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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Honorable Bentley Price, Circuit Court Judge

Appellate Case No. 2024-001061

RONALD L. LEGG,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPENDIX
Volume 2

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF HORRY) 2011-GS-26-03553

THE STATE OF SOUTH CAROLINA,)
)
Plaintiff,)
-VS-) TRANSCRIPT OF RECORD
)
RONALD LEE LEGG,)
)
Defendant.)

March 10-13, 2014
Conway, South Carolina

B E F O R E:

HONORABLE EDWARD B. COTTINGHAM, Judge.

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

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Attorney for the State

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Circuit Court Reporter
Fifteenth Judicial Circuit

the sole responsibility for that. You may accept all of what a witness says or none. You may accept a portion of what the witness says and disregard the larger. You may accept one witness against many or the other way around. I just tell you that you are the sole and only judges of the credibility of the witnesses. You twelve are the sole and only judges of the findings of the facts in this case.

During your deliberations, whatever your verdict is, and there will only be two possible verdicts, either not guilty or guilty, whatever your verdict is it's got to be the unanimous verdict of all twelve. It cannot be a verdict of a majority. It obviously would not be one of the minority.

Madam Foreman, I'll keep you fully advised of your duties, and these are just preliminary remarks, no substitute for the detailed and final remarks that I will make for you and to you at the conclusion of all of the testimony.

You may have your opening statement.

MR. SPRATLIN: Thank you, Your Honor. May it please the Court.

Good morning, ladies and gentlemen of the jury. My name is Martin Spratlin. I'm an Assistant Solicitor here in Horry County. I represent the State in this matter.

The Defendant, as the Judge said, is charged with lewd

act upon a minor. What he is accused of doing is between the months of June 1st, 2010, and June 14th, 2011, he touched Minor the girl seated right here, in a sexual, lewd manner.

Now, this is the part of the trial called opening statements. One of the most important things the Judge has told you about opening statements is that this is not evidence and that's important for you to know. Nothing that I tell you here right now is evidence, or Mr. Diggs stands up here and gives you the opening statement for the Defense, nothing he says will be evidence either. The only evidence you're going to hear will come from that witness chair, and other exhibits, video and audio recordings that are introduced in evidence, and there will be some of those today. And I will get to that in a minute.

The best way I've ever heard opening statements described is potentially a -- kind of like a preview to a movie that hasn't been written yet. The movie is the trial, so the purpose of a preview is to kind of give you an idea on what to accept.

When you go to the movies and you sit there and you are watching the previews, you see the upcoming summer blockbuster on the screen. You kind of know what to expect from the previews. You know whether it's going to be an action movie, R-movie, comedy, romance, whatever, and you

know a little bit about the plot. That's the purpose of a good opening statement. It doesn't give you all the details. It doesn't tell you everything you haven't seen, but it tells you what to expect going in.

And to that end, ladies and gentlemen, in this trial you can expect the following. You're going to hear from the mother of Minor a lady named Dinita Whipple. She's going to testify about how her family moved in next to the Defendant back in June, 2010.

She's going to tell you that the Defendant was very friendly with her family and she actually -- he actually had gained her trust, and he actually -- he actually had gained her trust and he actually watched Minor who at the time -- she's now thirteen. At the time, she was nine.

He was watching Minor while she would go to school, she would go to work, or do whatever. He was also watching Minor brother, D. That's pretty much what she's going to be able to tell you because she never saw the Defendant touch her daughter.

It's not the kind of crime, as you'll hear, that happened in front of a large group of people or a large group of adults. Instead, they happen in front of people who are too afraid to tell somebody or can't tell somebody. It happened in secret, so she never witnessed the Defendant touching her daughter, but she can tell you a lot of things

about the Defendant's relationship with her daughter, how much time he wanted to spend with her daughter, how initially he wanted to spend time with her son, too, but then he got tired of the son and told the son not to come over any more. He only wanted to see the daughter.

And you're going to hear from that daughter. She's going to take the stand and tell you what that Defendant did to her. She's going to tell you how he touched her on what she referred to as her front private part.

You're going to hear her tell him -- or tell y'all how the Defendant would call her sexy, how the Defendant would make comments to her, how he would touch her chest area, how one time at the river while they were swimming, he took off her bathing suit bottoms and wouldn't give them back to her.

You're going to hear about a time in a tent when it was her and the Defendant, and originally her brother, but her brother left, and how the Defendant again touched her front private parts.

Ladies and gentlemen, in these such cases, you're also allowed to see what's called a forensic interview of the child. To that end, you're going to hear from a lady named Natalia Achury Demaio. Now, that's a mouthful, but essentially Ms. Demaio at the time worked at a place called the Childrens' Recovery Center, which is in Myrtle Beach, South Carolina. The Childrens' Recovery Center is to help

victims of sexual assault.

One of the things they do is they interview the victims of sexual assault. They interview them as close in time to the sex- -- to the abuse as they possibly can. You're going to see that video and you're going to see ten year old Minor but by the time she told -- she was nine when it started, but by the time she told, she was ten, and on that video screen that's going to come down out of that ceiling, you're going to see ten year old Minor and you're going to see her tell you what that man did to her.

Lastly, ladies and gentlemen, today I expect you will hear from law enforcement. You will hear from Detective Neil Frebowitz. Well, first off, let me back up. You're going to hear from Detective Greg Lent first and he -- I'm sorry. He's a detective now. At the time, he was a road officer. He was the first responding officer when the report of child abuse came out.

He's going to tell you how he went to the Defendant's residence when he first responded, how he had a little discussion with the Defendant, and how he actually walked inside the residence at the Defendant's invite.

And now inside the Defendant's residence, there weren't any children living there. It was the Defendant and a mentally-challenged individual named Bob, and you're going to hear a little bit about Bob today, and Detective

Frebowitz will go into detail about his conversation with Bob and Bob's ability to understand things, but you're going to hear how they were the only two people living in the residence, but in that residence, there was a classroom set up, a classroom where Minor spent a lot of her time.

And you're going to hear how,ladies and gentlemen, they arrested the Defendant and how Detective Neil Frebowitz, sitting right here, went and talked to the Defendant, and you're going to hear the Defendant's statement taken by Detective Frebowitz.

Now, the purposes of me playing that statement is not because the Defendant admitted what he did. He didn't. He would never admit that he touched Minor but that statement gives you insight into what was in the Defendant's mind.

Because the one thing I ask all of you to keep in mind when listening to that statement is when the Defendant is talking about Minor that's a ten year old girl he's talking about, and just to give you a little overview, -- like I said, this is just a preview, not all the details, not everything, but just to give you a preview of some of the things he said about Minor

He calls her manipulative. He says she draws him in. He used her childhood status to get away with that, says she has low-key intendency, calls her flirtatious. He called her frigid, a ten year old girl.

Ladies and gentlemen, at the close of all the evidence today, based on the testimony of that child, you're going to convict the Defendant because you'll be convinced beyond a reasonable doubt that he touched her in a sexual, lewd way. Thank you.

THE COURT: Thank you, Solicitor.

Mr. Diggs.

MR. DIGGS: If you've ever wondered whether or not we have the best system in the world, this is why we can say that we do because everything that the Solicitor just said is his opinion, what he thinks about this case. It's what he believes.

Not even the Judge, not the law clerk can tell you, no one can tell you what the facts are in this case, and it's the Solicitor's obligation to put on evidence that convinces you collectively beyond a reasonable doubt that what he says is true.

But if you don't think so, you can, with all due respect, common Americans off the street in a community where we live, if you don't agree collectively beyond a reasonable doubt that the Defendant is guilty, you have to find him not guilty, because it's the State's burden of proof, and think about the power that citizens in our community have, and this is all across the country. It's not just Horry County.

Every American who comes into Court who is accused of a crime of this nature has a jury to act as a safety valve against the government to say, wait a minute, we don't agree. We think that the State has made a mistake here, and that's why it is a great system, because without you, my client would have been hauled off to prison and put under the jail a long time ago. As the Solicitor told you, this allegedly happened between 2010 and 2011.

Now, one of the things I want to remind you about at the outset of the case is that you all swore when the Judge asked at the beginning of the trial could you be fair in this case to both sides, could you be fair to the State? Yes, everybody indicated that they could. Even when you knew the nature of this case, you said yes, we can be fair to the State. We will listen to the evidence and render a fair judgment.

And then the Court asked you can you be fair to the Defendant? Do you remember? And all of you said yes, we can be fair, even when you knew the type of case this was, even when you knew that a child was going to be involved making accusations against an adult male. All of you said yes, we can be fair. Remember when you indicated that? All of you indicated that you could be fair, and that's what I'm asking of you today before we start the presentation of evidence.

The Judge is going to instruct you later, don't start deliberating the case and don't make up your mind until you've had a chance to hear all of the evidence in the case, because no doubt at the beginning when the State starts presenting evidence, you're going to be inclined to say, well, look at the evidence in this case.

There are accusations that my client improperly touched this girl, and you might start thinking, well, maybe he's guilty of doing what they said, but you haven't heard all of the evidence at that point.

And once you begin to make up your mind, it's very hard to switch around and go back and say wait a minute, maybe I was wrong about that and maybe he's innocent, and so what I'm asking you simply is to don't try to make up your mind yet, you know, simply because you hear one witness or another witness, because you're going to have grounds in this case at the end of the case to question the veracity of the State's evidence and the accuracy of what's been told to you.

Take, for example, the Solicitor told you what the evidence was going to show. The evidence is going to show that mom, -- and I don't know her, I never met the child's mother, -- when they moved into the neighborhood where my client lived, they became acquaintances.

Mom, who was, I think, a single mother with three

children in the house, took every opportunity she could take in trotting those kids next door to my client's house, and it got to the point he had to keep them so much, he had to even take them to work with him. He was a house painter, and he would have to take these children to work just to babysit them while mom was doing her thing, going to work or whatever she was doing, and that went on for a year, almost a year.

Mom trusted this man. She was around him a lot. She trusted him. She determined early on in their relationship and their neighbor interaction, neighborly interaction, this was a grown man, a mature man that she could trust with these little kids, so there they went. She put them over there all the time.

It got to the point where they liked going over there. They enjoyed being around him because he was fun. He would do things with them, and occasionally he would take them swimming, and they had fun. And I'd say the children developed a relationship with him almost like a fatherly attraction.

The State says, oh, well, this improper touching started right away and it lasted for the better part of a year, but you know what, nobody mentioned that to anybody for a year.

The State has indicated, at least, they mentioned tapes

and videos and stuff, you'll have a chance to look at the interview of this child where she claims these interactions were taking place. You can tell a little bit on the tape, but we'll bring it out more through the testimony.

When she decided to report this, the Defendant was at work trying to paint a house. She was running around, getting in the way, climbed up and down the ladder. He had just had it. Look, I can't take this any more. I'm going to have to take you home. We're not going to do this any more. I've got work to do. Shut up, and he used a bad word. She got angry, picked up the phone, called mom, and said guess what, he's been touching me.

That's when she reported it, and you know what, one of the witnesses he mentioned is going to come in and testify and say, oh, yeah, I saw him improperly doing stuff around this child, and yet this witness is not going to be a child. This is going to be a grown woman, okay, and she's going to say yeah, I can corroborate some of that.

The question is going to be, well, who did you report that to? Oh, well, I didn't report it to anybody. I didn't think anybody -- I was scared. I didn't think anybody would believe me, so I didn't tell anybody.

So what I'm saying is, the State is not going to tell you that, okay? That's why we say don't make up your mind yet until you've heard all the evidence and put everything

in context to give my client a fair trial, okay?

Another thing, we're charged with committing a lewd act. Well, that's a terrible thing. The law -- I mean, that's been illegal forever as long as I know, and what's -- and a lewd act is probably something that's going to affect a child.

When you look at the tape of the video, if you have a chance to see it, we'd ask you to look for evidence of any trauma this child suffered, or is it more the nature of something she's making up as they go along. That's why I'm asking you not to make a decision yet just on one or two witnesses. Just wait and hear all the evidence in the case.

And we want to look and see from the words of this child if there's any evidence that she might have been coached, and I'm going to suggest to you there is, and if you don't pick up on it directly while you're looking at the evidence with the case, we'll have a chance to point it out at the end of the playing of that tape. That's -- that's critical.

And lastly, I want to tell you that I appreciate your listening to me. My client, you're going to learn, is sixty-three years of age. Never once in his life has he ever been accused of criminal sexual conduct, and I'm going to ask you to look for evidence in this case about how men or predators in their sixties all of a sudden turn when

they haven't shown any of those tendencies at any point in their life to that point. All of a sudden, they're doing all these horrible things to one child.

And so I come back to the point, you play a tremendously important role in this process because you have the power to say wait a minute, Mr. Solicitor. We appreciate you doing your job, but you can't be right all the time. Mistakes happen. Mistakes are made, and we think that the proof is just not here to convince us collectively beyond a reasonable doubt that this man is guilty.

And so I appreciate this -- I can tell you it's the most important day in my client's life, this day. We appreciate your being here and participating in it, because I know you would rather do other things.

It's a hard job to be a juror, but we appreciate your doing it, and I promise this is probably the most long-winded I'm going to be. I'm not going to take any more of your time than is necessary for you to understand what we want you to understand about the case, but we appreciate it very much.

And again, on behalf of Mr. Legg, -- and I didn't introduce him. That's Ronald Legg. He is my client in this case. My name is Bill Diggs. I'm an attorney in Myrtle Beach. I've been there for a number of years, and occasionally I practice law with my son there in Myrtle

Beach.

And I'm happy to have a chance to work with Mr. Legg on this case, and I appreciate your willingness to serve on the jury and render a fair verdict in this case. Thank you very much.

THE COURT: Thank you, gentlemen.

Call your first witness.

MR. SPRATLIN: Your Honor, the State first calls Ms. Dinita Whipple to the stand.

DINITA WHIPPLE, being first duly sworn, testifies as follows:

THE DEPUTY CLERK: State your full name and spell your last name.

MS. WHIPPLE: Dinita Whipple. W-H-I-P-P-L-E.

DIRECT-EXAMINATION BY MR. SPRATLIN:

Q. Ms. Whipple, in what county do you reside?

A. Horry County.

Q. How long have you lived in Horry County?

A. Seventeen years.

Q. Where did you live before Horry County?

A. Michigan.

Q. If you would, how far did you go in school?

A. I graduated and went to college.

Q. What sort of work do you do?

A. I'm an aesthetician.

Q. What does that mean?
A. I do facials, body scrubs, all that.
Q. Are you married?
A. Yes.
Q. What's your husband's name?
A. Thomas.
Q. Thomas. How long have you been married to Thomas?
A. Six years.
Q. What sort of work does Thomas do?
A. He's the manager at Waccamaw Metal Recycling in Myrtle Beach.
Q. Now, Ms. Whipple, if you would, where were you living back between June 2010 and June 2011?
A. On .
Q. I'm sorry. What was the name of that street again?
A. .
Q. ?
A. Yes.
Q. All right. What sort of neighborhood was ?
A. The part where we lived were -- it was good.
Q. All right. Are these freestanding houses, mobile homes, or what kind of houses?
A. We have a doublewide.
Q. Now, Ms. Whipple, between June 2010 and June 2011

when you were living on , how many children did you have at that time?

A. I had three living with me.

Q. Three. What are -- who is your oldest child?

A. Ashley.

Q. How old is Ashley?

A. She's twenty-two.

Q. Twenty-two. Does Ashley ever go by any other name?

A. No.

Q. Okay.

Q. Who is your second child?

A. S.

Q. S. How old is S.

A. Nineteen.

Q. Nineteen. And who else was living with you?

A. D. is fourteen, and Minor

Q. How old was -- how old is Minor now?

A. She's thirteen.

Q. You said earlier you had three children living with you. Which three were living with you?

A. S. Minor and D.

Q. Okay. Now, you said that Minor is thirteen now?

A. Yes.

Q. When is her date of birth?

A. .

Q. . How old would Minor have been in June of 2010?
A. She was ten.
Q. And how old would she have been in June two thousand---
--- I'm sorry. So she was ten years old at the time that you were living on ?
A. Yes.
Q. All right. Now, Ms. Whipple, if you would, between June 2010 and June 2011, was anybody else residing with you?
A. Yes. I let Shannon stay with me.
Q. Who is Shannon?
A. My dad is married to her grandmother, so she's just a friend.
Q. So she's a friend of yours?
A. Yes.
Q. How long have you known Shannon?
A. Since about 2005.
Q. 2005?
A. Uh-huh **(indicating affirmative)**.
Q. What's Shannon's last name?
A. Lawrimore.
Q. Lawrimore. And how old is Shannon, if you know?
A. She's twenty-three.
Q. Twenty-three now?
A. Uh-huh **(indicating affirmative)**.
Q. So she would have been twenty back in two

thousand- ---
A. Yes.
Q. Is there anything different or special about Shannon?
A. She's been through a lot. Her dad was killed, and they just kind of was here and there, but she can be different at times.
Q. Different. Okay. Let's move on to the Defendant, Mr. Legg. You said when you moved onto , did you get a chance to meet the Defendant?
A. Yes. When we were moving our doublewide in, Don and Bob walked over there and introduced theirself.
Q. Okay. You said Don. Why do you call the Defendant Don?
A. That's what he told us his name was.
Q. So he first told you his name was Don?
A. Don, uh-huh (**indicating affirmative**).
Q. And Bob. Who is Bob?
A. Bob was living with Don.
Q. Is there anything special or different about Bob?
A. Yes. He is mentally challenged.
Q. To your knowledge, were there any children living with Don and Bob?
A. No.
Q. And the Defendant's residence, how close to your residence was it?

A. About fifty feet.
Q. Fifty feet. So to your knowledge, was that in Horry County?
A. Yes.
Q. The Defendant's residence, what kind of structure was that? Was it a freestanding home, a mobile home?
A. It was a old mobile home.
Q. Did you ever have a chance to go over to his mobile home?
A. My husband and I walked over there, yes.
Q. Let me ask you, your husband, was he living with you on as well?
A. Yes.
Q. How often did he work when you were there?
A. He worked every day.
Q. Every day?
A. Yeah.
Q. What kind of hours did he work?
A. He worked from seven in the morning until four in the evening. He would -- he would get home about five, and then he would work out back.
Q. Okay. And what about you, what kind of work were you doing back then?
A. I was going to school.
Q. Going to school?

A. Uh-huh (**indicating affirmative**).
Q. Now, prior to moving onto , did you know the Defendant at all?
A. No.
Q. Ever met him before?
A. No. I never knew him.
Q. All right. How long after you moved in did you actually meet the Defendant?
A. The day that we were moving our mobile home in.
Q. Okay. If you know, what sort of work does the Defendant do?
A. He said he was a handyman.
Q. Handyman. Did he ever do any work for you?
A. Yes. He fixed a pipe in one of the walls in our bathroom, and we asked him if him and Bob could put up the skirting around our mobile home, our doublewide.
Q. Now, how often would you see the Defendant while you were living on ?
A. Well, he wouldn't come over all the time. When we -- we didn't go over there. We'd have to turn right by his house in order to get to ours. You know, if they were in the yard or out doing something, we would see them.
Q. Ms. Whipple, let me ask you about the Defendant's relationship with your children. Did he have any sort of interaction with any of your children?

A. My son had ADD and ADHD and a learning disability, and Don had told us that he had worked with children with ADD and ADHD, worked with them, and he said that he could, you know, help D. so ---

Q. Did he ever tell you how he could help D.

A. He said he had books and they would do projects. That's -- that's about it.

Q. To your knowledge, has the Defendant ever been -- had any kind of actual training for ---

A. No.

Q. To your knowledge, has the Defendant even graduated college?

A. No.

Q. Has he ever been a licensed counselor to your knowledge?

A. Not to my knowledge.

Q. All right. Did he -- besides D. did he have any sort of relationship with any of your other children?

A. Yeah. He -- I don't understand what you are ---

Q. Did he ever have any interaction with any of your other children besides D.

A. Yeah. He, you know, -- he -- I mean, he would, you know, -- the kids, he would make them write papers and, you know, ---

Q. Did any of your other children besides D. ever go

over to his residence?
A. Yes.
Q. Who?
A. Minor
Q. Okay. How often would Minor go over to his residence?
A. It wouldn't be every day, maybe two or three times a week.
Q. And where were you at the times that Minor was going over there?
A. I was at my house.
Q. At your house?
A. Yeah.
Q. Were you ever anywhere else when Minor was going over to his house?
A. No. I was pretty much home. I would go to school the same time that they were in school, so I would be home in the evening time.
Q. Okay. So you said Minor would go over to his house two to three times a week?
A. Basically, yeah.
Q. All right. Were there any rules for Minor when she went over to his house about what she could and could not do?
A. Yes.

Q. What were those rules?
A. The rules were that she couldn't go in.
Q. Were you with Minor at the time that she was over at his house?
A. At first, you know, they would just go in the yard and stuff, and like I said, my husband and I walked over there. We would go in the yard every now and then, but they would normally play out in the yard.
Q. At all times that Minor was over there, were you with her?
A. No.
Q. What sort of things did you think that Minor was doing over there?
A. They liked the cats.
Q. How many cats did he have?
A. I don't know, probably thirty. I don't know. He had a lot. They would play. They would -- you know, like do little projects, write little papers, or make pictures.
Q. Would the Defendant ever take Minor anywhere?
A. Yes.
Q. Where would he take her?
A. Sometimes -- well, he started taking her and D. to school because they didn't want to ride the bus, and then eventually he wouldn't take D. but he took Minor
Q. Why wouldn't he take D. Did he tell you?

A. He said that D. was too mean and that D. didn't listen.
Q. But he still took Minor
A. Yes.
Q. Every time that Minor went over there, did D. go with her?
A. At first, yeah.
Q. At some point -- you said at first. At some point did D. stop going over there?
A. Yes, because Don said he was too mean.
Q. But Minor still went over there?
A. Sometimes, yeah.
Q. Besides school, did Don -- to your knowledge, did Don ever take the children somewhere -- or take Minor anywhere else?
A. Every now and then I would let her ride to Wal-Mart if he had to go down there for something.
Q. Okay. Did Don ever take Minor -- or the Defendant, excuse me, -- and you probably learned what the Defendant's real name was?
A. No, I never knew it until after ---
Q. But for your entire relationship, you've known the Defendant as Don?
A. Yes.
Q. When the Defendant -- did he ever take Minor to any

kind of fun activities or anything like that, you know?
A. I think they went to the mall.
Q. The mall?
A. Yeah. I know they went to the mall, and she jumped on the bungee jump.
Q. Okay. Did he ever take her swimming or anything like that?
A. Yes.
Q. Where would he take her swimming at, do you know?
A. They went to -- I can't remember the name of the lake -- the river.
Q. But he would take her to the river to go swimming?
A. Yes.
Q. Okay. When you were around the Defendant and your daughter, did you ever see anything that made you think that he was being inappropriate with her?
A. Well, he would like to wrestle with her, and I told him a few times to stop, that he didn't need to be doing that and she didn't need to be doing that, and I witnessed a few times or several times that he was looking at her in places he shouldn't be looking at her.
MR. DIGGS: Your Honor, I would object to the ---
THE COURT: Sir.
MR. DIGGS: May I approach.
THE COURT: Better let the jury step out.

Step out. We'll call you back in just a minute. Have them to step out.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: Yes sir.

MR. DIGGS: Your Honor, she doesn't know where he was looking at her, and even if she could ---

THE COURT: Well, you -- that's an area of cross-examination. What was wrong with her comment he was looking at her inappropriately? What was wrong with it?

MR. DIGGS: She said in places where he shouldn't be looking.

THE COURT: Well, you can cross-examine on what she meant. I don't understand your objection.

MR. DIGGS: I think -- I object to it because it's not responsive to the question, and it's assuming that she knows ---

THE COURT: No, I see nothing wrong with the question, and she's answered the best she can. That's a matter for you to talk about on cross-examination.

Bring the jury back.

MR. DIGGS: I -- respectfully we object.

THE COURT: I understand.

Tell them to come on back, please.

MR. SPRATLIN: The bailiff went to get them, Your

Honor.

THE COURT: I understand.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: Proceed.

MR. SPRATLIN: Thank you, Your Honor.

CONTINUING DIRECT-EXAMINATION BY MR. SPRATLIN:

Q. Ms. Whipple, before the short break, you were mentioning that the Defendant was looking at her in places he shouldn't have been. What do you mean by that?

A. Sometimes I would catch him looking at her butt ---

Q. Okay.

A. --- and at her top half.

Q. Given these observations, why did you continue to let Minor go around him?

A. Well, I didn't really think anything that -- I didn't think he would -- I mean, I trusted him.

Q. Now, the Defendant, you said he was working with D. on his ADHD?

A. Yes.

Q. Did he ever talk to you about Minor and her -- any issues she was having?

A. No. No. She never really had any iss- -- I mean, ---

Q. To your knowledge, has Minor had any kind of

disability?
A. No, never.
Q. How was Minor doing in school?
A. She's a honor student and has been since she's been in the first grade.
Q. Now, besides your observations of the Defendant looking, was there ever anything else, thinking back on it, that should have caused you concern about the Defendant and Minor relationship?
A. Yes. He used to refer to her as his girlfriend.
Q. At the time, did you think anything of this?
A. No. I thought he was just being -- because he was a joking guy. I mean, he joked a lot.
Q. How did you come to find out that something was wrong?
A. I was finishing up the last couple of days at Miller-Motte, and my daughter had called me.
Q. Do you know where your daughter called you from?
A. Yes. She went to a house that Don and Bob were painting. It's just right up the road from us, and she had called me and she was really upset, and I said, well, what's wrong honey, and she said that Don had been -- been cussing at her and told her to shut the F up, and I said, well, you need to tell him don't talk to you like that and I'll take care of that when I get home.

So she stayed on the phone for a second, and she -- she was crying, and I said, Minor what's wrong? Is there something else wrong? And she said yes. I said, well, tell me, and she said that Don had spread her legs and she told him to stop, and he had put his hands -- his fingers down her butt crack, and before she could tell me anything else, I said just hold on and I'll be right there in fifteen minutes.

And as soon as I got there -- actually on my way to my house I had called the police and told them what was going on, and an officer met me -- well, he come out there shortly after I got home.

And in the meantime while I was on the phone with the officer, Don had come over. At that point I don't think he knew what -- what she had told me, and ---

Q. What did he say to you?

A. He said -- he put his hand up on the deck and he said, let me tell you my side of this story. I'm right and I'm always right, and I said, well, you need to leave. I don't even think he knew who I was -- that I was on the phone with the police.

Q. Let me back up for a second. You said you left school or -- or you left to come home. Where were you when that ---

A. I was at school.

Q. Okay. Was it common sometimes for Minor to go over to his house when you were at school?
A. No. The kids were in school during the day when I was in school, but they had gotten out June 4th, I think it was, and I had like two days of school left, and I needed somebody, you know, to watch Minor while I finished the two days up.
Q. Who did you get to watch Minor while you finished those two days?
A. I asked Don if he could do it.
Q. Okay. Did he have any problem doing it?
A. No.
Q. And again, throughout your entire time you've known the Defendant, what name have you known him by?
A. Don Legg.
Q. And why do you know him by that name?
A. Because that's what he said his name was.
MR. SPRATLIN: Beg the Court's indulgence for one second.
No further questions, Your Honor.
THE COURT: Mr. Diggs.
CROSS-EXAMINATION BY MR. DIGGS:
Q. Ms. Whipple, you were convicted of breach of trust?
A. Yes sir.
Q. And when was that and where was it?

A. 2003 in Conway.
Q. And you did -- you were sentenced to a year suspended to probation?
A. Yes.
Q. All right. Let's look at your rules regarding your daughter and my client. Do you have a rule she couldn't go in the home?
A. Yes, that's true.
Q. And why did you have that rule?
A. Because I didn't know him.
Q. For a whole year?
A. No. I didn't know him at first.
Q. Did that rule continue on throughout the year that he was your neighbor?
A. No.
Q. When did you stop enforcing that rule?
A. I didn't. I just told her that she could not go in there at first.
Q. And then you kind of dropped it?
A. Yes.
Q. So, throughout the duration of the relationship, my client would take the children skating? Did he ever go skating?
A. I don't -- I don't remember.
Q. Okay. Bowling?

A. Yes.
Q. Shopping?
A. (Nods in the affirmative.)
Q. He would give them a ride to school?
A. Yes.
Q. They would go swimming?
A. Yes.
Q. Now, when they went swimming, it wasn't just your daughter and my client? Wasn't it your son as well?
A. He had went a couple of times, but ---
Q. And Shannon?
A. Uh-huh (**indicating affirmative**).
Q. All right. Was there a time that you're aware of when my client ever took him by himself and herself?
A. Not that I'm aware of.
Q. No; no. Now, the day she called you crying or mad -- how did you describe that call?
A. She was upset. She was crying.
Q. But before she was crying, how was her -- what was her attitude?
A. She was upset that Don was cussing at her.
Q. Okay. Was she mad?
A. No. She was upset.
Q. Was she crying?
A. Yes.

Q. Okay. So you're altering your testimony. Initially, she was crying right out of the gate?
A. She was about in that -- to cry, like ---
Q. She was upset?
A. Upset, yes.
Q. Could have been angry as well?
A. No, I don't think so.
Q. So he just cussed at her. That didn't make her angry, it just made her start crying?
A. That upset her.
Q. Now, where was she when she called you?
A. She was in the truck.
Q. Yeah, but where was the truck?
A. At where he was doing a project.
Q. Where he was working, right?
A. Right.
Q. And when he felt her butt crack, was that when they were at the house painting?
A. Yes.
Q. And was Bob there?
A. Bob was not on the truck. He was ---
Q. How do you know where he was?
A. She told me where he was.
Q. All right. But you don't know where he was?
A. No.

