

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM OCONEE COUNTY

J. Cordell Maddox, Jr., Circuit Court Judge

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SC COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

STEVEN GREGORY FROST,

APPELLANT

APPELATE CASE NO. 2012-213043

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL
OCONEE) SESSION
)
) TENTH JUDICIAL CIRCUIT
)
) CASE NO: 2012-CP-37-00549

STATE OF SOUTH)
CAROLINA;)
)
PLAINTIFF,) TRANSCRIPT OF RECORD
) TRIAL
)
-vs-)
)
STEVEN GREGORY FROST,)
)
DEFENDANT.)

September 17th, 18th, 19th, 2012
OCONEE, SOUTH CAROLINA

B E F O R E:
THE HONORABLE J. CORDELL MADDOX, JR., JUDGE.

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1 3:19 p.m.)

2 THE COURT: Thank you ladies and gentlemen.

3 Solicitor, call your first witness.

4 MS. SIMMONS: Thank you, Your Honor. The State

5 calls CHILD

6 THE COURT: All right.

7 (Whereupon, Witness comes forward.)

8 THE CLERK: Please place your left hand on the

9 Bible and raise your right hand. (Complies.)

10 Do you solemnly swear or affirm the testimony you

11 give the Court to be the truth, the whole truth and

12 nothing but the truth?

13 THE WITNESS: Yes.

14 THE CLERK: Please be seated.

15 THE COURT: Yes, ma'am.

16 MS. SIMMONS: Thank you, Your Honor.

17 CHILD

18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MS. SIMMONS:

21 Q. Good afternoon, CHILD How old are you?

22 A. Nine.

23 Q. Okay. And where do you go to school?

24 A. James M. Brown.

25 Q. Is that an elementary school?

- 1 A. Yeah.
- 2 Q. And when is your birthday?
- 3 A. January 16th.
- 4 Q. Of what year?
- 5 A. (No response.)
- 6 Q. Do you know?
- 7 A. No.
- 8 Q. How old are you?
- 9 A. Nine.
- 10 Q. Okay. And do you know the difference between right
11 and wrong?
- 12 A. Yes.
- 13 Q. Can you tell me that?
- 14 A. If you do something right it is good and if you do
15 something wrong it's bad.
- 16 Q. Okay. If I stole a candy bar without paying for it
17 from the store, would that be right or wrong?
- 18 A. Wrong.
- 19 Q. Okay. And do you know the difference between the
20 truth and a lie?
- 21 A. Yes.
- 22 Q. Can you tell me the difference?
- 23 A. If you tell the truth, that's good and if you tell
24 a lie that's bad.
- 25 Q. What happens if you lie?

- 1 A. You get in really bad trouble.
- 2 Q. Uh-huh. And do you promise today to only talk
3 about the truth and things that really happened?
- 4 A. Yes.
- 5 Q. Okay. Who do you live with now?
- 6 A. My mom, dad, me, and my two brothers.
- 7 Q. Okay. And how old is your younger brother?
- 8 A. Eight.
- 9 Q. Okay. And what's your mom's name?
- 10 A. Christine.
- 11 Q. Do you have any other brothers that don't live with
12 you?
- 13 A. No.
- 14 Q. Okay. So your brother, how old is your younger
15 brother?
- 16 A. Eight.
- 17 Q. Okay. And he's your brother by blood?
- 18 A. Yes.
- 19 Q. Okay. And how do you know the Defendant, Steve
20 Frost, the man sitting right there?
- 21 A. (No response.)
- 22 Q. Take your time.
- 23 A. 'Cause that's her son.
- 24 Q. Okay. That's her son?
- 25 A. Yeah.

1 Q. And her is?

2 A. My mom.

3 Q. Okay.

4 MS. SIMMONS: And, Judge, let the record reflect
5 that she has identified the Defendant Steven Frost.

6 THE COURT: So reflected.

7 MS. SIMMONS: Thank you, Judge.

8 BY MS. SIMMONS:

9 Q. This time last year, last fall before Halloween,
10 what grade were you in last year?

11 A. Third.

12 Q. And do you remember how old you were then?

13 A. Yes.

14 Q. How old were you?

15 A. Eight.

16 Q. And if I ask you a question that you don't know the
17 answer or you don't understand, make sure you tell me,
18 okay?

19 A. Okay.

20 Q. Back last fall, did -- was Steve Frost around your
21 house some?

22 A. Yes.

23 Q. Okay. How much time was he there? Was he living
24 there or no?

25 A. No.

1 Q. Okay. How much time do you think he spent there?

2 A. A little.

3 Q. Do you remember a time before Halloween when he was
4 around in the month of October?

5 A. Yes.

6 Q. When he came over, did he come over during the day
7 or did he come over and sleep, too?

8 A. Both.

9 Q. And when he slept at your house, where did he
10 sleep?

11 A. In my room.

12 Q. And where did you have to sleep then?

13 A. In the living room.

14 Q. Okay. Do you remember in that time frame being
15 alone with him in your bedroom?

16 A. Yes.

17 Q. Okay. Why did you go in your bedroom alone with
18 him?

19 A. He wanted me to change the movie.

20 Q. Okay. Why could he not change the movie himself?

21 A. (No response.)

22 Q. Is it your DVD player?

23 A. Yes.

24 Q. Okay. So you know how to work it?

25 A. Yeah.

STATE VERSUS GARY EUGENE FROST --

1 Q. When you went in, did you go in there and change
2 the movie?

3 A. Yes.

4 Q. Where was Steve when you went in your bedroom and
5 changed the movie?

6 A. On the bed.

7 Q. Okay. After you changed the movie, what happened?

8 A. He told me to come here.

9 Q. Okay. And what happened after that?

10 A. (No response.)

11 Q. Did you go there?

12 A. Yes.

13 Q. Okay. Where did, where did you end up in your
14 room?

15 A. Like kind of on the side of the bed.

16 Q. Okay. Why did he want you to come over there?

17 A. I don't know.

18 Q. What happened once you went over there to the side
19 of your bed?

20 A. (No response.)

21 Q. Take your time.

22 A. He told me to come closer.

23 Q. And when you went closer what happened?

24 A. He pulled out his -- private area.

25 Q. Okay. And his private area, is that a private area

1 in his pants or?

2 A. Yes.

3 Q. Okay. What did his private area look like?

4 A. Um, I forgot.

5 Q. And that's a, that's a good answer. When he showed
6 you his private area, what did he say?

7 A. Nothing.

8 Q. Did he try to get you to touch his private area?

9 A. Yes.

10 Q. Okay. Did you touch it?

11 A. No.

12 Q. What do you call your private areas?

13 A. The wrong spot.

14 Q. The wrong spot?

15 A. Yeah.

16 Q. Okay. And are your privates -- is the wrong spot,
17 is that underneath your panties?

18 A. Yes.

19 Q. Okay. Did he, did anything happen with your wrong
20 spot after he showed you his privates?

21 A. Yes.

22 Q. What happened?

23 A. He stuck his hand down there and started moving it
24 around.

25 Q. Okay. When he stuck his hand down there, was that

1 on top of your panties or underneath your panties?

2 A. Under.

3 Q. Okay. And was his hand in your wrong spot or on
4 your wrong spot? Was it inside or outside?

5 A. Inside.

6 Q. Okay. When his fingers were inside you, did it
7 hurt?

8 A. Yes.

9 Q. And was it in there for a second or did they move
10 around a lot?

11 A. Moved around, moved around.

12 Q. It hurt -- how long did it hurt after that day,
13 your private area?

14 A. Like a day.

15 Q. Did he say anything to you while his hand was
16 inside your private area, your wrong spot?

17 A. Yes.

18 Q. What did he say?

19 A. Does that feel good?

20 Q. And did you say anything back to him?

21 A. Yes.

22 Q. What did you say?

23 A. No.

24 Q. While this was happening, did anyone walk in the
25 room or see what he was doing?

- 1 A. Yes.
- 2 Q. Who was that?
- 3 A. My mom.
- 4 Q. What did your mom see when she came in?
- 5 A. She said, what are you doing?
- 6 Q. And what did he say?
- 7 A. Nothing.
- 8 Q. Did you later tell your mom what had happened that
- 9 day?
- 10 A. Yes.
- 11 Q. When did you do that?
- 12 A. Right after she walked in, she pulled me and took
- 13 me outside and I told her.
- 14 Q. Okay. And did you tell her what you told me here
- 15 today?
- 16 A. Yes.
- 17 Q. Did you, did you have to go talk to some other
- 18 people in Anderson about what happened to you at a big
- 19 white house?
- 20 A. Yes.
- 21 Q. And did you also have to go to the doctor?
- 22 A. Yes.
- 23 Q. Okay. So just to make sure I understand, sometime
- 24 in October of last year, Steve Frost called you into
- 25 your room to change a movie?

1 A. Yes.

2 Q. And he put his hand inside your wrong spot?

3 A. Yes.

4 Q. Okay. Give me just one second, okay?

5 (There was a pause in the proceedings.)

6 (Discussion off the record.)

7 MS. SIMMONS: CHILD I appreciate you talking to
8 me. And this is Mr. Day and he's gonna ask you just a
9 few questions, okay? Thank you.

10 CROSS-EXAMINATION

11 BY MR. DAY:

12 Q. Okay, CHILD I'm gonna ask you questions that
13 may be a little embarrassing, okay?

14 A. Okay.

15 Q. I'm not trying to embarrass you and I don't want to
16 hurt your feelings, okay, so if you don't understand
17 what I'm asking you, say so.

18 A. Okay.

19 Q. It's okay. All right?

20 You said that Steve was on the bed and I think you
21 said something about a movie?

22 A. Yes.

23 Q. And what was it he wanted you to do?

24 A. Change it.

25 Q. Okay. What, just put the CD in or whatever it is?

STATE VERSUS GARY EUGENE FROST --

1 A. Yeah, put a different CD in.

2 Q. Okay. And I think you -- I want to make sure here.
3 I think you said that he touched you. And, again, I'm
4 not trying to embarrass you, but I believe you said
5 touched you in your wrong spot?

6 A. Yes.

7 Q. When you spoke to the lady over in Anderson in the
8 room, you know, where the camera was ---

9 A. Yes.

10 Q. --- and the thing drawing, I believe you told her
11 that you called that your privacy?

12 A. Yeah.

13 Q. Okay. So why is it now that you have changed that?

14 A. I forgot what the other one, what the other name
15 was.

16 Q. And you said something in response to one of the
17 questions from Ms. Simmons that you thought it was in
18 October.

19 A. Yes.

20 Q. Is that what you remember now?

21 A. Yes.

22 Q. When you spoke to the lady in Anderson, you said
23 you didn't know when it happened; isn't that right?

24 A. Yes.

25 Q. Okay. And you never said anything to her about

1 Halloween or October or anything, did you?

2 A. Huh-uh.

3 Q. Okay. And now you're saying it was October, is
4 what you're telling us today?

5 A. Yes.

6 Q. And I also understand your mom came in the room?

7 A. Uh-huh.

8 Q. And y'all went out of the room?

9 A. Yes.

10 Q. And you told her what happened, you said?

11 A. Yes.

12 Q. Same thing you told -- make sure -- you're
13 answering quick on me. It's all right. I know you're
14 nervous, okay?

15 What you're telling us here today is what you
16 remember telling your mom that day; is that right?

17 A. Yes.

18 Q. Okay. And then you spoke to others?

19 A. Yes.

20 Q. I think that's what you said, okay?

21 How long after this day that you just talked about
22 did you talk to these other people?

23 A. Um...

24 Q. As best you can remember.

25 A. (No response.)

STATE VERSUS GARY EUGENE FROST --

1 Q. Was it, say, a week later?

2 A. Yeah.

3 Q. Okay. And when Steve was there at this time when
4 you say this happened, he was there every day for a
5 while there, wasn't he?

6 A. Yeah.

7 Q. Okay. And I think your mom was letting him use
8 your room and you slept, what was it, in the living
9 room?

10 A. In the floor in the living room.

11 Q. All right. Okay. So Steve -- there wasn't anybody
12 else in the room but Steve that wasn't sleeping in
13 there, were they?

14 A. No.

15 Q. Okay. All right.

16 MR. DAY: **CHILD** thank you very much.

17 THE COURT: Any other questions from the State?

18 MS. SIMMONS: Beg the Court's indulgence for a
19 moment.

20 THE COURT: Sure.

21 MS. SIMMONS: Nothing further from this witness,
22 Judge.

23 THE COURT: All right. Zyiesha, you can step down.
24 Thank you.

25 (Whereupon, The Witness left the witness stand.)

1 THE COURT: All right. Without objection.

2 MS. SIMMONS: Thank you, Judge.

3 (Whereupon, State's Exhibit Number 1, Dr. Carter's
4 Drawing, was marked for identification.)

5 (Whereupon, State's Exhibit Number 1 was entered
6 into evidence.)

7 BY MS. SIMMONS:

8 Q. Dr. Carter, based on what you saw in Zyiesha's
9 exam, what is that consistent with in your opinion?

10 A. Well, there's been some sort of disruption, some
11 sort of injury.

12 Q. Is it consistent with a penetrating injury of that
13 area?

14 A. It is.

15 Q. And are those physical findings that you had
16 consistent with what you now know are the allegations in
17 this case?

18 A. Well, I haven't studied up on what the allegations
19 in this case are. I'm simply reporting on my exam.

20 Q. And your exam is consistent with a penetrating
21 injury?

22 A. It is.

23 Q. How could such an injury like that be caused?

24 A. Well, you know, when we examine an injury we can
25 describe the injury but we can't always say what caused

1 it. Now, a child can have a penetrating injury. There
2 are such injuries and I know that the defense will ask
3 me about bicycle seats, fence post-injuries, falling on
4 a tree limb, things like that. But typically when a
5 child describes an injury, a child can tell you what
6 caused it, you know, whether it's a bruise or whether
7 it's, you know, if there's blood in the panties usually
8 they can say what caused it.

9 In this particular case I didn't -- I knew the
10 child had had a forensic, or I guess I supposed the
11 child had had a forensic interview, and I typically do
12 not repeat any of the questions from the forensic
13 interview. So I noted that I really, you know, just
14 simply said see referral about the history of injury.
15 And I did not take any history of the injury, so I
16 cannot tell you what caused this except that it is more
17 typical of a penetrating injury than it is of a blow to
18 the area as would be received from a bicycle seat, fence
19 post, a tree limb or such.

