you thought she -- did
19 you know her in other words? Let me ask that.

20 A I had seen her around the property. I know she lived
21 there. Actually, I wasn't exactly -- I'm not -- you know,
22 -- I'm thinking she might've been in 7 building, but she
23 might've been living in 6 building, because that's where I
24 seen her at, a lot around there.

25 Q Okay.

RAYMOND LOWERY - CROSS BY MS. ANDERSON

1 A You know, the small kids like that, you know, they --
2 unless you actually go in their apartment, see where they
3 live, you know, they just -- you know where they hang
4 around at.

5 Q Okay. And I know it's been a while ---

6 A Yes.

7 Q --- so if you don't remember something, just let me
8 know. So in other words, with her you knew she lived
9 somewhere on the property ---

10 A In one of them two buildings there.

11 Q Okay.

12 A Right.

13 Q Building maybe 6 or 7?

14 A That's correct.

15 Q Okay. But you did not know her name, her parent's
16 name ---

17 A No, I -- at this time I don't remember. I know a lot
18 of people by faces. When you in -- kind of business, you
19 know, you -- you remember a lot of people; you know them by
20 faces, ---

21 Q I'm sure.

22 A --- unless you're in the office and then you deal with
23 the names.

24 Q Okay. And this ---

25 MS. ANDERSON - Beg the Court's indulgence.

1 THE COURT - Yes, ma'am.

2 MS. ANDERSON - All right, no further questions,
3 Your Honor.

4 THE COURT - Anything further from the State?

5 MS. O'HAYON - No, Your Honor.

6 THE COURT - You may step down, sir. Thank you
7 very much.

8 MS. O'HAYON - The State calls Dwayne Boepple.

9 THE COURT - Sir, if you'll come forward right up
10 here and be sworn, please. Right here in front of this
11 lady.

12 DWAYNE BOEPPLE, AFTER BEING FIRST DULY SWORN,
13 TESTIFIES AS FOLLOWS -

14 THE COURT - Have a seat in the witness stand over
15 here, sir. State your name.

16 MR. BOEPPLE - Dwayne Andrew Boepple.

17 THE COURT - Your witness, counsel.

18 MS. O'HAYON - Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MS. O'HAYON -

21 Q Did you used to work for Pace's River?

22 A Did I used to work?

23 Q Yes, for Pace's River.

24 A Yes, ma'am.

25 Q When did you work at Pace's River?

DWAYNE BOEPPLE - DIRECT BY MS. O'HAYON

1 A From 2004 to 2013.

2 Q And what was your job there?

3 A I started off as a grounds tech and ended up as
4 maintenance tech.

5 Q And as grounds tech and maintenance tech were you --
6 were you mainly in an office or were you in the grounds?

7 A I was out in the field.

8 Q Okay. And what was your position in 2011 and 2012?

9 A I was maintenance tech.

10 Q And do you remember as part of maintenance tech that
11 there was a person in particular that you and other office
12 staff members were keeping an eye out for?

13 A Yes, ma'am.

14 Q Okay, what were you keeping an eye out for that
15 person? What was the reason behind that?

16 A Hanging around children much younger than them doing
17 things they shouldn't be doing.

18 Q If you could be a little bit more specific. First of
19 all, how -- approximately how old was this person?

20 A Teenager. I mean ---

21 Q Teenager, 13? Teenager 19?

22 A 13 -- more -- probably more about 15.

23 Q Okay. And how old were the kids that this person was
24 hanging around?

25 A Easy five, six years difference, younger.

1 Q Can you describe this person?

2 A Was a heavier-set African American male.

3 Q And looking around the courtroom, do you see that
4 person in the courtroom today?

5 A I -- right off hand, no.

6 Q Okay. What is it exactly you testify that he was
7 doing things that he shouldn't be doing? What does that
8 mean?

9 A Kissing, grabbing, holding onto. I mean ---

10 Q What do you mean by grabbing?

11 A Grabbing, physically putting hands on.

12 Q Okay, and when you say kissing, where was he kissing
13 that on ---

14 A Mouth, cheek, neck. I mean like he was making out
15 with them.

16 Q Okay. Do you remember where on the complex this was -
17 - where he was hanging out with kids that were younger than
18 him?

19 A It would've been on that property that was phase I;
20 the fellow describing lived in 4 building. You would've
21 had 4, 5, 6 and 7 building here. There was a little green
22 electrical transformer box. This is the main area and
23 where they would be hanging out is between 6 and 7
24 building.

25 MS. O'HAYON - Beg the Court's indulgence.

1 THE COURT - Yes, ma'am.

2 Q You testified a little green transformer box. Would
3 that be the electrical box?

4 A Yes.

5 MS. O'HAYON - Okay. Thank you. We have no
6 further questions. Would you please answer any questions
7 the defense counsel may have?

8 THE COURT - Your witness, counselor.

9 MS. ANDERSON - Thank you, Your Honor.

10 THE COURT - Yes, ma'am.

11 CROSS EXAMINATION

12 BY MS. ANDERSON -

13 Q The things you just sort of testified to, do you
14 remember approximately the time-range you observed these?

15 A What you mean, like month, day -- I mean ---

16 Q Right.

17 A All right, this is few years ago. I mean ---

18 Q Okay.

19 A --- you're scratching the surface on something that
20 happened a few years ago.

21 Q Sure, that's fine. I just -- yes, if you don't
22 remember, just let me know. I just want to see if you did.
23 Do you remember year or is it just you remember a couple
24 years ago?

25 A Yes, it was just a few ago.

1 Q Okay. And the -- the girls you described seeing, do
2 you recall -- did you know any of their names, any physical
3 descriptions of them?

4 A One girl in particular, she was a -- I don't know if
5 she was a mix or if she was a little African American girl,
6 but she had like curly little black ringlet hair, ---

7 Q Okay.

8 A --- and she lived, I want to say, in the 6 building,
9 which ---

10 Q Okay.

11 A --- would've been right in that same vicinity, but I
12 mean she was little, little kid, and that was the main one
13 that I would report to like the supervisor. There's just -
14 - it looked out of place and looked like it shouldn't have
15 been going on.

16 Q Okay. And you describe she had curly hair?

17 A I -- if -- it's few years ago, ---

18 Q Okay.

19 A --- so I mean if I'm not mistaken, yes.

20 Q Okay. And you said -- but you did not -- you didn't
21 know her name at that time, you just remember her ---

22 A No, I mean ---

23 Q --- sort of -- little bit by appearance.

24 A As for like the employee handbook, you didn't
25 fraternize with residents. I was there to do a job.

1 Q Okay. Sure, sure. And you indicated that you went to
2 the office -- or the manager or to the office?

3 A My supervisor, Raymond Lowery.

4 Q Your supervisor. Okay, Mr. Lowery. Okay. And when
5 you saw this on the grounds, you didn't go over though and
6 sort of confront the kids. Right?

7 A No, no.

8 Q Okay. You just went and reported to Mr. Lowery.

9 A I'm -- I'm not getting involved with nothing with no
10 under-age kids.

11 Q Okay. All right.

12 MS. ANDERSON - Beg the Court's indulgence.

13 THE COURT - Yes, ma'am.

14 MS. ANDERSON - Nothing further, Your Honor.

15 THE COURT - State?

16 MS. O'HAYON - No questions, Your Honor.

17 THE COURT - You may step down, sir. Thank you
18 very much.

19 MR. BOEPPLE - Thank you.

20 MS. O'HAYON - State calls Alyssa Pruitt.

21 THE COURT - Come forward, ma'am. Right up here
22 to be sworn, please.

23 ALYSSA PRUITT, AFTER BEING FIRST DULY SWORN,

24 TESTIFIES AS FOLLOWS -

1 THE COURT - Have a seat in the witness stand,
2 please, ma'am, and once you're seated state your name,
3 please.

4 MS. PRUITT - My name is Alyssa Pruitt.

5 THE COURT - Thank you. Counselor?

6 MS. O'HAYON - Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MS. O'HAYON -

9 Q Do you work for Pace's River?

10 A Yes.

11 Q What is your job there?

12 A I'm the assistant property manager.

13 Q How long have you been working there for?

14 A I started working there in November of 2010. I
15 started as a leasing consultant.

16 Q Do you remember somebody by the name of Brenda Coleman
17 or Orlando Coleman living at that community?

18 A (Indicating yes)

19 Q Do you remember approximately when they were living at
20 that community?

21 A It was in 2011.

22 Q Do you remember what building they lived in?

23 A I believe it was building 4.

24 Q Do you recall what apartment number they lived in?

1 A I think it -- it may have been [REDACTED] -- [REDACTED], [REDACTED], around
2 there.

3 Q Do you recall exactly or ---

4 A I can't remember specifically the apartment number. I
5 know it was on -- they were in a, I believe, a 2-bedroom,
6 2-bath apartment, so it would've been on either [REDACTED] or the
7 one above it.

8 Q Would looking at the lease refresh your recollection?

9 A (Indicating yes) Yes, ma'am.

10 MS. O'HAYON - Your Honor, permission to approach?

11 THE COURT - Yes, you may.

12 Q If you could take a look at that and when your
13 recollection has been refreshed, if you could let me know
14 what apartment number he lived in?

15 A Yes, [REDACTED].

16 Q Okay. Do you recall the address?

17 A It would've been 1807 Pace's River Avenue, Apartment
18 [REDACTED] just like it has on the lease contract.

19 Q Now, what do you remember about Orlando Coleman?

20 A I remember he lived with his mother, Brenda, and I
21 remember seeing him throughout the property. I remember we
22 had to go through some eviction proceedings, things like
23 that with them, but I do specifically remember seeing him
24 walking around the property with other young children,
25 which is kind of why his name always stood out to us at the

1 apartment complex, because we had seen him primarily with
2 younger females.

3 Q Was there anyone else that you had seen with younger
4 females?

5 A (Indicating no)

6 COURT REPORTER - She needs to answer ---

7 Q And when you say younger females, how ---

8 COURT REPORTER - I'm sorry. She needs to answer
9 verbally.

10 A No. I'm sorry. No.

11 Q And when you say that he was with younger females,
12 around what age were those younger females?

13 A They were probably five or six years old. They were
14 very young.

15 Q In looking around the courtroom today, do you see
16 Orlando Coleman in the courtroom today?

17 A No, I see his mother, but I don't -- I don't see him.
18 (Indicating no)

19 Q Can you please point out his mother, describe an
20 article of clothing that she's wearing?

21 A Yes, she's in the back there. She has a ponytail and
22 she's wearing black. She's on my left, but she's on the
23 left-hand side.

24 Q So just to be clear, during the time that Mr. Coleman
25 lived there until -- during the time that he lived there in

1 2011, do you recall any other African American males being
2 complained about for hanging around younger children?

3 A No, ma'am.

4 Q Okay. And do you recall there being any sort of talk
5 amongst maintenance workers or Mr. Lowery or anyone coming
6 to you to ---

7 A Yes.

8 Q What was that they were saying?

9 A They --- one instance that stood out to me from what -
10 - and I never witnessed this, but this is what was heard
11 and seen by maintenance staff which is on the property all
12 the time -- but there was one specific incident where they
13 saw him sitting ---

14 MS. ANDERSON - Your Honor, I'm going to object to
15 hearsay as to this through this witness.

16 THE COURT - I'll sustain ---

17 MS. O'HAYON - Your Honor, this is an offering ---

18 THE COURT - --- the objection and ask you to
19 rephrase the question.

20 MS. O'HAYON - Okay.

21 MS. PRUITT - Can I make a comment to a previous
22 question that you asked? You asked me if ---

23 MS. O'HAYON - Oh -- one moment.

24 MS. PRUITT - Sorry.

1 Q So you stated that you did receive -- without stating
2 that what the complaints were -- you did say that you
3 received complaints from Raymond Lowery and other
4 maintenance staff workers.

5 A Yes.

6 Q And they were about Mr. Coleman.

7 A Yes.

8 Q And there was no -- no one else, no other black
9 African American males with other young female children
10 that you received complaints about.

11 A Yes. There were none.

12 Q There were none.

13 A There were none.

14 MS. O'HAYON - Okay. No further questions. If
15 you could please answer defense counsel's questions.

16 THE COURT - Your witness, ma'am.

17 CROSS EXAMINATION

18 BY MS. ANDERSON -

19 Q Ms. Pruitt, if you'll look, the lease documentation
20 the solicitor gave you to refresh your memory ---

21 A Yes.

22 Q --- and there's a document in there, let's see, it
23 looks like it may be the second page of that ---

24 A The move-out checklist?

1 Q The move-out checking (sic). Could you read from that
2 the move-out date for Brenda Coleman?

3 A There's not a move-out date listed on it. On this
4 sheet here?

5 Q I'm sorry. Let me show you which one. I think it's a
6 different ---

7 A It's that it? Okay.

8 Q Yes. If you could look at that one. I'm sorry about
9 that. This document which is a -- looks like a breakdown
10 of the charges in association with a move-out. Is that
11 correct?

12 A Yes. (Indicating yes)

13 Q And on that if you could read the move-out date.

14 A November 14th of 2011.

15 Q Okay. So by this document the records would indicate
16 that the move-in date for Brenda Coleman was May 5th --
17 excuse me -- May 13th, 2011, the move-out date November 14th,
18 2011. Is that correct?

19 A Yes.

20 Q Okay. And you testified as some recollections of
21 things regarding Orlando Coleman.

22 A (Indicating yes)

23 Q Are you relying on any -- is there any documentation
24 you're relying based on that, or is that solely on your
25 memory?

1 A As far as this here in front of me?

2 Q Well, let me change that. As regard to what you
3 testified about him being seen with younger females and
4 complaints being made about that from maintenance, is there
5 any documentation you have of that?

6 A No.

7 Q And do you recall the timeframe in which these
8 complaints were made?

9 A They would've been obviously during those, what, five,
10 six months during his tenancy there.

11 Q Okay. And during the course of those five or six
12 months, did you or anyone in the office that you're aware
13 of call the police at any time?

14 A Not that I was aware of. I was just a leasing
15 consultant at the time.

16 Q Okay. So at that time you weren't handling -- you
17 weren't the property manager. You weren't handing (sic)
18 that part ---

19 A Correct.

20 Q Okay. But as the property -- you're the property
21 manager now and you have access, I guess, to records.

22 A Assistant, but yes.

23 Q And to the best of what you are able to see in terms
24 of what you're able to access, you don't have any
25 documentation regarding that.

1 A No, unfortunately -- it's a new management company
2 that took over, so we don't have a lot of the old records.

3 Q Okay. And do you recall when you were contacted in
4 regard to this case?

5 A Maybe two, three months ago?

6 Q Okay. And prior to two or three months, at no point -
7 - you were not contacted, for instance by the Rock Hill
8 Police Department in regard to this case or anything of
9 that nature.

10 COURT REPORTER - She needs to answer verbally.

11 A No. No, I'm sorry.

12 MS. ANDERSON - Beg the Court's indulgence.

13 THE COURT - Yes, ma'am.

14 Q Do you recall any residents by the name of Pattersons?

15 A Yes.

16 Q Okay. And what do you recall of them?

17 A It's just their -- their name sticks out to me.

18 Q Okay.

19 A Normally names for me stick out more than apartment
20 number sometimes, because we deal with people face-to-face
21 normally, but they just -- their name sounds familiar, yes.

22 Q Okay. So the name sounds familiar, but there's
23 nothing other you recall in particular about them other
24 than the name as being residents there. That's correct?

25 A Yes.

1 Q And for instance, you don't know their apartment
2 number by memory?

3 A No.

4 MS. ANDERSON - Nothing further, Your Honor.

5 THE COURT - Anything further from the State?

6 MS. O'HAYON - No, Your Honor.

7 THE COURT - You may step down. Thank you, ma'am.

8 State have any other witnesses on this point?

9 MS. O'HAYON - Yes, Your Honor. Detective Thomas.

10 THE COURT - Come forward, please, sir.

11 RYAN THOMAS, AFTER BEING FIRST DULY SWORN,

12 TESTIFIES AS FOLLOWS -

13 THE COURT - Have a seat, sir. Once you're
14 seated, state your name, please.

15 MR. THOMAS - Detective Ryan Thomas.

16 THE COURT - Your witness, counselor.

17 MS. O'HAYON - Thank you, Your Honor.

18 DIRECT EXAMINATION

19 BY MS. O'HAYON -

20 Q Detective Thomas, did you make an arrest on Orlando
21 Coleman back in 2013?

22 A Yes.

23 Q And since 2013 and now, has there been any difference
24 in his physical appearance?

25 A Significant difference.

RYAN THOMAS - DIRECT BY MS. O'HAYON

1 Q Okay, what difference is that?

2 A He's lost a lot of weight since his arrest.

3 Q Do you see Mr. Coleman in the courtroom today?

4 A Yes, ma'am, he's right there.

5 Q Can you point out an article of clothing that he's
6 wearing?

7 A He's wearing a dark suit with a red and grayish tie,
8 white shirt.

9 MS. O'HAYON - Let the record reflect that the
10 witness has ID-d the defendant.

11 Q When you say that he's lost a significant amount of
12 weight, could you estimate ---

13 THE COURT - The record shall so reflect that.

14 MS. O'HAYON - Thank you, Your Honor.

15 THE COURT - You may proceed.

16 Q Can you estimate about how much weight?

17 A Off top of my head, maybe 70, 80 pounds.

18 MS. O'HAYON - Thank you. No further questions.

19 THE COURT - Counselor, your witness.

20 MS. ANDERSON - No, Your Honor.

21 THE COURT - You may step down.

22 MR. THOMAS - Thank you, Your Honor.

23 THE COURT - State have other witnesses on this

24 point?

1 MS. O'HAYON - No, Your Honor. The only thing
2 that the State would request is the -- the female who had
3 been identified in the audience, if she could please
4 identify herself for the record.

5 THE COURT - Ma'am, the lady on the left, if
6 you'll stand, please.

7 (WHEREUPON, MS. COLEMAN STANDS)

8 THE COURT - Yes, ma'am. Your name?

9 MS. COLEMAN - Brenda Coleman.

10 THE COURT - Thank you. Did you get that?

11 COURT REPORTER - Yes, sir. Thank you.

12 THE COURT - Anything else from the State?

13 MS. O'HAYON - That's all, Your Honor.

14 THE COURT - Defense wish to call any witnesses on
15 the point?

16 MS. ANDERSON - No, Your Honor.

17 THE COURT - All right, I'll hear from the State.

18 Well, this is defense motion to exclude the testimony.

19 I'll hear from the defense.

20 MS. ANDERSON - Yes, Your Honor. May it please
21 the Court. Your Honor, the defense would move to exclude
22 this evidence arguing that this does essentially amount to
23 other bad act evidence. Going through the testimony that -
24 - there's nothing from either the testimony of Mr. Lowery,
25 Mr. Boepple or Ms. Pruitt that links this allegations as to

1 being the alleged victim in this case Ms. Patterson.
2 Neither Mr. Boepple or Mr. Lowery even specifically
3 identifies Mr. Coleman as being by face, though I
4 understand there's the testimony regarding the apartment
5 there. Mr. Lowery is the only one who that can offer a
6 specific date. He provides a date of this -- him observing
7 this in late spring or early summer of 2012, which based on
8 the testimony from Ms. Pruitt would be outside of the range
9 of the tenancy of the Colemans at Pace's River. Mr.
10 Lowery's testimony is specifically that he identifies this
11 person as being a resident of building 4, apartment [REDACTED],
12 and again that this took place some time in the spring or
13 summer of 2012, cannot identify Mr. Coleman in the
14 courtroom. Again, there's nothing regarding the testimony
15 of that that links the allegation of this incident in the
16 breezeway with the girl alleged to be involved with that
17 with that being MINOR [REDACTED]. As that -- and there
18 were no charges made in regard to this. The testimony is
19 the police were never called in regard to this, so
20 obviously there's no conviction in regard to this breezeway
21 incident, which I would say then that pushes this in the
22 range of it having to be proved by clear and convincing
23 evidence, and I think based on Mr. Lowery's testimony, it's
24 not to a clear and convincing standard that this is an eye-
25 witness account of observing Mr. Coleman with Ms.

1 MINOR, which is what is at issue here in Court, this
2 trial. Your Honor, Mr. Boepple, again, cannot identify Mr.
3 Coleman, cannot identify the time-range this occurred in,
4 and so cannot -- he knows the individual again living in
5 building 4 is the only way he can identify, but again,
6 cannot actually testify as to a time-range of whether that
7 fits during the Colemans' residency or not. I would also
8 point to the fact that the allegations made by Mr. Boepple
9 and Mr. Lowery -- Mr. Boepple's allegation is essentially
10 sort of kissing -- activity of kissing or grabbing.
11 There's nothing again that alleges this sort of conduct
12 that's at issue and alleged in this, and again, nothing
13 that links by his description or any information regarding
14 the -- the girl who was alleged involved but then, again to
15 say that this rises to a level of an allegation that this
16 is Ms. -- they are observing Mr. Coleman and Ms. MINOR
17 together. You know, as such, Your Honor, I would say it
18 does qualify as bad act evidence, that it's not any sort of
19 eye-witness evidence or direct evidence linked to the
20 parties in this case, and as such would move for this
21 testimony of Mr. Boepple and Mr. Lowery to be excluded and
22 Ms. Pruitt's testimony as to regard of any complaints being
23 made regarding this activity. I understand she may be able
24 to testify as to other things, but as to that portion of
25 her testimony.

1 THE COURT - All right, I'll hear from the State.

2 MS. O'HAYON - Your Honor, in regards to Mr.

3 Boepple's testimony -- I'm sorry, Mr. Raymond Lowery's
4 testimony, the first witness, the State still holds that
5 this is -- still argues that this is not prior bad acts.
6 The acts that he ---

7 THE COURT - Well, what is -- what is the
8 relevance?

9 MS. O'HAYON - The relevance, Your Honor, is that
10 his statement puts the defendant in the exact same spots
11 that the victim puts herself with the defendant during her
12 own encounters with him during the two incidents. He's at
13 the electric box which is the tennis court incident; he's
14 in the stairwells, which is the breezeway incident. So it
15 makes -- and I do have a ---

16 THE COURT - Well, they both lived at this
17 apartment complex at that time, did they not?

18 MS. O'HAYON - Yes, however, the way they
19 explained it is that there is more than one phase, and
20 buildings 4, 5, 6 and 7 were together and so people who
21 lived in those buildings tended to hang out in the same
22 areas together, so we're not talking about people who were
23 hanging out in different areas; we're talking about people
24 who were hanging out in these specific areas, specifically
25 the electric box and the stairwells. And in addition -- in

1 addition to that, it contradicts the defendant's own
2 statements. There's a statement made by the defendant to
3 the police officers that he does not hang around with
4 little kids, that he's always, quote, chasing other --
5 women older than him and that he does not hang around with
6 children from the neighborhood. But the testimony here
7 will contradict that, will impeach his statement about
8 that, specifically saying that he does hang around with
9 children who are younger than him. One moment, Your Honor.
10 I do have a case, State vs. Wallace, that states
11 essentially when it comes to Lyle evidence that it is
12 important to consider location, and in regards to whether
13 testimony that would be considered Lyle should come into
14 evidence.

15 THE COURT - Pass it up.

16 MS. O'HAYON - I'm sorry?

17 THE COURT - We've got it already.

18 MS. O'HAYON - Okay. I'll just hand one over to
19 defense counsel. I also have another case that allowed
20 testimony from a witness about the defendant in a -- it is
21 not a criminal sexual conduct case. It was a murder case,
22 but the testimony was just that the defendant owned and in
23 his possession a .9 millimeter handgun. That testimony was
24 permitted to be brought into evidence to show that it was
25 relevant, because it tended to prove the identification of

1 the defendant as the possessor of the murder weapon. And
2 in our case, the defendant, the testimony of the defendant
3 hanging out with girls who are that much younger than them,
4 hanging out by the tennis courts, by the electric box and
5 in the breezeways tends to prove that this is the -- the
6 person who committed these acts against the victim.

7 THE COURT - Let's go back to one thing. You
8 indicated that there's a statement that he made that he
9 didn't hang around with young girls.

10 MS. O'HAYON - Yes, Your Honor.

11 THE COURT - That's a statement that I guess was
12 made during some interview with the police?

13 MS. O'HAYON - Yes, Your Honor.

14 THE COURT - Is that a statement that you intend
15 to introduce in your case in chief?

16 MS. O'HAYON - Yes, Your Honor.

17 THE COURT - So you're the one who's putting that
18 statement into the record, not the defense.

19 MS. O'HAYON - Yes, Your Honor.

20 THE COURT - So you're asking then to be allowed
21 to impeach your own evidence?

22 MS. O'HAYON - Your Honor, the -- I'm putting into
23 evidence the defendant's statement, that is the defendant's
24 statement that I want to impeach his credibility about the
25 statement that he made to the detective.

1 THE COURT - I understand. I just want to be sure
2 I understood what you're talking about doing. You're
3 talking about putting in his statement and then you want to
4 use this evidence to impeach the statement that you put
5 into evidence.

6 MS. O'HAYON - Yes, Your Honor.

7 THE COURT - Okay.

8 MS. O'HAYON - In addition to that, it also
9 corroborates the victim's testimony that the victim was
10 hanging around with the defendant despite their age
11 difference, that they were hanging around by the breezeways
12 or inside the breezeways and by the tennis courts by the
13 electric box. So it goes towards two different purposes.

14 THE COURT - All right, go head. I interrupted
15 you.

16 MS. O'HAYON - I'm sorry?

17 THE COURT - I said you may proceed, I interrupted
18 you.

19 MS. O'HAYON - Thank you, Your Honor. (Pause)
20 Your Honor, just to -- just to clarify that. The State is
21 not intending to present this evidence as Lyle or prior bad
22 act evidence. The State is presenting this evidence for
23 two main purposes, the first purpose being to impeach the
24 defendant's statement that he made to the detective, and
25 the State understands we are presenting the defendant's

1 statement as part of our case in chief and we are looking
2 to impeach that ---

3 THE COURT - I'm going to look into that, because
4 it's fairly unusual that basically you're setting up the
5 reason why his statement ought to be impeached, so you're
6 setting up the reason why that evidence ought to come in.
7 I have my doubts that you can do that, but I'm going to
8 look into it further, but that's an unusual procedure where
9 you put in the statement that you're trying to impeach so
10 that you can bring evidence in to impeach him, and I'm not
11 sure you can do that. But I'm going to look into it. I
12 have my doubts about that.

13 MS. O'HAYON - Okay, um, in addition -- in
14 addition to that and in addition to corroborating the
15 victim, it is also to corroborate the victim's statement,
16 so we are presenting evidence to corroborate her statement,
17 because we don't have ---

18 THE COURT - Well, again, but it's evidence of --
19 what the rule says -- it says evidence of other crimes,
20 wrongs or acts. It doesn't say bad acts. I know we say
21 that quite often -- acts -- are not admissible to prove to
22 character of a person in order to show action and
23 conformity therewith. Now, it can be admissible if it
24 shows motive, identity, the existence of a common scheme or
25 plan or mistake, lack of mistake or accident or intent. So

1 those are the reasons why it could come in. It has to fit
2 within one of those exceptions to come in. Now, I'm
3 thinking that this is evidence of an act. Obviously, it
4 would -- if viewed by a juror, what you're trying to say is
5 we've got an older teenager playing with small children and
6 doing things that the witnesses themselves said they didn't
7 see it to be appropriate and that they had called it to the
8 attention of other people, so that would -- those acts when
9 viewed by people in the jury might be considered to be acts
10 in conformity with the character you're trying to prove, so
11 the question is does it fit within one of those exceptions.
12 And then I've got to decide whether the probative value of
13 that evidence outweighs its prejudicial effect in this
14 case, so I've got to make that determination as well. So
15 those are the things I'm focusing on right now. I know you
16 keep characterizing it as not a bad act. I'm just saying
17 it -- it doesn't say bad act in the rule. It just says
18 evidence of crimes, wrongs or acts are not admissible. So
19 I'm -- I'm looking at this as if a juror listened to this,
20 this is not behavior that you're putting on as appropriate
21 behavior. You're putting it on as inappropriate behavior.
22 That's the reason the witnesses' attention was called to
23 it. That's what they said.

24 MS. O'HAYON - Yes, Your Honor, but we're not
25 presenting it for the character of the defendant. We're

1 presenting it to impeach a statement and presenting it to
2 corroborate the victim's statement and I ---

3 THE COURT - Well, again, any evidence would be
4 for whatever purpose, but I think it would have the effect
5 of you attempting to show that he is hanging around with
6 the other children when he shouldn't be.

7 MS. O'HAYON - But that in and of itself is not
8 necessarily inappropriate for a defendant of his -- for him
9 at the age of 17 to be hanging out with kids who are not 10
10 and younger. That we're not presenting because it's
11 inappropriate in and of itself. That behavior isn't ---

12 THE COURT - It's not illegal. It's not a crime.

13 MS. O'HAYON - Correct.

14 THE COURT - But the witnesses themselves said
15 their attention was called to it because they did not
16 consider it appropriate. That's what they said.

17 MS. O'HAYON - I beg the Court's indulgence.

18 (Pause) Your Honor, the -- we could -- we could ask the
19 questions of the witnesses in a way and ask them not to put
20 in their own opinion about whether this was appropriate or
21 not, to limit the taint of them saying that this behavior
22 was inappropriate and just limit their testimony
23 specifically to what they observed without any additional
24 commentary, that they observed the defendant, they observed
25 the ages of the children that he was playing with, that

1 they were observed in the breezeways and they were observed
2 by the tennis courts and the electric box. In addition,
3 the defendant said himself in his own statement that he
4 does not hang around with children younger than him, and
5 Rule 607 allows us to impeach any witness, so -- or for any
6 witness to be impeached by any party, so we are able to
7 present a defendant's statement to police and then show the
8 jury why that statement is incorrect or the credibility of
9 the defendant's statement.

10 THE COURT - I'm going to look into that. All
11 right, anything else?

12 MS. O'HAYON - Thank you, Your Honor.

13 THE COURT - Defense?

14 MS. ANDERSON - I think Your Honor has hit most of
15 the things the defense ---

16 THE COURT - Did I make your argument for you?

17 MS. ANDERSON - Yes, I think so, Your Honor. You
18 know, I would just -- I would just reiterate again that
19 this is not a circumstance where the defense is putting the
20 defendant's character into evidence ---

21 THE COURT - I have not seen this statement by
22 your client to the police. Has it been correctly
23 characterized to me as to what he said in there?

24 MS. ANDERSON - Your Honor, there is that
25 statement made, however, there are other statements in the

1 course of it that he does hang around even with the alleged
2 victim, her brother. There are other statements that the
3 State wanted into evidence regarding him playing with
4 children, so I don't think this is a circumstance where
5 that is the sole statement made and there is no other
6 statement throughout the course of the two interviews
7 whereby the State could argue he is saying he plays with
8 the children. He admits to playing even with the alleged
9 victim and her cousins and brother or being in the general
10 area. So I don't think the statement that the State is
11 picking out in isolation is the sole statement regarding
12 him being around children or playing out at the apartment
13 complex, so I would disagree that that is the
14 characterization that they have to -- that they have to
15 have this evidence, which I think is highly prejudicial and
16 is being testified in a way of being prejudicial to the
17 defendant and in character evidence to show him acting in
18 appropriately in order to counter one statement or one
19 sentence in the course of two police interviews, which gets
20 into at times the defendant playing with kids outside,
21 playing with the alleged victim, playing with her cousins,
22 playing with her brother and even at one -- some point kids
23 crawling on him, so there are things in the interviews that
24 do get that point across, and I think the State is able --

1 is able to get that out there. The one statement they're
2 highlighting is not the only statement regarding ---

3 THE COURT - Oh, I understand that, but that is in
4 there that he denied playing with younger children.

5 MS. ANDERSON - Your Honor, the specific statement
6 ---

7 THE COURT - Might be a good idea that you --
8 somebody tell me what he said.

9 MS. ANDERSON - Beg the Court's indulgence. I
10 think I have a transcription of it. (Pause) Your Honor,
11 the statement is -- there is a -- I'll go back a little
12 bit. What my notes indicate, the detective is questioning
13 him, the detective initially makes an allegation that the -
14 - that there is allegations being made against multiple
15 guys, and that Mr. Coleman's name has come up as part of
16 his interrogation. The detective goes to the point of,
17 okay, well, I mean because everyone was out there playing,
18 I know that already. I already talked to a couple of the
19 older boys around 13 years old and they all know you. We
20 all hung out with OJ all the time, playing on the tennis
21 court, playing ball, whatever it was. That is what it is.
22 There's nothing wrong with that, so I know you were out
23 there playing with them, hanging out during the summer with
24 them, and again, I don't know exactly what the specific day
25 of the week was or the specific day, because obviously she

1 can't remember that. She's trying to say you touched her,
2 and I'm thinking if this many things have really happened,
3 she was probably coming on to the guys. You know what I'm
4 saying; that's what I'm wondering. She's extremely
5 specific with details for a six year old that is different
6 to me like details. I don't even know how she could come
7 up with details for that. Mr. Coleman then states, well,
8 if you've seen her cousins, you probably know. Detective
9 says, I don't know anything about her cousins. Mr. Coleman
10 says, they're very vulgar around her. The detective then
11 says, okay, so maybe she learned. Mr. Coleman then states,
12 probably, I don't know. The bottom line is I don't do that
13 to little kids period, because I'm always chasing after
14 adults older than me. And then it goes into, sure, sure,
15 well, what was relationship with her back then, and Mr.
16 Coleman states, I see her around the neighborhood and
17 stuff, but she hardly ever hung out with more like that,
18 because she always hung around with other little girls.
19 When I saw her she was either with her cousins or in the
20 house somewhere. That's pretty much it for me. And that
21 was in that section. That was that statement within that.
22 The other statements regarding the interaction comes sort
23 of later in the interview, but that is the statement I
24 think -- the transcription I have of the statement that the
25 State is referencing.

1 THE COURT - Is that what you're referring to,
2 counsel?

3 MS. O'HAYON - Yes, Your Honor, except that he
4 goes on to say -- the detective asked him, did you ever sit
5 her down on your lap? And the defendant then says, no,
6 this is exactly the reason why; anyone can get the wrong
7 idea. So he does -- not only does he say that he doesn't
8 put her on his lap, because he does not put little girls
9 his lap because they can get the wrong idea, but then
10 there's all of these witnesses who constantly see him
11 hanging out with little girls on his lap hanging around
12 him. So even though the defendant himself ends up changing
13 his own statement later and even later to say when he does
14 finally say that, yes, she did crawl on my lap, but I
15 pushed her off as soon as she got on there, that's not
16 true, and so the amount that he does ultimately admit is
17 never as much as actually is accurate.

18 THE COURT - So what are you trying to impeach?

19 MS. O'HAYON - Trying to impeach his statement
20 that, one, he does not hang around with little girls.

21 THE COURT - Is that in there?

22 MS. O'HAYON - Well, that he says, I don't do that
23 to little kids period. I'm always chasing after adults
24 older than me. And also that he -- when he said that he
25 doesn't hang around her, because she hangs around with

1 girls her age and her cousins, and that's what he saw her
2 with her cousins and at home, but he never hung around her
3 and that if -- when she did -- she never went on his lap
4 because people would get the wrong idea, and that when she
5 was on his lap he would push her off, so those statements
6 are all inaccurate.

7 THE COURT - So you are trying to get in the acts.

8 MS. O'HAYON - The acts?

9 THE COURT - Of having her on his lap.

10 MS. O'HAYON - Of -- I'm not saying that these
11 witnesses specifically saw her on his lap.

12 THE COURT - I didn't hear that either.

13 MS. O'HAYON - They're not -- I don't have - that
14 is -- that's not what I'm offering. What I'm offering is
15 to impeach him, that there were witnesses who did see him
16 with little girls on his lap, and that's not necessarily a
17 bad thing, but it's -- it impeaches his statement. He's
18 the one who says that it's a bad thing. He says anyone can
19 get the wrong idea. So he's not saying that having little
20 kids on his lap is necessarily bad, but he doesn't want to
21 - he doesn't want them there because people can get the
22 wrong idea.

23 THE COURT - I'm trying to find out what the
24 statement is you're trying to impeach. It's very -- it's
25 an illusive target here.

1 MS. O'HAYON - It's ---

2 THE COURT - To me it is. I'm having difficult
3 understanding it.

4 MS. O'HAYON - It's essentially -- it is entire
5 statement to the detective. He never admits to the
6 detective that she sat down on his lap and that he left her
7 there.

8 THE COURT - And do you have any evidence that
9 that's not true?

10 MS. O'HAYON - Specifically with MINOR, no, but
11 he says that the reason ---

12 THE COURT - Okay, then that's a problem.

13 MS. O'HAYON - But he says the reason why she --
14 he does not sit her ---

15 THE COURT - So you want to use other bad acts to
16 show that he did.

17 MS. O'HAYON - No. He's saying he does not sit
18 MINOR on his lap because he does not let little kids sit
19 on his lap because anyone can get the wrong idea.

20 THE COURT - And you want to show that he did with
21 somebody else.

22 MS. O'HAYON - I want to show that he does let
23 little kids sit on his lap and he does let little kids hang
24 around then (sic) ---

1 THE COURT - That's right. So you're using it for
2 a bad act to show he has to be in conformity of this act.

3 MS. O'HAYON - But it's not necessarily a bad act
4 to be hanging around with little kids and for kids to be
5 sitting on him. Kids sit on older people all the time.
6 It's not in and of itself a bad act. He's the one who
7 characterizes it as anyone can get the wrong idea.

8 THE COURT - Well, he did and the witness who
9 testified did. You're the only one who doesn't.

10 MS. O'HAYON - And I can with the witness
11 specifically ask them about, without having them
12 characterize it as appropriate, specifically ask them what
13 did you see, without having them characterize it.

14 THE COURT - As to the sitting on the lap, I'm
15 going to sustain the objection. That's not coming in.

16 MS. O'HAYON - As to him hanging around kids that
17 are younger than him?

18 THE COURT - Show me that statement in his
19 statement where he said he didn't hang around children that
20 were younger than him. He said he chased after older
21 women. He said that, but I didn't hear the statement -- I
22 asked for it a couple of times -- the statement where he
23 said that he didn't hang around with younger children. If
24 it's in the statement we'll talk about it.

1 MS. O'HAYON - He said little kids like 13 and
2 older like to hang around me because I'm funny, so he does
3 not specify the 10 and younger which is the age range of
4 other people saw him hanging around.

5 THE COURT - Did he make a statement that he
6 didn't hang around younger children? If he did, then you
7 may have something. If he didn't, maybe you don't.

8 MS. O'HAYON - Beg the Court's indulgence.

9 THE COURT - Yes, ma'am.

10 (WHEREUPON, BRIEF PAUSE)

11 MS. O'HAYON - Your Honor, I don't have -- in the
12 -- I don't have a full transcript of the statement, and all
13 I recall is the part where when the detective asked -- when
14 the defendant asked how young she is, the detective says
15 six, and then later him saying I don't do that to little
16 kids, I'm always chasing adults older than me, and the part
17 where he says, little kids like 13 and older like to hang
18 around with me because I'm funny. I don't have anything
19 specifically where he says ---

20 THE COURT - Well, he's acknowledging by saying
21 that that little kids that age do hang around him. Isn't
22 he not?

23 MS. O'HAYON - He's acknowledging kids 13 and
24 older hanging around him. He's not ever acknowledging --
25 well, later on he acknowledges little kids at the pool

1 hanging around him and hanging around with the cousins, but
2 he doesn't ever acknowledge that he hangs around with kids
3 under that age or as -- as young as five or six.

4 THE COURT - All right, well, my ruling thus far
5 on this is that I do find that the evidence as to the acts
6 that were testified to, such as, sitting on a lap, hugging
7 him, things of that nature, I don't find that that -- any
8 of that shows motive, identity, existence of a common
9 scheme or plan, absence of mistake or accident or intent.
10 There was no showing that the particular victim in this
11 case was involved in those activities from the testimony
12 that I've heard thus far. I do find that if I were to let
13 it in under those circumstances, the prejudicial effect
14 would far outweigh its probative value. I don't find that
15 the evidence rises to the level of evidence that would be
16 admissible under Rule 404(B). Now, as far as impeachment
17 is concerned, thus far I've not heard any statements that
18 are in the statement for which this would serve as
19 impeachment. If there's something there -- you indicated
20 you don't have the full transcript. If you get it and you
21 find something, raise the issue again, but right now I
22 don't find that there was a statement made by him that this
23 would directly impeach, therefore, I'm not allowing it for
24 that reason at this point.

25 MS. O'HAYON - Thank you, Your Honor.

1 THE COURT - All right, we need to take up the
2 plea.

3 (WHEREUPON, A PLEA IN ANOTHER MATTER IS TAKEN AND
4 A BREAK IN THE TRIAL IS TAKEN)

5 (WHEREUPON, DOCUMENTS MARKED FOR IDENTIFICATION
6 AS STATE'S EXHIBITS 1 AND 2.)