Q. He was on the property, though, right?
A. Yes.
Q. He was painting, correct?
A. Yes.
Q. And he certainly -- you don't know if my client was monitoring his whereabouts, correct?
A. No.
Q. And so he was feeling it -- putting his hands down her pants certainly at risk of being discovered by Bob, isn't that true?
A. Yes.
Q. And yet your understanding is they were there on that property doing work? How about the property owners, were they there?
A. I don't think so.
Q. But you don't know for sure?
A. No, I don't.
Q. When my client was arrested, you -- did you ever have a chance to meet my client's brother?
A. No. Before he was arrested?
Q. No, at any time. Did you ever have a chance to meet my client's brother?
A. Yes, uh-huh (**indicating affirmative**).
Q. When did you meet him?
A. I met them when they came down after he was arrested.

They came down and tried to take the stuff from over at his house.

Q. His property, correct?

A. Yes.

Q. And you stopped him, didn't you?

A. No, I didn't stop them.

Q. You called the police to have them stopped?

A. Bob called the police to have them stopped.

Q. And do you know what property was in there that they were trying to retrieve?

A. There was a old truck, and whatever else, I don't know.

Q. You don't have any idea?

A. They said there was -- there was an old truck that was sitting in the driveway. As far as anything else, I don't know what Bob had -- or I don't know what Don had in there.

Q. Did they take the truck with them?

A. Yes.

Q. To your knowledge -- did you go out there when the police were discussing the situation with my client's brother?

A. I -- Bob had called me. He was really upset, so we walked over there, but there was nothing I could do. I mean, it wasn't my property.

Q. Do you know if any written materials were taken out of my client's home?
A. I don't know.
Q. Did you ever see any writings in the home?
A. Did I?
Q. Yeah.
A. Huh-uh **(indicating negative)**.
Q. Do you know your daughter's handwriting?
A. Yeah.
Q. Do you think you could recognize it?
A. From then to now, maybe. I don't know.
Q. All right. Let me show you a document. I'm not going to ask you to read it or anything.
A. Uh-huh **(indicating affirmative)**.
Q. Can you identify the writing?
A. Yes.
Q. It appears to be what?
A. Hers.
Q. All right.

MR. DIGGS: And, Your Honor, for the record, we're looking at Defense Exhibit for identification Number 1.

THE COURT: Okay.

MR. DIGGS: I'm not going to introduce it, Your Honor. I just wanted to ---

THE COURT: I recollect that you're talking about

Exhibit 1.

Q. Did you object to my client's brother removing my client's personal possessions from the home?

A. Well, I told him, you know, that he probably shouldn't do that. I mean, Bob was really upset. He asked for my help.

Q. Does Bob have a right to keep my client's possessions?

A. I don't know.

MR. SPRATLIN: Objection, Your Honor.

THE COURT: Sustained. That's a legal question.

Q. To your knowledge, did he have the right?

MR. SPRATLIN: Objection, Your Honor.

THE COURT: I sustain.

Q. Did Bob ever tell you anything that made you believe that it would be inappropriate for my client's brother to remove personal items from the home?

A. No.

Q. Okay. So you don't know if Bob's objection -- you say it was his objection, correct? In other words, it was Bob objecting to this?

A. Yes. Bob was upset.

Q. Okay. And do you know if Bob still has my client's possessions or his possessions?

A. No, I don't know.

Q. You don't know?
A. No, I don't.
Q. When was the last time you saw Bob?
A. Oh, gosh, it's been a while. We'll see him riding his moped, and that's about it.
Q. How long ago was it when you saw him?
A. Probably -- you mean just saw him?
Q. Yes.
A. Probably a week or two ago maybe.
Q. All right. So he's still alive?
A. Yes.
Q. All right. Have you spoken with him?
A. No.
Q. Do you have any knowledge as to whether or not he's going to come in and testify in this case ---
A. No.
Q. --- on behalf of the State?
A. No.
Q. Now, tell me about your husband, okay? I did not realize that he was there living in the home. What is his name?
A. Thomas.
Q. All right. He's not the father of the children ---
A. No.
Q. --- that we've spoken about here?

A. No.
Q. What is his relationship with them?
A. He has a very good relationship. He loves them very much.
Q. Why doesn't he ever babysit them?
A. Because he works all the time, and we don't normally get babysitters, just at that time. We always have them with us.
Q. So you would prefer my client to have done the babysitting than Thomas during that time frame?
A. Tommy was working.
Q. He couldn't take them skating, or bowling, or shopping, or rides to school?
A. He was working.
Q. Okay. Do the children get along with him?
A. Yes.
Q. Do they like him?
A. Yes.
Q. Why do they prefer to spend time with my client as opposed to Thomas?
A. I don't know.
Q. Did Thomas ever take them swimming?
A. We took them some. We took them to do stuff, yes.
Q. Now, are you aware of any situations where Minor might have gotten an idea to make a sexual abuse allegation?

A. No.
Q. You have no knowledge?
A. Oh, I have knowledge, yes.
Q. Well, what is that?
MR. SPRATLIN: Your Honor, I'm going to object to this line of questioning.
THE COURT: No sir. I'm going to permit that question.
A. I don't understand exactly where you're ---
Q. What is the knowledge you have?
A. I have a knowledge that she told me what happened.
Q. No. Did someone else -- could someone else -- could she have gotten that information ---
MR. SPRATLIN: Your Honor, again I'm going to object.
THE COURT: No sir. I'm going to permit that question ---
MR. SPRATLIN: Yes sir.
A. You mean could somebody else have ---
THE COURT: --- on a very limited basis, and you know I told you that, ---
MR. SPRATLIN: Yes sir.
THE COURT: --- very limited, but I -- I'll permit the limited inquiry.
Go ahead.
A. You mean could somebody else put it in her head?

Q. Could she have learned about the sexual allegations from some other source?
A. No, not -- not that I'm aware of.
Q. You're under oath.
A. I don't understand what you're asking me.
Q. I'm asking is there anything to your knowledge ---
THE COURT: Ask her with specificity what you're talking about so she'll understand.
Q. I'm talking about D. ---
A. Okay.
Q. --- okay?
A. What about him?
Q. He's made allegations, has he not, that he was molested ---
MR. SPRATLIN: Your Honor, ---
THE COURT: I am going to permit this testimony, Solicitor, on a limited basis.
A. D. -- I think D. was a little confused. Like I said, he has a learning disability, and, no, he would not have put it in her head.
Q. But he made an allegation to that effect, did he not?
A. He did not say he was molested.
Q. He was ---
A. He did not say he was molested. He said his dad touched his penis, ---

Q. Okay.
A. --- but ---
Q. And Minor certainly had knowledge of that, didn't he -- didn't she? She had knowledge that he had made that accusation?
A. She may have. I don't ---
Q. You're telling us you don't know?
A. I don't know -- she -- yes, I think she did.
Q. All right. And that was before -- let's be clear time-wise. It was before the alleged incidents started occurring in this case, correct?
A. Yes.
Q. Does your daughter have a Facebook account?
A. Yes.
Q. Did you give her permission to do that?
A. Yes.
Q. Because it's my understanding, and correct me if I'm wrong, you're supposed to be eighteen in order to have such an account, correct?
A. Not to my knowledge.
Q. Okay. Your understanding is that any child can open up a Facebook account?
A. Yes. A lot of them do it.
Q. Well, I know that, but by stating their correct age as minors under age eighteen?

A. Yeah.

MR. DIGGS: Beg the Court's indulgence for just a second.

I appreciate your time, Ms. Whipple. Just one more question.

Q. According to your testimony, maybe three days a week, when Minor and D. would go over to my client's home, did you ever have any discussions with them about what took place when they were over at the home?

A. Oh, they would say that they had done little projects, maybe wrote some papers, colored some pictures, but other than that, no.

Q. Okay. But you did make a point to discuss, try to keep up with what was going on?

A. Yes.

Q. So at that point, Minor had every opportunity to disclose to you inappropriate touchings that had been occurring?

A. She did.

Q. And she made a decision not to ---

A. She did.

Q. --- at that point?

And just not to leave it hanging, the accusations that D. had made were not true, correct?

A. No.

MR. DIGGS: Thank you very much. That's all I have.

THE COURT: Is there any redirect?

MR. SPRATLIN: Yes sir, Your Honor.

Thank you, Mr. Diggs.

REDIRECT-EXAMINATION BY MR. SPRATLIN:

Q. Ms. Whipple, first addressing the allegations that D. made, those -- there were no arrests made in that case?

A. No.

Q. And, in fact, the police officers unfounded those charges, correct?

A. Yes.

Q. During the course of that entire investigation, did Minor ever accuse any -- her father of molesting her?

A. No.

Q. Did Minor ever say anybody touched her?

A. No.

Q. Has Minor ever said anybody touched her except for that man?

A. No.

Q. And the first thing Mr. Diggs asked you was about your breach of trust in 2003. You were convicted of that?

A. Yes.

Q. Did that have anything at all to do with your daughter?

A. No.
Q. Did that have anything at all to do with any of your children?
A. No.
Q. Did you comply and complete all the conditions of that?
A. Yes.
Q. And, also, Mr. Diggs on cross-examination asked you a little bit about Bob. Again, how would you describe Bob's mental faculties or his ability to -- his mentality?
A. He is mentally challenged.
Q. Can you be a little bit more specific? Does he appear to be mentally slow or ---
A. He's -- he's slow. He can't -- I don't think he can really hold a conversation that could make sense.
Q. You've had a lot of opportunity to talk to him?
A. Yes.
Q. So he can't really tell you or talk to you?
A. No.
Q. And the truck that you talked about, that was taken by the Defendant's family?
A. Yes.
Q. And all the items in that truck were taken by the Defendant's family?
A. Yes.

Q. And when the victim -- when Minor was spending time with the Defendant, where was your husband, Thomas?
A. Working.
Q. Working. All right. And let me go back to the allegation D. made one more time. You stated that D. said that his dad had touched his penis, correct?
A. Yes.
Q. That was about the extent of the disclosure?
A. Yes.
Q. He didn't go into any more ---
A. His real father.
Q. His real father?
A. Yes, not Thomas.
Q. Not Thomas?
A. No.
Q. So Thomas has never been involved in any action?
A. No.
Q. All right. And that was the extent of what D. stated?
A. Yes.
Q. He didn't go into any more details?
A. No.
Q. He didn't give a detailed account of what he said his dad did?
A. No.

Q. All right.

MR. SPRATLIN: Thank you. That's all the questions I have.

THE COURT: All right.

You may come down, and thank you.

Call your next witness, please.

MR. SPRATLIN: Your Honor, the State would call Ms. Minor to the stand.

THE COURT: All right.

Minor being first duly sworn, testifies as follows:

THE DEPUTY CLERK: State your full name and spell your last name.

Minor : Minor Minor .

DIRECT-EXAMINATION BY MR. SPRATLIN:

Q. How are you doing today, Minor ?

A. Good.

Q. How old are you?

A. Thirteen.

Q. Thirteen. When is your date of birth?

A. .

Q. , all right. So back in June 2010, how old were you?

A. I was ten.

Q. Ten. You were ten to eleven when -- when the time

you were living on ?
A. Yes.
Q. Was it or ?
A. .
Q. , okay.
A. now.
Q. I think I said nine to ten, but you were ten to eleven when you were living on ?
A. Yes.
Q. Okay. Do you go to school currently?
A. Yes.
Q. Where do you go to school?
A. Conway Middle.
Q. What's your favorite class at Conway Middle?
A. Math.
Q. Math. Are you good at math?
A. Yes.
Q. What's your least favorite class?
A. Social Studies.
Q. Social Studies. Now, Minor you said that you are thirteen years old, right?
A. Yes.
Q. Do you know the difference between a truth and a lie?
A. Yes.
Q. And you understand that you're under oath here today?

A. Yes.
Q. And do you know that you have to tell the truth?
A. Yes.
Q. And you have to answer all the questions to the best of your ability?
A. Yes.
Q. Okay. When you were living off of , who all was living with you?
A. My sister, S. D. and me, and my mom.
Q. Okay. Do you know the Defendant?
A. Yes.
Q. What name do you know the Defendant by?
A. Don.
Q. Don. Is that the name pretty much everyone called him?
A. Yes.
Q. Did anyone call him Ronald?
A. No.
Q. Did you ever hear anyone call him Ronald Lee?
A. No.
Q. Okay. If you can remember, when was the first time that you met the Defendant?
A. Whenever we moved our trailer in, him and Bob came over and we met him.
Q. Okay. Let me ask you about Bob. How would you

describe Bob?
A. He's not like regular -- like he's a regular person, but he's kind of slow, I guess.
Q. Okay. And that's noticeable with you?
A. Yes.
Q. Was that noticeable to you when you were ten years old?
A. Yes.
Q. Okay. Now, you said you met the Defendant when he came over?
A. Yes.
Q. How many times -- how long did you live on , do you remember? Well, let me back up a second. What grade were you in when you first moved to ?
A. Fourth grade.
Q. Fourth grade. And what grade were you in when you first -- when you moved from ?
A. We still live there.
Q. Still live there, still live in the same place?
A. Uh-huh **(indicating affirmative)**.
Q. The time when the Defendant was living there, how old were you?
A. Probably like nine or ten.
Q. Okay. Now, you were -- the best you can remember, how many -- how often would you see the Defendant?

A. Whenever like -- I mean, sometimes I would go over there like three times a week maybe.
Q. Three times a week?
A. Yes.
Q. All right. Where would your stepdad, Thomas, be when you were going over to the Defendant's house?
A. At work.
Q. And where would your mom be sometimes?
A. Sometimes she would be at the house, and then sometimes she would go to school.
Q. Okay. Now, why did you used to go over to the Defendant's house?
A. I don't really know.
Q. Okay. Who used to tell you to go over there?
A. No one -- I mean, no one used to tell me, but like there was nobody else to watch us.
Q. When you would go over to the Defendant's house, what kind of things would you do?
A. Sometime we would write papers. He would make me write papers.
Q. When you say he would make you write papers, what would he make you write?
A. He would make me write stuff like -- if he didn't like what I had done, he would make me write about what I had done.

Q. Would he tell you what to write?
A. He would tell me what to write about.
Q. All right. Now, your mom testified earlier that you initially weren't allowed to go in his house. Did you always follow that rule?
A. Not always.
Q. All right. When you went into his house, what, if anything, did you do inside his house?
A. Like I would sit at a little desk or I would sit at the table.
Q. And who all would be over at his house when you were over there?
A. Sometimes it would be my friend, J.M. and then sometimes D. and maybe a couple of times Shannon.
Q. Did D. come over with you a lot?
A. He used to come with me a lot at first.
Q. When did D. stop going over?
A. Whenever he told him he couldn't come over any more.
Q. He told D. that?
A. (Nods in the **affirmative**.)
Q. Was that in front of you?
A. (Nods in the **affirmative**.)
THE REPORTER: You need to answer yes or ---
MR. SPRATLIN: You need to answer yes or no, ma'am.
A. Oh, yes.

Q. That Court Reporter right there has to take down everything you say, so if you can just answer any questions.
A. All right.
Q. So he told D. he couldn't come over any more?
A. Yes.
Q. And were you still able to come over?
A. Yes.
Q. All right. What sort of things would you and Don, or the Defendant, do together?
A. Sometimes we would go swimming, sometimes be in his house. Like I said, we would write papers, and sometimes we would color, and stuff like that.
Q. Okay. Where would you go swimming at?
A. The river.
Q. The river. Minor do you recall the Defendant ever doing anything that made you feel uncomfortable?
A. Yes.
Q. When was the first time that you remember the Defendant doing something to make you feel uncomfortable?
A. Maybe like a month or two after.
Q. After you -- after what?
A. After we moved in.
Q. What did the Defendant do?
A. He would touch me in the wrong places and it would make me feel uncomfortable.

Q. Where would he touch you at?
A. In my front part.
Q. Front part. Could you be a little more specific?
A. Vagina.
Q. Now, would he do that over -- under your -- over your clothes, under your clothes, or ---
A. Over.
Q. Do you remember the first time he did that?
A. Maybe like a month or two after ---
Q. Okay.
A. --- we moved in our house.
Q. Do you remember where you were the first time he did that?
A. Might have been in his truck.
Q. Do you remember where you were seated in the truck?
A. In the middle.
Q. Who was driving the truck?
A. Don.
Q. By Don, do you mean the Defendant?
A. Yes.
Q. Who else was in the truck?
A. I think it was Bob, but usually he wouldn't Bob -- want Bob to go anywhere with us.
Q. Now, so at this time, it was you, the Defendant, and Bob in the truck?

A. (Nods in the **affirmative.**)

THE REPORTER: Answer aloud, please.

MR. SPRATLIN: I'm sorry.

Q. Please answer aloud.

A. Okay.

Q. So it was you, the Defendant, and Bob in the truck?

A. Yes.

Q. And where were you seated in position?

A. In the middle.

Q. The Defendant's truck was -- do you know the difference between an automatic and a manual?

A. Yes.

Q. Was the Defendant's truck an automatic or a manual?

A. Manual.

Q. And where was the gear shift located?

A. In the middle.

Q. And when the Defendant would be changing gears, where would his hand be?

A. Like right here (indicating).

Q. And could you be -- could you describe a little bit more specifically what you mean by that?

A. Like in the middle. Like whenever he would shift it, it would be in the middle so it kind of like hit me, you know what I mean?

Q. It would hit you?

A. Yes.
Q. And when he was shifting gears, did he ever touch you?
A. I don't think so.
Q. Okay. Now, you said in the truck he did something to make you go icky and you said he actually touched your vagina. How did he come to touch your vagina? I need you to be as specific as you can.
A. He would just put his hand over there and like, I guess, touch it.
Q. He would touch it. When his hand was -- when his hand was on your vagina, did he do anything else with his hand?
A. No. He just sat it there.
Q. How long do you think he was sitting it there for?
A. Well, like I felt uncomfortable, so I like moved it.
Q. So you had to move his hand?
A. Yes.
Q. He didn't move his hand? You moved it?
A. No.
Q. When you would move his hand, what did he do?
A. Just didn't say anything.
Q. Now, you said this time he touched you over your clothes?
A. Yes.

Q. Did there ever come a time when he touched you under your clothes?
A. Whenever -- the last day that I told my mom.
MR. DIGGS: Object to the leading.
MR. SPRATLIN: Your Honor, ---
THE COURT: Hold ---
MR. SPRATLIN: Yes sir, Your Honor. With -- Your Honor, if I may ---
THE COURT: I understand the rule. I'll let a limited leading based on the youthfulness of the witness. You may proceed.
MR. SPRATLIN: Yes sir. That's all I ask.
Q. Was there ever a time that the Defendant touched you under your clothes?
A. Yes.
Q. When was that?
A. The last day that I told my mom. I was painting the base of the house and he came behind me and stuck his hand down in my pants, like in my butt crack, and he -- I said -- he was spreading my legs, and I said can you stop. He said I'm just stretching you.
Q. And was his hand -- you said his hand was under your clothes?
A. Yes.
Q. Was it touching your bare skin?

A. Yes.
Q. And what part of your body was he touching?
A. My butt.
Q. Now, you said this was the time that you told your mom?
A. Yes.
Q. And you said the first time he did something to make you feel icky was two months after you moved in?
A. Yes.
Q. So in the ten months or so between that, was there ever any other time that the Defendant did something to make you feel uncomfortable?
A. Yes.
Q. If you would, after the time you told us that happened after two months in the truck, when was the next time you recall the Defendant doing something to make you feel uncomfortable?
A. Well, he would do it like several times, like whenever we went to the river, that there's a long way that you had to take, and we was at the river and he swam underwater, and he pulled my bathing suit bottoms off, and he swam the opposite way and held them up and said ha, ha, ha.

And so Shannon was there with me, and then I told her, I said Shannon can you tell him to give my bottoms back, and

so whenever he gave my bottoms back, we left. Like I wanted to go home.
Q. Okay. Let me back up for a second with you. You said y'all were going to the river?
A. Yes.
Q. Who all was going to the river?
A. I think it was me, Shannon, and Don.
Q. And by Don, again, you mean the Defendant?
A. Yes.
Q. All right. When y'all got there, what were you wearing?
A. A bathing suit.
Q. Was it a one piece bathing suit or a two piece bathing suit?
A. Two piece.
Q. And what, if anything, did Don do with that bathing suit?
A. He -- like I was in the middle and he swam underwater, pulled my bottoms off, and swam the opposite way, and held them up and said ha, ha, ha.
Q. What did you do when Don took your bottoms off?
A. I went and told Shannon.
Q. And what did Shannon do?
A. She told him to give my bottoms back.
Q. And were you able to get your bottoms back?

A. Yes.
Q. And what did you do after you got your bottoms back?
A. I put them on and I wanted to go home.
Q. And were you able to go home?
A. Yes.
Q. Has Don -- did Don at the river that time ever say anything to you that made you feel uncomfortable besides ---
A. Like he would call me sexy and stuff.
Q. Did he ever say anything to you and Shannon together that made you feel uncomfortable?
A. I can't remember.
Q. Okay.
A. Well, the one time where he told us to take our bottoms off.
Q. And where did this occur at?
A. I think it was when we were standing on the shore.
Q. Was this while y'all were swimming?
A. No. It was while we was standing.
Q. Okay. But had y'all been going swimming? Were y'all at the river?
A. Yes.
Q. And what was the response when he asked y'all to take your bottoms off?
A. We told him no.
Q. And did he say anything or do anything after you told

him that?
A. No.
Q. Now, Minor besides the river time, and the time in the truck that we talked about, and the last time where he touched you, touched your butt that we've already talked about, have there been any other times that you can recall him doing something that made you feel either uncomfortable or icky?
A. Yes.
Q. What was that?
A. Well, we stayed the night in a tent in his backyard, and it was me, my brother, and Don, and I wanted to sleep next to my brother, but he said I couldn't, so he was in the middle, and my brother was on the left, and I was on the right, and so I asked to sleep next to my brother, and he said no.

So he turned -- I was turned this way, and he turned -- he was like right behind me, and he put his arm around me and he like grabbed me like on my vagina. He grabbed me and pulled me towards him.
Q. Okay. So he grabbed you by your vagina?
A. Yes.
Q. Let me ask you something. Was D. still in the tent when this happened?
A. Yes.

Q. Was D. in the tent the whole night?
A. No.
Q. Do you remember why you were staying in the tent that night?
A. Well, because he said he wanted to go camping.
Q. And you said at first you wanted to sleep next to D.
A. Yes.
Q. And what was the Defendant's response when you wanted to sleep next to D.
A. No.
Q. Where did the Defendant make you sleep?
A. Next to him.
Q. And was that when that touching occurred that you told us about?
A. Excuse me?
Q. I'm sorry. Is that when he grabbed your vagina that you just told us about?
A. Yes.
Q. Was this over or under your clothes?
A. Over.
Q. Did the Defendant say anything to you at that time?
A. No. He just pulled me and grabbed -- or pulled me and then pulled me next to him.
Q. Did the Defendant try to do anything to himself while

doing that?
A. No.
Q. All right. Now, you said D. went home. When did D. go home?
A. Well, whenever we fell asleep, I woke up in the middle of the night and D. had already left, and somehow Don woke up, and so we went and looked around and then the door was open at my house, like cracked a little bit at my house, so I went inside and I -- I just went home that night.
Q. Okay. Now, has there ever been a time that you've gone inside Don's house and Don has done something that made you feel uncomfortable?
A. Yes.
Q. Could you tell us about that?
A. Yes. One night we were playing a game and he was sitting on the other side and I was sitting on this side, and I said I needed a little bit of help, so whenever we -- he came over there, he got really close to me, and then I said can you please back up a little bit, and then he got mad, and then I went home. He said you've got to go home.
Q. Has there ever been a time that Don has touched you on a part of your body that you didn't want him to while you were in his house?
A. Yes.

Q. When was that? Do you remember when that occurred, roughly?
A. After we moved in?
Q. Yes, after you were -- while you were over at Don's house. While you were inside Don's or the Defendant's house, did he ever touch you on a part of your body that made you feel uncomfortable or that you didn't want him to touch you on?
A. Yes.
Q. Where did he touch you?
A. On my front part, vagina.
Q. And do you -- what were the circumstances surrounding him doing that?
A. What do you mean?
Q. What was he -- what were you doing before that, before he touched you?
A. Just sitting there.
Q. Just sitting there. Do you remember if you were playing a game, cooking, doing anything like that?
A. I think he was cooking.
Q. Okay. And what part -- did he say anything to you or do anything to you?
A. He just -- he just touched me.
Q. Did he say anything when he was touching you?
A. No.

Q. Has the Defendant ever said anything to you when he was touching you that made you feel uncomfortable?
A. No.
Q. Has the Defendant ever said anything to you -- you said earlier he called you sexy. Has the Defendant ever said anything else to you that you thought was wrong, threatening, or made you feel uncomfortable?
A. Well, one time he said that he was going to take me to West Virginia.
Q. Did he tell you why he was going to take you to West Virginia?
A. He said 'cause there's not a lot of people up there, or something like that.
Q. Okay. Have you ever been to West Virginia?
A. Yes.
Q. Who is from West Virginia?
A. My mom.
Q. When you came back from West Virginia, did you see Don?
A. Yes.
Q. What did Don do when you came back from West Virginia?
A. He didn't really say anything.
Q. All right. Minor just let me ask you, besides the one time you told us that he touched you under your clothes

when he touched your butt, has he ever touched you under your clothes any other time?

A. Well, we'd be driving in his truck or we would be driving in his truck, and we would go down the road, and then he would just put his hand down my -- down my butt like under my clothes.

Q. Let me ask you about your chest. What do you call your chest?

A. Boobs.

Q. Boobs. Has the Defendant ever touched your boobs?

A. Yes.

MR. DIGGS: Your Honor, I object to the leading.

THE COURT: Again, as this is a witness of tender age and our rules permit a limited inquiry, and he's complying with the rules so far. Thank you.

Q. Minor you said yes to that question?

A. Yes.

Q. When did the Defendant touch your ---

A. Whenever we were driving in his truck.

Q. How did he touch them?

A. Just put his hand like this (indicating).

Q. Did he grab, squeeze, rub, or anything like that?

A. He would just like touch.

Q. Let me ask you, you said touch a lot. Has the Defendant ever, say, grabbed one?

A. Yes.
Q. Has the Defendant ever pinched, squeezed, or grabbed a part of your body?
A. No.
Q. Well, besides what you are telling us. Okay. Have you ever seen the Defendant's body?
A. Well, whenever we would go over to his house, he would be taking a shower, and before like he would take a shower, he would come out in the doorway and expose hisself.
Q. Who all would be over there?
A. It would be Bob, sometimes J.M. and it would be me.
Q. Okay. Did the Defendant when he was not wearing any clothes ever touch you?
A. Well, I wasn't -- okay, one time he was getting ready to take a shower and he told me to come through there, but like -- he was like in his room and he told me to come through there and I went in there, and he like tried to expose hisself.
Q. Did he grab you at all that day?
A. No.
Q. Now, let me ask you, Minor all this happened three years ago, correct?
A. Yes.
Q. Do you remember talking to someone about this more

recent -- recently after it happened?
A. No.
Q. Do you remember going to a pink house?
A. Yes.
Q. Do you remember talking to a lady named Natalia?
A. Yes.
Q. Let me ask you, at the time that you talked to Natalia, is it fair to say that your memory would have been fresher than it is now, you would remember more ---
A. Yes.
Q. --- stuff then than you do now?
A. Yes.
Q. And how old are you, again?
A. Thirteen.
Q. And this happened how many years ago?
A. Three.
Q. Let me ask you, Minor did the Defendant ever talk to you about his private parts?
A. Yes.
Q. What did he talk to you about it?
A. Well, he would call -- he would name it. He would call it congressman.
Q. He called it congressman?
A. Yes.
Q. Did he ever tell you why he called it congressman?

A. No.
Q. Did you ever touch his private parts at all?
A. No.
Q. Now, Minor did the Defendant ever show you any kind of movies or anything like that that made you uncomfortable?
A. Yes.
Q. What happened in those movies?
A. There would be men and women and they would just be having sex.
Q. Let me ask you, when you were over at the Defendant's house, did you ever have to go use the restroom or anything?
A. Yes.
Q. Would anything happen when you used the restroom?
A. Like he would try to come in there, but J.M. I would have her stand in front of the door because I didn't really feel comfortable using the bathroom there, but she would have to be there with me to use the bathroom, or else I wouldn't use it whenever I was there.
Q. Minor let me ask you, all these things you are telling us, why didn't you ever tell your mom?
A. Because I was scared that she wouldn't believe me.
Q. Did the Defendant ever say or do anything to you to tell you not to tell someone?
A. Well, the last day that I was at the house that he was working on, whenever he spreaded my legs and all that, I

said I was going to tell my mom. He said you better not. You better shut your mouth.

Q. Again, why didn't you ever tell your mom before it got to that point?

A. I don't know.

Q. Minor all the events you described for me today, did they occur in Horry County?

A. Yes.

Q. Did they occur, to the best of your knowledge, between June of 2010 and June of 2011?

A. Yes.

MR. SPRATLIN: Thank you, Minor That's all the questions I have. Please answer any questions Mr. Diggs might have.