20 Q. And when you say penetrating injury, something was
21 actually inside the vagina?

22 A. That's what it appears.

23 Q. Could it be consistent with digital penetration?

24 A. Digital, probably not because the finger is not
25 large enough to cause that much of an injury. That's a

1 MS. SIMMONS: Thank you, Judge.

2 THE COURT: Thank you.

3 (Whereupon, a recess was taken.)

4 THE COURT: Okay. You can bring them back in.

5 (Whereupon, the Jury entered the courtroom at
6 approximately 4:15 p.m.)

7 THE COURT: Again, thank you for your patience.
8 You can call your next witness.

9 MS. SIMMONS: Thank you, Your Honor. The State
10 calls Christine Longwith.

11 (Whereupon, Witness comes forward.)

12 THE CLERK: If you'll place your left hand on the
13 Bible and raise your right hand. (Complies.)

14 Do you solemnly swear or affirm the testimony you
15 give the Court will be the truth, the whole truth, and
16 nothing but the truth?

17 THE WITNESS: Yes, I do.

18 THE CLERK: Please be seated.

19 THE COURT: Yes, ma'am.

20 CHRISTINE LONGWITH,

21 having been duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. LONGWITH:

24 Q. Ms. Longwith, would you please state -- spell your
25 name for the court reporter.

1 full transection. We actually grade transections to
2 partial transections, full transections and that's a
3 full transection.

4 Q. If it was a significant digital penetration of more
5 than one finger, could this have been caused by that?

6 A. Yes. The larger the penetrating object the more
7 damage.

8 Q. Is there a stage of healing of these injuries or
9 can you just tell us that they are healed?

10 A. Just that they are healed. Actually, some of them
11 completely heal up. There have been studies in girls
12 who have had traumatic vaginal injuries or hymenal
13 injuries and sometimes, probably half the time they heal
14 completely up, but then half the time they don't so
15 there is residual evidence.

16 Q. Would you expect to find DNA evidence in one of
17 your exams? Do you collect DNA?

18 A. My only -- I do not collect DNA. And I would look
19 for that only if the alleged incident had been very
20 recent, say within 24 hours, and if the allegation had
21 been digital penetration we, you know, we might not look
22 for DNA anyway.

23 Q. Okay. And no further -- and just to recap, the
24 injury to the hymen posterior fourchette is consistent
25 with some sort of penetration to the area, but you can't

1 A. C-h-r-i-s-t-i-n-e L-o-n-g-w-i-t-h.

2 Q. Ms. Longwith, where do you live?

3 A.

4 Q. And is that in Oconee County?

5 A. Yes, ma'am.

6 Q. Who presently lives in your home?

7 A. Me, my husband, my son Michael, and my
8 granddaughter, Emily F **CHILD** and Adrian or Duke
9 our grandchildren.

10 Q. And Emily Frost, how is she related to you?

11 A. She's my granddaughter.

12 Q. And the Defendant is her father?

13 A. Yes.

14 Q. Can you tell me the names and ages of all your
15 children?

16 A. My first child is named Shirley Doley. She lives
17 in Myrtle Beach and she's 48. My next son is Steven
18 Frost, he's 40 -- no, he's 45. There's four years
19 between them. Shirley was born in '62, Steven was born
20 in '67, and Michael, he was born in '71.

21 Q. And when did you adopt Adrian and **CHILD**

22 A. I think it was around April in 2007.

23 Q. And how long have Adrian and **CHILD** been with you?

24 A. We got Adrian from the hospital, straight from the
25 hospital in '03, and he was about 18 months old

1 when we got her.

2 Q. And they've been with you ever since?

3 A. Yes, ma'am.

4 Q. What's CHILD date of birth?

5 A.

6 Q. How old would she have been last October?

7 A.

8 Q. You mentioned that CHILD and Adrian had been with
9 you their whole life. The prior witness mentioned that
10 she had some behavioral problems. How old was she when
11 she had that?

12 A. She was still in DSS care and they referred me to
13 do that. She was probably two or three or four,
14 something like that.

15 Q. It's been a long time?

16 A. Oh, yes.

17 Q. In October 2011 did your son Steve move back to
18 this area?

19 A. Yes.

20 Q. Okay. Would he come around your home then?

21 A. Yes.

22 Q. How often did he come around?

23 A. At first he was coming around often because he
24 didn't have nowhere else to go, no home. And he was
25 just visiting with friends and cousins.

1 Q. What kind of things did you help him out with then?

2 A. With food, washing his clothes, taking him to
3 places to get his disability started, and let him stay
4 there when he didn't have a place to stay a night or so.
5 Just a few nights.

6 Q. When he spent the night, where did he sleep?

7 A. In CHILD room in her bed.

8 Q. Where did CHILD sleep?

9 A. In the family room, I guess you would call it. In
10 the floor. I made her a little bed in the floor.

11 Q. Do you remember sometime around the second weekend
12 of October him coming around?

13 A. Yes.

14 Q. Who did he come around with?

15 A. He had a girlfriend with him.

16 Q. Okay. Do you know her name?

17 A. Sarah. I'm not sure of her last name.

18 Q. What do you know -- can you tell me anything about
19 her?

20 A. What do you mean?

21 Q. Do you know anything about her, what she looks
22 like, anything?

23 A. Yeah. She was a black girl, probably about his
24 age. And she lived over there close to him I think.

25 Q. And do you recall them coming, around October 15th

STATE VERSUS GARY EUGENE FROST --

1 them both coming over?

2 A. Yes.

3 Q. Can you tell me what happened that night?

4 A. Well, it was -- I had told him to leave and not to
5 come, and he didn't have no place to go, so I figured
6 that he might come so I stayed up 'cause he said he
7 didn't have nowhere to go, he had to sleep somewhere.
8 So it was about 5:00 in the morning and he and her came
9 in and they was very drunk and they came in.

10 Q. Did you allow them into your home?

11 A. I didn't have much choice. He knocked on the --
12 banged on the door, and when I opened the door they just
13 come on in. And he started to go back to the bedroom.
14 And told him -- I asked him where was he going and he
15 said to bed. And I said you can't do that. I said
16 **CHILD** is in her bed. And I said you're not going back
17 there. So he just sat back down on the couch and said,
18 well, I guess I'll sleep here. So they sat on the
19 couch.

20 Q. What happened after that?

21 A. They went to sleep laying on each other and just
22 piled up on the couch.

23 Q. Did the kids eventually get up the next morning?

24 A. Yeah. It was about 9:00 when the kids started
25 getting up.

1 Q. Did Steve's girlfriend stay or leave?

2 A. She was getting a call from her children, I think,
3 and they were wanting her to come home so she left.

4 Q. When CHILD got up, what did Steve do?

5 A. He said he was going to the bathroom, but he went
6 back there and got in her bed.

7 Q. So Steve is asleep in CHILD bed. What's going
8 on in the household?

9 A. I was fixing breakfast for all the kids and getting
10 them ready for the day.

11 Q. What did you guys do that day?

12 A. We went outside and we was raking leaves and, um, I
13 might have been pulling some stuff out of the storage
14 building, I'm not sure.

15 Q. Did at any point in time did y'all go back in?

16 A. CHILD went in before we went in. She went in to
17 get some water or something she needed, but she came
18 back out.

19 Q. Did anything that concerns you or sticks out in
20 your mind happen that day?

21 A. Well, we came back in, all of us came in a little
22 bit later to fix lunch for the children. And he had
23 hollered for her to come in and change his movie, so she
24 went back that way. And she was gone for a little while
25 and I went to see where she was at. I thought it didn't

STATE VERSUS GARY EUGENE FROST --

1 take that long to change a movie, you know.

2 Q. When you got to **CHILD** room, what did you see?

3 A. When I walked in, Steve's hand was under her
4 clothes in the back and he had his right-hand and he had
5 his left hand, had ahold of her hand, his left hand was
6 holding her hand.

7 Q. His hand was under her dress or in her pants?

8 A. Yeah, in the back. Yeah, his hand. When I walked
9 in he was kind of pulling his hand up.

10 Q. When you saw that, what did you do?

11 A. I asked him what in the H was he doing, you know.

12 Q. Did you get any response?

13 A. Yeah. He said nothing. And then I said the H you
14 are, you know. And I got her hand and pulled her on out
15 of the room and I asked her, I said, what was he doing?
16 And she just looked at me. Then we went on in to the
17 bathroom, into our, the master bathroom back that way.
18 And I asked her again, I said what was he doing? And
19 she said, he had his hand in her, her clothes, her,
20 let's see what she said, her poopy hole. He had her
21 hand in her potty hole, that's what it was her potty
22 hole.

23 Q. Were you concerned at this point?

24 A. Yeah, I was concerned. I was -- well, first off I
25 was shocked, you know, when I went in there and saw that

1 because I, that's my son, you know, and that's my little
2 girl. And then I was mad, angry, and I was scared not
3 knowing what to do because I think well there's my
4 husband and Michael, there could be a big fight, you
5 know, so what do I do, go back in there and have it out
6 with him or what? And so I sit down with **CHILD** and we
7 sat there.

8 She didn't want to talk much, you know, she didn't
9 want to when I asked her something, she'd just answer.
10 She wasn't, she was kind of scared. And then she
11 started telling me that he had his hand in her.

12 Q. What did you do with Steve after you were able to
13 get **CHILD** calmed back?

14 A. I went back in there and told him to get out, to
15 leave. And he told me to get back in there and shut up,
16 that he would leave when he was ready and that somebody
17 was coming to get him.

18 So I went back in there in the other room. And
19 then still setting there, you know, and I'm not knowing
20 what to do because I don't know what's gonna happen, you
21 know, say something there's gonna be a big fight or
22 what. So I go back in there and tell him to leave. And
23 about that time his girlfriend showed up, and I told her
24 to get him out of the house and she took him and left
25 with him.

1 Q. Did you immediately call law enforcement after he
2 left?

3 A. No.

4 Q. Why not?

5 A. I don't know. I was scared and I didn't know what
6 to do. You know, I'm confused because what's going on,
7 you know? My son touching my daughter and what did I
8 do? You know. And is there gonna be a fight or what?
9 I didn't know what to do.

10 Q. Once these allegations came to light in February,
11 were you cooperative with law enforcement?

12 A. Yes. And I took all kind of courses, too, to help
13 me to realize what to do if something like this was to
14 ever to happen again and how to go about reporting
15 things.

16 Q. When ---

17 A. I've done that.

18 Q. I didn't mean to cut you off. When he left, did
19 you allow him any unsupervised contact with the children
20 again?

21 A. No, ma'am.

22 Q. Did you try to keep him away?

23 A. Yes.

24 Q. Did he come around or no?

25 A. I even took money out and rented him a house out of

1 my own money to rent him a house so he wouldn't have no
2 reason to come there till he got his disability started.

3 Q. Since you were contacted by law enforcement about
4 this, have you been completely cooperative?

5 A. Yes.

6 Q. And have you accompanied **CHILD** to doctors
7 appointments, interviews and all those sort of things?

8 A. Yes.

9 Q. Has **CHILD** ever had a bicycle accident or fall
10 where she could have possibly injured her private parts?

11 A. Not that I know of.

12 Q. Ms. Longwith, do you love your son?

13 A. I sure do.

14 Q. Do you love your daughter?

15 A. Yes, I do.

16 MS. SIMMONS: Please answer any questions Mr. Day
17 may have.

18 CROSS-EXAMINATION

19 BY MR. DAY:

20 Q. Ms. Longwith I'm Danny Day, as you know. I've got
21 a few questions for you, if I may. As I understand it,
22 Steve would come back, he was staying there at the house
23 for a while, and had been there, what, about a week or
24 so?

25 A. About a week, but he wasn't there the whole time.

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1 He spent some nights with his cousins and his friends.

2 He wasn't there the whole time, the whole week.

3 Q. Okay. But actually this is where he was living at
4 the time, he hadn't gotten him a place to stay yet?

5 A. When he left I told him -- right before he left,
6 before this happened, I told him he had to leave because
7 I couldn't have him there, and that's why he went to
8 stay with his cousins and all.

9 Q. Okay. But he was still coming back and staying
10 there?

11 A. Taking baths and getting something to eat mostly,
12 you know.

13 Q. But he was waiting on his disability checks to
14 resume; is that correct?

15 A. Yes.

16 Q. Okay. All right. Now, this supposedly happened, I
17 think you said, it was a weekend, you said October 15th?

18 A. Yes, sir.

19 Q. Approximately on a Saturday?

20 A. Yes.

21 Q. Okay. But you never said anything to anybody at
22 all, did you?

23 A. I told my granddaughter, it was around Christmas or
24 Thanksgiving. She was the only person I told about it
25 and because I didn't know what to do. I thought, you

1 know, I need to tell somebody, I need to, but I didn't
 2 know how to go about doing it. I mean I just hurt, I
 3 didn't want to -- I don't know how -- I was just
 4 confused.

5 Q. You told your husband, though, didn't you?

6 A. Yeah, I told my husband, yeah.

7 Q. And he didn't tell anybody?

8 A. No.

9 Q. All right. Did you tell, tell your other children?
 10 Did you tell Mike, Mike Heads?

11 A. Not till later. He found out when the other ones
 12 came out there.

13 Q. All right. Okay. Do you remember --

14 A. Because ---

15 Q. Oh, I'm sorry.

16 A. Because if I had told them there probably would
 17 have been a fight.

18 Q. Okay. But by then Steve was long gone, right?

19 A. No. He was just over there at Westminster.

20 Q. But I mean he wasn't living at your house anymore?

21 A. But he threatened if we do this he'll be right over
 22 there.

23 Q. He threatened you?

24 A. Yes. And ---

25 Q. Well, ma'am -- I'm sorry, go ahead.

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1 A. One time I told him, I said Steve, I said you know
2 this is gonna come out. I said this is gonna be told
3 about. He said, well, the best thing you do is just
4 keep your mouth shut and just be quiet.

5 Q. Why didn't you tell that to anybody else before
6 today?

7 A. Like I said, because -- what do you mean?

8 Q. About this threat.

9 A. I told a lot of people about it. He -- people know
10 about him. They know he threatens me if I don't do what
11 he wants, then he'll get it one way or the other.