7 THE COURT - Thank you very much. You can be
8 seated. All right, the State ready to proceed?

9 MS. O'HAYON - Yes, Your Honor.

10 THE COURT - Defense ready?

11 MS. ANDERSON - Yes, Your Honor.

12 THE COURT - All right, let's bring the jury in.
13 And my intention is to go through my opening statement to
14 the jury and allow you to make your opening statements
15 before we break for lunch.

16 (WHEREUPON, THE JURY ENTERS THE COURTROOM)

17 THE COURT - All right, the record will reflect
18 that the jury has returned to the courtroom. I hope
19 everyone had a good evening. I want to thank you for your
20 patience this morning. We've been here; we've been working
21 on some matters that hopefully will take care of some
22 issues that might come up later on. While we may have, I
23 guess, to a certain degree wasted some of your time this
24 morning, I think in the long-run we may have saved you some
25 time as far as some matters that we've gone over while

1 you've been waiting. So I want to thank you for your
2 patience this morning with the Court. Now, when you left
3 the courthouse yesterday I gave you some instructions
4 concerning how I wanted you to behave. If anyone had any
5 difficulty in complying with the instructions that I gave,
6 please stand.

7 (NO RESPONSE)

8 THE COURT - The record will reflect then that all
9 jurors have been able to comply with my instructions thus
10 far. Now, I told you that upon your return to the
11 courtroom you would be taking an oath concerning your
12 responsibilities as jurors in this case. And at this time
13 I'm going to ask that the clerk please swear the jury panel
14 in this matter. Madam Clerk.

15 (WHEREUPON, THE JURY IS DULY SWORN BY THE DEPUTY
16 CLERK.)

17 THE COURT - Now, if any of you either failed or
18 refused to take the oath that was just administered by the
19 clerk, please stand.

20 (NO RESPONSE)

21 THE COURT - The record then will reflect that all
22 jurors have now been sworn concerning your responsibilities
23 in this case. Before we begin the trial of the case
24 there's some things that I would like to discuss with you.
25 I'm going to approach this from the perspective that I

1 believe that for most of you this is the first time that
2 you've ever been in the situation that you find yourself
3 in, that is, serving on a jury in the trial of a criminal
4 case in an actual court of law, and where that doesn't
5 happen to people very often in their lives, so I'd expect
6 that some of you this is your first experience in this
7 regard. So I'm going to talk to all of you as if this is
8 your first time in being involved in this type of a trial.
9 Many people don't have the chance to even attend actual
10 Court sessions, so I wouldn't expect you to know a great
11 deal about what actually goes on in courts during a trial
12 of a case. I would think that most of what you might know
13 or believe about what goes on in courtrooms you would've
14 learned from such sources as television shows you've
15 watched or movies you've seen or maybe books that you've
16 read, and, you know, while all of those sources of
17 information are interesting, they're full of high drama and
18 interesting plots and twists and turns. In a case of
19 television it's always amazing to me that they can have an
20 event occur and the case can be tried and everything
21 wrapped up in the space of an hour and they can still stop
22 about five times during that time to put on some
23 commercials for you. Now, if you think about that you
24 might realize that what they do with television shows and
25 movies, they sometimes twist what goes on in courtrooms so

1 it will fit the story line so it stays interesting so that
2 you'll keep watching the show. It's there for your
3 entertainment. They want you to watch those commercials.
4 That's how they sell them by the number of people that
5 watch. So those -- while those sources of information are
6 very entertaining, that's what they're intended for
7 primarily. I'm going to tell you that what you're engaged
8 in at this time in this trial is intended for anything but
9 your entertainment. I hope you realized that you're
10 engaged in a fundamental part of our governmental
11 structure. You know, if you were to take the time to look
12 around the world today at the different countries that
13 exist in the world and you were to look at the justice
14 systems that exist in most of those countries, you would
15 find that most of those justice systems did not allow
16 citizens to directly participate in the decision-making
17 process that goes on in those courts. You see, because
18 most countries in this world don't have a system such as
19 ours that is based on one of the constitutional rights that
20 all of us have, is the right to a trial by a jury of one's
21 peers. That right to a trial by a jury was -- the first
22 time it was guaranteed to someone, it was guaranteed in a
23 document known as the magna carta. That document was
24 signed in England. It was signed in the year 1215. So if
25 you do the math, you'll realize that that document is

1 having its 800th anniversary this year. So it's a long
2 tradition that we have in our system of justice, that is
3 the right of every citizen to have a trial by a jury of
4 one's peers. You see, this courtroom is a place of honor.
5 It's dedicated to the preservation of citizens' rights
6 through the Constitution of this State and of the United
7 States and that guarantee of a right to a trial by a jury.
8 I want to thank you very much for your willingness to
9 participate in that process today. The right to a trial by
10 a jury is the right that we fought for for many years.
11 Many people have died to preserve the Constitutions and the
12 rights that we have in this country. I hope it's a right
13 we never lose in this country. Now, the attorneys that are
14 involved in this trial are here to represent their client's
15 interest. I'm sure they'll do an excellent job in
16 presenting the cases that their clients have before you
17 during this trial. I want to point out something to you,
18 however. Those attorneys that'll be appearing during the
19 trial are first and foremost officers of this Court. You
20 see, at some point in time they appeared in front of a
21 Judge such as myself or some other Judge in this State and
22 they took an oath. It's an oath prescribed by the rules of
23 the Courts, and that oath includes a promise that they will
24 assist you during this trial in your search for the truth.
25 For that reason you can expect the attorneys will act in a

1 reasonable and ethical and a professional manner in the
2 presentation of their clients' cases before you during this
3 trial. By the same token, I want to point out to you that
4 you come in front of this Court this morning and you took
5 an oath. Your oath is to decide the issues joined in this
6 case based upon the law and the evidence presented during
7 the trial. I expect you then to act in a reasonable, a
8 professional and an ethical manner in the discharge of your
9 duties as jurors in this case. Now, what I'm telling you
10 now is not intended to be a charge on the law that you're
11 going to apply in the case. Later on at the close of
12 trial, once you've heard all the arguments and all the
13 evidence I'll charge you concerning the law that you're to
14 apply in this case. What I am going to try to go over with
15 you is the procedure that we'll follow and the duties that
16 we all have in trying this matter. Now, yesterday I did go
17 over with you the fact that there are two indictments in
18 this case. The two indictments charge the offense of
19 criminal sexual conduct with a minor in the first degree.
20 I'm not going to go over those with you in detail right
21 now. Later on when I charge you on the law, I'll go over
22 those indictments with you in much greater detail. I will
23 again remind you, however, that the indictments in this
24 case are simply the charges that bring the case into this
25 Court. It's not in any sense evidence of any allegations

1 contained in the indictment, and the defendant has pled not
2 guilty to those indictments, and under the law and the
3 Constitution of this State and of the United States, that
4 plea places the burden of proof in this case solely upon
5 the State, and that burden is to prove the allegations
6 contained in the indictment to you by proof beyond a
7 reasonable doubt. At the close of the trial, it'll be your
8 responsibility to make a determination as to whether or not
9 the State has met its burden of proof in this case. Now,
10 your purpose as jurors in this case is to find and
11 determine the facts. In every case tried in this Court
12 before a jury, the jury is always the sole and exclusive
13 Judge of the facts in this case. I'm going to serve as the
14 presiding officer. It'll be my job to rule on certain
15 questions that might come up during the trial, such as the
16 admissibility of evidence or the appropriateness of
17 questions that are being asked of the witnesses. I'm going
18 to caution you now, you should not take from anything that
19 I do in the discharge of my duties as the presiding officer
20 in this trial to indicate to you that I have an opinion one
21 way or the other as to how you determine the facts in this
22 case. You see, you are the sole and exclusive Judges of
23 the facts. For that reason I'm not allowed an opinion
24 concerning the facts, and I'll assure you, I have no
25 opinion as to how you should determine the facts in this

1 case. But, you know, the same law that makes you the sole
2 Judge of the facts makes me the sole Judge of the law in
3 this case. That means at the close of the trial when I go
4 over the law to be applied in this case, that's the only
5 law that you can use in determining the outcome of this
6 matter. So if you came into the courtroom today with a
7 notion as to what the law is or you've got an idea or an
8 opinion as to what the law ought to be, I will tell you
9 that you should leave those notions outside of the jury
10 room before you begin deliberations. I cannot disagree
11 with you concerning your determination in the facts; you're
12 not allowed to disagree with me concerning the law that's
13 to be applied to the facts as you determine those facts to
14 be. Now, I've already gone over with you the fact that you
15 should not try to gather any information outside of this
16 courtroom. I will tell you, the only place you will hear
17 evidence and law -- and that's what you're sworn to decide
18 this case on -- the only place you'll hear evidence is from
19 this witness stand during the trial from witnesses who've
20 been sworn to tell the truth who will testify from that
21 witness stand and whatever evidence goes into the record of
22 the case through that testimony. The only other additions
23 to the record of the case will be evidence that the
24 attorneys agree on and are placed into the record by
25 agreement or by stipulation. So that's the evidence that

1 you're going to be presented with during the trial of the
2 case. The law will be presented to you by me at the close
3 of the evidence. So that's the only place that you will
4 hear law or evidence in this case, and for that reason you
5 should not attempt to gather any information outside of the
6 courtroom about this case, and again I'll caution you, I
7 want you to keep an open mind until such time as I ask you
8 to begin deliberations. For that reason, don't discuss the
9 case with anyone, family, with family, friends or anyone
10 else until such time as I tell you to begin your
11 deliberations, and then you'll only discuss it with your
12 fellow jurors in the jury room during those deliberations.
13 Now, at the close of this trial it's going to be your
14 solemn responsibility to determine the guilt or the
15 innocence of the defendant, and your verdict must be based
16 solely upon the evidence presented to you during the trial
17 and the law as I instruct it. Now, in a few minutes we're
18 going to start the trial of the case, and I'm going to let
19 the attorneys address you directly, talk to you directly.
20 They're only allowed to do that twice during the trial.
21 Once at the beginning of the trial they'll have an opening
22 statement where they'll tell you what the case is about,
23 perhaps, what they expect to prove. Then at the close of
24 the trial, once you've heard all of the evidence, they'll
25 do a summation or a closing argument and at that time

1 they'll go over with you the evidence that you've heard;
2 they'll ask you to draw certain inferences from that
3 evidence, they'll argue that evidence to you. So those are
4 the two times lawyers are allowed to talk to you during the
5 trial directly. Now, I'm going to caution you though,
6 statements made by lawyers at any time during the trial,
7 those statements in and of themselves are not evidence.
8 Again, the only evidence in the case is the testimony of
9 witnesses testifying from the witness stand and what goes
10 into the record through that testimony. Again, the
11 attorneys will make arguments, but that information does
12 not in and of itself constitute evidence in the case.
13 Also, from time to time there may be an issue, as I've told
14 you, that I'm asked to rule upon. If it's my belief that
15 the discussion about that question might lead to a
16 discussion about some matter that's not admissible in
17 evidence under the rules that govern the admission of
18 evidence, if I think the discussion is going in that
19 direction, I may ask you to step outside the courtroom
20 while I have that discussion with the lawyers. Please
21 don't take from the fact that I've asked you to leave the
22 courtroom during that discussion to indicate that I've got
23 an opinion as to how you decide the facts in this case.
24 I've told you the law doesn't allow me an opinion on that
25 subject, but what I am doing when I'm doing that is doing

1 my job. My job is to see that you decide this case based
2 solely upon evidence that has been properly admitted into
3 the record under the rules that govern those matters. So
4 if I think the discussion may lead to an inadmissible
5 matter being discussed, I'll ask you to leave while that
6 occurs. Now, when you come back to the courtroom, I'll
7 make a ruling, we'll proceed with the trial, but don't take
8 that as an effort on my part somehow to influence your
9 decision on the evidence in this case. It is not such an
10 effort. Now, in deciding the facts in this case, I'm going
11 to tell you it's going to be necessary, it's going to be
12 part of your job to determine the credibility or the
13 believability of every witness you hear in this case. And
14 that's what credibility means. It means believability, and
15 it's your job to decide which evidence convinces you of its
16 truth. I'm going to urge you to use your good, ordinary,
17 common sense in making those decisions. Every single day
18 of your life you make decisions as to what you choose to
19 believe and what you choose not to believe using your good
20 common sense, and we've not asked you to leave it outside
21 of the courtroom during this trial, so pay attention to
22 what the witnesses say. Try not to let your thoughts
23 wander during the trial. Pay attention with an idea toward
24 the fact that you're going to have to decide what evidence
25 convinces you of its truth, what evidence you choose to

1 believe. Now, using your good common sense, you have the
2 right to consider such factors as whether or not you think
3 a witness as a stake in the outcome of the trial, whether
4 or not you think a witness might have a bias or prejudice
5 one way or the other, either for or against one side or the
6 other. You have the right to determine whether or not you
7 think the witness actually has the ability to know the
8 facts about which the witness is testifying, and we always
9 put the witness stand in plain view of the jury box so that
10 you can observe the witnesses as they testify, as they
11 speak. Again, use your good common sense, but pay
12 attention to what's going on in the courtroom, what's being
13 said. Be in a position to make a determination as to what
14 evidence convinces you of its truth and what evidence does
15 not convince you of its truth. Be in a position to discuss
16 that with your fellow jurors at the close of the trial when
17 I ask you to begin your deliberations. Now, I will tell
18 you that I do not appoint a Foreperson of the jury until I
19 charge you on the law. I know on television they appoint
20 the Foreperson at the beginning of the trial. I do that
21 for a reason. That allows me at this time to emphasize to
22 you that at the close of the trial your verdict must be
23 unanimous. Each and every one of you must agree upon the
24 verdict before it becomes the verdict of the jury.
25 Therefore, no one juror is more important than any other

1 juror. You all have to agree before you can reach a
2 verdict in the case. I don't want to appoint a Foreperson
3 and have someone on the jury think, well, that must be
4 smartest person or the most important person, I'll just let
5 them listen and I'll go along with whatever they say. I
6 want you to think that you might be appointed as the
7 Foreperson of the jury. You might be the person who's
8 required to lead the discussions of the jury at the close
9 of the trial, so you should be paying attention just like
10 you're going to be leading those discussions throughout the
11 trial. I'll make a decision at the close of the trial as
12 to who I'll appoint as the Foreperson, but until then, if
13 you have a problem or some issue that you think the Court
14 should be aware of, inform the bailiff, they'll let me know
15 and I'll be glad to take care of those issues, so there's
16 no need to have a Foreperson until we actually begin
17 deliberations, and I'll appoint that person at that time,
18 so don't think I've forgotten it. I haven't forgotten it.
19 I do that on purpose, and that's the purpose that I have.
20 Now, I want to be sure that I haven't violated anyone's
21 rights in what I've told you thus far. Does the State have
22 any objection to my opening comments?

23 MS. O'HAYON - No, Your Honor.

24 THE COURT - Does the defense have any objection?

25 MS. ANDERSON - No, Your Honor.

1 THE COURT - All right, now, ladies and gentlemen,
2 I have told you that the State has the burden of proof in
3 this case and the only burden of proof. A defendant is
4 never required to prove himself or herself innocent in a
5 court of law, and so for that reason the State is allowed
6 to go first during the opening arguments, followed by the
7 defense, then the State is allowed to go first in calling
8 witnesses, again followed by any witnesses the defense
9 chooses to put up. Once the sides have put up all the
10 evidence that they intend to put up, we'll have the closing
11 arguments by lawyers. Once those arguments have been
12 completed, I'll charge you concerning the law to be applied
13 in the case. Once I've completed that charge on the law,
14 I'll turn the case over to you for your deliberations and
15 ultimate verdict, so that's the steps that we'll go through
16 in the case. So at this time we'll begin with the opening
17 statements by the State. You may proceed.

18 MS. O'HAYON - Thank you, Your Honor. In the
19 summer of 2013 Delissa Patterson was living with her
20 children at Cedarview Apartment, and for approximately two
21 months she noticed some behavior from her then eight year
22 old daughter, MINOR [REDACTED], that was really puzzling
23 to her. Instead of going outside to play, MINOR [REDACTED] was
24 fearful, withdrawn, had nightmares, wanted to stay inside
25 and alone. After about two months of this very puzzling

1 behavior in September of 2013, it all came pouring out.
2 When they lived in Riverview -- in Pace's River Apartments,
3 one of MINOR's older brother's friends known as OJ had
4 touched her vagina on two separate occasions. Finally, all
5 of the pieces of the puzzle fell together and it all made
6 sense why MINOR was acting so fearfully all of a sudden.
7 They had just moved to Cedarview Apartments when her
8 behavior became odd, and it just so happened that OJ was
9 living there. He was Orlando Coleman, the defendant, and
10 he was their neighbor. You'll hear from MINOR that when
11 they lived in Pace's River Apartments between May of 2011
12 and June of 2012, that her cousins had moved in at some
13 point in 2011 and that's when she was allowed to go outside
14 and start to play, and that while she was outside and
15 allowed to play, she was playing with one of her brother's
16 older friends, OJ, and on two of those incidents he had
17 touched her vagina. You'll hear from her that on one time
18 by a staircase in one of the buildings when her brother and
19 cousins had left her alone with OJ, OJ asked her to sit on
20 his lap and he put his finger inside of her vagina. You'll
21 hear another time she'll tell you that when they were by
22 the tennis courts of the apartment complex when they were
23 playing with her cousins, OJ again asked her to sit on his
24 lap, and when she did, he again put his finger inside her
25 vagina. Both times the victim will tell you she was

1 digitally penetrated by the defendant. The defendant is
2 charged with two counts of criminal sexual conduct with a
3 minor in the first degree, which requires the State to
4 prove beyond a reasonable doubt that the defendant is
5 guilty for engaging in a sexual battery with a victim who's
6 under 11 years of age. A sexual battery means a lot of
7 different conduct, sexual intercourse, cunnilingus,
8 fellatio, anal intercourse, or as in this case, any
9 intrusion however slight. At the end of this case I will
10 return to you and I will ask you to return a verdict of
11 guilty for two counts of criminal sexual conduct in the
12 first degree for the defendant digitally penetrating
13 MINOR [REDACTED] when she lived at Pace's River on two
14 separate occasions. Thank you.

15 THE COURT - Ms. Anderson, for the defense.

16 MS. ANDERSON - May it please the Court.

17 THE COURT - Yes, ma'am.

18 MS. ANDERSON - Ladies and gentlemen, I realize
19 you don't know very much about this case at this point, but
20 I realize that the subject matter of this case may be
21 difficult for you. I realize it's not the type of thing,
22 type of subject that you probably talk about on your daily
23 basis, whether it's in the course of your day or your job,
24 your conversations with other people, and I realize that,
25 but this case is vitally important. This case is vitally

1 important to Orlando Coleman who is here being charged of
2 alleged offenses that happened allegedly back when he was a
3 teenager. And in doing that, in the vital importance of
4 this case, it's necessary for us, perhaps, to talk about
5 difficult things. It's necessary perhaps for you to hear
6 awkward things said, awkward questions asked and subjects
7 that may be difficult to talk about, but they're important
8 because they have to be asked in this case. Those
9 questions have to be asked; those things have to be talked
10 about, because again Orlando Coleman is here being charged
11 with this crime. And the Judge talks to you a little bit
12 about the law in the case, and he'll give you the
13 instructions at the end, but I bring up some of those
14 concepts because like you may have heard them in TV and
15 movies and maybe they seem like just words or abstract
16 concepts, but here in the courtroom they're real, and the
17 concept of the presumption of innocence is real, and it is
18 strong and it is powerful in our system, and as he sits
19 here in the courtroom, Orlando is resumed innocent. He
20 doesn't have to prove anything. He's never required to
21 prove anything. He's never required to prove his
22 innocence. He sits here innocent before you and throughout
23 the course of this trial. And that's a powerful thing and
24 it's a real thing. And then we talked a little bit about
25 beyond a reasonable doubt, and again, I bring that up

1 because those aren't just words. They're not just a
2 concept of hearing TV lawyers talk about. They're real and
3 they're vitally important in this case. And that means
4 that the State must prove each and every element beyond a
5 reasonable doubt, and that's a high burden and the Judge
6 will charge you as to that at the end of this case, but
7 I'll give you this illustration that a friend of mine in my
8 office once used, has used before. And he talked about if
9 you've ever seen one of those carnival games at a fair or a
10 carnival and that there's this sort of mallet when you hit
11 a target and there's a light that goes up to a sort of long
12 piece of wood or plastic or this sort of score. And when
13 you hit that, to win a prize the light has to go all the
14 way up to the top. Doesn't matter if you get close, you
15 get 40 percent, 50 percent of the way, 60 percent, even 99
16 percent of the way. If it doesn't go all the way up the
17 top, then the chart -- then you haven't won. How that
18 applies here is that that's the burden of proof of the
19 State. That beyond a reasonable doubt is that top aspect
20 of that score, and if that light doesn't go all the way to
21 the top, then the State hasn't proven their case, and that
22 means that your verdict should be not guilty. Ladies and
23 gentlemen, I ask you to look carefully in this case; look
24 carefully at the evidence, put aside emotion, sympathy,
25 passion, prejudice, all those things you were instructed to

1 put aside when you step into the jury box, to listen
2 carefully, to look at this case analytically, because I
3 think you'll see when you do that, when you examine this
4 closely, that the State has not proven this case, that
5 Orlando Coleman who's presumed innocent is not guilty of
6 these charges. And at the end of this case I'll talk to
7 you again, but I ask you to keep those concepts in mind as
8 you look at this case, and at the end of this case I'll
9 stand up again and ask you to return a verdict on both of
10 these charges of not guilty. Thank you.

11 THE COURT - All right, ladies and gentlemen of
12 the jury, that completes the opening statements by the
13 attorneys. I know we haven't been going very long as far
14 as you're concerned, but we're going to stop at this time
15 for lunch. It's 12:15 looks like on the clock back there.
16 I'm going to ask that you be back in the jury room by 1:30.
17 We should be in a position to start shortly thereafter. We
18 should be ready to start pretty quickly after 1:30, so
19 please be there at that time. As you leave I'm going to
20 give you the same instructions I gave you when you left
21 earlier. Don't try to gather any information on your own,
22 don't listen to, watch or read media reports; don't discuss
23 this case with anyone; don't allow anyone to discuss it
24 with you, and please report to the Court any contact you
25 might have from anyone about this case while you're not

1 here. I'll check on those instructions when you come back.

2 Again, 1:30 back in the jury room. Thank you very much.

3 We should start shortly thereafter.

4 (WHEREUPON, JURY EXITS THE COURTROOM)

5 THE COURT - All right, we're in recess until that
6 time. Thank you very much.

7 MS. ANDERSON - Thank you, Your Honor.

8 (WHEREUPON, COURT IN RECESS FOR LUNCH)

9 THE COURT - Thank you very much. You can be
10 seated. All right, State ready to proceed?

11 MS. O'HAYON - Yes, Your Honor. We have the
12 expert available now if you want to do the proffer for the
13 expert, or do you want to proceed with the trial?

14 THE COURT - Well, how long do you think that's
15 going to take?

16 MS. O'HAYON - I'm not sure. We do hope to have
17 the expert testify this afternoon, so we ---

18 THE COURT - That's your call, not mine. Do you
19 want her to testify this afternoon?

20 MS. O'HAYON - Yes, Your Honor.

21 THE COURT - All right, then I suppose we better
22 take that up. Your objection to the expert is?

23 MS. INGERILLO - Your Honor, we would have
24 numerous objections to the expert, and those would be on --
25 objections as to her qualifications under Rule 702, we have

1 a 403 objection, a 608 improper bolstering objection and
2 vouching objection.

3 THE COURT - All right, you may call her to
4 testify.

5 MS. O'HAYON - Your Honor, the State calls Laurie
6 Caldwell.

7 THE COURT - Come forward, ma'am, right here to be
8 sworn.

9 LAURIE CALDWELL, AFTER BEING FIRST DULY SWORN,
10 TESTIFIES AS FOLLOWS -

11 THE COURT - If you'll step around to the witness
12 stand, please, ma'am and state your name for the record,
13 please.

14 MS. CALDWELL - My name is Laurie Varnadoe
15 Caldwell.

16 THE COURT - Thank you. Your witness, counselor.

17 MS. O'HAYON - Thank you, Your Honor.

18 PROFFERED TESTIMONY:

19 DIRECT EXAMINATION

20 BY MS. O'HAYON -

21 Q What is your educational and training background?

22 A In 1984 I graduated from the University of South
23 Carolina with a bachelor's degree in interdisciplinary
24 studies, and from there I continued on at University of
25 South Carolina and obtained my master's degree in social

1 work and from there I did not go into social work; I went
2 into law enforcement and began training starting with the
3 basic law enforcement police academy which at that time was
4 an eight-week course, and I graduated from it in February
5 of 1987. From there the majority of my training has been
6 focused in the field of child sexual abuse and child
7 physical abuse and investigations. And that included
8 training from the Federal Bureau of Investigation, the
9 Federal Law Enforcement Training Center, The National
10 Children's Advocacy Center, University of South Carolina
11 Children's Law Center, The National Center for Missing and
12 Exploited Children and many seminars offered by different
13 organizations locally and nationally, such as some of the
14 technical colleges would offer -- sponsor training in the
15 field of investigations of child abuse.

16 Q Where are you currently employed?

17 A I'm currently employed at the State Law Enforcement
18 Division.

19 Q And what services do you provide?

20 A At this time I do social security disability fraud
21 investigations.

22 Q And where did you work before?

23 A Prior to that I was an agent, as I am now, with the
24 State Law Enforcement Division, and I did criminal
25 investigations, primarily involving children and vulnerable

1 adults. And I retired from SLED in February, 2011 and
2 began full-time employment at The Dickerson Center for
3 Children, which is a community-based child advocacy center
4 located in West Columbia, and there I spent three years and
5 two months, and I made the decision in April of 2014 to
6 step down from that role and return as a contract employee
7 at SLED doing the social security disability fraud
8 investigations.

9 Q What courses, seminars and other training have you
10 taken in the field of forensic interviews?

11 THE COURT - In the field of forensic what?

12 MS. O'HAYON - Interviews.

13 THE COURT - Interviews? Okay, I'm sorry, excuse
14 me. I didn't hear her. You may proceed.

15 A I attended the course at the Criminal Justice Academy
16 offered. That was a long time ago. I believe at that time
17 it was just one week. I believe it's two weeks now unless
18 something's changed. I have also attended the Federal Law
19 Enforcement Training Center reference child forensic
20 interviewing, then other seminars, but also the most recent
21 would have been through the Children's Law Center at the
22 University of South Carolina when South Carolina decided a
23 particular model of child forensic interviewing.

24 Q And briefly you had previously testified about
25 different courses and seminars and other training that you

1 had taken in related to just child sexual and physical
2 abuse in general. Correct?

3 A (Indicating yes)

4 Q Okay. And have you taught any courses or led any
5 trainings?

6 A Yes. I have taught all over South Carolina in the
7 field of child forensic interviewing. I've spent many
8 years as a guest instructor at the North Carolina Criminal
9 Justice Academy teaching child forensic interviewing. I
10 have taught nationally in Virginia, Nevada, Florida; also I
11 trained some of the royal bohemian police in child forensic
12 interviewing.

13 Q Are you a member of any professional organizations or
14 affiliations related to children's issues?

15 A I was but I have to admit that I have let those
16 memberships lapse and have not been quick to renew them
17 lately.

18 Q What were you a member of?

19 A The American Professional Society on the Abuse of
20 Children, the South Carolina American Professional Society
21 of the Abuse of Children, and I am a member of the South
22 Carolina Law Enforcement Association.

23 Q Approximately, how many years of experience do you
24 have in child sexual and physical abuse investigations?

25 A Twenty-eight.

1 MS. O'HAYON - One moment. I beg the Court's
2 indulgence.

3 THE COURT - Yes, ma'am.

4 Q Have you previously been qualified as an expert and
5 provided testimony for specifically about the topics of
6 delayed disclosure?

7 A Yes, I have.

8 Q Okay, and what about the topics for chronological --
9 about children not being able to tell dates and times or
10 remember dates and times?

11 A Yes.

12 Q And what about for behavioral issues of children who
13 have been victims of sexual abuse?

14 A Yes.

15 MS. O'HAYON - Your Honor, at this time the State
16 would like to offer this witness as an expert in the field
17 of delayed disclosure, with children not being able to
18 remember dates and times and behavioral issues of children
19 with sexual assaults.

20 THE COURT - Do you wish to cross examine her on
21 her qualifications?

22 MS. INZERILLO - I do, Your Honor.

23 THE COURT - You may do so.

24 MS. INZERILLO - Thank you, Your Honor. May it
25 please the Court, Your Honor.

1 THE COURT - Yes, ma'am.

2 CROSS EXAMINATION

3 BY MS. INZERILLO -

4 Q Ms. Caldwell, you testified that your experience was
5 in the field of forensic interviewing?

6 A Yes, in child abuse investigations in general.

7 Q Okay. The experience that you've just relayed to the
8 Court was predominantly in forensic interviewing. Is that
9 correct?

10 A A large majority of it, but in my previous role at
11 SLED I conducted criminal investigations from the beginning
12 to the end of allegations. So my role varied. Sometimes
13 it was the lead investigator on those, and sometimes it was
14 the assisting investigator with local law enforcement and
15 just depending on what their need was, so it varied.
16 Sometimes I was through the case the whole way and
17 sometimes just the interview.

18 Q Okay. So sometimes you would actually go out and find
19 witnesses and that kind of thing, and ---

20 A Yes.

21 Q --- then sometimes you would just be the forensic
22 interviewer ---

23 A Correct.

24 Q --- and just interview the child. Okay. But always
25 in a law enforcement capacity is your ---

1 A Yes, except for the last three years, from February --
2 well, March 17th, 2011 until I stepped down in April 23rd,
3 2014. That was through a child advocacy center.

4 Q Okay. In your prior experience in terms of the -- in
5 regards to the forensic interviewing, did you publish any
6 papers ---

7 A No.

8 Q --- in regards to forensic interviewing?

9 A No.

10 Q Do you know what your error rate was?

11 A No, ma'am, I do not.

12 Q And you used the RATAC method?

13 A Beginning in -- some time in 2000 -- and I'm sorry I
14 don't recall the month -- but I began using the RATAC
15 method in 2001. Prior to that I did not have a particular
16 model per se. I used the guidelines that I had been
17 trained in through the years.

18 Q Okay. Did you have any peer review of your interviews
19 under the RATAC method?

20 A Yes, I did.

21 Q And were any of those published?

22 A No, ma'am.

23 Q And were they able to evaluate your error date?

24 A No, ma'am.

1 Q With your masters of child -- social work, is there a
2 subspecialty in regards to forensic interviewing?

3 A No, not at all.

4 Q Is there a subspecialty for delayed disclosure?

5 A No, ma'am. That just falls under -- all the training
6 in child forensic interviewing investigations you're going
7 to be trained in the area of the delayed disclosure abuse.

8 Q Is there a subspecialty for dynamics of children not
9 being able to tell time?

10 A No.

11 Q Is there a subspecialty for any -- I apologize -- say
12 what the State said -- behavioral issues regarding
13 children?

14 A No, not a subspecialty, no.

15 Q Have you published any research papers at all?

16 A No, ma'am.

17 Q You indicated that when you trained folks, you trained
18 in forensic interviewing. Is that correct?

19 A That is correct. And one thing I did fail to say is
20 that does include delayed disclosures and behavioral
21 indicators.

22 Q So your training involved teaching people how to do a
23 forensic interview?

24 A Correct.

25 Q It wasn't doing research and applying that research.

1 A No, ma'am, but the training was based on much of the
2 research such as on delayed disclosure.

3 Q Okay. The -- you said your training was based on the
4 research for delayed disclosure?

5 A Some of it, yes. That segment of it, yes.

6 Q Okay. You never did any research and then had a
7 hypothesis and trained based on that?

8 A No, absolutely not.

9 Q The --

10 MS. INZERILLO - May I beg the Court's indulgence
11 for one moment?

12 THE COURT - Yes, ma'am.

13 MS. INZERILLO - Your Honor, at this time I have
14 no further questions for this witness.

15 THE COURT - State wish to ask any questions
16 concerning ---

17 MS. O'HAYON - One moment, Your Honor.

18 THE COURT - --- her qualifications on the issue
19 for which she's been offered.

20 MS. O'HAYON - Just a few questions, Your Honor.

21 RE-DIRECT EXAMINATION

22 BY MS. O'HAYON -

23 Q How many forensic interviews have you conducted?

24 A Over 2000.

1 Q And when did you first learn about the term delayed
2 disclosure?

3 A In 2001 when I went through the RATAC training through
4 the Children's Law Center at USC.

5 Q And you'd previously testified that your training was
6 based on research, the RATAC training that you led was
7 based on research. What kind of research was that?

8 A The RATAC training was based on research?

9 Q I'm sorry, the forensic interview training that you
10 led was based on research.

11 A That was -- that I provided or -- oh, okay.

12 Q Yes.

13 A Yes, I was basing it on the trainings that I had been
14 through and my experience. Now, my experience was not
15 research, but the materials I was exposed to during all
16 those trainings, yes.

17 Q Okay. So you have also been trained on some peer
18 review articles. Correct?

19 A Yes, yes.

20 Q Okay, what kind of -- what articles were those? Like
21 what sort of articles were -- what topics did they discuss?

22 A The child sexual abuse accommodation syndrome and
23 delayed reporting, how children tell.

1 Q Okay. And in your specialized training, did you do a
2 training called Trauma-Focused Cognitive Behavioral
3 Therapy?

4 A Yes, I completed that and that was through the Medical
5 University of South Carolina.

6 Q And what was that training about?

7 A That is a evidence-based therapy treatment program for
8 children that have experienced trauma to include sexual
9 abuse.

10 Q And you previously testified that you worked at the
11 Dickerson Center for Children. Correct?

12 A Yes.

13 MS. O'HAYON - I have no further questions, Your
14 Honor.

15 THE COURT - Anything further from the defense?

16 MS. INZERILLO - Your Honor, I would have more
17 questions, but I think at this time I'd like to state my
18 objections at this point and then ---

19 THE COURT - Yes, ma'am.

20 MS. INZERILLO - --- be able to reserve the right
21 to ask more questions based on the Court's ruling. I think
22 at this point my threshold concern would be the
23 qualifications as has been presented. The State wishes to
24 enter Ms. Caldwell as an expert based on delayed
25 disclosure, children not being able to tell on behavioral

1 issues, but what's been presented so far in terms of
2 qualifications for that don't seem to support those three
3 areas of purported expertise, and quite honestly, Your
4 Honor, that's where I'm having a little struggle in going
5 forward. Her qualifications all seem to stem around
6 forensic interviewing. There's been no qualifications put
7 forth as to what would make her a particular expert in the
8 field of delayed disclosure. She does no particular
9 research; she has not had any peer review on that outside
10 of any forensic interviewing capacity. She has not looked
11 into that particular field of particularly delayed
12 disclosure. She does have a master's degree in social work
13 but there is no subspecialty in any of these -- in any of
14 these fields of delayed disclosure. What I am quoting as
15 the inability of children to not tell time and behavioral
16 issues of children -- at this point, Your Honor, I am not
17 seeing a connection between her experience in terms of
18 forensic interviewing and her extensive law enforcement
19 experience and how that correlates with any particular
20 expertise in the field of delayed disclosure, how any of
21 the prior experience and any of that education gives her
22 particularized expertise in children not being able to tell
23 time or anything in particular in terms of behavioral
24 issues. Your Honor, that would be my threshold objection
25 at this time. If the Court does feel that that has been

1 met, I would have further objections, and I would ask the
2 Court permission to further question her on those areas of
3 expertise for other objections.

4 THE COURT - I'll hear from the State.

5 MS. O'HAYON - One moment, Your Honor.

6 THE COURT - Yes, ma'am.

7 MS. O'HAYON - Your Honor, would the Court permit
8 the State to ask a few more questions of the forensic
9 interviewer -- I'm sorry -- of the expert witness at this
10 time about some of her qualifications and specifically
11 regarding delayed disclosure?

12 THE COURT - Yes, I'll allow you to do that.
13 Let's -- we've got to get to the point here. We haven't
14 called the first witness in this case. I understand these
15 issues have to be fleshed out, but let's get to the point.

16 MS. O'HAYON - Yes, Your Honor.

17 RE-DIRECT EXAMINATION

18 BY MS. O'HAYON (CONTD.) -

19 Q Just going back on your experience, you said that you
20 had done over 2000 forensic interviews?

21 A That's correct.

22 Q Okay. And you stated in 2001 you had some -- you had
23 taken a RATAC training course?

24 A Yes.

1 Q And in that course that you took, did they discuss
2 delayed disclosure?

3 A Yes. That was the first time I had ever head the
4 terminology, but it was not the first time I had recognized
5 the actual delay of children reporting.

6 Q Okay. What is delayed disclosure mean exactly?

7 A It means that contrary to what most people think, that
8 when a child's been victimized that they tell right away.
9 Most children in my experience, and also based on research,
10 that children do not tell right away. It could be a month
11 later; it could be a year later; it could be in a -- as an
12 adult. I've had many parent sit across the table from me
13 when they brought their child in as a possible victim of
14 abuse, disclosed for the first time that they were victims
15 of sexual abuse.

16 Q And is there a consensus among the community, the
17 research in clinical community that delayed report --
18 delayed reporting is common?

19 A Yes.

20 Q And you didn't conduct any research about delayed
21 disclosure. Correct?

22 A That is correct. It was not my role.

23 Q But have other people conducted research on delayed
24 disclosure?

25 A Yes.

1 Q And have you been trained on this research?

2 A Yes.

3 Q And have you read these articles and these -- and this
4 research?

5 A Yes.

6 Q And have you used that research in your -- when you
7 were training others for forensic interviewing?

8 A Yes, I have.

9 Q And how common -- based on your training and
10 experience, how common is delayed reporting among victims
11 of child sexual abuse?

12 A More common than not. The majority of the children
13 that I came in contact with over the 28 years, the majority
14 of them there was a delayed report.

15 Q And the articles that you've been trained with and
16 you've used in your training, are they -- have they been
17 subject to peer review?

18 A Yes.

19 Q And have they been accepted in the peer review
20 community?

21 A Yes.

22 Q And those studies, do they involve confirmed cases of
23 sexual abuse?

24 A Yes. Not all, but ---

25 Q But do some of them?

1 A Yes. Yeah.

2 Q And is the prevalence of those cases with confirmed
3 sexual abuse similar to that with those cases that are not
4 confirmed sexual abuse?

5 A Yes, they're finding a lot of similarities, that there
6 is that delay of disclosure.

7 Q Okay, and through your -- through your training and
8 experience, have you had the opportunity to study the
9 developmental roadblocks in the trauma that affect children
10 of sexual abuse?

11 A Yes.

12 Q Okay. And is that a component of the trauma-focused
13 cognitive behavioral therapy training that you did at MUSC?

14 A Is the developmental roadblocks?

15 Q Yes.

16 A I don't believe so.

17 Q What training did you take that discussed the
18 development roadblocks and the trauma in how it affects
19 children?

20 A The various child abuse investigative trainings I
21 attended, some of -- frequently they had that involved in
22 the curriculum. Um -- I'm not sure which ones, to be
23 honest with you, because there are so many, but we always
24 talked about that, you know, whether children can tell

1 because of their age in what they've experienced and
2 cognitively where they are.

3 Q And did that training -- or what training did you take
4 that -- what sort of training did you have in terms of
5 children and their developmental -- (pause) In your trauma-
6 focused cognitive behavioral training, did that training
7 cover at all the way trauma affects a person's ability to
8 tell chronologically time or when certain events happened?

9 A No, not in the cognitive -- I mean the trauma-focused
10 cognitive behavioral therapy. No, that would -- we were
11 focused on treatment in that particular training, but
12 through child abuse training -- the investigations as well
13 as the forensic interviewing, we are trained to know kind
14 of what to -- in age frames what we can expect a child is
15 able to tell.

16 Q In terms of chronological dates and times or in terms
17 of disclosure?

18 A About chronological, about what they can tell. For
19 example, a three year old we could probably expect that
20 most three year olds -- there have been exceptions to the
21 rule -- could tell you who and what, maybe where, but
22 timeframe, no.

23 MS. O'HAYON - I have no further questions at this
24 time, Your Honor.

1 THE COURT - Do you wish to ask any additional
2 questions.

3 MS. INZERILLO - If I may, Your Honor.

4 THE COURT - Sure.

5 MS. INZERILLO - Thank you, Your Honor.

6 RE-CROSS EXAMINATION

7 BY MS. INZERILLO -

8 Q Your understanding of delayed disclosure has been what
9 you have learned in classes and then any -- any articles
10 you've read. Is that right?