THE COURT: Mr. Diggs, let's take the morning break and your cross-examination when we return. Is that satisfactory?

MR. DIGGS: Yes sir, it is.

THE COURT: The jury has been here very patiently.

Ladies and gentlemen, let's take the morning break at this time. We'll be out for about fifteen minutes and come right back.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. We'll be in recess about

fifteen minutes and when we return, you'll have your cross-examination.

MR. DIGGS: Thank you, Your Honor.

THE COURT: Thank you. I thought we'd probably need to take ---

MR. DIGGS: Your Honor, just for the record, ---

THE COURT: Yes sir.

MR. DIGGS: --- I want to note that we're not waiv- ---

THE COURT: I concluded based on the elements of the statute that it was appropriate that the video be played, and, of course, it will have to be played now because she's testified.

MR. DIGGS: Right, and ---

THE COURT: It won't have to be, but it can be played.

MR. DIGGS: I just didn't want to waive anything by going and cross-examine- -- go on ---

THE COURT: You're not waiving anything. The record will reflect my findings on the video.

MR. DIGGS: Yes sir.

THE COURT: Do you have any thoughts about that, Martin?

MR. SPRATLIN: No sir, Your Honor. I was going to offer to the Court that an alternative to Mr. Diggs going into the video on this cross-examination is that the child will be available to be cross-examined after the playing of

the video about the contents of the video. That's another solu- -- possible solution.

THE COURT: Well, I'll leave it to Mr. Diggs.

MR. DIGGS: Well, yeah. Maybe he wants to go ahead and play the video.

MR. SPRATLIN: I was going to call the forensic interviewer and have her testify to authenticate the video ---

THE COURT: No, any cross-exam- -- no, don't tell Mr. Diggs how to handle his case. Let him handle it. He's a professional.

MR. SPRATLIN: Yes sir. That was his ---

MR. DIGGS: Thank you, Your Honor.

THE COURT: All right, sir.

Thinking about your cross-examination, it may be that the better practice will be to go ahead and play the video, then have your cross examination.

MR. DIGGS: Yes. Your Honor, if ---

THE COURT: If you cross-examine this witness about a video that the jury hadn't seen, they're going to wonder what's going on.

MR. DIGGS: Yes sir, I agree, so -- and, of, I don't want to tell the Solicitor how to present his case either, but ---

THE COURT: I'll tell him.

MR. DIGGS: --- I don't -- I don't see anything wrong with him playing the video now and then calling the interviewer later. I mean, I'd ---

MR. SPRATLIN: Your Honor, alternatively what I could do is just go ahead and call the interviewer ---

THE COURT: Well, let's' do it this way. Let's defer your cross-examination, let him call his witness and put her back on the stand.

MR. DIGGS: That will be fine.

THE COURT: The only problem is why can't we play -- I'd like to play that video prior to lunch.

MR. SPRATLIN: I can go ahead and play it, Your Honor. I mean, if Mr. Diggs doesn't have any objection to me not laying the proper foundation and me laying the proper foundation after ---

THE COURT: He's agreeable to that.

MR. DIGGS: Your Honor, I think we'd be tempted to go to sleep watching a video after lunch.

THE COURT: I want to play it now. Are you in -- agreeable that we can play it subject to that witness being called?

MR. DIGGS: Your Honor, that will be fine.

THE COURT: Okay.

Now, Martin, ---

MR. SPRATLIN: Yes, Your Honor.

THE COURT: --- are you prepared to redact that last statement ---

MR. SPRATLIN: What I'm going to do -- again, Mr. Diggs discussed this earlier, I'm just going to cut it off at -- the statement in question comes up at one minute, thirty-two seconds -- one hour, thirty-two seconds and twenty-five minutes into the video.

Any useful information ends about one hour and thirty minutes into the video. I'm simply going to stop the video at an hour and thirty minutes.

THE COURT: Does that suit you?

MR. DIGGS: Yes sir.

THE COURT: Done.

Bring my jury in.

Let's go ahead and do that. Are you finished with your cross-examination with this witness at this time -- or your direct?

MR. SPRATLIN: Yes, Your Honor, I am. Can this witness come down?

THE COURT: No. Wait a minute. I want it done in the presence of the jury.

You may say to the jury -- you may inquire about the video and ask to play it at this time.

MR. SPRATLIN: Yes sir, Your Honor.

THE COURT: I want it done in the presence of the jury.

(THE FOLLOWING TAKES PLACE AFTER A BREAK AND WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right. You may resume your examination, Solicitor.

MR. SPRATLIN: Thank you, Your Honor.

Your Honor, at this time, the State has no further questions. Pursuant to stipulation of the parties, the State is at this time going to play the forensic interview of Minor subject to later authentication.

THE COURT: All right.

Have Minor come down with the understanding that after the video is played, she will be recalled for cross-examination by the Defendant.

MR. SPRATLIN: Yes sir, Your Honor.

May I retrieve the previously marked item from the Court Reporter?

THE COURT: You may do so.

And by stipulation, you would agree that the particular expert testimony will be after the video is played?

MR. DIGGS: Yes sir. And with regard to the video, our position is on the record, Your Honor.

THE COURT: I understand.

MR. SPRATLIN: Your Honor, if I may ask Madam Clerk's assistance in lowering the display screen.

THE COURT: And the lights.

I want the record to reflect that this video was played in open court with the presence of the Defendant, both attorneys, and myself on yesterday outside the presence of the jury.

Can we agree with that, Mr. Diggs?

MR. DIGGS: Yes sir.

THE COURT: All right.

You may proceed.

(STATE'S EXHIBIT NUMBER 6, C.D. INTERVIEW OF Minor Minor **, PLAYED IN OPEN COURT IN THE PRESENCE OF THE JURY.)**

THE COURT: Ladies and gentlemen, let's have the cross-examination when we return after lunch. Ladies and gentlemen, it's nearly 1:30. Try and be back at a quarter 'til three and let's begin again. You are discharged to return at quarter 'til three. Thank you.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: When we return at quarter 'til three, the last witness will resume the witness stand for cross-examination. I caution the attorneys and that witness, do not discuss your testimony with anybody during the lunch break.

Solicitor, you understand that?

MR. SPRATLIN: Yes sir, Your Honor. I will be sure that she doesn't talk to anyone.

THE COURT: And you do, too?

MR. DIGGS: Yes sir.

THE COURT: All right. You had concluded your cross-- your examination, so when we return, Mr. Diggs will begin his cross, is that correct?

MR. DIGGS: Yes sir.

MR. SPRATLIN: Yes sir, Your Honor. And then the State intends to call the forensic interviewer to authenticate the tape -- the statement of this witness.

THE COURT: I understand. That's on the record.

All right. See you at quarter 'til three. Thank you.

MR. SPRATLIN: Thank you, Your Honor.

(THE FOLLOWING TAKES PLACE AFTER A LUNCH RECESS AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. Solicitor, I understand from my law clerk that you may have some type of motion?

MR. SPRATLIN: Yes sir, Your Honor. Subject to Mr. Diggs' earlier cross-examination of the mother, he made reference to a Facebook page ---

THE COURT: Yes.

MR. SPRATLIN: --- that my victim had. Your Honor, I understand that there -- Mr. Diggs can go into any kind of untruth the victim may have put on that Facebook page, such as stating she was older than she was or representing herself to be different.

THE COURT: What's your point?

MR. SPRATLIN: I would like the motion in limine to stop Mr. Diggs from introducing any photographs of the victim from her Facebook page. I don't see any relevance to the introduction of any photographs.

THE COURT: Well, I -- I don't know how I can rule on it until somebody tells me what pictures you are talking about and what the relevancy is.

What have you got there, Mr. Diggs?

MR. DIGGS: I don't plan to introduce it. I was going to make reference to the fact as far as I understand that Facebook requires you to be eighteen years of age to open an account there, and she has one. I mean, she just ---

THE COURT: Oh, I'll let that go in.

MR. SPRATLIN: Your Honor, there's no objection to that. I just don't want any photograph of -- recent photograph of her coming in because I feel they are irrelevant.

THE COURT: Mr. Diggs knows better than that. You've got to realize both of you are professional attorneys.

MR. SPRATLIN: Yes sir, I know. I just -- I just want to be sure so that we can possibly save the jury from coming out twice.

THE COURT: Bring my jury.

Thank you. Is the witness ready to resume the witness

stand?

MR. SPRATLIN: Yes, Your Honor.

THE COURT: Let her do it in the presence of -- wait a minute. No. I want to do it in the presence of the jury.

MR. SPRATLIN: Yes sir.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right. Please have that last victim -- not victim, but witness resume ---

MR. SPRATLIN: Yes sir, Your Honor.

Minor , if you would, please go ahead and take the witness stand.

Your Honor, the State has no further questions for Min Minor She will be the Defense's witness for cross-examination.

THE COURT: All right.

Mr. Diggs.

MR. DIGGS: May it please the Court, and thank you, Your Honor.

CROSS-EXAMINATION BY MR. DIGGS OF Minor

Q. Minor how are you?

A. Good.

Q. You were in court when we played the video?

A. Yes.

Q. When was the last time you saw that video, if ever,

before today?
A. The last time I came in here, and that was March.
Q. Okay. And about how long ago was that?
A. About two weeks ago.
Q. All right. Now, did he also show you a transcript that they had made of the conversation that you had with the lady?
A. Can you make it -- can you make me understand it better?
Q. Yeah. Let me show you this. This is a copy of the transcript of that video, of everything that was said, and he gave this to me in the discovery materials. Have you ever had a chance to look at that or did you know that a transcript like that had been made?
A. Like one on paper ---
Q. Yeah.
A. --- of the conversation I had with her?
Q. Yes.
A. Yes.
Q. Okay. Have you ever had a chance to read it?
A. Yes.
Q. Okay. And when was the last time you read it before you came to court?
A. I didn't really -- I mean, it was yesterday morning. I just looked over it, but I didn't really read it.

Q. And prior to that, when was the time before that that you had a chance to read it?
A. I didn't really read it.
Q. Okay. Have you ever had an opportunity, not that you did it, but did you have an opportunity from time to time over the last couple of years to read this transcript?
A. Yes.
Q. And can you give me an estimate of about how many times you've had a chance to look at it?
A. Just like one time, one or two times.
Q. But -- okay. Do you understand what I'm saying? Are you telling us that you only had access to the transcript a couple of times over the last two years?
A. Yes.
Q. Okay. And during those times, did you read it?
A. Looked over it.
Q. But not -- you didn't read the whole thing?
A. No.
Q. All right. I want to ask you some questions about it, about your interview, and to help, I'm going to ask you to use that transcript there, and maybe -- does your transcript have page numbers up in the top left-hand corner?
A. Yes.
Q. Okay. Let me get you to look at some stuff. If you'll bear with me for just a minute. Do you see -- can

you turn to Page 10. Okay, and do you see in the middle of the page where the interviewer, Ms. Achury, says, all right, said tell me about the first time that something happened with Don?

A. Yes.

Q. You see that. Okay. I'm going to read those questions, and I want you to read what your answer was, okay? Okay. All right. So tell me about the first time that something happened with Don.

A. That was -- I can't remember. We -- when we first moved in.

Q. No. The first time that something happened that he touched you in order that you feel yucky around him.

A. That was every day when I -- that I went with him.

Q. That was every day that you went to his house?

A. Yeah, and drove around in his truck with him, and I used to have like a dress on and he used to feel in my dress and my shorts like where I have -- where I have -- where I used to have my shorts, or he used to feel up inside my shirt.

Q. Okay. Now, you're telling her there in this part of the interview that he was touching you and making you feel bad all the time, every day you were around him?

A. That was true.

Q. Okay. And that's what you told the interviewer then?

A. Yes.
Q. And that's the way you recall now, correct?
A. Yes.
Q. And do you remember all of these things as well now as you did at the time you did the interview?
A. No.
Q. Okay. So on the interview, you were younger, a couple, two or three years younger? You remembered better then than you do today, correct?
A. Yes.
Q. And would it be fair to say that your viewing of the video today has helped refresh your memory?
A. Yes.
Q. So at that time, you said, oh, he did it every day, and anytime I was around him, that's what you told her then, and that's what your testimony is now?
A. Yes.
Q. Let's go on to another section. Just turn the next page to Page 11, and let's go down to the one, two, three, four, five, sixth line. On the fifth line, she says how did everything start, and what did you say?
A. My mom trusted him like ---
Q. Go back and read it exactly like it is written.
A. Well, he -- he thought my mom trusted him a lot and he made my mom think that he would never do anything like

that.
Q. All right. Let me ask you this. Are those your words?
A. Now?
Q. Did you think up that concept at that time?
A. Whenever I first met him?
Q. No. When you were in the interview with the lady -- with the lady?
A. Yes.
Q. How do you know -- what made you think that you could judge what Ron, or Don, was thinking?
A. I don't understand.
Q. Okay. You said, well, he thought my mama trusted him. What makes you think that's true?
A. Because she did.
Q. And what makes you think that Don believed that?
A. I mean, I don't know.
Q. Okay. It's just something you thought?
A. Yeah.
Q. Okay. Go ahead and read those -- those two sentences there, the first two.
A. And I never told my mom because I was scared, and then ---
Q. All right. Let me ask you this. Why did you tell her that, that you never spoke about it because you were

scared, because she hadn't even asked you about that, right?
A. Yes.
Q. Why did you feel it necessary to just throw that -- throw that out?
A. I don't know.
Q. You just said it?
A. Yes.
Q. But it's your testimony today that was your idea? You thought of that and felt like you needed to tell the interviewer?
A. Yes.
Q. Even though she hadn't asked you about that?
A. Yes.
Q. Had your mom or anyone spoken to you about that and discussed the fact that you were scared ---
A. No.
Q. --- with you?
And let me finish the question. Had anyone discussed that with you specifically prior to this interview?
A. No.
Q. Okay. So your testimony is that was your thought? You thought of that at that time?
A. Yes.
Q. I want to go back and ask you, when do you recall the first incident occurring, when you felt like there was an

inappropriate touching that occurred?
A. It was about a month after that, after we moved into -- from our ---
Q. And just give us an overview of what it was and when it happened.
A. Whenever we were driving in his truck, like he would touch me like all the time when I would drive in his truck.
Q. Okay. But I don't know want to know about the -- all the time. I want to know the first time -- the first couple of months, I assume everything went fine?
A. Yes.
Q. And then all of a sudden out of the clear blue, something happened that's not fine?
A. Yes.
Q. What was that and where did it occur?
A. It occurred in his truck and he wretched (reached) his hand over there and touched me somewhere where I didn't want to be touched.
Q. Okay. Was anyone else in the truck at that time?
A. I don't think so.
Q. Okay. Now, let me to ask you to go down that page a little bit. Let's go -- I'm going to read you this question, and then I want you to read your response, okay? Do you see where I'm reading, all right, well, we're going to go a step by step, okay, so I don't get confused. Um, do

you remember when was the very, very, very first time he touched you? All right. Tell me about the times that you remember how did everything happen, if he said something to you, where did he touch you, all right, so we're going to talk about the time that you remember. And then you said?

A. The time I remember is when we were in his house and he was cooking, and then he touched my -- my private part.

Q. Okay. All right. Now, that's not in the truck, right? That's a different occasion. Were you confused at that time, or do you think you're confused today, or am I confused? What's going on about the first time?

A. I think I'm a little bit confused today.

Q. Okay. But your recollection, because I think there's another spot in here where you said the truck was the first time, but there's also a couple of times when you say the cooking incident was the first time?

A. Uh-huh **(indicating affirmative).**

Q. But the reality is your testimony now is you just don't recall, would that be fair?

A. I think so.

Q. All right. Let's go over to -- can you go to Page 14. I'm kind of in the middle here, and we're talking about Shannon, is that correct?

A. Yes.

Q. I say -- or Ms. Achury says she's just a friend, and

is she your friend or it's a family friend, and what do you say?
A. Well, she's my mom's friend kind of.
Q. Is she an adult or is she ---
A. She's an adult.
Q. Okay. What did you say?
A. Is she an -- yeah.
Q. And then the interviewer asks you, and what -- what was her reaction when she saw Don doing this, and you said what?
A. She got really mad, really upset, but she never told my mom because she was scared that she would never believe her.
Q. Okay. Now, again, you interjected that being scared into the conversation, because the interviewer didn't ask you about that, correct?
A. Yes.
Q. Why did you feel the need, if you recall, to interject that idea into the conversation?
A. Because it just came to my mind.
Q. All right. How did you know Shannon was scared?
A. I mean, you could see it in her face.
Q. All right. Was she scared of your mom?
A. She was scared that she wouldn't believe her.
Q. Well, your testimony -- have you discussed that --

let's -- let me ask it this way. Have you discussed that idea with Shannon?
A. Which idea?
Q. That she was scared to tell your mom?
A. No.
Q. Okay. You just kind of assumed that?
A. Yes.
Q. Okay. Because the fact is she never did tell your mom, isn't that true?
A. Yes.
Q. As far as you know?
A. Well, she -- she never told my mom until after.
Q. After you said something?
A. Yes.
Q. And did Shannon ever tell you, well, I would have said something, but I was scared to?
A. Yes.
Q. When did that conversation take place, do you recall?
A. It was probably after everything happened.
Q. But you're sure that took -- that conversation occurred?
A. Yes.
Q. Do you remember if it was before this interview or after?
A. It was after.

Q. Okay. Let's go to -- I want to ask you about this incident that you said in the river with the bathing suit bottom.
A. Yes.
Q. Okay. Do you recall that incident?
A. Yes.
Q. Would it be fair -- would it be possible that the -- that you lost those trunks in some other way?
A. No.
Q. Your testimony is that Don pulled them off?
A. Yes.
Q. And about how long was that before you told your mom what had been going on?
A. It was a couple of weeks before.
Q. Okay. Pretty much near the end of your relationship with Don?
A. Uh-huh **(indicating affirmative)**, yes.
Q. But still nevertheless neither you nor Shannon mentioned that incident to your mother or any other person?
A. Whenever I told, I started telling everything.
Q. Okay. That was the first time you mentioned it?
A. Yes.
Q. And why was that?
A. Because I was scared.
Q. Okay. Wasn't D. with you at that time, too?

A. I believe so. I'm not really sure.
Q. All right. Could have been?
A. Yes, but I don't think he was.
Q. All right. I want you to go to Page 17,and if I'm not mistaken, this is after y'all -- the group had left the river and you were going home?
A. Yes.
Q. Is that when the bandanna -- you pulled the bandanna off?
A. Yes.
Q. Okay. So a pretty close time frame?
A. Yes.
Q. And let's go to Page 17, and I'm going to say as the interviewer, okay, and what happened next, and then you said what?
A. So him and Bob got out of the river because me and Shannon had already got out, and when we were driving back down the road, I pulled off his bandanna ---
Q. All right. Let me ask you this. Why did you do that?
A. I'm not really sure.
Q. You were playing?
A. Yeah.
Q. You were playful, having fun at the river, and swimming, correct?

A. Yes.
Q. So you pulled off the bandanna?
A. Yes.
Q. And then go ahead and complete that sentence.
A. And he started touching me down there and we came back to ---
Q. Explain to us ---
THE COURT: Wait a minute.
MR. DIGGS: Yeah, I know ---
THE COURT: You interrupted that child.
MR. DIGGS: Yeah, I know, and I apologize.
Q. I wanted you to stop at that sentence because I want to ask you what vehicle you were in and who was seated where if you recall, okay?
A. We were driving his little Ford truck and Bob was in the back, and I was in the middle, and Shannon was on the front -- in the front seat.
Q. All right. Now, help me. This -- this truck had a seat that went all the way across?
A. Yes.
Q. It wasn't a -- what I call bucket seats, ---
A. No.
Q. --- you know, a seat here and a seat here?
A. No.
Q. But this one was a seat that went all the way across

the width of the truck?
A. Yes.
Q. And you were seated in the center, and Shannon on your right side?
A. Yes.
Q. Okay. But nevertheless with Bob and Shannon there, he started doing this touching?
A. Shannon was in the front seat.
Q. Right. And Bob -- not Bob, but Don started doing this touching?
A. Yes.
Q. Did Shannon see it?
A. I'm not really sure.
Q. Okay. Do you remember if you said anything?
A. I didn't tell my mom.
Q. I know, but did you say stop it?
A. Yes.
Q. Okay. And did Shannon, to your knowledge, ---
A. She probably did hear me.
Q. Okay. But you don't recall her reacting in any way?
A. No. Just whenever we got home, she said that he shouldn't be taking my bottoms off like that.
Q. Okay. But she never mentioned anything about him touching you improperly on the way home?
A. No.

Q. Okay. But wouldn't it be fair to say she certainly could have seen it?
A. Yes.
Q. Okay. Now, to me this is a delicate -- but I've got to go -- I want to go to that concept of congressman, okay? Did you -- where -- I want you to think back and do the best you can to remember where you first heard that reference.
A. We were in his driveway, and I think we were getting ready to leave, and he started talking about his name of his private parts, and he said it's my congressman.
Q. Now, let me ask you something. Do you know who Bruce Willis is?
A. No.
Q. All right. Have you ever heard of movies or seen a movie, or part of a movie, with an actor in it who made that statement about the congressman?
A. No.
Q. Is it possible that you could have heard that on a T.V. movie or on a video movie ---
A. No.
Q. --- in the home?
A. No.
Q. You're sure of that?
A. I'm positive.
Q. Okay. And so tell me again where it was, where you

were, and where Don was ---

A. Don was just like ---

Q. --- when you -- when you had that conversation ---

THE COURT: You interrupted her when she was trying to answer.

MR. DIGGS: I don't mean to do that.

THE COURT: Sir?

MR. DIGGS: I don't mean to do that.

THE COURT: I know you don't, but please let her answer the question.

You may answer the question.

A. He was like -- like here the truck was backed in, he was standing at the back and I was standing right here and he said -- he started about how he named his private part and all that stuff.

Q. Was anyone else around within hearing distance of that?

A. I think it was D.

Q. Okay. Now, let's go over to Page 18, and this is when you had just arrived back from your trip to West Virginia?

A. Uh-huh **(indicating affirmative).**

Q. And let's go down to the middle of the page, and the interviewer says when you were in West Virginia, and then you said?

A. No. We got back from West Virginia. He started -- he picked me up and started kissing me, and I don't -- and I don't like that.
Q. Okay. Now, she says -- the interviewer says, well, where did he kiss you?
A. On my face and right here on my neck.
Q. All right. Now, let me ask you something. Was that offensive?
A. Yes.
Q. Okay. And that's fine, but then the interviewer says, well, did he kiss you on the lips, and you said what?
A. Yeah, kind of on my lip.
Q. Yeah, kind of, so you didn't fully commit to that, right?
A. No.
Q. In other words, you wanted to say on your face and neck. I mean, that's what upset you. It wasn't that he kissed you on the lips, correct? I mean, isn't that fair?
A. Yes.
Q. And the interviewer was trying to say, well, how about the lips, and you didn't want to say no. You just kind of like side-stepped it, didn't you?
A. I mean, all over your face is everywhere.
Q. Sure, and that's what he was doing at that point, agreed?

A. Yes.
Q. I mean, he wasn't trying to stick his tongue in your mouth or anything of that nature, correct?
A. Yes.
Q. Okay. Let's go to Page 19. Shortly after that, there was an occasion the interviewer asked you about -- it was about a week later, and the interviewer down at the bottom of Page 18, she says and what happened, and then over at the top of the next page, what do you say?
A. Read that?
Q. Pardon?
A. Read at the top of the page?
Q. Yes, the top of 19.
A. Well, I told you like we were at the house painting. He was there, and I was painting the wall, like the baseboard. He came up behind me and stuck his hand in my pants, and then he turned me around and spreaded my legs and he said I'm just stretching you. And I said stop before I tell my mom. He said you better not tell her. You better keep your mouth shut.
Q. Now, let me ask you something, switch gears here and go to another situation. Do you have an uncle?
A. Yes.
Q. What's his name?
A. Bub.

Q. Bub, okay. And Bub comes over and sometimes you guys will rough-house, is that correct?
A. Yes.
Q. Play around, and sometimes he will grab your feet, will he not?
A. No. He will grab my hands. He will grab my hands.
Q. You don't recall him ever grabbing your feet ---
A. No.
Q. --- and twisting them?
A. No.
Q. And your mom seeing that and getting angry?
A. No. He used to grab my hand.
Q. Okay. But you don't recall him grabbing your feet?
A. No.
Q. Okay. At any time did you ever rub paint brushes up and down Don's back?
A. No, I didn't ever rub -- no.
Q. On the day that this confrontation happened and you ended up calling your mother, did anything like that happen on that day, that morning?
A. No.
Q. Okay. Let's go over to the next page, 20. We're talking -- are we not talking here about the time that you and Don got angry?
A. Yes.

Q. Okay. It was the last morning you ever went on a painting job with him, ---
A. Yes.
Q. --- okay. And he told you to shut up and ---
A. Yes.
Q. --- used a bad word?
A. Yes.
Q. And I assume he was kind of angry, ---
A. Yes.
Q. --- said it in a -- like he was mad?
A. Yes.
Q. Do you have any idea why he was mad?
A. Because we were talking about American Idol and I was talking about the judges, and I said I liked that judge and he got mad and told me to shut the F up.
Q. Okay. And was it because you liked a certain judge ---
A. Yes.
Q. --- or was it because he was trying to work and you were talking to him?
A. No. He had took a break and I told him about -- we were talking about American Idol, and that's when I was talking about a judge. He didn't like that judge, so he told me to shut the F up.
Q. Okay. And then how did that make you feel?

A. I got upset.
Q. Okay. Did you get mad?
A. No, I didn't really get mad.
Q. Okay. Let me ask you this. In preparing for your testimony today, did anyone approach you about this particular -- this moment in time and discourage you from using the word mad ---
A. No.
Q. --- or angry?
A. No.
Q. No one has suggested that?
A. No.
Q. Has anyone suggested, well, maybe you want to phrase that like I just got upset?
A. No one approached me.
Q. No one?
A. No one.
Q. I understand you were upset. Tell us for -- as much as you can, as well as you can, how -- how you were feeling? What do you mean by being upset?
A. Like I was -- I mean, I got upset because, I mean, no one cusses at me like that, and so I went outside -- or I asked him could I use his phone to call my mom. He said it was in the glove box, so I got his phone out of the glove box and I called my mom, and I told her, and I don't know,

something was just -- was telling me to tell her everything.
Q. Okay. Was that the first time it had occurred to you you should tell her everything?
A. Yes.
Q. All right. But there's no doubt we would agree it was a time when you were upset?
A. Yes.
Q. Very emotional?
A. Yes.
Q. Did you like Don, I mean, as a friend?
A. Pretty much.
Q. And how about D. did he?
A. Did he like Don?
Q. Yeah. Did they get along okay?
A. Sometimes.
Q. Tell us about why you were with Don that day. Why was -- he was working on a project, wasn't he?
A. At the house, yes.
Q. And he was a hired painter, correct?
A. Yes.
Q. And you were what, ten years old at that time?
A. Yes.
Q. Okay. Why were you with him that morning?
A. Because my mom had to -- I think it was her last day or next to the last day of school, so she didn't have a

babysitter for me, so she asked Don could I go with him.
Q. Okay. So this was at least one occasion when it wasn't Don's idea for you to go? It was someone else's idea?
A. Yes.
Q. I want to talk to you about the shower incident.
A. Yes.
Q. What kind of shower did he have in his residence?
A. Like a stand-up shower.
Q. Okay. Did it have a curtain or a door, or ---
A. It had like one of those slide-open doors.
Q. Okay. Now, you were here when your mom spoke of D. accusations against his father?
A. Yes.
Q. You remember that?
A. Yes.
Q. Did you ever discuss those accusations with D.
A. No.
Q. Do you know what they were?
A. Not really.
Q. What do you know about them?
A. All he told me -- or he told my -- my mom told my sister, and so I asked my sister what was wrong because she started crying, and she just told me that D. had got touched -- his real dad.