12 Q. Tell me one person you told about this threat?

13 A. Probably all my family.

14 Q. And none of them said anything to anybody?

15 A. No, they didn't that I know of.

16 Q. Didn't tell the police, did you?

17 A. Not that I know of.

18 Q. Okay. So this was the first time anyone's heard
19 that outside of the people you just said?

20 A. What?

21 Q. That you claim that Steve threatened you.

22 A. He's told me to keep my mouth shut.

23 Q. All right. On February the 8th ---

24 A. He said the best thing for me to do is to keep my
25 mouth shut.

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1 Q. All right. On February the 8th you spoke to an
2 officer named John Vickery. Do you remember that, a
3 Deputy at the Sheriff's Department?

4 A. On what date?

5 Q. February the 8th, 2012. Do you remember that?

6 A. At the Sheriff's Department I gave a statement,
7 yes.

8 Q. Yes, you did.

9 Do you have that statement that she can look at?

10 MS. SIMMONS: (Handing.)

11 BY MR. DAY:

12 Q. I want to show you what appears to be a copy of a
13 statement. Please look at that to make sure that's what
14 we're talking about.

15 A. I don't have my glasses, though. (Witness reads
16 document.) In this I was just talking about what
17 happened that day.

18 Q. Yes, ma'am. That's the statement that you wrote?

19 A. He wasn't threatening me on that day. I mean, I
20 was just telling him about what happened that day. He
21 threat -- when he told me to keep my mouth shut it was
22 after Christmas, somewhere first of the year.

23 Q. Okay. But this is February the 8th; is that
24 correct?

25 A. Yeah, somewhere in there he told me.

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1 Q. Okay.

2 A. But still, sir, in this I didn't need to put
3 anything in it because I was just talking about her
4 being touched and all.

5 Q. Okay.

6 A. I didn't say anything about what I felt or what I
7 was feeling.

8 Q. Okay. In this statement, you signed -- that's your
9 signature down there, isn't it?

10 A. Yes.

11 Q. And it says that you have read every page of this
12 statement consisting of one page, each page of which
13 bear my signature and corrections, if any, bear my
14 initials and I certify that the facts contained herein
15 are true and correct. That's what it says.

16 A. Yes.

17 Q. Was certified, made no request.

18 A. On that day, on that day is when I made a no
19 trespassing sign and motive and what you call a no
20 contact on him. So if I wasn't afraid of him, why would
21 I do that?

22 Q. That's a good question. Maybe you can tell us then
23 why you said that when you came in and I'm looking at
24 it. Please make sure I'm saying it correctly, if you
25 would. "Weekend of the second week of October 2011,

1 when he touched my daughter **CHILD** I saw his hand on
2 her dress in the back."

3 A. Yeah. Up her dress in the back.

4 Q. No, ma'am, that's not what you say. Look at it and
5 see. I want to be sure now. "I saw his hand on her
6 dress in the back of her when I walked in the room."

7 Nothing about being under her dress, nothing about being
8 under her clothes, nothing about anything except on her
9 back you say; isn't that correct?

10 A. Under her dress.

11 Q. No, ma'am. Please read it. You read it.

12 A. I know what this says, but I know what I saw.

13 Q. All right. So you lied here?

14 A. I wouldn't say I lied.

15 Q. You didn't tell the truth; is that correct?

16 A. I just didn't represent, say it right.

17 Q. Didn't say it right.

18 A. Yeah.

19 Q. Okay. "And I asked what he was doing and he said
20 nothing." Right? But you said a minute ago that you
21 saw his hand under her dress, but that is not what you
22 wrote in your own words. They weren't threatening you
23 there at the Sheriff's Department, were they?

24 A. No, but I was upset. When you are upset you don't
25 put down everything that you feel.

1 Q. All right. When you're upset you don't tell the
2 truth. Is that what you're telling me?

3 A. That's not saying I lied. I just didn't put down
4 everything.

5 Q. Didn't the officer ask you to put down what
6 happened?

7 A. Well, most of the time if you say what happened you
8 don't sit there -- as a matter of fact, that day I
9 didn't have my glasses on. I had to go outside and get
10 my glasses. And I was upset 'cause I had been up there
11 arguing with the lady from DSS and talking with her, and
12 I was just upset. I didn't know what I was putting
13 really. I mean, I knew what I was putting but I didn't
14 put all of it.

15 Q. You are pretty upset now, aren't you?

16 A. No, sir.

17 Q. Not at all?

18 A. I'm upset. I'm nervous.

19 Q. Okay. But when you wrote this statement you were
20 asked to put down exactly what happened so you wrote it
21 in your own hand using your own words in this statement;
22 is that correct?

23 A. Yes.

24 Q. Okay. All right. And I think you said she used
25 the term potty hole?

1 A. Yeah.

2 Q. When she testified she called it, what was it,
3 wrong place?

4 A. Well, I found out that you need to teach your
5 children what the real body parts are so when they say
6 something you'll know what they're talking about. If
7 it's one thing it's that thing, if it's another it's
8 another. If it's a penis, it's a penis. It's not
9 private part. If it's a vagina, it's a vagina, not a
10 potty hole.

11 Q. Okay. But you put down what she said?

12 A. Yeah.

13 Q. Okay.

14 A. Because she wasn't taught. I didn't teach my
15 children. My mama didn't teach me to say those things.

16 Q. All right. And I understand that. I agree. And
17 this was October the 15th you said, and this was
18 February the 8th before you wrote down this statement.
19 And this was after supposedly DSS came and took the
20 children?

21 A. Yes.

22 Q. Okay. Now, Steve was there for a little while, and
23 you said you gave him some money. He paid you back that
24 money, though, didn't he?

25 A. I didn't give him money. I paid Mr. Roy Holbrooks

1 rent to get him a house, and I paid for a motel and all
2 kind of stuff.

3 Q. But you got your money back?

4 A. Yes, sir.

5 Q. When his check came in?

6 A. I repaid -- I paid his rent one month.

7 Q. But I'm saying you got repaid?

8 A. I don't know if I got repaid, but I got some money
9 back.

10 Q. Okay. Now, we heard **CHILD** say that it was a week
11 after this happened when she went to see the doctor and
12 these other people.

13 A. **CHILD** is a child. She don't remember what one
14 week was or two months ago. You can ask her or even --
15 she don't remember all these dates and all these months
16 and all. She might look like a big girl, but she has a
17 nine-and-a-half-year-old mind.

18 MR. DAY: That's all the questions I have. Thank
19 you.

20 THE COURT: Redirect?

21 MS. SIMMONS: Just a couple follow-up.

22 REDIRECT EXAMINATION

23 BY MS. SIMMONS:

24 Q. You told Mr. Day that DSS took your children as a
25 result of this incident, right?

1 THE CLERK: Please be seated.

2 THE COURT: Yes, ma'am.

3 MS. SIMMONS: Thank you, Judge.

4 SARGEANT GENTRY HAWK,

5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MS. SIMMONS:

8 Q. Sergeant Hawk, where are you employed?

9 A. I'm with the Oconee County Sheriff's Department.

10 Q. In what capacity are you employed there?

11 A. Investigations, specifically dealing with child
12 abuse and elder abuse.

13 Q. How long have you been investigating those cases?

14 A. Approximately eight to nine years.

15 Q. Do you have any specialized background and training
16 in investigating cases like this?

17 A. Yes, ma'am. I've been to numerous schools
18 concerning child abuse, physical abuse, sexual abuse,
19 also elderly, vulnerable adult abuse. I've been out to
20 California for the national symposium on child
21 maltreatment. Finding words at the time is what it's
22 called. It's a forensic interviewing of kids where they
23 just do the, take us through how to interview a child
24 and...

25 Q. How did you become involved in the case relating to

STATE VERSUS GARY EUGENE FROST --

1 this Defendant? When did you receive the report?

2 A. I received the report -- what happens is an officer
3 goes out and takes an incident report and it comes
4 through the system and assigned to me as an investigator
5 to follow up on.

6 Q. And officer Meadows had received a DSS report?

7 A. Yes, ma'am.

8 Q. And it was referred to you?

9 A. Yes, ma'am.

10 Q. Now, do you have any idea of when you received that
11 report?

12 A. I do not. I don't remember the date on the report.
13 It was a couple days after he had gone out there.

14 Q. Would it have been immediately after this incident?

15 A. What are you asking? No.

16 Q. Like Dr. Carter testified that she did the exam in
17 March. Would that have been close to the time you
18 received your ---

19 A. Yes. That was in February.

20 Q. Okay, thank you. Based on your experience
21 investigating these types of cases, are reporting delays
22 common?

23 MR. DAY: Objection, Your Honor. That goes well
24 beyond the expertise of this witness.

25 THE COURT: All right. Ladies and gentlemen, I

1 THE COURT: Okay. Let's just move on.

2 MS. SIMMONS: I'll withdraw the question. Thank
3 you.

4 THE COURT: All right. You can bring them back in.
5 I mean, I know what you're asking but I think that
6 will get into more trouble than it's worth.

7 MS. SIMMONS: Thank you, Judge.

8 (The Jury entered the courtroom at approximately
9 4:47 p.m.)

10 THE BAILIFF: There's one in the bathroom.

11 THE COURT: Okay. That's fine. (Last juror in
12 approximately 4:48 p.m.)

13 BY MS. SIMMONS:

14 Q. Sergeant Hawk, so you were the investigator
15 assigned to this case?

16 A. Yes, I was.

17 Q. Did you have an interview of the victim conducted?

18 A. I did.

19 Q. And where was that done?

20 A. That was done at the Child Advocacy Center there
21 Anderson.

22 Q. What did those allegations reveal in your
23 investigation?

24 A. I'm sorry, can you repeat that?

25 Q. Based on, based on that interview, did you conduct

STATE VERSUS GARY EUGENE FROST --

1 a further investigation?

2 A. I did. I sent, after the forensic interview I
3 referred the child to the Child Advocacy Center again
4 for a medical exam.

5 Q. And did you also arrange to have witness statements
6 taken in this case?

7 A. I did not. The witness statement was taken by
8 another officer.

9 Q. But you arranged for that to happen?

10 A. No, ma'am.

11 Q. When you have a, when you have a person forensic
12 interview that results in a disclosure, do you search
13 for corroborating evidence?

14 A. I'm sorry, what was that last part?

15 Q. Do you search for corroborating evidence?

16 A. I do.

17 Q. And were you able to obtain corroborating evidence
18 in your case?

19 MR. DAY: Objection, Your Honor. Speculating about
20 it. If there's evidence, let him identify the evidence
21 and see if it's permissible.

22 THE COURT: Overruled. Your question was, was
23 there any.

24 BY MS. SIMMONS:

25 Q. Was there any corroborating evidence for the

1 victim's story?

2 A. The medical evidence in the report.

3 Q. Okay. And did you also, did your department also
4 obtain a statement from Ms. Longwith?

5 A. We did.

6 Q. Based on the interview with Ms. Longwith, were you
7 able to determine where these events occurred?

8 A. I heard both from Ms. Longwith and the child it
9 occurred at the residence, at their residence.

10 Q. And was the residence in Oconee County?

11 A. Yes, ma'am.

12 Q. And how were you able to create a time frame for
13 these events?

14 A. I did because of the statement from the mother it
15 was in October. And because it was a child victim under
16 the age of nine, I did my timeline from the first of
17 October to the first of November.

18 Q. What did you eventually charge the Defendant with?

19 A. With criminal sexual conduct with a minor first
20 degree.

21 Q. And what elements did that include?

22 A. It has to be a child under the age of 11. It has
23 to be some kind of sexual battery, penetrating,
24 penetration of the anus or the vagina of the victim or
25 oral sex.

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1 seeing we finished up. I'll see y'all at 10:00
2 tomorrow. Do you know whether you will have anything in
3 rebuttal or does it just depend?

4 MS. SIMMONS: I have no idea what his witnesses
5 would testify to at this point.

6 THE COURT: I understand.

7 MS. SIMMONS: I would assume if I had rebuttal it
8 would be brief as long as I could get the witnesses
9 here.

10 And, Judge, it's my understanding as far as the
11 charge the jury on the verdict form needs to make a
12 factual finding as well; is that correct?

13 THE COURT: Yeah. If y'all have, just because of
14 the way we're set up, we got new computers yesterday
15 that were delivered in Anderson. If you have a sample
16 that you want me to look at, how about doing it for me.
17 It's real difficult for us to coordinate and the printer
18 can't help. So if y'all will do a verdict form that
19 would help.

20 So I'll see y'all tomorrow at 10:00.

21 (Whereupon, Court adjourned at 5:01 p.m. on 2nd day
22 of trial.)
23
24
25

1 THE COURT: And what's your decision?

2 THE DEFENDANT: Not testify.

3 THE COURT: All right. And do you understand that
4 I'll instruct the jurors that the fact that you have not
5 testified can't be held against you? Do you understand
6 that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you have any questions for me at
9 this time?

10 THE DEFENDANT: No, sir.

11 THE COURT: All right. Mr. Day, do you have any
12 questions for your client?

13 MR. DAY: No, sir.

14 THE COURT: All right. So you've decided not to
15 testify?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And you understand everything I've
18 talked to you about?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Okay. Thank you.

21 The other thing I need to talk to you about before
22 we start, you have a check list on your verdict form.
23 Is there a new requirement for that checklist on your
24 verdict form?

25 MS. SIMMONS: Judge, the way I understand

1 Subsection 16-3-655 ---

2 THE COURT: Okay. Yeah, because I can't pull it
3 up, so...

4 MS. SIMMONS: 16-3-655 subsection A (1) is -- under
5 C (1) it says: If a person is convicted of A(1), which
6 is criminal sexual conduct with a minor first degree, it
7 says that the Judge, let's see, the case of a person
8 pleading guilty to a violent offense convicted at trial
9 under section A(1) must designate as part of the verdict
10 whether the conduct that constituted sexual battery
11 involved sexual or anal sexual intercourse or intrusion
12 by an object.

13 THE COURT: Okay.

14 MS. SIMMONS: I never made one that looks like
15 that, but I think we have to include it.

16 THE COURT: I hadn't either. But that -- it may
17 have been amended. If it hadn't been amended, it's
18 something that hasn't been done. I understand why it
19 needs to be done.

20 Have you had a chance to look at the verdict form?

21 MR. DAY: Yes.

22 THE COURT: Do you agree that's ---

23 MR. DAY: That appears that's the way I would have
24 written it, Your Honor, based on the statute.

25 THE COURT: Well, I trust you both and I can't pull

1 it up; so...