11 A The articles and based on my experience of
12 interviewing children.

13 Q Okay.

14 A I just didn't have a name for it until 2001.

15 Q Okay. So really it's more experience-based what
16 you've seen. It just kind of jived in your mind. They
17 gave it a name of what you have been seeing.

18 A Right, but since 2001 I have read several articles and
19 it's included in the multiple trainings I've been to since
20 2001.

21 Q Okay. And so you're aware that delayed disclosure
22 comes from Dr. Summit's article from the child sexual abuse
23 accommodation syndrome.

24 A He's one of the ones, but there's several others, yes.

25 Q He was the seminal author. Right?

1 A He kind of started it, yeah.

2 Q Okay. And since then -- he came up with this theory,
3 and then since then people have been tested against that.
4 Right?

5 A Yes.

6 Q Okay. And his subject sample was rather small and it
7 dealt with chronic abuse. Is that right?

8 A I believe that's correct, yes.

9 Q Okay. And so his theory upon looking at it was that
10 after chronic abuse children tended to be unable to relay
11 back to the time that things happened due to chronic abuse.

12 A They do have -- yes, his conclusion was that they do
13 have -- experience difficulty with that.

14 Q Okay. And he also laid out several steps in his
15 syndrome, I believe it was five steps, one of which was
16 delayed disclosure.

17 A Yes.

18 Q Okay. And there have been several studies since then
19 testing his syndrome. Is that correct?

20 A Yes.

21 Q Okay. And those studies have actually been very
22 inconsistent in determining the reliability of this area of
23 the syndrome.

24 A The controversy that I was aware of that he actually
25 went back and addressed later was that his study was not to

1 be used as a diagnostic tool of child sexual abuse. He was
2 saying that this is -- in my research this is what I --
3 these children that have been possible victims of sexual
4 abuse have same similarities, same characteristics, they're
5 experiencing some of the same things, but he said it is not
6 diagnostic of sexual abuse.

7 Q So he was alerting against grouping children and
8 making generalizations against abuse of children.

9 A Correct. Right.

10 Q Okay. And I think you touched on this, but he did
11 write a second paper I believe in the early 90s cautioning
12 against that very ---

13 A Yes.

14 Q Okay. In fact, I think the -- I think that paper
15 cautioned against using it in a courtroom setting. Is that
16 your recollection?

17 A No, I don't recall that.

18 Q The -- I believe you relied on several articles that
19 you talked with the State about, Sorenson & Snow and some
20 other articles, and you're aware of well (sic) of London,
21 Bruck, Wright, and I believe it's Ceci, where they do
22 indicate the unreliability of some of the literature
23 surrounding the -- the literature surrounding and showing
24 the unreliability of this syndrome.

1 A Yes, the problem being that the study samples have --
2 cannot come -- they can't go and abuse a child just to see
3 how they will have disclosed, so they're taking their
4 samples from what we call retrospect research where adults
5 that have later come forward and said, hey, I'm a victim of
6 sexual abuse, and then also taken them from research where
7 children have disclosed, then that includes those that
8 there's been a conviction, there's been a confession,
9 there's maybe been a -- some type of evidence like sexually
10 transmitted disease or might be some pornography and other
11 corroborating evidence.

12 Q And in -- those studies are inherently reliant and for
13 the most part on the child's disclosure. Is that right?

14 A As well as, hopefully, some other -- if any other
15 corroborating evidence exists, such as, you know, if
16 there's an eye-witness or -- to the crime or a confession.

17 Q But there are several studies where that's not
18 present. Correct?

19 A Right.

20 Q And, in fact, in some studies that they have looked
21 at, there's been some false allegations.

22 A Yes. Yes.

23 Q Okay. And in the study that I've cited, London,
24 Bruck, Wright and Ceci, they've indicated that the general

1 pattern of inconsistency holds to the point that it
2 provides no strong evidence to support CASAS which is ---

3 A That's the child, ---

4 Q --- Summit's theory

5 A --- yes. Yes.

6 Q Or any other theory regarding disclosures ---

7 THE COURT - Which is what? What did you say that
8 was?

9 MS. INZERILLO - The -- Summit's theory of the
10 child ---

11 A Child abuse -- child sexual abuse accommodation
12 syndrome.

13 THE COURT - Thank you.

14 MS. INZERILLO - Thank you, Your Honor.

15 Q Or any other theory regarding children's disclosure of
16 child sexual abuse.

17 A I'm sorry, now I forgot the question.

18 Q That's okay. That that study by London, Bruck --
19 which I'll call London, Bruck, but there's four names on it
20 -- does go so far as to say that that general pattern of
21 inconsistency provides no strong evidence to support that
22 syndrome or any other theory regarding children's
23 disclosure of child sexual abuse.

24 A Right, but it does still indicate that there is the
25 common element of delayed disclosure.

1 Q Okay. And in delayed disclosure, again, that comes
2 from his original theory dealing with chronic abuse. Is
3 that right?

4 A But it's also based on other people's research, such
5 as their own and Sorenson & Snow, April Bradley and James
6 Wood, Thomas Lyon -- so it's other research, and some of
7 their -- their methodologies are sometimes different, but
8 they still come out with similar -- a similar conclusion
9 that children delay in disclosing.

10 Q Okay. And Sorenson & Snow, for example, in their
11 methodology they determine that -- I believe it's about 84
12 percent of the reported cases were not supported; 16
13 percent turned out to be supported abuse, but the remainder
14 did not.

15 A Right.

16 Q Okay.

17 A Not substantiated at that time.

18 Q Not substantiated. Thank you.

19 A Yes.

20 Q That's why you're -- um -- okay. So unlike in a
21 scientific method, there is no control versus -- like you
22 say, you can't ---

23 A Right. Can't ---

24 Q --- abuse a child and then ---

25 A Right.

1 Q Okay. In this case -- what is your knowledge of this
2 case?

3 A I don't have any knowledge of this case whatsoever. I
4 don't even know if the victim's a girl or a boy.

5 Q Okay. So you did not interview the victim?

6 A No, no, no.

7 Q Have you been told anything by the State?

8 A No, I have not.

9 Q Okay. The -- did you counsel the victim in any way to
10 determine if there was presence of trauma?

11 A No.

12 Q So you're not here in any way in a role as a
13 counselor?

14 A No.

15 Q Okay. You did no evaluations in this case of anyone?

16 A None whatsoever.

17 MS. INZERILLO - Your Honor, I have no further
18 questions.

19 THE COURT - Anything further from the State of
20 this witness?

21 MS. O'HAYON - Just one question, Your Honor.

22 THE COURT - Yes, ma'am.

23 RE-DIRECT EXAMINATION

24 BY MS. O'HAYON -

1 Q The defense attorney asked you a question about --
2 where she phrased something 6 -- only 16 percent were
3 supported in the study, in the Sorenson & Snow study. Is
4 that -- do you recall that question?

5 A Yes, I do.

6 Q Okay. Can you please clarify -- the defense attorney
7 used the word only 16 percent were supported. Can you
8 please clarify of that 16 percent -- the 116 studies that
9 were taken from the 630 cases, were they taken because they
10 were the only ones that were supported or the only ones
11 that were found to have corroborating evidence?

12 A One was (sic) that had been with the corroborating
13 evidence.

14 Q So the remaining 84 percent, they were not necessarily
15 false allegations.

16 A Correct. That's true.

17 MS. O'HAYON - Okay, that's it. Thank you, Your
18 Honor.

19 MS. INZERILLO - Your Honor, at this time we would
20 object to Ms. Caldwell on several points, and I will ---

21 COURT REPORTER - Your Honor, could I ask that she
22 speak up a little bit?

23 MS. INZERILLO - I apologize, Your Honor, I don't
24 usually get that request, but I'll comply. Your Honor, the
25 -- my first objection would be in terms of the vouching

1 nature of the testimony in this case. Ms. Caldwell is
2 being put on the stand essentially to testify as to a class
3 of victims, essentially a class of -- I shouldn't say
4 victims -- of people that would delay -- have delayed
5 disclosure. I believe there's going to be some testimony
6 as to trauma, as well they can't tell time, and certainly
7 the State I believe sort of where this is heading is
8 probably in closing going to connect that to Ms. **MINOR**,
9 the victim in this case. I think that even though she is
10 being portrayed as a neutral person, that that will
11 essentially result in a vouching. I think that is improper.

12 THE COURT - Say that again. She's going to do
13 what?

14 MS. INZERILLO - She essentially will be vouching
15 for a class of people that by her own testimony is not
16 allowed for in the -- in the -- the use of this particular
17 theory, that he -- that the theory was put forth to
18 essentially vouch for -- the theory was put out essentially
19 assessing that there was a class of people that would
20 generally under chronic abuse situations would react in
21 this particular way, that that theory has since been sussed
22 out by further experience, but that -- further -- further
23 experiments and studies, that that's essentially the point
24 of her testimony here and vouching for not only that, but

1 in relation to the victim, that that will vouch -- her
2 testimony ---

3 THE COURT - Let's stop right there. Let me just
4 ask the State a question.

5 MS. O'HAYON - Yes, Your Honor.

6 THE COURT - We never got there, but I think I
7 know where we're going. You intend to just ask her whether
8 it is common for children of the age - about the age of the
9 victim I assume to disclose - delayed disclosure?

10 MS. O'HAYON - That is correct, Your Honor.

11 THE COURT - But she has not interviewed that
12 child.

13 MS. O'HAYON - No, she has not, Your Honor.

14 THE COURT - You're not going to ask her anything
15 about what the child said ---

16 MS. O'HAYON - No, Your Honor.

17 THE COURT - --- did not say, who did what ---

18 MS. O'HAYON - No, Your Honor.

19 THE COURT - --- who did anything. Okay. So
20 you're saying simply by saying that, somehow she would be
21 vouching for the ---

22 MS. INZERILLO - That essentially in the
23 purporting to being neutral that she is saying she falls
24 into this class of victims, that not knowing that this
25 victim, that she would fall into a delayed disclosure

1 situation. I think that sort of piggy-backs on the
2 bolstering, because my anticipation is at closing this will
3 all be tied in very neatly, that there's been this expert
4 testimony and you see how it applies to MINOR in this
5 case who's the victim, and so put those together in that --
6 make a vouching objection as well as bolstering objection,
7 that it would be improper in this case. I believe the
8 testimony you will hear that MINOR will be the bulk of
9 the State's case and so that would unfairly and improperly
10 bolster the State's case.

11 THE COURT - Well, let me hear what the State has
12 to say about that. Well, let me back up. Let me back up,
13 just be sure I get it all on the table. You're objecting
14 to that just simply saying that someone that -- that quite
15 often there are delayed disclosure in cases such as this
16 one, that somehow that's bolstering. Then are you
17 objecting to the -- her being qualified as an expert at
18 all?

19 MS. INZERILLO - I am, Your Honor.

20 THE COURT - Let's talk about that too. Let's get
21 it all out.

22 MS. INZERILLO - Absolutely, Your Honor. I would
23 make an objection under Rule 702, specifically as to her
24 credentials and for the purposes for which the State wishes
25 to put her before the jury in terms of delayed reporting,

1 the children's inability to tell time as well as behavior
2 of children. She does not have any subspecialty or
3 credentials specifically to that. Her expertise in the
4 past is more towards forensic interviewing. She has not
5 done any independent research, anything to support that --
6 delayed reporting. The only prior training that she has is
7 essentially been to relay training in that area but not
8 anything of independent means. She has not conducted any
9 peer review studies or anything along those lines. So for
10 those reasons, Your Honor, we would object to -- with her
11 particular credentials that that does not rise to the level
12 of making her an expert in this case. We would also object
13 to that subject matter in terms of under the reliability of
14 prong under State v. White. As the Court has heard, there
15 are several studies on this subject matter. The manner in
16 which those studies are taken, they are taken all different
17 methodology. Several studies since Dr. Summit's initial
18 that positive delayed disclosure has actually disproven his
19 theory, and so the reliability is inherently -- the theory
20 is inherently unreliable, and so we would object to the
21 subject matter as well. And I believe I touched earlier on
22 the prejudicial nature under Rule 403 in terms of the type
23 evidence the jury may hear and that the victim would be ---

24 THE COURT - Let me ask you now. My understanding
25 of her opinion is that her opinion is being asked -- in

1 fact, I think she said that in the majority of the cases
2 there are late disclosures and that's with her experience
3 and her years in practice, that the majority of her cases
4 was, so -- I don't think that I've heard anything about her
5 opinion going to the quality of those disclosures or
6 whether or not they were founded or unfounded. In fact, I
7 think she acknowledged in some of the studies that the
8 majority of them were unfounded cases. Is she simply being
9 offered for the purpose of offering an opinion that in the
10 majority of cases that she's dealt with in the literature
11 there are late disclosures, period, whether they're right
12 or wrong or indifferent? That's unreliable?

13 MS. INZERILLO - I think in -- she's relying on a
14 theory that positive delayed disclosure -- I think on the
15 theoretical side the theory's unreliable in that ---

16 THE COURT - Theory -- what theory?

17 MS. INZERILLO - The child sexual abuse
18 accommodation syndrome posited by Dr. Summit has been
19 subsequently either disproven or has had mixed methodology
20 and mixed results, and so for that reason it's unreliable.
21 I think if we look at the part of her testimony involving -
22 --

23 THE COURT - Just one second. (Brief pause) Go
24 ahead.

1 MS. INZERILLO - Your Honor, in terms of the part
2 of her testimony relying on her personal experience, she
3 cannot testify as to what her error rate was, how many of
4 those cases resulted in false accusations, how many of
5 those had been corroborated, so it's hard to determine,
6 what, if anything, the reliability of those -- that --
7 those cases were. So I would argue that on that end it's
8 inherently unreliable and the State has not shown
9 reliability on this.

10 THE COURT - Yes, ma'am.

11 MS. O'HAYON - Your Honor, State vs. Weaverling
12 states that the State can have a blind expert -- if you'd
13 like me to hand this up to you, Your Honor?

14 THE COURT - Yes, what's the date on that?

15 MS. O'HAYON - I'm sorry?

16 THE COURT - What's the date on that?

17 MS. O'HAYON - 1999.

18 THE COURT - Pass it up.

19 (WHEREUPON, DOCUMENT IS HANDED UP TO THE COURT.)

20 THE COURT - Go ahead.

21 MS. O'HAYON - I beg the Court's indulgence.

22 THE COURT - Yes, ma'am.

23 MS. O'HAYON - Your Honor, just to clarify, the
24 term -- the concept of delayed reporting has existed before
25 Summit has done his -- his research on it, before he used

1 it in his study. So it wasn't -- the idea was not invented
2 by Summit; it was incorporated by Summit, and studies show
3 consistently that the delayed reporting does exist and it
4 is a phenomenon that does exist amongst -- especially
5 amongst children who are sexually abused. We're not
6 offering Summit's theory of child sexual -- I'm sorry --
7 child sexual abuse accommodation syndrome. We're just
8 offering the delayed disclosure portion that Summit
9 incorporates into his research. As to her credentials and
10 her experience, I think she's testified about all of her
11 experience and all of her credentials. She's -- has a
12 masters of social work. There is no subsection, and
13 defense had asked her if there even was a subsection for
14 delayed disclosure, and there isn't one, but she's been
15 trained on it; she's conducted over 2000 interviews with
16 children. She's had -- she's conducted trainings on it as
17 well, and she's done the research on the peer reviewed
18 articles that are widely accepted amongst the community for
19 delayed disclosure, and this will assist the triers of
20 fact, because the jury may feel like this is not common,
21 may not know how common delayed disclosure actually is.
22 Most lay witnesses will feel like the victim would -- would
23 do an immediate disclosure and this would be contrary to
24 their thought process, and they should be informed about --
25 about that, that it is actually more common than not for

1 there to be delayed disclosure. Oh, and just that it's not
2 vouching for the witness, just it's a -- this is a blind
3 witness. She's never spoken to the victim. She doesn't
4 know anything about the case. She doesn't know -- we're
5 not going to ask her specifics about this case. We're only
6 going to ask her in general about delayed disclosure, and
7 if the Court will allow, about children's inability to
8 remember dates and times and sort of -- some behavioral
9 issues of children who have been subject to child sexual
10 abuse. We're not going to ask her anything specifically
11 about this case, and she doesn't know anything about this
12 case.

13 THE COURT - All right, anything further?

14 MS. INZERILLO - Not at this time, Your Honor.

15 THE COURT - I'm going to step down for just a few
16 minutes. Thank you.

17 (WHEREUPON RECESS IS TAKEN)

18 THE COURT - I'd like to ask counsel just a couple
19 of questions. Maybe I can bring this thing to a close. My
20 understanding is you're offering the witness for the
21 following testimony: You're going to put her up and
22 establish the fact that she has had extensive experience in
23 conducting forensic interviews with children over a long
24 period of time, 2000 interviews I think is what she
25 testified to. And then you're to ask her if during that

1 process if the majority of those interviews involved delay
2 reporting?

3 MS. O'HAYON - No, Your Honor, a part -- her 2000
4 interviews as part of her experience, however, we're going
5 to ask her to base her answers of whether there's a
6 majority of delayed reporting based on the peer review
7 articles that she's studied, been trained on and uses in
8 her training.

9 THE COURT - What opinion are offering asking her
10 all that? I guess, I'm getting at bottom line of my
11 question. What opinion is she offering?

12 MS. O'HAYON - That delayed reporting is common.

13 THE COURT - Again, isn't that a statistical fact?

14 MS. O'HAYON - The peer review articles talk about
15 how common delayed reporting is, so they -- and there are
16 different -- they -- there is not one statistic that says
17 this is how common delayed reporting is, but the general
18 consensus is that delayed reporting is common.

19 THE COURT - Well, again, isn't that a statistical
20 fact?

21 MS. O'HAYON - Your Honor, I'm sorry, I'm just a
22 little unclear what you mean by when you say isn't that a
23 statistical fact.

24 THE COURT - I have -- I've gotten at least one of
25 the articles up here. We've been looking over it. It

1 appears that they report that in certain percentage of the
2 cases that there is delayed reporting, and they talk about
3 the various reasons why that could occur. I know they go
4 into a lot more detail, but if the only purpose you're
5 putting her up there for is to establish the fact that in
6 the majority of these cases it appears there is delayed
7 reporting according to the statistics -- if you add up the
8 reports, 70 percent of them, whatever of them, are late
9 reports. If that's what you're trying to get her to say --
10 I'm just trying to find out if that's an opinion or simply
11 a fact that's been established scientifically or
12 statistically. And she said from her reports that she has
13 2000 cases, the majority of which were late reports.

14 MS. O'HAYON - Yes, Your Honor. The -- yes.

15 THE COURT - Well, okay, well, I'm trying to find
16 out what her opinion -- what is she -- she start -- when
17 you do an opinion, you take a set of facts and you draw
18 some conclusion or inferences from that. What are the
19 conclusions or inferences she's going to bring from that,
20 or are there any? I didn't hear her testify to any, but
21 I'm trying to find out if there are. (Brief pause) Let me
22 ask the defense if they can tell me. What conclusions are
23 you objecting to if her testimony is that in the majority
24 of her cases of delayed reporting and the articles that
25 she's read, the majority of the cases involved there?

1 MS. INZERILLO - Your Honor, I'm -- I am objecting
2 to that -- to -- well, if she can make that assertion ---

3 THE COURT - I was first told she was only being
4 offered for the purpose of establishing that late reporting
5 occurs.

6 MS. INZERILLO - Right.

7 THE COURT - Isn't that what you told me you were
8 putting her up for?

9 MS. O'HAYON - Yes, Your Honor.

10 THE COURT - Okay.

11 MS. INZERILLO - More of a -- my understanding is
12 that was more of an educative situation, so my objection
13 went to ---

14 THE COURT - Well, you went into bolstering and
15 all that other stuff.

16 MS. INZERILLO - Absolutely, and so ---

17 THE COURT - I understand what you said, but ---

18 MS. INZERILLO - If she's in a position to make
19 that assertion, which I would object to and say that she is
20 not, and too that that educative part of that, the
21 application of that in this case would be a secondary,
22 Judge.

23 THE COURT - I didn't hear her apply it to this
24 case, but she said she'd never talked to the child, didn't
25 know if it was a boy or a girl, didn't know the child's

1 age. I didn't hear any application of those facts to this
2 case from what I heard from that witness stand.

3 MS. INZERILLO - Well, and I think ultimately
4 that's -- what's going to happen is that the entry of this
5 testimony will then be used I believe at a later time,
6 approximately at the closing argument to be applied to this
7 case, and that would be the objection.

8 THE COURT - All right, any evidence can -- you
9 can argue it in -- I understand that. I'm trying to get
10 down to the opinion -- I'm supposed to judge whether I let
11 her be qualified as an expert based on several criteria,
12 whether she has the sufficient education, training,
13 experience, then I've got to look at the reliability of the
14 opinions that she offers. So when I got to that second
15 point that I'm trying to determine the reliability of the
16 opinions she's offered, I can't discern what the opinion is
17 in order for me to judge its reliability, so I'm trying to
18 get to the point as to what is this opinion that she's
19 offering and then is it a reliable opinion or not. But it
20 seems to me that she is simply -- her testimony was that
21 she was reporting that in the majority of her cases there
22 was late reporting, then when she looked at the articles or
23 the peer reviewed articles on that subject, that -- those
24 articles confirmed that there is -- the majority of cases
25 are late reported. Now, they got into some questions about

1 then whether or not those cases ended up being founded
2 cases or not founded cases and -- but I didn't hear her
3 testimony would be that, well, it's 20 percent of them
4 they're founded and -- I didn't think you were going to go
5 that far with her is the way I understood it. I think they
6 drew it out on the cross examination, but I didn't hear you
7 go that far in your direct, so that's the reason -- I'm
8 trying to get to the point where I can judge the
9 reliability of the opinions that she intends to offer. So
10 maybe I should've started off with that point and try to
11 get to what is her opinion and what is it -- and tell me
12 then what it's based on, and according to Chavez there's
13 got to be some type of indicia of reliability as to the
14 opinions that the -- or the conclusions that an expert
15 gives in a case. So I'm trying to follow Chavez. That's
16 the only guidepost I've got right now, and it's not a very
17 clear one.

18 MS. O'HAYON - Your Honor, the opinion that we're
19 asking her to make is that delayed reporting is common, and
20 although the statistics vary throughout the different
21 articles, all of the articles agree that it is common for
22 there to be delayed reporting, and the application of it
23 is, is it unusual for there to be delayed reporting. The
24 reliability portion of it is that all the studies that she
25 uses to determine that, in addition to her own experience,

1 but mostly all the studies that even despite the different
2 statistics all say that delayed reported is common, and the
3 ones that they use, the ones that have corroborating
4 evidence which she testified about, that some of them have
5 corroborating evidence to them. So that would be the
6 application and the reliability.

7 THE COURT - What does corroborating evidence have
8 to do with it?

9 MS. O'HAYON - She had testified that some of the
10 studies were based -- some of them were not based on
11 corroborating evidence, but some of them were based on
12 corroborating evidence, so it wasn't just on the victim
13 disclosing that there was sexual abuse, but there was other
14 evidence corroborating that there actually was sexual abuse
15 and in those studies ---

16 THE COURT - And you want her to testify to that.

17 MS. O'HAYON - Well, that's just the reliability
18 of her -- of the studies ---

19 THE COURT - Is that what you want her to -- I'm
20 trying to find out what you're going to put her up there
21 for, and if you ---

22 MS. O'HAYON - I want her to ---

23 THE COURT - You need to be able to tell me that
24 now.

1 MS. O'HAYON - I want her to testify to the fact
2 that it is common for there to be delayed disclosure, that
3 children have difficulty remembering dates and times and
4 the chronological order of events and the certain
5 behavioral issues that they have when they have been
6 victims of child abuse. Those are the -- the questions
7 that I specifically want to ask her is, is it common for
8 their to be delayed discloser, can children remember dates
9 and times, why not, why is it common for there to be
10 delayed disclosure and what sort of behavioral issues or
11 differences are seen in children of victims of sexual
12 abuse.

13 THE COURT - You just stretched it out a little
14 further. It's a moving target. All right. Now, is there
15 any evidence that you have been able to discern that would
16 indicate that delayed reporting is not common? Where is
17 the scientific evidence on the other side of that question
18 that would indicate that that statement's not a reliable
19 statement?

20 MS. INZERILLO - Give me moment to think about
21 that. Because I think in the studies that I read, they got
22 into the leads about the type of disclosure -- the study
23 that I read that I cited in my cross examination is called
24 review of the contemporary literature on how children
25 report sexual abuse to others, findings, methodological

1 issues and implications for forensic interviewers. The
2 lead author being Kamala K-a-m-a-l-a London, and this
3 article questions the commonality of the proposition that
4 it is common to disclose.

5 THE COURT - It's common to disclose what?

6 MS. INZERILLO - The -- common to delay the
7 disclosure.

8 THE COURT - Right.

9 MS. INZERILLO - The article, however, goes into
10 the factors underpinning that, so it doesn't -- I want to
11 accurately answer your question. It doesn't come out and
12 say, we find that this wrong, there is no delayed
13 disclosure. It just goes into, these are the factors
14 commonly associated with it and ---

15 THE COURT - Again, my -- I'm trying to judge the
16 reliability. If this witness gets up and gives the --
17 makes the statement as someone who's done a large number of
18 forensic interviews and has examined children and makes the
19 statement that the majority of these cases are involved
20 late disclosure, so it's not uncommon for that to happen,
21 is there any research that indicates that's not a
22 reliability study?

23 MS. INZERILLO - (No response)

24 THE COURT - You're making the motion; I'm going
25 to put the burden on you.

1 MS. INZERILLO - The article I cited questions the
2 factors underpinning that ---

3 THE COURT - It doesn't question -- I think it
4 doesn't question that there are a large number or a
5 majority of cases involving late disclosure.

6 MS. INZERILLO - That do involve delayed
7 disclosure, yes, Your Honor.

8 THE COURT - So is there anything -- if this
9 witness is being offered to give that opinion that in the
10 majority of cases it does involve late disclosure by
11 children, is there any scientific evidence that disputes
12 that statement?

13 MS. INZERILLO - I will say not that I have found.

14 THE COURT - Okay, that was I gathered from what I
15 read up here.

16 MS. INZERILLO - And I would venture to say, Your
17 Honor, if that's the standard, I would question if she --
18 if we need an expert to testify about her prior as being a
19 forensic interviewer ---

20 THE COURT - Well, I was trying to lead the State
21 into just saying we won't even offer her as an expert,
22 we'll just offer her as somebody that can testify from her
23 experience as to what she's found in her interviews. They
24 didn't bite on the bait, so I can't go there. They want
25 her to be an expert.

1 MS. INZERILLO - And I would offer that ---

2 THE COURT - And I'd say that's probably a
3 dangerous way to go, but that's okay. That's where we are.

4 MS. INZERILLO - I would -- I would offer that. I
5 don't know with her -- expertise is probably similar to a
6 forensic interviewer in this case, but I would have some --
7 -

8 THE COURT - Well, except she did not interview
9 the child, and I will not let her testify as to anything
10 that would relate to the interview, how it was conducted,
11 whether it was done properly or improperly. We're not
12 going there with this witness.

13 MS. INZERILLO - Absolutely. No, Your Honor, we
14 are not. I would note with Your Honor looking at the State
15 vs. Chavez, with the State sort of fleshing out a little
16 bit more than what they now explain to the Court is the --
17 I believe the second prong that they've laid out, that
18 children can't do -- can't understand time. I believe
19 that's in a general understanding of any adult that's ever
20 been around a child. I'm not quite sure that's necessarily
21 within her particular expertise. She doesn't ---

22 THE COURT - What? You talking about timings ---

23 MS. INZERILLO - The time -- children not
24 understanding time and I'm looking at through Your Honor's
25 lens of Chavez since that's what the Court has cited.

1 THE COURT - Well, that's -- that came out about
2 two weeks ago. It's pretty recent law.

3 MS. INZERILLO - Absolutely.

4 THE COURT - And it is our Supreme Court.

5 MS. INZERILLO - Absolutely. And certainly to
6 kind of track with Your Honor, I've not heard anything to
7 indicate why she has a specialized opinion on that and if
8 looking at that is whether this would assist in the trier
9 of fact, I think any adult would have that in their
10 understanding. With the third prong, Your Honor, I'll go
11 ahead and note my objection.

12 THE COURT - All right, I'm going to make a
13 ruling. I'll allow the witness to testify from her
14 experience and she'll be qualified as an expert. I suppose
15 you can as to the fact that there are late disclosures in
16 the majority of the cases she's dealt with and the
17 literature supports that determination by her. Now, as to
18 the timeframe for children, I'll again allow her to testify
19 from her experience that children do have difficulty
20 relating times and dates. Now, as to the reliability of
21 any of that information concerning disclosures or the
22 reliability of the reports, I'm not going to allow any
23 evidence or testimony concerning those issues. She said
24 she had not been peer reviewed. She had no way of knowing
25 her success rate, her accuracy rate. I will not allow any

1 testimony as to her accuracy rate or that of others unless
2 there is some type of scientific evidence that has been
3 peer reviewed to establish those facts or figures. As long
4 as you limit it to late reporting does occur in a large
5 number of majority of the cases and that children do have
6 difficulty relating time and dates during interviews, if
7 it's limited to those two facts I'll let her testify.
8 Anything outside of that will be objectionable.

9 MS. O'HAYON - Your Honor, just so that I'm clear
10 when I'm asking her, does that mean that she can or cannot
11 cite the articles or she can only cite to articles that
12 have used -- have been corroborated?

13 THE COURT - Any article that has been peer
14 reviewed and established. I have not read them all, so I
15 don't know what -- I'm not going to try to tell you which
16 ones have or haven't been but anything that has been peer
17 reviewed and is considered to be reliable by people in that
18 field, but again if we start getting into the numbers of
19 those late reports that were founded or unfounded or in her
20 case how many of the ones she reported were accurate
21 reports or inaccurate reports, there's no statistics on
22 that; there's nothing that's been established as to the
23 reliability of those, so I'm not going to allow that
24 testimony.

25 MS. O'HAYON - Thank you, Your Honor.

1 THE COURT - Very limited scope for her testimony.

2 MS. O'HAYON - Understood, thank you, Your Honor.

3 THE COURT - Now, State ready to proceed?

4 MS. O'HAYON - Yes, Your Honor.

5 THE COURT - Defense ready to proceed?

6 MS. ANDERSON - Yes, Your Honor.

7 THE COURT - Bring the jury in.

8 (WHEREUPON, JURY ENTERS TO THE COURTROOM)

9 THE COURT - All right, the record will reflect
10 the jury has returned to the courtroom. I've spent most of
11 my time apologizing to you, and I'll apologize again; I had
12 you come in too soon. An issue came up that I had to deal
13 with, and we have done that now, and again I'm sorry you
14 had to sit back in the jury room while we did it, but it's
15 been taken care of, and we are now ready to proceed with
16 the testimony in the case. I told you the State would be
17 going first, so the State may call its first witness.

18 MS. O'HAYON - Your Honor, the State calls

19 MINOR [REDACTED], please.

20 THE COURT - Ms. MINOR [REDACTED], if you would come
21 forward, please, right down here to this lady to be sworn.

22 MINOR [REDACTED], AFTER BEING FIRST DULY SWORN,
23 TESTIFIES AS FOLLOWS

24 THE COURT - Please have a seat in the witness
25 stand. State your name, please.

1 MS. MINOR [REDACTED] - MINOR [REDACTED].

2 THE COURT - And I'm going to ask you speak up as
3 loud as you can, please, so that we can all hear you. You
4 may proceed.

5 MS. O'HAYON - Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. O'HAYON -

8 Q How old are you?

9 A Nine years old.

10 Q And what's your birthday?

11 A [REDACTED] [REDACTED].

12 Q What year?

13 A 2005.

14 Q And what school do you go to?

15 A Riverwalk Academy.

16 Q And what grade are you in?

17 A Third.

18 Q Who's your teacher?

19 A Ms. Tucker.

20 Q And what's your favorite subject?

21 A Science.

22 Q What do you like to do when you're not in school?

23 A Read.

24 Q And what books do you like to read?

25 A I like to read The Babysitter's Club.

1 Q Is that what you're currently reading?

2 A Yes, ma'am.

3 Q Let's talk a little bit about who you live with now.

4 Who currently lives with you?

5 A My brother and my big -- and my little brother and my
6 mom.

7 Q Okay, what is your -- what are you brothers' names?

8 A B. P. [REDACTED], B. J. P. [REDACTED].

9 Q What's your mom's name?

10 A Delissa Latrelle Patterson.

11 Q How old is -- how old are your brothers?

12 A Fifteen and five.

13 Q Is B. P. [REDACTED] fifteen?

14 A Yes.

15 Q Do you remember where you lived in 2011 and 2012?

16 A Pace's River.

17 Q Do you remember who you lived with?

18 A My aunt, my cousins and my big brother and my little
19 brother.

20 Q Did you always live with your aunt and your cousins?

21 A No.

22 Q Do you remember when they came in and lived with you?

23 A 2011.

24 Q You said that's your aunt. Is that your mom's sister
25 or your dad's sister?

1 A My mom's sister.

2 Q When you lived in Pace's River, did you go outside and
3 play?

4 A Yes, a little bit.

5 Q A little bit. Were you always allowed to go outside
6 and play?

7 A No, only with my brother.

8 Q I'm sorry?

9 A Only with my brother.

10 Q Only with your brother. Were you allowed to go
11 outside and play before your cousins moved in?

12 A No, not really.

13 Q So some time in 2011 your cousins moved in with you,
14 and then you were allowed to go out and play?

15 A Yes.

16 Q When you went outside to play, who was out there with
17 you?

18 A My big brother and my cousins.

19 Q When you say your big brother, is that B. P. [REDACTED]?

20 A Yes.

21 Q What are your cousins' names?

22 A Amazhanee, Arkevious and Sanadia.

23 Q And those are the cousins you go outside and play
24 with?

25 A (No response)

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1 Q Did you go outside and play with any of your friends?

2 A Yes, I had a couple in my complex.

3 Q Okay. Do you remember someone by the name -- actually
4 sorry, withdrawn. When you went out and played with

5 B. P. and your cousins, did B. P. and your cousins have
6 any friends that they played with?

7 A Yes.

8 Q Who did B. P. play with?

9 A B. P. had a couple of friends in that complex.

10 THE COURT - Ma'am, can I interrupt just for one
11 second?

12 MS. O'HAYON - Yes, sir.

13 THE COURT - Ladies and gentlemen of the jury, I'm
14 going to ask you to step back to the jury room for just a
15 moment while I go some things with the attorneys. I'll ask
16 you not to discuss the case during your absence from the
17 courtroom. If you'll step back to the jury room. Thank
18 you very much.

19 (WHEREUPON, JURY EXITS THE COURTROOM)

20 THE COURT - I want to inquire of the defense as
21 to whether or not the defense is requesting to conduct --
22 the Court conduct a competency hearing concerning this
23 minor's testimony. Generally, there's no fixed age for a
24 child to be competent to testify, however, if you request,
25 the Court will conduct a questioning of the witness to

1 determine whether or not the minor knows the duty to tell
2 the truth, whether or not the child is aware of right and
3 wrong and whether or not the child understands the probable
4 punishment for lying. If you wish for me to conduct that
5 type of examination, I will. If you are waiving my doing
6 that and will accept the child's testimony based on what
7 you've heard thus far, I would like for you to say on the
8 record as to how you would like for me to proceed.

9 MS. INZERILLO - We would ask the Court to do
10 that, Your Honor.

11 THE COURT - All right, thank you.

12 EXAMINATION

13 BY THE COURT -

14 Q Ms. MINOR, I want to ask you just a couple of
15 questions about your testimony here today, and if you
16 would, please -- do you understand what it means to tell
17 the truth?

18 A Yes, sir.

19 Q Well, if I were to tell you that it is night right
20 now, would I be telling the truth or would I be lying?

21 A Uh-huh.

22 Q If I were to tell you that right now it's nighttime,
23 would I be telling the truth or would I be lying?

24 A You'll be lying.

1 Q I'd be lying. Well, if I were to tell you that it is
2 snowing outside, would I be telling the truth or would I be
3 lying?

4 A You'd be lying.

5 Q Well, what if I told you the sun's shining and it's a
6 beautiful day outside right now? Would I be telling the
7 truth or would I be lying?

8 A You'd been telling the truth.

9 Q Now, if someone tells a lie, is that right or is that
10 wrong?

11 A No, sir.

12 Q So if someone tells a lie, that's the right thing to
13 do?

14 A No, sir.

15 Q That's the wrong thing to do. Is that what you're
16 telling me?

17 A Yes, sir.

18 Q Okay, and if someone is -- tells lies, should they be
19 punished for telling lies?

20 A Yes, sir.

21 Q And if someone tells the truth, should they be
22 punished for telling the truth?

23 A No, sir.

24 Q Now, you're here today and you've taken an oath to
25 tell the truth.

1 A Yes, sir.

2 Q The testimony that you've given thus far, have you
3 told me the truth or have you been telling lies?

4 A Yes, sir, been telling the truth.

5 Q You've told me the truth.

6 A (NO RESPONSE)

7 THE COURT - All right, any further questions from
8 the State concerning this matter?

9 MS. O'HAYON - No, Your Honor.

10 THE COURT - Defense wish to request any
11 additional questions from the Court?

12 MS. INZERILLO - No, Your Honor.

13 THE COURT - All right, I'm going to find that
14 this minor does understand the difference between right and
15 wrong, understands the probable punishment for lying and
16 understands the difference between the duty to tell the
17 truth in the case or to tell a lie.

18 Q Ma'am, I'm going to urge you to continue to adhere to
19 your oath and tell me the truth and tell the people in the
20 Court the truth today. Are you able to do that?

21 A Yes, sir.

22 THE COURT - All right, bring the jury back.

23 (WHEREUPON, JURY ENTERS THE COURTROOM)

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1 THE COURT - All right, the jury has returned to
2 the courtroom. I apologize for my interruption. You may
3 proceed with your examination.

4 MS. O'HAYON - Thank you, Your Honor.

5 DIRECT EXAMINATION

6 BY MS. O'HAYON (contd.) -

7 Q We were just talking a little bit about your brother,
8 B. P., and the friends that he would hang out with in the
9 apartment complex. Do you remember their names?

10 A No, not all of them, but he had friends from his
11 school that he played with and friends from my school he
12 played with.

13 Q Okay. Do you remember what some of the names -- you
14 said you don't remember all of them but you remember some
15 of them. Which names do you remember?

16 A Noah and John, Veronica and Juliana.

17 Q Okay, do you remember anyone else that he used to play
18 with?

19 A No, ma'am.

20 Q Do you remember anyone by the name of OJ that he used
21 to play with?

22 A Yes, ma'am.

23 Q Okay. What do you remember about OJ?

24 A He was in high school; he used to go to the pool and
25 come to the complex.

1 Q Was that one of B. P.'s ---

2 THE COURT - Ma'am, speak up. I think some of
3 them are having trouble hearing you. Could you repeat that
4 last answer for us, louder.

5 A He was in high school, and he came to play with other
6 kids, and he went to the pool, and he came over to hang out
7 in the other complex.

8 Q Okay, so do you remember B. P. -- do you remember OJ
9 being one of B. P.'s friends?

10 A Yes, ma'am.

11 Q Okay. I'm going to ask you to look around the
12 courtroom, and if you're not able to see ---

13 MS. O'HAYON - I'm going to ask the Court if the
14 witness would have permission to stand up so she could look
15 around?

16 THE COURT - Yes, ma'am, you can stand up if you
17 need to see everyone.

18 Q Okay, do you see OJ in the courtroom today?

19 A Yes, ma'am.

20 Q Okay. Can you point out what he's wearing?

21 A Tuxedo and a tie.

22 Q I'm sorry?

23 A A tuxedo and a tie.

24 Q What color tie?

25 A Navy blue.

1 MS. O'HAYON - Let the record reflect that the
2 witness is identifying the defendant.

3 THE COURT - Can you tell me which gentleman
4 you're pointing to?

5 A Right here.

6 THE COURT - The one on the far right or the one
7 on the left?

8 A Far right.

9 THE COURT - One on -- which one, now, the one
10 against the wall or the one in the center?

11 A One against the wall.

12 THE COURT - The one against the wall. Okay. I
13 will indicate then that she indicated the defendant.

14 MS. O'HAYON - Thank you, Your Honor.

15 THE COURT - You may proceed.

16 Q Did OJ ever do anything to you that made you feel
17 uncomfortable?

18 A Yes, ma'am.

19 Q About how many times did he do some that made you feel
20 uncomfortable?

21 A Two.

22 Q Let's talk about the first time. Do you remember the
23 first time that he made you feel uncomfortable?

24 A Staircase.

1 Q Okay. So if it's okay with you, we're going to refer
2 to the first time that he made you feel uncomfortable as
3 the staircase time. Is that okay?