Q. Okay. But it was when he was in the shower, wasn't it?
A. Whenever he was in the shower?
Q. Uh-huh **(indicating affirmative)**.
A. Whenever he told me this stuff?
Q. No, no, no, no. When D. got touched allegedly, he was in the shower too, wasn't he?
A. No -- I don't know.
Q. Okay. Could have been?
A. I don't know.
Q. I want to ask you, you mentioned in that interview that the interviewer is asking you have you ever seen someone hurt by someone else, and you said, well, I saw Don slap Bob?
A. Yes.
Q. Where did that happen? Where were you and where were they when that happened?
A. We was all in the kitchen.
Q. And were they having a conversation of any kind?
A. I don't think so, no.
Q. You indicated in the interview you didn't recall, you didn't know why that slap took place?
A. No.
Q. And in your interview, you said at the top of Page 27 -- the interviewer says why did he slap him, and you said

what?
A. Just for no reason.
Q. Okay. So my client, I mean Don, just walks up to Bob, and Bob is mentally ---
A. Challenged.
Q. --- challenged, and he's a -- does okay, doesn't he, in terms of communicating?
A. Pretty much.
Q. Your testimony is to your knowledge Don just walked up and slapped him?
A. Yes. He used to do that.
Q. You saw it on more than one occasion?
A. No, but he -- I mean, Bob would tell us this stuff.
Q. Was anyone else in the room to your recollection?
A. I don't think so, might have been D.
Q. Okay.
MR. DIGGS: Bear with me for just a second.
Q. In the interview -- I know it's hard to do this, and I'm sorry to ask you, but what -- what event was the -- was the most difficult for you to take?
A. The tent.
Q. Okay. And you described what happened in that interview?
A. Yes.
Q. But I want to know if that's the way you felt about

it at that time?
A. Yes.
Q. It's -- it was the most traumatic then and now, is that correct?
A. Yes.
Q. But it took you an hour and twenty minutes into the interview before you mentioned it, which seems to me, and it was right near the end -- it was within ten minutes of the end of the interview, and I wonder why it took so long to come out ---
A. I don't know.
Q. Was it on your mind during other portions, other parts of the interview?
A. It was, but there was so many times that this happened.
Q. Okay. But the tent thing only happened once?
A. Yes.
Q. All right. Let me ask you -- I want to have you look at some -- you've been in the trial, and we saw what's marked as -- for identification, and I'm going to show you Defense Identification Number 1 and ask you if you wrote that?
A. Yes, I did.
Q. And I'm not going to ask you to read it. I don't want to publish it for everybody to hear, but I want to ask

you why you wrote it?
A. Because whenever I would -- whenever Don would say something to me, I would call my mom and tell her, and whenever -- he didn't like that idea whenever I called my mom, so he would make me sit down and write a paper, tell me what to say in the paper ---
Q. Okay.
A. --- of what to say.
Q. All right. And can you tell us why he did that?
A. I guess just to make hisself feel better.
Q. To make himself feel better?
A. Yes.
Q. Okay. And he had you do that a lot of times, didn't he?
A. Yes.
Q. You wrote a lot of things, correct?
A. Yeah, sort of.
Q. Do you remember a black notebook, ---
A. No.
Q. --- a spiral ---
A. I don't think so, no.
Q. --- red notebook?
A. No.

MR. DIGGS: Can I look at that?

MR. SPRATLIN: Your Honor, the only objection the State

would have is that this should be done outside the presence of the jury if Mr. Diggs wants to look through that.

THE COURT: Do we need to excuse the jury, Mr. Diggs?

MR. DIGGS: Your Honor, ---

THE COURT: I think not. I don't see anything at this point in time.

MR. DIGGS: I'm just going to show her an object and ask her if she has ever seen it.

THE COURT: You can do that.

Q. I want to ask you, Minor if you've ever seen books that look like this?

A. Yes.

Q. Okay. And you don't need to look at them any more, right -- you remember, and where did you see them?

A. They would be like -- he had like a little basket or whatever that he used to keep his notebooks in.

Q. All right. And you've seen this?

A. Yeah, I think so.

Q. Were there any other similar notebooks or ledgers?

A. I don't think so.

Q. Okay. I want you to -- I don't want you to guess. I want you to -- if you don't know, I want you to tell me you don't know.

A. I don't know.

Q. Okay. But did he have you from time to time write in

the notebooks?
A. Like he would tear the paper out.
Q. How many times did you write statements?
A. Quite a bit.
Q. Okay. A lot?
A. Yes.
Q. And would he do this -- how did you perceive it to be the case? Were you being punished? Were you ---
A. I was being punished.
Q. Okay. And what had you done, to your understanding, about why you were being punished?
A. Because whenever I would call my mom, like I said, he would get mad ---
Q. Okay.
A. --- and things like that.
Q. Okay. And from time to time did he ever record video of ---
A. No.
Q. --- his interactions with you?
A. No.
Q. You're not aware of that?
A. No.
Q. Are you aware of any cameras, video recording equipment that was in his home?
A. No.

Q. Have you ever seen any documents or booklets, note pads like that in your home since Don was arrested?
A. No.
Q. And have you discussed that with anyone prior to your testimony here in Court today?
A. No.
Q. Where is your stepdad, Thomas, if you know?
A. He's at work.
Q. What does he do, do you know?
A. He works at Waccamaw Metal Recycle.
Q. Okay. Did you ever discuss D. accusations against his dad with D.
A. No.
Q. Can I ask you why?
A. Because, I mean, it would make D. feel uncomfortable, and he gets upset easy.
Q. Okay. So you didn't discuss it with him for that reason?
A. No.
Q. But you knew he had made those accusations?
A. I knew a little bit.
Q. Okay. Let's go back -- you still have your transcript there. Can you look at Page 5 of the transcript. Let's read this page. I'm going to start at the -- I want you to start at the top, and you say what?

A. And we had two pit bulls.
Q. And then, you have two pit bulls, so you have three dogs?
A. Yes.
Q. Oh, my goodness. What are the names of your other two dogs?
A. Chester and Roscoe.
Q. Chester and Roscoe. Pit bulls, they are big?
A. Uh-huh **(indicating affirmative)**.
Q. They are dangerous, too, aren't they?
A. Yes.
Q. Do you play with them?
A. No.
Q. You stay away from them, right?
A. Uh-huh **(indicating affirmative)**.
Q. Let me ask you this: Why did you keep going back to Don's?
A. What do you mean?
Q. When this stuff started happening with you all the time, every time you went there, you kept going back.
A. Going back to where?
Q. Don's.
A. I don't know.
Q. Did you enjoy going there?
A. Sometimes.

Q. But whatever he did, it wasn't severe enough to you in order to make you want to stay away, correct?
A. Yes, but, I mean, you're going to always remember it.
Q. Of course, but if you had stopped going there, you wouldn't have as many to -- as many episodes to remember?
A. No.

MR. DIGGS: I appreciate you being here.

THE COURT: Is there any redirect?

MR. SPRATLIN: Yes, Your Honor.

REDIRECT-EXAMINATION BY MR. SPRATLIN:

Q. Minor I have a couple of additional questions for you.

THE COURT: Can I hold you to a couple?

MR. SPRATLIN: Your Honor, it may be a little more than a couple, but I promise not to ---

THE COURT: Go ahead then.

MR. SPRATLIN: I promise not to make it lengthy.

Q. Minor your mom went to work. Your stepdad went to work. Who was the only person there to watch you?
A. Don.
Q. Anybody else available to watch you?
A. No, because my sister was always with her boyfriend.
Q. Did you have a choice other than to go to Don's?
A. Yeah.
Q. Now, Mr. Diggs even asked you some stuff about Don

video-taping you or audio-taping you. Does Don's house even have electricity most of the time?

A. No.

Q. Let me show you what's already been marked as Defendant's Exhibit 1, I believe, for identification purposes. You stated on cross-examination that you wrote that?

A. Yes.

Q. And you wrote that when Don told you what to say?

A. Yes.

Q. What did Don say to say on that one?

A. You want me to read it out?

MR. DIGGS: I don't think we need to publish that.

MR. SPRATLIN: Your Honor, he opened the door for me.

THE COURT: Let you go to the jury room.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. What's the problem here, Mr. Diggs? You did make reference to some writings that she made, yes sir, so what's the problem?

MR. DIGGS: I didn't publish it to the jury.

THE COURT: I know it, but you left it out there. What do the writings say? I don't ---

MR. SPRATLIN: Your Honor, I'll read the writing to the Court. The writing states when I twist stuff, I make Don

look like that bad guy and make me look like I'm in- -- insistent -- I'm not sure exactly ---

A. Innocent.

MR. SPRATLIN: I'm sorry?

A. Innocent.

MR. SPRATLIN: Innocent. When I call my mama, there's no gain in any of that. I should be responsible enough to handle that situation myself. When someone tells me to respect them because I'm on their household, I should not be a caretaker and manipulate someone to get my way. My problem is I react selfishly without stopping and thinking.

MR. DIGGS: Now, here's my thought on it, Your Honor.

THE COURT: Yes.

MR. DIGGS: He's claiming I opened the door. I mean, if he wants to introduce that document, that's fine.

THE COURT: No sir. I'll tell you what, I'm not going there, not going to do that. You're getting into a whole 'nother area and you're getting where you're going to get reversed if you do.

MR. SPRATLIN: Your Honor, ---

THE COURT: Leave it alone.

MR. SPRATLIN: Mr. Diggs opened the door.

THE COURT: I am not going to permit it.

MR. SPRATLIN: Your Honor, I'm not even going to ask her to read the document. I'm going to ask her what he told

her to write. I'm not asking -- that document is only being used to refresh her recollection.

THE COURT: I am not going to permit it, not going to permit it.

Bring the jury back.

Now, if something else comes up on his examination that will permit it, I'll take a look at it.

MR. SPRATLIN: Yes sir, Your Honor. Well, may I at least ask her what document or what the Defendant would consistently tell her to write that's from her memory?

THE COURT: No, not going -- I'm going to wait. If he testifies as to that issue, I'll permit you to call her back.

MR. SPRATLIN: Your Honor, his own statement includes that issue.

THE COURT: Well, the statement ain't in evidence at this time, Mr. -- if the statement was in evidence, that would be another issue, but if -- listen, if by statement or testimony he makes it an issue, then I'm going to permit you to call her back.

MR. SPRATLIN: Your Honor, I submit that he already has made it an issue.

THE COURT: No sir. I just respectfully disagree with you.

MR. SPRATLIN: Yes sir.

THE COURT: Bring the jury back.

No need in getting in that area unless it comes in. No, you don't need it.

Now, I want it clear, Mr. Diggs, if anywhere in the area this comes back and persists on her writings, that's coming in.

MR. DIGGS: I understand.

THE COURT: All right, but I don't think it's appropriate at this time, although technically I'd have to agree with the Solicitor you did open the door, but you didn't ask what the writings were.

MR. DIGGS: But he's trying to come in a different door.

THE COURT: I understand that.

MR. SPRATLIN: If you ---

THE COURT: I've already ruled now, Martin. Please don't argue with me.

MR. SPRATLIN: Yes sir.

THE COURT: Bring the jury in.

I'll permit it if it's necessary.

MR. SPRATLIN: Yes sir. Thank you, Your Honor.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right, sir.

MR. SPRATLIN: Yes sir, Your Honor.

CONTINUING REDIRECT-EXAMINATION OF Minor **BY MR. SPRATLIN:**

Q. Now, Minor on cross-examination you stated that you would still go over to Don's even though he was doing these things to you?

A. Yes.

Q. Did you like spending time with Don?

A. Sometimes.

Q. And Don would take you to do fun things, wouldn't he?

A. Yes.

Q. He'd take you to go swimming?

A. Yes.

Q. He'd sometimes buy you stuff, too, wouldn't he?

A. Yes.

THE COURT: Now, you're beginning to lead too much.

MR. SPRATLIN: Yes sir.

Q. Now, Minor Mr. Diggs went through your transcript at length with you, and you stated that you had seen that video before recently?

A. Yes.

Q. Your testimony here today, is that based on what you saw on the video or what happened three years ago?

A. What happened three years ago.

Q. And it's been three years?

A. Yes.

Q. How old are you?
A. Thirteen.
Q. And you said you're good at math, correct?
A. Yes.
Q. What -- how much of your life is three years?
A. Can you make it where I can understand it better?
Q. How much of your life is three years? Three years would be about a quarter of your life, wouldn't it?
A. Yes.
Q. Three times four is twelve?
A. Yes.
Q. So it would be about a quarter of your life, and a quarter of your life is a long time ago, isn't it?
A. Yes.
Q. Your memory may not be as fresh ---

THE COURT: Mr. Spratlin, the jury can do the math, too.

MR. SPRATLIN: Yes sir, Your Honor. I'm just making a point.

THE COURT: I know it. There's no need wasting the jury's time on that math question.

Q. Minor did anyone from my office or law enforcement tell you what to say here today?
A. No.
Q. Did anyone tell you what words to avoid?

A. No.
Q. Did anyone tell you to not say this word and use that word instead?
A. No.
MR. SPRATLIN: Thank you. That's all the questions I have.
THE COURT: Thank you, Mr. Spratlin.
You may now come down.
I assume there's no further cross-examination?
MR. DIGGS: No sir.
THE COURT: You may come down, and thank you.
Please call your next witness, Mr. ---
MR. SPRATLIN: Your Honor, the State would call Ms. Natalia Achury Demaio to the stand.
THE COURT: Have her come around.
NATALIA ACHURY DEMAIO, being first duly sworn, testifies as follows:
THE DEPUTY CLERK: State your full name and spell your last name.
MS. DEMAIO: Natalia Demaio, D-E-M-A-I-O.
DIRECT-EXAMINATION BY MR. SPRATLIN:
Q. Ms. Demaio, how are you doing this afternoon?
A. Good, thank you.
Q. Back in 2011, where were you working?
A. At Childrens' Recovery Center.

Q. What is the Childrens' Recovery Center?
A. The Childrens' Recovery Center is a child advocacy center that serves children in Horry and Georgetown County.
Q. What are some of the things you do at the Childrens' Recovery Center?
A. I conducted forensic interviews, do child advocacy, as well as attended training and provided training in the community to educate a community about child maltreatment and abuse.
Q. All right. Now, what kind of qualifications did you have for your job at the Childrens' Recovery Center?
A. Well, I attended Coastal Carolina University, completed my Bachelor's in Psychology, and then attended intensive training in forensic interviewing when I started working for the Childrens' Recovery Center.
Q. And what is the purpose of a forensic interview?
A. The purpose of a forensic interview is to elicit a clear statement of a child about an experience for the purpose of an investigation.
Q. And are you specifically trained to talk to children?
A. Yes sir.
Q. Now, a forensic interview, is that preserved or saved in any way?
A. Yes sir. We audio and video record all the interviews.

Q. Now, Ms. Demaio, did you have a chance to conduct a forensic interview on Ms. Minor
A. Yes sir.
Q. How old was Minor at the time of that interview?
A. She was ten years old.
Q. Who all was present during that interview?
A. Only the child and myself.
Q. Okay. Was that interview audio and video recorded?
A. Yes sir.
Q. If you know, how did Minor come to be referred to the Childrens' Recovery Center for a forensic interview?
A. Yes sir. She was referred by law enforcement, by Horry County Police Department.
Q. Do you remember which detective actually referred her?
A. Detective Neil Frebowitz.
Q. Do you see Detective Frebowitz in the courtroom?
A. Yes sir.
Q. Where is he seated at?
A. Right over there (indicating).
Q. Okay. Now, in regarding a forensic interview with a child, what sort of techniques do you use in that forensic interview?
A. I use neutral questions and I use the RATAC Protocol.
Q. What is the RATAC Protocol?

A. And the RATAC Protocol is same structure protocol and that aids with the interview of a child. It will help elicit the statement of the child facilitating for them to communicate their experiences. RATAC, it stands -- the R, it stands for rapport, to build rapport with the child and being able to assess their competency.

The A, it stands for anatomical identification to a right to a common language of the body parts with the child, and then the T refers to touch inquiry, and this allows the child to communicate and to see if they have an understanding about touching.

A for abuse scenario. This allows the child to tell and communicate about their experiences, and C refers to closure, and that gives the interviewer a chance to give a respectful closure to the interview and educate the child in personal body safety.

Q. All right. Now, was Minor able to give you a detailed account of the improper conduct by the Defendant?

A. Yes sir.

Q. And when you were interviewing Minor were her answers to your questions appropriate to the questions that you were asking?

A. Yes sir.

Q. Let me show you what's already been marked as State's Exhibit Number 6 for identification purposes. Do you

recognize that item?
A. Excuse me?
Q. Do you recognize that item?
A. Yes sir.
Q. Does it appear to be a copy of the forensic interview that you conducted with Minor
A. Yes sir.
Q. To the best of your knowledge, is it a fair and accurate copy of that interview?
A. Yes sir.
Q. Has anything been changed to the best of your knowledge?
A. Yes sir.
Q. What was changed? Actually, let me just back up a second. Any of the changes that were made, do they alter in any way the substance of the interview?
A. No sir.
Q. Did they change what Minor said?
A. No sir.
Q. All right.
MR. SPRATLIN: Your Honor, at this time, I would tender State's Exhibit Number 6 into evidence.
MR. DIGGS: I think it's already in evidence.
THE COURT: I believe it's in.
MR. SPRATLIN: Your Honor, it was entered in pre-trial,

but just for the purposes of the trial.

MR. DIGGS: Your Honor, we take the same position we stated.

THE COURT: It will come in.

(C.D. OF FORENSIC INTERVIEW OF Minor **INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 6.)**

MR. SPRATLIN: Yes sir, Your Honor, and it has already been published to the jury.

The State has no further questions for Ms. Demaio.

THE COURT: That statement has already been published by way of video?

MR. SPRATLIN: Yes sir.

THE COURT: You may examine the witness.

MR. DIGGS: Thank you, Your Honor.

CROSS-EXAMINATION BY MR. DIGGS:

Q. Now, Ms. Demaio, ---

A. Yes sir.

Q. --- okay, we got a chance to meet once before and go through basically what your testimony would be in this trial, have we not?

A. Yes sir.

Q. Okay. And so you may have a sense of deja vu, but the jury hasn't had a chance to hear all of your testimony, and so it may be repetitious to us, but it's the first time hearing it in front of the jurors.

The RATAC method, is it fair to say the protocol a process that you use to elicit information from the child victims?

A. I see my structure a protocol.

Q. Okay. And the R, again, stands for what?

A. For rapport.

Q. Okay. And in your interview here, you recall you spoke to -- and let me ask you this, when was the last time you had a chance to look at the interview?

A. Yesterday.

Q. Okay. So you were talking about her family, her siblings, her dogs, and things like that. That's what you call the rapport, building some possibility or communicating with the child, ---

A. Correct.

Q. --- making her -- making the child in that situation feel more comfortable in communicating with you?

A. Correct.

Q. And then the RA, the next letter is for what?

A. Anatomical identification.

Q. Okay, and you went through that with our witness here and you used some drawings, because we heard you in the interview, we heard you describing the drawings, but it wasn't real clear in the video what you guys were talking about, but you had some drawings of just not like stick

figures, but drawings of male and female?
A. Anatomical drawings, yes sir.
Q. And she went through and labeled those parts based on her language and where she was at that time in her development?
A. That's correct.
Q. But then I noticed in -- I have a transcript of that interview. Would you like to look at it?
A. Sure.
Q. Because I'm going to ask you about some specifics that were discussed, and on Page 9, -- the numbers of this transcript are up in the top left, okay, and you see -- you're in the middle of that page, you're saying and when we go swimming, we wear a bathing suit because we want to cover up the private parts?
A. That's correct.
Q. And the same, the boys wear shorts, swim shorts, because they want to cover private parts. It's okay for them -- and then you go on -- and then Minor says yes, and then you state what? What is your next question to her in this interview?
A. Has anyone ever tried to touch you on your private parts in a way that made you feel yucky?
Q. Okay. And so you moved again in the RATAC method interviewing the child. You moved right on from the anatomy

part to the second A, did you not?
A. I actually moved into the touch inquiry stage.
Q. And I want you to explain for me what your definition of the touch inquiry stage is.
A. In the touch inquiry, it's what allows me to know if the child understands about touching and if she is able to communicate about touching.
Q. But doesn't the protocol require you to go through with the child and discover what touching episodes are pleasurable and acceptable to the child?
A. Not necessarily. The RATAC Protocol has been a semi-structure, a stage protocol. You can modify or eliminate any of the stages according to the needs of the child, so not necessarily. There are certain things that I will use with younger children. Depending on their developmental level, I will accommodate those stages.
Q. All right. Would you agree that the materials that are used, and to preface this, you've been to specific classes for learning the RATAC method of interviewing?
A. That's correct.
Q. And for our benefit, where did you go for that training?
A. My first training was Child First and was taking place in Columbia, South Carolina. And this was sponsored by the Childrens' Law Center. It's the first training that

was mandatory for me to go in order to conduct interviews in the state.

Q. And wouldn't it be fair to say that most of the interviewers that conduct these types of or do interviews in these types of cases go to an in-state seminar somewhere in South Carolina to learn this protocol?

A. Yes sir.

Q. And would you agree with me that if I were to look at some educational material that would be disseminated at these seminars, the way they would describe the RATAC program, would it be -- would it include trying to determine what would be acceptable to children like maybe having their back scratched, hugs, tickling, things of that nature? Do you agree with me that's the protocol that that type of activities discussed in the protocol under the touch aspect of the RATAC method?

A. Yes. According -- again, according to -- to the needs, and these can be asked that way.

Q. But you're kind of doing -- you're kind of changing that a little bit in your testimony in this case, are you not, because you've gone directly to the improper touching?

A. I didn't change it. It was just eliminated.

Q. Okay. All right. I'll accept that, because your question was has anyone tried to touch you on your private parts in a way that make you feel yucky?

A. That's correct.
Q. Okay. So you did -- just eliminated this other category and went straight to the abuse?
A. I -- I don't think it was complete elimination of the touch inquiry. I am still trying to assess if she's able to communicate about that.
Q. Well, you certainly went into the direction here of the lewd act and what constituted a lewd act possibly in this case, isn't that true?
A. Well, it was not a direct leading question.
Q. Has anyone ever tried to touch you on your private parts in a way that make you feel yucky, and her response was yes ma'am, and then your question was who was that, and she said my client, correct?
A. Correct.
Q. And that was before you went into any other interaction that would be pleasant or acceptable to the child based on her training and experience?
A. Based on her training?
Q. Uh-huh **(indicating affirmative)**.
A. What do you mean by her training?
Q. Well, her experience.
A. Based on her experience, yes sir.
Q. Interaction with family members, friends, siblings, uncles, aunts. Do you see what I'm getting at?

A. I'm a little bit confused about your point.
Q. Well, go back -- let's go back and let me leave it with this question with respect to this aspect of the protocol. You chose to modify the protocol in Minor case, correct, and basically eliminated the touch aspect of the RATAC method?
A. Well, I - if I may, I want to explain that with young children, you are referring as not talking about if someone -- about good touches or bad touches. I usually do that with the younger children ---
Q. Okay.
A. --- when I am teaching them body safety so they can differentiate for me to know if they understand what are good touches for them or what are bad touches for them, so I don't necessarily have to use that with older children and I will usually make that determination after I know if she was able to communicate effectively when I was doing my report with her, so every interview is different and I want to continue with my touch inquiry question without having to go over the good touches and bad touches.
Q. And I understand you've done approximately three hundred interviews?
A. Correct, over three hundred.
Q. And would it be accurate to say that you typically step over the T part of the program with children Minor

age?
A. No, that wouldn't be appropriate to say. Every child is different. It's not only according to their age. It's according to what they are able to communicate, so I may have a child the same age as Minor but I may use -- modify the protocol according to that child's needs.
Q. Let me get you to turn to Page 18 of our transcript if you could, and we're talking here about Minor returning from a trip with her family to West Virginia, okay? I want you to go down to the middle of the page where you can see where Minor is speaking, and she says no, when we got back from West Virginia, he started -- he picked me up and started kissing me, and I don't like that. Do you see that?
A. Yes sir.
Q. And then you said -- what did you say?
A. Where did he kiss you?
Q. On my -- on my face here, on my neck, on my face, and right here on my neck. And you said?
A. Did he kiss you on your lips?
Q. Okay. Now, let me ask you this: Why did you ask her ---
A. Because I needed clarification when she said on my face, so I wanted to make sure that I was covering all the -- I was covering everything.
Q. But you just told me she was pretty good at

communicating with you in terms of responding to your questions?
A. Yeah. She was -- she was really good and she responded good, but, you know, my job is still follow-up with her answers.
Q. You felt like when she said on my face, that didn't trust that to exclude the lips? You had to ask her specifically about being kissed on the lips?
A. I chose to ask her specifically, yes sir.
Q. And what did she say?
A. Yeah, kind of like, yeah, on my lips.
Q. Okay. Now, I read that as some hesitancy on her part to respond in an affirmative way. Do you?
A. It is really not my job to give an opinion of what I think that she meant or not.
Q. With all due respect, you shouldn't lead her either, should you?
A. It was not a leading question. She had already admitted that someone has kissed her.
Q. On the face?
A. So -- on the face, and it was a follow-up question for me to use some of the information that she told me and follow up with that information.
Q. But then you followed up, okay, on the lips. Was it open-mouth or closed-mouth? You went even further, didn't

you?
A. Absolutely. She had already said yeah, on my lips, so I needed to follow up if it was an open-mouth kiss or a closed-mouth kiss.
Q. She said yeah, kind of like, yeah, on my lips?
A. That's exactly why I follow up with the question.
Q. Okay. But you stand -- you stand by that as being an appropriate question for you to ask in this interview at that stage?
A. Yes sir.

MR. DIGGS: Ms. DeMaio, I appreciate you coming back this afternoon, and I think that really all -- is all I have, Your Honor.

THE COURT: Any follow-up, Mr. Spratlin?

MR. SPRATLIN: No, Your Honor. Can this witness be excused?

THE COURT: Yes.

And we thank you. You are excused from your subpoena.

We're going to take the afternoon break. Have you got a short witness you want to get rid of at this time?

MR. SPRATLIN: Your Honor, I've got the doctor from Childrens' Recovery Center who is available. I don't imagine her testimony will be very long.

THE COURT: Let's take the doctor so we can accommodate that doctor's schedule now.

(THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: Bring the jury in, please.

MR. SPRATLIN: Your Honor, may I let one of my witnesses go then, because I think we're only going to get to two more witnesses today then.

THE COURT: They're not sequestered. Just let them come in the courtroom. Nobody asked for sequestration. It will save some time.

You don't object to that, do you, Mr. Diggs?

MR. DIGGS: Not at this point, Your Honor. I would have earlier, ---

THE COURT: Okay.

MR. DIGGS: --- but we're beyond that.

MR. SPRATLIN: Your Honor, in that case, I'll probably have two witnesses tomorrow morning.

THE COURT: That will be fine. How many have you got this afternoon?

MR. SPRATLIN: Two.

THE COURT: Okay.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: All right. You may call your next witness.

MR. SPRATLIN: Your Honor, the State would call Ms. Shannon Lawrimore to the stand.

SHANNON LAWRIMORE, being first duly sworn, testifies as follows:

THE DEPUTY CLERK: State your full name and spell your last name.

MS. LAWRIMORE: Shannon Lawrimore, L-A-W-R-I-M-O-R-E.

DIRECT-EXAMINATION BY MR. SPRATLIN:

Q. Ms. Lawrimore, where are you currently living?

A. Conway.

Q. How long have you lived in Conway?

A. For almost a year.

Q. Almost a year. Where were you living back in 2011?

A. With Shawn.

Q. With Shawn? Who is Shawn?

A. Dinita Whipple.

Q. Dinita Whipple. You call her Shawn?

A. Yes ma'am -- I mean, yes sir.

Q. Why?

A. It was known as by that.

Q. That's what name she was known as?

A. Yes sir.

Q. Okay. Who else lived with Shawn or Dinita?

A. Minor D. Sierra, her, and Tommy.

Q. Okay. Let me ask you, Ms. Lawrimore, what do you do for a living?

A. Disabled.

Q. What kind of disability do you have?
A. I've got mental retardation, borderline.
Q. Yes ma'am. Do you know the difference between a truth and a lie?
A. Yes sir.
Q. What is the truth?
A. Something that is not right and you're fibbing.
Q. Is that a lie or is that the truth?
A. That's a lie.
Q. That's a lie. What -- what does it mean to tell the truth?
A. (No response.)
Q. Does the truth mean something that actually happened?
A. Yes sir.
Q. Are you able to tell us what actually happened?
A. Yes sir.
Q. I'll keep it real brief, Ms. Lawrimore. Do you know the Defendant?
A. Yes sir.
Q. How do you know him?
A. He was a neighbor of Shawn.
Q. All right. Did you ever have a chance to be around him and Minor
A. Yes.
Q. Where did you have a chance to be around him and

Minor

A. We went to the pond.

Q. You went to the pond?

A. And a river.

Q. And the river. What were y'all doing at the pond and the river?

A. We were swimming.

Q. Who all was there with you swimming?

A. Me, Don, Bob, and Minor

Q. All right. Ms. Lawrimore, did anything that was unusual to you happen when you were with Don and Minor

A. Yes.

Q. What did you see?

A. He had her bathing suit bottoms.

Q. Do you know how he got her bathing suit bottom?

A. No.

Q. What was he doing with her bathing suit bottom?

A. I don't know what he was doing, but he was trying to come close to Minor and she said no.

Q. What did she do when she said no?

A. She hid behind me.

Q. She hid behind you?

A. Yes.

Q. And what did you do when Minor hid behind you?

A. I let her hide behind me and I got them back for her.

Q. So you were able to get her bathing suit bottoms from him?
A. Yes.
Q. All right. Did you ever witness the Defendant anywhere, not just at the pond or the river, but anywhere else, did you ever witness Don touch Minor in a way that bothered you?
A. On the chest.
Q. Where did you see him touch her chest?
A. In the breast area.
Q. But where were y'all location-wise?
A. We were at his house.
Q. At his house. How did he touch her breast? How did he come to touch her breast? What ---
A. I don't know if they were playing.
Q. What was Minor doing while he was touching her breast?
A. They -- she -- I think she was scared.
Q. Was she -- did she say anything that you remember?
A. I'm not sure.
Q. Okay. All right.

MR. SPRATLIN: Ms. Lawrimore, thank you. Please answer any questions that Defense counsel may have.

THE COURT: Mr. Diggs.

MR. DIGGS: May it please the Court.

CROSS-EXAMINATION BY MR. DIGGS:

Q. Ms. Lawrimore, you were talking about being at the lake or the river, and you saw Mr. Legg with the bathing suit in his hands?