2 MS. SIMMONS: Judge, I'll be happy to hand you my
3 copy.

4 THE COURT: Let me just look at it. It seems odd
5 to me, but...

6 And, Mr. Day, you have a couple witnesses?

7 MR. DAY: No.

8 THE COURT: You're gonna rest?

9 MR. DAY: We're gonna rest.

10 (Whereupon, off-the-record discussion occurred at
11 sidebar.)

12 THE COURT: All right. Just for the record we've
13 had an off-the-record discussion. Because of the change
14 in the statute, assault and battery second degree does
15 apply because the legislature apparently took out the
16 word adult. So what I'll do is I'll charge criminal
17 sexual conduct in the first degree and assault and
18 battery in the first and second degree, and then as a
19 lesser-included.

20 MR. DAY: And what I'll do is I'll just wait till
21 the end of the charge and then I'll put on the record my
22 objection not having qualified as third, assault and
23 battery third and we'll finish that off.

24 THE COURT: All right. What we'll do then is,
25 since I thought we'd be doing this during lunch, I'll

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1 bring them in and let you do your closing and then I'll
2 have to give them a fairly substantial break while we
3 put this together. Okay?

4 All right. Are you all ready for your closing?

5 MS. SIMMONS: Yes, Your Honor.

6 THE COURT: Mr. Day?

7 MR. DAY: Yes, Your Honor.

8 THE COURT: All right. You can bring them in.

9 The first thing I'll do is tell them that they
10 can't hold the fact that he's not testifying against him
11 so we'll go from there.

12 (Whereupon, Counsel confer off the record.)

13 (Whereupon, the Jury entered the courtroom at
14 approximately 10:33 a.m.)

15 THE COURT: All right. Mr. Day, do you have any
16 witnesses?

17 MR. DAY: Your Honor, at this time the Defense
18 rests, Your Honor.

19 THE COURT: All right, thank you.

20 All right. Ladies and gentlemen, you have heard
21 all the testimony that you're gonna hear in this case.
22 The Defendant, as I told you at the beginning, has pled
23 not guilty in this trial. I'll explain more in my long
24 jury charge to you, but just briefly he has a Fifth
25 Amendment right not to testify if he chooses not to.

1 MS. SIMMONS: Yes, Your Honor.

2 THE COURT: Thank you, ma'am.

3 MS. SIMMONS: Thank you, Your Honor, Mr. Day.

4 Good morning ladies and gentlemen, first I want to
5 thank you for paying attention the last couple of days.
6 I want to thank you and I know you have carefully listen
7 to the witnesses in this case. It is my obligation to
8 prove to you beyond a reasonable doubt that this
9 Defendant committed the crime of criminal sexual conduct
10 with a minor in the first degree. I want to tell you a
11 little bit about the law in this case and how it
12 applies.

13 Reasonable doubt is the kind of doubt that causes a
14 reasonable person to hesitate to act. When you are in
15 that jury room, it is not beyond all doubt. Reasonable
16 doubt is not obtained, it is a standard. The standard
17 is reasonableness and you are all reasonable people.

18 The law on criminal sexual conduct with a minor in
19 the first degree, again, I have to prove to you that a
20 sexual battery was committed by this Defendant on a
21 child that is less than 11. A sexual battery can be a
22 number of things. It can be actual sexual intercourse
23 from the penis being inserted in the vagina. It can be
24 oral sex. It can be anal sexual intercourse and it can
25 also be penetration of a body part, in this case the

1 And that's a personal decision. No person shall be
2 compelled in a criminal case to testify against himself.
3 As I said, the presumption of innocence in this country
4 is an important function and he's decided not to
5 testify, so you cannot hold the fact that he did not
6 testify against him. He's just asserting his right.

7 At this point in the trial because there are no
8 witnesses from the Defense, we're moving straight into
9 the closing arguments. This is a little earlier than I
10 thought. So we're gonna let the attorneys do their
11 closing arguments and then unfortunately I have to take
12 a fairly long break before I give you the charge. I
13 have a printing issue that's going to take a little
14 while so I apologize.

15 But after the closings, we'll take a break as quick
16 as we can. We'll bring you back in and then I will have
17 to read to you the jury charge. Again, it's gonna be 30
18 or 40 pages. So make sure when you come back in you are
19 awake and ready to listen.

20 As I told many a jury, I read to two people in my
21 life, I've read to my children to put them to sleep and
22 juries to try to not put them to sleep. So during the
23 break you're gonna have time to get up and walk around
24 and that might be a good idea.

25 All right. Are you ready to close?

1 fingers into the vagina, as well as the penetration by
2 an object. There are lots of kinds of sexual
3 intercourse and in this case the sexual intercourse
4 would be that the victim being penetrated by the
5 defendant's fingers.

6 The law in South Carolina also requires that when
7 you convict a Defendant for criminal sexual conduct with
8 a minor in the first degree the jury has to make certain
9 factual findings. You have three options in that.
10 Unfortunately you have to make a factual finding what
11 kind of sexual battery occurred. Your options are
12 sexual intercourse, anal sexual intercourse or intrusion
13 by an object. I would submit to you in this case the
14 option would be sexual intercourse being the penetration
15 of the victim's vagina by the Defendant's hand.

16 The Judge most importantly is going to tell you
17 that in South Carolina the standard is that the
18 testimony of a victim in a criminal sexual conduct case
19 does not have to be corroborated. In this case there
20 was corroborating evidence, but it is not required under
21 the law.

22 The Judge also is gonna charge you on some
23 lesser-included offenses. Those are various degrees of
24 assault. I submit to you that those lesser-included
25 offenses do not apply in this case. The only evidence

1 you heard from the victim is that there was a
2 penetrating injury to her vagina. The lesser-included
3 offenses involve only an unlawful nonconsensual touching
4 of the parts, not the penetration of the parts. But it
5 is my position to you that criminal sexual conduct with
6 a minor in the first degree is clearly what happened in
7 this case.

8 I want to spend a little time talking about the
9 defense in this case. It's kind of like what I call
10 smoke and mirrors. They want to get you off track by
11 confusing you, asking questions that aren't really
12 important or are designed to mislead. They want you to
13 forget about **CHILD** who is nine years old, and forget
14 there's a victim in this case.

15 Ms. Longwith is as close to an eyewitness as you
16 will ever get in a criminal sexual conduct case. Quite
17 frankly, people don't invite a crowd to molest a child.
18 Much ado has been made about her statement and her
19 testimony. Let me reiterate to you, she never said the
20 statement she gave was false. She said there was more
21 detail than what was written in the statement. She
22 herself was asked by an officer to write down what
23 happened. She wrote down what happened, what she saw
24 that day.

25 It's not a be all end all account of this incident

1 how it affected her life and her relationship with her
2 son. She told you she saw the Defendant's hand in the
3 victim's dress. She took an oath to tell you the truth,
4 and I submit that is indeed what she saw back in October
5 of 2011. She may have written the word on the statement
6 instead of the word in, but what difference does it
7 really make? At the end of the day, at the end of any
8 interpretation of her statement she walked in on her
9 adult son in a bedroom alone with her eight-year-old
10 daughter with his hand in a very compromising position
11 on her body.

12 **CHILD** disclosed to her mother immediately after
13 what happened, told her as soon as they got out of the
14 room this is what he did to me. Ms. Longwith did not
15 immediately report this testimony to the police. You
16 heard her testimony. This is a woman conflicted. It's
17 hard to call the law on your own child, call the police.
18 It's hard to make an embarrassing family spectacle.

19 This woman who has raised her four children, she is
20 now raising two children that belong to somebody else
21 and she's raising the Defendant's daughter. Once this
22 came to light, this woman was 100 percent cooperative.
23 She told you on cross-examination that the Defendant
24 scares her, that he threatened her if she told you about
25 this. She told you she fed this man, she did his

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1 laundry, she gave him rides, she gave him money. She
2 gave him a place to lay his head when no one else would.

3 How was she repaid? He ends up drunk on her
4 doorstep at 5:00 in the morning with his girlfriend and
5 then shows his mother the ultimate disrespect by
6 molesting his own eight-year-old sister. Trying to
7 shift the blame to Christine Longwith is simply an
8 insult.

9 Dr. Carter testified on the medical evidence in
10 this case. True, she cannot give you a time frame for
11 these injuries. She can only tell us they were
12 completely healed and they happened more than a week,
13 they were more than a week old. But she can tell us
14 these injuries are more consistent with a penetrating
15 injury to the vagina rather than a blunt force injury
16 which is like a fence post or a bike accident.

17 And remember she told us it's unusual for a single
18 finger to cause the injury. It is possible for this
19 injury to be caused by multiple fingers being inserted
20 in the vagina. I would remind you that **CHILD** said
21 fingers the plural and recounted the fingers moving
22 around inside her.

23 I expect the Defense is also gonna talk to you
24 about witness credibility. There is no such thing as a
25 perfect witness. People are taken from their everyday

1 lives to the tense environment of a courtroom, somewhere
2 they probably have never been before. Small details may
3 be overlooked. Minor inconsistencies are going to
4 emerge. However, overall the witnesses have been
5 consistent. **CHILD** recalled details from almost a year
6 ago and she's been consistent on what happened to her.

7 She's a child. She was eight years old when this
8 happened. She's nervous, but she's consistent. So what
9 if she uses a different name for the body part today
10 than what she used a year ago? Children's vocabulary
11 emerges, changes over time, especially if you have been
12 forced to talk about this in a public forum these very
13 private things. At the end of the day, it's still the
14 same body part she was talking about that was injured by
15 this Defendant.

16 Most importantly I want you to look at motive to
17 lie. There is none. Why would **CHILD** want to get her
18 brother in trouble? Is her life better because she told
19 this story? Not only did she endure the embarrassment
20 of telling this story multiple times to complete
21 strangers, the most private things, she also endured an
22 invasive medical procedure. And more importantly, for a
23 period of time she was taken from the only home she's
24 ever known, from the only mother she'd ever known. Then
25 she has to come to court and relive it all again.

1 Why would an eight-year-old go to such lengths to
2 perpetuate a lie? I submit to you she would not. Is an
3 eight-year-old really capable of concocting a grand plan
4 to frame her brother and get her mother to go along with
5 it and miraculously produce medical evidence that
6 corroborates her story? Ladies and gentlemen, a theory
7 such as that would be ludicrous. No mother is going to
8 take part in framing her own son for a crime, especially
9 not one like this.

10 Look at our case. Again, let's look at **CHILD**
11 Her facts, her details and her consistency, the courage
12 it takes to tell your story to complete strangers. The
13 details are pretty good. She told you he was watching a
14 movie in her bed. He called her into the room. He
15 asked her to change the movie, asked her to come closer.
16 Exposed his penis to her and put his hand inside her
17 private parts and moved it around. He even asked her
18 does it feel good.

19 She said he touched her privates with his hand, not
20 just with the hand, not just a singular finger she used
21 the word fingers. Fingers. I submit to you this
22 Defendant is a big man. Big people have big hands, have
23 big fingers. Fingers that can damage the private parts
24 of little eight-year-old girls.

25 Yes, **CHILD** and the Defendant were alone, but

1 Ms. Longwith came in at the end of this incident. It's
2 very rarely we have eyewitnesses to a crime of this
3 sort.

4 [CHILD] recall is pretty good. Most of us can't
5 remember what we did last week. We can nit-pick her
6 story to death, but at the end of the day you will still
7 overall find consistency that this man inserted his
8 fingers in her vagina and moved them around. Most
9 importantly, in this case you find corroboration,
10 corroboration by her own mother, corroboration by the
11 medical evidence.

12 In a little bit you're gonna be asked to go into
13 the jury room and deliberate this case. I told you
14 yesterday the most important tool you bring is your
15 common sense. You didn't leave it at the door when you
16 came in here. Your common sense tells you [CHILD] is
17 telling you the truth. Your common sense does not
18 believe the defense assertions in this case.

19 Remember that no witness in this case stands alone.
20 This case does not solely rest on [CHILD] Dr. Carter or
21 Ms. Longwith. You take their testimony as a whole.
22 It's like putting the pieces of a puzzle together. I
23 submit to you that pieces of the puzzle are together and
24 you do have a complete accurate picture of what happened
25 October of 2011. Your common sense tells you that this

1 man used his fingers to penetrate the vagina of
2 eight-year-old CHILD in October of last year.

3 There are some things this case is about betrayed
4 trust. CHILD trusted the Defendant because she knew
5 him as a brother. The way little girls trust adults, a
6 hundred percent pure simple kind of trust. This
7 Defendant betrayed that trust in one of the worst way
8 you can imagine. He violated this little girl. She was
9 only eight. She wasn't even old enough to understand
10 truly what he was doing. And in the course of
11 committing this horrible act this man betrayed his own
12 mother.

13 Under the last two days CHILD has trusted me to
14 tell you her story and make you understand what happened
15 in the events of October of 2011. I ask that you go to
16 the jury room and use your common sense, deliberate the
17 totality of everything you've heard in this case. I
18 simply ask that you find this man guilty of criminal
19 sexual conduct with a minor in the first degree. Thank
20 you.

21 THE COURT: Yes, sir.

22 MR. DAY: Thank you, Your Honor.

23 Mr. Foreman, ladies and gentlemen, as we said at
24 the beginning, these cases don't take long because in
25 South Carolina it's not like it is on the television,

1 not like it is in some other states. We believe that
2 when you are looking for the truth and you're looking
3 for justice you should do it as quickly as possible.

4 I've actually read the transcripts of some cases
5 that were actually driving under the influence cases
6 from other states that took two months to try. If you
7 can imagine sitting in that box for two months hearing a
8 case on driving under the influence you would understand
9 why jurors sometimes feel they've been put upon and why
10 people don't want to be on a jury. And I can understand
11 that, too.

12 This case is coming to an end, and it now comes to
13 the most important part and that is it is time for you
14 to take all of the evidence that has been presented
15 here, right from there, and it is time for you to
16 determine whether or not this man's life is gonna change
17 completely from here on out. His life is in your hands.

18 Soon the Judge will be able to give you a charge on
19 the law which he will tell you to apply to the facts.
20 He'll explain to you what the laws in South Carolina and
21 this great country of ours is and you will have to make
22 a decision. It's never an easy one, but you have to
23 make that decision.

24 When you realize that the reason we're here is
25 because of our Constitution, this is actually

1 Constitution week celebrated by the Daughters of the
2 American Revolution. And last Monday was Constitution
3 day and all of our schools in South Carolina are
4 celebrating the Constitution. The Constitution is a
5 great document and that's why we're here. It protects
6 you and me and the Judge, the Solicitor, everyone. And
7 it does it by guaranteeing one of the greatest rights
8 ever, and that is to have a jury determine your guilt or
9 innocence. In this case you must make that decision,
10 guilty, not guilty.