4 A (Indicating yes)

5 COURT REPORTER - She needs to answer verbally.

6 MS. O'HAYON - I'm sorry?

7 COURT REPORTER - She was nodding her head.

8 Q You have to answer verbally.

9 A Yes.

10 Q Okay. Talking about the staircase time, tell us what
11 happened that day?

12 A I was sitting at the staircase, and he told me to get
13 on his lap, uh, my brother left with my cousins.

14 Q Okay, so let's backtrack a little bit. You mentioned
15 that there -- your brother and your cousins -- were you out
16 with your brother and your cousins?

17 A Yes, ma'am.

18 Q Okay. And then you said they left?

19 A (Indicating yes)

20 Q Okay. Where did -- do you remember where they went?

21 A I think they went home or somewhere. I don't really
22 know -- remember.

23 Q Okay. When you said that you were by the staircase,
24 is that the staircase in Pace's River?

25 A Yes, ma'am.

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- DIRECT BY MS. O'HAYON (CONTD.)

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1 Q Okay. Do you remember which building that was?

2 A It was -- it was this building right here, because my
3 complex is right here.

4 Q Okay. So it wasn't the building that you lived in?

5 A No.

6 Q It was another one of -- do you know anybody who lived
7 in that building? If you don't remember, that's okay.

8 A No, I didn't really know anybody.

9 Q Okay. So now you mentioned that your brother and your
10 cousins left. Right?

11 A (No response)

12 Q So were you alone with OJ?

13 A Yes, ma'am.

14 Q Okay, what happened when you were left alone with OJ?

15 A He put his hands in my pants.

16 Q Okay. Where were you in relation to OJ? Were you
17 both standing? Were you both sitting?

18 A I was sitting.

19 Q Where were you sitting?

20 A On his lap.

21 Q Did you sit on his lap? Was that your decision to sit
22 on his lap?

23 A I really don't recall.

1 Q Okay. When you said that he put his hand in your
2 pants, -- when he put his hand down your pants, did he put
3 it inside your underwear or was it over your underwear?

4 A Inside my underwear.

5 Q Okay. And did he touch anything when he was inside
6 your underwear?

7 A Yes, ma'am.

8 Q What did he touch?

9 A My vagina.

10 Q Okay. Did he touch you inside of your vagina or
11 outside your vagina?

12 A Inside.

13 Q Okay. Do you remember how long that lasted?

14 A Til my brother came back.

15 Q Okay. So your brother and your cousins came back,
16 too, or just your brother?

17 A My brother and my cousins.

18 Q Okay, when they came back, you said it -- that's how
19 long it lasted. What did the -- what did OJ do when your
20 brother and your cousins came back?

21 A He took his hands out of my pants.

22 Q Okay. How did that make you feel?

23 A Uncomfortable.

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1 Q Okay. You said there was a second time that he made
2 you feel uncomfortable. Do you remember where that second
3 time was?

4 A Tennis court.

5 Q Okay. So talking about the tennis court time, tell us
6 a little bit about what happened that day?

7 A I was sitting at the tennis court and he came over and
8 I was sitting by my cousins.

9 Q Okay, so you were sitting by your cousins and he came
10 over to you? Did say anything to you?

11 A I don't remember.

12 Q Okay. And what happened after he came over to you?

13 A I think I sat on his lap.

14 Q So you sat on his lap?

15 A (No response)

16 Q Okay. And what happened when you sat on his lap?

17 A He put his hands in my pants.

18 Q Did he put his hands -- when he put his hands in your
19 pants, did he put inside your underwear or outside your
20 underwear?

21 A Outside my underwear.

22 Q That was outside your underwear?

23 A (No response)

24 Q Okay. So did he touch your vagina on that time?

25 A Yes, well, -- I'm sorry -- inside my underwear.

1 Q Okay. So it was inside your underwear. Did he touch
2 your vagina at that time?

3 A Yes, ma'am.

4 Q I'm sorry?

5 A Yes, ma'am.

6 Q Was it inside your vagina or outside your vagina?

7 A Inside.

8 Q Okay. Other than these two times, did he ever do
9 anything else like this to you?

10 A I don't remember.

11 Q You don't remember any other times.

12 A No.

13 Q Okay. Did you see him again after this second time?

14 A No, I don't think so.

15 Q You eventually moved out of Pace's River. Right?

16 A Yes.

17 Q Okay. And do you remember where you moved to?

18 A Yes, I moved into with my mom's friends ---

19 COURT REPORTER - I'm having trouble understand
20 her and hearing her. I'm sorry, Judge.

21 A We moved into my mom's friend's house.

22 Q Okay. And did there come a point when you moved into
23 Cedarview Apartments?

24 A Yes. That's (sic) was before we moved into a condo.

MINOR

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1 Q Okay. If you could speak loudly, because I'm having a
2 little trouble hearing you. Okay?

3 A That was before we moved into another condo.

4 Q Okay. So you lived at some point in Cedarview
5 Apartments.

6 A (Indicating yes)

7 Q Do you remember if OJ lived at the apartments there?

8 A Yes, ma'am.

9 Q Okay. Do you remember ---

10 THE COURT - Let's try -- move as close as you can
11 to that microphone. Can you move your chair?

12 COURT REPORTER - Your Honor, I don't think that
13 chair moves. She'd have to lean up. I don't think the
14 chair moves.

15 THE COURT - Talk as close as you can to it.
16 Thank you, ma'am.

17 Q Do you remember seeing him when you moved into
18 Cedarview Apartments?

19 A Yes, ma'am.

20 Q Okay. And what -- how did you feel when you saw him
21 at that point?

22 A I was kind of scared.

23 Q Okay. And did you tell anyone?

24 A No, I didn't tell anybody til September.

25 Q Til September?

1 A (No response)

2 Q Do you remember what year that was?

3 A 2003. I mean 2013.

4 Q 2013. Who did you tell in September of 2013?

5 A My mom.

6 Q Okay. The two times that OJ touched you that made you
7 feel uncomfortable, the staircase time and the tennis court
8 time, did both of those happen when you lived at Pace's
9 River?

10 A Yes, ma'am.

11 Q Okay. Do you remember if OJ lived at Pace's River?

12 A Yeah.

13 Q Do you remember if he lived there the entire time?

14 A Um, no, because I -- we moved there 2010, and I don't
15 recall seeing him around the complex.

16 Q Okay. So you recall him moving in after you moved in.

17 A Yes, I think so.

18 Q And of the two times that happened, do you remember,
19 were they both the same day?

20 A No.

21 Q Do you remember how long in between each of the times?

22 A How long it lasted?

23 Q No. I'm sorry. Do you remember how long between the
24 first time and the second time? Do you remember how many
25 days or weeks or months between those two incidents?

1 A I really don't remember the dates or the times, but
2 the tennis court was kind of like, kind of late noon.

3 Q Okay. The first time was the staircase time.

4 Correct?

5 A (Indicating yes)

6 Q Okay. Do you remember when that happened? You said
7 you don't really remember dates and times. Do you know
8 around maybe what grade you were in or anything like that?

9 A Run around?

10 Q Do you remember around maybe what grade you were in?

11 A Yes, first.

12 Q You were in first grade. Okay, what year were you in
13 first grade?

14 A 2012.

15 Q Was it 2011 into 2012?

16 A Yes.

17 Q And do you remember -- do you remember seeing OJ there
18 on a regular basis between the time of the staircase time
19 and between the time of the tennis court time, or was there
20 a time when you didn't see him for a little while?

21 A Yes, when he was at school, because we got out at 2:00
22 and we used to come home and we went to ---

23 Q Okay. Would you hang out with him when you were out
24 in the -- in the neighborhood and with your cousins and
25 your brother, would you play with OJ very often?

1 A No, not often, but my brother did.

2 Q Your brother did. Okay. Did you ever tell anyone
3 other than your mom?

4 A No, ma'am, I don't remember.

5 Q Do you remember ever trying to tell B. P. [REDACTED]?

6 A Yes, ma'am.

7 Q Okay. What do you remember about trying to tell
8 B. P. [REDACTED]?

9 A He told me that he didn't believe that I -- that it
10 happened.

11 Q Okay.

12 MS. O'HAYON - The State has no further questions.
13 Please answer any questions that the defense attorney may
14 have.

15 THE COURT - You may cross examine.

16 MS. INZERILLO - May it please the Court, Your
17 Honor.

18 THE COURT - Yes, ma'am.

19 CROSS EXAMINATION

20 BY MS. INZERILLO -

21 Q MINOR [REDACTED], my name is Melissa. Can I ask you some
22 questions, too?

23 A Yes, ma'am.

24 Q Okay. You talked to your mom about what you just
25 talked about?

1 A Yes.

2 Q Okay. And you remember talking to these ladies about
3 what you just talked about?

4 A Yes.

5 Q Okay. And you remember talking a long time ago to a
6 lady named Puja?

7 A Yes.

8 Q Okay. And did you ever talk to this man sitting right
9 here in the green tie?

10 A No, I don't remember.

11 Q Okay. And do you remember way long time ago when you
12 told your mom what you told her?

13 A (Indicating yes)

14 Q Okay. When you talked to her about it at first, you
15 told her it happened in the summertime. Do you remember
16 that?

17 A Yes.

18 Q Okay. And the first thing -- when you first told her,
19 you only told her about the staircase. Is that right?

20 A (Indicating yes)

21 COURT REPORTER - She needs to answer verbally.

22 MS. INZERILLO - Oh, I'm sorry.

23 Q You have to say yes.

24 A Yes.

1 Q And then after that you told her about the staircase
2 and the tennis court. Right?

3 A Yes.

4 Q Okay. And you remember it was summer, because you
5 weren't in school?

6 A No, we really wasn't in school.

7 Q Right, because you don't go to school in the summer.

8 A Yes.

9 Q Okay. And do you remember if you had started first
10 grade in that summer?

11 A No, I -- I started first grade in the beginning of
12 August, 2011.

13 Q Okay. And did you tell your mom way back then that OJ
14 pulled you onto his lap?

15 A I didn't -- I didn't tell her ---

16 COURT REPORTER - She needs to speak up a little
17 bit, Judge. I'm having trouble hearing her.

18 A I didn't tell she -- he pulled me on his lap.

19 Q Okay. Do you remember what you told her?

20 A That he touched me somewhere he wasn't supposed to.

21 Q Okay. And do you remember telling your mom that he
22 only stopped once some other kids walked by?

23 A Yes.

1 Q Okay. And do you remember telling your mom that one
2 time you were wearing pants and another time you were
3 wearing shorts?

4 A I don't remember.

5 Q And do you remember that time that you talked to your
6 mom about it, you didn't tell her that B. P. was there or
7 that your cousins were there?

8 A I told her that they weren't all together.

9 Q Okay. So you told your mom that they were there.

10 A Yes.

11 Q Okay. Just B. P. or your three cousins, too?

12 A My cousins were -- the second time they were here, but
13 the other -- the first time they weren't here.

14 Q The first time they weren't, but the second time they
15 were?

16 A No, the second time they were. The first time they
17 weren't.

18 Q First time they weren't. Okay. And that's Arkevious
19 and Sanadia and tell me the third one.

20 A Amazhanee.

21 Q Amazhanee. And how old are your cousins?

22 A My first one, I think he's 11, and my second one's 9
23 and my third one is 13.

24 Q Is 13. So all about -- almost about your age.

25 A Yes.

1 Q Okay. And you -- and when you first talked to your
2 mom about it, did you tell her that you had told B. P.
3 what happened?

4 A Yes.

5 Q Okay. And did you tell her that B. P. said it
6 couldn't have happened?

7 A Yes. Yes.

8 Q Okay. And so after that was when you had to go talk
9 to Puga?

10 A Actually I went to my family members and we talked
11 about it, then I went to Puja.

12 Q Then you went to Puja. Okay. And did you tell your
13 family members the same thing?

14 A Yes.

15 Q Okay. And when you went to talk to Puja, did you
16 remember telling her that you were wearing shorts?

17 A No.

18 Q Don't remember telling her that? Okay.

19 A (No response)

20 Q Do you remember telling Puja that you crawled into
21 OJ's lap?

22 A No, ma'am.

23 Q Don't remember telling her that.

24 A (No response)

1 Q The -- I think that you had told her that you told
2 B. P. about it after the tennis court time. Is that
3 right?

4 A I don't remember.

5 Q You don't remember? Okay. And if you don't remember
6 something, just tell me. Okay?

7 A (No response)

8 Q And then after you talked with Puja, you talked to
9 these ladies. Is that right?

10 A No, I had therapy. I went to therapy.

11 Q You went to therapy. Okay. And then after therapy,
12 did you talk to these ladies?

13 A Yes, ma'am.

14 Q Okay. All right, correct me if I say something wrong.
15 Okay?

16 A (Indicating yes)

17 Q All right. Do you like talking to these ladies?

18 A Huh?

19 Q Do you like talking to these ladies?

20 A Yes, ma'am.

21 Q They're kind of nice, aren't they?

22 A Yes, they are.

23 Q Yeah. And you came up and you talked to them a couple
24 of times. Right?

25 A Yes.

1 Q Okay. And they wanted to talk with you about -- have
2 you tell them what happened, too. Right?

3 A Yes, I did.

4 Q And so when you talked to them, you told them one time
5 at the tennis court that you were riding your scooter. Is
6 that right?

7 A Yes.

8 Q Okay. And then when you met with them again, you said
9 you weren't riding your scooter.

10 A No, ma'am.

11 Q No, you weren't riding it or no you didn't tell them?

12 A I was riding my scooter.

13 Q You were riding your scooter the whole time, but you
14 never told them that you weren't.

15 A I wasn't riding my scooter the whole time.

16 Q (Indicating yes)

17 A Uh ---

18 Q Did you ever tell them you weren't riding your
19 scooter?

20 A I was riding my scooter.

21 Q Okay. But you never told them that -- you didn't ever
22 say, Ms. Sharon or Ms. Erin, I wasn't riding my scooter?

23 A I wasn't riding my scooter -- my scooter the second
24 time.

25 Q You weren't riding your scooter the whole time.

1 A Not the whole time it happened.

2 Q Okay. But do you remember telling them one time, I
3 was riding my scooter, and then when they asked you another
4 time, you said, no, I wasn't riding my scooter?

5 A I don't remember.

6 COURT REPORTER - If she could maybe move up to
7 the mic. I think the jury's probably having trouble
8 hearing her, too. If you could scoot up to the mic.

9 Q Did you ever tell your mom you were riding the
10 scooter?

11 A No.

12 Q Okay. Did you ever tell Puja you were riding your
13 scooter?

14 A No.

15 Q Do you remember telling these ladies here that
16 Amazhanee and Sanadia and your other cousin admitted that
17 they were playing hand games ---

18 A Yes.

19 Q --- when they were out there?

20 A Yes, I did.

21 Q What are hand games? Like this? (Indicating)

22 A Like Lemonade or Miss Mary Mack.

23 Q Oh, you'll have to teach me that one. Okay. And then
24 that they were -- the two cousins were sitting next to you?

25 A Yes.

1 Q Okay, and you told that to these ladies. Right?

2 A Yes, I did.

3 Q Okay. And you remembered that because you couldn't go
4 outside until your cousins moved in. Right?

5 A Yes, I really didn't go outside.

6 Q Okay. Do you remember telling them that this happened
7 around your birthday?

8 A No.

9 Q You don't remember telling them that?

10 A I don't really remember.

11 Q Okay. When's your birthday?

12 A [REDACTED], 2005.

13 Q Okay. Do you remember telling them that one time
14 happened before your birthday and one time happened after?

15 A Yes.

16 Q Okay. So do you remember that, telling these ladies
17 that.

18 A Yes.

19 Q Okay. Now, I think today -- and I want you to tell me
20 if I'm saying something wrong -- okay -- that today you
21 said that your cousins and your brother were there, but
22 they walked away, and that's when he wanted -- OJ wanted
23 you to sit on his lap. Is that right?

24 A (Indicating yes)

25 Q You didn't say that to ---

1 MS. INZERILLO - Oh, I'm sorry. You have to say
2 yes or no.

3 A Yes.

4 Q Okay. But you didn't say that to Puja, did you?

5 A No, ma'am.

6 Q Okay. Did you tell that to these ladies here?

7 A Yes, ma'am.

8 Q Okay. Do you remember when you told them that?

9 A It was -- I remember the temperature was hot. It was
10 real -- couple of months ago.

11 Q Okay. And -- and then you said that it stopped when
12 they came back.

13 A Yes, I did.

14 Q Okay. But you didn't tell that to Puja either. Is
15 that right?

16 A Yes, I didn't -- no, I didn't tell her.

17 Q Didn't tell you that. Okay, but you told that to
18 these ladies. Is that correct?

19 A Yes.

20 Q Okay.

21 MS. INZERILLO - I have no further questions, Your
22 Honor.

23 THE COURT - Re-direct.

24 MS. O'HAYON - I have no questions, Your Honor.

1 THE COURT - All right, you may step down. Thank
2 you very much. State may call its next witness.

3 MS. O'HAYON - State will call Detective Thomas.

4 RYAN THOMAS, AFTER BEING FIRST DULY SWORN,
5 TESTIFIES AS FOLLOWS -

6 THE COURT - Have a seat, please, sir, and once
7 you're seated, state your name.

8 MR. THOMAS - My name is Detective Ryan Thomas.

9 THE COURT - Thank you. Counselor, your witness.

10 MS. JOYNER - Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MS. JOYNER -

13 Q Detective Thomas, which law enforcement agency are you
14 employed?

15 A The Rock Hill Police Department.

16 Q How long have you been with the Rock Hill Police
17 Department?

18 A Just finishing up eight years.

19 Q And how long have you been a detective for the Rock
20 Hill Police Department?

21 A Not quite two years.

22 Q And so then you were a detective with the Rock Hill
23 Police Department in September of 2013?

24 A Yes.

1 Q Directing your attention back to September of 2013,
2 did you become involved in an investigation of the
3 Defendant, Orlando Coleman?

4 A Yes, I was.

5 Q And how did that -- how did that case come to the
6 attention of the Rock Hill Police Department initially?

7 A I believe Ms. Delissa Patterson, the mother, called us
8 to report that. There was an initial report taken, I
9 believe, by Detective Sims at the time that just happened
10 to be there, you know, to take the report and then it was
11 passed up to me.

12 Q Okay, so the case was then assigned to you after the
13 phone call came in from Ms. Patterson?

14 A Yes.

15 Q Okay. And the initial phone call gave you a general -
16 - the allegations of a sexual-type assault upon MINOR
17 [REDACTED] at Pace's River Apartments?

18 A The -- I don't know what she said her initial phone
19 call to the police, but her initial reporting there at that
20 time was, yes, the allegations of sexual assault.

21 Q And during that initial report, did you become aware
22 that MINOR [REDACTED] was a minor?

23 A Yes.

24 Q And do you remember how old she was at the time the
25 report was made?

1 A Six. Oh, at the time the report was made?

2 Q Yes.

3 A Eight, I believe.

4 Q Now, as part of your law enforcement general way that
5 you would investigate an allegation regarding a sexual
6 assault of a minor victim of this age, did you personally
7 interview Ms. MINOR ?

8 A No.

9 Q Okay. Did you then schedule an interview to be
10 conducted at Safe Passage?

11 A I did.

12 Q Okay. Safe Passage, a child advocacy center here in
13 Rock Hill?

14 A Yes. Yes.

15 Q Okay. And so you -- is it correct you did not conduct
16 that interview?

17 A No.

18 Q Is it correct that you observed that interview
19 conducted from another room?

20 A Yes, through a TV monitor.

21 Q Okay. And did you, in fact, schedule that interview
22 for MINOR at Safe Passage?

23 A I did.

24 Q Okay. Did that occur on September 24th of 2013?

25 A Yes.

1 Q Did you -- were you present to observe that interview?

2 A I was.

3 Q Okay. Now, let me ask you, detective, Pace's River
4 Apartments, are those apartments located within the city
5 limits of Rock Hill?

6 A Yes, they are.

7 Q Is that within York County, South Carolina?

8 A It is.

9 Q Okay. On September 25th of 2013, -- in September 25th
10 of 2013, did you make contact with the Defendant in this
11 case, Orlando Coleman?

12 A I did.

13 Q Okay. And how did you come to make contact with him?

14 A At first I went by the residence and left my business
15 card on the door requesting that he call me, because no one
16 was home at that time, then he called me back.

17 Q And did you -- were you able to schedule a meeting in
18 which you went to Mr. Coleman's house to meet with him?

19 A Yes, on -- when he called back I asked if it would be
20 okay if I could come to his house for an interview.

21 Q And at that time did you go there with the intention
22 of placing him under arrest?

23 A No.

24 Q Okay. What was your intention in going there?

1 A To interview him to gather information and evidence
2 about the case.

3 Q Okay. Was there anybody -- on September 25th, do you
4 remember the address that you went to?

5 A It's Cedarview, the apartments there. I don't
6 remember the specific numbers of his building. It's an
7 upstairs unit on the right-hand corner.

8 Q Okay. Was there anybody else there besides Mr.
9 Coleman?

10 A No.

11 Q Did you -- were you aware at that time of who else
12 maybe lived at the apartment?

13 A I believe I was aware that he lived with his mother
14 there. I asked him before the interview started if anyone
15 else was home, and he said his mother had just left.

16 Q Okay. And did Mr. Coleman agree to speak with you?

17 A He did.

18 Q Okay. Now, in that initial meeting with Mr. Coleman,
19 did you record the interview?

20 A Yes.

21 Q Okay. And did he -- and did you record it with a
22 device that he could see that you were recording it?

23 A It's a small silver recorder about that big, and it's
24 -- there was a coffee table in front of us in the living

1 room area, had my paperwork out there, and it was just
2 laying there on top of the paperwork.

3 Q And in order to get Mr. Coleman to agree to speak with
4 you or continue to speak with you, did you threaten him in
5 any way?

6 A No.

7 Q Promise him anything?

8 A No.

9 Q Ever draw your service weapon?

10 A No.

11 Q Did you in any way place him under duress at all?

12 A No, ma'am.

13 Q And did he agree to speak with you on September 25th of
14 2013?

15 A Yes, ma'am.

16 Q Okay. And on that day -- and he was not in custody,
17 was he?

18 A No.

19 Q Now -- and at the conclusion of that -- of that
20 meeting on September 25th, did you leave and Mr. Coleman was
21 free, he had not been placed under arrest? Is that
22 correct?

23 A Correct. I left his residence.

24 Q Now, did you subsequently seek warrants, seek a
25 warrant for Mr. Coleman?

1 A I did.

2 Q And on October 8th of 2013, was he placed under arrest?

3 A He was.

4 Q And was he brought to the Rock Hill Police Department?

5 A Yes, he was.

6 Q And at that time -- well on October 8th of 2013, did
7 you -- did you have an occasion to interview Mr. Coleman?

8 A I did.

9 Q And do you recall where that interview took place?

10 A Yes, in our building in the law center itself. The
11 detective division has an interview room that's along the
12 hallway. It's very close to our jail, and it was in that
13 interview room.

14 Q Okay. And again, how big is that interview room would
15 you say?

16 A You can almost touch both walls if you reach your
17 hands out. I mean seven feet by seven feet maybe. It's
18 small.

19 Q Okay. And is there furniture in those rooms?

20 A In -- there's a triangle-shaped corner desk in one
21 corner. There's two doors leading into the detective
22 division or the hallway and then two small chairs here for
23 the suspect, and one chair for the officer.

24 Q Okay. When you spoke with him on October 8th of 2013,
25 was there anybody else in the room?

1 A No.

2 Q Did you have your service weapon on you at that time?

3 A No.

4 Q Detective, I'm showing you what's been marked for
5 exhibit purposes as State's Exhibit 1. Do you recognize
6 that document?

7 A I do.

8 Q Is that a copy of the Miranda warnings, the warnings
9 that you gave to Mr. Coleman on October 8th of 2013?

10 A Yes, it is.

11 Q Okay. And how are you able to tell that those are the
12 warnings that you gave to him on October 8th?

13 A Because Mr. Coleman signed it at that time, and I
14 witnessed it.

15 Q Do you recall, did you read it aloud to him, or did
16 you give him the opportunity to read it?

17 A What I do is I set it on the desk between myself and
18 any suspect I'm interviewing -- I did this with Mr. Coleman
19 -- and I read it out loud. If he feels free to look along,
20 he can.

21 Q And there's two different paragraphs on that sheet.
22 Is that correct?

23 A There are.

24 Q Okay. But that, again, is that a truthful copy of the
25 form that you showed him and he signed on October 8th?

1 A Yes, it is.

2 MS. JOYNER - Your Honor, we'd move State's
3 Exhibit 1 into evidence?

4 THE COURT - Any objection?

5 MS. INZERILLO - Your Honor, we renew the
6 objections incorporated into this record.

7 THE COURT - All right, your previous objections?

8 MS. INZERILLO - Yes, Your Honor.

9 THE COURT - All right. They are noted. The
10 Court would make the same ruling. It'll be admitted.

11 MS. JOYNER - Thank you, Your Honor.

12 Q Could you please read ---

13 THE COURT - Has it been marked?

14 MS. JOYNER - It has been marked, Your Honor.

15 THE COURT - It's admitted as marked. You may
16 proceed.

17 (WHEREUPON, DOCUMENT IS ENTERED INTO EVIDENCE AS
18 STATE'S EXHIBIT NUMBER 1.)

19 Q If you could please read the first paragraph.

20 A Before we ask you any questions, you must understand
21 your rights. You have the right to remain silent.

22 Anything you say can be used against you in Court. You
23 have the right to talk to an attorney for advice before we
24 ask you any questions and have him with you during
25 questioning. You have this right to the advice and

1 presence of an attorney even if you cannot afford to hire
2 one. We have no way of appointing you an attorney, but one
3 will be appointed by the Court for you if you wish. If you
4 wish you may answer questions without the presence of the
5 attorney, and you may stop answering any time you desire
6 until an attorney is present.

7 Q And did you read that word-for-word to Mr. Coleman on
8 October 8th of 2013?

9 A Yes, I did.

10 Q And did Mr. Coleman appear to understand what you were
11 saying to him?

12 A Yes, he did.

13 Q On October 8th, was Mr. Coleman under the -- did he
14 appear to be under the influence of anything?

15 A He did not appear to be under the influence.

16 Q Did you feel like he was of average intelligence?

17 A Yes.

18 Q And, again, did he sign that -- that ---

19 A He signed it.

20 Q Okay. And again, if you could read then the second
21 paragraph.

22 A Sure. I have read or had read to me the statement of
23 my rights shown above. I understand what my rights are and
24 I am willing to make a statement. I do not want an
25 attorney at this time. I understand and know what I am

1 doing. I know that the person talking to me is a police
2 officer, and I understand what he is talking about.

3 Q Okay. Did you read that word-for-word to Mr. Coleman?

4 A Yes.

5 Q And did he, again, acknowledge by signing?

6 A He signed it.

7 Q Okay. And so then did he agree to speak with you?

8 A He did.

9 Q Was he threatened in any way in order to coerce him to
10 speak with you?

11 A No.

12 Q Was he promised anything?

13 A No, ma'am.

14 Q How long -- do you -- let me kind of ask you --
15 there's a few questions that I forgot to ask you about
16 September 25th, so I'm going to ask the same questions as to
17 each. But going back, I think I forgot to ask you. As to
18 the first interview in his home on September 25th of 2013,
19 did Mr. Coleman at that time appear to be under the
20 influence of anything that would affect his ability to
21 understand who you were or what was going on?

22 A No, ma'am.

23 Q And, again, was he under the influence of anything on
24 October 8th when he was in custody in giving you a
25 statement?

RYAN THOMAS - DIRECT BY MS. JOYNER

1 A He did not appear to be.

2 Q Okay. Do you recall how long it was -- on the first
3 interview in his home on September 25th, 2013, do you recall
4 how long that interview lasted?

5 A Approximately, 45 minutes, around that timeframe?

6 Q And was the entire interview recorded?

7 A Yes.

8 Q Okay. So however long that recording is, is -- would
9 that be fair to say is the approximate length of the
10 interview?

11 A Correct.

12 Q And at any point during that first interview on
13 September 25th, 2013, did he say stop it, leave, I want you
14 to -- I want you -- I want to stop?

15 A Never anything like that.

16 Q Okay. Now, going back to -- and on that first
17 interview on September 25th, was he given Miranda warnings?

18 A No.

19 Q And why was that?

20 A Because he was not in custody for anything.

21 Q Okay. And so going back to October 8th, 2013, do you
22 recall how long that interview lasted?

23 A I believe that one was right at an hour or just over.

24 Q Was that interview recorded as well?

25 A Yes.

1 Q Okay. Was the entire interview recorded such that
2 length of the recording can tell us how long the interview
3 lasted?

4 A Yes, it was.

5 Q Okay. At any point during that interview -- I think
6 I've already asked you -- you didn't threaten him.

7 A No.

8 Q Or promise him anything.

9 A No.

10 Q Did he ask at any point to stop?

11 A Never.

12 Q Did he ask for a lawyer?

13 A Never.

14 Q Did he ever say I need to use the restroom or I'm
15 hungry or thirsty?

16 A No.

17 MS. INZERILLO - Your Honor, may we approach?

18 THE COURT - You may.

19 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
20 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
21 WHICH WAS NOT REPORTED.)

22 THE COURT - All right, you may proceed.

23 Q Detective Thomas, just to correct a previous question,
24 going back in September 25th, 2013 interview in his home,
25 again, approximately how long was it?

1 A My guess is about 45 minutes or so.

2 Q Okay. Now, going to the October 8th of 2013 interview
3 when he was in custody, approximately, how long did that
4 interview last?

5 A Approximately an hour.

6 Q Now, I'm showing you what's been marked as State's
7 Exhibit 2. Do you recognize that State's Exhibit 2?

8 A I do.

9 Q And what do you recognize that exhibit as?

10 A This is a CD. It has the two recordings you just
11 mentioned on it with my initials and date.

12 Q Okay. And other than some rulings of the Court
13 regarding the contents and the admissibility of some of the
14 statement, is this a truthful and accurate representation
15 of the interrogations or the questionings that you gave the
16 defendant on September 25th of 2013 and October 8th, 2013?

17 A Yes, it is.

18 Q Okay.

19 MS. JOYNER - Your Honor, we move State's Exhibit
20 2 into evidence, and we'd ask to publish it at this time?

21 THE COURT - Any objections?

22 MS. INZERILLO - We just renew previous
23 objections, Your Honor.

24 THE COURT - All right, previous objections would
25 be noted. It'll be admitted pursuant to Court's previous

1 rulings, so you may publish. And, ladies and gentlemen of
2 the jury, let me make you aware, there have been some
3 issues that came up concerning the admissibility of some of
4 the information on that disk. Based on rulings made by
5 this Court, as I indicated to you earlier outside of your
6 presence, you may notice places where that tape or that
7 recording appears to be altered. That is based on Court
8 rulings as to that information. So those are matters that
9 the Court may have altered or changed.

10 MS. JOYNER - Your Honor, we're first going to
11 play the interview from September 25th. That would be the
12 interview in his home.

13 THE COURT - All right, thank you.

14 (WHEREUPON, STATE'S EXHIBIT 2 MARKED INTO
15 EVIDENCE AND PORTION IS PLAYED FOR THE JURY.)

16 Q I want to stop the recording for just a minute,
17 Officer Thomas, and ask you about something that you just
18 told Mr. Coleman. You told him that there had been
19 allegations against multiple people?

20 A That's what I told him.

21 Q Was that the truth?

22 A No.

23 Q So what was the reason there that you told him that

24 MINOR had made allegations against multiple people?

1 A One technique that we are trained on for interviewing
2 is -- especially in cases of sexual assault -- is to
3 present a fabricated story to the possible suspect, one
4 that you know yourself is not true, and you present it to
5 them as if it is true, and if the suspect is willing to go
6 along with that story to answer questions about it and to
7 adopt it as if it is true, you know for a fact that they're
8 lying to you about that. It's a technique to ease into --
9 you know, rather than just direct accusations and
10 confrontation, and to get a feel for the believability of
11 the suspect and whether or not, you know, he'll be honest
12 with you throughout the interview.

13 MS. JOYNER - All right, we'll continue to play.
14 Thank you.

15 (WHEREUPON, THE CD IS CONTINUED)

16 Q All right, Detective Thomas ---

17 MS. JOYNER - Actually, Your Honor, the next
18 recording we're going to play is from October 8th, 2013.

19 THE COURT - Do you know how long that one is?

20 MS. JOYNER - Well, it's 35 minutes with
21 redactions, Your Honor.

22 THE COURT - All right, well, why don't we take
23 just a short break and let everybody stretch their legs,
24 and I'll let you step back to the jury room and let us make
25 you comfortable. It shouldn't be long, and then we'll

1 resume shortly. As you leave the courtroom, please don't
2 discuss the case even among yourselves until I ask you to
3 do so. You may retire to the jury room.

4 (WHEREUPON, JURY EXITS THE COURTROOM)

5 THE COURT - Court will be in recess for about
6 five or ten minutes. You can step down. Please don't
7 discuss your testimony during the break.

8 MR. THOMAS - Yes, sir.

9 (WHEREUPON, RECESS TAKEN)

10 THE COURT - Thank you very much. You can be
11 seated. State ready to proceed?

12 MS. JOYNER - The State's ready, Your Honor.

13 THE COURT - Defense ready?

14 MS. INZERILLO - We just need our client.

15 THE COURT - As soon as he's here.

16 (WHEREUPON, DEFENDANT ENTERS THE COURTROOM)

17 THE COURT - Bring the jury in.

18 (WHEREUPON, JURY ENTERS THE COURTROOM)

19 THE COURT - All right, the record will reflect
20 the jury has returned to the courtroom. You may proceed in
21 the publication of the second ---

22 MS. JOYNER - Thank you, Your Honor. This next
23 recording is from October 8 of 2013.

24 (WHEREUPON, RECORDING OF CD IS PLAYED FOR THE
25 JURY)

RYAN THOMAS - DIRECT BY MS. JOYNER

1 Q Just a few brief follow-up questions, Detective
2 Thomas. The end of the interview you're receiving consent
3 to search the phone?

4 A Yes.

5 Q Is that a standard part of any police investigation?

6 A Yes, it is.

7 Q And nothing of evidentiary value was located as to
8 this case. Is that correct?

9 A No.

10 Q Okay. And you weren't requesting that based upon any
11 statements from the victim regarding the phone. Is that
12 correct?

13 A No. I mean that -- correct, it was not based on any
14 statements.

15 Q Just a standard procedure?

16 A Yes.

17 Q Okay. Now, the individual that you were meeting with
18 both on September 25th of 2013 and October 8th of 2013,
19 Orlando Coleman, do you see that person that you met with
20 here in the courtroom?

21 A I do.

22 Q Can you please point him out to the jury?

23 A Mr. Coleman's sitting here to the left close to that
24 easel.

1 MS. JOYNER - Okay. Let the record reflect he's
2 identified the defendant in this case.

3 THE COURT - It'll so reflect. You may proceed.

4 MS. JOYNER - Thank you, Your Honor.

5 Q And is there anything different about Mr. Coleman
6 today than was on October 8th of 2013?

7 A Yes, there is.

8 Q And what is that difference?

9 A He's lost a significant amount of weight since his
10 arrest.

11 MS. JOYNER - No further questions for Detective
12 Thomas.

13 THE COURT - You may cross examine.

14 MS. INZERILLO - May it please the Court, Your
15 Honor.

16 THE COURT - Yes, ma'am.

17 CROSS EXAMINATION

18 BY MS. INZERILLO -

19 Q Detective Thomas, ultimately you were the case agent
20 for this case. Is that right?

21 A Yes, ma'am.

22 Q And that means that you are the detective that is
23 responsible for the case.

24 A Yes.

1 Q And so when you conducted these interviews with Mr.
2 Coleman, you did it as the case agent.

3 A Yes.

4 Q When you interviewed Mr. Coleman, that was in 2013?

5 A Yes.

6 Q He was 18 at the time?

7 A I believe so.

8 Q Okay. And you were asking him about events that took
9 place, in your belief, at the time during the summer of
10 2011. Is that correct?

11 A Correct.

12 Q And he indicated to you that during that time he was a
13 junior in high school?

14 A I believe -- yes, I believe he said junior.

15 Q Yes, and I think he says like a year before graduating
16 or something, but that would be a junior.

17 A Right, roughly that time period.

18 Q Okay. So he's a teenager then in September of 2011.

19 A '11, yes.

20 Q Okay. And you got that timeframe based on Delissa
21 Patterson's relaying of events to Detective Sims that was
22 relayed to you.

23 A Correct.

1 Q Okay. And I want to walk through that a little bit.

2 Essentially your job as case agent is to take the case from

3 its inception and take it all the way through to the end.

4 A Yes.

5 Q Is that fair? Okay. So even though you may not be

6 the person that picked up the phone in this case and took

7 the initial report, you're the one that kind of picked it

8 up and then reviewed all the information that came in.

9 A Right. Rarely would I take the initial report.

10 Q So that's pretty common.

11 A Yes.

12 Q Okay. And so -- and that's what happened in this

13 case.

14 A Yes.

15 Q Okay. So Delissa Patterson calls Rock Hill PD and

16 ultimately the initial report is taken by Detective Sims.

17 A Correct.

18 Q Okay. And in that initial report -- and you've

19 reviewed that initial report.

20 A Yes.

21 Q Okay. And then based on that initial report, you

22 then, I believe in this case then picked up the phone and

23 talked to Delissa Patterson to get more information.

24 A Yes, that was the first I believe I spoke to in the

25 case was Ms. Patterson.

1 Q And that's pretty common, because the complainant in
2 this case was a child.

3 A Absolutely.

4 Q Okay. And so up until that point that's pretty
5 standard, because in these kind of cases you do generate
6 and refer the child to essentially a place like Safe
7 Passage so that they can interview.

8 A I mean I have no formal training in interviewing
9 children, so I defer to experts on that.

10 Q Absolutely. Okay. So your initial information in the
11 case came from Ms. Patterson and then Detective Sims report
12 and then your phone conversation with her.

13 A Correct.

14 Q Okay. And then from there you watched the forensic
15 interview and then you done all that prior to speaking to
16 Mr. Coleman in the first interview.

17 A Right.

18 Q Okay. All right, so -- and then based on all of that,
19 you're sort of on the case, you're the guy in charge and so
20 from there you're making all the decisions about where we
21 go from here, warrants, I think at issue, that kind of
22 thing.

23 A Yes.

24 Q Okay. So the initial information that you got -- that
25 -- from Detective Sims was -- and I believe -- I want to

1 make sure I get the language correct -- that Orlando,
2 quote, pulled her -- being MINOR -- onto his lap and
3 held her there. Is that right?

4 A I personally didn't have it memorized exact word in
5 the report, but that sounds correct, yes.

6 Q Okay. And Ms. Patterson indicated that MINOR was
7 only able to get away because children playing outside
8 started walking past Orlando. Is that correct?

9 A Right.

10 Q And she indicated to Detective Sims, and then I think
11 ultimately to you as well, that all of this happened in
12 2011.

13 A That was the -- her understanding of the timeframe
14 that she could put together.

15 Q From MINOR's recitation to her.

16 A Account to her, right.

17 Q Okay. And the incident date from your warrant that I
18 think you were kind of working off of was September 1st,
19 2011, and I think you were also working around sort of a
20 summer timeframe of 2011.

21 A Yes, we picked a generic month and day, because we
22 didn't have a specific one, so we just picked one that was
23 relatively close.

24 Q So you -- and then you were kind of operating at that
25 time under the summer of 2011.

1 A Right.

2 Q Okay. Because you were questioning Orlando about
3 summer of 2011.

4 A Right.

5 Q And you had indicated to him you'd gone so far as to
6 pull utility records for summer of 2011 ---

7 A Correct.

8 Q --- when he had called you in between these two
9 interviews and said, look, I don't think we lived there at
10 the time you think we lived there.

11 A Yes, he called me and left a voicemail stating that.

12 Q And then you pulled the utility records to see if he
13 lived there.

14 A Yes.

15 Q Okay. And you recall from those utility records he
16 lived from there May to November of 2011.

17 A Brenda Coleman.

18 Q Okay. Brenda is his ---

19 A Mother.

20 Q Okay. Now, at that point in the case, there was
21 nothing discussed about any incidents happening around
22 MINOR s birthday.

23 A No.

24 Q No information you had specifically noting an incident
25 date around May 13th, 2011.

1 A May -- could've been close -- I mean that's close
2 enough to the summer. Again, it was just this general --
3 it was warm out; kids were out playing regularly outside.

4 Q Okay, but that wasn't a date you were working off of
5 specifically.

6 A Not a specific date, no.

7 Q Okay. And there was no date range that you were
8 working off of of January to June 2012.

9 A January to June ---

10 Q 2012.

11 A No.

12 Q Okay. Or any information that you had of anything one
13 incident happening in 2011 or another incident happening in
14 2012.