A. Yes.

Q. But you don't know how he got them?

A. No sir.

Q. Okay. Didn't you testify to something, and I didn't -- I wasn't able to hear what you said, what happened at that point. What -- what did you say previously to the Solicitor had happened when you saw that?

A. I had blocked Minor when she had said that she didn't want him to come closer.

Q. Okay. Was he -- was Mr. Legg coming closer to Minor

A. Yes.

Q. Was he -- would it be possible based on the circumstances that you saw that he was trying to give the bathing suit back to her?

A. Not at -- no sir.

Q. And why do you say that?

A. Because she asked him to give them back to him (sic) and he wouldn't. He said not until I come to you, and she didn't want him to come.

Q. Okay. And so what happened?

A. I had blocked her, because she was scared.
Q. Okay. And then she got behind you, and then what happened?
A. I had got them back for her.
Q. Okay. Mr. Legg handed them to you?
A. Yes.
Q. Did he say anything at that point?
A. No sir.
Q. Okay. And then what did you do?
A. I don't remember.
Q. Okay. And you didn't -- did you fuss at Don about it?
A. I don't remember.
Q. Okay. When -- when did you talk to Minor last about this incident?
A. The time I talked to Minor was when I was staying somewhere else. She had -- Shawn had called me and asked me about it.
Q. Okay. Have you seen Minor this week?
A. No.
Q. And you didn't speak to her prior to the trial?
A. No.
Q. Okay. Now, when you lived there with Dinita and her husband, Thomas, why did you leave?
A. Because it wasn't working out, and I was -- and I

ended up going to stay with a friend.
Q. Okay. Did you guys have a fight?
A. No.
Q. An argument?
A. No.
Q. It was a pretty friendly separation?
A. Yes.
Q. And you just moved?
A. Yes.
Q. Now, how many times were you in Don -- Don's home?
A. Probably a couple of times.
Q. A couple of times, and even though -- and that was over -- how long were you a neighbor with Don?
A. Probably a -- I'm not really sure at this moment, probably about a month or two.
Q. So it was pretty quick after the Whipples moved in? It was pretty quick when you moved out?
A. (No response.)
Q. Let me rephrase that. Okay. Were you living there when they moved in Mr. Legg's neighborhood?
A. Yes -- no, not at that time, no.
Q. So you actually didn't live with them very long, correct?
A. No sir.
Q. You lived there -- you were living in their home

about how long?
A. I'm not sure.
Q. A month or two at the most?
A. A month or two.
Q. Okay. And during that period of time, you were in Mr. Legg's home twice?
A. Yes.
Q. And on one of those occasions your testimony is that you saw him touch her chest?
A. Yes.
Q. And do you remember any conversation that was going on?
A. No sir.
Q. Did you say anything about it?
A. No sir.
Q. Was it an intentional touching as far as you could tell?
A. I think so, yes.
Q. Were they wrestling, or playing, or anything of that nature?
A. I don't know because -- I'm not sure.
Q. Okay. You just cannot recall at this point?
A. No.
Q. All right. Do you remember how the inside, interior of the home, was decorated?

A. It had a bad smell, a lot of cats, and ---

Q. Okay. All right.

MR. DIGGS: I think that's all I have, Your Honor. Thank you.

THE COURT: All right, sir.

Can this witness come down?

MR. SPRATLIN: One additional -- one last question, and only one.

REDIRECT-EXAMINATION BY MR. SPRATLIN:

Q. Ms. Lawrimore, why didn't you ever tell anyone what you saw?

A. I was scared that she wouldn't believe me.

MR. SPRATLIN: Thank you, Your Honor. No further questions.

THE COURT: All right.

You may come down.

Do you have another short witness before we retire for the evening?

MR. SPRATLIN: Yes sir, Your Honor. I have one more short witness.

THE COURT: That's fine. I want to accommodate the juror's schedule here that needs to be ---

MR. SPRATLIN: Yes sir, Your Honor. Can Ms. Lawrimore be excused from her subpoena?

THE COURT: Yes, she is. And call your next witness.

THE DEPUTY CLERK: Please state your full name and spell your last name.

OFFICER LENT: Gregory Lent, L-E-N-T.

DIRECT-EXAMINATION BY MR. SPRATLIN:

Q. Mr. Lent, where are you currently employed?

A. The Horry County Police Department.

Q. How long have you been working at the Horry County Police Department?

A. Approximately seven years.

Q. Now, Officer Lent, what is your current job title there?

A. I'm a detective in the Major Crimes Section.

Q. How long have you been in the Major Crimes Section?

A. About the last year or a little more.

Q. The last year. Seven years, so you were working at the police department back in June of 2011?

A. Correct.

Q. What job were you doing at that point?

A. I was an officer on uniform patrol.

Q. So let me ask you, did you have a chance back in June of 2011 while an officer on uniform patrol to come in contact with the Defendant?

A. I did.

Q. Could you tell the Court how you came into contact with the Defendant.

A. I had been called down to respond to the victim's mother's residence. This was in reference to a complaint that she had made about some inappropriate touching that had gone on between the victim and the Defendant, so I went out there to write the initial report.

I spoke with the victim's mother, the victim, and then I went next door or next door to where the Defendant lived and spoke with him.

Q. All right. Now, when you spoke with the Defendant at this point in time, what name, if any, did he give you?

A. He gave me the name Donald Legg.

Q. Donald Legg. And if you recall, do you recall what birthdate he gave you?

A. It was of . I don't remember the date.

Q. All right. Is there something that would refresh your recollection as to what birthdate he gave you exactly?

A. It would be on the police report whatever he had given me.

MR. SPRATLIN: Your Honor, let the record reflect I'm showing the witness what has been marked as State's Exhibit Number 4 for identification purposes. I'm showing opposing counsel.

THE COURT: All right, sir.

Q. Officer, please take a second to just review that document. What is that document?

A. This is a copy of the police report that I had writ-- -- initially written.
Q. Does that refresh your recollection as to what date of birth the Defendant gave you that day?
A. It does.
Q. What date did he give you?
A. .
Q. All right. And that would put him well above the age of eighteen, wouldn't it?
A. Yes. Sixty-one years old is what it states on the police report.
Q. All right. Now, when you were over at the Defendant's residence discussing with him, what, if anything, did he say about these allegations of touching?
A. Well, when I first went over there and introduced myself, I told him where I had come from, that I had come from the Whipple's residence, ---
Q. Uh-huh **(indicating affirmative)**.
A. --- and the first thing that he had stated to me before we were even able to get into any conversation was when I mentioned -- well, the children came up, and the first thing he mentioned was that they were both vindictive and manipulative, and then we got into -- I explained why I was there, and then our conversation went on from there.
Q. Did he say anything in particular to Minor or did

he describe her in any sort of way?
A. After we -- we had spoke for a little bit, for some time, and after I had gone through some -- I asked him what the -- I explained to him what the complaint was.
Q. Uh-huh **(indicating affirmative).**
MR. DIGGS: Your Honor, could I make -- I would object unless this is going to the statement that the Court has already considered.
THE COURT: What's your objection?
MR. DIGGS: Your Honor, I -- I think -- I would submit it needs to be subjected to the Jackson V. Denno ---
MR. SPRATLIN: Your Honor, I'll -- actually we'll move on from that. I'll just let this Defendant's statement for itself -- speak for itself on that.
THE COURT: Okay.
Q. Let me back up for a minute, detective -- I mean, Detective Lent now. When you were discussing with the Defendant, did you have a chance to come in contact or go into his house, excuse me?
A. Yes. He brought me inside his house.
Q. All right. When you went into that home, what, if anything, was unusual about it?
THE COURT: Let me ask you -- he said he went in. Where did this first conversation take place?
Q. Where did the conversation take place initially?

A. Well, we spoke out in the yard and inside the residence.

THE COURT: Go ahead.

MR. SPRATLIN: Okay.

Q. Now, let me ask you, at this point in time that you were having this discussion, was the Defendant in custody at all?

A. No, not at all.

Q. All right. And was he handcuffed or in any way detained?

A. No.

Q. Was he free to leave?

A. He was free to ask me to leave his property.

Q. Okay. Now, when you went into his residence, what, if anything, was unusual about it?

A. When you walk through the front door, the first room -- and it was a mobile home -- the first room, my initial observation of it was that it looked to be like a classroom. There was some type of chalkboard on the right-hand wall when you walked in, and there were a bunch of visual displays that appeared to be more geared towards children, and they were -- but they were all handwritten. It wasn't like they were manufactured somewhere.

Q. Okay. To your knowledge, were there any children living at the Defendant's residence?

A. No.
Q. All right. And, Detective Lent, you were also the officer that eventually arrested the Defendant on this charge?
A. I was one of the officers, yes.
Q. And that happened several days later?
A. It did.
Q. After you spoke with the victims, as you discussed, and met the Defendant over at his residence, what did you do with the case?
A. I wrote the initial report and for an investigation like this, I get to turn it over to a detective, and it was turned over to Detective Frebowitz.

MR. SPRATLIN: All right. Thank you, Officer Lent. That's all the questions I have. Please answer any questions Mr. Diggs might have.

CROSS-EXAMINATION BY MR. DIGGS:

Q. Detective Lent, when you went in, you saw all of these writings, written materials?
A. Yes.
Q. Now, you've been in the courtroom -- were you in the courtroom when the -- when Minor testified ---
A. No.
Q. --- yesterday?

All right. Have you seen the box of items that were

removed from the -- from my client's home, ---
A. No.
Q. --- the writings, the written material?
A. He had -- when I was at the home, he tried -- he showed me some of his writings.
Q. Okay.
A. I think there was a letter to Rush Limbaugh or something that he had written ---
Q. Okay.
A. --- that he tried showing me, but I didn't go over much of the writing with him. I was there just to speak with him.
Q. All right. Now, but a lot of the writings were just out in open view and you could see them, like on the chalk board or on ---
A. There were things hanging on the wall.
Q. Hanging on the wall. Now, I just want to be clear here. There was nothing perverse that you saw about those writings, was there?
A. No.
Q. I mean, they weren't like pornographic or describing that kind of activity?
A. I don't -- I don't remember anything like that. I don't remember what the writing was, but ---
Q. All right. So if it had been perverse, pornographic,

or something illegal like that, you certainly would have noticed that, wouldn't you?

A. Yes.

Q. Okay. So we're safe in assuming that that material was okay ---

A. Yes. It was just ---

Q. --- on its face?

A. And, again, there was nothing that rose -- that concerned me with what I saw as far as the writing was concerned.

Q. Right. Now, were you in the position of deciding what was going to be taken into custody and what was not ---

A. No.

Q. --- in terms of the writing -- written materials?

A. No. I did not take anything from anybody's house that day. I was there just to do an initial report, gather everybody's information, ---

Q. Okay.

A. --- and that was it.

Q. Okay. Got'cha. Now, did you see any cameras, video cameras, or anything of that nature?

A. Not that I remember.

Q. Could it have been there and you just didn't notice it?

A. I have no idea.

Q. Okay. So I take that as a yes? It could have been there, but you certainly didn't inspect to eliminate it was present, correct?
A. I was there, like I said, just as an initial meeting with them.
Q. Did you have a conversation with my client about video recordings or audio recordings?
A. I don't remember anything coming up in a conversation with him about that.
Q. All right. Did you ever go out and look inside of his truck, vehicle?
A. No. I remember there were vehicles in the yard. I don't remember looking inside any of them. There was no need for me to.
THE COURT: Let me ask you this: We're talking about your initial visit?
A. Yes sir.
THE COURT: And this was not as a result of a search warrant at that time?
A. Correct.
THE COURT: All right, sir.
He had no right to go out there and look in the vehicles and so forth.
MR. DIGGS: Well, I was just asking if he had done that, if my client maybe had shown him something.

THE COURT: He was not there under a search warrant. This was his initial visit.

MR. DIGGS: Right, and, Your Honor, that's all I'm trying to get to at this point.

Q. Did the young lady, Minor or her mother, or any member of the family come over while you were there on that occasion?

A. No.

Q. And did you have occasion to go back out to the property at a later time?

A. I did.

Q. Okay. And approximately when did you go back?

A. It would have been probably in the next coming days. I think that at some point I was made aware that an arrest warrant had been issued, and I -- being that I worked that area and I was familiar, I had gone out there to try to locate ---

Q. All right. So my client was not arrested on that initial occasion when you came out?

A. No.

Q. It was several days later, maybe a week, week and a half, somewhere in that neighborhood?

A. It was just a few days later, I believe.

MR. DIGGS: Your Honor, I would beg the Court's indulgence for just a second.

Q. Let me ask you, did you have an occasion to see if there was access to any electricity in the home? In other words, when you went in, was the lights on?
A. I don't remember. I was there in the daylight.
Q. Okay. But you don't recall one way or the other?
A. I don't recall.
Q. All right. Do you remember if there were any lights, or lamps, or anything like that that were present in the room, not necessarily on, but were there?
A. I don't recall. I would imagine there was.
Q. All right.

MR. DIGGS: That's all I have. Thank you very much.

THE COURT: Anything further?

MR. SPRATLIN: Just one question in follow-up, Your Honor.

REDIRECT-EXAMINATION BY MR. SPRATLIN:

Q. Officer Lent, was it normal for you to not arrest the Defendant that day but refer it to Investigation?
A. Yes.
Q. And that's standard procedure?
A. Yes.

MR. SPRATLIN: No further questions.

THE COURT: You may come down. Thank you, sir.

OFFICER LENT: Thank you, Your Honor.

MR. SPRATLIN: Your Honor, I'd ask that this witness to

be allowed to be excused from his subpoena.

THE COURT: Yes sir, he may be.

MR. SPRATLIN: Yes sir.

THE COURT: Your next witness.

MR. SPRATLIN: The State would next call Detective Neil Frebowitz to the stand.

NEIL FREBOWITZ, being first duly sworn, testifies as follows:

THE DEPUTY CLERK: State your full name and spell your last name.

DETECTIVE FREBOWITZ: Neil Frebowitz, F-R-E-B-O-W-I-T-Z.

DIRECT-EXAMINATION BY MR. SPRATLIN:

Q. Mr. Frebowitz, where are you currently employed?

A. Horry County Police Department.

Q. How long have you worked at the Horry County Police Department?

A. Nine years now, sir.

Q. Nine years. Before that, where did you work?

A. I was a police officers in Washington, D.C. with the Metro Police Department.

Q. How long did you work there?

A. Twenty-five years.

Q. So how much experience in law enforcement do you have in total?

A. I was a desk officer in Pennsylvania when I was in college, so a total of forty years now in law enforcement.
Q. Forty years experience. What's your current job at Horry County Police Department?
A. I'm a detective with the Major Crimes Section.
Q. What is the Major Crimes Section?
A. We investigate the serious crimes, the violent crimes that occur in Horry County. My responsibility is basically homicides and sexually-based offenses.
Q. And would lewd act upon a minor be one of those sexually-based offenses?
A. Yes sir, it would be.
Q. Now, as a detective, what are some of your duties in cases that you are assigned?
A. We are responsible to follow up on the initial police officer's report. Their responsibility is to just what the jury just heard, that Officer Lent respond to the scene to have a preliminary information, see if he can develop witnesses, provide that to our investigative unit, in this case myself, and I then conduct follow-up investigations.
Q. And, Detective, what, if any, involvement did you have in the case we're here today about, Mr. Ronald Legg?
A. I did just that. After receiving the case and revealing the information that Officer Lent provided, reading his report and then speaking with him, I went to the

home and spoke to the victim and her mother.
Q. So you went over to the home and spoke with the victim and her mother?
A. That's correct, sir.
Q. And we saw in court yesterday the forensic interview of the minor child. What, if any, involvement did you have in that taking place?
A. I established through our protocols a request for a forensic interview and then that was followed up on. They did go to the Childrens' Recovery Center for that interview, and I reviewed that, that process.
Q. Okay. Based on your investigation and totality, did you have sufficient probable cause to issue a warrant for the Defendant?
A. Initially I had probable cause to issue a warrant for who we believed to be Donald Legg, and it wasn't until he was taken into custody and fingerprinted we determined him to be Ronald Legg.
Q. Okay. You determined his real name was Ronald Legg after he was arrested?
A. Yes.
Q. And so the initial warrant in this case, who was it issued for?
A. Donald Legg.
Q. And the Defendant, he's not Donald Legg?

A. No sir. I've seen their photographs. They are two different people.
Q. Okay. Now, after the Defendant was arrested and charged with this crime -- well, let me back up for a second. During the course of your investigation, did you have a chance to learn who all was living with the Defendant?
A. Yes sir, I did.
Q. Who all was living there?
A. There was a fellow named Bob.
Q. Bob. How would you describe Bob?
A. He was relatively challenged. I did go out and have another conversation with him where there was some concern about his safety at the home after Mr. Legg was arrested to the point where I contacted Adult Protective Services and asked for a follow-up visit.
They confirmed, and as well as I, that while he was, you know, a little slow, but he certainly had the ability to take care of himself, he was not a danger to himself, and he was allowed to just go on about his life.
Q. Okay. Bob is certainly slow?
A. Yes sir, absolutely.
Q. Okay. Now, after the Defendant was arrested, what, if anything, did you do in regards to him?
A. I was informed by Officer Lent that he had been taken

into custody I believe the next day or -- I perfected a warrant with the correct name and then went to J. Reuben Long Detention Center and requested to interview him.

Q. Now, where did this interview take place?

A. There's an interview room adjacent to the booking facility. It's a private room that just the Defendant and I, at the time, was able to sit in and have a conversation.

Q. Who all was present in this interview?

A. Just he and I.

Q. Was it recorded in any way?

A. Yes sir, it was.

Q. How was it recorded?

A. There's a digital recorder I used.

Q. Was it video-recorded?

A. No sir.

Q. Just audio-recorded?

A. That's correct, sir.

Q. All right. Now, detective, if you know, can you estimate how old the Defendant was at the time you talked to him?

A. He was in his late fifties.

Q. Late fifties. During your conversation with him, did he appear to understand English?

A. Absolutely.

Q. Did he appear to respond appropriately to the

questions you asked?
A. He was very articulate.
Q. Were you able to have a conversation with him?
A. Yes sir.
Q. Now, you said you had forty years experience in law enforcement, correct?
A. Yes sir.
Q. In that forty years, did you have a chance to come in contact with people who are under the influence of drugs or alcohol?
A. Yes sir.
Q. What are some of the outward symptoms that people under the influence give you?
A. Initially you see people with a staggered gait, as they say. I watched him walk from the booking facility into the interview area and he had no trouble walking. When he went into the interview room, I said please sit down in this chair here. He had no problem following instructions. As I started to question him, he quite understood as I read him his Miranda rights, what they were.
Q. Did the Defendant at any time appear to have any kind of slurred speech?
A. No sir.
Q. Did he appear to have any difficulty staying awake in the interview?

A. No sir.
Q. Did he do anything at all that led you to believe he was under the influence of any drugs or alcohol?
A. No sir.
Q. And to just go ahead and get this out of the way, do you see the individual in the courtroom that you talked to that day?
A. Yes sir, I do.
Q. Could you point him out and identify an article of clothing?
A. Yes sir. He's at the defendant table, wearing a yellow shirt and a goldish tie.
MR. SPRATLIN: Please let the record reflect the detective has identified the Defendant.
THE COURT: It will.
Q. Now, you say that there were no signs of any kind of intoxication in this case?
A. No sir.
Q. All right. Now, prior to interviewing a suspect, is it common to read him his rights?
A. Yes sir, it is.
Q. How do you present those rights?
A. There's a form, a standard form, that we read. It's something everybody is familiar with.
MR. SPRATLIN: Please let the record reflect I'm

showing opposing counsel what is marked State's Exhibit Number 1 for identification purposes at this time.

Permission to approach the witness?

THE COURT: Yes.

MR. SPRATLIN: Please let the record reflect I'm handing the witness what has been marked State's Exhibit Number 1 for identification purposes.

Q. Detective, do you recognize the document I just handed you?

A. Yes sir, I do.

Q. What is it?

A. It is a advice of Miranda rights.

Q. All right. Is that the form that you used to go over the rights with the Defendant that day?

A. Yes sir, it is.

Q. How do you know it's that form?

A. It has my signature -- initials, actually, on the bottom. I recognize my handwriting on the rest of the form.

Q. That's your handwriting?

A. Yes sir.

Q. Is that a fair and accurate copy of the form you used that day?

A. Yes sir, it is.

Q. To your knowledge, have there been any additions or deletions to that form?

A. No sir.
Q. Is it in every way accurate?
A. Yes sir.
MR. SPRATLIN: Your Honor, at this time, I would tender State's 1 into evidence as State's 1.
THE COURT: I will permit it.
MR. SPRATLIN: Thank you.
(MIRANDA RIGHTS FORM INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 1.)
Q. Now, Detective, how did you go over the Defendant's rights with him using that form?
A. It was a combination of reading and through memory.
Q. What exactly did you read him about his rights?
A. I read him that he had the right to remain silent. Anything he said could be used against him in a court of law. He had the right to -- and I believe I used the term attorney -- it says here lawyer, and have him present with you while you are being questioned. If you cannot afford a lawyer, one will be appointed to represent you before any questioning, and then the next line actually says if you make a statement to answer any questions, you have the right to stop at any time.

He must have been reading over my shoulder across the desk because before I got to that part he actually said, well, I only want to answer so much, which acknowledged to

me that he understood what his rights were.
Q. Now, the reading of those rights, are they contained on the recorder?
A. Yes sir, they are.
Q. Okay. Did the Defendant appear to understand those rights when you were reading them to him?
A. Yes sir.
Q. At any point either prior to, during his statement, did he ever state that he did not wish to talk to you?
A. No sir.
Q. At any point prior to or during his statement, did he ever request an attorney?
A. No sir.
Q. At any point prior to or during his statement, did he ever insinuate to you in any way that he wished to terminate the conversation?
A. No sir.
Q. Now, let me ask you, Detective, did you or anyone in your presence make any promises of leniency to the Defendant in exchange for giving a statement?
A. No sir.
Q. Did you threaten him in any way in order to obtain that statement?
A. No sir.
Q. To the best of your knowledge, was the Defendant

coerced in any way in making that statement?
A. No sir.
Q. To the best of your ability, can you state that that was a free and voluntary statement that he gave you?
A. Yes sir.
Q. Now, Detective, when you interview someone, what sort of technique do you use during the interview?
A. I try to -- as Natalia said yesterday, almost a rapport-building phase. I try to learn a little bit about the person I'm going to interview beforehand.

In this case, after speaking with Officer Lent, I realized that Mr. Legg had an interest in education, and I had actually spoken with Mr. Legg on the phone briefly before the arrest, and he indicated to me that he was, as he said, treating Minor so I recognized that he thought he was in that position, and I pursued that particular avenue of questioning when interviewing him.

Q. Okay. Do you during interviews sometimes agree with things you otherwise normally wouldn't agree with?
A. Absolutely.
Q. Do you try to befriend people?
A. Yes sir.
Q. Let me show you ---

MR. SPRATLIN: Let the record reflect I'm showing opposing counsel what has been marked for identification

purposes as State's Exhibit Number 3.

THE COURT: What is it?

MR. SPRATLIN: It's a C.D. of his statement, Your Honor.

THE COURT: Has that statement been furnished counsel for the defense?

MR. SPRATLIN: Yes sir, Your Honor, it has been.

THE COURT: Do you agree to that, Mr. Diggs, you've had possession of it and an opportunity to examine it?

MR. DIGGS: Yes sir.

THE COURT: Thank you.

MR. SPRATLIN: May I approach the witness?

THE COURT: You may.

MR. SPRATLIN: Please let the record reflect I'm showing the witness what has been marked State's Exhibit Number 3 for I.D.

Q. Detective, do you recognize the item I just handed you?

A. Yes sir, I do.

Q. What is it?

A. It appears to be a C.D. containing Mr. Legg's statement I took.

Q. All right. In the statement that you took from Mr. Legg, were there certain parts of that statement that for whatever reason are inadmissible in court?

A. That's what I understand, yes, sir.
Q. And have those parts, to the best of your knowledge, been removed from that statement?
A. Yes sir.
Q. Do the removal of those parts in any way change the substance of the Defendant's statement?
A. No sir.
Q. Do they change the questions you asked?
A. No sir, not at all.
Q. Do they change the responses the Defendant gave?
A. Not a bit.
THE COURT: You've had opportunity to review the redacted version, Mr. ---
MR. DIGGS: I'm sorry, Your Honor?
THE COURT: You reviewed the redacted version of it?
MR. DIGGS: Yes sir.
Q. To the best of your ---
THE COURT: And you have no problems with the redaction?
MR. DIGGS: No, not the redaction itself.
THE COURT: I understand.
MR. DIGGS: Of course, you know our position.
Q. To the best of your knowledge, Detective, is that a fair and accurate copy of the statement the Defendant gave you that day?

A. Yes sir.

MR. SPRATLIN: Your Honor, I would tender into evidence State's Exhibit Number 3.

THE COURT: Madam Foreman, ladies and gentlemen, there has been some testimony with reference to an alleged statement made by this Defendant to this witness. This statement is going -- this alleged statement is going to be played for you in just a moment.

There's some conversation relative to redactment, meaning they've taken certain things out of the statement. This was done with consent of the State and the Defendant, and the reason these matters were taken out is that they had no relevancy to any issue in this case, and so you are hearing everything of the statement except those matters which were redacted because they had no bearing on any issue in this case.

Is that a fair statement, Solicitor?

MR. SPRATLIN: Yes sir, Your Honor, it is.

THE COURT: Mr. Diggs?

MR. DIGGS: Yes sir.

THE COURT: Thank you.

MR. SPRATLIN: Your Honor, the statement is so admitted?

THE COURT: Yes sir.

MR. SPRATLIN: Your Honor, permission to ---

THE COURT: Subject -- the statement is admitted subject to his overall objection, yes.

MR. SPRATLIN: Yes sir, Your Honor.

(AUDIO C.D. OF STATEMENT OF RONALD LEGG INTRODUCED INTO EVIDENCE AS STATE'S EXHIBIT NUMBER 3.)

MR. SPRATLIN: May I retrieve the exhibit from the witness?

THE COURT: Sure.

MR. SPRATLIN: And may I publish it to the jury?

THE COURT: You may.

(AUDIO C.D. OF STATEMENT OF RONALD LEGG IS PLAYED IN OPEN COURT IN THE PRESENCE OF THE JURY.)

THE COURT: Is there any further direct-examination?

MR. SPRATLIN: Just one additional question, Your Honor.

Q. Detective Frebowitz, again, who is the other person on the interview besides you?

A. Mr. Legg.

Q. And could you point him out again for the jury one more time?

A. The Defendant.

Q. Thank you.

MR. SPRATLIN: No further questions, Your Honor.

THE COURT: Mr. Diggs.

MR. DIGGS: Your Honor, could we take a brief ---

THE COURT: I want to take the -- let's take it right after your examination.

MR. DIGGS: All right.

CROSS-EXAMINATION BY MR. DIGGS:

Q. Detective Frebowitz, were there any other people there present at that time?

A. No sir, there were not.

Q. Okay. Was Detective Lent there?

A. No sir.

Q. Okay. Let me ask you, what was the date of that interview?

A. I believe it was the 18th.

Q. Okay. Now, have you ever talked with -- talked about this case with Ms. Demaio?

A. Natalia? Yes sir, absolutely.

Q. Yes, the lady that testified yesterday.

A. Yes sir.

Q. Okay. And when -- do you recall the date of her interview with Minor

A. I have it in my notes that I can refresh my memory.

Q. Could you look at that and tell us?

A. Yes sir. Her interview was June 20th, 2011.

Q. Okay. And yours was ---

A. The 18th.

Q. Two days prior?

A. Yes sir.
Q. Were you in the courtroom when she testified?
A. Yes sir, I was.
MR. DIGGS: And I just want to make sure, Your Honor, we're not pitting one against the other, and I am just going to inquire about subject matter.
Q. There was quite a bit of time in this interview with my client about Minor being frigid, remember that?
A. Okay.
Q. And you asked her not to ask my client about what he meant by that because in your opinion that was something you associate with older women, married women, and that kind of thing?
A. Yes sir.
Q. You remember that?
A. I do.
Q. And do you remember Ms. Demaio talking about the protocol or interviewing children?
A. Yes sir.
Q. Okay. And do you remember her saying there was a certain aspect of the normal protocol that she skipped over?
A. Yes sir.
Q. Do you recall what that was that she skipped over?
A. No sir.
Q. Wasn't it the touching?

A. I'm not an expert in that RATAC Protocol, so I really don't know.
Q. But you were here when she testified, weren't you?
A. Yes sir.
Q. And you heard her talk about the RATAC Protocol?
A. Yes sir.
Q. Rapport, anatomy, touching, and then abuse ---
A. Yes sir.
Q. --- and closure?
Now, did you discuss this case with Ms. Demaio before she did the video interview?
A. No sir.
Q. Okay. And you're sure about that?
A. I'm -- if I discussed it, it was to provide her a copy of the police report, a copy of the referral, which has a preliminary indication of what the allegations of abuse are, and that's what we knew at the time.
Q. Was there an opportunity to your knowledge for her to learn about this issue of being frigid?
THE COURT: He would have no knowledge of how she learned about it.
MR. DIGGS: Well, I asked him if he had an opportunity and he ---
THE COURT: Well, you were asking him what she learned about something ---

MR. DIGGS: Well, he was the lead detective and that's why ---

THE COURT: Sir?

MR. DIGGS: He was the lead detective in the case.

THE COURT: I understand that, but he can't possibly answer what she may have learned from some unknown source.