11 The Judge is gonna give you the law that in our
12 state, in our country means so much. But it's very
13 simply the person with the burden of proof is always on
14 the State. It's right here. It never leaves. And the
15 reason it's there is because when our country came into
16 being, when this country started, the rule of law was if
17 you are charged with a crime you are guilty and you must
18 prove your innocence. We decided that wasn't right. It
19 should be the other way around. And that's why we exist
20 as a country today. One of the main reasons is we
21 didn't like that. Didn't like being treated that way.

22 The Judge has explained to you once, and he'll tell
23 you again, that you must apply all of your common sense
24 to it. And part of that is looking at it, being serious
25 and determines whether you have found that the evidence

1 goes beyond a reasonable doubt. Beyond. And the
2 Solicitor is correct. It's not beyond every possibility
3 by no means. We can say that I doubt that we're gonna
4 see the sun tomorrow. Why? Because it's not tomorrow
5 yet.

6 Let's be realistic. That's not a reasonable doubt
7 that the sun is not gonna be here tomorrow. We're
8 pretty sure it's gonna be here. It hasn't missed a day
9 in a long time. It has not missed a day since the
10 second day when God created light and day and night and
11 day and dark and light. Hasn't missed a one. But you
12 do have to look beyond a reasonable doubt.

13 And the Judge used the word that is so true. And
14 that is you must firmly believe in the guilt of the
15 Defendant. You must believe firmly in the guilt of
16 Steve Frost. That's what we're here for.

17 Now, as I said before, there is a presumption that
18 is with Steve, just as it is with everyone else, and
19 that is that you are innocent. So let's look at this
20 case. The Solicitor thinks I'm gonna nit-pick
21 everything. What do you think we're gonna do? We can't
22 just come up here and say well some of it may not make
23 sense and some may contradict each other. But you've
24 got to look at that, you've got to weigh it.

25 **CHILD** story changed so many times, weighing

1 each of the things that went on, but let's see if we can
2 figure it out. If we believe everything presented here
3 today, supposedly October 15th, which is a set day
4 according to Christine Longwith which is exactly when it
5 had happened. And she said in February, which according
6 to my calculations is 111 days later, when the doctor
7 saw her. She says in February that then she was asked
8 to tell what happened and she gave a statement.

9 Now, the Solicitor may want you to believe that she
10 was asked to give a statement, something to this effect.
11 Here, ma'am, write down what happened. I'll be back in
12 a minute. I want to get some coffee. And the law
13 enforcement officer walks away or sits in a chair across
14 the room. Wrote it down. Okay. Well, okay. Looks
15 okay, signed it. That's the truth. Okay. Put it in my
16 little folder, take that back, give it to the chief
17 investigating officer and let's move on.

18 Now, that might be in some Sheriff's Department,
19 but by God, I don't believe it's Oconee County. We got a
20 pretty good Sheriff's Department. We got a pretty good
21 bunch of officers there. I don't think that's the way
22 it happened. I think she was asked to write down what
23 happened. She was asked, is that it? What else would
24 you like to put there? Is this everything? What went
25 on? You sure this is what you want to put down? Nobody

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1 is threatening you, nothing at all, just tell us what
2 happened. Write it down, okay?

3 I have found in my 34-plus years of practicing up
4 here and with the Oconee County Sheriff's Department
5 that she would be willing to write it for you if you
6 want him to. You tell me. I'll write it down. You
7 look it over and make sure it's right.

8 But in her statement she said something completely
9 different from what she said up here. Up here she's
10 trying to say all sorts of things in February after she
11 claimed this happened October the 15th. As a matter of
12 fact, considering the fact that she gave that statement,
13 said it was the middle of October, and the weekend of --
14 said the weekend of the second week of October which
15 happened to be Saturday, would be the 15th of October,
16 2011. Sunday would be the 16th. She said it was that
17 weekend.

18 However, the indictment said somewhere between
19 October 1st and November 1st. So apparently what was
20 presented to the grand jury didn't say anything about
21 October 15th, just said somewhere in there, so that
22 wasn't presented. The person who signed the warrant
23 didn't even talk to the grand jury, someone else did who
24 didn't have anything to do with the case.

25 So we end up here today and the Judge tells you

1 it's the indictment that brings us here. You can't have
2 a trial without an indictment. You can't have a
3 complete charge in a criminal case without an
4 indictment. And what we have here is an indictment that
5 doesn't even get close to what she was saying. It's
6 testimony that's different.

7 **CHILD** like I said, kept changing and describing
8 things. And look, we all know eight and nine years old,
9 we don't know. But she's been with her mama all that
10 time. She said that when, according to this statement,
11 her testimony, and according to Christine, then also
12 told her dad at the same moment within minutes of time
13 at that time as to what supposedly what happened.

14 Where is dad? Why haven't we heard from him?
15 Christine said, oh, she thought there might be some kind
16 of trouble. The dad, **CHILD** dad, wife of Christine,
17 is not Steve Frost's father. He would be considered his
18 step-dad I reckon. There was no trouble.

19 He didn't do anything, which leaves me to believe
20 possibly he didn't believe it because he sure wasn't
21 here today. He sure didn't check anything, he didn't
22 make any statements. Nothing. No one else in that
23 house has testified here. No one that's in that house
24 wrote a statement. Nothing at all.

25 From October until February. And the doctor didn't

1 see her until March the 5th of 2012.

2 **CHILD** testimony went through there, you saw her
3 demeanor when testifying. I'm sure that she was
4 nervous. I think I would be. I think you would be.
5 Even at your age right now if you had never been in a
6 courtroom you would be nervous. If you sat up there and
7 looking out at this big room with all these people
8 running around here trying to figure out what all these
9 people are doing you're going to be nervous. You got to
10 see at the time she was testifying how she responded to
11 questions.

12 Was it free flowing? When you speak the truth, it
13 flows freely. It's not hard. You tell the truth, it
14 just comes out. She kept responding with short answers
15 to things she expected. When she was asked something
16 that wasn't expected, nothing came. It might be a while
17 or nothing verbal. She wasn't expecting a question like
18 remember seeing the doctor? Yeah. How long after this
19 supposedly happened did you see the doctor? (Pauses) a
20 week. She wasn't expecting that one. So she didn't
21 know what to answer. A lot of questions there.

22 Also, when she went to the doctor and saw
23 Dr. Carter, Dr. Carter did an examination and she told
24 her what her examination found. I wasn't gonna question
25 Dr. Carter about what she found. She seems to know what

1 she's doing. When she sees something, she knows what it
2 is and how to describe it. That's true.

3 She took no history and she did nothing whatsoever
4 to try to tie in what she saw. She said it was an
5 injury to the incident which is what brings us here
6 today. Is there any link between those two? She said,
7 I don't know. When did it happen? I don't know. How
8 long before you saw her? I don't know. How did it
9 happen? I don't know. Is it consistent? Yes. Is it
10 consistent with other possibilities? Yeah. Well, tell
11 me some more. I don't know anything more. I told you
12 all I know. That was it.

13 She did not put them together. She can't say what
14 she found to support anything. She didn't find anything
15 about how, when or anything else that could tie it
16 together. She never did anything. Nothing was
17 presented to you other than what she saw at that time in
18 March.

19 And then Christine gets up here. Christine made it
20 pretty clear that when she wrote that statement in
21 February she was nervous or she was scared or she was
22 frustrated. Whatever you want to say. She was sitting
23 in a room, she was with an officer, she was not being
24 threatened, no one is trying to hurt her, no one is
25 forcing her to do anything, and she says she wrote down

1 what happened and then she testified to something
2 completely different up here. So what she did is she
3 made it very clear if I'm scared or frustrated I'm gonna
4 lie. I'm not going to tell the truth. I'm gonna do
5 what I got to do at the moment. And that's what she
6 did.

7 She said one thing. She said she saw Steve's hand
8 on her back, on **CHILD** back. That's what she wrote
9 when there was no one threatening her in February, some
10 what 111 days after this supposedly happened, close to
11 that. When she wrote that statement, she was much
12 closer to when it happened and she had a reason at that
13 point if she wanted to try to tell the truth she could
14 have told the whole truth, had plenty of time to do it
15 and wrote it in her own hand.

16 And no, I do not believe for one minute that
17 anybody rushed her into doing it. Nobody. I don't
18 believe anybody forced her to write just a few sentences
19 and quit. I don't believe anybody tried to scare her in
20 some way.

21 What I do believe is she was trying to write down
22 something that she said that she saw and his hand was on
23 her back, not under her dress in any way. That's what
24 she said. She could have changed that any time she
25 wanted to. That was February of this year, and this is

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1 now the end of September. She could have written
2 another statement saying, you know, I've been thinking
3 on it. Maybe I was scared. Let me write it again. She
4 didn't do that. Nope. Not at all.

5 Remember she kept saying she was worried and she
6 was scared. As I said before, nothing happened. Her
7 husband was told the very same day, we don't know of
8 anything he did. Never made a statement, never looked
9 at anything, never tried to find out anything, nobody
10 else in the house did. Not at all. Not one thing.

11 This case is based on what the Sheriff's Department
12 said was a medical exam where nothing was shown or
13 proven as to when or how it happened and a statement
14 from Christine Longwith which she now says wasn't true.
15 That's what this case is based on. That's how they
16 brought it. That's how we ended up here.

17 I think Christine was willing to do about anything,
18 particularly when DSS got involved, because there was
19 some sort of allegation. She said they took the
20 children out of that house. Steve wasn't there. He'd
21 been gone for months. But they took them away, and I
22 think she was willing to do anything and say anything,
23 anything, to try to get people to stop looking at her.

24 Ladies and gentlemen, it's a serious charge. It's
25 a horrible charge. This crime is a terrible crime.

1 There's nothing good about this crime. There's no way
2 to defend this crime. But you can defend the facts of
3 an allegation, a claim, a charge against a person, Steve
4 Frost. With the evidence that's been presented here,
5 you've got to take what the Judge says as law, as to the
6 possible charges that he could be found guilty of or not
7 guilty of.

8 One, I don't think the evidence has shown beyond a
9 reasonable doubt, firmly beyond a reasonable doubt that
10 he committed a crime of criminal sexual conduct. I just
11 don't think it's there.

12 Two, there is evidence also that says he may have
13 touched her. In this case that evidence is contradicted
14 between a nine-year-old child and an adult. Was there a
15 touching? We don't know. There could have been. You
16 will have to decide that and the Judge will explain that
17 to you.

18 There was a lesser-included charge. If it wasn't
19 that, could it be something else? And our law is such
20 it will allow you to consider that. First you got to
21 prove to yourself in your mind that he committed a
22 crime; and if you believe he did, what crime did he
23 commit? And that evidence has got to be beyond a
24 reasonable doubt, firmly beyond a reasonable doubt.
25 That's what it's all about.

1 You now have an opportunity to go back in that jury
2 room. So you will understand something. In our
3 country, which is a great country, don't get me wrong,
4 with all the problems we've had in this country, with
5 all the mistakes we have made down through the years,
6 there is one place that is inviolable and that is back in
7 that jury room. When you go back there, no one can
8 look, no one can listen.

9 Your bedroom can be bugged by the government, and
10 it happens all the time. But that room back there can't
11 be bugged, nobody can listen. But when you go back
12 there, this is your opportunity to make a decision and
13 nobody is to bother you, none at all. And while it's
14 hard and while it's difficult, it is so important
15 because you have taken an oath and that oath is very
16 serious and that oath says that you will look at
17 everything and you will make a determination and it's
18 gonna be hard. You will make that.

19 And no one can ask you why you did it or anything
20 else unless you want to answer a question from anyone.
21 The Judge will tell you somebody comes up to you, me or
22 anybody else and ask you how did you come to your
23 decision? You don't have to talk to me. You don't have
24 to talk to anybody. You don't have to talk to your
25 wives or husbands. You don't have to talk to your

1 children. You don't have to talk to anybody if you
2 don't want to. It's entirely up to you because it's
3 that important.

4 Winston Churchill said that the most important
5 thing that a citizen can do, most importantly beyond
6 wartime is sitting on a jury because you can make the
7 system work. You protect the rights of all of us,
8 yourself included, by going into that room, making the
9 determination, making the hard decision. And for that
10 we thank you.

11 And it's just a good thing you don't have to do it
12 again for another three years. And you're getting paid
13 for this. Not much, but they actually pay you
14 something. We appreciate the fact that you have
15 listened to everything, paid attention, it's gonna be a
16 decision that only you can make and we will sit and
17 wait. Thank you.

18 THE COURT: All right. Ladies and gentlemen, I
19 need to send you out. As I said, we've got several
20 matters to take up. Originally we had planned to send
21 you out closer to lunchtime to give us some time to work
22 these out. But I'm gonna need you to sit back there for
23 20 minutes or so. Please don't discuss this case yet.
24 And when I bring you back in, I will charge you on the
25 law. And as I said, it's a very long, involved charge.

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1 After I've charge you, I will send you out of the
2 jury room for a few minutes, I'll give the lawyers an
3 opportunity to ask me to recharge something or put on
4 the record any mistakes they think I've made on the law
5 in this case. And then after that's over, we'll get you
6 the verdict form and any introduction of evidence and
7 you will begin your deliberations.

8 I'm sorry for this long break this morning, but
9 you're pretty close to getting this case. Those smokers
10 if you need to can go out and smoke. If you just can't
11 stand sitting back there because it's gonna take 20 to
12 25 minutes, if we have the manpower, I don't mind
13 somebody walking around with you. We have to send
14 somebody with you for everybody's protection, but please
15 bear with us one last time. Please don't discuss the
16 case yet.

17 (Whereupon, the Jury left the courtroom at
18 approximately 11:12 a.m.)

19 **THE COURT:** Okay. It's being printed now. Let me
20 look at it and I'll get you a copy. So y'all take a
21 break for a minute.

22 (Whereupon, a recess was taken.)

23 **THE COURT:** Y'all have had a chance to go through
24 the charge and we've made the corrections that I think
25 she said; is that right?