15 A Well, that -- that was the initial understanding of
16 mine was that they could've been a year apart, as far as a
17 year apart in two different summers, and then he began to
18 go into, well, I was at school during this time, we had
19 already moved by that time, so my -- my opinion after that
20 was that **MINOR** just couldn't sort out how far apart the
21 incidents where.

22 Q So when the Delissa tells you when she talked to
23 **MINOR** that she narrowed it down to the summer of 2011,
24 is that incorrect or is that correct?

1 A To the best of my recollection that's -- she felt that
2 they were in 2011.

3 Q Okay. And that was the information she gave Detective
4 Sims and that she ultimately gave you. Was that correct?

5 A I don't remember specifically what she told Sims
6 about; I'm pretty sure that's what she relayed to me.

7 Q Okay. When you spoke to Ms. Patterson yourself, you
8 spoke to her on the phone?

9 A Yes, ma'am.

10 Q You didn't have her come in and write a statement?

11 A No, ma'am.

12 Q You didn't have her -- you didn't audio-record a
13 statement?

14 A No, ma'am.

15 Q Okay. And Ms. Patterson indicated on the summer of
16 2011 that she narrowed it down because -- and I want to
17 make sure I'm correct -- that ---

18 MS. JOYNER - Your Honor, I'm going to object to
19 the repeated reference as to what Ms. Patterson said. If
20 she could ask the officer what his understanding was,
21 perhaps, but Ms. Patterson hasn't -- Ms. Delissa Patterson
22 hasn't testified.

23 THE COURT - He indicated he did not conduct any
24 of the interviews.

25 MS. INZERILLO - He spoke with ---

1 THE COURT - So perhaps you should lay a
2 foundation for any knowledge he might have of what Ms.
3 Patterson might've said.

4 MS. INZERILLO - Your Honor, I believe he's
5 testified he spoke to Ms. Patterson over the phone, and
6 that's how he got this information. And if that's
7 sufficient, I can continue to ask ---

8 MS. JOYNER - But I think that he's -- she's
9 inquiring -- or can we approach?

10 THE COURT - PLEASE DO.

11 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
12 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
13 WHICH WAS NOT REPORTED.)

14 THE COURT - You may proceed.

15 MS. INZERILLO - Thank you, Your Honor.

16 Q Ms. Patterson had the timeframe of summer of 2011
17 based on the fact she thought it was a summer school break.
18 Is that the information she gave you?

19 A Correct.

20 Q Okay. And then as we indicated after that, you sat in
21 on the forensic interview in this case.

22 A I did.

23 Q Okay. And that was at your request that the forensic
24 interview be held.

25 A Correct.

1 Q And from your perspective, a forensic interview can be
2 an investigative tool. Would you agree with that?

3 A In my opinion is, yes.

4 Q Okay. Sometimes in those interviews you can get a
5 fact or something that may assist in your independent
6 investigation of the case.

7 A It could lead to that.

8 Q Okay. In this case, MINOR told the interviewer
9 that her brother was present for one of the incidents, the
10 alleged incidents. Is that correct?

11 A My understanding is she told her brother that it had
12 happened.

13 Q Okay.

14 A I don't believe she said he was a witness to it.

15 Q Okay. You don't recall her telling the investigator
16 that?

17 A That he witnessed the assault?

18 Q That he -- that he was present; that he was there.

19 A She -- if she said that her brother was there, she
20 wasn't saying that he was a witness to the assault. She
21 was saying her brother was in that area at that time that
22 day.

23 Q Okay. Do you recall her telling Puja that there were
24 other -- that the cousins were there?

25 A Yes.

1 Q Okay. Did you interview the cousins?

2 A No, ma'am.

3 Q Okay. Did you interview her brother?

4 A No, ma'am.

5 Q At that point you then went and inter -- went to Mr.
6 Coleman's house, the left the card in order to interview
7 him.

8 A Right.

9 Q Okay. And you testified on direct that the point of
10 that September interview was to essentially get evidence
11 and to get more information about the case. Is that
12 correct?

13 A Correct.

14 Q But you went in there essentially with a lie.

15 A Part -- parts of lies, not everything.

16 Q Okay. So your way of getting evidence and of getting
17 information was to lie to an 18 year old about this -- what
18 you knew about the case.

19 A Standard technique.

20 Q Okay. So and the lie that you chose was to say that a
21 six year old was coming on to multiple guys.

22 A That was one aspect of it, yes, ma'am.

23 Q Okay. And in interviewing Mr. Coleman, at one point
24 you eventually do ask him directly, did you put your hands
25 down her pants and he said no.

1 A I believe I asked him did he sexually touch her in any
2 way or sexually assault her in any way.

3 Q And he said no.

4 A He said no.

5 Q And you said, did you put your hand under her clothing
6 and he said no.

7 A He said -- yes, he answered no to all those questions.

8 Q Okay. So when you actually got to the actual fact of
9 your case, he said no. Is that correct?

10 A To that specific point of it.

11 Q Okay. The point that's actually the crux of the case,
12 not the made-up part.

13 A The aspect of him sexually touching her, but again we
14 did discuss her crawling on him or being in his lap and
15 things like that.

16 Q Okay. So you go with the intention of talking to an
17 18 year old kid to try to get evidence, and he is talking
18 with you about the victim, alleged victim, in this case.
19 Would you agree with that?

20 A Just to clarify, an 18 year old is an adult in South
21 Carolina, not a kid, and that was -- yeah, obviously, you
22 know, I needed to question him about the allegations
23 against him.

24 Q Okay. So he tells you that some of these cousins are
25 vulgar around her.

1 A Correct.

2 Q Okay. Did you look into that?

3 A No, ma'am.

4 Q Okay. He tells you that um -- that um the brother was
5 around, that she'd see him since -- well, let me back up --
6 that she had seen him since then. Did you look into that?

7 A That MINOR had ---

8 Q She had seen Orlando since then. Did you look into
9 that?

10 A That's what Ms. Patterson had already relayed to me.

11 Q Okay, but you didn't look into that.

12 A What do you mean look into it?

13 Q Do any follow-up investigation into that.

14 A She had already told me that's what happened.

15 Q Okay. Did you -- when he told you that -- give me one
16 second, because I want to make sure I get the language
17 right. When he told you that MINOR always hung out with
18 -- well, let me back up -- that when he went back, she
19 would walk up to him and she came up and she gave him a
20 hug? Did you follow-up on that?

21 A Specifically about a hug, no.

22 Q Okay. You did tell him though that you would continue
23 to look into, that you would get back to him, and that if
24 he had any other questions he could call you.

25 A Yes.

1 Q And he did.

2 A He -- he did call?

3 Q He left a voicemail about trying to help you with the
4 investigation.

5 A That was after the first interview, yes.

6 Q Okay. And he -- you asked him questions specifically
7 about this girl and her -- these alleged allegations
8 against all these guys. Is that right?

9 A Against **MINOR**, yes.

10 Q Right. Okay. You didn't tell him in that first
11 interview that it was lie.

12 A No.

13 Q No.

14 A That would defeat the purpose of it.

15 Q So -- but you do tell him that you're a detective with
16 the Rock Hill Police Department.

17 A Yes.

18 Q Okay. And you're there -- are you dressed similarly
19 the way you are today?

20 A Shirt and tie. Probably not a suit jacket, but ---

21 Q You had a badge on you?

22 A Yes.

23 Q Okay, do you have your gun on you?

24 A Yes, I usually have gun on my hip.

1 Q Okay. So you don't pull your gun, but you're
2 obviously a pretty authoritative-looking guy.

3 A That'd be your opinion. I ---

4 Q All right. I'm going to say pretty authoritative-
5 looking guy.

6 A Thank you.

7 Q You've got your badge, you got your gun, pretty clean-
8 cut, you come into 18 year old guy's home and you tell him
9 you're a detective. Is that right?

10 A Correct.

11 Q Okay. And then you proceed to spin a lie to him about
12 this girl and these guys, and you ask him a series of
13 questions about that.

14 A Well, you say spin a lie -- I say -- I use techniques
15 that I've been trained in to determine his believability,
16 his credibility, his truthfulness.

17 Q Okay. It's a lie, though; Right?

18 A You can call it a lie, sure.

19 Q You told him a lie. You told him in the second
20 interview it was a lie.

21 A Aspects of it. Not everything, just to clarify.

22 Q But it was a lie.

23 A Aspects of it were.

RYAN THOMAS - CROSS BY MS. INZERILLO

1 Q Okay. And so the 18 year old kid is trying to answer
2 your questions. You asked him a question about **MINOR** and
3 he tries to answer your question. Is that right?

4 A He answered everything.

5 Q He answered your questions. You testified on direct
6 he never once said I don't want to talk to you anymore.
7 Right?

8 A Correct.

9 Q Right?

10 A True.

11 Q He's trying to be helpful; we can hear that on the
12 tape. Is that right?

13 A I would -- you could say helpful, yes.

14 Q Okay. He didn't kick you out of the house, tell you
15 to leave, ---

16 A No.

17 Q --- cut off the interview at that point.

18 A No.

19 Q In fact, in this sort of month-long period, he
20 actually calls with information saying, look, I think this
21 might help you, I may not have lived there during that
22 time.

23 A Well, certainly he wants to help his case out.

1 Q Okay. On the second interview, you go in, knowing
2 you've spun this lie, but he doesn't know that. Is that
3 fair?

4 A That's accurate.

5 Q Okay. And then you proceed to go through all of
6 these, quote, unquote, details that he shouldn't have
7 remembered about that time-frame.

8 A To me he remembered a lot of specific detail about one
9 young girl that I thought was out of character for a normal
10 18 year old.

11 Q Okay. So the details that you focus in on is that he
12 remembered that a six year old girl wore revealing
13 clothing, had a bad temper, called other girl b's and had
14 vulgar cousins.

15 A Those were some of those, yes.

16 Q Okay. Those to you are unusual details for someone to
17 remember about a six year old child?

18 A Absolutely. In his case specifically because of his
19 testimony that he hung out with all the kids, this was a
20 regular, normal thing, everyday-event, well, for the summer
21 or what may it be, and to be able to single out one child
22 two years ago, that -- that is very specific, things that
23 he mentioned about her.

24 Q So he hangs out with a bunch of children and one of
25 them curses all the time. That wouldn't stand out to him?

1 MS. JOYNER - Objection. I don't know that there
2 was any statement that one of them curses all the time.

3 MR. THOMAS - No.

4 MS. INZERILLO - Says she calls girls b's, Your
5 Honor.

6 THE COURT - That's a characterization. I'd ask
7 for you to stay within the proof.

8 MS. INZERILLO - Yes, Your Honor.

9 THE COURT - Thank you.

10 Q So he hangs around with children all the time and he
11 would remember that one six year old calls girls b's. That
12 would be unusual for him to remember?

13 A That's a very specific point.

14 Q Okay. It wouldn't be unusual for him to remember that
15 cousins around her own age were vulgar?

16 A Again, you're recalling what specific children used to
17 say while out at play in the summertime. I personally
18 believe that's specific.

19 Q Okay. Vulgar children would not stand out to you.

20 A Vulgar children, that's -- that's a detail that he's -
21 - he can recall.

22 Q Okay. The -- you never asked him about the cousins,
23 did you?

24 A No.

25 Q Okay. You only asked him about a girl named **MINOR**.

- 1 A Correct, the victim.
- 2 Q Okay. And those are the details he gave you.
- 3 A Yes.
- 4 Q Multiple times from that interview he denied touching
- 5 **MINOR**. Is that correct?
- 6 A Yes.
- 7 Q Okay.
- 8 A In a sexual way, to clarify.
- 9 Q Okay. In fact, he numerous times he tells you I did
- 10 not do what you're saying that I did. Is that right?
- 11 A I don't remember how many times, but at least -- at
- 12 least once or twice he did say that.
- 13 Q Okay. When you asked him specifically about a six
- 14 year old coming on, he tells you, who would expect a six
- 15 year old to do that.
- 16 A Right.
- 17 Q Is that correct?
- 18 A Which validated my point in saying that.
- 19 Q Okay. Because it's not a normal response for someone
- 20 to disbelieve a six year old would come on to an adult?
- 21 A No, because it's irrational to think a six year old
- 22 would be sexually promiscuous toward an adult. That was my
- 23 whole point in presenting that lie.
- 24 Q Right. And he had that reaction.
- 25 A Right, he agreed with the fact that it didn't happen.

1 Q He agreed with you that it's clearly irrational that a
2 six year old would come on to an adult. Right?

3 A Right.

4 Q Okay. At the time that you interviewed him the second
5 time, he was under arrest for the warrant that's sworn out.
6 Is that correct?

7 A Yes, ma'am.

8 Q So this interview was the last thing you did in the
9 case.

10 A I believe -- yes, you know, except for compiling
11 paperwork and things, yes, I believe that was it.

12 MS. INZERILLO - Okay. No further questions.

13 THE COURT - Re-direct?

14 MS. JOYNER - Just a few questions briefly.

15 RE-DIRECT EXAMINATION

16 BY MS. JOYNER -

17 Q Do you recall, Detective Thomas, during the course of
18 your investigation, your interaction with the defendant,
19 did you learn what his date of birth was?

20 A Yes.

21 Q Do you remember that off the top of your head, or
22 would you need to see it?

23 A Not today. I would need a refresher.

24 Q Okay. If I were to show you the incident report,
25 would that refresh your recollection?

1 A Yes, it would.

2 THE COURT - You may approach the witness.

3 MS. JOYNER - Thank you, Your Honor.

4 Q Can you please let the jury know what Mr. Orlando
5 Coleman's date of birth is?

6 A [REDACTED], 1993.

7 Q Okay. So correct my math if I'm wrong, but would that
8 make him a 19 year old adult at the time of your first
9 interview with him on September 25th of 2013?

10 A By two days.

11 Q Would he then have been a 20 year old adult on October
12 8th of 2013 when you interviewed him the second time?

13 A Yes, 20; 20, 20 years old.

14 Q Okay. Oh, I'm sorry. Let me correct that. If you
15 interviewed him for the first time November (sic) 25th, was
16 he actually 20 then?

17 A As I say by two days he had just ---

18 Q Yes, by two days he was ---

19 A Right.

20 Q --- 20. I'm sorry. I misstated.

21 MS. JOYNER - That's it. No further questions,
22 Your Honor.

23 THE COURT - Re-Cross.

24 RE-CROSS EXAMINATION

25 BY MS. INZERILLO -

1 Q But you still lied to him?

2 A Again, you keep putting it like that. This is a
3 technique that we are regularly trained to use and employ
4 to see if a defendant will admit to a crime, to see if he
5 will lie about a crime. It's -- it's normal.

6 Q So on the second tape when you said, I'm going to be
7 honest with you, Mr. Coleman, when I told you all that
8 stuff about MINOR coming on to people, I was lying ---

9 A Well, I use a vernacular he would understand, of
10 course.

11 Q Okay. So it was a lie.

12 A The way you're presenting it is incorrect. This is a
13 technique that we are trained to use in order to see if he
14 will lie, and then at the end after it's fulfilled its
15 purpose, then we can explain to them which parts weren't
16 true, which parts were.

17 THE COURT - Ma'am, you're on re-cross. This
18 needs to be new matters that were raised by the re-direct.
19 This has already been asked and answered in your cross
20 examination.

21 MS. INZERILLO - You know what, I have no further
22 questions.

23 THE COURT - Thank you. All right, ladies and
24 gentlemen of the jury -- sir, you may step down. Thank you
25 very much.

1 MR. THOMAS - Thank you, Your Honor.

2 THE COURT - At this point in time we're going to
3 break for the evening. My instructions as you leave the
4 courthouse will be the same as has been in the past. Don't
5 attempt to gather any information on your own. Don't listen
6 to, watch or read media reports about the case. Don't
7 discuss the case with anyone; don't allow anyone to discuss
8 it with you. Please report any contact you might have from
9 anyone about your participation in the trial. I'll ask
10 that you be back in the jury room at 9:30 in the morning.
11 I'm going to try to get started better on time. I've
12 apologized to you a couple of times, but we've had some
13 important things we'd had to deal with that, and I
14 apologize to you about the delays. 9:30 in the morning in
15 the jury room. Hope you have a great evening. We'll see
16 you in the morning.

17 (WHEREUPON, JURY EXITS THE COURT.)

18 THE COURT - We're in recess til 9:30. Thank you.

19 MS. INZERILLO - Thank you, Your Honor.

20 MS. O'HAYON - Thank you, Your Honor.

21 (WHEREUPON, COURT IN RECESS FOR THE DAY AT 5:30
22 P.M.)

23

24

25

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
CASE NO.: 2014-GS-46-03857
03858
STATE OF SOUTH CAROLINA)
TRANSCRIPT OF RECORD
VS) (DAY 3 - VOLUME III)
ORLANDO MARTINEZ COLEMAN) (PAGES 248 - 381)

March 18, 2015
YORK, SOUTH CAROLINA

BEFORE THE HONORABLE ROGER COUCH

APPEARANCES:

SHARON O'HAYON, ASSISTANT SOLICITOR
YORK, SOUTH CAROLINA

ERIN JOYNER, ASSISTANT SOLICITOR
YORK, SOUTH CAROLINA

ATTORNEYS FOR THE STATE

ASHLEY ANDERSON, ASSISTANT PUBLIC DEFENDER
YORK, SOUTH CAROLINA

MELISSA INZERILLO, ASSISTANT PUBLIC DEFENDER
YORK, SOUTH CAROLINA

ATTORNEYS FOR THE DEFENDANT

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

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E-X-H-I-B-I-T-S

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1 (WHEREUPON, STATE'S EXHIBIT 3 MARKED FOR
2 IDENTIFICATION)

3 THE COURT - All right, State ready to proceed?

4 MS. O'HAYON - Yes, Your Honor.

5 THE COURT - Defense ready to proceed?

6 MS. ANDERSON - Yes, Your Honor.

7 THE COURT - Bring the jury in, please.

8 (WHEREUPON, JURY ENTERS THE COURTROOM.)

9 THE COURT - Good morning. I hope everyone had a
10 good evening. The record should reflect that the jury is
11 now back in the courtroom. Yesterday afternoon, as always,
12 when you left the courthouse I gave you some instructions
13 concerning your behavior. If there was any member of the
14 jury panel who was unable to follow my instructions, please
15 stand.

16 (NO RESPONSE)

17 THE COURT - The record then will reflect that all
18 jurors have been able to follow my instructions thus far.
19 When we stopped yesterday afternoon, the State was in the
20 process of calling witnesses. At this time the State may
21 call its next witness.

22 MS. O'HAYON - State calls Laurie Caldwell.

23 THE COURT - Would you get her, please? Thank
24 you. Come forward, please ma'am, and be sworn by the
25 clerk.

1 LAURIE CALDWELL, AFTER BEING FIRST DULY SWORN,
2 TESTIFIES AS FOLLOWS -

3 THE COURT - Please have a seat in the witness
4 stand, and once seated, state your name. Thank you.

5 MS. CALDWELL - My name is Laurie Varnadoe
6 Caldwell.

7 THE COURT - Thank you. Counselor, your witness.

8 MS. O'HAYON - Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MS. O'HAYON -

11 Q What is your educational and training background?

12 A I graduated from the University of South Carolina with
13 a bachelors in interdisciplinary studies and continued on
14 and graduated in 1986 with a masters in social work, and
15 from there I found myself at the South Carolina Police
16 Academy, and I graduated from basic law enforcement
17 training, and at that point in my career I began
18 specialized training in child abuse and neglect
19 investigations. So most of that -- the early training
20 started at The Criminal Justice Academy in child abuse
21 investigations and medical aspects of child abuse, and
22 continued training throughout the years through the
23 governor's office, the Federal Law Enforcement Training
24 Center. I've attended numerous national conferences
25 concerning child abuse and neglect, -- excuse me -- and

LAURIE CALDWELL - DIRECT BY MS. O'HAYON

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1 through the Forensic Mental Health Association. I attended
2 the Southern Police Institute which is part of the
3 University of Kentucky on a week-long class on
4 investigations of sex crimes that also included children.
5 I have attended numerous training conferences on
6 interviewing children, one in particular that kind of
7 changed the way South Carolina started approaching child
8 abuse and neglect, is in 2001 I attended a week-long
9 training through the University of South Carolina
10 Children's Law Center in forensic interviewing. I have
11 attended the advanced classes for forensic interviewing,
12 especially concerning the class that started in 2001, which
13 was a model that South Carolina adopted in interviewing
14 children. I've been trained through the Federal Law
15 Enforcement Training Center, the Federal -- excuse me --
16 yes, the Federal Law Enforcement Training Center. It's
17 located in Brunswick, Georgia, and also through the Federal
18 Bureau of Investigation, as well as national organizations
19 such as National Children's Advocacy Center.

20 Q Where are you currently employed?

21 A I'm currently employed at State Law Enforcement
22 Division, which is more commonly known as SLED.

23 Q And where have you worked before?

24 A I'm a little bit of an odd duck, in that I retired
25 from SLED in 2000 -- February of 2011, and I was an agent

1 there where I worked crimes against children, as well as
2 other type of investigations. From there I went full-time
3 at a child advocacy center called the Dickerson Center for
4 Children, and that's a community-based child advocacy
5 center located in West Columbia, and I was there three
6 years and a couple of months, and April of last year I made
7 a personal decision to step down from being involved in
8 child abuse investigations, and I returned to SLED where
9 I'm at now, and I'm a contract agent where I investigate
10 Social Security Disability fraud investigations.

11 Q And what did you do while you worked with Dickerson
12 Center for Children?

13 A I wore several hats, but I was the Director of
14 Forensic Services, and what that means is I was over the
15 forensic interview program, the interview of children. I
16 was the chief interviewer, as well as supervise the other
17 social workers there that have the responsibility of
18 interviewing children. I also was over the Victim Advocate
19 Program, as well as I coordinated and facilitated the
20 multidisciplinary team for Lexington County, and what that
21 is, it was a monthly case review there law enforcement,
22 social services, mental health, the Dickerson Center staff,
23 victim advocates and our prosecutor came together once a
24 month and staffed child abuse cases, and then I did a
25 little bit of therapy. I am trained to do trauma-focused

1 cognitive behavioral therapy, but I did very little of it,
2 because that was not my primary job. My primary job was
3 working with the forensic interviews.

4 Q Have you taught any courses or led any trainings?

5 A Yes. I have trained all over South Carolina over the
6 past 20 years in the area of child abuse, more specifically
7 with child forensic interviewing. I have -- for several
8 years was a guest instructor at The North Carolina Justice
9 Academy where I taught interviewing children. I have
10 taught through the Office of Victims Crime Training and
11 Technical Assistance Center where I've taught nationally up
12 in Virginia, Nevada; I've taught in Florida and had the
13 privilege to train the Bohemian law enforcement officers in
14 child abuse and neglect in interviewing.

15 Q Have you previously been qualified as an expert in
16 delayed disclosure in child abuse cases and provided
17 testimony in Court?

18 A Yes, I have.

19 MS. O'HAYON - Your Honor, at this time the State
20 would like to offer this witness as an expert in delayed
21 disclosure?

22 THE COURT - In what?

23 MS. O'HAYON - Delayed disclosure.

24 THE COURT - Subject to your prior objections?

25 MS. INZERILLO - Yes, Your Honor.

1 THE COURT - All right. The Court will qualify
2 this witness as an expert within that field. Ladies and
3 gentlemen of the jury, let me explain to you what we're
4 going through right now, so that you'll have a little
5 better understanding of the process. Generally, witnesses
6 who testify in Court, lay witness, are limited to testify
7 to facts within their knowledge. They're not allowed to
8 offer opinions or draw conclusions from the facts that they
9 testify as to. There's an exception to that general rule.
10 That exception is for a witness who is declared by the
11 Court to be an expert within some profession or calling or
12 field of endeavor. As to those witnesses that are
13 designated as experts, they are allowed to give their
14 opinions within the area of their expertise, and they are
15 allowed to state the reasons they have those opinions.
16 Later on when I charge you concerning the law, I'll go over
17 expert testimony and how you have a right as the finders of
18 fact to receive or analyze that testimony. So suffice it
19 to say I've qualified the witness as an expert within the
20 field requested, and that will allow her to state her
21 opinions within that field and the reasons why she holds
22 those, and again I'll give you further instruction later
23 concerning that. You may proceed, counsel.

24 MS. O'HAYON - Thank you, Your Honor.

1 Q Can you explain to the jury what is meant by the term
2 delayed reporter?

3 A Just like it sounds. It means they're -- someone has
4 waited to report something and in the child -- in the field
5 of child abuse and neglect it means when a child does not
6 report an incident immediately.

7 Q Is there a consensus among the research and clinical
8 community that delayed reporting is common?

9 A Yes, it is more common than not.

10 Q And what factors commonly play a role in a child's
11 delayed reporting?

12 A In the cases of child sexual abuse, what often delays
13 a child, it could be -- one, it's a secret and then
14 depending on how the perpetrator ---

15 MS. INZERILLO - Your Honor, I'm going to object.
16 May we approach?

17 THE COURT - You may.

18 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
19 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
20 WHICH WAS NOT REPORTED.)

21 THE COURT - You may proceed.

22 MS. O'HAYON - One moment. I beg the Court's
23 indulgence.

1 Q So in your training and experience, specifically with
2 sexual assault cases involving children, would it be common
3 for a six year old victim to delay report?

4 A It is more common for a six year old, and all other
5 ages of children, to delay in reporting their sexual abuse.

6 MS. INZERILLO - Objection, Your Honor. May we
7 approach?

8 THE COURT - Well, why don't we do this, ladies
9 and gentlemen of the jury, I'm going to ask you to step
10 back to the jury room. I've got some matters I need to
11 discuss with the attorneys. As always, I'll ask you not to
12 discuss anything about the case until I've asked you to do
13 so. Thank you very much.

14 (WHEREUPON JURY EXITS THE COURTROOM)

15 THE COURT - The objection is?

16 MS. INZERILLO - Your Honor, my objection to that
17 question is, that is a specific reference to a fact in this
18 case, and my objection would be that that is now moving
19 into impermissible vouching or bolstering in this case,
20 because she's been specifically asked about a -- whether a
21 six year old -- it's common for a six year old to delay
22 reporting. We've moved from being a generalization about
23 delayed reporting to now commenting on a specific fact in
24 this case.

LAURIE CALDWELL - DIRECT BY MS. O'HAYON

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1 MS. O'HAYON - Your Honor, the witness testified
2 that it is -- her answer to that question was that it's
3 common for children of all ages to delay reporting, so I
4 can rephrase that question for children ---

5 THE COURT - Well, again, I think my ruling was
6 that the -- this witness indicated that she had done some
7 two thousand interviews of children who have allegations or
8 some concern about them having sexual abuse, and her
9 testimony was previously that in the majority of those
10 cases it involved delayed reporting, so it's not unusual
11 for children -- and I don't know that the age group is that
12 she interviewed. You have the right to ask her about that
13 age group, what ages are included in that age group, and I
14 agreed to allow her to testify as to the fact that within
15 the age group that she has handled in her practice, some
16 two thousand interviews, that it was not unusual, in fact,
17 it was more common for that group to delay reporting. You
18 specifically asked about a specific age that just happens
19 to be the age of the complaining party or the victim in
20 this case.

21 MS. O'HAYON - Thank you, Your Honor.

22 THE COURT - And that's not what I ruled, so I'm
23 going to sustain the objection and ask that you ask the
24 question as it relates to her experience and her practice.
25 That's what makes her an expert, besides her training, and

1 it doesn't apply just to one age group; it applies to
2 whatever age group she has handled in her practice.

3 MS. O'HAYON - Okay. Thank you, Your Honor.

4 MS. INZERILLO - Your Honor, for the record can we
5 move to strike that question ---

6 THE COURT - If you wish for me to call attention
7 to it in that manner I will.

8 MS. INZERILLO - If we could just, I guess, for
9 the record outside the presence just ---

10 THE COURT - Well, the only reason I would do that
11 is for the jury's benefit. I'm ruling in your favor ---

12 MS. INZERILLO - Okay, well, we'll ---

13 THE COURT - If you wish for me to call attention
14 to the fact that I'm striking that particular question to
15 the jury and that they're to disregard it, I'll be more
16 than happy to do that.

17 MS. INZERILLO - I just want to make sure the
18 record is preserved for that.

19 THE COURT - Okay. I have sustained your
20 objection. I'm asking her to rephrase the question.

21 MS. INZERILLO - Thank you, Your Honor.

22 THE COURT - You may bring the jury back.

23 (WHEREUPON, JURY ENTERS THE COURTROOM.)

24 THE COURT - All right, the record will reflect
25 that the jury has returned to the courtroom. During your

1 absence I have reaffirmed previous rulings that I have made
2 in regard to this witness's testimony and instructed the
3 State to proceed in accordance with those rulings. You may
4 proceed.

5 MS. O'HAYON - Thank you, Honor.

6 Q Have you conducted forensic interviews as part of your
7 job previously?

8 A Yes, for over 20 years.

9 Q Okay. About how many forensic interviews have you
10 conducted?

11 A Over two thousand.

12 Q Can you briefly explain to the jury what a forensic
13 interview is?

14 A Forensic interview -- the terminology is really just a
15 -- fancy words for a fact-finding interview designed for
16 children, to meet them on their developmental level.

17 Q And what is the purpose of a forensic interview?

18 A To solicit uncontaminated information about a possible
19 crime.

20 Q And what is the age group of the people that you
21 interviewed during those forensic interviews?

22 A The youngest is three and the oldest, as far as
23 definition of a child, 17, though I use forensic interviews
24 with adults that were developmentally delayed.

1 Q Okay. In your experience with conducting those
2 interviews, was delayed reporting more or less common?

3 A It is much more common.

4 MS. O'HAYON - Thank you. I have no further
5 questions.

6 THE COURT - You may cross examine.

7 MS. INZERILLO - Thank you, Your Honor. May it
8 please the Court.

9 THE COURT - Yes, ma'am.

10 CROSS EXAMINATION

11 BY MS. INZERILLO -

12 Q Ms. Caldwell, do you have any specific information
13 about this case?

14 A No, I have no information about this case.

15 Q Did you conduct a forensic interview in this case?

16 A I did not interview this child.

17 MS. INZERILLO - Your Honor, I have no further
18 questions.

19 THE COURT - Re-direct?

20 MS. O'HAYON - No, Your Honor.

21 THE COURT - You may step down. Thank you, ma'am.
22 Wish to excuse the witness?

23 MS. O'HAYON - Please, Your Honor.

24 THE COURT - Any objections?

25 MS. INZERILLO - No, Your Honor.

ALYSSA PRUITT - DIRECT BY MS. O'HAYON

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1 THE COURT - You're free to go if you'd like,
2 ma'am. Thank you very much for coming. The State may call
3 its next witness.

4 MS. O'HAYON - The State calls Alyssa Pruitt.

5 THE COURT - Come forward, please, to be sworn.
6 (Pause) Come forward, please, ma'am, and be sworn. Thank
7 you.

8 ALYSSA PRUITT, AFTER BEING FIRST DULY SWORN,
9 TESTIFIES AS FOLLOWS -

10 THE COURT - Once you're seated, please state your
11 name for me.

12 MS. PRUITT - My name is Alyssa Pruitt.

13 THE COURT - Counselor, your witness.

14 MS. O'HAYON - Thank you, Your Honor.

15 THE COURT - Yes, ma'am.

16 DIRECT EXAMINATION

17 BY MS. O'HAYON -

18 Q Where do you work?

19 A Pace's River Apartments.

20 Q And what is your job there?

21 A I'm the assistant manager.

22 Q How long have you been working there?

23 A I've been there since 2010. I started as a leasing
24 consultant.

1 Q Do you remember somebody by the name Brenda and
2 Orlando Coleman living at Pace's River?

3 A Yes.

4 Q And do you remember approximately what the dates were
5 that they were living there?

6 A They lived there beginning in 2011.

7 Q Do you remember which month?

8 A I think it was May?

9 Q If you don't remember, you can just say that you don't
10 remember but ---

11 A Don't remember specifically, yes.

12 Q Okay, is there something you have to help you refresh
13 your recollection? Would looking at something help you?

14 A A lease contract.

15 MS. O'HAYON - May I approach the witness, Your
16 Honor?

17 THE COURT - You may.

18 Q If you could just take a look at that and when your
19 recollection is refreshed, if you could please look up
20 answer the question of when they moved in, when they moved
21 out.

22 A The move-in date was May 13th, 2011, and per the
23 statement of deposit account, they moved out November 14th,
24 2011.

1 Q And do you remember what apartment they were living
2 in?

3 A 4-█████.

4 Q What does that mean, 4-█████?

5 A Building 4, apartment █████. So the actual physical
6 address would've been 1807 Pace's River Avenue, Apartment
7 █████.

8 Q And Pace's River, is that located in Rock Hill?

9 A Yes.

10 Q Is that within York County, South Carolina?

11 A Yes.

12 MS. O'HAYON - Thank you. I have no further
13 questions. If you could please answer any questions
14 defense counsel may have.

15 THE COURT - You may cross examine.

16 MS. INZERILLO - Your Honor, we have no questions
17 for this witness.

18 THE COURT - You may step down, ma'am. Thank you
19 very much. Do you wish to excuse this witness?

20 MS. O'HAYON - Please, Your Honor.

21 THE COURT - Any objections?

22 MS. INZERILLO - No, Your Honor.

23 THE COURT - You're free to go at this time.

24 Thank you, ma'am. State may call its next witness.

1 MS. JOYNER - Thank you, Your Honor. The State
2 calls B. P. [REDACTED].

3 THE COURT - Come forward, sir, and be sworn,
4 right here at the clerk. Right here, sir. Right here.

5 B. P. [REDACTED], AFTER BEING FIRST DULY SWORN,
6 TESTIFIES AS FOLLOWS -

7 THE COURT - State your name, please.

8 MR. PATTERSON - B. P. [REDACTED].

9 THE COURT - Thank you. Counselor, your witness.

10 MS. JOYNER - Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MS. JOYNER -

13 Q B. P. [REDACTED], can you tell me how old you are, please?

14 A 15.

15 Q What's your date of birth?

16 A [REDACTED], 1999.

17 Q And what is your mother's name?

18 A Delissa Patterson.

19 Q And is your sister MINOR [REDACTED]?

20 A Yes.

21 Q Is she your older sister or younger sister?

22 A Younger sister.

23 Q How much older are you than she?

24 A (No response)

25 Q You're 15 and she's 9. Is that right?

1 A (Indicating yes)

2 Q So about six years?

3 A (Indicating yes)

4 MS. JOYNER - You have to say yes or no.

5 THE COURT - Sir, you have to answer verbally.

6 A Yes, ma'am.

7 Q Now, I want to ask you to kind of think back, and back
8 in 2010, 2011, 2012, do you remember living at Pace's River
9 Apartments in Rock Hill?

10 A Yes.

11 Q Okay. And who lived with you at Pace's River
12 Apartments?

13 A Me, my mom, my sister and my brother and my aunt and
14 my other three cousins.

15 Q Did your aunt and your three cousins live there the
16 whole time or just part of the time?

17 A The whole time.

18 Q Are you sure it was the whole time?

19 A (Indicating yes)

20 COURT REPORTER - I need a verbal answer.

21 THE COURT - Sir, you have to answer verbally.

22 You have to say an answer; you can't shake your head or nod
23 your head.

24 A Yes, sir.

1 THE COURT - So say either yes or no, but say
2 something. She's taking that down on a tape, and she can't
3 record you shaking your head, so please answer verbally.
4 Okay?

5 A Okay.

6 THE COURT - Okay.

7 Q Now, while you were living at Pace's River Apartments,
8 did you ever meet a person named OJ?

9 A Yes.

10 Q And did you become friends with OJ?

11 A Yes.

12 Q How did -- do you remember how you met him?

13 A It was -- it was at the pool.

14 Q At the pool?

15 A Yes.

16 Q And did you -- do you know what OJ's real name is?

17 A Owen.

18 Q Okay. I want you to look around the room and can you
19 tell me if you see in the room -- okay, do you see in the
20 room the person you know as OJ?

21 A Yes.

22 Q Okay. Can you tell me where that person is?

23 A Right there.

24 Q Okay. Are you pointing -- can you please tell me what
25 the person you're pointing out is wearing?

1 A White shirt and a tie.

2 Q Okay.

3 MS. JOYNER - Your Honor, if the record can
4 reflect he's identified the defendant.

5 THE COURT - The record shall so reflect. You may
6 proceed.

7 MS. JOYNER - Thank you, Your Honor.

8 Q And so you said you met him at the pool. Is that
9 right?

10 A Yes.

11 Q And you guys became friends. Is that right?

12 A Yes.

13 Q Would you hang -- would you spend time together around
14 the complex?

15 A Yes.

16 Q Was OJ older than you or the same age?

17 A Older.

18 Q Older. So do you remember how old about approximately
19 you were when you were friends with him?

20 A 12.

21 Q 12? Okay. And what kind of things would you guys do,
22 just walk around the complex, hang out?

23 A Yes.

24 Q Okay. Did you ever go to the pool together?

25 A Yes, whenever it was open.

1 Q Okay. Did they have like basketball courts or tennis
2 courts or anything like that in the complex?

3 A They had a tennis court.

4 Q Did kids like to hang out at the tennis courts?

5 A Yes.

6 Q Did you guys ever hang out in the tennis courts?

7 A Yes.

8 Q Were there other places that you would hang out around
9 the complex?

10 A In the field and park.

11 Q There was a park there as well?

12 A (Indicating yes)

13 Q Did you guys ever spend any time in stairwells or the
14 breezeways?

15 A Yes.

16 Q Okay. Now, you said your cousins lived there as well?

17 A Yes.

18 Q Could you give me the names of your cousins?

19 A Arkevious, Amazhanee and Sanadia.

20 Q Okay, who was the oldest amongst those three?

21 A Amazhanee.

22 Q Amazhanee. Is Amazhanee a girl or a boy?

23 A Girl.

24 Q Okay. How old is she?

25 A I think 10 or 11.

1 Q Right currently 10 or 11?

2 A Or 12 ---

3 Q I'm sorry?

4 A 12.

5 Q 12? That's her current age?

6 A Yes.

7 Q So she's younger than you?

8 A Yes.

9 Q Are all of your cousins that you mentioned younger
10 than you? Are any of them the same age as you?

11 A They're younger.

12 Q Okay. So Amazhanee's the oldest and then Arkevious,
13 is he the next?

14 A Yes.

15 Q And that's a boy. Correct?

16 A (Indicating yes)

17 Q And so the youngest is named ---

18 A Sanadia.

19 Q Do you know how young Sanadia is?

20 A No, ma'am.

21 Q Okay. So was it correct then that you were the oldest
22 kid in the house?

23 A Yes.

24 Q Okay. And did -- was [REDACTED] closer in age to the
25 cousins than you?

- 1 A Yes.
- 2 Q Did she play with the cousins?
- 3 A Yes.
- 4 Q Did she ever go outside with the cousins?
- 5 A Yes.
- 6 Q Okay. Were there ever times that you were also
- 7 outside?
- 8 A Yes.
- 9 Q Okay. Did you spend a lot of time with OJ at Pace's
- 10 River?
- 11 A Yes.
- 12 Q Okay. At some point did OJ move out?
- 13 A Yes.
- 14 Q And did you see him again after he moved out?
- 15 A Around the time when we moved -- we was about to move
- 16 out, so it was like a -- at the end of the -- beginning of
- 17 summertime.
- 18 Q Okay. So around the time that you were going to move
- 19 out you saw him again?
- 20 A (Indicating yes)
- 21 Q Where did you see him?
- 22 A He was with a friend; they was walking around.
- 23 Q Walking around where?
- 24 A I think they was walking towards the pool.
- 25 Q At Pace's River?

B. P. [REDACTED] - DIRECT BY MS. JOYNER

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1 A (Indicating yes)

2 Q Okay, you have to say or no.

3 A Yes, ma'am.

4 Q Okay, thank you. Now, going back to those times where
5 you would be outside walking around with OJ, did that
6 happen a lot or a little bit?

7 A A little bit.

8 Q Okay. And when the time -- so did you spend a lot of
9 time with OJ or a little bit of time with OJ?

10 A A lot of time.

11 Q Okay. So -- let me say hanging out. When you were
12 hanging out with OJ, would you hang out inside your
13 apartment or would you hangout outside?

14 A Outside.

15 Q Okay. And did -- were there ever times where your
16 sister was around OJ?

17 A Yes.

18 Q Okay. Now, back during that period of time, did you
19 ever see anything that made you concerned about OJ behaving
20 any particular way towards your sister?

21 A No.

22 Q Okay. Now, B. P. [REDACTED], I'm going to ask you a difficult
23 question. Okay? Back when you lived at Pace's River, did
24 MINOR [REDACTED] -- do you ever remember a time that MINOR [REDACTED] tried
25 to tell you something about OJ being inappropriate?