MR. DIGGS: No. I'm just asking if he's aware of any possibility where she might have learned any detailed information from his interview ---

THE COURT: If he can answer the question, I'll let him do so.

A. Yes sir. I never explained that part of his interview to her.

Q. Okay.

A. If she learned it, it wasn't from I.

Q. All right. And was there anyone else that would have had access to the interview with my client that also had access to the people at the Childrens' Recovery Center?

A. Not prior to the interview at the Childrens' Recovery Center.

Q. All right. Let me ask you something. You signed a statement about this case, did you not?

A. A statement?

Q. Yes sir.

A. Yes sir.

Q. And it was an affidavit that you put together, correct? Remember?
A. (No response.)
Q. You had -- I'm not going any further than that and you can just say yes or no.
A. Yes sir.
Q. All right. Now, in that affidavit, did you make the allegation that my client had digitally penetrated the vagina of this child?
A. Yes sir.
Q. All right. Now, where did you get that information?
A. From talking to the victim.
Q. That being Minor
A. Yes sir.
Q. All right. Now, you heard -- you watched the video?
A. Yes sir.
Q. And she -- no doubt about it, she denied that ever happened, didn't she?
A. No. At the time ---
Q. Did the video ---
THE COURT: Let him answer.
A. No sir. I believe she said in the video it's exactly what happened.
Q. She says in the video that there was penetration?
A. She didn't use that exact word, said he touched her

vagina. The depth of penetration is something that a ten year old I would not expect at the time to understand.

Q. Well, aren't you putting words in her mouth?

A. I'm refer- -- I'm recalling what she expressed to me at the time.

Q. Okay. And she said he penetrated my vagina or in so many words that would be expressed by a ten year old?

A. Yes sir.

Q. All right. But then we heard her testimony yesterday or via the video and everybody had a chance to see that, including yourself, correct?

A. Yes sir.

Q. And you still stand by the statement you made in your affidavit?

A. Yes sir.

Q. All right. Now, ---

MR. DIGGS: I have a matter that I need to discuss. Maybe I can continue on and we can do it ---

THE COURT: Let's conclude the cross-examination ---

MR. DIGGS: All right.

THE COURT: --- and then I'll let the jurors take their break.

MR. DIGGS: All right.

Q. Now, let me go to the time that you were in -- and I believe -- did you not indicate you had a chance to go

inside of my client's home?
A. I haven't indicated that yet, but that's true.
Q. Okay. All right. I'm sorry. I want to ask you did you have an opportunity to go in the home?
A. Yes sir, I did.
Q. And can you tell us generally what you observed there?
A. Yes sir. The room was set up similar to a classroom or -- my first indication was it was some sort of treatment center, almost a doctor's office or a physician's office.
Q. All right. And I want to ask you the same question I asked Detective Lent. Did -- were there writings on all of this stuff?
A. There were multiple writings on the walls, yes sir.
Q. And did you have a chance to look at any of the writings?
A. Yes sir, I did.
Q. And did they appear to be obscene or pornographic, or inappropriate on the face of those writings?
A. On the surface, I found nothing to support that.
Q. All right. And wouldn't they pretty much corroborate the interest that was shown by my client in his interview with you on psychology, child psychology, ADD and those kinds of things, ---
A. Yes sir.

Q. --- inter-personal relationships and that kind of thing?
A. Yes sir.
Q. And would it be reasonable to draw the inference from what you saw in his home that he was using that -- his writings to maybe teach children or other people?
A. I would use the term manipulate children or other people, not necessarily teach.
Q. That's one -- that's one inference, but other reasonable inferences, he might have had a legitimate desire to help people?
A. If he was a skilled psychologist, I would say yes.
Q. Yes.
A. Him, not so much.
Q. But you don't have to be a skilled psychologist with a Ph.D. or a lesser degree in order to have an interest in the subject matter?
A. That's true.
Q. And to exercise or to spend time in that subject matter area just in the way of using it as a hobby, wouldn't that be reasonable based on what you saw?
A. Yes sir.
Q. What discussion you had with my client, could you draw a conclusion or does that raise an inference that he had a hobby of spending time reading about child

psychology ---

THE COURT: I don't believe he's entitled to make an assertion as to what this Defendant's hobby is.

Do you have an objection to this testimony or not?

MR. SPRATLIN: Your Honor, I think Detective Frebowitz ---

THE COURT: You are asking him to relate as to what kind of hobby he had. He's not qualified to do that.

Q. Would it be consistent, what you saw, the writings, journals, spiral notebooks, the writing, the note cards, laminated writings on the wall, and a chalk board, based on your understanding of that setting, would it be reasonable to say the person who lives here has a hobby of studying and spending time with ---

THE COURT: He's not qualified to make that assertion, Mr. Diggs.

MR. DIGGS: Your Honor, if I could ---

THE COURT: You can say what he saw, but you let the jury raise such inference as they think from that testimony, ---

MR. DIGGS: All right.

THE COURT: --- but he's not qualified to do it. He's certainly not a psychiatrist.

Q. He was not doing anything ---

THE COURT: That issue would be for the jury to

determine. You can argue it, but it's not for him to determine.

MR. DIGGS: All right.

Q. But you're pretty safe in assuming it's not done for pornographic reasons?

MR. SPRATLIN: Your Honor, I am going to object to that on the grounds of speculation. There's no way for ---

THE COURT: I sustain that.

You are asking him to speculate totally on some basis that's not in the record, Mr. Diggs.

MR. DIGGS: All right. I think he's already indicated that it didn't appear to be used for any pornographic purposes.

MR. SPRATLIN: Your Honor, again ---

THE COURT: No sir. He can't make that observation one way or the other. He's not trained in that field and I -- I will let the jury determine what he's indicated or not, not me or you.

MR. DIGGS: All right.

Q. You didn't see any children -- pictures of children in any abusive or pornographic setting, did you?

A. No sir.

THE COURT: That's fine.

Q. And there were a lot of writings in the home, correct?

A. Yes sir.
Q. And you took some of the writings?
A. Yes sir, I did.
Q. All right. Did you take all of them?
A. No sir.
Q. And why did you take some of the writings?
A. The writings were voluminous. I would have needed a U-Haul truck to collect. He was very prolific in his writings. I took what I believed to be a random sampling of his thought process.
Q. All right. Okay. And so it was never your intention to remove everything?
A. No sir.
Q. Do you know where any of those writings that were left in the home, do you know their whereabouts now?
A. No sir, I do not.
Q. All right. Are you aware of any additional visits to the home of my client subsequent to the time you were there?
A. Yes sir.
Q. And tell me what you know about that.
A. Yes sir. I actually received a telephone call from the road officers at the time indicating that an individual by the name of Donald Legg, having identification of Donald Legg, with the date of birth that was provided initially by the Defendant, was at the home requesting to retrieve his

information.
Q. Did you find out -- was there a relationship between that gentleman and my client?
A. I believe it was his brother.
Q. Okay. And go ahead and tell us what happened.
A. Yes sir. The question from the road was does that individual have the right to that property. I actually contacted the on-call Solicitor for a legal opinion and was informed that one of the problems with stealing somebody's identity is when that person actually shows up to claim the property, he's entitled to it.
Q. Now, did the brother -- was the brother given the property that was located in the home?
A. The law enforcement did not -- was instructed not to stop him from having access to the property that was in his name presumably to be his.
Q. And do you know what happened ---
A. No sir, I do not.
Q. --- at that point?
A. No sir.
Q. All right. Do you know anything further beyond that incident?
A. No sir, I do not.
MR. DIGGS: Beg the Court's indulgence for just a second.

THE COURT: We're going to take the morning break as soon as this cross-examination and direct is over.

Q. Do you know -- just one more follow-up. Do you know who it was, if anyone from the police department, that went out to the property that day when the brother showed up?

A. I don't recall. I apologize. I just don't recall. I was at home. I received a phone call on my day off. I didn't make a notation.

Q. Do you have any notes anywhere that might indicate or have that information?

A. No sir. I just testified that I was home on my day off. I didn't note it.

Q. And you didn't make any notations after that?

A. No sir, I did not.

Q. Okay. Let me ask you, before I sit down, the substance of the conversations, if any that you had, with Ms. Demaio, going back to that protocol. Approximately, if you can tell me, how many conversations did you have with her about this case?

A. This case? I don't recall exactly, but historically the protocol is after the interview. I'll get a preliminary report either by telephone, or e-mail, or I'll stop by the recovery center just to get a preliminary protocol just to ensure that the child, in fact, did disclose what the allegations are. Then there will be a written report that

will be transmitted, which I believe you have a copy of. Those would be the times.

Q. And that information, not making any judgment on truth, validity, credibility, or anything? You just talked about prima facie case ---

A. That -- exactly, sir.

Q. And it goes to Court if you've got some evidence of this element?

A. Exactly, and I can point to a case I had where just the opposite happened.

Q. Okay.

A. The child did not disclose and we did not effect an arrest.

Q. Now, -- okay.

MR. DIGGS: Your Honor, I think that's all I have at this time for Detective Frebowitz.

THE COURT: All right.

Was there any further direct, Mr. ---

MR. SPRATLIN: Yes sir, Your Honor. I have a couple of questions.

THE COURT: Well, let's limit it to a couple. The jury has been out here very patiently now.

MR. SPRATLIN: I understand, Your Honor.

REDIRECT-EXAMINATION BY MR. SPRATLIN:

Q. I just want to clear up a couple of things on cross-

examination, Detective. How many forensic interviews would you say you've watched?

A. A couple dozen a year, five years, you know. I think the Judge said I'm sure the jury can do the math.

Q. Now, Mr. Diggs talked about touching. In any of those interviews, how many of those interviews have you actually seen the forensic interviewer touch the child?

THE COURT: No, I'm not going into other interviews. It has nothing to do with this case. He objects, and I sustain it.

MR. SPRATLIN: Okay. Yes, Your Honor.

Q. Now, Detective, Mr. Diggs asked you several questions about conversations that you had with Ms. Demaio prior to this interview occurring?

A. Yes sir.

Q. And you stated that you provided her a short referral form?

A. That's correct, sir.

Q. And the initial police report?

A. That's correct, sir.

Q. The initial police report, would that have been Detective -- I mean Officer Lent's report?

A. Exactly, sir.

Q. And from your knowledge being in the courtroom today, did Officer Lent have a chance to talk with the Defendant?

A. The Defendant?
Q. Yes.
A. Yes sir.
Q. Prior to writing the report?
A. Yes sir.
Q. Now, also Mr. Diggs asked you some questions about digital penetration. Again, what in the statement of the victim were you basing that on in your affidavit?
A. When I interviewed the victim initially, she stated that the Defendant had touched her between her legs, that it happened under her clothes, and she made a motion, and I remember clearly, she made sort of a grabbing motion. That was consistent with my experience of a digital penetration to the vaginal area.
Q. And you said that when Mr. Diggs asked you questions about taking writings from the Defendant, you took what you referred to as a random sampling?
A. Yes sir.
Q. Why didn't you take all the writings in the home?
A. As I said, it would have required a U-Haul truck to capture his prolific writings. Many of them actually had no value towards sexual abuse. They were written to Rush Limbaugh, many T.V. personalities, the President, the Congress.
Q. And are any of those writings admissible or would

there be any reason for them to come into evidence here today?

A. No sir.

Q. You also -- Mr. Diggs asked you several times about the Defendant's hobby and psychology or something like that ---

THE COURT: Now, I've ruled on that. It's got nothing to do with this case. Let's don't go there.

MR. SPRATLIN: Yes sir, Your Honor.

THE COURT: I wouldn't let him go there, so you ought to not go there.

MR. SPRATLIN: Yes sir. I just want -- Mr. Diggs did go somewhere into the mind manipulation, and I just wanted to address one question with the Detective on that.

THE COURT: You may do so.

Q. Was there books on mind manipulation there?

A. There were.

Q. And the property in the house, who was it released to again?

A. Donald Legg.

Q. And why was that?

A. He was the person we believed owned the property. The cars were registered to Donald Legg, and our legal advice was to release the property to the owner.

Q. And what name did that Defendant give you?

A. Initially Donald Legg.

Q. And what's his real name?

A. Ronald Lee Legg.

MR. SPRATLIN: Thank you, Detective Frebowitz. That's all the questions I have.

THE COURT: All right, sir.

You may now come down. Thank you.

DETECTIVE FREBOWITZ: Thank you.

THE COURT: Does the State have any other witnesses?

MR. SPRATLIN: Your Honor, at this time the State would rest.

THE COURT: All right. The State has concluded its testimony.

I'll let you go to the jury room and rest a few minutes. We'll be calling you back in about fifteen minutes. Thank you.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: Mr. Diggs, during your cross-examination you stated you had one issue that you wanted to call to my attention.

MR. DIGGS: Your Honor, the problem we have with presenting the defense ---

THE COURT: With what?

MR. DIGGS: With presenting the defense, is that all of

MR. DIGGS: And also, Your Honor, we'd move for a directed verdict on the grounds of lack of evidence from the prosecution that establishes ---

THE COURT: Mr. Diggs, let's cut to the chase here. The direct evidence, if believed by the jury, of the victim itself, including the fact that he had the bottoms of her swimsuit.

MR. DIGGS: What I'm saying the evidence is deficient on, showing that it was done with the intent to arouse, appeal to, or gratify the lust, passions, or sexual desires of the Defendant or the child.

THE COURT: Well, I think the jury can make that determination.

MR. DIGGS: Well, nobody has even claimed that in this case.

THE COURT: Well, I think by inference there's plenty of testimony as to that effect.

MR. DIGGS: Okay. Well, that's our motion to ---

THE COURT: I understand. You can argue that, clearly.

MR. DIGGS: --- a directed verdict.

THE COURT: There's absolutely an inference that it occurred, not only from this witness's testimony, the victim's testimony, and the expert's testimony, all of which is for the jury to determine. That motion is denied.

MR. DIGGS: Your Honor, I believe that's all the

you rested. You understand that?

MR. DIGGS: Yes sir.

THE COURT: All right.

Bring the jury in.

(THE FOLLOWING TAKES PLACE AFTER A BREAK AND WITHIN THE PRESENCE OF THE JURY.)

THE COURT: Madam Foreman and ladies and gentlemen, just prior to the recess, the State had concluded its presentation, and we now move to the Defense.

Mr. Diggs.

MR. DIGGS: Your Honor, the Defense is going to rest.

THE COURT: All right. That is certainly your right to do so.

MR. DIGGS: Yes sir.

THE COURT: Ladies and gentlemen, we have now heard all of the testimony in the trial of this case, and we will be charging you the law, and we will have summations after lunch.

Now, you noticed a moment ago that the Defendant rested. This Defendant, and all defendants, come into Court under a presumption of innocence, and that presumption remains with him throughout the trial until and unless you, the jury, unanimously has found him guilty beyond a reasonable doubt.

The Defendant has absolutely no burden whatsoever. The

burden is upon the State of South Carolina to prove him guilty beyond a reasonable doubt.

Now, this Defendant, as is his constitutional right, as is yours and mine, has elected not to testify. That is his absolute right, and the fact that he has exercised the right not to testify raises absolutely no adverse inference against him on that issue.

Madam Foreman, the fact that this Defendant elected not to testify must not even be used in your jury room during deliberations. It is just simply his, mine, and yours, absolute right not to testify, and the State of South Carolina -- I don't have to prove anything. You've got to prove me guilty beyond a reasonable doubt.

Now, generally we charge the jury after summations. Jurors in the past years have said to me, however, Judge, I wish you would have told me what the law was with regard to this case. I believe I could have followed counsels' arguments better had I been able to put their statements to the law of the case.

And for the last fifteen years, that's made sense to me, so as is my custom, I'm going to give you the law now. We will then break for lunch and come back at 2:30, and we will have final summation from counsel, and you will have the case this afternoon for your deliberation.

Now, during last evening and again this morning, I and

my associate, Mr. McLeod, have prepared the appropriate legal issues for your consideration. I'm going to ask Mr. McLeod to read my statements to you. Please accept his rendition as coming from me as the law on the issues in this case.

Mr. McLeod.

MR. McLEOD: The indictment charges the Defendant with committing a lewd act on a minor child. I remind you that the fact that the Defendant was arrested, charged, and indicted in this case is not evidence in this case and cannot be considered by you as evidence of guilt in this case, nor does it create any presumption or inference of guilt.

This document is simply the formal written instrument which contains the charge made against the Defendant. It is the formal document by which this case is brought into this Court.

The Defendant has pled not guilty to this indictment, and that plea puts the burden on the State to prove the Defendant guilty. A person charged with committing a criminal offense in South Carolina is never required to prove himself innocent.

I charge you that it is an important rule of the law that the Defendant in a criminal trial, no matter what the seriousness of the charge may be, will always be presumed to

be innocent of the crime for which the indictment was issued unless guilt has been proven by evidence satisfying you of that guilt beyond a reasonable doubt.

This presumption of innocence does not end when you begin your deliberations, but it accompanies the Defendant throughout the trial until you reach a verdict of guilt based on evidence satisfying you of that guilt beyond a reasonable doubt.

The presumption of innocence is like a robe of righteousness placed about the shoulders of the Defendant, which remains with the Defendant until it has been stripped from the Defendant by evidence satisfying you of the Defendant's guilt beyond a reasonable doubt.

The presumption of innocence is not mere legal theory. It is not just a legal phrase. It is a substantial right to which every Defendant is entitled unless you, the jury, are satisfied from evidence of the Defendant's guilt beyond a reasonable doubt.

The State has the burden of proving the Defendant guilty beyond a reasonable doubt. Some of you may have served as jurors in civil cases where you are told it is only necessary to prove that a fact is more likely true than not true, such as by the greater weight or preponderance of the evidence.

In criminal cases, the State's proof must be more

powerful than that. It must be beyond a reasonable doubt. Proof beyond a reasonable doubt is proof that leaves you firmly convinced of the Defendant's guilt. There are very few things in this world that we know with absolute certainty, and in criminal cases, the law does not require proof that overcomes every possible doubt.

If based on your consideration of the evidence you are firmly convinced that the Defendant is guilty of the crime charged, you must find the Defendant guilty. If, on the other hand, you think there is a real possibility that the Defendant is not guilty, you must give the Defendant the benefit of the doubt and find him not guilty.

I remind you that during this trial you and I have certain duties to perform. As the trial judge, it is my responsibility to preside over the trial of this case, and I also have the duty to rule on the admissibility of the evidence offered during this trial.

You are to consider only the competent evidence before you. If there was any testimony ordered stricken from the record in this case during this trial, you must disregard that testimony. You are to consider only the testimony which has been presented from this witness stand, any exhibits which have been made a part of the record in this case, and any stipulations of counsel.

I have the additional duty to charge you the law

applicable to this case. As the presiding judge, I am the sole judge of the law of this case, and it is your duty as jurors to accept and apply the law as I now state it to you.

If you already have any idea as to what the law is or what the law ought to be and it does not agree with what I now tell you the law is, you must abandon this idea because you are sworn to accept the law and apply the law exactly as I state it to you.

In every case tried in this court before a jury, the jury becomes the sole and exclusive judge of the facts in that case. A trial judge cannot intimate, state, comment on or make any statement to a trial jury about the facts in a case.

Since you, the jury, are the sole judge of the facts in this case, you are not to infer from what I've said during the progress of this trial in ruling upon the admissibility of evidence, or otherwise, or anything that I say now during the course of this instruction to you that I have any opinion about the facts in this case. The law does not allow me to have an opinion about the facts in this case. This is a matter solely for you, the jury, to determine.

As jurors, it is your duty to determine the effect, value, weight, and truth of the evidence presented during this trial. Necessarily, you must determine the credibility of witnesses who have testified in this case. Credibility

simply means believability. It becomes your duty as jurors to analyze and to evaluate the evidence and determine which evidence convinces you of its truth.

In determining the believability of witnesses who have testified in this case, you may believe one witness over several witnesses or several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness.

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

A person who has a past criminal record is competent to testify during a trial. A past record does not affect the ability of that witness to testify. The past record may only be considered by you, if at all, in determining the witness's believability. Remember, you are the sole judges of the facts in the case and of the believability of any and all of the witnesses.

The rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for witnesses we call expert

the trial of this case.

On the back of this indictment you will see the word verdict. Your verdict will either be not guilty or guilty. It must be the unanimous verdict of all twelve. It must -- cannot be a verdict of the majority, obviously not one of the minority. It must be unanimous, so when your deliberations are concluded, Madam Foreman, and you and your jury have reached a unanimous verdict, please list that verdict- -- list that decision under the word verdict, sign your name, let the bailiff know, and we'll accept your verdict at that time.

Now, we are going to break for lunch. Please be back at 2:30. At two o'clock, I have some matters not involving this case, but I hope to get started right at 2:30 if I can.

Remember my admonitions now. Don't discuss this case even among yourselves. Be back at 2:30. We'll have final summation, and I'll be giving you the case for your deliberation. Thank you so much.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. From the State, any exceptions or additions to the charge?

MR. SPRATLIN: No, Your Honor.

THE COURT: Mr. Diggs?

MR. DIGGS: No, Your Honor.

THE COURT: The charge will stand as given.

Now, gentlemen, you will note that I did not charge circumstantial evidence. I just didn't see that in the case. Do you agree with that?

MR. SPRATLIN: Yes sir, Your Honor, that's fine. I think ---

MR. DIGGS: Yes sir.

THE COURT: All right. Gentlemen, be back at 2:30. And, of course, under the rules, the Defense has the last argument, Counsel.

MR. SPRATLIN: Yes sir.

THE COURT: All right. Let me say this to you. This case thus far has been very professionally presented by the State and the Defendant.

MR. DIGGS: Thank you, Your Honor.

MR. SPRATLIN: Thank you, Your Honor.

THE COURT: It has been my privilege to have presided.

All right. Be back at 2:30.

(THE FOLLOWING TAKES PLACE AFTER A LUNCH RECESS AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: Bring the jury.

(THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: Good afternoon, Madam Foreman, ladies and gentlemen.

As you are well aware, we have completed now all of the testimony. I have given you my instructions with regards to the law. You fully understand that whatever your verdict is, either not guilty or guilty, must be the unanimous verdict of all twelve. And at this time we'll have the opening statement by the Solicitor.

MR. SPRATLIN: Yes sir, Your Honor. May it please the Court.

THE COURT: Yes sir.

MR. SPRATLIN: Ladies and gentlemen, the first thing I want to do is tell y'all thank you. Y'all sat here for two days now, and today, and listened to all the evidence that was presented and paid attention as best you can, and that's all the State can ask of you, so I believe that once you've looked at all the evidence, once you've seen all the evidence presented, that evidence will prove the Defendant guilty beyond a reasonable doubt.

To that end, let me talk to you for a second about my job as a prosecutor. My job is to bring forth all the relevant and admissible evidence and present it to you, and I believe as you've seen today, we've tried our best to do that. We brought forth sufficient evidence to convince you beyond a reasonable doubt, that is as the Judge told you leaves you firmly convinced of the Defendant's guilt.

Now, what you have to be firmly convinced that the

Defendant did, as the Judge told you, the Defendant is charged with one charge, lewd act upon a minor, and it has been clearly demonstrated that that man is older than fourteen, so you have to be older than fourteen in order to commit any lewd act. Clearly he is, and it has to be done to a victim who is less than sixteen.

And as presented today that the time that this touching occurred, Minor was between the ages of nine and eleven, well under sixteen. And it has to be with a part of the body of the child, and let me just go ahead and simplify all of this for you.

A grown man touching a ten year old girl's vagina qualifies as a lewd act, has and always will. It is. It's lewd. It's improper. It's what when we were children they call a bad touch. So if you find in your head when you're looking for the truth in this case that that man touched that girl's vagina, that's a lewd act. Now, as far as -- the Judge also told you that he has to do so intentionally.

When I was in high school, I was a big science fiction fan. If you'd have asked me in high school how in the world would I prove in court someone's intent twenty years down the road, I would have said we can scan his brain and say, well, there's his intent, but that's not how we do it anymore. That's not how we do it at all. That's not how we can do it. Rather, what you have to do is you have to look

at the circumstances surrounding it.

Now, intent is if I'm walking and I accidentally brush a child, that's not intent. I didn't do that intentionally, didn't touch her or anything, but as that man did, I repeatedly and frequently stick my hands down a ten year old girl's pants, that's intent, no doubt about it. His hands did what his mind told him to do, and that was to touch that little girl.

And how do you know that he touched that little girl? As I said, we brought forth all the relevant and admissible evidence, so let's talk about that for a minute. I'm kind of going to go in order. Actually I'm going to take something out of order real quick because I believe that one of the most important parts or one of the most compelling parts of my case in chief here today, or yesterday, excuse me, was the testimony of J.M. That was the girl who testified last yesterday afternoon.

The defense in this case, as best I can tell, has always been that Minor is making this up and it never happened. What's the best evidence we have to refute that? I submit to you it's J.M. because what did J.M. say? J.M. said she was a neighbor of Minor she was a neighbor of the Defendant, and she had a chance to go over to his house with Minor And what happened when she was over to his house with Minor At one point Minor went to

use the bathroom, and what was J.M. job when Minor went to use the bathroom? Stand by the door. She didn't know why she had to stand by the door, but her job was to stand by the door.

I submit to you, ladies and gentlemen, Minor had that girl stand by the door so that man couldn't come in there. She may not have known that was her job to keep him out, but that's why she was standing by the door, and that didn't happen after he yelled at her about some American Idol or something like that. That happened months before. That happened during that year when he was touching her. That's when that happened.

Now, you heard from Minor mother. Is she going to win mother of the year? No. Did she basically let a stranger babysit her children? Yes. Did she take advantage of a free babysitter next door while she was in school? Yes. But none of that changes what he did. None of that changes it. The fact that she wasn't the greatest mother doesn't change that he touched her daughter.

Let's talk about Minor testimony. I want to kind of go in order of witnesses here, so let's talk about Minor Now, you heard from Minor today, age thirteen, and you heard from Minor back then. Three years is a long time. Three years to you or me maybe not, but three years to her is a quarter of her life. You forget a lot in a quarter of

your life. You don't remember the details.

Now, Mr. Diggs asked her questions about have you seen the video before, was she testifying on what she saw in the video or what she remembered. I submit to you, ladies and gentlemen, if she was testifying on what she saw in the video, she probably would have gotten more of the details consistent, but the fact that her testimony wasn't exactly the same, the fact that her testimony here today was not the same as it was three years ago is her credibility.

If she sat up there and told you the exact same words the exact same way, then you should be suspicious of her not telling the truth. Then you should be suspicious of her being coached up. Then you should be suspicious of what she says, but the fact that her words, the fact that the details weren't all filled in, that shows you she was doing her best to tell you the truth on that, and, ladies and gentlemen, the truth of it was is that man had been touching her for a year when she was ten years old.

Now, let me go ahead and tell y'all that Mr. Diggs talked about with Ms. Demaio, the forensic interviewer who testified, the young lady, I think he said when we were talking about the list and her putting words in the mouth of Minor or something like that. If you think that what Minor talked about on that video was put into her mouth by Ms. Demaio, go back there and pour yourself a cup of coffee,

use the restroom, and come back and say not guilty.

Because, ladies and gentlemen, let me tell you, if you twelve, and I'm sorry alternates, you, too, in case you have to sit in there, but if you twelve main jurors go back there and are trying to figure out what the truth in this case is and think that Ms. Demaio planted all these ideas in Minor head, well, then, there's nothing else to do, but that's not what happened. You saw the video for yourself. You heard the questions that were asked. You heard Minor response.

Mr. Diggs also made a big point out of the fact that Minor was -- didn't stop going over there. Minor was ten, ten years old. You can't -- no matter what the Defendant may say, you can't put the actions an adult would take on that ten year old girl.

Ten year old girls don't think the same way as adults. Every time I go in the back room I get hurt, I'm going to stop going in the back room, but a ten year old girl, she didn't have a choice.

Mom was going to school. You can't stay alone. The only person she gets to go to is him. And was every single moment with him unbearable? No. She told you that. She told you they did fun stuff sometimes. He's not all a monster, but he's still a monster.

He took them swimming. I'm sure she enjoyed that.

You've heard in his own statement how he bought her a bungee ride or something along that line at some point in time, bought her stuff. I'm sure there was a part of him that was a lot of fun. There was also a part of him that was a whole lot of not fun, and we're going to get to more of how we know that in a second.

Just because Minor kept going over there, again to the place -- to the fact that her mother wouldn't win a mother of the year award, the fact that Minor kept going over there doesn't change what happened. It doesn't mean it didn't happen.

You heard from Dr. Carol Rahter, an expert, eighteen years working at the Childrens' Recovery Center. She told you about how the fact that Minor wasn't crying wasn't necessarily indicative that there wasn't abuse.

Ladies and gentlemen, a ten year old girl would not even be able to understand what's been happening to her. She may know it's bad. She may know it's wrong. She may know it's yucky in her words, but to break down and cry, and sit there and do that, that was probably just a little bit -- that maybe a ten year old is capable of.

Ladies and gentlemen, I'll just go ahead and address this issue on the part of Dr. Rahter. There were no injuries to Minor You don't expect to find injuries in this kind of case. The kind of case and the kind of

touching that man was doing is not going to leave trauma. It's not going to leave injuries, but keep in mind here, we're not talking a penetration case.