1 MS. SIMMONS: Yes, Your Honor.

2 MR. DAY: Yes.

3 MS. SIMMONS: Thank you.

4 THE COURT: Well, I'm sorry for the update problem.
5 I'm not sure -- I'm going to check on that today. I
6 just think that the updates are sitting in our office
7 waiting for IT to come up. I got an e-mail during the
8 testimony that because of problems in the IT department,
9 which everybody seems to have, they're delaying their
10 implementation of the new computers. So anyway.

11 All right. Anything I need to take up before I
12 charge the jury?

13 MS. SIMMONS: No, Your Honor.

14 MR. DAY: No, sir.

15 THE COURT: Okay.

16 Okay. They can bring them in.

17 (The Jury entered the courtroom at approximately
18 11:57 a.m.)

19 THE COURT: All right. Ladies and gentlemen, I
20 seem to be apologizing for delays a lot. I do apologize
21 for this last delay. And, as I said, after I finish
22 this charge and after you've deliberated and rendered a
23 verdict, I'll come back and talk to you and I'll be able
24 to explain a little more. It's not as mysterious as it
25 sounds, but a lot of it is mechanically oriented. So we

1 have everything done now. I appreciate your patience
2 and the time you have spent listening to the witnesses.

3 It is now my duty and obligation to charge you on
4 the law in this case. And I'll tell you it's not as
5 long as I thought, but it's 17 pages of applicable law.
6 Some of it is a little repetitive, but required to be
7 charged. After I charge you on the law, I'll send you
8 back. And as I think I told you yesterday, I give the
9 attorneys an opportunity to ask me to correct the
10 charge, make an addition, make a subtraction. Quite
11 frankly, while you've been out we've done that, so
12 unless we've made an error, I don't think we'll be
13 having much of that to do.

14 But I will send you out and then we have one piece
15 of evidence entered. And once we delivered that piece
16 of evidence and the verdict form to you at that point
17 you can begin your deliberations.

18 Now, again, for the last time if you need a break
19 at any point during any of this -- this isn't going to
20 take as long as I thought, but it's gonna take a little
21 time. But give Mr. Bibb's attention or my attention and
22 just raise your hand and we'll take a break.

23 CHARGE TO THE JURY:

24 All right. Ladies and gentlemen, as I told you at
25 the first of this trial, the Defendant, Mr. Frost, has

1 been charged with criminal sexual conduct with a minor
2 under 11 years of age in the first degree.

3 This process was started by the indictment. You'll
4 have the indictment with you in the jury room when you
5 begin your deliberations. The fact that this Defendant
6 was arrested, was charged and was indicted by the State
7 of South Carolina should never be discussed by you. You
8 shouldn't discuss the fact that there has been an
9 arrest, charge or an indictment because he's pled not
10 guilty. And I know that it's somewhat flowery to
11 describe the presumption of innocence as a robe of
12 righteousness, but it's that important.

13 And I want to charge you that the Defendant has
14 pled not guilty to this indictment and that plea puts
15 the burden on the State to prove the Defendant guilty.
16 A person charged with committing a criminal offense in
17 South Carolina is never required to prove himself
18 innocent.

19 I charge you that it's an important rule of the law
20 that the Defendant in a criminal trial, no matter what
21 the seriousness of the charge may be, will always be
22 presumed to be innocent of the crime for which the
23 indictment has been issued unless guilt has been proven
24 by evidence satisfying you of that guilt beyond a
25 reasonable doubt. This presumption of innocence does

1 not end when you begin your deliberations, but it
2 accompanies the Defendant throughout the trial until you
3 reach a verdict of guilt based on the evidence
4 satisfying you of that guilt beyond a reasonable doubt.

5 As I said, the presumption of innocence is like a
6 robe of righteousness placed about the shoulders and is
7 still about his shoulders. He's pled not guilty. The
8 only way that robe can be taken from him is after you
9 deliberate and find the State has proven their case
10 beyond a reasonable doubt. Then you can take that robe
11 of innocence or righteousness from him, but that
12 continues in the jury room until you finish your
13 deliberations.

14 I charge you that the State has the burden of
15 proving the Defendant guilty beyond a reasonable doubt.
16 Some of you may have served as jurors in civil cases
17 where you were told it's only necessary to prove that a
18 fact is more likely true than not true, such as by the
19 greater weight or a preponderance of the evidence. In
20 criminal cases, the State's proof must be more powerful
21 than that. It must be beyond a reasonable doubt.

22 Proof beyond a reasonable doubt is proof that
23 leaves you firmly convinced of the Defendant's guilt.
24 There are very few things in this world that we know
25 with absolute certainty, and in criminal cases the law

1 does not require proof that overcomes every possible
2 doubt that you may have. If, based on the consideration
3 of the evidence, you are firmly convinced that the
4 Defendant is guilty of the crime charged, you must find
5 the Defendant guilty. If, on the other hand, you think
6 that there is a real possibility that the Defendant is
7 not guilty, you must give him the benefit of the doubt
8 and find him not guilty.

9 As I told you at the beginning of this trial, you
10 and I have had different roles. You have listened very
11 carefully to this case. You have to determine the facts
12 in this case and you will take this law as I give it to
13 you, apply it to the facts and come up with a verdict.
14 If I've given you any impression I believe or disbelieve
15 a witness during the course of this trial, I don't think
16 that I have, but if for some reason I've given you that
17 impression please disregard that. My opinion as to the
18 facts should mean nothing to you.

19 I charge you there are two types of evidence which
20 are generally presented during a trial. There's direct
21 evidence and circumstantial evidence. Direct evidence
22 is the testimony of a person who claims to have actual
23 knowledge of a fact such as an eyewitness. It is
24 evidence which immediately establishes the main fact to
25 be proved. Circumstantial evidence is proof of a chain

1 of facts and circumstances indicating the existence of a
2 fact. It is evidence which immediately establishes
3 collateral facts from which the main fact may be
4 inferred. Circumstantial evidence is based on the
5 inference and not on the personal knowledge or
6 observation.

7 The law makes absolutely no distinction between the
8 weight or value to be given either direct or
9 circumstantial evidence, nor is a greater degree of
10 certainty required of circumstantial evidence than of
11 direct evidence. You should weigh all the evidence in
12 this case and after weighing the evidence, if you are
13 not convinced of the guilt of the Defendant beyond a
14 reasonable doubt you must find the Defendant not guilty.

15 Necessarily as a part of your deliberations you
16 have to determine the credibility of witnesses.
17 Credibility under the law in South Carolina simply means
18 believability. It becomes your duties as jurors to
19 analyze and to evaluate the evidence and determine which
20 evidence convinces you of its truth. In determining the
21 believability of witnesses who testified in this case,
22 you may believe one or several witnesses or several
23 witnesses over one witness. You may believe part of the
24 testimony of a witness and reject the remaining part of
25 the testimony of that same witness.

1 You may believe the testimony of the witness in its
2 entirety or reject the testimony of a witness in its
3 entirety. You may consider whether any witness has
4 exhibited to you any interest, bias, prejudice, or other
5 motive in this case. You may also consider the
6 appearance and manner of a witness while on the witness
7 stand.

8 Now, I charge you that in South Carolina the law is
9 that the testimony of a victim in a criminal sexual
10 conduct case need not be corroborated by another
11 witness. That is not required in this state.

12 Now, during this trial you've heard the testimony
13 from a child. Where a witness is a child, you must
14 determine, as with any witness, whether that testimony
15 is believable. In deciding believability, you may
16 consider not only matters already discussed and talked
17 with you several times, but you may also consider the
18 age of the child, the child's ability to observe and
19 remember facts, the child's ability to understand and
20 answer questions. Because children may not fully
21 understand what is happening in the courtroom, it is up
22 to you to decide whether the child understood the
23 seriousness of this case and the questions being asked.

24 You have to decide whether the child has a good
25 memory and whether the child understands the difference

1 between lying and telling the truth. In addition, young
2 children may be influenced by the way the questions are
3 asked. It's up to you, the jury, to decide whether the
4 child understood the questions asked.

5 Now, the Rules of Evidence ordinarily do not permit
6 witnesses to testify to opinions or conclusions. An
7 exception to this rule exists for witnesses that we term
8 expert witnesses. A witness who by education and
9 experience has become expert in some art, science or
10 profession or calling may state an opinion as to
11 relevant and material matter in which the witness claims
12 to be an expert and may also state the reasons for that
13 opinion.

14 You should consider any expert opinion received in
15 this case like any other evidence in this case, and you
16 have to give it the weight that you think it deserves.
17 If you decide that the opinion of an expert witness is
18 not based on sufficient education or experience, or if
19 you conclude that the reasons given in support of the
20 opinion are not sound or that the opinion is outweighed
21 by other evidence, you may disregard the opinion of the
22 expert in its entirety.

23 An expert witness's testimony is to be given no
24 greater weight than that of other witnesses simply
25 because the witness is an expert. Further, you're not

1 required to accept an expert's opinion even though it's
2 not contradicted by the testimony.

3 I'm gonna instruct you again and charge you and
4 emphasize that the fact the Defendant did not testify in
5 this case is not a factor to be considered by you in any
6 way in your deliberations and in your consideration on
7 the question of guilt or innocence. It must not be
8 considered by you in any manner whatsoever. A Defendant
9 has the Constitutional right to remain silent and the
10 assertion of that right must not be considered by you in
11 your deliberations. I repeat, under your oath you are
12 to draw no conclusions whatsoever by the fact the
13 Defendant in this case did not testify.

14 The fact that this Defendant did not testify should
15 not even be discussed in the jury room. The burden of
16 proof, as I've stated to you, is on the State. The
17 Defendant is not required to prove his or her innocence.
18 The burden of proof remains on the State to prove guilt
19 beyond a reasonable doubt.

20 Now, ladies and gentlemen, you're gonna have to
21 deliberate and make a decision on three separate
22 offenses. I'm gonna charge you the law on each of those
23 offenses, but just in brief, you're gonna have to
24 determine whether or not this Defendant is guilty or not
25 guilty of criminal sexual conduct with a minor, or

1 whether he is guilty or not guilty of assault and
2 battery in the first degree or guilty or not guilty of
3 assault and battery in the second degree. Those are
4 three separate deliberations that you must make.

5 I'm now going to give you the law in its entirety
6 on criminal sexual conduct in the first degree, assault
7 and battery in the first and second degree.

8 The Defendant is charged with criminal sexual
9 conduct with a minor in the first degree. The State
10 must prove beyond a reasonable doubt that the Defendant
11 engaged in a sexual battery with the victim. A sexual
12 battery in South Carolina is sexual intercourse,
13 cunnilingus, fellatio, anal intercourse, sexual
14 intercourse, or any intrusion however slight of any part
15 of a person's body or of any object into the genitalia
16 or anal openings of another person's body, except when
17 the intrusion is accomplished for medically recognized
18 treatment or diagnostic purposes.

19 The State must prove beyond a reasonable doubt that
20 the victim was also less than 11 years old at the time
21 of the sexual battery. Consent, willingness,
22 indifference or ignorance on the part of the minor, if
23 any, as to what is taking place does not in any way
24 affect the charge of sexual or criminal sexual conduct
25 with a minor because an unmarried woman under the age of

1 14 in South Carolina cannot legally consent to sexual
2 intercourse or activity.

3 I'm also charging you on the law in regard to
4 assault and battery in the first degree. The Defendant
5 is also charged with assault and battery in the first
6 degree. The State must prove beyond a reasonable doubt
7 that the Defendant committed this offense.

8 A person commits the offense of assault and battery
9 in the first degree if the person unlawfully injures
10 another person and either the act involved nonconsensual
11 touching of the private parts of a person either under
12 or above the clothing with lewd and lascivious intent or
13 the act occurred during the commission of another crime
14 under the statute.

15 The act offers -- the act must have occurred during
16 the commission of a robbery, burglary, kidnapping or
17 theft to come under the second portion of the statute,
18 but that doesn't apply so you just need to worry about
19 the first.

20 I don't want to cause any undue attention to
21 assault and battery in the first degree, but just again
22 let me repeat because there was a mistake. In order to
23 find the Defendant guilty of assault and battery in the
24 first degree the State must prove beyond a reasonable
25 doubt that the Defendant committed this offense. He

1 commits the offense of assault and battery in the first
2 degree if the person unlawfully injures another person
3 and the act involves nonconsensual touching of private
4 parts of a person either under or above the clothing
5 with lewd and lascivious intent.

6 The Defendant is also charged with assault and
7 battery in the second degree. To prove this the State
8 must prove beyond a reasonable doubt that the Defendant
9 committed this offense. A person commits the act of
10 assault and battery in the second degree if a person
11 unlawfully injures another person or offers or attempts
12 to injure another person with the present ability to do
13 so, and either there is a moderate bodily injury to
14 another person that results in, to another person, or
15 the act involves a nonconsensual touching of the private
16 parts of a person under or above the clothing.

17 And, again, since I did the first degree and second
18 degree, I'm gonna charge you again on the second degree.
19 I'm not -- the only reason I'm doing that is because
20 there's a smaller error here. I don't want to call
21 attention to assault and battery first and second degree
22 by recharging it again, but I am gonna tell you what
23 assault and battery in the second degree is.

24 In order to be found guilty for assault and battery
25 in the second degree, the State must prove that the

1 person commits the offense of assault and battery in the
2 second degree, in the second degree, if he unlawfully
3 injures another person or offers or attempts to injure
4 another person with the present ability to do so and the
5 act involves nonconsensual touching of the private parts
6 of a person either under or above their clothing.

7 Again, please don't take into account or place any
8 importance on the fact that I charged assault and
9 battery in the first degree and the second degree twice.
10 It was an error that I wanted to make sure it was
11 correct.

12 Now, basically ladies and gentlemen, there are
13 three separate charges that you're gonna have to deal
14 with. And Mr. Foreman, just very briefly let me tell
15 you how we're gonna do this. On the verdict form we
16 have, we the jury by unanimous consent find the
17 Defendant Steven Gregory Frost, one, guilty of
18 first-degree criminal sexual conduct with a minor. Now,
19 if you find him guilty of first-degree criminal sexual
20 conduct in the first degree with a minor, if you would
21 put a check there. And then you have to check under the
22 law that the sexual battery involved one of the
23 following: Sexual intercourse, anal intercourse, or an
24 intrusion by an object. That's required to be checked
25 if you find him guilty.

1 Then underneath that I have not guilty. Now,
2 again, I know that sounds ridiculous, but the law
3 requires me to tell you that place no importance on the
4 fact that we put guilty in front of not guilty on the
5 verdict form. One has to come first. We place guilty
6 first.