- 1 A Yes.
- 2 Q I'm sorry?
- 3 A Yes.
- 4 Q Okay. Do you remember telling your mom before -- when
- 5 the case first started, when the police were first called,
- 6 that you didn't remember that?
- 7 A Yes.
- 8 Q Was that true when you told your mom that?
- 9 A Yes.
- 10 Q It was -- I'm sorry?
- 11 A Yes.
- 12 Q It was true, you didn't remember. Is that correct?
- 13 A Yes.
- 14 Q Okay. Do you -- do you remember MINOR [REDACTED] tried to
- 15 tell you something?
- 16 A Yes.
- 17 Q Do you remember what words she used?
- 18 A She kept trying to -- she kept calling out my name,
- 19 but I wouldn't listen.
- 20 Q She -- I'm sorry, say again.
- 21 A She kept calling out my name, but I wouldn't listen.
- 22 Q Okay. Where -- where was this?
- 23 A We were walking home. It was during nighttime and we
- 24 was coming back to the apartment complex.
- 25 Q From where?

B. P. [REDACTED] - DIRECT BY MS. JOYNER

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1 A The tennis court.

2 Q Okay. And do you remember what -- did she say
3 anything to you besides your name?

4 A Not that I could hear of.

5 Q I'm sorry?

6 A Not that I could hear of. I didn't -- all she -- all
7 I heard was her calling my name.

8 Q Okay, if -- okay, if you don't -- if she didn't really
9 saying anything, B. P. [REDACTED], how do you know this was
10 something she was trying to tell you about OJ?

11 A Because she kept mentioning his name, but I just
12 wasn't listening at the time.

13 Q So she was saying his name to you when you weren't
14 listening.

15 A (Indicating yes)

16 COURT REPORTER - He needs to answer verbally.

17 A Yes, ma'am.

18 Q Now, I want to kind of fast-forward. When you moved
19 from Pace's River, you moved somewhere different than -- at
20 some point did you move to apartments at Cedarview?

21 A Yes, ma'am.

22 Q Okay. Do you remember when that was?

23 A During the summertime.

24 Q Okay. Were you living at Cedarview at the time that
25 your mom called the police?

1 A Yes.

2 Q Okay. And back when you moved into the apartment --
3 or let me ask you this. After you moved from Pace's River,
4 did you see OJ?

5 A No, ma'am.

6 Q When you moved into the apartments at Cedarview, did
7 you see OJ?

8 A Yes.

9 Q Okay. Were you glad to see him?

10 A Yes.

11 Q Okay. And did you guys strike up your friendship
12 again?

13 A Yes.

14 Q Okay. How long -- well, let me ask you this. When
15 you moved to Cedarview, did you notice anything different
16 about MINOR [REDACTED]?

17 A Yes.

18 Q What did you notice about her?

19 A Any time that OJ would be waiting on me outside, she
20 would walk -- run into the other run, just stand there. I
21 kept asking her why she was standing there, but she just
22 said she didn't want to go in the other room.

23 Q Okay, I want to -- you do a little bit of mumbling.

24 Okay? So I want you to speak loud. Okay.

25 A She would go ---

1 Q So tell me again. What did you observe -- was O --
2 what you were talking about -- was OJ in your house?

3 A Yes.

4 Q Okay. How many times did OJ come into your house?

5 A Twice.

6 Q Twice. Now, at both times did you observe her have a
7 bad reaction?

8 A Yes.

9 Q Okay, tell me -- tell the jury again, what was that
10 reaction?

11 A She would go into my mom's room, but it wasn't a bed
12 in there. She was just standing there, and I would wander
13 why she was just standing there in the dark in a dark room,
14 and she said she didn't want to come out.

15 MS. JOYNER - Thank you very much. Please answer
16 any questions these nice ladies have for you. Okay?

17 MR. PATTERSON - Yes, ma'am.

18 THE COURT - You may cross examine.

19 MS. INZERILLO - Thank you, Your Honor. May it
20 please the Court.

21 THE COURT - Yes, ma'am.

22 CROSS EXAMINATION

23 BY MS. INZERILLO -

24 Q Good morning, B. P. [REDACTED].

25 A Good morning.

1 Q My name is Melissa, and I'd like to ask you some
2 questions, too. Is that okay?

3 A Yes, ma'am.

4 Q Okay. You met OJ at the pool. Is that what you said?

5 A Yes, ma'am.

6 Q Okay. And you met him in the summertime when you
7 lived at Pace's River?

8 A Yes, ma'am.

9 Q Okay. And you and he were friends. Is that right?

10 A Yes, ma'am.

11 Q Okay. And you would kind of -- you had your cousins
12 living in the house with you. Is that right?

13 A Yes, ma'am.

14 Q Okay, and they were all younger than you?

15 A Yes, ma'am.

16 Q And MINOR [REDACTED] is younger than you?

17 A Yes, ma'am.

18 Q Okay. So you're kind of the big younger as they all
19 kind of hang around with you. Is that right?

20 A Yes, ma'am.

21 Q Okay. The -- Ms. Erin asked you about the time that

22 MINOR [REDACTED] -- you tried to remember when MINOR [REDACTED] tried to
23 tell you something. Do you remember that?

24 A Yes, ma'am.

25 Q Okay. And tell me again what you remember about that.

1 A She would call out my name multiple times and mention
2 OJ's most of the time.

3 Q Okay. You don't remember her telling you anything
4 more than that.

5 A Yes, ma'am.

6 Q Okay. And when you -- did you talk to a detective in
7 this case?

8 A No, ma'am.

9 Q Okay. At any point did you talk to the detective in
10 this case?

11 A No, ma'am.

12 Q So the only people you talked to was these nice ladies
13 right here?

14 A Yes, ma'am.

15 Q Okay. Did you talk to your mom about this case?

16 A Yes, ma'am.

17 Q Okay. And did you tell your mom that MINOR [REDACTED] had
18 never told you anything?

19 A No, ma'am.

20 Q You didn't tell your mom that.

21 A (No response)

22 Q Did you tell your mom that she did you something?

23 A Yes, ma'am.

24 Q Okay. When did you tell your mom that?

25 A It was around when we just got moved into Riverview.

1 Q Okay. And -- but you couldn't remember anything that
2 she said.

3 A Yes, ma'am.

4 Q Okay. The -- your mom never told you -- or took you
5 to meet with any detectives or anything like that?

6 A No, ma'am.

7 MS. INZERILLO - Your Honor, I have no further
8 questions.

9 THE COURT - Re-direct?

10 RE-DIRECT EXAMINATION

11 BY MS. JOYNER -

12 Q B. P. [REDACTED], just to clarify, did you originally tell your
13 mother you did not remember MINOR [REDACTED] telling you anything?

14 A Yes, ma'am.

15 Q Do you remember when the first time you told your
16 mother that you did remember?

17 A Yes, ma'am.

18 Q When was that?

19 A It was in the living room. It was around when
20 MINOR [REDACTED] was acting funny, she wouldn't come out of the
21 room or nothing.

22 Q Are you sure you told your mom all the way back then?

23 A (Indicating yes) That's the only time I remembered it.

24 MS. JOYNER - No further questions.

25 THE COURT - Does the defense wish to re-cross?

B. P. [REDACTED] - RE-CROSS BY MS. INZERILLO

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1 MS. INZERILLO - May I beg the Court's indulgence
2 for one moment, Your Honor?

3 THE COURT - Yes, ma'am.

4 RE-CROSS EXAMINATION

5 BY MS. INZERILLO -

6 Q B. P. [REDACTED], at -- I'm old and I have a little hard of
7 hearing (sic) -- and I need you to say one more time what
8 you just told her about when you said that you first
9 remember telling somebody about what MINOR [REDACTED] tried to tell
10 you.

11 A It was in the living room. We had just got moved in,
12 and OJ was sitting right there in the living, but we were
13 about the leave to go back to the other apartment complex
14 next door, and I told mom that MINOR [REDACTED] was acting funny;
15 she wouldn't come out of her -- my mother's room.

16 Q Okay. And then that's when you told your mom she
17 tried to tell you something ---

18 A Yes, ma'am.

19 Q --- earlier on. Okay. And that's when you had your
20 suspicion.

21 A Yes, ma'am.

22 MS. INZERILLO - Okay.

23 THE COURT - All right, sir, you may step down.

24 Thank you very much.

25 MR. PATTERSON - You're welcome.

1 THE COURT - Wish to excuse the witness?

2 MS. O'HAYON - Please, Your Honor.

3 THE COURT - Any objections?

4 MS. INZERILLO - No, Your Honor.

5 THE COURT - You're free to go, sir. The State

6 may call its next witness.

7 MS. O'HAYON - State calls Delissa Patterson.

8 THE COURT - Come forward, please, ma'am.

9 DELISSA PATTERSON, AFTER BEING FIRST DULY SWORN,

10 TESTIFIES AS FOLLOWS -

11 THE COURT - Once you're seated, please state your
12 name, ma'am.

13 MS. PATTERSON - Delissa Latrell Patterson.

14 THE COURT - Thank you. Counselor, your witness.

15 MS. O'HAYON - Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MS. O'HAYON -

18 Q Delissa, is your daughter MINOR [REDACTED] ?

19 A Yes.

20 Q And how old is MINOR [REDACTED] ?

21 A She's nine.

22 Q And where are you living right now?

23 A I live in Lancaster, South Carolina.

24 Q Where were you living in 2013?

1 A I lived at Cedarview Apartments off of Riverview in
2 Rock Hill, South Carolina.

3 Q And where did you live in 2011 and 2012?

4 A I lived at Pace's River in Rock Hill.

5 Q How old was MINOR in 2011?

6 A She was six.

7 Q And how old was she in 2012?

8 A She turned 7.

9 Q Who all was living in the apartment with you at Pace's
10 River in 2011 to 2012?

11 A It was me, my son, B. P., and MINOR, and I have a
12 little boy. His name's Braydon and then my sister and my
13 two nieces and my nephew.

14 Q Did your sister and your niece and nephew, did they
15 always live there with you at Pace's River?

16 A No, they did not. We moved in in August of 2010, and
17 they did not come and move in until May of 2011.

18 Q And between the time of August, 2010 to May 2011, was
19 MINOR allowed to go outside and play?

20 A No. At that time when we moved in, they were still
21 going to school in Fort Mill, so I didn't immediately
22 transfer them in, and we didn't know any kids in the
23 neighborhood. B. P. would sometimes go out by himself
24 because he knew more of the kids there, but MINOR didn't

1 know any of the little girls that played over there, so she
2 was never allowed outside until my nieces moved in.

3 Q Okay, so May of 2011 -- is that your sister that moved
4 in and your nieces and nephews.

5 A And my nieces, yes.

6 Q And that's when MINOR was allowed to start going
7 outside to play?

8 A Yes, yes.

9 Q And who all would go outside and play together?

10 A My oldest son, my nephew, Arkevious, and Amazhanee,
11 Sanadia and MINOR.

12 Q When you said your older son, is that ---

13 A B. P.

14 Q B. P. When did you move out of Pace's River?

15 A June 15th, 2012.

16 Q And did you immediately move into Cedarview Apartments
17 from there?

18 A No, ma'am.

19 Q Okay, then when did you move into Cedarview
20 Apartments?

21 A July 1st, 2013.

22 Q When you lived in Cedarview Apartments starting in
23 July 1st, 2013, did you notice anything about MINOR that
24 summer?

1 A Not immediately. We had lived in a hotel prior to
2 moving there, and we were there for a significant amount of
3 time, so when I got the news that the apartment was mine,
4 it was a pretty joyous occasion for us, because we had been
5 staying in a hotel, so um the first couple of days there
6 she was overjoyed; it was great; we were in our own place,
7 and then all of a sudden she left to go to her grandparents
8 house in Clover and um, I kind of knew something was wrong
9 when she left, but I -- I couldn't understand it, she just
10 changed all of a sudden, and then they brought her back,
11 and the day that they brought her back, it was raining; I
12 remember having to go down to the car to kind of like pull
13 her out of the car, because she was upset, and OJ had
14 pulled up on his bike and he was going upstairs, and she
15 was hysterical, and I didn't understand it in my mind. I
16 just kept saying why is she crying? I mean I know she like
17 to be with her grandparents, but she'd never acted like
18 that. So they left and she continued to cry and cry and
19 cry. I could never get her calmed down, so they came back
20 and they picked up her and she ended up going back there
21 for a couple more days, but it kind of threw me, because
22 she had never acted like that. It was supposed to be a
23 good thing, because we'd just moved into a brand new place.

24 Q Okay. You mentioned that OJ was there. Do you
25 remember who OJ was?

1 A Yes.

2 Q Who was OJ to you?

3 A His name is Orlando. He -- at the time when I knew
4 him before he was one of those kids that lived in the
5 neighborhood when we stayed at Pace's River.

6 Q Looking around the courtroom today, do you see the
7 person that you know as OJ?

8 A Yes, ma'am.

9 Q Okay, if you can point him out and describe an article
10 of clothing that he's wearing.

11 A That's him over there in the white shirt and tie.

12 MS. O'HAYON - Let the record reflect that the
13 witness has identified the defendant.

14 THE COURT - It'll so reflect. You may proceed.

15 MS. O'HAYON - Thank you, Your Honor.

16 Q Was that the only thing that you noticed about
17 MINOR was her crying and not wanting to get out of that
18 car that day, or was there anything else that you noticed
19 about her?

20 A My building and the building that OJ and his mom
21 stayed in were probably not a feet apart, and at the time
22 my mom actually lived at the bottom apartment under them,
23 so I could stand on my apartment and if I wanted to yell my
24 mom's name and she could hear me. That's how close we
25 were. And there was a time I was sitting at my mom's and

1 I said, MINOR, go to the apartment and get me a popsicle
2 and she freaked out, and I couldn't understand -- it's just
3 right there, you don't have to go -- it was during the
4 daytime, but she would not move, and me thinking, okay,
5 she's just acting like a brat, never even paid -- never
6 knew why. She would never go outside by herself. She
7 would not step in the front door by herself. She did --
8 she just -- she just changed. She -- at night the boys --
9 my condo was two bedrooms, so the boys slept in one bedroom
10 and MINOR shared a room with me, and at night she would
11 cry in her sleep. Like she would just -- she would cry to
12 the point to where she was waking me up, and I would shake
13 her and I would wake her up, and I would say, baby, what's
14 wrong, and she would just shake her head, she said she had
15 a nightmare and she would go back to sleep. She -- she was
16 really mean. She was aggressive. If I had my little one -
17 - they're five years apart, and just the little slightest
18 thing would set her off. She -- she -- to get off the bus
19 when school started -- it wasn't a long distance for her to
20 get off the bus and walk down to the condo. She would
21 never do that. I would have to meet her at the top of the
22 hill, and all these things would go on, and I never knew
23 what was wrong. I just -- me, I took it, okay, she's
24 getting older, maybe she's going through some changes.
25 Q Okay. Did you ever figure out what was going on?

1 A Not at first. I didn't put two and two together until
2 one night we laid down. It was a Sunday and um ---

3 MS. INZERILLO - Your Honor, I'm going to object.
4 If we can approach just very briefly.

5 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
6 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
7 WHICH WAS NOT REPORTED.)

8 THE COURT - We're going to take a short break at
9 this point in time. I'm going to ask you to step back to
10 the jury room. As always, I'll ask you not to begin any
11 discussions about the case until I've asked you to begin
12 your deliberations. You may retire to the jury room.
13 Thank you very much.

14 (WHEREUPON, JURY EXITS THE COURTROOM)

15 THE COURT - I'll ask defense to express their
16 concerns concerning the possible direction of the
17 testimony.

18 MS. INZERILLO - Your Honor, the nature of my
19 objection, my concern is the witness after describing her
20 perception of the behavior of the child, I believe was then
21 going to link that up with the child's recitation of the
22 alleged abuse by the defendant, and I was afraid that that
23 connection would be improper and so I just wanted to --
24 before we got into that, that bell had been rung, wished to

DELISSA PATTERSON - DIRECT BY MS. O'HAYON

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1 just make the Court aware that we did object to the
2 testimony heading into that direction.

3 THE COURT - All right, State's position?

4 MS. O'HAYON - Beg the Court's indulgence.

5 (Pause) Your Honor, I'm going to withdraw that question.

6 I -- maybe I phrased it in a way that didn't get across
7 what it is that I was trying to get out, so I will rephrase
8 that question and just want to get out that **MINOR** did
9 make a disclosure to her and then she called the police,
10 not necessarily what was said.

11 THE COURT - Well, again, she would not be allowed
12 to report to the jury what was said ---

13 MS. O'HAYON - Right.

14 THE COURT - --- under the rules that we were
15 governed by, and so you might during our break talk to your
16 witness in that regard to be sure we don't have something
17 occur that could result in -- I don't know how it would
18 happen and under what circumstances it would happen, but it
19 could possibly result in a mistrial if it were not done
20 properly. I'm going to give you an opportunity to talk to
21 her about that so that we don't go there.

22 MS. O'HAYON - Thank your, Your Honor.

23 THE COURT - Court will be in recess briefly.

24 MS. INZERILLO - Thank you, Your Honor.

1 THE COURT - Ma'am, you can step down and talk to
2 the attorneys.

3 (WHEREUPON, RECESS TAKEN)

4 THE COURT - Thank you very much. You can be
5 seated. All right, I don't see the witness. You might
6 want to step outside and have her come back in, please.
7 Thank you.

8 (WHEREUPON, WITNESS ENTERS THE COURT)

9 THE COURT - Ma'am, if you would, please, just
10 resume the stand for me.

11 (WHEREUPON, WITNESS RE-TAKES THE STAND.)

12 THE COURT - Thank you. All right, the State
13 ready to proceed?

14 MS. O'HAYON - Your Honor, beg the Court's
15 indulgence just for a moment, please.

16 THE COURT - All right.

17 MS. O'HAYON - All right, Your Honor, ---

18 THE COURT - Ready to proceed?

19 MS. O'HAYON - --- State's ready to proceed.

20 THE COURT - Defense ready?

21 MS. INZERILLO - Yes, Your Honor.

22 THE COURT - Bring the jury in, please.

23 (WHEREUPON, JURY ENTERS THE COURTROOM)

24 THE COURT - All right, the jury's returned to the
25 courtroom. You may resume your examination of the witness.

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1 MS. O'HAYON - Thank you, Your Honor. The State's
2 going to withdraw the last question.

3 Q Delissa, at some point in 2013 did you call the
4 police?

5 A Yes, ma'am.

6 Q Why did you call the police?

7 A To report that MINOR -- that -- a sexual assault.

8 Q And without saying what was said -- without ever
9 saying what was said, did MINOR ever tell you where or
10 when that happened?

11 A Yes.

12 Q Where or when did that happen?

13 A She told me that it happened when we lived at Pace's
14 River. She didn't give me a round-about time, but she told
15 me around the summer of 2011.

16 Q And do you recall your son, B. P., ever trying to
17 tell you that MINOR told you -- told him something
18 inappropriate happened?

19 A I asked him around the same time that I had the talk
20 with her, and at first he said he didn't remember. He
21 actually said that, no, I didn't -- you didn't tell me, and
22 they kind of argued back and forth and um, I asked him
23 again he said he didn't remember.

1 Q You talked a little bit about how MINOR's behavior
2 changed, she was crying in her sleep. Is her behavior
3 still like that today?

4 A No, ma'am. Once everything got started and I found
5 out what was going on, I put her in therapy.

6 MS. INZERILLO - Objection, Your Honor.

7 THE COURT - Objection is?

8 MS. IZERILLO - May we approach?

9 (WHEREUPON, BENCH CONFERNCE WAS HELD IN THE
10 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
11 WHICH WAS NOT REPORTED.)

12 THE COURT - All right, you may proceed with the
13 question.

14 MS. O'HAYON - Thank you, Your Honor.

15 Q Can you describe MINOR's behavior as of today?

16 A She's back to being my MINOR. She started a new
17 school this year and um she's laughing, she's smiling. She
18 recently started playing softball, and she's really good at
19 it. She um -- she has her moments, but she's my baby
20 again, and she's my MINOR.

21 (WHEREUPON, WITNESS CRYING DURING HER ANSWER)

22 MS. O'HAYON - I have no further questions.
23 Please answer any questions these ladies have for you.

24 THE COURT - You may cross examine.

1 MS. INZERILLO - May it please the Court, Your
2 Honor.

3 THE COURT - Yes, ma'am.

4 CROSS EXAMINATION

5 BY MS. INZERILLO -

6 Q Ms. Patterson, you lived at Pace's River for a couple
7 of years, I think between 2010 and 2012?

8 A Yes, ma'am.

9 Q Okay. And you reported this to Rock Hill PD in 2013?

10 A Yes, ma'am.

11 Q And your recollection was that you -- the timeframe
12 was in the summer of 2011 ---

13 A Yes, ma'am.

14 Q --- that it allegedly happened. Okay. The -- the --
15 your nieces and nephews, your sister's children, lived with
16 you while you lived at Pace's River.

17 A Yes.

18 Q Okay. And they lived with you for the whole time or
19 part of the time that you lived at Pace's River?

20 A They -- part of the time.

21 Q Part of the time. And you still keep in contact with
22 your sister?

23 A Yes, she's here.

24 Q Did -- and those nieces and nephews that you refer to
25 are Amazhanee, Sanadia and Arkevious. Is that right?

1 A Yes.

2 Q Okay. I just wanted to make sure we're all talking
3 about the same group of people. And you indicated that
4 **MINOR** was allowed to go outside and play once those
5 cousins moved in.

6 A (Indicating yes)

7 COURT REPORTER - She needs to answer verbally.

8 A I'm sorry. Yes, ma'am.

9 Q Okay, I'm sorry. And you described moving away from
10 Pace's River and moving to Cedarview. Is that right?

11 A Yes, ma'am.

12 Q Okay. And I know there was -- I think a stop in
13 between, but eventually moved to a new apartment complex.

14 A Yes, ma'am.

15 Q Mr. -- Orlando already lived there when you guys moved
16 in. Is that right?

17 A Yes, ma'am.

18 Q And when -- you described her -- **MINOR**'s behavior
19 that you noticed.

20 A Yes.

21 Q Is that right? You never indicated to Detective
22 Thomas or anything that you noticed any of that behavior
23 when you lived at Pace's River.

24 A No. No, ma'am.

1 Q Okay. And you spoke to your son, B. P. , about this
2 situation. Is that right?

3 A Yes, ma'am.

4 Q Okay. And initially he indicated that he -- and I get
5 the impression it was like a sibling argument, no, you
6 didn't tell me, yeah you did, that kind of situation.

7 A Yes, ma'am.

8 Q I'm sure you hear it all the time being a mom.

9 A Yes, ma'am.

10 Q Okay. And then after that he denied saying that she
11 said anything or denied to you that she said anything or he
12 admitted that she something to him?

13 A To me?

14 Q To you.

15 A I only asked him that one time, ---

16 Q Okay.

17 A --- and that time he told me he didn't remember her
18 saying anything to him about it.

19 Q Okay. Has he said anything else to you since then?

20 A No.

21 Q No. Did you make Detective Thomas aware that he had
22 made those comments to you?

23 A Yes.

24 Q Okay.

1 MS. INZERILLO - I have no further questions of
2 this witness.

3 THE COURT - Re-direct?

4 MS. O'HAYON - One moment, Your Honor. No
5 questions, Your Honor.

6 THE COURT - All right, ma'am, you may step down.
7 Thank you very much. State may call its next witness.

8 MS. JOYNER - May we approach for a schedule
9 issue?

10 THE COURT - You may.

11 (WHEREUPON, BENCH CONFERENCE WAS HELD IN THE
12 PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY
13 WHICH WAS NOT REPORTED.)

14 THE COURT - Ladies and gentlemen, I have some
15 scheduling matters I have to take up with the attorneys, so
16 I'm going to ask you to step back to the jury room one more
17 time. Don't begin discussions until I ask you to do so.
18 Thank you very much.

19 (WHEREUPON, JURY EXITS THE COURTROOM)

20 THE COURT - All right, yes, ma'am.

21 MS. JOYNER - Thank you, Your Honor. At this time
22 we'd like to proffer regarding admissibility of the
23 forensic interview under Section 17-23-175. And we'd --
24 I'd call Ms. Puja Amin to the stand.

25 COURT REPORTER - I'm sorry, I didn't hear you.

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1 MS. JOYNER - We call Puja Amin to the stand.

2 THE COURT - The code section again is 17 ---

3 MS. JOYNER - -23-175, Your Honor, and I've got a
4 copy of the statute.

5 (WHEREUPON DOCUMENT HANDED UP TO THE COURT.)

6 THE COURT - Thank you.

7 MS. JOYNER - You're welcome.

8 PUJA AMIN, AFTER BEING FIRST DULY SWORN,

9 TESTIFIES AS FOLLOWS -

10 THE COURT - State your name, please.

11 MS. AMIN - Puja Amin.

12 THE COURT - Thank you. It's your witness,
13 counselor.

14 MS. JOYNER - Thank you, Your Honor.

15 (PROFFERED TESTIMONY)

16 DIRECT EXAMINATION

17 BY MS. JOYNER -

18 Q Can you please tell the Court where you're employed?

19 A Safe Passage.

20 Q And for the Court's information, what is Safe Passage?

21 A Safe Passage is a non-profit agency located here in
22 South Carolina in York County. We assist law enforcement
23 and the Department of Social Services in investigations of
24 child abuse.

1 Q And do you assist by providing interviews of children
2 alleged to be victims?

3 A Yes.

4 Q And what we call forensic interviews?

5 A Yes.

6 Q And what, specifically, is your occupation with Safe
7 Passage?

8 A I'm a forensic interviewer.

9 Q How many years have you been employed as a forensic
10 interviewer?

11 A Almost four years.

12 Q Almost four years?

13 A Almost four years.

14 Q Are all of those years with Safe Passage?

15 A Yes.

16 Q And can you please tell me approximate number of
17 forensic interviews that you've conducted?

18 A I've conducted over three hundred forensic interviews.

19 Q And have you received any specialized training in
20 order to be able to conduct those forensic interviews?

21 A Yes.

22 Q What -- tell the Court, please, what that training is.

23 A It's a forty hour training put on by the National
24 Child Protection Agency. It involves courses such as

1 learning about child abuse dynamics, child development and
2 then also administering the particular interview protocol.

3 Q Okay. And what interview protocols have you been
4 trained in?

5 A RATAAC and Child First.

6 Q Okay. And -- now, back in 2013 which of those
7 protocols were you using at Safe Passage?

8 A RATAAC.

9 Q And if you could just explain briefly what is involved
10 with the RATAAC protocol.

11 A RATAAC is a child interview protocol. It's a neutral,
12 non-leading interview process. RATAAC is an acronym, R-A-T-
13 A-C. The R stands for rapport building. During that
14 portion of the interview we establish competence in the
15 child as well as communications skills. The A stands for
16 anatomical identification, and so we show the child a male
17 and a female -- it's a boy and a girl cartoon drawing, and
18 they do not have any clothes on. And the reason we show
19 the child that is we want to get an idea of what the child
20 calls particular body parts, because we don't want to
21 assume they use adult language; that way I fully understand
22 what the child's saying and the child fully understands the
23 interviewer. The T stands for touch inquiry, so if the
24 child does make a disclosure, -- sorry - touch inquiry is
25 we talk about appropriate and inappropriate touches. And

1 then abuse scenario. If the child makes a disclosure, we
2 sort of gain detail on what happened and the child says
3 happened and their reality of what happened. And then
4 closure is thanking the child for coming, respectfully
5 ending the interview and reviewing safety strategies.

6 Q Now, are there guidelines that are set for the
7 interview?

8 A Yes.

9 Q And are the children informed of those guidelines?

10 A Yes.

11 Q And kind of what would you tell a child in order to
12 inform them of the guideline?

13 A The child's made aware of the camera in the room and
14 the purpose of it. The interviewer also elicits a promise
15 from the child to tell the truth while they're actually in
16 the interview room and talking to the interviewer.

17 Q Now, you mentioned the camera in the room. Are the
18 interviews recorded?

19 A Yes.

20 Q Is there anybody else that's allowed to be in the room
21 while you conduct the interview?

22 A No.

23 Q Is there anybody else that's allowed to observe from
24 another room?

25 A Yes.

1 Q And who would be allowed to observe, just in general,
2 from another room?

3 A The investigating party.

4 Q Okay. And kind of going back to explain the
5 competency you mentioned in RATAAC, why is it important to
6 take steps to establish a child's competency?

7 A We want to make sure that the child's fully
8 understanding what the interviewer is asking and that
9 they're telling us to their competency level what they can,
10 so we establish competency; it's really important during
11 the interview.

12 Q Now, going back to September 24th of 2013, on that day
13 did you conduct a forensic interview of MINOR [REDACTED]?

14 A Yes.

15 Q Do you remember how old MINOR [REDACTED] was on the
16 date of the interview?

17 A She was eight.

18 Q Okay. And who -- do you remember who referred her for
19 that interview?

20 A Yes, Detective Ryan Thomas from Rock Hill PD.

21 Q Okay. And the nature of the allegations from which
22 she was referred ---

23 A Yes.

24 Q --- for sexual abuse?

25 A Yes.

1 Q Okay. Was her interview audio -- audio and video-
2 recorded?

3 A Yes.

4 Q And in conducting this interview, did you adhere to
5 the RATAC protocol?

6 A Yes.

7 Q Okay. And again in the RATAC protocol, if you could
8 explain again sort of the format of the questioning that
9 you would ask her - or that you did ask her.

10 A Typically it's open-ended, neutral questions. We want
11 to learn about the child's reality of what has happened in
12 an unbiased way.

13 Q And did MINOR, in fact, make a disclosure to you?

14 A Yes.

15 Q Okay. And was all that captured on the audio and
16 video of the interview?

17 A Yes.

18 Q Okay. And, again, you testified that when MINOR
19 was interviewed she was eight. In your opinion did she
20 appear competent ---

21 A Yes.

22 Q --- for purposes of the interview?

23 A Yes.

24 Q Did she appear to be age appropriate?

25 A Yes.

PUJA AMIN - DIRECT BY MS. JOYNER

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1 Q Were you able to assess her knowledge of anatomy?

2 A Yes.

3 Q Ms. Amin, I'm showing you what's been marked for
4 exhibit purposes as State's Exhibit 3. Do you recognize
5 State's Exhibit 3?

6 A Yes.

7 Q Is that a copy of the forensic interview that you
8 conducted with MINOR on September 24th of 2013?

9 A Yes.

10 Q Other than some agreed upon redactions between the
11 State and the defense, is (sic) this represent a full and
12 accurate -- is this a full and accurate reproduction of the
13 interview that you conducted?

14 A Yes.

15 MS. JOYNER - Your Honor, for purposes of this
16 hearing, I'd offer State's Exhibit 3 into evidence?

17 THE COURT - All right, any objection to it being
18 marked for identification purposes for this hearing?

19 MS. INZERILLO - No, Your Honor.

20 THE COURT - All right, you may mark it.

21 (WHEREUPON, DOCUMENT MARKED FOR IDENTIFICATION
22 PURPOSES AS STATE'S EXHIBIT NUMBER 3.)

23 THE COURT - How long is the recording?

24 MS. O'HAYON - Your Honor, I want to say it's 25
25 minutes.

1 THE COURT - Okay.

2 (WHEREUPON, VIDEO IS PLAYED FOR THE COURT.)

3 MS. JOYNER - There's nothing else substantive
4 beyond that. If you could please bring up the lights.
5 I don't have any further questions on this proffer.

6 THE COURT - All right. Defense wish to offer any
7 evidence or wish to make argument?

8 MS. INZERILLO - Your Honor, I can cross examine
9 the witness just on a few points if the Court would allow
10 or ---

11 THE COURT - You may.

12 MS. INZERILLO - --- assist in any argument, Your
13 Honor.

14 THE COURT - You may, yes.

15 MS. INZERILLO - Just for the record.

16 CROSS EXAMINATION

17 BY MS. INZERILLO -

18 Q Ms. Amin, when you interviewed MINOR, you --
19 initially when you asked her about the allegations, she
20 indicated she didn't want to talk with you about it. Is
21 that right?

22 A Yes.

23 Q Okay. And then when -- immediately after that you
24 told her that your job was to make children feel safe and
25 all of that; is that right?

1 A Yes.

2 Q Okay. And then when she -- you began to talk with her
3 about the allegation, you asked her a series of questions
4 about -- and I apologize if I get your language wrong --
5 but essentially you say he -- who touched you on your
6 vagina; is that right; and she said OJ. Is that right?

7 A Yes.

8 Q And then you said, did he touch you on the outside or
9 the inside of your clothing, and she gave an answer, and
10 then after that you said, on the inside or the outside of
11 your vagina. Is that right?

12 A I believe I mentioned on the inside or outside of your
13 underwear in between that.

14 Q Okay. And then after that, on the outside or inside
15 of the vagina and she said -- and she answered your
16 question, outside or inside. Is that right?

17 A Yes. (Indicating yes)

18 Q She never gave another possible third answer.

19 A Right.

20 Q Okay. And it was only with that list of questions
21 that she gave any -- any sort of details about the
22 allegation. Is that right?

23 A Yes.

24 Q After that, when you leave -- well and -- when she's
25 talking with you about the two allegations, she tells you

1 that there are other children there, like I think brother
2 and some cousins. Is that right?

3 A Yes.

4 Q Okay. And you don't ask her anything else about
5 whether they are seeing it, in the vicinity, anything like
6 that?

7 A No.

8 Q Okay. When you leave the room and come back in, your
9 next set of questions take a more open-ended form in terms
10 of how did he touch you? Is that correct?

11 A Can you ask that question another way?

12 Q Sure. At some point in the tape you leave and then
13 you come back in the room.

14 A (Indicating yes)

15 Q All right, so after that, you -- when you come back in
16 the room, you ask her another set of questions where you
17 say how did he do this, how did he put his -- I don't want
18 to misrepresent what you said -- but how did he touch you
19 this way, how did he put his fingers there, and she cannot
20 give you any details; she says I don't remember or she's
21 unable to give you details. Is that correct?

22 A Yes.

23 Q Okay.

PUJA AMIN - RE-DIRECT BY MS. JOYNER

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1 MS. INZERILLO - Your Honor, that would be the
2 only cross examination I have, but I do have an argument on
3 that.

4 THE COURT - All right, any further questions from
5 the State?

6 MS. JOYNER - Just briefly.

7 RE-DIRECT EXAMINATION

8 BY MS. JOYNER -

9 Q The questions that Ms. Inzerillo was asking you about,
10 were you asked was it inside or outside, are those in
11 conform -- do those conform with the protocol of RATAAC?

12 A Yes, yes.

13 Q And is it normal during a forensic interview to take a
14 break?

15 A Yes.

16 MS. JOYNER - I have no further questions, Your
17 Honor. I can -- I'm not sure if you want Ms. Inzerillo to
18 argue first or the State to argue regarding ---

19 THE COURT - Why don't let you -- since it's your
20 proffer, I'll let you argue first.

21 MS. JOYNER - Thank you, Your Honor. The State
22 would just submit that this is admissible under South
23 Carolina code annotated 17-23-175. Specifically, as to the
24 requirements of the statute, **MINOR** is clearly under the
25 age of 12 at the time of giving the interview. She is the

1 alleged victim of a criminal act, so for the purposes of C,
2 she meets the definition of child. Per subsection D, this
3 is an investigative interview done at the request of law
4 enforcement, and so we do meet that criteria. Under, you
5 know, subsection (A) (2) we have an audio and visual
6 recording. She's been subject to cross examination,
7 MINOR has, regarding the elements of the offense and the
8 making of the statement. The statement was given in
9 response again to an investigative interview of the child,
10 of MINOR, who meets the definition of child. In
11 regarding (A) (4) the Court's determination on the totality
12 of the circumstances regarding the particularized
13 trustworthiness or guarantee of the trustworthiness, in
14 going to subsection (B) those criteria -- they're (B) (1),
15 whether the statement was elicited by leading questions,
16 Your Honor, I submit that these are not elicited by leading
17 questions. This was conducted according to the RATAC
18 protocol, which does has open-ended questioning. The fact
19 that the child initially said I don't want to talk about
20 it, I don't think renders any question after that leading.
21 You know, the questions of she clearly disclosed that she
22 had been touched on her vagina by her brother's friend OJ
23 and was able to give detail about that, the nature of the
24 touching in non-leading questions. Your Honor, I think a
25 leading question is one that pre-disposes the answer.

1 Simply by asking her a question, was it above your clothes
2 or below your clothes is not leading. The interview was
3 conducted by Ms. Amin, who has been trained in conducting
4 these interviews. She's testified that she's trained in
5 the RATAC protocol and that's what she was working under at
6 that time. I think the statement has internal coherence to
7 it, and, Your Honor, I think it does represent detailed
8 account of the events. She talked about two different
9 incidents. She talks about the apartment complex where she
10 lived. She is able to give the name of the perpetrator,
11 his relationship to her, described the touching and
12 described where on -- in the apartment complex the touching
13 was, and I think that that is a detailed account of the two
14 charged offenses in this case. And so, Your Honor, we
15 would respectfully submit that we have met the requirements
16 under South Carolina Code Section 17-23-175.

17 THE COURT - I'll hear from the defense.

18 MS. INZERILLO - Thank you, Your Honor. May it
19 please the Court. Your Honor, the primary objection by the
20 defense in regards to the admission of this is the framing
21 of the questions in this case or on this video. The stated
22 purpose by Ms. Amin in the RATAC method is to be neutral
23 and open-ended. In the structure of the interview you can
24 see in two parts, segments of the case, the -- it's
25 understandable the child initially does not want to talk

1 about the allegation, but the only way details are elicited
2 are through a series of leading questions. The child when
3 presented with two options only gives one of the two
4 options, so it will be the position of the defense that
5 does make those questions leading. When the child later on
6 is presented with a truly open-ended and neutral question
7 in the form of how did he do this, which according to Ms.
8 Amin, is the stated protocol behind RATAC, she is unable to
9 give that, and I think that lends further credence to the
10 leading nature of the first set of questions. As the
11 primary -- the allegations are primarily elicited through
12 the first set of leading questions and that is the only
13 time the allegations are elicited. Then it's the position
14 of the defense is that the statement is under (B) (1)
15 elicited only by leading questions. There's no other time
16 on the tape in which **MINOR** states any other time OJ did
17 this. On her own she doesn't give her own statement. She
18 only does this and gives the details of the alleged offense
19 in response to those elicited detail questions, and so for
20 that reason, Your Honor, we would object to it.

21 THE COURT - All right. I do find the statement
22 was given in response to questions conducted during the
23 interview and investigative interview of the child, an
24 audio and visual recording has been preserved, that the
25 child has testified in the case and has been subject to

1 cross examination on the elements of the offense and the
2 making of the applicable statement. In determining whether
3 the statement possesses particularized guarantees of
4 trustworthiness, I do not find that the statement was
5 elicited by leading questions. The questions that have
6 been called into question by the defense have to do with
7 whether or not the touching was on the surface of the
8 clothing or whether he put his hands in the clothing and
9 then there was a series of questions like that, but leading
10 questions would be one that suggests an answer. This case,
11 while there's only two choices, asked if the touching was
12 on the outside of the clothing, the inside of the clothing,
13 I can't imagine what another choice would be to be given to
14 a person -- it's either outside or inside. So I don't find
15 just because there's two choices that that makes it a
16 leading question. And I don't find that the questioning
17 did suggest answers to the child being interviewed. I do
18 find that the statement does represent a detailed account
19 of the alleged offense. It has internal coherence, and I
20 do find that the -- that the statement itself should be
21 admitted. Any further matters that the State wishes the
22 Court to take up?

23 MS. JOYNER - Nothing further from the State.

24 Your Honor, I know that things have been a little stop and

1 go. Can I have like a three minute comfort break before we
2 bring the jury back in?

3 THE COURT - Yes, let me see if the defense has
4 anything else you want me to consider or specifically rule
5 on.

6 MS. INZERILLO - I concur with her request, but
7 also I need a chance to speak with the State about any
8 redactions. I wasn't sure if I heard any redaction on that
9 tape.

10 MS. O'HAYON - We did redact something from the
11 tape. There was a statement made by the victim that --
12 something like I didn't tell -- he's done something like
13 this before; my mom told me he's done something like this
14 before, something alluding to the fact that there may have
15 been previous allegations against him. I'm pretty
16 confident that I have muted it. I didn't cut it out, but I
17 think the computer froze at the exact time that that had
18 muted. I think that we should perhaps ask Brandon to look
19 at the computer, because I am really confident that I had
20 not cut it out; I had muted it and it would -- should've
21 just kept going, but I think it froze.