Now, was he rubbing around her pants and inside her vagina, and did you see on the video where Detective Frebowitz was testifying about when Mr. Diggs was asking about penetration? Yes, you did, but we're not -- that's not what he's charged with. He's not charged with penetrating Minor He's charged with touching her, and ladies and gentlemen, touching doesn't leave injuries. That's not an injury. That's not an injury.

I told you at the beginning of my -- the first thing you heard from me, opening statement, I told you that this kind of crime didn't happen in front of her mother. It didn't happen in front of Detective Frebowitz. It didn't happen in front of Officer Lent. This kind of crime happens in front of people who can't tell.

This kind of crime happens in front of people like Shannon, who is mildly mentally retarded and scared to tell. This kind of crime happens in front of Minor a ten year old girl, scared to tell. This kind of crime happens in front of Bob, who what we know about Bob is he's mentally retarded as well. And from Minor interview, we know that Defendant used to hit him. I submit to you he's probably scared, too.

That kind of crime doesn't happen in front of people who can do something about it. It happens in front of people who won't do anything, who can't do anything. A lot of adults in this case has let Minor down.

Shannon, it is not her fault, but she let her down. Bob, maybe it's not his fault, but he let her down. Her mom, just sending her over there, she probably let her down, too. Just today, though, comes from Minor who asks y'all to return a just verdict.

Let me talk to you a bit about the Defendant's statement because besides the video and besides Minor testimony, that was the main part of the Defendant's -- I mean the -- excuse me -- the State's case in this matter.

I was writing this down, but I want to address this with you real briefly, and I'm going to be brief, because I know y'all have been here a while. Y'all have seen all the evidence. You have heard all this. This is just me kind of reiterating what you saw and what you've heard.

Let's first talk about the Defendant's name because I want to make sure there's no confusion on that. He's Ronald Lee Legg, date of birth , not Donald Legg, date of birth . Why is he giving a fake name? Why is he telling everyone that his name is Don? I submit to you, ladies and gentlemen, it's exactly what Detective Frebowitz testified about, because the original warrant for this

arrest was for Don, not Ronald Lee Legg, Don. He figured if they told, what are they going to tell, not Ron. A fake name, admittedly a fake name.

Ladies and gentlemen, just going kind of chronologically through his statement with you for a minute, he talked a lot. It's confusing and it's rambling. I get that, and so there's certain things that I want to point out to you because when it comes right down to it, the Defendant talked a lot about manipulation and who is a manipulator.

Somebody is a manipulator in this case, but it's not little Minor It's not ten year old Minor It's that man, and in that entire statement as you're listening to it, he was trying to manipulate Detective Frebowitz. And, now, let me tell you, Detective Frebowitz played along sometime, but luckily Detective Frebowitz is not a ten year old girl, so he was not as easily manipulated as Minor was.

And thanks to that, we were able to get a lot of information from the Defendant, a whole lot more. First off, he admitted that he threatened them. He used that very word, I threatened them. They did something and I threatened them. He called Minor an opportunity, now he says for a case study, but, ladies and gentleman, I don't care what your hobby is.

I don't care if you have an interest in psychology. I don't care if you get Psychology Today at the house. You

don't go around treating children unless you're a doctor. I want to talk about that, because he diagnosed Minor with ADD, told her mama she has ADD. Mama says, well, we took her to a doctor. The doctor says she doesn't have ADD. You heard that on the statement. Oh, yes, she does. Why is it so important for her to have ADD? Because then he still gets to treat her. She's still an opportunity for him. You know what the opportunity was.

Men who touch little children, they don't go after the child who has a stable home. They don't go after the child whose mother is there all the time, whose father is there. No. They go after children just like Minor who has a mother who goes to school and puts them off on the neighbor.

MR. DIGGS: Your Honor, it's outside the record, the evidence.

MR. SPRATLIN: Your Honor, I think I am within the evi-- within the evidence in this case.

THE COURT: You may continue.

MR. SPRATLIN: Thank you.

Minor has low-key intendency. She's ten. I don't know how much more simply to put that than she's ten. He says she has low-key intendency. He says she's frigid. Let me ask you something, ladies and gentlemen, how does she know -- how does he know she's frigid if he never tried to touch her? How did he know she pulls away when he'd touch

her body? How did he know that she's never let him put her hands -- stick his hands down her pants because, well, she'll pull away, unless he did it, unless he tried, unless he succeeded and she pulled away. That's how you know.

When he talked about Minor ladies and gentlemen, and Detective Frebowitz pointed this out in his statement, it doesn't sound like he's talking about a ten year old girl. It sounds like he's talking about a grown woman. It sounds like he's talking about someone who he has a lot of animosity towards, who he blames for manipulating him.

He didn't see Minor as just an innocent little ten year old girl, okay? He saw Minor as more, more to him, and that's clear from listening to his statement.

One of the things that kind of jumped out to me when that statement was being played, and I didn't actually pick up on it until I was sitting here listening to it in court, but I've heard it before, but I was sitting here listening to it and it kind of jumped out at me when he says I told Dinita, or Shawn, I think he called her, the mother of Minor that she couldn't come over anymore because she was going to be twelve then. Why couldn't she come over if she was twelve? What changes between ten and twelve? Think about that.

A ten year old girl has penis envy. That's pretty self-explanatory on that one, I think, ladies and gentlemen,

a child trying to lure him in.

Ladies and gentlemen, these crimes don't happen in front of a lot of people. These crimes don't happen in front of people I can put on the stand to say yes, I saw him touch her. Yes, I saw that.

Now, we had some of that today, and we had Shannon who could corroborate what happened at that river, that he had her bathing suit bottom. He admits he had a part of her bathing suit, but he even changed it when he was talking to Detective Frebowitz and said, well, I had her top. Her top came off. Shannon was very clear it was her bottom. Minor was very clear it was her bottom.

These crimes don't happen in front of people who can do something about it, but luckily, that's why we're all here, to do something about it. And the evidence today has shown you beyond a reasonable doubt, if you all are firmly convinced that he's guilty, because you sat here and you watched the same evidence that I've seen, and I submit to you there's no other conclusion you can reach.

I thank you for your time, ladies and gentlemen, and I ask you to do the right thing and find the Defendant guilty. Thank you.

THE COURT: Thank you, Solicitor.

Mr. Diggs, you may have your closing statement.

MR. DIGGS: May it please the Court. Thank you, Your

Honor.

I know it's not something that we have to comment on because the Defendant doesn't have to take the stand and testify, but as I was listening to that audio this morning, it occurred to me that there's over an hour's worth of audio from my client talking to the detective about this case, about these children, about what he does in his relationship with them.

It occurred to me that probably to put him up on the stand and say basically the same things would save time, and we could accomplish the same thing. You would get a chance to hear from him, but what I want you to do when you think about that audio, think about a couple of things.

Let's put it in context. One, he's sitting in a jail here in Horry County where the detective has come in. You've got two grown men sitting there talking to one another, and he probably did not anticipate having that private conversation, you know, played in open court. That happens, and it's kind of -- sometimes it's crude the way grown men communicate about such things, but given what else occurs in society, it really was pretty tame.

I want you to put it in that context. Understand that he had just -- my client had just been arrested. He had just been locked up. He had just been accused of this crime. He was nervous. You know, he's going to be worried,

nervous, and he was. You know, you could tell that during the interview, but put that -- what information we got from that audio in context to what these gentlemen said they saw in his home.

Okay, this is not just a pedophile out roaming, trying to gather in children. There were thousands of pages of documents in his home that were -- contained psychological writings about something, you know, a subject matter that interested him, that being psychology, ADD, ADHD, those kinds of things.

The officers, both of the officers, who went in the home said no, we didn't see anything illicit or untoward about those writings. He has a hobby that includes psychology. I would submit to you that he saw these children who needed help. I don't know where the father figure is in the family.

I think when I did the opening statement I even said we had a single mother, and I made that mistake because we didn't hear anything about stepdad, you know, the male in the home, helping take care of these children. We didn't hear anything about that.

I would submit to you that the children are looking elsewhere for a father figure in their lives, and you've got a man who was sixty-one years old at the time who was interested in human behavior and was interested in people.

He quoted the Bible in his talk with the detective. I would submit to you it's not the type of pedophile that's going to be necessary to commit the kinds of acts that are alleged in this case. He doesn't have that history.

He doesn't -- he doesn't have writings in his home about pedophilia, and children, you know, and pornographic material. There's none of that there. It's legitimate psychological writings and studies.

And what else did we hear? Oh, he's written letters to Rush Limbaugh and even the President, and other people. Well, when you take the position that people take sometimes on those programs, you might modify your name and not use your actual real name.

One thing he enjoyed, I think you can gather by just -- you know, the mental picture you get about his home is with all these writings, Detective Lent mentioned it this morning, he had even written letters to the President, and yesterday, someone mentioned Rush Limbaugh, political writings that he would write in political -- you know, when you voice political opinions and things like that. You generate some feedback sometimes. Sometimes it's negative. It's not uncommon that you might want to change slightly your identity in that situation. I'm just suggesting maybe that's what's going on here.

It's certainly not going to change his face, and it's

not going to mean when -- if somebody is going to accuse him of a sex crime, changing his name from Ron to Don is not going to give him any protection from that, so that's a red herring in this case, I would submit.

So when we look at my client's statement about being frigid, okay, now that is relevant to this case because I want to go back -- I want to go back to the young lady that was here from the Childrens' Recovery Center, and she testified that -- I think I asked her how many interviews have you done, and she said three hundred. I don't know if she said that in your presence, but I know I asked her in your presence and she acknowledged, yeah, three hundred.

And I used the R-A-T-A-C method, RATAC method, R-A-T-A-C, and she said that means rapport, we develop a rapport with the children. We discuss anatomy, RA, anatomy, T, touching. That is an issue in this kind of case.

Studying psychology, my client knows that. He uses the term frigid, but you know what, the State's witness can't use that term because she skipped right over that whole interview. She didn't ask any questions at all about this young girl and what kind of touching she perceived to be harmful or good.

That's why we had a miscommunication when we said -- when the testimony came in, oh, Don picked me up and he kissed me on the face, okay? Now, we don't know was that

something that this child thought was a good thing or was it something she thought that was a bad thing? You see, we don't know because she left out that portion of the procedure.

I didn't make up the procedure. That's the procedure she said all of these interviewers in South Carolina are taught to follow. I used my discretion, she said, and in this case, as in other cases I've done, I'm not going to use that touching thing, but as it turns out, it's important.

My client knew it was important. He knew it was important enough to tell the detective, she's frigid. Okay, by that, this lady should have said what happens, you know, what is it that could be perceived about this child as being frigid? She's a child. Don't think of it as an adult, okay? She's not a married woman. She's not a person who doesn't like physical interaction. She's a little child, a frigid child, I'm shy of adults. I don't like to be hugged, you know, by somebody other than my parents, those kinds of things.

It's not a sexual perversion for an adult to say this child was frigid. I would submit to you it's kind of a professional term that would be used in the situation. It should have been investigated in our case, but it wasn't, and that's why I asked her about that, why did you go straight on into the bad stuff?

And when she was on the -- when Ms. Demaio was on the stand testifying, she goes right from the rapport and the anatomy, and the very first question she asks her, has anyone ever touched you on your private parts in a way to make you feel yucky? She skips the whole concept of the physical touch, you know, and what the child accepts and what the child rejects.

Now, if I were a conspiracy theorist, I would say, you know what, that gentleman had that information and he told that lady not to go there because they wanted to use it against him at trial, and so she, you know, said okay, I'll leave that out so that we can get the maximum benefit out of his -- my client's use of the word frigid.

I'm not going to suggest that. I don't think that they would intentionally do something like that, but I would admit I would suggest to you if they're going to convince you beyond a reasonable doubt about my client's guilt, the bases should be covered.

We're not playing here. This is a serious case. I'm not talking sim- -- I'm not simply talking about Minor -- Minor okay? This case is going to have consequences, but we're left to speculate about something like that that are very important because the State is relying on this word frigid for you to draw an inference that he is guilty.

And yet we don't know from their own expert -- their

own witness who has been trained in this area to corroborate that for us. She could have said yay or nay, and she didn't even go into it because of her expression, and I'm sure she's an excellent interviewer, okay? To be as experienced as she is, she's got to be excellent, but she didn't cover something that was very important that you deserve to have before you make a decision that that -- the Court is asking you to make. You don't just guess about it.

Now, one thing that I like, what the Court did this morning was different from the way things have been done in the past. He went ahead and charged you on the law before, now. Usually in the past in my career, it was reversed, but one thing that he -- the Court, His Honor, has already said, is speaking of reasonable doubt, it means there's a real possibility that this man is not guilty, a real possibility.

And I'm suggesting when you have holes in the evidence like this that was maybe not deliberately -- you know, in a mean, bad way omitted. Maybe it was just an oversight or misjudgment at the time, it was a mistake, and it's costing us now because we don't know that aspect of this child's personality that we should know, that the procedure that was developed for this lady to follow wasn't followed. It wasn't followed.

She used her discretion to omit that, and now we have to pay the price for it. And it's the type of thing, it's

the type of omission that a wrongful conviction can be hung on, a real possibility. Where would we be with this frigid thing if it had been confirmed by that witness? It would be a non-issue, but because we don't know, now the State is trying to use it to their advantage and convince you my client is guilty because we have to speculate about it, and we don't have any way to rebut it.

A sixty-one year old gentleman who is not stupid, okay, he's -- the writings -- you heard his conversation. His opinions may differ from yours, but he was coherent, a lot -- he knows a lot about human psychology, child psychology, and I would -- I'm urging you don't go to the next step, oh, well, he's a pedophile, and that's the way he uses psychology to get these kids in, because that is not in his history, okay? That's not who he is as established by the evidence in this case.

All of a sudden, these people move into his neighborhood and he becomes this terrible pedophile? Or is it a situation where he's actually somebody who cares about human beings, was thrust into a situation of being a babysitter he didn't ask for, and he actually tried to help?

And maybe this little child who has a need for a father figure in her life, and listen, I -- heaven knows, if my family was in here under the microscope, there's no telling what you would see, and I don't mean to be judgmental about

this family, but there's just not a -- there doesn't seem to be a father figure in this child's life.

Stepdad -- I don't know where the biological dad is. I don't remember any evidence about where that individual is. We know the stepfather -- I don't think he's even been in the trial. He's been at work. He works all the time. He couldn't babysit the children when mom was in school or working. My client had to babysit.

Where's the father figure in this child's life? And he was thrust into that role, and stupidly, I hate to say that -- what's the phrase, no good deed goes unpunished. He tries to help, and this is what it gets him.

Okay, now, you've got an expert that's called in here, Dr. Rahter. Oh, don't worry about all these inconsistent statements. Don't worry about them not reporting it, but I didn't hear anything from Dr. Rahter saying that she -- it's pretty common for you to repeatedly go back when you're abused, especially when you don't have to.

I would submit to you that it's common sense, I don't care how young this child is, this child is not stupid. She's an intelligent young lady. You heard her on video. She could have made some kind of objection to going over there, to be -- you know, having to be subjected to this stuff.

Let's talk about what she says. If you want to, that

video is available to look at if you don't believe or trust me. You don't have to. You can see it on the video. And she says the first time something happened that he touched you in order that made you feel yucky around him, and Minor said, that was every day when I went with him. That was every day.

And I -- I would submit to you it's especially interesting. I submit to you that's not credible. It's not believable. I submit to you she's making that up. Even if the State's theory of the case is correct, we know it didn't happen every day. We know it didn't happen, so we know that child is not telling the truth in response to that question.

Now, this is a lewd act. The Solicitor made it very clear this is a serious offense under the law, okay, so when it starts -- I'll bet you any person ten years old, ten years old, if you asked them -- if one were to ask them when did this start, when was the first time you were touched on that, I bet you would remember. I'll bet it would be crystallized in your mind.

Some of the others might be blurry, but you would remember the first time you were touched, but Minor doesn't. On one occasion she said it was in the truck, and on another occasion she said it was in the kitchen when they were cooking, okay, so one of those times she was lying.

Let's go back and ask what is reasonable doubt. It's a

real possibility that this man is not guilty. Okay, are we going to believe Minor it happened all the time? When was the first time it happened? It happened in the truck. Oh, no, it happened in the kitchen.

She didn't remember from time to time what she had said, but I would bet your common sense tells you a child that that's smart is going to know when somebody stuck his hands down her pants and felt her crotch, and they're not going to forget it when the first time it happened.

There's one thing I want to comment about. We had a chance to look at the video. It was an hour and a half, hour and a half, and I asked Minor when she was testifying what was the worst thing, what was the most traumatic thing you had to experience, and remember she said, oh, it was in the tent, that encounter in the tent, but it was an hour and twenty minutes into the interview before she got around to even bringing that up. And I would submit to you that's just -- that doesn't make sense, and if that was -- if that was -- that was an attempted rape, okay? She says, oh, he got on top of her and tried to have sex.

Now, listen, if he'd wanted to do that, he could have done it. If he's going to do that, do you think he's going to listen to a ten year old child saying stop it? Oh, okay, I'm sorry. I thought you would consent. I mean, it's almost -- we're not playing here. This is a serious matter.

We're talking about whether or not this man is going to be found guilty of committing this lewd act.

But an hour and twenty minutes into the interview, that's when that information surfaces, and there's no indication here that this child has perhaps these memories, you know, and she's put them out of her mind, tried to forget about them, so all this is going on.

Minor says it happens every day, it's all the time, every day, but she doesn't report it until she gets mad when he blows up at her and says shut the F up. I'll show you. Guess what, mom, he's touching me.

You know, I'll submit to you the testimony seemed to be reversed. How was she feeling? She was upset. Was she angry? No. Well, she was upset. And then Minor gets up there -- and that's what mom says, and when Minor gets up there, I was upset. Were you mad? No. Upset. They're on the same page here about what they were going to say. She was mad. She was going to pay him back. He was going to -- she was going to show him.

And how did she know how to do this? Because just a few months earlier, her brother had done the same thing with his father. What a coincidence. There's a real possibility that this man is not guilty. There's a real possibility this child is not being truthful. We know she's not being truthful on some of this when she said it happened every

day.

J.M. -- let me tell you, I will submit that there's not a person in this courtroom who has not stood watch by a bathroom while a friend or somebody was in there, okay? The State wants to elicit from that a bad motive.

What was J.M. going to do if he came up and wanted to get in the bathroom, said beat it, get outside, because I'm going to be busy. I mean, why not do that? I mean, if he's going to just do this anyway and let Minor be a witness to all this stuff, he's not going to be concerned about running the child off.

J.M. -- and one thing J.M. said, yeah, we snuck around and tried to peek in his window. You know, who was trying to see whom? Was it a curious child trying to see what's going on? J.M. -- I mean, why would they be peeking in his window?

I would submit to you that the case was exaggerated. This detective is a professional detective who -- and certainly he -- you know, we're lucky to have him in the position he's in, but he said there was digital penetration, and he said that Minor told him that.

Now, I think the detectives can -- you know, he's deciphering here. He's trying to interpret what happened, but Minor said in her own words, no, he never put anything inside of me. Somebody is wrong. Somebody has

mischaracterized what happened here.

Even -- even if we assume it's illegal, you know, they've mischaracterized it. There's a real possibility that this man didn't penetrate anybody, and there's a real possibility that he didn't touch anybody, because we've got missing evidence and we don't know. Her story has too many inconsistencies to make us feel comfortable, including that it's trustworthy in this setting, in this situation, and the personality doesn't fit.

You don't -- when you turn sixty, you don't become a pedophile, and I guarantee you in this day and time, if you're sixty years old and a pedophile, somebody knows about it.

Shannon said, well, I saw him touch her in the top, but, you know, she couldn't even tell us the circumstances of that touching. Do you remember when she said I saw him touch her chest in the kitchen? And I said, well, how did that happen? Was he trying to feel her, or was it an accidental thing, and she didn't know. She couldn't remember and she didn't know. Was that a lustful thing? We don't know, because it could have been accidental, or it might not have happened.

At the river, this is interesting because everybody has been swimming in a river and somebody's bathing suit comes off. I mean, you've seen that in your life. Almost

everybody has. Usually it's kids playing around, but you know what, Shannon saw my client pick up the bathing suit, but she didn't see how it came off.

Do you remember, she couldn't corroborate the fact that my client, the Defendant, swam underground -- under the water and pulled it down, and if he did that, how come it was laying over there somewhere and he's got to go pick it up? There's a real possibility that he didn't do that.

Minor said right after that on the way home, we were sitting in the front of the truck and he put his hands down my pants. Shannon was sitting in the front of the truck, but she didn't see that. Is that going to happen?

All right. I ask you is that going to happen? She's going to notice something like that. Minor is going to say stop that. Shannon is going to hear it. Why would Minor do this, okay? Three years down the -- or two and a half years down the road, and she's still persisting in this.

I submit to you she made the allegation when she was mad, not just upset. She was mad. She enjoyed going over to his house. She enjoyed spending time with him, and he had indicated that ain't going to happen anymore. Go home. Call your mom and go home, and I submit to you she was angry about it.

And D. had just done this stuff, and so she did it, okay, but then here's what happens. Mom calls the police.

The police call the Child Recovery Center people. You get interviews going. How in the heck is she going to back out of that now? And she goes -- she just gets swept along.

Did you ever hear anybody say to her, look, child, if this didn't really happen, you don't have to do this. I guarantee that Dr. Rahter's mind -- that doesn't even enter her mind about giving her a chance to back down, and so here we are.

You look at that video and I would submit to you that child was happier then than she is now, and if she were traumatized, it would have shown on that video. I will tell you what's traumatized that child is having to go through this for the last two and a half years, and we should look at the -- sex crimes are terrible. I'm not condoning them, but we need to look at what happens to these children by the system, especially if they're not given the chance to correct the record.

And these professionals who -- they don't have any physical evidence. There's a dispute about the penetration. There's a dispute about what happened first. There's a dispute about who saw what when, not -- I mean, before we even get to D. and him doing the same thing.

It's -- it's not a game we're playing. It's a serious thing. When we talk about presumption of innocence, it is a serious thing. It is the law. It is not a technicality.

Have they convinced you? Have they eliminated the real possibility that this man is innocent? No. I will submit they haven't.

It's a hard job being a juror, but every juror has to swear to follow the -- they swear an oath to follow the law, and that law is beyond a reasonable doubt, a real possibility that this man is innocent is not acceptable. If that is your mind-frame -- mind-set right now, you've got to find him not guilty under the law.

I guarantee you the child is going to be -- she's going to have everything available to her that the system can offer, and that's rightly so, but this proceeding for this day in time is guilt beyond a reasonable doubt. That is the issue that you have been empaneled to determine.

And I will submit to you under the facts of this case that the Defendant in this courtroom, and under the law that has been charged and given to you, the questions that remain in this case, is there a real possibility that this man is innocent? And I would submit to you that answer is yes, and your duty is to come back not guilty under the facts of this case at this time and on this day.

I started out by saying it's the most important day in my client's life. You were very attentive and I appreciate your bearing with me and letting me have my say, and I appreciate the State's attitude toward the case. They have

been very professional.

On behalf of my client, I want to say thank you very much, and I know you will deliberate and be compelled to find collectively not guilty beyond a reasonable doubt. Thank you.

THE COURT: Thank you, Mr. Spratlin. Thank you, Mr. Diggs.

Ladies and gentlemen, you've heard all the testimony in the case. You've heard the instructions in the law. You've heard final summation of counsel in this matter. The next part of the proceedings will be your deliberation, and, of course, you understand that whatever your verdict is, either not guilty or guilty, it's got to be unanimous, and when you have reached that verdict, Madam Foreman, on the back of this indictment under the word verdict, write your verdict. Please sign your name and let the bailiff know.

Now, during your deliberations, there may be some questions that you have about matters of law or the charge, and if you have any questions regarding that, please write that question down, let me know, and I'll call you back out, remembering this, you are the finders of the facts. I'm not entitled to a factual opinion and I have none.

I raise that issue because some years ago I was trying a case where it was alleged that a young lady burned her mobile home down. Jurors came up with a question, tell us

whether she smoked or not. Well, I knew she smoked because I had given her the opportunity to go outside the courtroom and have a puff. That question was never asked in the record. Consequently, it was never answered. Therefore, I could not reply.

You take the facts in this case from the record in this courtroom, and if you need any instructions, additional instructions, in the law, I'll be glad to provide it.

Now, I'm going to send you to the jury room. Do not begin your deliberations until this indictment comes in, along with the evidence, and it will be in just a few moments.

Dana, obviously the rules do not permit the alternates to be in the jury room. Find them a place for repose in the event we need them for some reason.

Now, take my twelve jurors to the jury room, and I'll be bringing this indictment in in a minute.

(AT 3:40 P.M., THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

Gentlemen, come forward and let's agree on what's going in as evidence.

MR. SPRATLIN: Yes sir, Your Honor.

(COUNSEL FOR THE STATE AND THE DEFENSE REVIEW THE EXHIBITS IN EVIDENCE TO BE TAKEN TO THE JURY.)

THE COURT: Can we agree on what goes in the record?

MR. SPRATLIN: Your Honor, we're just missing the Miranda form. That's what we're looking for right now.

THE COURT: Make sure now before we go.

THE REPORTER: State's 1, 3, and 6. Everybody agree?

MR. SPRATLIN: Yes ma'am.

THE REPORTER: Mr. Diggs?

MR. DIGGS: I think I didn't have anything that goes back there.

THE COURT: You didn't introduce anything. I watched very carefully. That's why you got the last argument.

MR. DIGGS: Exactly.

THE COURT: All right. We are in agreement as to what's in evidence. Tell the jurors I'm sending the indictment back. Tell the jury to begin deliberations. Take the evidence back there for me.

All right. We are in recess.

(THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY AND THE DEFENDANT.)

THE COURT: The jurors have sent me a -- by the time they got in there, they sent this. They want a copy of the transcript of the forensic.

MR. SPRATLIN: Your Honor, I don't -- I mean, I don't ---

THE COURT: Mr. Diggs has no objection to it.

MR. SPRATLIN: Your Honor, I would just prefer they

just have the video played for them.

THE COURT: Why? Why do you want to go through all that again?

MR. SPRATLIN: Your Honor, I haven't had a chance to review the transcript in detail. I can follow along with it. It's ---

THE COURT: Sir?

MR. DIGGS: What we could do is just take off the last couple of pages where he edited out that ---

MR. SPRATLIN: There's also other parts in the transcript that I edited it, Your Honor, the part about the truth and all that stuff ---

MR. DIGGS: That's what I'm talking about.

MR. SPRATLIN: But that's at the beginning, too ---

THE COURT: No, if it's -- I agree. I can't do that. I thought the only part that was objectionable was that last statement about honesty.

MR. SPRATLIN: No sir, Your Honor. It's a transcript of the ---

THE COURT: Wait a minute. You've explained that to me. That's fine.

Write this down for me. Write this in response.

THE DEPUTY CLERK: Okay.

THE COURT: Put this. Write what I'm getting ready to say.

THE DEPUTY CLERK: Okay.

THE COURT: In response to your inquiry, the total transcript was not introduced into evidence and, thus, is not available. If, however, the jury desires to play back in whole or in part her testimony, it will be read to you.

All right, gentlemen, what do you say to my response?

MR. SPRATLIN: I agree, Your Honor. I think that's appropriate. If the jury wants to give us some kind of a idea where it is, we can probably key up the ---

THE COURT: I'll deal with that at the appropriate time.

MR. DIGGS: We could use the transcript so you don't have to listen to thirty minutes to get to that one minute they want to hear.

MR. SPRATLIN: We would just need a little while to set that up.

THE COURT: When they want to listen, I'll explain what they can do. I said in whole or in part already.

MR. DIGGS: Okay.

MR. SPRATLIN: Yes sir.

THE COURT: Read it back to them so there will be no question.

THE DEPUTY CLERK: In response to your inquiry, the total transcript was not introduced into evidence and, thus, is not available. If, however, the jury desires to play

back in whole or in part her testimony, it will be read to you.

THE COURT: Now, that's acceptable?

MR. SPRATLIN: It sounds good -- you said it will be read to them? It will be played for them.

THE COURT: I'm sorry, played for them.

All right. Give this to my Court Reporter.

(QUESTION FROM JURY MARKED AS COURT'S EXHIBIT NUMBER 4.)

MR. DIGGS: If Dixie recorded that, she could play back whatever portions that were read ---

THE COURT: I understand that.

MR. SPRATLIN: Your Honor, or we could just have it played for the jury.

MR. DIGGS: Right.

THE COURT: No, I don't do that. I say to them we are going to play back her testimony. If you get to the part where you desire to be heard and that concludes your inquiry, let the Foreman know and we will stop.

MR. SPRATLIN: Are we going to play back her testimony or are we going to view the video for them, because I think the jury ---

THE COURT: No, they didn't ask for the -- the professional was not videoed, was it?

MR. DIGGS: Well, yes. Remember her video when Ms.

Demaio was doing the forensic interview when the girl was ten?

MR. SPRATLIN: Your Honor, I think that's what they are asking for.

THE COURT: I think they're asking ---

THE REPORTER: It's transcript of forensic interview.

MR. DIGGS: What they want is that transcript, but you could tell them, and I think what you did tell them in your response was that the Court Reporter could play that audio back where I was asking Minor questions and she was reading from the transcript.

THE COURT: The reason they asked for the transcript is you referred to it in your questions to her.

MR. DIGGS: Right. Right.

MR. SPRATLIN: Your Honor, the video has -- I'll be glad to play it.

THE COURT: Well, they didn't ask for that.