7 So on that charge, criminal sexual conduct with a
8 minor, which is charge number one, you'll find guilty or
9 not guilty. If you find guilty, you must decide which
10 of the three sexual batteries are involved. Or you can
11 find the Defendant guilty of assault and battery first
12 degree or not guilty of assault and battery in the first
13 degree or guilty of assault and battery in the second
14 degree or not guilty of assault and battery in the
15 second degree.

16 And then you will just, Mr. Foreman, have to sign
17 your name and date it here. Again, these are three
18 separate charges and you have to decide between guilt or
19 innocence on all three of those charges and you need to
20 take them separately, deal with each separately. We
21 tried to do that on the verdict form and we've tried to
22 make these verdict forms as simple as possible. Not
23 because I don't think you can't understand them, but
24 because there are requirements that have to be placed in
25 there. So address each one separately.

1 Your verdict has to be unanimous. In other words,
2 you all have to agree as to the charge and as to the
3 guilt or innocence of the person.

4 I'm gonna send you back now and, again, let the
5 attorneys ask me to recharge. I want to advise you
6 again that the fact that I charged you twice on assault
7 and battery in the first and second degree only was
8 because of a mistake in the charge not because I want to
9 place any inference on those two charges.

10 Once you begin your deliberations, the only way I
11 can discuss anything with you is on the record. So,
12 Mr. Foreman, if you have any questions about this or any
13 problems or issues, there will be a pad and you'll need
14 to write down the question or issue, put the time and
15 date if you don't mind, and then knock on the door and
16 Mr. Bibb will bring it to me.

17 If you need me to recharge any or all of that
18 charge that I just read to you, I'll be happy to do it.
19 You will not have the charge in the jury room,
20 unfortunately. So if you have some feeling that you
21 need the whole charge or a portion of the charge
22 recharged, I'll have to bring you back in to do that and
23 I'll be happy to do it.

24 If you have a question, write that question on your
25 note. If I can answer the question under the law in

1 South Carolina I'll bring you in and answer the
2 question. If I can't answer the question under the law
3 in South Carolina, I'll bring you in and tell you I just
4 can't answer that question. So any communication
5 between you and I from this point forward will need to
6 be in writing from the foreman to me.

7 So if you would, go back one last time. I don't
8 expect to bring you back in here. In just a few minutes
9 I think we'll deliver this verdict form, along with the
10 one piece of evidence that was introduced and at that
11 time you can begin your deliberations. Again, if you
12 got any questions or concerns or problems, write them
13 out, knock on the door and then we'll deal with it.

14 You-all have been very patient. I apologize for
15 that mistake in the charge, but I think we've corrected
16 it. But I'll let the lawyers ask me to read it again if
17 they want me to.

18 Don't begin your deliberations until we deliver the
19 evidence, but go back there one last time.

20 And the alternate, if you would wait in the hall
21 back there.

22 (Whereupon, the Jury left the courtroom at
23 approximately 12:17 p.m.)

24 **THE COURT:** All right. Other than the recharging
25 twice of assault and battery first and second, it was

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1 just worded strange and then I realized I probably
2 should have taken out the robbery and kidnapping and I
3 just didn't do it. Are there any other additions,
4 alterations, changes or subtractions from the State or
5 from you?

6 MS. SIMMONS: No, Judge.

7 THE COURT: Okay.

8 MR. DAY: Two things really just for the record,
9 note my objection to failing to charge assault and
10 battery third degree.

11 THE COURT: Okay.

12 MR. DAY: Second, Your Honor, I believe when you
13 read on the, when you read the assault and battery in
14 the second degree, under 16-3-600 D (1). Do you see
15 that? Anyway.

16 THE COURT: No, I haven't. What was it?

17 MR. DAY: D(1), of course, is a person commits an
18 offense of assault and battery, that created a second
19 degree, a person unlawfully injures another, attempts to
20 injure another person or the present ability to do so
21 and -- and then A says: Moderate bodily injury to
22 another person results or moderate bodily injury could
23 have resulted or the act involves nonconsensual touching
24 of the private parts of a person either under or above
25 the clothing.

1 I don't believe you actually read (A), which is
2 moderate bodily injury to another person results or
3 could have resulted. I didn't know if you decided not
4 to put that in there or what. I just think because
5 there was testimony of some injury --

6 THE COURT: Well, you know ---

7 MR. DAY: I know because of the way the ---

8 THE COURT: The way the statute is written, I
9 actually just thought the second paragraph applied more
10 to the, to the testimony. I don't mind bringing them
11 back in and telling them that there is moderate bodily
12 injury to another person or moderate bodily injury could
13 have occurred, or the act involves a nonconsensual
14 touching of the private parts of a person. I don't mind
15 doing that. I just wasn't sure if that top part applied
16 quite frankly. I'll be happy to charge them that first
17 paragraph.

18 MS. SIMMONS: Judge, if we're gonna charge assault
19 one more time, I'll be ---

20 THE COURT: You want me to redo criminal sexual
21 conduct?

22 MS. SIMMONS: I do.

23 THE COURT: I think she's right. If I bring them
24 back in, I'm not comfortable, I'm uncomfortable with it.
25 I've done it twice. I don't mind recharging them on all

1 three.

2 MR. DAY: Well, let's just leave it the way it is.
3 We don't need to hear criminal sexual conduct again.

4 THE COURT: Okay.

5 MS. SIMMONS: Thank you, Judge.

6 THE COURT: And, again, I apologize for that. I
7 actually think that I ---

8 MR. DAY: I think the first time you did, the
9 second time you didn't.

10 THE COURT: Yeah. Yeah, I think you are right. If
11 they're having some confusion they'll let me know, trust
12 me. I suspect, looking at their faces that they're
13 gonna want me to recharge it all anyway. And I've never
14 done a criminal sexual conduct with a minor that I
15 haven't had to recharge out of ten maybe. Here's the
16 verdict form. Y'all have looked at that, right?

17 MS. SIMMONS: Yes, Your Honor.

18 MR. DAY: Yes, sir.

19 THE COURT: I apologize for that. That was just
20 rough wording.

21 THE SHERIFF'S DEPUTY: Do you want to start?

22 THE COURT: Yeah. And tell the alternate I'll be
23 right out.

24 MS. SIMMONS: Thank you, Judge.

25 (Whereupon, jury starts deliberations at

1 approximately 12:21 p.m.)

2 THE COURT: Lisa, she's gonna stay in here. Thank
3 you very much.

4 (Whereupon, the alternate juror stayed to observe
5 the proceedings.)

6 (Whereupon, there was a question from the jury at
7 approximately 12:45 p.m.)

8 (Whereupon, Court's Exhibit Number 1, Jury Note,
9 was marked for identification.)

10 THE COURT: We're back on the record. I have a
11 question and the question is: Do we have to find on all
12 of the charges or just one of them? I think the answer
13 is just one of them.

14 MS. SIMMONS: I agree, Your Honor.

15 THE COURT: So I'll just call them in and tell them
16 that they need to find on just one of the three.

17 MR. DAY: Or they can find not guilty on all three.

18 THE COURT: I could go in and I could say they
19 could find guilty or not guilty on all three or they can
20 just, once they find guilty on one, then they're done.
21 I'm just gonna say that they deal with them separately
22 and they only have to find on one, find a verdict on one
23 of them. How about that?

24 MS. SIMMONS: Thank you, Judge.

25 THE COURT: Okay.

1 MR. DAY: I don't want them to think they have to
2 find somebody guilty.

3 THE COURT: No. I'm just gonna say verdict on one
4 of them. I'll say they have to do each one separately,
5 have to find guilty or not guilty.

6 MR. DAY: Oh, okay. I missed that part. Okay.
7 I'm sorry, thank you.

8 (Whereupon, the Jury entered the courtroom at
9 approximately 12:47 p.m.)

10 THE COURT: Y'all approach a minute over here.
11 (Whereupon, a discussion at sidebar occurred off
12 the record.)

13 THE COURT: All right. Mr. Foreman, I received
14 your question. This is exactly the way I need you to do
15 it. The question is: Do we have to find on all of the
16 charges or just one of them; is that correct?

17 THE FOREMAN: That's correct, yes, sir.

18 THE COURT: The answer is just one of them. So if
19 you would go back and continue deliberating. If you
20 have another question or problem, this is exactly the
21 way to do it. I appreciate it.

22 THE FOREMAN: Thank you, sir.

23 THE COURT: And we made that question an exhibit.
24 (Whereupon, the Jury left the courtroom at
25 approximately 12:49 p.m.)

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1 THE COURT: We'll just wait.

2 (Whereupon, off-the-record while jury deliberates.)

3 THE COURT: The question is: Does digital
4 penetration qualify as, one, sexual intercourse or, two,
5 intrusion by an object? What's y'all's answer to that?

6 MS. SIMMONS: It's my position it's sexual
7 intercourse. I think it can be either, but ---

8 THE COURT: I don't know how sexual intercourse --
9 have you got a definition of sexual intercourse? I
10 think it's an intrusion by an object, quite frankly. I
11 think sexual intercourse is defined.

12 MS. SIMMONS: Judge, to be honest with you, I had a
13 dilemma about which one it was. I think it could be
14 concluded either, so...

15 THE COURT: Yeah. I mean, I just -- and I don't
16 know whether they're stuck on that -- I don't know what,
17 but I sort of expected that question because I don't
18 think it's sexual intercourse by definition.

19 (Whereupon, counsel confer off the record.)

20 MS. SIMMONS: I know the definition of sexual
21 battery is codified, but...

22 MR. DAY: It just talks about more and more about
23 it, which doesn't have anything to do with this.

24 THE COURT: Well, sexual battery means sexual
25 intercourse. The other definitions are any intrusion

1 however slight. I don't think it's sexual intercourse.
2 I mean, I think just by definition it's probably got to
3 be intrusion by an object.

4 MS. SIMMONS: Thank you, Judge. I could not find
5 sexual intercourse as defined.

6 MR. DAY: It's not in the statute I don't think.

7 THE COURT: No, it's not. Sexual battery. But I
8 think just by very definition, and I certainly don't
9 hold myself out as any type of textbook, but I'm more
10 comfortable with going with intrusion by an object.

11 MS. SIMMONS: We have no objection, Judge.

12 THE COURT: Any objection to that from either side?

13 MR. DAY: Well, the problem I have is object. An
14 object tends to be something that is separate from an
15 individual, and would be an inanimate object because it
16 says object. It doesn't say ---

17 THE COURT: It doesn't say inanimate object.

18 MR. DAY: I know, but object in itself.

19 THE COURT: Well, I mean, if -- the way the statute
20 is written, it's one of those three, and if I had to
21 pick between those two in that question, then I think it
22 would be intrusion by an object. I mean, let's face it.
23 When that statute was written, whoever did it didn't
24 follow through with it.

25 MR. DAY: I know this particular statute is too,

1 too young for that to have come up. I almost want to
2 argue that it's neither one.

3 THE COURT: Well, you can.

4 MR. DAY: I certainly don't believe that it's
5 sexual intercourse, but whether it be an object.
6 Because they could have said after sexual intercourse or
7 intrusion into the body by part of the ---

8 THE COURT: Well ---

9 MR. DAY: By the accused.

10 THE COURT: If sexual battery is sexual
11 intercourse, the various other definitions, or any
12 intrusion however slight of any part of the person's
13 body or any object into the genital area. So I think
14 you got to go with intrusion by an object. It's not
15 sexual intercourse.

16 MR. DAY: Then note my objection, Your Honor.

17 THE COURT: Okay. Y'all can bring them in.

18 (Whereupon, the Jury entered the courtroom at
19 approximately 1:23 p.m.)

20 THE COURT: Mr. Foreman, I understand your question
21 does digital penetration qualify as, one, sexual
22 intercourse or, two, intrusion by an object; is that
23 correct?

24 THE FOREMAN: Yes, Your Honor.

25 THE COURT: All right. For the sake of the choices

1 that you have before you, my interpretation is that it
2 would be intrusion by an object. And, again, you've
3 done this exactly right. I appreciate it. If you've
4 got another question, just send it out.

5 THE FOREMAN: Okay.

6 (Whereupon, the Jury left the courtroom at
7 approximately 1:23 p.m.)

8 (Whereupon, Court's Exhibit Number 2, Jury Note,
9 was marked for identification.)

10 (Whereupon, the jury resumed their deliberations at
11 approximately 1:23 p.m.)

12 (Whereupon, the jury reached a verdict at
13 approximately 1:27 p.m.)

14 (Whereupon, clerk entered courtroom at
15 approximately 1:33 p.m.)

16 THE COURT: Okay. You can bring them in.

17 (Whereupon, the Jury entered the courtroom at
18 approximately 1:33 p.m.)

19 THE COURT: All right. I understand, Mr. Foreman,
20 you have a verdict?

21 THE FOREMAN: We do, Your Honor.

22 THE COURT: All right. If you would hand it to
23 Mr. Bibb.

24 THE FOREMAN: (Complies.)

25 THE COURT: All right. If you would publish it.

1 If you would all please stand. All right. Go ahead.

2 THE CLERK: In the matter of the State of South
3 Carolina versus Steven Greg Frost on indictment
4 2012-GS-37-549 we, the jury, by unanimous consent find
5 the Defendant Steven Greg Frost guilty of first degree
6 sexual -- criminal sexual conduct with a minor, the
7 sexual battery involved intrusion by an object.

8 Ladies and gentlemen, of the jury if this was your
9 verdict and remains your verdict, please indicate so by
10 raising your right hand.

11 Let the record reflect that all members of the jury
12 have raised their right hand.

13 THE COURT: Thank you. Ladies and gentlemen, I
14 have to send you back one last time. I'll be back to
15 talk to you personally in about two or three minutes, so
16 please just remain back in the jury room.

17 (Whereupon, the Jury left the courtroom at
18 approximately 1:35 p.m.)

19 THE COURT: What we'll do -- we're talking about --
20 I'm gonna go back there and talk to them. Because we
21 did a verdict form and there's a question from the
22 Clerk's Office about conforming the indictment, writing
23 guilty on it. I don't think that's necessary when you
24 have a verdict form. We'll just attach the verdict form
25 to the indictment, okay? All right. What we'll do, I'm

1 gonna go back and speak to them. If you could fill out
2 a sentencing sheet, I'll be back in just a few minutes.