22 THE COURT - All right, why don't we take a minute
23 and you folks work on that.

24 MS. O'HAYON - Thank you.

1 THE COURT - Court will be in recess for a short
2 period of time. Thank you.

3 MS. O'HAYON - Thank you.

4 MS. INZERILLO - Thank you, Your Honor.

5 (WHEREUPON, RECESS TAKEN)

6 THE COURT - Thank you very much. You can be
7 seated. All right, State ready to proceed?

8 MS. JOYNER - The State's ready, Your Honor.

9 THE COURT - Worked out our technical issue?

10 MS. O'HAYON - I think so, Your Honor.

11 THE COURT - Okay. All right, defense ready?

12 MS. INZERILLO - Yes, Your Honor.

13 THE COURT - Bring the jury in. Oh, wait a
14 second. Don't bring the jury in.

15 MS. JOYNER - The way that the redaction was done,
16 is it was a splice where several seconds were cut out, and
17 so I don't know if any jurors will be paying close enough
18 attention to that time to see that, but I would wonder if
19 the Court might ---

20 THE COURT - Why don't I just say that by
21 agreement of counsel a portion of the interview has been
22 taken out?

23 MS. JOYNER - Thank you, Your Honor.

24 THE COURT - All right. Bring the jury in.

25 (WHEREUPON, JURY ENTERS THE COURTROOM.)

1 THE COURT - All right, the record will reflect
2 that the jury has returned to the courtroom. The State may
3 proceed at this time.

4 MS. JOYNER - Thank you, Your Honor. The State
5 calls Puja Amin.

6 THE COURT - Come forward, please, and be sworn.

7 PUJA AMIN, AFTER BEING FIRST DULY SWORN,
8 TESTIFIED AS FOLLOWS -

9 THE COURT - Have a seat, and once seated, please
10 state your name, please.

11 MS. AMIN - My name is Puja Amin.

12 THE COURT - Thank you. Counselor, your witness.

13 MS. JOYNER - Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MS. JOYNER -

16 Q Ms. Amin, where are you employed?

17 A Safe Passage.

18 Q Can you please explain to the jury what Safe Passage
19 is?

20 A Yes. Safe Passage is a non-profit agency located here
21 in York County. We provide assistance to law enforcement
22 and the Department of Social Services in child abuse
23 investigations.

24 Q And, specifically, at Safe Passage, what is your
25 occupation?

1 A I'm a forensic interviewer.

2 Q And what does the term forensic interviewer mean?

3 A A forensic interview is a non-leading, sort of,
4 neutral interview process that we engage in with a child
5 where there are allegations of abuse. We ask questions in
6 a sort of neutral, mostly open-ended way.

7 Q How many years have you been employed as a forensic
8 interviewer?

9 A Almost four years.

10 Q And do you have to have any specialized training in
11 order to do that job?

12 A Yes.

13 Q What specialized training do you possess?

14 A It's a forty-hour course put on by the National Child
15 Protection Agency. The courses range from child abuse
16 dynamics, child development in the actual administration of
17 the interview process.

18 Q And over the course of your four years -- and are all
19 four years at Safe Passage? All of your years of forensic
20 interview experience have been at Safe Passage. Is that
21 correct?

22 A Yes.

23 Q And in your four years at Safe Passage, how many
24 forensic interviews have you conducted?

25 A I've conduct over three hundred forensic interviews.

1 Q Now, is there a particular -- I'm asking for back in
2 2013. Was there a particular format or protocol that you
3 would follow in conducting a forensic interview?

4 A Yes, we utilize the RATAC protocol.

5 Q What is RATAC protocol? Please explain it to the
6 jury.

7 A RATAC is an interview protocol. It's semi-structured.
8 RATAC is an acronym, R-A-T-A-C. The R stands for rapport
9 building. So during that time in the interview with the
10 child, we establish communication, competency levels and
11 comfort. We want to make the child feel comfortable in the
12 interview. The A stands for anatomical identification, so
13 during that time we do an anatomical ID exercise where the
14 child sees a male and a female cartoon drawing without any
15 clothes on, and then identifying, kind of tell the
16 interviewer what they call different body parts so we can
17 be sure that we understand, as well as they understand,
18 because we don't want to assume that they use adult
19 language. The T stands for touch inquiry, so during that
20 time we assess the child's knowledge of appropriate touches
21 and inappropriate touches. The A stands for abuse
22 scenario, so if the child does make a disclosure of an
23 inappropriate touch, the interviewer gathers details
24 surrounding what the child has said, and then the C is sort

1 of closure. So we thank the child for talking with us. We
2 review safety strategies and close the interview out.

3 Q Kind of going back, you talked about competency. Why
4 is it important to assess a child's competency?

5 A We want to be sure that the child fully understands
6 the questions that the interviewer is asking.

7 Q And can you explain to the jury a little bit about the
8 measures that you would take in order to assess competency?

9 A Yes, we often, sort of, observe the child's responses
10 to questions, so if the child is providing age-appropriate
11 responses, responding in a narrative fashion, we can
12 establish a level of competency that way.

13 Q And the formatting of the questioning -- when you're
14 asking the child questions, what type of format are those
15 questions supposed to be?

16 A They typically start at open-ended, neutral, non-
17 leading questions.

18 Q Now, when you begin the interview with the child, do
19 they -- are they given any guidelines to follow during the
20 interview?

21 A Yes.

22 Q And what are those guidelines?

23 A They're made aware of the camera in the room, because
24 the actual interview is video-recorded. They're made aware
25 of why it's in there and the purpose of it. The

1 interviewer also elicits a promise from the child to tell
2 the truth during the interview there in the room with the
3 interviewer.

4 Q When you conduct a forensic interview, other than
5 yourself and the child, is there anybody else in the room?

6 A No.

7 Q Is there anybody else that's able to observe the
8 interview?

9 A Yes.

10 Q And who could -- who would be allowed to observe the
11 interview?

12 A Just the investigating parties.

13 Q Where do they observe the interview from?

14 A In another room through a closed-circuit television.

15 Q Now, back on September 24th of 2013, did you conduct a
16 forensic interview for MINOR [REDACTED]?

17 A Yes.

18 Q Do you remember how old MINOR [REDACTED] was at the
19 time of that interview?

20 A She was eight.

21 Q And do you remember who -- what agency or what
22 individual within that agency referred her for an
23 interview?

24 A Detective Ryan Thomas from Rock Hill PD.

1 Q Was she referred because of allegations of sexual
2 abuse?

3 A Yes.

4 Q You had just testified for the jury about some things
5 that you do, sort of a standard as part of a forensic
6 interview. Did you follow the RATAC protocol in this case?

7 A Yes.

8 Q Did you take steps to assess MINOR s competency?

9 A Yes.

10 Q And did she appear to be competent to you?

11 A Yes.

12 Q Did she appear to be answering questions in a age-
13 appropriate fashion?

14 A Yes.

15 Q In what way -- did you take as part of the RATAC
16 protocol steps in identifying or assessing her knowledge of
17 anatomy?

18 A Yes.

19 Q And ultimately during the course of the forensic
20 interview, did MINOR make a disclosure to you regarding
21 sexual abuse?

22 A Yes.

23 Q Was that done in response to non-leading questions?

24 A Yes.

1 Q And you mentioned earlier a video camera. Was that
2 functional and operational that day?

3 A Yes.

4 Q And did it, in fact, audio and video-record your
5 interview with MINOR ?

6 A Yes.

7 Q I am showing you what's been marked for exhibit
8 purposes as State's Exhibit 3. If you could, please, take
9 a look at that exhibit and tell me if you recognize it.

10 A Yes.

11 Q And how are you able to recognize this?

12 A My signature's on it.

13 Q And what does this disk represent?

14 A That is MINOR's forensic interview.

15 Q MINOR ?

16 A MINOR .

17 Q Now, other than a redaction that was made at the
18 agreement of the parties, does this recording truthfully
19 and accurately reflect your entire interview with MINOR
20 ?

21 A Yes.

22 MS. JOYNER - Your Honor, at this time we'd offer
23 State's Exhibit 3 into evidence and publish it to the jury.

24 THE COURT - Subject to your prior objections?

25 MS. INZERILLO - Yes, Your Honor.

PUJA AMIN - CROSS BY MS. INZERILLO

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1 THE COURT - All right, I'll make the same ruling.
2 I'll admit it. You may publish it.

3 (WHEREUPON, VIDEO IS MARKED INTO EVIDENCE AS
4 STATE'S EXHIBIT NUMBER 3.)

5 THE COURT - Now, ladies and gentlemen of the
6 jury, as it's being played and has been mentioned
7 previously, there has been a redaction. A portion of that
8 recording has been removed, because by agreement of the
9 parties it did not comply with the rules of evidence and
10 should not have been presented, so if you see a place where
11 it appears that it has been edited, it has been for that
12 reason.

13 (WHEREUPON, VIDEO IS PUBLISHED TO THE JURY.)

14 MS. JOYNER - Thank you very much, Ms. Amin. We
15 have no further questions for this witness, Your Honor.

16 THE COURT - All right. You may cross examine.

17 MS. INZERILLO - Thank you, Your Honor. May it
18 please the Court.

19 THE COURT - Yes, ma'am.

20 CROSS EXAMINATION

21 BY MS. INZERILLO -

22 Q Ms. Amin, you were the -- you interviewed **MINOR** on
23 September 24th, 2013. Is that right?

24 A Yes.

25 Q And that was about 18 months ago?

- 1 A Yes.
- 2 Q And that was about -- well, let me put it this way.
- 3 To your knowledge you were the first person to do the
- 4 actual interview of the child. Is that right?
- 5 A I would have to review the entire file. I'm not quite
- 6 sure.
- 7 Q Okay. But you were referred by Detective Thomas in
- 8 your role as forensic interviewer. Is that right?
- 9 A Yes, typically I am the first to do the interview.
- 10 Q Okay. And that's because of your training as a
- 11 forensic interviewer.
- 12 A Right.
- 13 Q Okay. And essentially that training is because you
- 14 know how to talk to children.
- 15 A Right.
- 16 Q And when you met with MINOR that day, she didn't
- 17 appear to you to be angry?
- 18 A No.
- 19 Q Okay. And I believe you indicated that she appeared
- 20 to understand your questions?
- 21 A Yes.
- 22 Q Okay. Her responses I think you said were age
- 23 appropriate?
- 24 A Yes.
- 25 Q And she didn't appear to be fatigued or tired?

1 A No.

2 Q Okay. You didn't have any concerns about any impaired
3 memory on her behalf?

4 A No.

5 Q Now, when you interviewed her, she indicated she was
6 not sure when any -- any of the incidents that she
7 described to you when they happened.

8 A Yes.

9 Q Okay. And she couldn't give you any timeframes or
10 dates or anything like that.

11 A No.

12 Q Okay. She doesn't mention to you being on a scooter
13 or anything like that?

14 A No.

15 Q I think at some point she mentions to you that she's
16 wearing shorts.

17 A Yes.

18 Q Okay. She does describe in her mind that there were
19 two incidents, one that she describes a location, a
20 staircase and a tennis court.

21 A Yes.

22 Q Okay. At one point you are asking her questions about
23 any alleged touching sort of about mid-way through the
24 interview. Do you recall that?

25 A Can you ask that question again?

1 Q Sure. About sort of when you get through the initial
2 part of the questioning where you're talking to her about
3 the ice cream and you're talking about that, you asked her
4 about any of this, and she says she doesn't want to talk
5 about. You recall that?

6 A Right.

7 Q Okay. And then at that point you -- you asked her who
8 touched her. Is that right?

9 A Right.

10 Q Okay. And then there's a series of questions after
11 that where you are eliciting answers in terms of where were
12 you touched, inside or outside. Is that right?

13 A Right, once she indicated something had happened.

14 Q Okay. And the only answers she gave were either
15 inside or outside. Is that correct?

16 A Right.

17 Q You didn't ask her at that point how, how did this --
18 tell me what happened, give me your own details, at that
19 point in the interview. Is that correct?

20 A Right. Right.

21 Q And so at the -- the only recitation of her account of
22 any alleged abuse is your questioning of her, did he touch
23 you on the inside or the outside of your underwear, inside
24 or outside of your vagina. Is that correct?

25 A Right.

1 Q Okay. At a later point in the interview, you leave
2 the room and you come back in. Is that right?

3 A Yes.

4 Q Okay. And that's pretty standard, where you kind of
5 step outside, take a break, maybe touch base with someone
6 who's watching the interview. Is that ---

7 A Yes.

8 Q --- normal? Okay. And you indicated that a forensic
9 interview is partly a law enforcement tool. Right?

10 A Right.

11 Q And so in this case Detective Thomas was watching the
12 interview.

13 A Yes.

14 Q Okay. The -- so when you stepped back in, at that
15 point you did ask her some more open-ended questions, how
16 did he touch you.

17 A Right.

18 Q And she was unable to give you any details.

19 A Right.

20 Q Right? The -- in fact, when you asked her, she was
21 unable to tell you details like, he told her to get into
22 her lap (sic) or into his lap. She didn't ever tell you
23 that.

24 A No.

1 Q Okay. Or that that happened when her brothers and
2 cousin -- her brother and cousins left; they went home or
3 something like that. She never relayed those details.

4 A No.

5 Q Okay. The -- when you asked her to -- in any sort of
6 open-ended way about any incident, she never relayed to you
7 that any of the touching stopped when the brother and the
8 cousins came back; she didn't relay those details to you.

9 A No.

10 Q Okay. And that that was the only time in which he
11 took his out -- out essentially. She never relayed that to
12 you.

13 A No.

14 Q Okay. The -- when -- so the only time that she gives
15 any recitation of facts or any sort of, I guess, quote,
16 unquote, details about anything is when you're kind of
17 walking her along saying, who touched you, did he touch you
18 here, did he put his hand there, that's when she's
19 answering your questions. Is that correct?

20 A Yes.

21 Q Okay. Chronologically, your interview is closer in
22 time to any alleged event than today.

23 A Yes.

1 Q Is that a fair -- okay. The -- when she talks with
2 you, she tells you that her brother is -- at least in the
3 picture there and some cousins. Is that correct?

4 A Yes.

5 Q Now, your job as a forensic interviewer, you can
6 interview all kinds of children. Right? I mean you
7 interview children.

8 A Yes, three to 17 years old.

9 Q Okay. So you can interview any possible alleged
10 victims, but you can also interview child witnesses. Is
11 that right?

12 A Yes.

13 MS. INZERILLO - Okay. I have no further
14 questions, Your Honor.

15 THE COURT - Re-direct.

16 MS. JOYNER - No re-direct, Your Honor.

17 THE COURT - You may step down. Thank you very
18 much. Do you wish to excuse the witness?

19 MS. JOYNER - Yes, sir.

20 THE COURT - Any objections?

21 MS. INZERILLO - No, Your Honor.

22 THE COURT - You're free to leave. Thank you very
23 much. All right, ladies and gentlemen of the jury, it's
24 about 12:30; we'll break for lunch at this time. I'll ask
25 that you be back in the jury room at about 15 minutes until

1 2:30, about 1:45. We should begin shortly thereafter. As
2 always, when you leave the courthouse, same instructions,
3 don't attempt to gather any information about this case;
4 don't listen to, watch or read media reports; don't discuss
5 the case with anyone; don't allow them to discuss it with
6 you, and please report any contact you might have from
7 anyone concerning your participation on the jury. Hope you
8 have a good lunch. Be back at a quarter til 2:00, 1:45.
9 Thank you very much.

10 (WHEREUPON, JURY EXITS THE COURTROOM)

11 THE COURT - For planning purposes, how many
12 additional witnesses from the State?

13 MS. O'HAYON - No, Your Honor.

14 THE COURT - Beg your pardon?

15 MS. O'HAYON - No, Your Honor.

16 THE COURT - You don't have any additional
17 witnesses?

18 MS. O'HAYON - No, Your Honor.

19 THE COURT - Oh, so you're going to rest.

20 MS. O'HAYON - Yes, Your Honor.

21 THE COURT - All right, well, let's go ahead and
22 go over some matters while we can at this point in time.
23 Any motions from the defense?

1 MS. ANDERSON - Yes, Your Honor, at this time on
2 behalf of Mr. Coleman, the defense would move for a
3 directed verdict in this case.

4 THE COURT - That motion would be noted. I do
5 find, however, that there is sufficient evidence to justify
6 the case moving forward to the jury, so the motion would be
7 denied, and of course, in doing so I take the evidence in
8 the light most favorable to the State, the non-moving party
9 and do find that there is evidence sufficient to justify a
10 denial. Now, I do wish to inquire of your client
11 concerning his right to testify in this matter. Has the
12 State informed the defense of any convictions that it might
13 intend to use for impeachment purposes?

14 MS. ANDERSON - Yes, Your Honor, my understanding
15 is that the only conviction that would be subject to that
16 is a magistrate level shoplifting.

17 THE COURT - I see. Okay. Now, if you would,
18 Madam Clerk, please place the defendant under oath for me.

19 (WHEREUPON, THE DEFENDANT, ORLANDO COLEMAN, IS
20 DULY SWORN BY THE DEPUTY CLERK.)

21 THE COURT - Sir, you can be seated. Thank you.

22 THE COURT - Mr. Coleman, at this point in time
23 I'm going to explain to you certain rights that you have.
24 When I finish going over my explanation, if you have any
25 question concerning what I've gone over with you, I'll be

1 more than happy to answer your questions or give you
2 additional information if that's necessary. We have
3 reached the stage of this trial where you have the right to
4 present your defense in this matter. You, in addition to
5 that, always have the right to claim the protections that
6 are given to you by the Fifth Amendment of the United
7 States Constitution. That amendment reads in part that no
8 person can be compelled in a criminal case to be a witness
9 against himself. Now, what that means is that while you
10 have the right to testify in your defense, you also have a
11 right not to testify. You have the right to remain silent,
12 and no one can make you testify in this case. The right to
13 remain silent is a personal right and it's up to you as to
14 whether or not you wish to testify or wish -- whether you
15 wish to exercise the right to remain silent and not
16 testify. I will tell you that if you decide to testify,
17 that your testimony would be governed by the same rules
18 that govern any other witnesses' testimony. You would be
19 examined by your attorney and cross examined by the State's
20 attorney, and I will tell you that if you have on your
21 record any convictions involving dishonesty, false
22 statements or for crimes punishable by more than one year
23 and I made the determination at that time that the
24 probative value of admitting this evidence as to your
25 credibility outweighs its prejudicial effect, if I made

1 that ruling, the solicitor would be able to use that record
2 to attack your credibility. Now, I will tell you that if
3 you decide to testify, the decision must be made by you
4 freely, voluntarily and intelligently with knowledge of the
5 protections given to you by the Fifth Amendment to the
6 Constitution and the consequences that could result in the
7 testimony. I will advise you that if you decide not to
8 testify in this case, that I will instruct the jury that
9 the fact that you did not testify in this case should not
10 be a matter that they should consider in any manner
11 whatsoever in reaching a verdict, in other words, that
12 there should be no prejudice to you because you did not
13 testify. In fact, I would instruct them that the fact that
14 you did not testify could not even be discussed by them in
15 their deliberations. Now, the final decision as to how to
16 handle this, whether to testify or not, is yours and yours
17 alone. You have the right to consult with family, friends,
18 lawyers, anybody you'd like to talk to about the decision,
19 but in the final analysis, this decision is your decision
20 and yours alone. Now, do you have any questions about what
21 I've explained?

22 MR. COLEMAN - Am I allowed to do that now with my
23 family?

1 THE COURT - Oh, yes, sir. Let me finish talking
2 to you. Do you have any questions about what I've
3 explained to you?

4 MR. COLEMAN - No, sir.

5 THE COURT - Do you need for me to explain it any
6 further?

7 MR. COLEMAN - No, sir.

8 THE COURT - All right, now, do you wish to have
9 time to discuss this decision with family, friends or
10 attorneys at this time?

11 MR. COLEMAN - Yes, sir.

12 THE COURT - Okay. Then over the lunch break I'll
13 give you the opportunity to discuss this with anyone you'd
14 like to discuss it with. When we return I'll be asking you
15 about this again. We'll be in recess for lunch. Thank you
16 very much.

17 MS. ANDERSON - Yes, sir. Thank you, Your Honor.

18 (WHEREUPON, LUNCH RECESS TAKEN.)

19 THE COURT - Thank you very much. You can be
20 seated. All right, we're back on the record in the State
21 of South Carolina vs. Coleman. Mr. Coleman has returned to
22 the courtroom. Mr. Coleman, when we took our break earlier
23 for lunch, you had asked for additional time in which to
24 discuss your decision as to whether or not to testify in

1 this case with your family and/or attorneys. Did you have
2 an opportunity to discuss those matters with them?

3 MR. COLEMAN - Yes, Your Honor.

4 THE COURT - Have you completed your discussions?

5 MR. COLEMAN - Yes, Your Honor.

6 THE COURT - Have you made a decision as to
7 whether you will testify?

8 MR. COLEMAN - Yes, Your Honor.

9 THE COURT - Do you intend to testify?

10 MR. COLEMAN - No, Your Honor.

11 THE COURT - All right. Now, does the defense
12 have any other witnesses you wish to present?

13 MS. ANDERSON - No, Your Honor.

14 THE COURT - Okay. Now, I will make the State
15 aware -- I think the State's the only one who made a
16 specific request for charge. The State had requested that
17 the Court charge Code Section 16-3-657, which states that
18 the testimony of a victim need not be corroborated in
19 prosecution under Section 16-3-652 through 16-3-658 which
20 would be included in the statutes that we have. Now, I've
21 reviewed that and I've reviewed the cases that were
22 submitted to me, which is Schumpert and Rayfield. I've
23 also looked at State v. Perry which is another case that
24 has more recently come out concerning this particular code
25 section. All of them indicate that it's not error for a

1 Judge to charge that code section, however, in each case
2 they talk about the fact that the Judge gave sufficient
3 qualifiers to justify that statement. The Courts though
4 have yet to specifically spell out what qualifiers have to
5 be charged by a Judge to cover that. I am concerned giving
6 the information that's in the most recent Perry case, that
7 the Court is moving toward disfavoring that charge as a
8 comment on the facts, and for the reason, I do not intend
9 to charge it. I will, however, charge that the jury has
10 the right to believe one witness against all the others and
11 all the others against one. You certainly would have the
12 right to argue to the jury what inferences they could draw
13 from that law and as those facts -- and of course, I won't
14 prevent you from arguing that, but I don't intend to charge
15 it as a charge on the law. I'm concerned that it comes too
16 close to a comment on the facts. All right, anything
17 further before we bring the jury in? Now, the defense -- I
18 don't recall the defense putting anything into evidence in
19 the case. Am I correct?

20 MS. ANDERSON - That's correct, Your Honor.

21 THE COURT - All right, so the State will be going
22 first?

23 MS. O'HAYON - Yes, Your Honor.

24 THE COURT - And close by the defense. All right.

1 MS. ANDERSON - Your Honor, just before we start,
2 I did not request it specifically, but just would ask if
3 Your Honor's charges -- it does contain a charge regarding
4 the jury not construing anything for multiple indictments
5 but to treat those individually.

6 THE COURT - Oh, I always charge that where there
7 are multiple indictments, that they have to reach a
8 separate verdict on each, unconcerned or unaffected by
9 their verdict on the other.

10 MS. ANDERSON - Thank you, Your Honor.

11 THE COURT - It has to be an independent verdict
12 on each charge.

13 MS. O'HAYON - Your Honor, I just have a question
14 as to how the Court intends to charge proof beyond a
15 reasonable doubt, so that I can use the same terminology in
16 my closing.

17 THE COURT - Well, let me pull it up. I'll tell
18 you ---

19 MS. O'HAYON - Thank you, Your Honor.

20 THE COURT - What's your specific concern about
21 the charge?

22 MS. O'HAYON - Well, I've heard it both ways.
23 I've heard some Judges use hesitate to act, and I've heard
24 some Judges say firmly convinced, and I just want to use
25 the same terminology.

1 THE COURT - I use both.

2 MS. O'HAYON - All right. Thank you, Your Honor.

3 THE COURT - What I'll be saying is that the
4 definition of reasonable doubt is that that type of doubt
5 which would cause a reasonable person to hesitate to act,
6 and then later on in that charge I will state that if after
7 their consideration of all of the evidence, if they are
8 firmly convinced of the defendant's guilt, and I add in
9 beyond a reasonable doubt, then you must find the defendant
10 guilty, however, on the other hand, if you think there's a
11 real possibility that the defendant is not guilty, then you
12 must give the defendant the benefit of that doubt and find
13 the defendant not guilty. So I charge it both ways at the
14 end of the charge with, they are firmly convinced beyond a
15 reasonable doubt they must find guilty, and if there's --
16 if they find there's a real doubt as to whether or not he
17 is guilty, they must give him the benefit of the doubt and
18 find him not guilty.

19 MS. O'HAYON - Thank you, Your Honor.

20 THE COURT - Anything else before we bring the
21 jury in? Are you ready to go into your argument I guess is
22 what I'm saying?

23 MS. O'HAYON - Yes, Your Honor.

24 THE COURT - All right, defense ready?

25 MS. ANDERSON - Yes, Your Honor.

1 THE COURT - All right, now, I'm going to call
2 upon the State -- ma'am, I'll call upon you to call any
3 additional witnesses. They did not hear you rest; they had
4 left. That'll give you a chance to say that you have
5 completed your evidence, then I'll call upon the defense if
6 you have any witnesses. I assume you'll answer that you
7 don't, and then we'll proceed right into the arguments.
8 Bring the jury in. I'd ask the attorneys to approach
9 briefly. I don't think you've seen how I amended the
10 indictments.

11 (WHEREUPON, BENCH CONFERENCE IS HELD OUT OF THE
12 PRESENCE OF THE JURY PRIOR TO THE JURY ENTERING THE
13 COURTROOM WHICH WAS NOT REPORTED.)

14 THE COURT - Make a note that I went over the
15 indictments as amended and there were no objections.

16 (WHEREUPON, JURY ENTERS THE COURTROOM)

17 THE COURT - All right, the record will reflect
18 the jury has returned to the courtroom. I trust everyone
19 had a good lunch, and if you had any difficulty in
20 complying with my instructions while you were away from the
21 courthouse, I'd ask that if anyone had that problem, please
22 stand.

23 (NO RESPONSE)

24 THE COURT - It appears that all jurors have been
25 able to comply with my instructions. Now, when we took our

1 lunch break, the State was in the process of calling its
2 witnesses. At this time the State may call its next
3 witness.

4 MS. O'HAYON - The State rest, Your Honor.

5 THE COURT - All right, ladies and gentlemen, that
6 completes the presentation of evidence in this case by the
7 State. At this time the defense has the right to call
8 witnesses if the defendant chooses to. The defense may
9 call its witnesses.

10 MS. ANDERESON - Your honor, the defense rests.

11 THE COURT - All right, that concludes then the
12 presentation of evidence in the case altogether. Now, I
13 told you at the beginning of the trial when we had reached
14 this stage of the proceedings, the attorneys would be given
15 the opportunity to give their summations or their closing
16 arguments, their second opportunity to directly address
17 you. In this case the State will be going first. You may
18 proceed.

19 MS. O'HAYON - Thank you, Your Honor. Delissa
20 didn't know what it was, but she knew something wasn't
21 right. When she moved in with her family to Cedarview
22 Apartments it was puzzling her, and it didn't make sense
23 and then it all did. These cases are difficult because the
24 subject matter is uncomfortable. It was probably
25 uncomfortable for you to hear. It was uncomfortable for

1 MINOR to say it, but that doesn't mean that this case is
2 any less important. The defendant is charged with two
3 counts of criminal sexual conduct with a minor in the first
4 degree. That means the State has to prove beyond a
5 reasonable doubt that the defendant engaged in a sexual
6 battery with a child under the age of 11 here in York
7 County, South Carolina. A sexual battery is sexual
8 intercourse, cunnilingus, fellatio, anal intercourse or any
9 intrusion however slight of any part of a person's body of
10 any object into the genital or anal openings of another
11 person's body. The Judge told you that you probably have
12 some expectations of what a sexual assault case is like
13 based on your experience with TV shows, but they build up
14 expectations and they're not reality. This case does not
15 have the flash of a TV show. It won't get wrapped up and
16 it didn't get wrapped up in an hour. Cases of delayed
17 reporting do not have that same flash, but they bring us
18 back to the most basic question. As the jurors, you are
19 the finders of fact and the Judges of credibility and you
20 are to find the facts from the words of the witnesses.
21 Your verdict at the end comes down to whether you believe
22 MINOR. What factors do you use to determine
23 credibility? Bias, demeanor, prejudice, motive to lie.
24 What did MINOR have to gain out of this? You
25 heard her say that she had to tell her mom. She had to

1 tell Puja Amin. She had to come into the solicitor's
2 office and talk to the solicitors, and then she had to come
3 in here and tell a courtroom full of strange adults that
4 that man digitally penetrated her. What does she have to
5 gain from that? Let's talk about some of the statements
6 that you heard. Let's talk about the defendant's
7 statements. You may have found that the way that the
8 detective asked the defendant the questions a little bit
9 distasteful. You may have found the story he chose or the
10 tactic he chose was distasteful, and that's fine. The
11 defense attorney was trying to get you to focus on the way
12 Detective Thomas asked his questions. She was trying to
13 get you to remove your focus from what the defendant
14 actually said. I'm asking you to focus on his statement.
15 You probably asked yourself, why am I listening to this
16 hour-long statement. I want you to think about his
17 statement and how the subtle changes in his statements
18 were, that the changes happened so slowly that they may
19 have been imperceivable. At first he states, I know I
20 ain't did none of that, because I was in the house. Well,
21 when I came outside, I saw them, it was a quick thing.
22 Well, I saw MINOR [REDACTED] in the neighborhood. Well,
23 I may have played with her cousins; I may have picked her
24 up. No, I may have picked her cousins up, and then finally
25 she was on his lap. How many times was she on your lap? I

1 don't know how many times, but she did -- was. (sic) Isn't
2 that a long way from start to finish? What else does the
3 evidence show? The defendant is friends with B. P.; he
4 knew MINOR. We don't know exactly when this happened.
5 The indictment alleges May 13th, 2011 to June 24th, 2012. We
6 know that it happened when the Pattersons lived in Pace's
7 River; we know that it happened when they all lived at
8 Pace's River together up until the Pattersons moved out; we
9 know that they all lived at Pace's River together at one
10 point. Alyssa Pruitt came in here and testified that he
11 moved in in May 13, 2011, moved out at the end of November,
12 2011, and Alyssa told you that she was living at Pace's
13 River up until June 24th, 2012. B. P. told you, and the
14 defendant's own statement to the detective told you, that
15 after he moved out, he came back and he still hung around
16 with them before they -- before the Pattersons moved away.
17 We know that MINOR didn't go outside to play until her
18 cousins moved in. The defendant's own statement was that
19 he only saw her either inside the house or with her
20 cousins. So we know that it happened some time after the
21 defendant moved in, May 13, 2011 and up until the
22 Pattersons moved out. Now we know that MINOR was on his
23 lap by the defendant's own admission that she would get up
24 on his lap, he would brush her off. He doesn't know how
25 many times that happened. He says she's in his lap. That

1 gives him the opportunity to commit the crime. He puts her
2 in his lap. You had the opportunity to see MINOR for
3 yourself take the stand, and the MINOR you saw was a
4 different MINOR from the MINOR back in 2013 that
5 Delissa had to deal with. You met MINOR at the end of
6 this process, but Delissa told you about the MINOR back
7 in the summer of 2013, the MINOR who cried in her sleep,
8 the MINOR who was afraid to go outside, the MINOR who
9 would cry all the time, who was easily agitated. Delissa
10 told you that this behavior all started when they moved
11 into the Cedarview Apartments where the defendant was
12 living, and you heard from B. P. who told you that he
13 remembers the defendant coming over and MINOR going to
14 hide while he was there. You were able to see for yourself
15 MINOR's body language and demeanor as she took that
16 stand, the cues of her discomfort about the subject as she
17 sat here and told the courtroom full of strangers what had
18 happened to her. You saw her start to fidget in her seat.
19 You saw her voice change and get lower. You saw her face
20 change, her brow furloughed. You saw her get sad. When
21 the defense attorney first spoke to you in her opening, she
22 compared proof beyond a reasonable doubt to a carnival
23 game. And the Judge will instruct you on what proof beyond
24 a reasonable doubt is, but a reasonable doubt is a doubt
25 that will cause you to hesitate to act. It is not proof

1 beyond all doubt. I wouldn't compare that legal standard
2 to a carnival game, because it's not proof beyond all
3 doubt. You don't have to get to the hundred percent. You
4 have to get to proof beyond a reasonable doubt, not all
5 doubt. Your job as the jury is to deliberate, and
6 hesitating and deliberating are not the same thing. This
7 case comes down to MINOR and whether you believe her.
8 To come back to the deliberation room -- your job as a
9 juror is to go back to the deliberation room to talk about
10 all the what ifs, all the maybes and all the could bes and
11 at the end of that process, if you still believe in your
12 heart and in your mind that MINOR was
13 digitally penetrated by the defendant, then the State has
14 met its burden, and you are to find the defendant guilty of
15 criminal sexually conduct in the first degree with a minor.
16 Thank you.

17 THE COURT - For the defense. Ms. Anderson?

18 MS. ANDERSON - May it please the Court.

19 THE COURT - Yes, ma'am. You may proceed.

20 MS. ANDERSON - Ladies and gentlemen, the
21 solicitor just talked to you about -- a little bit about
22 credibility of the witnesses and essentially pointing out
23 to you that essentially the only evidence in this case is
24 what MINOR said. And that is, because there's
25 no physical evidence; there's no forensic evidence, no

1 medical evidence, no other eye-witnesses to these alleged
2 events, so it does become critical to look at credibility
3 of witnesses. It becomes critical to look beyond any
4 emotion that may be elicited, beyond an awkwardness that
5 may be elicited and to look critically and logically and
6 analytically at the testimony that you heard over the
7 course of this case, because it's in looking at that
8 testimony and looking at details and looking at
9 inconsistencies that you see that this case does not add up
10 to proof beyond a reasonable doubt. If you think about
11 these details, they may seem insignificant in isolation or
12 on their own, but if you think about an illustration of an
13 ice storm -- we had some winter weather a few months ago,
14 and if you were in an area that you saw ice, the individual
15 sleet or precipitation that comes down looks small in of
16 itself. Sometimes it's hard to see it looking out the
17 window. And in the individual it may seem like a small
18 piece of ice, a small bit of frozen rain, but when more of
19 that comes down and when it keeps having that precipitation
20 and it hits the ground, all of a sudden you see a big
21 effect from that. An ice storm is created by small bits of
22 precipitation, and in this case reasonable doubt is created
23 by small inconsistencies, small things that don't match up
24 and small things that are different today than they were
25 months or even years ago. Let's talk about some of those.

1 You heard MINOR [REDACTED] testify, and you heard her
2 testify as to some specific details that she says were in
3 connection with these allegations, and you heard her
4 indicate that these weren't things that she had told Puja
5 Amin, the forensic interviewer, who did an interview back
6 in September of 2013. You heard some testimony that the
7 forensic interview is an investigative tool. It's to aid
8 law enforcement in their investigation of the case. It's
9 certainly not the end-all and be-all of all investigation,
10 but we'll talk a little bit more about Detective Thomas's
11 investigation later. But it's done by an individual
12 trained in dealing with children. It's generally in the
13 normal course of things designed to be the first time that
14 information is elicited from a child. And you heard the
15 testimony regard (sic) that and you watched the video, and
16 you saw in the course of that video that when MINOR [REDACTED]
17 [REDACTED] provides any sort of specific information, it's
18 in response to Ms. Amin asking her something specific,
19 inside or outside, give me one of those choices. Was it
20 inside or outside your underwear? Was it inside or outside
21 of your vagina? And so when there's two options, both of
22 which those options contemplate it happened, that's when
23 she gives details about it. But in the portion of the
24 interview when Ms. Amin comes in and asked her, how did it
25 happen, how did it happen essentially when you were sitting

1 on his lap, she can't provide you any details. That's
2 significant. When asked to give the details on her own
3 without an interviewer prompting her, without an
4 interviewer sort of giving her the idea of give me
5 information and you're doing a good job at this, she can't
6 provide those details. Think about other things she didn't
7 mention in the forensic interview. You didn't hear
8 anything about this testimony that the first time that she
9 refers to as the staircase time, that she says she's out
10 with her brothers and cousins; they left; she doesn't
11 remember where they left, but that she -- they left her
12 alone. And she testifies when she's alone with OJ, she's
13 sitting on his lap, he touches inside of her underwear,
14 touches her vagina, and that he stopped when her brother
15 and cousins come back. You don't hear anything about that
16 in the forensic interview. What you do hear in the
17 forensic interview is her saying that the cousins are
18 there; I believe it's the second time. And again, it's
19 significant, because that's a more specific allegation of
20 events. The forensic interview is in September of 2013.
21 You heard testimony from Delissa Patterson that she calls
22 the police in September of 2013. So the forensic interview
23 is taking place right after this allegation is made,
24 essentially, the sort of first interview in connection with
25 her allegations. Today it's March 15th -- or excuse me --

1 March, 2015. Today you're hearing details that have never
2 been mentioned in all of that time. Call upon your life's
3 experiences, ladies and gentlemen, your logic, your common
4 sense. Do you think it likely that children's memory gets
5 more specific and more detailed over a year's time, that
6 things that can't be remember earlier, close in time to
7 when things are supposed to have happened, those memories
8 get better as time goes by? I submit to you it's difficult
9 even for adults' memory to get better over the course of
10 year and a half, but certainly for an eight year old, nine
11 year old that it's going to get more difficult. Is it
12 likely then or is it questionable? Is there some question
13 then about how those details get specific? And you'll
14 remember she's still in the forensic interview or either in
15 Court this week can't give you any specifics of how this
16 happened, never able to offer those. And I call that to
17 question and I bring that up, because you heard in the
18 interview with Detective Thomas of Orlando -- Orlando in
19 that interview doesn't deny knowing who **MINOR** or **MINOR**
20 is, doesn't deny knowing her, doesn't deny ever having any
21 contact with her, doesn't deny ever being around her,
22 doesn't deny her ever sitting on his lap. What he does
23 deny is anything in appropriate ever happened. And you
24 heard even Detective Thomas say, there's nothing illegal
25 about playing with kids; there's nothing illegal about a

1 teenager playing with kids; there's nothing illegal about a
2 kid sitting on someone else's lap. That in and of itself,
3 which the State wants to make out as very suspicious, is
4 not illegal. What he denies is that when she's sitting on
5 his lap, anything inappropriate happened. And what
6 MINOR [REDACTED], either in September of 2013 or here in
7 March of 2015, can't say is how anything illegally happened
8 when she's there. Just an admission that she had sat on
9 his lap at some point doesn't amount to anything
10 inappropriate happening. The State wants to talk about
11 these subtle shifts of what Mr. Coleman said. Well, the
12 State's witnesses have subtle shifts or shifts that aren't
13 subtle themselves. Detective Thomas and the State sort of
14 made a pact about the -- talking about only one specific
15 girl and Orlando answering these questions about one
16 specific girl. Ladies and gentlemen, that's the only
17 person Detective Thomas ever asked him about. He answered
18 the questions that were asked of him, and he repeatedly
19 denied that he ever did anything inappropriate to her.
20 Detective Thomas's interrogation techniques of lying about
21 the allegations in order to try to elicit a confession --
22 what they elicited is a denial that anything illegal
23 happened, denial that he ever touched MINOR [REDACTED]
24 inappropriately, which actually is consistent with B. P. [REDACTED]
25 [REDACTED]'s testimony that he didn't ever see anything that

1 would cause him to worry about his sister being around
2 Orlando. B. P. s testimony was also that the time after
3 OJ had moved out, that the time he saw him again was in
4 June. I think around -- don't know if he specifically said
5 June, but he said around the time they moved out, and Ms.
6 Patterson testified they moved out in June, 2012. And what
7 he said about when he saw OJ again, was that OJ was with a
8 friend walking toward the pool. B. P. s
9 testimony wasn't anything about when they saw him again,
10 him playing with them, him being around MINOR, him being
11 unaccompanied around MINOR. The only mention B. P.
12 made when they saw Orlando again, was Orlando with a friend
13 going to a pool -- going to the pool. B. P. also said,
14 he told his mom about MINOR supposedly saying something
15 to him before September of 2013. Delissa Patterson says he
16 never told her anything before 2013. MINOR, I believe
17 in her forensic interview, claims that she did tell her
18 brother, said OJ touched me, and her brother said he
19 couldn't have done it. Well, maybe he couldn't have done
20 it, because B. P. never saw anything that would've said
21 it happened. You heard the testimony about their cousins,
22 Amazhanee, Sanadia and Arkevious. You heard their names
23 brought up several times. You heard that for part of the
24 time that the Pattersons lived at Pace's River, part of the
25 time that was initially Delissa Patterson gave as the time

1 that this was alleged to have happened in the summer of
2 2011, that the cousins lived there, the cousins and their
3 mother, Ms. Patterson's sister lived in the apartment with
4 them. So you heard that they were there, and you heard
5 even from MINOR that when she said the tennis courts'
6 time allegedly happened that her cousins were sitting right
7 there playing, playing hand games, sitting right there.
8 You heard Delissa Patterson was in -- still in contact with
9 her sister, heard her say they're here, but you didn't hear
10 them testify; you didn't hear from them here in Court, even
11 though they were there at the time period when this was
12 supposed to have happened, and that their cousins who were
13 the ages somewhere around 11, 13, 9 years old, I think in
14 between MINOR and B. P., that they were there. Older
15 than MINOR, I would say old enough to tell you what they
16 saw or what they didn't see. Does that raise a question, a
17 doubt about this happening the way that MINOR
18 testified? Since that all you have to go on is what
19 MINOR said here in Court today. (sic) You
20 heard from Laurie Caldwell, the State called, but you also
21 heard she doesn't know anything about this case. She
22 didn't talk to anyone in connection with this case. She
23 doesn't know. She doesn't know the facts of it or the
24 allegations. You heard that the detective's investigation,
25 the case agent, the detective assigned to work on this case

1 was essentially to get assigned the case after Detective
2 Sims made the initial report to speak to Delissa Patterson
3 via telephone, to be present and watch via video the
4 forensic interview, to look up some utility records as to
5 when the Colemans were living at Pace's River and to swear
6 out a warrant and speak to Mr. Coleman. Didn't interview
7 any other witnesses, even though he knew about B. P. ; he
8 knew MINOR had a brother. I think Delissa Patterson
9 testified about telling Detective Thomas about B. P. , her
10 talking with B. P. . Knew about the cousins. Could've
11 gotten that either from information from Delissa Patterson
12 or remember, he watched the forensic interview. He knew
13 what information was relayed there. He didn't do any other
14 investigation whatsoever. But what he's called to do is to
15 do an independent investigation. It's not just a matter of
16 relying solely on a forensic interview. It's a tool. It's
17 a gathering of information, to take that and investigate
18 further, but he didn't do any further investigation.
19 Ladies and gentlemen, the Judge is going to you talk to
20 all, instruct you as to the standard you apply to this
21 case, and I brought them up a little bit in opening,
22 because they are important. As I said, they're not just
23 concepts on TV; they're real; they're concrete, and they're
24 vitally important to our justice system, and they're
25 vitally important to this case. And that is that the

1 burden of proof is always on the State, that Orlando
2 Coleman even now is presumed innocent, and that the State
3 must prove their case beyond a reasonable doubt, and that's
4 usually referred to as the kind of doubt that would cause a
5 person to hesitate to act, the kind of doubt that would
6 cause a person to hesitate to step forward, to feel
7 reassured that something happened. And, yes, the State
8 said -- talked about that it doesn't have to be a hundred
9 percent, but it's a strong burden, ladies and gentlemen.
10 You must be firmly convinced of that. And when you look at
11 this case analytically, when you look at the little details
12 that just don't match up, the witnesses that their
13 testimony doesn't match, they're testifying differently
14 from each other, when you look at the fact that the details
15 suddenly for a young child get better over a year and a
16 half later and details emerge that didn't emerge back in
17 September of 2013, and coincidentally they're details that
18 helps make her version of events stronger and helps make it
19 to where this could've happened and no one testifying else
20 (sic) of seeing either of these events happening -- it's
21 like the ice storm. These are small little bits in
22 isolation, but added up together they make a big effect,
23 and the effect, ladies and gentlemen, is that there's
24 reasonable doubt in this case. The effect is that the
25 State has not proven its burden beyond a reasonable doubt.