MR. SPRATLIN: But they did, Your Honor. They asked for a transcript of the video.

THE REPORTER: Forensic interview.

MR. SPRATLIN: The forensic interview.

THE REPORTER: Transcript of forensic interview.

THE COURT: Well, doesn't my ---

MR. DIGGS: They want to be able to read the question and answer without having to go through all that -- you

know, minute after minute of silence in the video.

THE COURT: Well, you see, what you say, play back the video, that don't take in his cross-examination.

MR. SPRATLIN: Your Honor, we could play back all the testimony of Minor for them if they wish to hear that because they've asked specifically for a transcript of the forensic interview, and since that's not in evidence, I would just ask to play the next best thing, which is the actual video.

THE COURT: How long was that video?

MR. SPRATLIN: An hour and a half, Your Honor, but we can -- if the jury wishes to give an idea on what part of the interview they want to have played back, I can fast forward and set it up for that amount, and I would submit the video is the best evidence.

THE COURT: Bring the jury in. I'm going to discuss it with them and tell them what the problem is and they can go back and decide what they want to do.

MR. SPRATLIN: Your Honor, do we need to get the Defendant out before we bring the jury back in?

THE COURT: Well, we can do it simultaneously.

MR. SPRATLIN: Yes sir. I just didn't want to see them have to see him coming out from lock-up.

THE COURT: That's all right. They don't know it's lock-up. They think it's the bathroom.

THE COURT: The video was a part and parcel of the totality of the professional's testimony, isn't that true?

MR. SPRATLIN: Yes sir, Your Honor. It was -- I mean, it was played during the girl's testimony, but it was fully introduced into evidence and playable for the jury if they want ---

THE COURT: Wait a minute. They don't -- they ain't asked for that video. They want the testimony of the professional.

MR. SPRATLIN: No, Your Honor. They asked for the video. They asked for the transcript of the forensic interview.

THE COURT: Have a seat. I'll find out what they want.

Read that back to me one more time, Dixie.

Bring my jury in, please.

THE REPORTER: May we have written transcript of forensic interview.

THE COURT: I don't see the word video in there. Written transcript is what they wanted to know.

MR. SPRATLIN: Well, Your Honor, that's ---

THE COURT: Wait a minute now. I'll deal with it.

MR. DIGGS: Judge, the Defendant is not out here yet.

THE COURT: Why is the -- where has he gone?

THE DEPUTY: Downstairs.

THE COURT: Hold the jury.

(RONALD LEGG ENTERS THE COURTROOM.)

THE COURT: All right. Bring the jury in.

(AT 4:05 P.M., THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: Madam Foreman, you have sent to me an inquiry and I want to make sure exactly as to what you want. As I read your request, you are asking for a copy of the transcript of Ms. Demaio's testimony that Mr. Diggs was using that in cross-examination. Is that what you wanted?

THE FORELADY: Yes sir.

THE COURT: The tran- -- did you want the transcript or replay the video, which one?

THE FORELADY: Your Honor, we're requesting a copy of the transcript ---

THE COURT: Of who?

THE FORELADY: --- of the forensic interview.

THE COURT: Okay. Okay. Let me say this to you. Unfortunately, that transcript is not available because it was not completed in toto and was not introduced into evidence. Such a transcript in totality is simply not available. However, that professional's testimony has been recorded on tape, and if you or your jury request, I will bring you back and her entire testimony, other than the video, will be re-played for you. Do you understand?

THE FORELADY: Yes, Your Honor.

THE COURT: Now, here's what I want you to do. I want you to go back and tell me if you want to re-play all of her testimony, it will be done. If there's some portion of her testimony that will save the jury's time that you want re-played, we'll try to find that for you.

Please go back and inquire of your jury do you want to re-play all of her testimony, or some part of it, or none of it. Unfortunately, the transcript is not available. If it was available, we would give it to you. You understand?

THE FORELADY: Yes, Your Honor.

THE COURT: Please let me know what the jury wants to do. Thank you.

Go to the jury room. Make a decision, and please understand that any part of the testimony that has been in the record can be replayed for you if you request it, okay?

(AT 4:06 P.M., THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. For the State, any additions to the instructions given, or exceptions?

MR. SPRATLIN: Your Honor, I would just ask you to let the jury know that they are allowed to watch the entire forensic interview, because I believe that's what they are asking for.

THE COURT: No sir. I'm not going to do that. I know that you want the whole -- the victim's entire statement

back in. She said three times we want the professional testimony, ---

MR. SPRATLIN: Your Honor, they're saying ---

THE COURT: --- and wait a minute. I said it you want the rest of it, I'll play it for you. Didn't you hear me say that?

MR. SPRATLIN: Your Honor, they're not talking about the forensic interviewer's testimony. They're talking about the actual forensic interview.

THE COURT: Well, I'll hear what the jury wants. and that's what we're going to do.

Do you have any objections to the instruction given, Mr. Diggs?

MR. DIGGS: No, but I do think that they probably want to look at Minor testimony that was elicited by the professional.

THE COURT: Well, if they tell me that, that's fine, but I don't get that view.

MR. DIGGS: Okay.

THE COURT: Didn't you hear me say I'd play that, too?

MR. DIGGS: Yes sir.

THE COURT: Sure, I did. This is an intelligent jury. They'll tell me what they want. I don't want them to sit here at my request and to play an hour and a half when they don't want it.

MR. SPRATLIN: Your Honor, if I could just put on the record that they do not have access to play the video back there, because that is something -- the video went back there, so I just want to make sure it's understood that they can't sit back there and play it, that they would come back out.

THE COURT: I -- we understand that.

MR. SPRATLIN: I just want to make sure for the record.

THE COURT: Yes sir. And I'm going to make sure for the record if they want to play that video, they can, but I'm not going to force them to do it simply because you want them to.

MR. SPRATLIN: No sir, I don't ---

THE COURT: They've never asked for it. The record will reflect what they asked for.

MR. SPRATLIN: I don't want to play the whole video, but if they could point to a part that they want ---

THE COURT: I will deal with it.

MR. SPRATLIN: Yes sir.

THE COURT: I'm just waiting for them to tell me what they want. I'd be surprised if they come back and want anything. We'll deal with it. This is not unusual that they asked for a transcript of various testimonies. It happens quite often.

Dixie, read for me one more time their request.

THE REPORTER: May we have written transcript of forensic interview.

THE COURT: That's written transcript. They didn't use the word video.

THE REPORTER: Forensic interview.

THE COURT: That's what I thought I heard them say.

THE BAILIFF: They've got another question, Judge.

THE COURT: All right. They didn't answer my last question.

THE BAILIFF: Well, I asked them about the question that they had last time, and they do want to see the video, the video interview that we watched.

THE COURT: Okay. That's fine.

THE BAILIFF: They've got the C.D. exhibit and they're wanting something to watch it on, a laptop to watch it so they can hear it.

THE COURT: They want what?

THE BAILIFF: They want a laptop so they can hear it.

THE COURT: Is there any way we can set it up in the jury room for them?

MR. SPRATLIN: Your Honor, unfortunately, because it would have to be stopped at a minute, thirty, there's no way to set it up in the jury room. I can try to make it louder. I can make it as loud as I possibly can in here, but it's not going to be any louder than it was beforehand. If we

need the jury to kind of position themselves separately, ---

THE COURT: Read that.

MR. McLEOD: May we have a laptop to review certain portions of the forensic interview, C.D., Exhibit Number 6, that we have questions on? Thank you. Donna Frost.

THE COURT: The only way I know to do it is play the video and when -- all of it or in part. When they see the part they were interested in, we can stop it or go forward. What's your thought, Mr. Solicitor?

MR. SPRATLIN: Your Honor, that's all I can think of, and if they want to play it -- if they want me to play it multiple times, I can play it multiple times for them, ---

THE COURT: I understand.

MR. SPRATLIN: --- but ---

THE COURT: Mr. Diggs, what's your thought?

MR. DIGGS: Your Honor, I -- what I would suggest, with all due respect, ---

THE COURT: I'm trying to seek a solution. I seek your input.

MR. DIGGS: I would -- I would send the transcript back. I would take out the last few pages that include that reference to telling the truth and just let them look at the transcript.

THE COURT: Well, what else is in there that -- do you want to glance at it and see ---

MR. SPRATLIN: Your Honor, there have been numerous things that were redacted. The page numbers are different. The transcript also has not been entered into evidence.

THE COURT: I understand that, but let me ask you this: Does he have in his hand the redacted version?

MR. SPRATLIN: No, Your Honor. There's never been a redacted version prepared.

MR. DIGGS: The only thing I know that's redacted out of it, though, is the reference to thank you for telling the truth, and we could take that out.

MR. SPRATLIN: No, Your Honor. There was actually the original, unredacted forensic interview that contained numerous references to the truth that the State has redacted, at the beginning, in the middle, and then at the end, we cut it off at a minute, thirty.

Your Honor, the transcript is not in evidence. I believe ---

THE COURT: I understand. My question is simply is that transcript that he's been using, is that a redacted version or not?

MR. SPRATLIN: It's the non-redacted version, Your Honor.

MR. DIGGS: But, for the record, I didn't use any part that was not included in the video.

MR. SPRATLIN: No, Your Honor, he didn't ask any

inappropriate question from it, but that ---

THE COURT: If some portion has been redacted, I can't send it back there to them, Mr. Diggs.

MR. SPRATLIN: Your Honor, I would respectfully ask that you not.

MR. DIGGS: I don't know of any redaction other than the last one.

MR. SPRATLIN: Your Honor, there are other parts of the interview that have been redacted. There's whole sections that have been taken out.

THE COURT: All right. Bring ---

MR. SPRATLIN: May I have a minute to set up everything and get the evidence out from the jury.

THE COURT: It would have been better to send in what they wanted, but if there's something in there that was not redacted and should have been, I don't want it to go. It might prejudice the Defendant.

MR. SPRATLIN: Your Honor, I can't val- -- validate the integrity of those transcripts because I don't have it, and so I'd just rather have ---

THE COURT: You never -- I know what you'd rather have, but I want to do what I want to do. Have you had a chance to look at it?

MR. SPRATLIN: Your Honor, I -- I think a former Solicitor actually prepared that on this case and I never

glanced at it.

MR. DIGGS: They gave them to us, though, in the discovery from the Solicitor's Office.

THE COURT: I'm curious, so who redacted what?

MR. DIGGS: I don't know.

MR. SPRATLIN: Your Honor, I redacted several things off the forensic interview, specifically her conversation under State v. Kromah. There were several times when the interviewer told the child about the truth and that we had to be truthful in here, all of which are ---

THE COURT: Properly redacted. I agree with that. No, we'd better not use that. That might be prejudicial to the Defendant.

MR. DIGGS: Well, those, though, were ---

THE COURT: Bring my jury in. No, I'm going to let them -- I'll deal with it. If they want to sit here for an hour and a half, they can. If they want to hear the entire trial from the good morning, they can hear it.

THE REPORTER: Let me mark that note, Court's Number 5.

(QUESTION FROM JURY MARKED AS COURT'S EXHIBIT NUMBER 5.)

THE COURT: I'm going to tell them that procedure that they requested is simply not available, Spratlin.

THE COURT: Yes sir, Your Honor.

MR. DIGGS: But, you know, Your Honor, they can watch

whatever they want to here.

MR. SPRATLIN: Yes sir. They can watch as much as they'd like.

THE COURT: I'll talk to them about that. I'll handle it.

You may bring the jury back.

We're going to start from not the video, from her initial testimony.

MR. SPRATLIN: Yes sir, Your Honor, whatever the Court would like. I'll just have the video que'ed up for ---

THE COURT: Well, they may want to start from the beginning of her testimony before we got to the video.

MR. SPRATLIN: Yes sir. If we could just inquire of the jury what they -- yes sir.

(AT 4:20 P.M., THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: Madam Foreman, and ladies and gentlemen, so that you will understand, during the course of a trial many times, and this one, too, most of the testimony has never been reduced to a written transcript. In some instances, just a portion of somebody's testimony is reduced to a transcript.

We conclude to make sure that the jury has received everything that they wanted, rather than a transcript, to actually play back word for word that witness's testimony,

with the understanding sometimes a witness's testimony has been three hours. We tell the jury at that time rather than playing it all back, unless they want to, when they get to the part of the testimony that they were interested in and conclude that they don't need to hear anymore, raise your hand and let the Foreman know and I'll stop it. If, however, some juror wants to hear all of the testimony, we'll be glad to do that.

All of the testimony in the trial of this case has been recorded, and if you request it, we'll start from the good morning yesterday and go right through all of the witnesses' testimony. It's here available for you and if you need it, you're entitled to it.

With reference to any piece of testimony, I leave it to you, Madam Foreman, and your jury, to determine whether or not they want to hear it all or some portion of it. You understand?

THE FORELADY: Yes sir.

THE COURT: Now, let me ask you this, in the forensic testimony, she, of course, testified directly and on cross-examination. During her testimony, the video of the victim was played. We need to know are you seeking her testimony on direct, and redirect, and cross? Are you seeking that and the video? Are you seeking the video or some portion of it? Just tell me what is it you want and I'll make it

available to you. Yes ma'am

THE FORELADY: Your Honor, we're looking for some portion of the video.

THE COURT: Good. Would it -- can you -- would you mind -- can you tell me what portion? It will save some time. We will try and find it for you? See what portion you want. Remember, now, I'll play the whole thing for you, but if it will save you some time and you know what portion, I'll be glad to do that for you.

THE FORELADY: We're looking at the beginning portion, Your Honor, where the interviewer starts asking questions.

THE COURT: That's fine. Okay, here's what we're going to do. We're going to start the interview and play it until you and your jury tell me you are satisfied that we've done what you requested. Is that okay?

THE FORELADY: What we were wondering is if it would be possible to get a laptop or a projector that we could take into the deliberation ---

THE COURT: I wish we had that capability, and I'm sorry we do not.

THE FORELADY: Okay.

THE COURT: That's something for the future, and I would urge Court Administration to do that. Unfortunately, we do not have that capability yet.

THE FORELADY: Okay.

THE COURT: I'm just glad we've got to the video. We're a little behind Internet provisos. But be assured now we're going to play the video and stop it at any time you desire or play it in full. It's about an hour and a half. You may not want to listen to all of it, but you let me know when you're satisfied. Is that fine?

THE FORELADY: Yes, Your Honor. Thank you.

THE COURT: Let the jury notify you and we'll stop it, but be assured now we'll play it all if that's what you want.

THE FORELADY: Okay. Thank you, Your Honor.

THE COURT: The jury has requested that that portion of the forensics testimony related to the video be played. Can we do that?

MR. SPRATLIN: Your Honor, they wish to have the video played, correct?

THE COURT: Right.

MR. SPRATLIN: Yes sir. We are prepared to play that. If I can ask the Clerk of Court for assistance in bringing down the display screen.

THE COURT: All right. And understand at the jury's request, we'll stop it when they conclude they've seen what they wanted.

MR. SPRATLIN: Yes sir, of course.

THE COURT: Apparently they are interested in the

beginning part of it.

MR. SPRATLIN: Yes sir. It's keyed up to start at the beginning.

THE COURT: All right.

And let me say, Madam Foreman, any time you have such a request, please let me know, will be glad to accommodate you.

THE FORELADY: Thank you, Your Honor.

Your Honor, we would like to know if we could have it fast-forwarded to the part where the questions about touching begin, the end of the anatomy?

THE COURT: Yes.

MR. SPRATLIN: Your Honor, I can do my best to get it to that portion.

THE COURT: Okay. This is fine. I just want to do that part that you are interested in, and thank you, Madam Foreman.

THE FORELADY: You're welcome.

THE COURT: Let's accommodate the jury to the extent possible.

MR. SPRATLIN: Yes sir. I'll do my best.

THE COURT: Okay.

(A PORTION OF STATE'S EXHIBIT NUMBER 6, C.D. FORENSIC INTERVIEW OF Minor **REGARDING TOUCHING, IS PLAYED IN OPEN COURT IN THE PRESENCE OF THE JURY.)**

MR. SPRATLIN: Your Honor, I believe the jury has something to say.

THE FORELADY: We would like to see if we could have it fast-forwarded, please, towards the end where she talks about the incident in the tent.

THE COURT: Can you find that for them, Mr. Spratlin?

MR. SPRATLIN: Yes sir, Your Honor. I'll do my best.

THE COURT: All she wants is it fast-forwarded to the tent incident.

MR. SPRATLIN: Yes sir, Your Honor. I believe I know where that is.

THE COURT: Okay.

This is excellent, Madam Foreman, and if there's any additional parts you want played, they're certainly available to you.

(ADDITIONAL PORTION OF STATE'S EXHIBIT NUMBER 6 REGARDING INCIDENT IN TENT IS PLAYED IN OPEN COURT IN THE PRESENCE OF THE JURY.)

THE FORELADY: Thank you, Your Honor.

THE COURT: That concludes that portion that you wished to watch?

THE FORELADY: Yes, Your Honor.

THE COURT: Okay. Please, now, if there's anything else that you need, let me know. Incidentally, it is perfectly permissible for any member of the jury for their

own use to take notes. That's perfectly permissible in our courtroom as long as you keep it for your own use itself.

Please retire to the jury room. If there's anything else you need, Madam Foreman, let me know. Thank you so much.

(AT 4:45 P.M. THE JURY CONTINUES DELIBERATION, AND THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right, Mr. Spratlin, any objections or additions to what has occurred?

MR. SPRATLIN: No sir, Your Honor.

THE COURT: Mr. Diggs?

MR. DIGGS: No, no objections and no additions.

THE COURT: All right.

MR. SPRATLIN: Your Honor, I would just ask if the C.D. is to be returned to the jury or left out here?

THE COURT: Just leave it out here because obviously they may want some more of it, ---

MR. SPRATLIN: Yes sir.

THE COURT: --- and no need to take it in there. We can't use it in there.

MR. SPRATLIN: Yes sir.

THE COURT: Let the record reflect that the Defendant was in Court throughout the playing of that testimony.

All right. You can turn the lights back on.

All right. Gentlemen, we're going to be in recess

subject to the call of the Court, but be close by now where I can find you, please.

MR. SPRATLIN: Yes sir. I won't go anywhere.

THE COURT: All right. Thank you.

Mr. Diggs, the same thing.

MR. DIGGS: Yes sir.

THE COURT: I'm going to leave the Defendant, because of the problems having to put him downstairs and back, I'm going to leave him in the courtroom, ---

MR. DIGGS: That's fine.

THE COURT: --- with the understanding if he needs to go to the restroom, just let us know and we'll do that for him.

MR. DIGGS: Your Honor, would it be permissible for me to maybe get him a Coca-Cola or something like that?

THE COURT: Sure. What you want to have him -- get him?

MR. DIGGS: He has asked for anything, but I've been sitting here drinking a Diet Coke in front of him and I feel like I want to offer him, you know, if he wants something.

THE COURT: How about give him a glass of water. That's what I've been using.

MR. DIGGS: He said a Dr. Pepper, so ...

THE BAILIFF: I've got to get somebody to bring one up.

THE COURT: Get him whatever is available. That's

appropriate now. I'm not going out of the courthouse to get a Dr. Pepper, but yes, get him a soft drink. That's appropriate.

MR. DIGGS: Thank you.

THE COURT: All right. We are subject to the call of the Court.

MR. SPRATLIN: Yes sir.

(AT 4:51 P.M., THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: All right. I'm advised that the jury has a verdict.

MR. SPRATLIN: Yes sir.

THE COURT: Now, I have no idea as to what the verdict is, but I will permit no outcry, no conversation, no comment of any kind by anybody with reference to whatever the verdict may be.

Bring the jury in.

(AT 4:53 P.M., THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE JURY.)

THE COURT: Madam Foreman, have you and your jury reached a unanimous verdict in regard to this case?

THE FORELADY: Yes, Your Honor, we have.

THE COURT: If this be the unanimous verdict of all twelve, please signify by raising your right hand.

The jury has so signified that the verdict is

unanimous.

Ms. Heather, accept the verdict and hand it to me.

THE REPORTER: Excuse me, Judge. I didn't see all the jurors raise their hand.

THE COURT: Wait a minute.

I thought I saw all the jur- -- I want everybody to raise their hand if this is a unanimous verdict.

THE DEPUTY CLERK: It is all except for the two alternates.

THE COURT: They were not supposed to raise their hand.

THE DEPUTY CLERK: Yes.

THE COURT: Let the record reflect that the twelve jurors have raised their hand signifying that the verdict is unanimous.

Heather, please accept the verdict.

(THE DEPUTY CLERK HANDS THE INDICTMENT TO THE COURT.)

THE COURT: Publish the verdict.

THE DEPUTY CLERK: Indictment Number 2011-GS-26-3553, State of South Carolina, County of Horry, versus Ronald Lee Legg, on the charge of lewd act on a minor child, we, the jury, unanimously find the Defendant guilty. Dated March 12th, 2014. Signed by Foreperson, Donna Frost.

THE COURT: For the State, anything further requiring the jury at this time?

MR. SPRATLIN: No sir, not from the State.

accorded him did.

She would tell him to stop. He did under that scenario, and I would -- I would argue that that warrants some deviation from the maximum that's available.

THE COURT: Did the victim -- does the Defendant wish to be heard?

MR. DIGGS: Not at this time, Your Honor.

THE COURT: All right, sir.

MR. DIGGS: He's disappointed, I'm sure, but not at this time.

THE COURT: I listened to the testimony very carefully and, of course, I have no comments to make about it. It was the jury's charge, and accept that. The evidence and the law in my view justified their verdict as findings of the facts in this case.

In sentencing, there are two things that I have in my mind. He could have done a lot worse, and I've tried these cases where a lot worse was done. That, having said, doesn't minimize that which he did, which was deplorable.

MR. DIGGS: Yes sir.

THE COURT: I note, too, and substantially, he's been a law-abiding citizen for many years, since 1974, and it's for those two reasons that I do not impose the maximum of fifteen years, but given the severity of the allegations and the verdict of the jury, it is the sentence and judgment of

this Court that he be confined in the state penitentiary for a period of twelve years, giving him credit for time served.

MR. DIGGS: Thank you.

THE COURT: Thank you so much, and I'll see you at 9:30 in the morning.

MR. SPRATLIN: Thank you, Your Honor, and obviously that charge does carry a mandatory sex offender registry?

THE COURT: It does. Sexual registry is required. Does it also require some electronic monitoring?

MR. SPRATLIN: It requires GPS monitoring, Your Honor.

THE COURT: Well, the detention center will take care of that.

All right, gentlemen. We are in recess on these issues until 9:30.

Again, I want to say to Mr. Diggs and to you, the case was professionally tried in every respect.

MR. SPRATLIN: Thank you, Your Honor.

MR. DIGGS: And I appreciate that.

MR. SPRATLIN: Your Honor, Madam Clerk is going to write on the sentencing sheet that the Sex Offender Registry is ordered, ---

THE COURT: Oh, sure. It is mandatory under the statute.

MR. SPRATLIN: --- and also check the box for mandatory GPS monitoring.

THE COURT: Correct.

MR. SPRATLIN: Yes sir.

THE COURT: Thank you.

(END DAY.)

(THE FOLLOWING TAKES PLACE ON THURSDAY, MARCH 13, 2014, AND OUTSIDE THE PRESENCE OF THE JURY.)

THE COURT: We are here for post-trial motions pursuant to the motion of Mr. Diggs involving the case of State v. Leggs (sic), which was concluded on yesterday with a verdict of guilty and a sentence of twelve years.

Mr. Diggs, as I understand it, you waived the presence of the Defendant for post-trial motions?

MR. DIGGS: Your Honor, we do, because I'm going to re-state some of the motions we made yesterday. There's not anything new that I'm objecting now that would be for the first time out of his presence, so he's only missing a re-statement of some of the motions that I made yesterday.

THE COURT: I understand. I'll be glad to hear from you.

MR. DIGGS: Your Honor, we would ask for a directed verdict in the case. We renew that and ask the Court to reconsider its ruling on that simply because there wasn't any -- any direct assertion by any witness for the State showing that intent to engage in lascivious conduct, that type of conduct designed to arouse sexual desires in either

of the parties involved. That -- I would submit that it needs to be direct evidence of that element of the offense before it is properly submitted to the jury.

Also, Your Honor, there was, I would submit, very damaging evidence to the fair trial process itself allowed by Statute 17-23-175. I think -- with all due respect, I think that statute is unconstitutional. It violates fundamental fairness by giving the State two opportunities to present the testimony of a single witness, and it bolster's the witness's testimony, the effect that that has on the jury, and, Your Honor, it was prejudicial here because we know the jury asked to see specific portions of that very video that I contend shouldn't have been into evidence, and so I would ask for a new trial based on the application of the statute in this case which is unconstitutional.

Now, there may be times when the statute is valid in the process or procedure that it arises within the context of a trial, but in this case, the child was available to testify. There was no need to play that video, and it was just prejudicial and made this trial proceeding fundamentally unfair, and I know, Your Honor, you didn't write the law. Your job is to apply the law.

I understand that, but our position is that that statute is unconstitutional and was embodied within an

unconstitutional statute itself, allowed for the death penalty short of it didn't involve any particular murder, so, I mean, not having to go there, I'm just pointing out that there was this period seems embodied within this whole statutory enactment, and this particular portion, it got passed during that time frame. It just gives too much power to the State in these lewd act cases and it deprives a defendant, the accused, of a fundamental right to a fair trial.

And, Your Honor, I want to -- I want to say it's arbitrary, and I think there's Eighth Amendment implications in it as well because it figures in to the type of sentence that's imposed in the case, and for that purpose -- for that reason, it violates the fundamental fairness and the Eighth Amendment, too, the Eighth and Fourteenth Amendments to the U.S. Constitution and corollary provisions of the South Carolina State Constitution.

Your Honor, there's also the ground for a new trial based on missing evidence that was taken out of the Defendant's home, apparently not by the police themselves, but because of the police negligence in failing to safeguard the security of that evidence. Our position is that it would have been exculpatory to have notes. We're claiming that we were kind of counseling this child, trying to help her. They were contemporaneous notes that were made at that

time by both the Defendant and the child victim, who would confirm that, and so I ask for a new trial on that, and/or a dismissal of the indictment on that basis.

THE COURT: Thank you, Counsel.

Would you care to respond, Solicitor?

MR. SPRATLIN: Yes sir, Your Honor, very briefly.

In regard to the directed verdict motion, there was obviously ample evidence in the record from which the jury could infer every fact and element of the offense, that being the fact that the evidence supported that the Defendant repeatedly and consistently grabbed the little girl in the private area.

Obviously, Your Honor, sexual motive can be inferred from that kind of conduct and that kind of repeated conduct, as well as the fact that he exposed himself and tried at one point in time to -- in the statement and the video to rub his penis on her vagina.

Additionally, Your Honor, as far as any motion for unconstitutionality of the statute, the statute is a viably passed statute by the South Carolina Legislature. It has not been overturned as unconstitutional. I believe that any kind of confrontation law at issue is remedied by the child being available to testify. Additionally, Your Honor, I don't believe that -- I believe there is a legitimate State interest in allowing this child to testify both in court and

also on video.

Regarding the missing evidence, Your Honor, as heard from the record, the police did not -- took a sampling. They were not able to and had no desire to take all the items. They secured the residence when they executed the search warrant, hammered it shut, left the house more secure than they found it I believe the testimony at the pre-trial motion was.

And, yes, that evidence was eventu- -- or those items were eventually taken out of the home. They were taken out of the home to the best of the State's knowledge by the person whose name was actually on the residence, that being Don Legg.

Your Honor, there's no fault of the police and no kind of negligence on the part of the police or law enforcement, or the State in general in the destruction or the missing of those items. Rather, they were not taken into evidence. The Defendant was actually back in the house after the search warrant was executed, as per the pre-trial testimony. There is no basis for a dismissal of this charge. There is no basis for a new trial based on that, and the State would respectfully request that you deny all Defense motions.

THE COURT: I listened very carefully to all the testimony in the case. I now hear arguments of Mr. Diggs and the Solicitor, and as to the three issues you raised,

they are respectfully denied.

First, there's ample evidence for the jury to conclude it was lascivious acts by the Defendant. Secondly, it would appear to me that the statute that you refer to is certainly constitutional. There's no evidence by me that this court or any court in the United States has declared it unconstitutional, but that's an issue for our Supreme Court.

Thirdly, you mentioned some alleged missing evidence. There's no testimony to what that evidence would have been. There's no testimony at all that it would be inculpatory or exculpatory. There's no evidence that it would help or hurt the Defendant. There's no evidence of what it was, and there's certainly no evidence of misconduct by the arresting authorities.

The record reflects as to those issues, those matters obtained in that illegal search, all of those were turned over to the Defendant.

Can you again affirm that, Mr. Spratlin?

MR. SPRATLIN: Yes sir, Your Honor. All contents taken by law enforcement were turned over and made available for the Defense review.

THE COURT: All right.

I note your objections and thank you for them, Mr. Diggs. They are respectfully denied. In my view, it is appropriate that the verdict and sentence stand. Thank you

so much.

The record will reflect that he has waived the presence of the Defendant in these post-trial motions.

MR. SPRATLIN: Thank you, Your Honor.

THE COURT: All right. Thank you gentlemen. Again, the case was professionally tried by both of you.

MR. DIGGS: Thank you, Your Honor.

THE COURT: I was just pleased to be your presiding judge.

MR. SPRATLIN: Yes sir. Appreciate it.

(Conclusion of Transcript of Record.)