3 Before I do that, do you have any motions that you
4 want to take up?

5 MR. DAY: Your Honor, we would, of course, for the
6 record renew our motion as stated for the directed
7 verdict. Also, a motion for a new trial based upon the
8 failure to charge assault and battery third as well as
9 on the question, response to the question particularly
10 as to object that under the statute may not fall into
11 it, but because of the fact that it was a part of his
12 body and we would ask the Court for a new trial based on
13 those issues.

14 THE COURT: Okay. All right. And you are
15 protected on the record on those. I understand you have
16 to make them, but those are denied.

17 So I'll be back in just a minute. I always give
18 them an opportunity to leave or come back in.

19 (Whereupon, the court conferred with the clerk off
20 the record.)

21 THE COURT: By the way, what's the sentencing range
22 under the new law?

23 MS. SIMMONS: 25 to life, Judge.

24 THE COURT: So it is different than the old one?

25 MS. SIMMONS: Yes, Your Honor.

1 (Whereupon, Court leaves courtroom and confers with
2 jury in the jury room.)

3 (Whereupon, Court and members of the jury panel
4 enter courtroom.)

5 THE COURT: Thanks. Have a seat.

6 MS. SIMMONS: Judge, may I approach?

7 THE COURT: Yeah. Hold on one second. I forgot to
8 take the antibiotics. Hold on a minute.

9 Mr. Day, how long has your client been in jail?

10 MR. DAY: 195 days, Your Honor.

11 THE COURT: 195. And again, just to be clear,
12 because the law has changed so severely, what is the
13 sentence range now, 25 to life?

14 MS. SIMMONS: Judge, it would be 25 to life, and
15 it's mandatory GPS if he's ever released from the
16 Department of Corrections and sex offender registry.
17 And I have his criminal history whenever you want that.

18 THE COURT: Yeah, I'm gonna want that in a minute.
19 But the minimum is 25, and I guess you take the position
20 25, 26, 27 up to life?

21 MS. SIMMONS: Yes, Your Honor.

22 THE COURT: Rather than 25 or life?

23 MS. SIMMONS: Yes, Your Honor.

24 THE COURT: And Mr. Day do you agree with that?

25 MR. DAY: Yes, sir.

1 THE COURT: Okay.

2 All right. Yes, ma'am. If you would, could you
3 tell me his record?

4 MS. SIMMONS: Yes, Judge. It starts in 1984 with
5 simple possession of marijuana, open container. 1985,
6 breaking and entering and grand larceny and attempted
7 grand larceny. 1985, simple possession of marijuana and
8 petit larceny. 1985, attempted grand larceny. 1985,
9 simple possession of marijuana, two counts, petit
10 larceny and open container, housebreaking and grand
11 larceny. In 1986, failure to stop for a police officer,
12 simple possession of marijuana.

13 1987, breaking and entering of motor vehicle, two
14 counts, and malicious injury of property. 1990, two
15 counts of reckless homicide. 1994, four counts of
16 malicious injury to real property. 1995, malicious
17 injury to real property. 1997, receiving stolen goods.

18 2000, manufacturing marijuana. 2002, failure to
19 stop for a blue light, second offense, and malicious
20 injury to real property. 2003, two counts of -- one
21 count of possession of ice or crack, DUS and possession
22 of marijuana. 2003, assault on a police officer,
23 malicious injury to property, unlawful use of a
24 telephone. 2003, assault on a correctional employee,
25 assault and battery of a high and aggravated nature.

1 2005, assault and battery of a high and aggravated
2 nature.

3 2008 driving under suspension. 2008, possession of
4 drug paraphernalia. 2008, four counts of possession of
5 meth or crack cocaine.

6 Judge, he had been out of the Department of
7 Corrections approximately 15 days when he committed this
8 crime. I believe this criminal history it's atrocious
9 and I do not think he can be a functioning member of our
10 society and I ask that you impose a sentence of life.

11 THE COURT: All right. He had been out of the
12 Department of Corrections 15 days when this incident
13 happened. What was he serving?

14 MS. SIMMONS: He was released on September 11,
15 2011. He was serving time for four counts of possession
16 of ice or crack cocaine.

17 THE COURT: All right. And the reckless homicide
18 was what year? That was two counts of reckless
19 homicide.

20 MS. SIMMONS: Yes, Judge. There were two
21 fatalities involved in that.

22 THE COURT: Okay. All right, Mr. Day anything --
23 first let me say, does anybody else wish to testify?

24 MS. SIMMONS: No, Your Honor.

25 THE COURT: Mr. Day, I would be happy to hear from

1 you.

2 MR. DAY: Your Honor, Mr. Frost is 45 years old.

3 As you can tell, he does have a bad record.

4 THE COURT: Yeah, he does.

5 MR. DAY: It mostly comes from drug use which
6 caused this. The reckless homicides, he was in a car
7 with his best friend driving too fast, someone pulled
8 out in front of him and as a result he couldn't stop ran
9 into a ditch and turned over and his best friend
10 drowned. It was one of those things that certainly
11 should not have happened but it did.

12 He has had an almost lifelong problem with drugs
13 off and on and drugs is what caused just about every one
14 of the things he got into, is he would be using drugs
15 and something would happen. And he spent his time in
16 jail.

17 I would submit to the Court, Your Honor, if you
18 notice all of those, not a single one of those was a
19 trial. When brought before the court he pled guilty.
20 He admitted to what he did and took his punishment. In
21 this case, Your Honor, he stated I'm not guilty of this
22 and that's why we went to trial. Even though he has a
23 bad record, Your Honor, as I said most of it comes out
24 of the use of drugs over the years. I think that with
25 Court ordered a sentence that would allow him to go

1 through the addiction program, et cetera, and the other
2 programs they have, that I believe he can still be a
3 functioning member of society. I realize there's a
4 minimum on this, but that would certainly give him time
5 to break away from the hold of drugs in this case, Your
6 Honor.

7 There was no indication that he had gotten back on
8 drugs when all this happened, so I'm just saying that if
9 we could get beyond that I think he has a chance. We
10 ask the Court to consider that. He's 45, like I said,
11 he's 45 years old.

12 THE COURT: Are you saying he wasn't on drugs when
13 this happened? He wasn't back on drugs when this
14 happened?

15 MR. DAY: Your Honor, he was drinking but he wasn't
16 using drugs, he tells me.

17 THE COURT: Okay.

18 MR. DAY: He said he was trying to stay away from
19 them because as soon as he got around some of those
20 people he was gone, he would have been gone.

21 THE COURT: Okay. All right. Mr. Frost, anything?

22 THE DEFENDANT: I was smoking a little bit of
23 marijuana, but that was about two or three days later or
24 something like that. I wasn't under no cocaine or
25 nothing like that.

1 THE COURT: Okay.

2 THE DEFENDANT: I was trying to stay away from
3 that.

4 THE COURT: Okay. Anything else you want to tell
5 me?

6 THE DEFENDANT: I'm sorry all of this happened.
7 I'm sorry y'all have to be here. Have pity on me.

8 THE COURT: Well, you know, I do have pity on you.
9 And it's not a time for -- Mr. Day, you got anything
10 else you want to say? I didn't mean to interrupt you.

11 MR. DAY: No.

12 THE COURT: I mean, it's not a time for me to
13 preach to you, but there are two ways to look at your
14 record. There's to look at that record and be afraid of
15 you because of you're somebody that's gonna hurt my
16 family or somebody else's family. I don't look at
17 things that way because I would prefer not to be afraid
18 of you. It's just pitiful. I mean, it's a life wasted.
19 What was the first year? '85?

20 MS. SIMMONS: 1984, I believe, Your Honor.

21 THE COURT: '84. How many years have you spent in
22 the Department of Corrections total?

23 THE DEFENDANT: Over 25 years.

24 THE COURT: How many times have you been through
25 the ATU program?

1 THE DEFENDANT: None.

2 THE COURT: Why not?

3 THE DEFENDANT: They ain't never give me or alcohol
4 no drug programs. I ain't never been through none of
5 them. I went to R and E and boom to the prison that I
6 was going to.

7 THE COURT: Okay. All right. Anything?

8 THE DEFENDANT: Excuse me?

9 THE COURT: Yeah, go ahead.

10 THE DEFENDANT: You'll see my beautiful daughter.
11 I did raise one thing. I have a 17-year-old beautiful
12 daughter back there, Emily. F

13 THE COURT: Well ---

14 THE DEFENDANT: The rest of me I'm bad I reckon,
15 but I got one thing.

16 THE COURT: Well, my children are my best thing
17 I'll ever do. But, you know, that may be one of the
18 longest records I've ever heard. And you really owed
19 your daughter more than what you done. Again, I mean,
20 it's not a time for me to preach to you. I just, this
21 will be the only time I get to talk with you.

22 SENTENCING BY THE COURT:

23 All right. Well, the jury has found you guilty of
24 criminal sexual conduct with a minor under the age of 11
25 or first degree. I've got the option of 25 years to

1 life. I understand why the Solicitor's Office would ask
2 for life. And quite frankly given your age I, probably
3 we're arguing semantics, but the sentence of the Court
4 is 40 years in the Department of Corrections, give you
5 credit for 195 days. It's mandatory GPS pursuant to
6 South Carolina law.

7 Obviously you have a right to appeal, and I'm sure
8 your attorney who has done a good job and has protected
9 your rights and clearly will explain those rights to
10 you. All right. Good luck to you.

11 MS. SIMMONS: Thank you, Judge.

12 THE COURT: Is the victim still here?

13 MS. SIMMONS: Judge, she is. Yes, sir.

14 (Whereupon, Defendant left courtroom.)

15 THE COURT: Hey, you did the right thing. You're a
16 very strong girl, okay? I'm, I'm pretty amazed. I'm
17 not sure I could have done what you did. You did the
18 right thing, okay, honey?

19 And to his daughter, hey, live your life, okay?

20 All right. What do you got for me now, pleas?

21 MS. SIMMONS: Yes, Judge.

22 THE COURT: I'll let the jury go. You are welcome
23 to stick around.

24 (Whereupon, the trial in the matter of the State of
25 South Carolina v. Steven Gregory Frost was concluded at

1 approximately 2:10 p.m. on September 19, 2012.)

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4 *** THIS ENDS REQUESTED TRANSCRIPT ***

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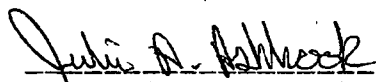
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1 CERTIFICATE OF REPORTER

2
3 I, the undersigned Julie A. Ashbrook, Court
4 Reporter for the Tenth Judicial Circuit Family Court of
5 the State of South Carolina, do hereby certify that the
6 foregoing is a true, accurate, and complete transcript
7 of record to the best of my ability of all the
8 proceedings and evidence introduced in the hearing
9 and/or trial of the captioned case, relative to appeal,
10 in the Circuit Court for Oconee County, South Carolina,
11 on the 17th, 18th, and 19th day of September, 2012.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.
14
15
16

17 
18 Julie A. Ashbrook
19 Family Court Reporter
20 Tenth Judicial Circuit
21
22
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF OCONEE)

IN THE COURT OF GENERAL SESSIONS
FOURTEENTH JUDICIAL CIRCUIT

2012-GS-37-549

STATE OF SOUTH CAROLINA)

VS.)

VERDICT FORM

Steven Greg Frost,)

Defendant.)
_____)

2012 SEP 19 PM 2 29

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

We, the jury, by unanimous consent, find the Defendant Steven Greg Frost:

1. X Guilty of First Degree Criminal Sexual Conduct with a Minor.

The sexual battery involved (choose one):

- Acc X Sexual Intercourse
 Anal Intercourse
X Intrusion by an Object

 NOT Guilty of First Degree Criminal Sexual Conduct with a Minor.

OR


2. Guilty of Assault and Battery, First Degree.

X NOT Guilty of Assault and Battery, First Degree.

OR

3. Guilty of Assault and Battery, Second Degree.

~~X~~ NOT Guilty of Assault and Battery, Second Degree.



Foreperson

September 19, 2012

Oconee County, South Carolina

Please indicate your finding on the appropriate line and certify this finding with the foreperson's signature. Please knock on the door and inform the bailiff when you have reached your verdict.

DOCKET NO. 2012GS37 00549

WITNESSES

Gentry Hawk, Oconee Co Sheriff's Dept.

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

JUN 11 2012

Term

Amanda Kepler

Amanda Kepler

ARREST WARRANT NUMBER

N138650

THE STATE

vs.

Steven Gregory Frost

ACTION OF GRAND JURY

True Bill

LSS

A. Michael Byrd

Foreperson of Grand Jury

Date: JUN 11 2012

Indictment for

VERDICT

Criminal Sexual Conduct With Minor - Victim
Under 11 Years Of Age- First Degree

SC Code: 16-03-0655(A)(1)

CDR Code: 0385

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF Oconee)

INDICTMENT

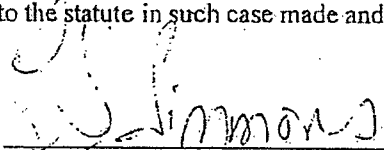
At a Court of General Sessions, convened on JUN 11 2012, the Grand Jurors of Oconee County present upon their oath:

Criminal Sexual Conduct With Minor - Victim Under 11 Years Of Age-
First Degree

That Steven Gregory Frost did in Oconee, South Carolina between October 1, 2011 and November 1, 2011, willfully and unlawfully commit the crime of Criminal Sexual Conduct with a minor in the first degree by engaging in sexual battery with a minor who was less than eleven (11) years of age, whose date of birth is

This is in violation of 16-3-655(A)(1) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



ASSISTANT SOLICITOR

Does digital penetration qualify as

- OR
- 1) sexual intercourse
- 2) intrusion by an object

1:13 pm

9-19-13

[Handwritten signature]

Court
 EXHIBIT NO. 2
 9-19-12
 Robin Hild

Do we have to find on all the charges or just one of these.

[Handwritten signature]

9-19

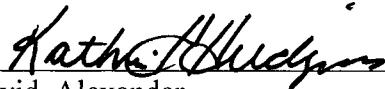
12:40 PM

Court
 EXHIBIT NO. 1
 9-19-12
 Robin Hild

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

September 25th, 2013



David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Oconee County

J. Cordell Maddox, Jr., Circuit Court Judge

RECEIVED

SEP 25 2013

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

STEVEN GREGORY FROST,

APPELLANT

APPELATE CASE NO. 2012-213043

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Jennifer Ellis Roberts, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 25th day of September, 2013.

Brandon Hall
Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 25th day of September, 2013.

[Signature] (L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.