1 The effect of this case is that your verdict in this case
2 should be a verdict of finding Orlando Coleman not guilty.
3 Thank you.

4 THE COURT - Ladies and gentlemen, that concludes
5 the closing arguments by the attorneys. I told you that
6 when we reached this stage of the proceeding it would be my
7 responsibility to charge you concerning the law that you're
8 to apply in this case. We began this case by going over
9 with you the indictments in this matter. There are two
10 indictments in the case. The indictments state the cases
11 and are for the same offense, criminal sexual conduct with
12 a minor in the first degree. The indictments are contained
13 in cases number 2014-GS-46-3857 and 3858. The indictments
14 will go with you back into the jury room. You'll have an
15 opportunity to look over them in detail. I have made a
16 notation on those indictments so that we can clarify the
17 allegations that are being made. Case number 3857 I have
18 indicated on that indictment is for the alleged staircase
19 incident. The allegations contained in case number 3858
20 are allegations that have to do with the alleged tennis
21 court incident. So there's two separate indictments in
22 this case. I want to remind you, however, the fact that a
23 defendant has been arrested, charged and indicted in the
24 case is not evidence in this case, and it cannot be
25 considered by a jury as evidence of guilt in this case, nor

1 does the fact that an indictment has been issued create any
2 presumption or inference of guilt. These documents are
3 simply the formal written instruments that inform this
4 Court of the charges to be tried. It informs the defendant
5 of the charges made against him. In other words, it's the
6 formal document by which the case has been brought into
7 this Court. Now, in cases in which there are more than one
8 indictment, the charges are separate and distinct. Each
9 indictment charges a separate and distinct offense. You
10 the jury will be called upon to decide each indictment by a
11 verdict separately on the evidence and the law that applies
12 to that indictment uninfluenced by your decision as to the
13 other indictment. In other words, the defendant can be
14 convicted or acquitted on either or both of the indictments
15 in this case. And again, you'll have to write a separate
16 verdict as to each indictment as to guilty or not guilty on
17 those indictments. The defendant has pled not guilty to
18 the indictments. Under the Constitution of this State and
19 of the United States, that plea places the burden of proof
20 solely upon the State to prove the defendant guilty. A
21 person who's charged with the commission of a criminal
22 offense in this state is never required to prove himself
23 innocent. I charge you that it's an important rule of law
24 that a defendant in a criminal trial -- and it doesn't
25 matter how serious the crime might be -- is always presumed

1 to be innocent of the crime for which an indictment has
2 been issued until and unless guilt has been proven to you
3 the jury by evidence that satisfies you of that guilt
4 beyond a reasonable doubt. Now, the presumption of
5 innocence doesn't end when you begin your deliberations.
6 It accompanies the defendant throughout the trial and into
7 your deliberations. Some people describe the presumption
8 of innocence somewhat like a robe that a Judge wears into
9 the courtroom. The defendant has that robe or that
10 presumption of innocence about his shoulders at the
11 beginning of the trial. It remains about his shoulders
12 throughout the trial. It accompanies the defendant into
13 your deliberations and remains about his shoulders until
14 such time as it has been stripped from him by evidence that
15 satisfies you of the defendant's guilt beyond a reasonable
16 doubt. So the presumption of innocence is not just a legal
17 theory; it's not just a legal phrase. It's a substantial
18 right that every defendant is entitled to until and unless
19 you the jury are satisfied from the evidence of the
20 defendant's guilt beyond a reasonable doubt. Now, you
21 notice that I've used that phrase proof beyond a reasonable
22 doubt about three or four times in my charge at this point
23 in time, and you may ask yourself, well, just what do you
24 mean by a reasonable doubt, what is a reasonable doubt, and
25 I'll tell you the cases that have defined what a reasonable

1 doubt is describes a reasonable doubt as that kind of doubt
2 that would cause a reasonable person to hesitate to act,
3 and the State has the burden of proving the defendant
4 guilty beyond a reasonable doubt. Now, I want to clear up
5 one thing that might confuse you, be sure we've got a good
6 understanding on this point. Some of you may have been
7 involved in cases in courts where civil matters were
8 involved, and civil matters are where somebody's seeking
9 monetary damages. That can be because they got injured in
10 an accident; it can be because somebody didn't pay their
11 bills or their debts; it can be because somebody breached a
12 contract that they had, didn't fulfill their obligations.
13 Those are the kinds of cases where people seek monetary
14 damages. They're referred to as civil cases. And in civil
15 cases the standard of proof is different than the standard
16 of proof in this court, a criminal court. In a civil court
17 the standard of proof is by the greater weight of the
18 evidence, sometimes call the preponderance of the evidence,
19 and that means the scales of justice have tilted ever so
20 slightly either in favor of a plaintiff or in favor of a
21 defendant, and whichever way those scales slightly tilt,
22 that's the side that's entitled to a verdict. That's in a
23 civil case. In a criminal case the standard of proof is
24 more powerful than that. It's proof beyond a reasonable
25 doubt. Proof beyond a reasonable doubt is that kind of

1 proof that leaves you firmly convinced of the defendant's
2 guilt. Now, I'm going to tell you that there's very few
3 things that go on in this world that can be proven beyond
4 any doubt whatsoever, and that's not the standard of proof
5 that the State is put to. The State does not have to prove
6 its case beyond any possible doubt. What I will tell you,
7 that if after your consideration of the evidence, if you
8 are firmly convinced of the defendant's guilt beyond a
9 reasonable doubt, you must find the defendant guilty.
10 However, on the other hand, if you think there's a real
11 possibility that the defendant is not guilty, then you must
12 give the defendant the benefit of the doubt and find the
13 defendant not guilty. Now, I'm going to remind you, at the
14 beginning of the trial I stressed to you that you and I
15 have different functions in this case. As the trial Judge
16 it's been my responsibility to rule on issues that have
17 come up concerning the proof that's presented, the
18 appropriateness of questions that are being asked, and it's
19 my responsibility now to charge you concerning the law.
20 I'm going to caution you again. Don't take from anything
21 that I may have said or done in the trial of this case to
22 indicate to you that I have an opinion one way or the other
23 as to how you determine the facts in this case. I told you
24 earlier, and it remains true right now, the law does not
25 allow me an opinion concerning the facts. I have no

1 opinion as to how you should determine the facts in this
2 case, because you see, the law that makes me the sole Judge
3 of the law makes you the sole Judge of the facts in this
4 case. You must take only the evidence that was put into
5 the record of this case. So if there is anything that I
6 ruled out of order or anything that I didn't allow to come
7 into evidence, you should not consider those factors or
8 those matters at all in reaching a verdict. You should
9 only consider the evidence that was admitted into the
10 record of the case during the trial in reaching a verdict
11 in this case. I have the additional duty of charging you
12 on the law at this time, and I told you earlier, just as
13 I'm not allowed to disagree with you concerning the facts,
14 you're not allowed to disagree with me concerning the law
15 to be applied in this case. Under your oath it's your
16 responsibility to take the law as I now give it to you,
17 apply this law to the facts as you determine those facts to
18 be and that -- for you'll be in a position to render a just
19 and a true verdict. And again, if you have an idea as to
20 what the law is or you have an opinion as to what the law
21 ought to be, leave those notions outside of the jury room
22 before you begin your deliberations and take the law
23 exactly as I give it to you and apply it to the facts as
24 you determine the facts to be. The determination of the
25 facts is a matter solely for you the jury to determine. As

1 jurors it's your duty to determine the effect, the value,
2 the weight and the truth of the evidence that's been
3 presented during this trial. Now, in deciding a case, you
4 have the right to consider two types of evidence. And I'll
5 try to explain to you what I mean by two types of evidence.
6 One type of evidence the law calls direct evidence. That's
7 when someone testifies directly on the fact that they're
8 seeking to prove. That can be someone who's actually --
9 claims to have actually experienced or been present or been
10 an eye-witness to the facts about which they've testified,
11 that's someone testifying directly on the fact they're
12 seeking to prove. Now, the other type of evidence is what
13 we refer to as circumstantial evidence. Circumstantial
14 evidence is proof of a chain of facts or circumstances that
15 indicate the existence of another fact. It's been
16 described as proof of collateral facts from which a main
17 fact might be reasonably inferred. Now, that's a lot of
18 fancy lawyer-talk, and I like to use a very simple example
19 as to what I mean by proof of a fact by circumstantial
20 evidence. Let's say that last night before you went to bed
21 you looked outside your window, the stars were shining, it
22 was a beautiful night, and you went to bed and you slept
23 well all night, didn't wake up at all, the next morning you
24 got up, you walked over to that same window in your
25 bedroom, but the sun shining, but when you looked a little

1 closer, you noticed that there was water dripping off all
2 the trees, the road in front of your house was wet, there's
3 puddles in the driveway that weren't there the night
4 before. Now, you know you slept all night; you didn't see
5 it rain; you didn't hear it rain, but from the facts that
6 you know to be true, you could reasonably infer that at
7 some point in time during the night it rained. So that's
8 what we mean by proof of collateral facts from which a main
9 fact could be reasonably inferred or proof of a chain of
10 facts from which another fact might be inferred. Now, the
11 law doesn't make a distinction between the weight or the
12 value that can be given to either direct or circumstantial
13 evidence. There's not a greater degree of certainty
14 required of circumstantial evidence than that of direct.
15 You the jury decide the weight that you choose to give to
16 all of the evidence in the case, and after weighing all of
17 the evidence, if you are not convinced of the guilt of the
18 defendant beyond a reasonable doubt, you must find the
19 defendant not guilty. On the other hand, if you're firmly
20 convinced of the defendant's guilt beyond a reasonable
21 doubt, you must find the defendant guilty. Now, in doing
22 your job as a juror, it's going to be necessary for you to
23 determine the credibility or the believability of the
24 testimony you've heard in this case, and that's what
25 credibility means. It means believability. And you may

1 recall at the beginning of the trial I asked you to use
2 your good common sense as you listened to the evidence that
3 came into the record to make a determination as to the
4 credibility or the believability of the testimony that you
5 heard. It's your duty as a juror to analyze and evaluate
6 the evidence and make a determination as to which evidence
7 convinces you of its truth. In determining the
8 believability of witnesses who've testified, you have the
9 right as the sole Judges of the facts to believe one
10 witness against all the others. You have the right to
11 believe all the others against one. As the sole Judges of
12 the facts you can believe all of, none of or part of what
13 any witness has testified to in this trial. You have the
14 right to consider whether or not a witness has exhibited to
15 you any interest, any bias, any prejudice or any other
16 motive in testifying in this case. You can consider the
17 appearance and the manner in which a witness has delivered
18 that witness's testimony. You're the sole Judges of the
19 facts. That makes you the sole Judges of the credibility
20 or believability of the witnesses who've testified in this
21 trial. Now, I told you that I'd talk to you a little bit
22 more about expert witnesses. I explained to you when that
23 witness testified that the rules of evidence ordinarily do
24 not allow a witness to state opinions or conclusions. The
25 exception of that rule is made for an expert witness, and

1 that's a witness who because of education or experience has
2 become an expert in a field, science or profession, and as
3 to those witnesses they may state opinions within the area
4 of their expertise and the reasons why they hold those
5 opinions. You should consider testimony given by an expert
6 just like any other evidence in the case. You give it the
7 weight you think it deserves. Should you decide that the
8 opinion of an expert's not based on sufficient education or
9 experience or you conclude the reasons given for holding
10 those opinions are outweighed by other evidence are not
11 sufficiently sound, you may disregard that testimony even
12 in its entirety if you choose to do that. You're not to
13 give the opinion or the testimony of an expert witness any
14 greater weight simply because that person was declared to
15 be an expert. In other words, you're to weigh that
16 evidence like you weigh any other evidence. You're not
17 required to accept an expert's opinion even though it might
18 not be contradicted. Now, I'm going to instruct to you and
19 I want to emphasize to you that the fact that the defendant
20 did not testify in this case is not a factor that can be
21 considered by you in any way in reaching your verdict. It
22 must not be considered by you in any manner whatsoever,
23 because you see, a defendant has a constitutional right to
24 remain silent. The assertion of that right must not be
25 considered by you in your deliberations. I repeat, under

1 your oath you are to draw no conclusions whatsoever from
2 the fact that the defendant did not testify. The fact that
3 the defendant did not testify should not even be discussed
4 by you in your deliberations. As I have stated to you, the
5 defendant is not required to prove his innocence. The
6 burden of proof in this case is solely upon the State, and
7 the State's burden of proof is to prove guilt beyond a
8 reasonable doubt. Now, the charge in both indictments is
9 the charge of first degree criminal sexual conduct with a
10 minor, and that's the charge that's been presented in the
11 indictments. In order for the State to prove those
12 allegations, the State must prove beyond a reasonable doubt
13 that the defendant engaged in a sexual battery with the
14 victim. Now, sexual battery is sexual intercourse,
15 cunnilingus, fellatio, anal intercourse or any intrusion
16 however slight that might be of any part of a person's body
17 or of any object into the genital or anal openings of
18 another person's body except when the intrusion is
19 accomplished for a medically recognized treatment or
20 diagnostic purpose. The State must then prove beyond a
21 reasonable doubt -- once that's been proven, the State must
22 further prove that the victim was less than 11 years old at
23 the time that the sexual battery took place. Now, I will
24 tell you that consent, willingness, indifference or
25 ignorance on the part of the minor involved, if any, as to

1 what was taking place does not in any way affect the charge
2 of criminal sexual conduct with a minor, because in this
3 State an unmarried woman under the age of 14 cannot legally
4 consent to sexual intercourse. Now, Mr. Ezell Long, juror
5 138, raise your hand, please.

6 (JUROR COMPLIES)

7 THE COURT - You are going to be the foreperson of
8 the jury. That means you'll be the person who will be
9 leading the discussions of the jury. You will also be the
10 person who will take care of a couple things for me. If
11 during the deliberations, if the jury has a question, it
12 will be your responsibility to write that question to me
13 down on a piece of paper, knock on the door, hand it to the
14 bailiff, the bailiff will bring me the question for me to
15 consider. Also, I'm going to give you a verdict form in
16 just a few minutes, and I'll explain it to you, but once
17 the jury's reached a unanimous verdict, it will be your job
18 to write that verdict on that form as I instruct you, sign
19 the form once it's been completed, knock on the door and
20 inform the bailiff that a verdict's been reached. The jury
21 then will be brought back into the courtroom for the
22 verdict to be announced. Now, there can be no verdict in
23 this case unless all of you agree upon the verdict. It
24 must be unanimous. All 12 of the sitting jurors must agree
25 on the verdict before it is the verdict of the jury, so you

1 would not write any verdict down until all 12 jurors have
2 agreed on the appropriate verdict in the case. Now, I've
3 gone over a great deal with you. There's some evidence
4 that needs to go back into the jury room with you, and I
5 want to be sure only the proper evidence goes back. This
6 may be the last time I tell you to do this, to go back to
7 the jury room, don't discuss anything about this case.
8 I'll bring you back in just a couple of minutes and give
9 you your final instructions, and then I'll ask you to begin
10 your deliberations. You may retire to the jury room.

11 (WHEREUPON JURY EXITS THE COURTROOM)

12 THE COURT - Objection, exceptions to the charge
13 from the State?

14 MS. O'HAYON - Your Honor, correct me if I'm
15 wrong, but I didn't catch that you charged them on
16 confessions and statements, and a statement was put in by
17 the State by the defendant. Did you do any charges about
18 statements?

19 THE COURT - I will be glad to charge that.
20 Anything else?

21 MS. O'HAYON - I think that's it, Your Honor.

22 THE COURT - I'm not sure it was a confession, but
23 I will ---

24 MS. ANDERSON - That was my concern about how it
25 was going to be charged.

1 THE COURT - Yes, I'll charge it as a statement
2 not a confession. Any exceptions from the defense?

3 MS. ANDERSON - No, Your Honor.

4 THE COURT - All right. I'm going to ask you to
5 come forward; let's get the exhibits and be sure that we
6 have those separated. I have a verdict form for you to
7 review. Please do so, and we'll discuss that in just a
8 moment.

9 (WHEREUPON, COUNSEL REVIEWS EXHIBITS AND VERDICT
10 FORM; BENCH CONFERENCE HELD WHICH WAS NOT REPORTED.)

11 THE COURT - All right, let's bring the jury panel
12 back in, please.

13 (WHEREUPON, JURY ENTERS THE COURTROOM)

14 THE COURT - All right, ladies and gentlemen of
15 the jury, there is one matter that I did not go over with
16 you, but I will at this point in time. During the trial of
17 this case, a statement alleged to have been made by the
18 defendant was admitted into evidence. I will tell you that
19 while this Court made a determination that the statement
20 was admissible, that it's up to you the jury to make the
21 ultimate decision as to whether or not the defendant did
22 make the statement. If the defendant did make the
23 statement, you must determine whether the statement was
24 made by the defendant voluntarily and of his own free will.
25 This means that the statement was not caused by pressure,

1 force, fear, threats, coercion or intimidation or by hope
2 or promise of leniency or a reward of any kind. In
3 determining whether the statement was voluntarily made, you
4 should consider both the characteristics of the defendant
5 and the details of the questioning. Some of the factors
6 that you may consider or must consider are, the age of the
7 defendant, the defendant's lack of education or education,
8 the defendant's mental ability or capacity, the defendant's
9 intelligence, the defendant's background or environment,
10 the place and the length of the detention at the time of
11 the interrogation, the nature of the questioning and the
12 advice or lack thereof to the defendant of his
13 constitutional rights including but not limited to the
14 right to remain silent, that any statement could be used
15 against him in a court of law, the right to have a lawyer
16 present, that if he could not afford a lawyer, a lawyer
17 would be appointed to represent him without any cost and
18 that he could stop making the statement at any time. You
19 must carefully consider all of the surrounding
20 circumstances before you give any weight to the alleged
21 statement. The State has the burden of proving beyond a
22 reasonable doubt that the alleged statement was voluntary.
23 If you determine that it was, you may give the statement
24 any further consideration that you deem proper. You must
25 decide the weight, if any, that should be given to the

1 alleged statement. If you determine the alleged statement
2 was not the free and voluntary statement of the defendant,
3 then you should not consider that statement at all. Now, I
4 have here the verdict form and the indictments. Mr.
5 Bailiff, if you'll pass this over to Mr. Ezell for me.

6 (WHEREUPON, DOCUMENTS HANDED TO THE FOREPERSON)

7 THE COURT - Mr. Ezell, that top paper there is
8 the verdict form. If you'll look at it, at the top it has
9 the state and county that we're in. It has the name of the
10 case, that's the State against Mr. Coleman. There are two
11 questions, one for each indictment. The indictments are
12 stated by number and also they are identified as the tennis
13 court incident and the stairwell incident, so -- and that
14 is true on the two indictments. In each case there is a
15 choice of verdicts, either not guilty or guilty. Depending
16 on the verdict of the jury, either not guilty or guilty,
17 you'll put an x or a check by the appropriate verdict once
18 a unanimous verdict has been reached. Once both questions
19 have been answered, you'll sign the document, let the
20 bailiff know that a verdict's been reached, and we'll bring
21 you back to the courtroom to receive the verdict. Now,
22 again, it must be unanimous. I'll also tell you that in
23 the evidence we're sending back, there are some recordings
24 in there. You have the right, if you wish to, to hear or
25 watch those recordings if you wish to do so. Now, if you

1 do wish to do that, let the bailiffs know, we'll make
2 arrangements for you to either come into the courtroom,
3 watch those recordings or listen to those recordings, or if
4 possible, we may get something -- some means for you to do
5 that in the jury room. So again, if you do wish to listen
6 to or watch the recordings that are in evidence, that
7 information is available to you if you wish to do that.
8 Now, again, you're going to step back and begin your
9 deliberations at this time, and when a unanimous verdict
10 has been reached on the indictments, it'll be recorded, and
11 when both verdicts are reached, let the bailiffs know and
12 we'll return you to the courtroom for the verdict. Now, at
13 this time I'm going to ask that the two alternates remain
14 seated. Do not leave the courtroom with the jury. The
15 members of the jury are now instructed to return to the
16 jury room to begin your deliberations. Thank you very
17 much.

18 (WHEREUPON, JURY EXITS THE COURTROOM TO BEGIN
19 DELIBERATIONS AT 2:55 P.M.)

20 THE COURT - All right, you should be Ethan Wagner
21 and Shedricka Heyward. Is that right?

22 JUROR - Yes.

23 JUROR - Yes, sir.

24 THE COURT - All right, and you have been serving
25 as alternates in this case, and I will tell you that had

1 any of the jurors not been able to go back to begin their
2 deliberations, we would've asked you to take their place so
3 we could continue. Now, they all went back, so the law
4 says once they start those deliberations and all 12 go
5 back, you're released from any further responsibility in
6 this case, so I'm releasing you at this time. I will tell
7 you that the remainder of the jury panel is asked to call
8 in after 8:00 o'clock tonight for further instructions for
9 this week of court, so we'll ask you to call in after 8:00
10 o'clock to get your further instructions. The bailiff will
11 check you out. If you need anything from them, let them
12 know what you need. Now, I've told you throughout the
13 trial not to discuss this case with anyone. I will now
14 tell you that you have the right to discuss it. You also
15 have the right not to discuss it. A citizen owes no one an
16 explanation for their service on a jury panel. You're not
17 required to talk about this case unless you choose to do
18 that. Now, if someone were to harass you or bother you
19 about your service on the jury, please let the clerk's
20 office know and I'm sure the appropriate action will be
21 taken for those people who might bother you. So at this
22 time I'm going to allow you to leave in this case. Call in
23 after 8:00 o'clock, and you'll get additional instructions.
24 Thank you very much. You're free to go at this time.

25 (WHEREUPON, ALTERNATE JURORS EXIT THE COURTROOM)

1 THE COURT - Any objections to my final
2 instructions from the State?

3 MS. O'HAYON - No, Your Honor.

4 THE COURT - Any from the defense?

5 MS. ANDERSON - No, Your Honor.

6 THE COURT - All right, we'll remain in recess in
7 the case until a verdict's reached. Thank you very much.

8 (WHEREUPON, COURT IN RECESS AWAITING VERDICT)

9 (WHEREUPON, NOTE IS SENT OUT FROM JURY AT 3:12
10 P.M.)

11 THE COURT - I'll ask the attorneys to approach.

12 (WHEREUPON, BENCH CONFERENCE WAS HELD OUT OF THE
13 PRESENCE OF THE JURY WHICH WAS NOT REPORTED.)

14 THE COURT - Are you ready?

15 MS. O'HAYON - Yes, Your Honor.

16 THE COURT - All right, I'm going to ask you to
17 bring the jury back in and ask them to -- that they will
18 need to bring with them the exhibit for the first interview
19 of Mr. Coleman and Detective Thomas, what they want to
20 listen to; tell them to bring that disk with them.

21 COURT REPORTER - That would be State's 2.

22 THE COURT - Exhibit Number 2. State's Number 2.

23 COURT REPORTER - Is that right, Sharon?

24 MS. O'HAYON - Yes.

1 (WHEREUPON, JURY ENTERS THE COURTROOM AT 3:15
2 P.M.)

3 THE COURT - All right, Mr. Long, it's my
4 understanding the jury would like to hear the first
5 interview between Mr. Coleman and Detective Thomas. Is
6 that right?

7 FOREMAN - Yes, sir.

8 THE COURT - Did you bring that recording with
9 you?

10 FOREMAN - Yes.

11 THE COURT - If you'll pass that over to the
12 State's desk, they'll play that for us.

13 (WHEREUPON, DISK HANDED TO THE STATE)

14 (WHEREUPON, REQUESTED INTERVIEW IS PLAYED FOR THE
15 JURY)

16 THE COURT - If you'll pass the disk back to the
17 bailiff, we can give that back to Mr. Long, and I'll ask
18 you to return to your jury room and continue your
19 deliberations. Thank you.

20 (WHEREUPON, JURY EXITS THE COURTROOM TO CONTINUE
21 DELIBERATIONS AT 3:40 P.M.)

22 THE COURT - Any objections from the State to the
23 Court's response to the questions?

24 MS. O'HAYON - No, Your Honor.

25 THE COURT - Any from the defense?

1 MS. ANDERSON - No, Your Honor.

2 THE COURT - All right, the inquiry will be made a
3 Court's Exhibit and part of the record. Would you pass
4 that down to the Court Reporter, and we'll be in recess
5 until a verdict's reached. Thank you.

6 (WHEREUPON, NOTE IS HANDED TO THE COURT REPORTER)

7 (WHEREUPON, NOTE IS MARKED AS COURT'S EXHIBIT
8 NUMBER 2.)

9 (WHEREUPON, COURT IN RECESS AWAITING VERDICT)

10 THE COURT - All right, I have been informed by
11 the bailiff by way of a note from the jury that the jury
12 has reached verdicts. The State ready to receive the
13 verdict?

14 MS. O'HAYON - Yes, Your Honor.

15 THE COURT - Defense ready?

16 MS. ANDERSON - Yes, Your Honor.

17 THE COURT - All right, let's bring the jury in.

18 (WHEREUPON, JURY RETURNS WITH VERDICT AT 4:25
19 P.M.)

20 THE COURT - All right, the record will reflect
21 that the jury has returned to the courtroom. Mr. Bailiff,
22 I've been informed by the -- excuse me -- Mr. Foreman, I've
23 been informed by the bailiff that a verdict's been reached.
24 Is that true?

25 FOREMAN - Correct.

1 THE COURT - Pass the form to the bailiff for me.

2 Thank you, sir.

3 (WHEREUPON, VERDICT IS HANDED UP TO THE COURT.)

4 THE COURT - Madam Clerk, you may publish the
5 verdict.

6 DEPUTY CLERK - In the State of South Carolina vs.
7 Orlando Martinez Coleman with Indictment 2014-GS-46-3857,
8 we the jury unanimously find the Defendant, Orlando
9 Martinez Coleman, concerning the offense of criminal sexual
10 conduct with a minor first degree staircase incident
11 guilty. We the jury unanimously find the defendant
12 concerning the criminal sexual conduct with a minor first
13 degree tennis court incident guilty, both signed by the
14 foreperson this day. If this so be your verdicts, so say
15 you all by raising your right hand.

16 (WHEREUPON, JURORS AFFIRM)

17 DEPUTY CLERK - Let the record show all affirm.

18 THE COURT - Thank you. Anything further from the
19 State before I release the jury?

20 MS. O'HAYON - No, Your Honor.

21 THE COURT - Anything further from the defense
22 before I release the jury?

23 MS. ANDERSON - No, Your Honor.

24 THE COURT - All right, ladies and gentlemen of
25 the jury, I want to thank you very much for your attention

1 to your duties. This completes your service in this
2 particular case. I am going to instruct you that you have
3 the right to discuss this case now with anyone if you wish
4 to do so. You also have the right not to discuss it.
5 Should anyone try to harass you or bother you concerning
6 your service on the jury, please report that to the clerk's
7 office; we'll take the appropriate action. You're entitled
8 to attend sentencing if you wish to do so. The bailiffs
9 will tell you how to do that if you wish to do it. You're
10 not required to do that, so you don't have to do that.
11 Now, Mr. Foreman, before you leave the courtroom, you'll
12 need to see the clerk here. There's a couple more papers
13 you'll have to sign before you leave, so I'll ask you to
14 see her before you the leave the courtroom. And at this
15 time I'm going to release you. Now, this doesn't mean
16 you've completed your service for the week. You have to
17 call in after 8:00 o'clock tonight. They'll give you some
18 additional instructions concerning your service for the
19 remainder of the week, but thank you very much for your
20 attention to your duties in this case, and the bailiffs
21 will show you out. Thank you very much.

22 (WHEREUPON, JURY EXITS THE COURTROOM)

23 (WHEREUPON, BRIEF PAUSE IN THE RECORD)

24 THE COURT - All right, if you'd stand, please.

25 (WHEREUPON, DEFENDANT STANDS)

1 THE COURT - Mr. Coleman having been found guilty
2 by a jury of your peers, at this point in time the Court
3 will consider sentencing in your case. I'll be happy to
4 hear from your attorneys and then I'll be happy to hear
5 from you once I've heard from them. Ms. Anderson?

6 MS. ANDERSON - Your Honor, before we do that, may
7 I put on the record just to renew all of defense's prior
8 motions and objections, also to make a motion to set aside
9 the verdict and a motion for a new trial for the record.

10 THE COURT - All right, those are noted. The
11 Court would make the same rulings as to the previous
12 motions and as to your new motions, the motions are denied.

13 MS. ANDERSON - Yes, Your Honor.

14 THE COURT - All right, now I'll be happy to hear
15 from you.

16 MS. INZERILLO - Your Honor, with regard to
17 sentencing, with the Court's permission I would ask to
18 present mitigation.

19 THE COURT - Yes, ma'am.

20 MS. INZERILLO - Your Honor, Ms. Anderson and I
21 have both represented Mr. Coleman essentially since his
22 assignment to our office. He's been in our county
23 detention center for 527 days.

1 THE COURT - Just one second. Let me -- does the
2 State agree that that's the length of time that he's served
3 thus far?

4 MS. O'HAYON - It's been about 18 months, yes.

5 THE COURT - So 527 days?

6 MS. INZERILLO - Yes, Your Honor.

7 THE COURT - Yes, ma'am, you may proceed.

8 MS. INZERILLO - Which as Ms. O'Hayon indicated is
9 about 18 months. As the Court has heard, these incidents
10 arose around the time that Mr. Coleman was 17 years old.
11 He's now in his early 20's, still a youth, and I can tell
12 you from all of my conversations with Mr. Coleman a bit of
13 a immature youth. I think a lot of the testimony the Court
14 has heard is that he often hung out with kids younger than
15 him. I think the Court heard from Mr. B. P. [REDACTED]
16 who's I think a couple of years younger, then Mr. Coleman
17 in that seems to be sort of the age disparity as sort of
18 found in our conversations, not really an intellectual
19 deficit per se, but more almost an emotional one. In our
20 conversations with Mr. Coleman, in investigating this case
21 I can tell you he's not really had the most stable of
22 backgrounds. He resides with his mother, and the Court has
23 heard testimony on that. His mother is here present today,
24 and I think at one point does wish to address the Court,
25 but I -- and I can tell you - and this is my own personal

1 perspective, Your Honor -- in investigating this case and
2 for the -- for the prior trial, in looking at any possible
3 alibis and piecing together the housing situation of Mr.
4 Coleman, he's -- essentially from my view, he moves almost
5 every two or four months, and I know from our perspective
6 those of us in the system that have been working in the
7 system, especially in our capacity, you know, that's not a
8 very stable living lifestyle, and certainly from someone as
9 young as Mr. Coleman, moving schools -- you've heard lots
10 of testimony that he was going to, you know, different
11 schools -- despite having a -- moving around all that often
12 -- we've pulled up utility records and some other
13 information -- moving that often and having that lack of
14 stability, still always tried to find it within himself to
15 try to make himself better. You heard reference to a
16 school called The Youth Challenge. That is put on by the
17 South Carolina National Guard. He had wishes to go into
18 the military, and that is a program put on by South
19 Carolina National Guard for young men such as himself who
20 do wish to transition into the military. That is
21 something, despite the instability in his life, that he did
22 -- a program he did go through. It's a six month program.
23 It's a residency program outside Columbia that he did put
24 himself into in an attempt to try to get a military career.
25 Your Honor, in -- I point this out because, I think -- and

1 there's a lot of testimony about him sort of going back and
2 forth between Pace's River almost seeming to be on his own,
3 and that's always been the one thing that's really struck
4 me about Mr. Coleman, is despite his youth, that he --
5 there's been a lot of instability and a lot of times when
6 he seems to sort of be on his own and that he does have
7 that sort of emotional deficit and that's, you know, always
8 sort of stuck with me about him. Despite his age and -- I
9 believe it was brought out that he was born in 1993 -- he's
10 not sort of your typical 20 or 21 year old -- any
11 conversations that you have with him, you won't see that.
12 And so that's -- I point that out. He's very close to his
13 mother. I think that he takes a lot of advice from her. I
14 know he's tried to discuss this case a lot of times with
15 her. I think a lot of the decisions he's discussed with
16 her. We appreciate the Court allowing him to discuss --
17 especially in deciding whether to testify with her today,
18 and I think that it is also a mark of his youth. It was a
19 tough decision for him to make to decide whether to go to
20 trial. I know a lot of times that gets factored in about
21 the effect at trial and the witnesses, but I can tell you
22 we had discussions with him about that, and it was a tough
23 decision for him due to his youth and due to his age and
24 the amount of time these charges carry, but that was a
25 consideration for him, so I did wish the Court to see

1 essentially from my perspective. Mr. Coleman doesn't talk
2 a lot. He's not one that would sit down with you and that
3 will give you his entire life story in one sitting. And so
4 a lot of times it is hard to pull information from him, and
5 so I did wish the Court to see, at least from my
6 perspective, what we had seen in our investigation of the
7 case, that he did move around a lot and he did seem to have
8 that instability, but that despite that, you know,
9 something that a lot of kids would use as an excuse to be
10 in the system, I mean he would've had a juvenile record or
11 something like that, something that I know in my years of
12 the system that I would've seen in a client. He tried to
13 overcome that and tried to always make himself better. I
14 think you heard on the tape as well, when he was speaking
15 with Detective Thomas he was still trying to go to York
16 Technical College. He was always trying to give himself a
17 better life than what he had, and I always thought that was
18 a strength for him. Your Honor, I know the Court is aware
19 that these charges carry a mandatory minimum 25 years. I
20 would sincerely ask the Court on behalf of Ms. Anderson,
21 Mr. O'Kelly and me and the Coleman family that despite the
22 admitted severity of these charges, that the Court would
23 consider a mandatory minimum sentence in this case to run
24 concurrent with credit for time served, taking into account
25 his age and the emotional deficits that he has. As I

1 indicated, Ms. Coleman, his mother is here and I do think
2 she wishes to speak to you.

3 THE COURT - All right. Ma'am, if you'll step up.
4 My understanding is you wish to speak. Is that correct?

5 MS. COLEMAN - Yes.

6 THE COURT - Your name?

7 MS. COLEMAN - Brenda Coleman.

8 THE COURT - Yes, ma'am, this is your opportunity.

9 MS. COLEMAN - I just wanted to address to the
10 Court that I love my son and despite everything, all this
11 tragedy that ---

12 COURT REPORTER - I'm having trouble hearing and
13 understanding her.

14 THE COURT - Ma'am, you have to speak up, so this
15 lady can hear you.

16 MS. COLEMAN - I said I've always tried to do my
17 best by him and to do whatever he needed me to do to
18 survive in this world and I've worked like two and three
19 jobs to take care of him. And I -- I don't think I'm going
20 to be all right without my son.

21 THE COURT - Ma'am, I'm -- you're going to have to
22 speak toward us, please.

23 MS. INZERILLO - She said I don't think I'm going
24 to be all right without my son.

25 THE COURT - All right.

1 MS. COLEMAN - And I'd like to ask the Judge to
2 please let me hug him or something.

3 THE COURT - Thank you, ma'am. You can be seated.
4 Mr. Coleman, do you wish to address the Court? This is
5 your opportunity.

6 MR. COLEMAN - Yes. Even though I've been charged
7 guilty of this crime, that doesn't mean I actually did it,
8 and that despite all this stuff, I forgive the Patterson
9 family and MINOR .

10 THE COURT - Prior record from the State?

11 MS. O'HAYON - Your Honor, he just has a previous
12 shoplifting charge, a magistrate level offense. That's all
13 he has.

14 THE COURT - Does the victim or the victim's
15 family wish to be heard on the sentences?

16 MS. O'HAYON - I don't believe so, Your Honor.

17 THE COURT - Check and be sure.

18 (WHEREUPON, MS. O'HAYON COMPLIES)

19 MS. O'HAYON - They do not.

20 THE COURT - Thank you. (Pause) Mr. Coleman, it
21 is the sentence of this Court that you be confined to the
22 State Department of Corrections in each case to run
23 concurrently for a period of time of 25 years. I have
24 given you credit for the 527 days that you have served. I

1 am requiring electronic monitoring, and I'm requiring sex
2 offender registration. Good luck to you, sir.

3 MS. INZERILLO - Thank you, Your Honor.

4 THE COURT - All right, Court's adjourned. Thank
5 you very much.

6 MS. ANDERSON - Thank you, Your Honor.

7 (WHEREUPON, DOCUMENT MARKED AS COURT'S EXHIBIT
8 NUMBER 3.)

9 (COURT IN RECESS AT 4:45 P.M.)

10 (END OF TRANSCRIPT)

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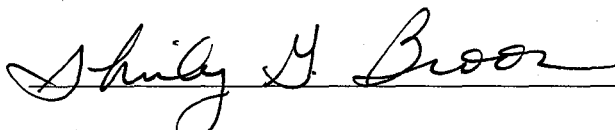
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C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 381 pages, consisting of Volume I (Day 1), Volume II (Day 2) and Volume III (Day 3) is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of State of South Carolina vs. Orlando M. Coleman, as taken by me in the Court of General Sessions for the Sixteenth Judicial Circuit on the days of March 16, 17 & 18, 2015, and provided by me this the 9th day of May, 2015.

I do further certify that I am neither of kin, counsel, nor interest to any party herein.



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina