

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Certiorari to Pickens County

Honorable Daniel D. Hall, Circuit Court Judge

DOUGLAS KELLY PHILLIPS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000955

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED JULY 25-26, 2016	1
STATE’S EXHIBIT 1 (WAIVER OF RIGHTS)	310
INDICTMENTS	311
SENTENCE SHEETS	317
APPLICATION FOR POST-CONVICTION RELIEF DATED JUNE 25, 2019.....	320
RETURN DATED JANUARY 24, 2020	329
PCR HEARING TRANSCRIPT DATED MARCH 9, 2023.....	339
ORDER OF DISMISSAL DATED APRIL 14, 2025.....	374

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
PLAINTIFF,)
)
)
-VS-)
)
DOUGLAS KELLY PHILLIPS,)
)
DEFENDANT.)
_____)

2013-GS-39-02327 - 02329

TRANSCRIPT OF RECORD

JULY 25 - 26, 2016
PICKENS, SOUTH CAROLINA

B E F O R E:

THE HONORABLE THOMAS A. RUSSO

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

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CHERYL AARON, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEX

<u>WITNESS</u>	<u>PAGE NO.</u>
<u>MONDAY, JULY 25, 2016:</u>	
<u>JACKSON V. DENNO HEARING:</u>	
JONATHAN HAMBY	
DIRECT BY MR. JONES -----	52
CROSS BY MS. AARON -----	62
KELSEY BEALS IN CAMERA VOIR DIRE	
DIRECT BY MR. JONES -----	69
CROSS BY MS. AARON -----	72
REDIRECT BY MR. JONES -----	76
KELSEY BEALS IN CAMERA PROFFER	
DIRECT BY MR. JONES -----	92
Minor [REDACTED] IN CAMERA PROFFER	
DIRECT BY MR. JONES -----	115
CROSS BY MS. AARON -----	127
<u>TUESDAY, JULY 26, 2016:</u>	
OPENING STATEMENTS	
MR. JONES -----	149
MS. AARON -----	152
Minor [REDACTED]	
DIRECT BY MR. JONES -----	159
PEGGY ROBINSON	
DIRECT BY MR. JONES -----	171

INDEX

<u>WITNESS</u>	<u>PAGE NO.</u>
JONATHAN HAMBY	
DIRECT BY MR. JONES -----	184
CROSS BY MS. AARON -----	196
KELSEY BEALS	
DIRECT BY MR. JONES -----	202
JONATHAN HAMBY	
DIRECT BY MR. JONES -----	230
CLOSING ARGUMENTS	
MR. JONES -----	247
MS. AARON -----	257
CHARGE OF THE COURT -----	266
VERDICT OF THE JURY -----	289
SENTENCE OF THE COURT -----	304
CERTIFICATE OF REPORTER -----	309

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
S-1	WAIVER OF RIGHTS -----	51	190
S-2	CD (NOT TRANSCRIBED) -----	51	X
S-3	CD (NOT TRANSCRIBED) -----	51	X
C-1	JURY QUESTION -----	287	
C-2	JURY CHARGE -----	292	

1 Monday, July 25, 2016:

2 (Whereupon court convened at 10:50 am)

3 **THE COURT:** I'll recognize the State to call the first
4 case.

5 **MR. JONES:** Thank you, Your Honor. The State calls
6 State versus Douglas Kelly Phillips, criminal sexual conduct
7 with a minor, second degree, a second count of criminal
8 sexual conduct with a minor, second degree, and one count of
9 criminal sexual conduct with a minor, third degree, Your
10 Honor.

11 **THE COURT:** All right. Thank you, sir. Ladies and
12 gentlemen, you heard the solicitor call the first case for
13 trial. It's the State of South Carolina versus Douglas
14 Kelly Phillips. Mr. Phillips is charged under three
15 indictments with the offense of criminal sexual conduct with
16 a minor in the second degree on two of those. That is
17 indictment 2013, GS-39-2327 and 2328. And on indictment
18 2013-GS-39-2329 he's charged with criminal sexual conduct
19 with a minor in the third degree.

20 Now, to those charges or to those indictments Mr.
21 Phillips has pled not guilty. That plea of not guilty does
22 two things. It places upon him the presumption of innocence
23 and it places upon the State the burden of proof. The State
24 has the burden of proving the elements of these charges
25 beyond a reasonable doubt.

1 An indictment, ladies and gentlemen, is simply a piece
2 of paper. It's a document. It is the formal document that
3 brings this case into court.

4 I'm going to read to you the allegations that this
5 indictment contains, but what's important for you to
6 understand is this, is that the contents of these
7 indictments are not evidence against Mr. Phillips and they
8 are not to be considered at all as evidence of guilt of Mr.
9 Phillips because as I told you to these charges he has pled
10 not guilty and he has the presumption of innocence as he
11 sits here today. So -- but these are the allegations that
12 the state has made and it's important that I go over those
13 with you so that I can ask you questions as it relates to
14 these allegations.

15 The first on indictment 2013-2327 alleges that Douglas
16 Kelly Phillips did in Pickens County on or about the 26th
17 day of July 2013 commit a sexual battery on **Minor** those are
18 the initials, who was 14 years of age or less, but who was
19 at least 11 years of age in violation of section 16-3-655
20 B(1) of the South Carolina code of laws as amended.

21 2013-2328 alleges that Douglas Kelly Phillips did in
22 Pickens County on or about the 19th day of July 2013 commit
23 a sexual battery on **Minor** who was 14 years of age or less,
24 but who was at least 11 years of age. Again in violation of
25 section 16-3-655 B(1) of the South Carolina code of laws as

1 amended.

2 And 2013-GS-39-2329 alleges that Douglas Kelly Phillips
3 did in Pickens County on or about the 28th day of July 2013
4 being over the age of 14 years did wilfully and lewdly
5 commit or attempt a lewd and lascivious act upon the body of
6 or parts of **Minor** a child under the age of 16 years of age,
7 with the intent of arousing, appealing to or gratifying the
8 lusts, passions or sexual desires of himself or such child.
9 This is in violation of section 16-3-655 (C) of the South
10 Carolina code of laws as amended.

11 Now, folks, those are the allegations that are made to
12 which Mr. Phillips has pled not guilty. Is there any member
13 of the jury panel who knows anything about this case at all?
14 If so, please stand.

15 (No response)

16 **THE COURT:** Thank you. There are none.

17 I'm going to ask the attorneys to introduce themselves.
18 So if you would, please listen carefully, and then I'll have
19 some questions regarding them.

20 **MR. JONES:** I'm Chris Jones. I'm an assistant
21 solicitor here in Pickens County.

22 **THE COURT:** All right. Ms. Aaron.

23 **MS: AARON:** May it please the Court. Good morning.
24 I'm Cheryl Aaron, and I'm a defense attorney. I live and
25 practice in Clemson, although I've been in Pickens County

1 for a long time, twenty-five, thirty years.

2 Seated next to me is Mr. Phillips. His name is Douglas
3 Kelly Phillips. Stand up and introduce yourself to the
4 jury.

5 **MR. PHILLIPS:** I'm Douglas Kelly Phillips. I live in
6 Pickens, South Carolina.

7 **MS: AARON:** He goes by Kelly. You might hear me refer
8 to him as Kelly. He is my client. And I have the pleasure
9 of representing him today during his trial.

10 **THE COURT:** All right. Thank you, folks.

11 Ladies and gentlemen, first, as it relates to Mr.
12 Jones, is there any member of the jury panel who is related
13 by blood, connected by marriage or who has any close
14 business or personal relationship with Mr. Jones or who has
15 ever either been represented by or prosecuted by Mr. Jones?
16 If so, please stand.

17 (No response)

18 **THE COURT:** Thank you. There are none.

19 And you've met Ms. Aaron. Is there any member of the
20 jury panel who is related by blood, connected by marriage or
21 who has any close business or personal relationship with Ms.
22 Aaron or who has ever been represented by her or any member
23 of her office? If so, please stand.

24 (No response)

25 **THE COURT:** Thank you. There are none.

1 Folks, you've met Mr. Phillips. Is there any member of
2 the jury panel who is related by blood, connected by
3 marriage or who has any close business or personal
4 relationship with Mr. Phillips? If so, please stand.

5 (No response)

6 **THE COURT:** Thank you. There are none.

7 Now, ladies and gentlemen, I'm going to call out a list
8 of names. These are folks who are potential witnesses in
9 this case. They may or may not testify. But if you'll
10 remember the question that I just asked you as it relates to
11 Mr. Phillips, that is, are you related by blood, connected
12 by marriage or have any close business or personal
13 relationship, those are the questions that I would be --
14 that's the question I would be asking as it relates to these
15 names.

16 If there's any member of the panel who -- if you hear a
17 name and that question would relate to you, go ahead and
18 stand. If you do stand, if you hear your name and you
19 stand, please continue to listen because I will be calling
20 out about four or five names. And it may be that you know
21 more than one individual involved. If any of these folks
22 are in the courtroom, I would ask that they stand as well.

23 Jon Hamby, Minor [REDACTED] Peggy Robinson, Kelsey
24 Beals, Shauna Galloway-Williams. Any member of the jury
25 panel related by blood, connected by marriage or have any

1 close business or personal relationship with any of those
2 folks? All right. And, ma'am, your name please?

3 **JUROR:** Angela Weisner.

4 **THE COURT:** Just give me one moment, please. Juror
5 153. Ms. Weisner, who on that list?

6 **MS. WEISNER:** Shauna Williams.

7 **THE COURT:** Shauna Williams. All right. And with
8 regard to Ms. Williams, are you related to Ms. Williams or
9 you just know her?

10 **MS. WEISNER:** Childhood friends.

11 **THE COURT:** Okay. Now, the fact that Ms. Williams may
12 appear as a potential witness in this case, would that in
13 any way affect your ability to give both the State and the
14 Defense a fair and impartial trial?

15 **MS. WEISNER:** No, sir.

16 **THE COURT:** All right. Thank you very much, ma'am.
17 You may have a seat. Anyone else?

18 (No response)

19 **THE COURT:** All right. Is there any member of the jury
20 panel who is either a member of or a contributor to any
21 organization or group that has as its primary concern the
22 promotion of law enforcement or the promotion of victims
23 rights?

24 Let me give you some examples. These aren't all-
25 inclusive, but some examples would be like MAAD, Mothers

1 Against Drunk Drivers, CAV, Citizens Against Violence, The
2 Fraternal Order of Police, The South Carolina Sheriff's
3 Association, South Carolina Troopers Association, SAAD,
4 Students Against Drunk Drivers, those types of
5 organizations.

6 Is there any member of the panel who is a contributor
7 by either financial means or by volunteering of your time to
8 any of those organizations? If so, please stand.

9 (No response)

10 **THE COURT:** Thank you. There are none.

11 Is there any member of the jury panel who has formed or
12 expressed any opinion about any issue or matter involved in
13 this case? If so, please stand.

14 (No response)

15 **THE COURT:** Folks, anytime we have a case here in this
16 court, whether it be a criminal case or civil case, we
17 always have the same goal, the same purpose. And that is to
18 select a panel of folks, a jury, that can take whatever
19 experiences you've had outside the courtroom and set those
20 aside and listen carefully to the evidence that is presented
21 during the course of this trial and in listening to that
22 evidence give both the State and the Defendant a fair and
23 impartial trial, to consider those matters fairly and
24 impartially and make no decision as to the facts until all
25 of the evidence is in. That's what we ask of juries and

1 that's what we're trying to seek.

2 You'll notice that when I asked the question or when I
3 ask any questions, but only had one individual stand with
4 regards to knowing Ms. Williams, but you notice I followed
5 up that question when she said she knew Ms. Williams. I
6 followed it up with the question with would that in any way
7 affect your ability to be fair and impartial? And that's
8 the key. That's the key issue that I'm concerned about and
9 that we are concerned about as a judicial system.

10 And so maybe the easiest thing to do is to simply ask
11 the question this way. Whether or not I've asked the
12 question, is there any member of the jury panel who knows of
13 any reason why you would not be able to give both the State
14 and the Defense a fair and impartial trial? If so, please
15 stand. All right. Ma'am, your name, please?

16 **JUROR:** Heidi Ravenscraft.

17 **THE COURT:** All right. Ms. Ravenscraft, let me get you
18 to come forward.

19 (Whereupon a bench conference was held on the record in
20 the presence of the jury panel, but out of their hearing)

21 **THE COURT:** This is juror 132. Yes, ma'am.

22 **MS. RAVENSCRAFT:** I believe I could be mistaken, but I
23 believe it was a neighbor -- I believe I was a neighbor of
24 Mr. Kelly -- Mr. Phillips when I was growing up --

25 **THE COURT:** Okay.

1 **MS. RAVENSCRAFT:** --- next door neighbors.

2 **THE COURT:** All right. Would that in any way affect

3 ---

4 **MS. RAVENSCRAFT:** Yes, sir, it might.

5 **THE COURT:** Okay. For purposes of this case then I'm
6 going to excuse you from serving, but I'm going to get you
7 to remain with us.

8 **MS. RAVENSCRAFT:** Okay. That's fine.

9 **THE COURT:** Two things, don't have any conversation
10 with anybody about anything. And then the other thing is we
11 have another case that we're going to be pulling a jury on
12 and ---

13 **MS. RAVENSCRAFT:** Sure.

14 **THE COURT:** --- you could be available for that one.

15 **MS. RAVENSCRAFT:** I just wanted to ---

16 **THE COURT:** Yeah. Thank you.

17 **MS. RAVENSCRAFT:** Thank you.

18 **THE COURT:** Okay.

19 **MR. JONES:** There's a juror 115, Mr. Moore, who was a
20 victim or his child was a victim in a recent case that I
21 prosecuted. I pled him like three months ago or so, but he
22 didn't stand up and say that he knew me or anything like
23 that. I just wanted to make y'all both aware of that.

24 **THE COURT:** You want me to bring him up and ask him
25 about it?

1 **MR. JONES:** Sure.

2 **MS: AARON:** Can we just agree to use a Court strike to
3 not call him? I mean, if he's a parent of a victim
4 prosecuted by this solicitor, I think probably no matter
5 what he says ---

6 **MR. JONES:** It was -- his child is autistic. It was a
7 child abuse case. So I wanted to be sure everybody was on
8 the same page.

9 **MS: AARON:** I mean, he may not like you, but I don't
10 really want to take that chance to base my case on what the
11 juror -- response.

12 **THE COURT:** It's up to you. If you want to consent to
13 that we can ---

14 **MR. JONES:** I'll consent to that.

15 **THE COURT:** All right. Let's not have Mr. Moore's name
16 pulled for this case.

17 **MR. JONES:** Thank you.

18 **MS. AARON:** Thank you.

19 (Whereupon the bench conference was ended)

20 **THE COURT:** All right. Are there any additional
21 questions or voir dire from the State?

22 **MR. JONES:** Nothing from the State, Your Honor.

23 **THE COURT:** Anything additional from the Defense?

24 **MS: AARON:** Nothing from the Defense, Your Honor.

25 **THE COURT:** All right. Ladies and gentlemen, let me

1 explain to you briefly how we go about selecting juries here
2 in general sessions court. We have a computer, and, of
3 course, your names appear on the jury roster in alphabetical
4 order or pretty much in alphabetical order.

5 What the computer does is it takes this list, this jury
6 list, and it completely and randomly just reorders it. I
7 may be Tommy Russo, juror number 134, on this alphabetical
8 list, but I may show up on this new list has Tommy Russo,
9 juror number 14. There's no rhyme or reason to it. It just
10 simply takes the names and it's just like putting it in a
11 big hat, jostling them around and pulling them back out and
12 then it lists them.

13 What Madame Clerk will do is she'll start on that new
14 or Mr. Clerk will and what will happen is Mr. Clerk will
15 take that list and from that list he'll start at the top and
16 he'll call the first name on the list. And if your name is
17 called, I'd ask you to please come out, come up to the front
18 of the court right here in front of the clerk and then turn
19 and face the back of the courtroom like I'm doing.

20 And you'll stand there and Mr. Clerk will first ask of
21 the State words to this effect, something like what say you
22 for the State or words to that effect. The State has two
23 options. They can either excuse you, and if they excuse
24 you, you just go back and have a seat, or they can present
25 you. And if they present you, you'll just remain standing.

1 They'll then ask the Defense what say you for the
2 Defense or words to that effect. The Defense has two
3 options. They can either excuse you, and if they excuse
4 you, you'll go back and have a seat, or they can seat you.
5 And if they seat you, you'll come around and have a seat in
6 the jury box.

7 Now, there's no way to know at this point if your
8 name's going to be called at all. Even more so, there's no
9 way of knowing if your name is called whether or not you're
10 going to be excused or seated.

11 I tell you that to say this, if your name is called,
12 please bring with you any personal items you brought to the
13 courtroom today; pocketbook, umbrella, hat, whatever,
14 whatever you may have, personal items, bring that with you
15 because it may be that you're not going to be going back to
16 your seat, that you'll be having a seat over here. Okay?
17 So -- and we'll go through that process until we've selected
18 our jury. And we're five and ten?

19 **MR. JONES:** That's correct, Your Honor.

20 **THE COURT:** Okay. All right. Is the State ready to
21 proceed to jury selection?

22 **MR. JONES:** The State's ready to proceed, Your Honor.

23 **THE COURT:** Is the Defense ready?

24 **MS. AARON:** Yes, sir.

25 **THE COURT:** All right. Mr. Clerk, ---

1 **THE CLERK:** Yes, sir.

2 **THE COURT:** --- you may begin the process.

3 **THE CLERK:** Juror number 122, Kristin J. Painter,
4 Christina J. Painter.

5 (Whereupon juror 122, Christina J. Painter, a white
6 female, came forward)

7 **THE CLERK:** What says the State?

8 **MR. JONES:** Please present Ms. Painter.

9 **THE CLERK:** And the Defense?

10 **MS. AARON:** Please excuse this juror from service in
11 this case.

12 **THE CLERK:** If you'd return to your seat, please,
13 ma'am.

14 Juror number 140, Sara G. Shaffer.

15 (Whereupon juror 140, Sara G. Shaffer, a white female,
16 came forward)

17 **THE CLERK:** What says the State?

18 **MR. JONES:** Please present the juror.

19 **THE CLERK:** And the Defense?

20 **MS. AARON:** Please excuse the juror from service in
21 this case.

22 **THE CLERK:** If you would return to your seat, please,
23 ma'am.

24 Juror number 151, Charles F. Watson.

25 (Whereupon juror 151, Charles F. Watson, a white male,

1 came forward)

2 **THE CLERK:** What says the State?

3 **MR. JONES:** Please present Mr. Watson.

4 **THE CLERK:** And the Defense?

5 **MS. AARON:** Please seat this juror.

6 **THE CLERK:** If you would have a seat in the jury box,
7 sir.

8 Juror number 69, Brandon M. Harvey.

9 (Whereupon juror 69, Brandon M. Harvey, a white male,
10 came forward)

11 **THE CLERK:** What says the State?

12 **MR. JONES:** Please present the juror.

13 **THE CLERK:** And the Defense?

14 **MS. AARON:** Please seat this juror.

15 **THE CLERK:** If you'd have a seat in the jury box, sir.
16 Juror number 10, William L. Bearss.

17 (Whereupon juror 10, William L. Bearss, a white male,
18 came forward)

19 **THE CLERK:** What says the State?

20 **MR. JONES:** Please present the juror.

21 **THE CLERK:** And the Defense?

22 **MS. AARON:** Please seat this juror.

23 **THE CLERK:** Okay. Thank you. If you would have a seat
24 in the jury box, sir.

25 Juror number 94, Tonya M. Knox.

1 (Whereupon juror 94, Tonya M. Knox, a black female,
2 came forward)

3 **THE CLERK:** What says the State?

4 **MR. JONES:** Please present Ms. Knox.

5 **THE CLERK:** And the Defense?

6 **MS. AARON:** Please seat this juror.

7 **THE CLERK:** If you would have a seat in the jury box,
8 ma'am.

9 Juror number 86, Karen A. Johnson.

10 (Whereupon juror 86, Karen A. Johnson, a white female,
11 came forward)

12 **THE CLERK:** What says the State?

13 **MR. JONES:** Please present Ms. Johnson.

14 **THE CLERK:** And the Defense?

15 **MS. AARON:** Please seat this juror.

16 **THE CLERK:** If you would have a seat in the jury box,
17 please, ma'am.

18 Juror number 96, Brandy S. Laws.

19 (Whereupon juror 96, Brandy S. Laws, a white female,
20 came forward)

21 **THE CLERK:** What says the State?

22 **MR. JONES:** Please present Ms. Laws.

23 **THE CLERK:** And the Defense?

24 **MS. AARON:** Please excuse the juror from service in
25 this case.

1 **THE CLERK:** If you would return to your seat, please,
2 ma'am.

3 Juror number 160, Nickalas C. Yanetta.

4 (Whereupon juror 160, Nickalas C. Yanetta, a white
5 male, came forward)

6 **THE CLERK:** What says the State?

7 **MR. JONES:** Please excuse the juror.

8 **THE CLERK:** If you would return to your seat, please,
9 sir.

10 Juror number 16, Louis R. Brand.

11 (Whereupon juror 16, Louis R. Brand, a white male, came
12 forward)

13 **THE CLERK:** What says the State?

14 **MR. JONES:** What was the number again, Mr. Clerk?

15 **THE CLERK:** 16.

16 **MR. JONES:** Please present the juror.

17 **THE CLERK:** And the Defense?

18 **MS. AARON:** Please seat this juror.

19 **THE CLERK:** If you would have a seat in the jury box,
20 sir.

21 Juror number 14, David J. Boiter, Jr.

22 (Whereupon juror 14, David J. Boiter, Jr., a white
23 male, came forward)

24 **THE CLERK:** What says the State?

25 **MR. JONES:** Please present the juror.

1 **THE CLERK:** And the Defense?

2 **MS. AARON:** Please seat this juror.

3 **THE CLERK:** If you would have a seat in the jury box,
4 sir.

5 Juror number 76, Justin K. Hinkle.

6 (Whereupon juror 76, Justin K. Hinkle, a white male,
7 came forward)

8 **THE CLERK:** What says the State?

9 **MR. JONES:** Please present the juror.

10 **THE CLERK:** And the Defense?

11 **MS. AARON:** Please seat this juror.

12 **THE CLERK:** If you'd have a seat in the jury box, sir.
13 Juror number 149, Jacob T. Vinson.

14 (Whereupon juror 149, Jacob T. Vinson, a white male,
15 came forward)

16 **THE CLERK:** What says the State?

17 **MR. JONES:** Please excuse the juror.

18 **THE CLERK:** Okay. If you would return to your seat,
19 please, sir.

20 Juror number 157, excuse me, juror 57, Jordan D. Gray.

21 (Whereupon juror 57, Jordan D. Gray, a white male, came
22 forward)

23 **THE CLERK:** What says the State?

24 **MR. JONES:** Please present the juror.

25 **THE CLERK:** And the Defense?

1 **MS. AARON:** Please seat this juror.

2 **THE CLERK:** If you would have a seat in the jury box,
3 sir.

4 Juror number 70, Carl T. Haubold.

5 (Whereupon juror 70, Carl T. Haubold, a white male,
6 came forward)

7 **THE CLERK:** What says the State?

8 **MR. JONES:** Please excuse the juror.

9 **THE CLERK:** If you'd return to your seat, please, sir.
10 Juror number 100, Lisa D. Leslie.

11 (Whereupon juror 100, Lisa D. Leslie, a white female,
12 came forward)

13 **THE CLERK:** What says the State?

14 **MR. JONES:** Please present Ms. Leslie.

15 **THE CLERK:** And the Defense?

16 **MS. AARON:** Seat this juror.

17 **THE CLERK:** If you would have a seat in the jury box,
18 please, ma'am.

19 Juror number 18, Paul Brown, Jr.

20 (Whereupon juror 18, Paul Brown, Jr., a black male,
21 came forward)

22 **THE CLERK:** What says the State?

23 **MR. JONES:** Please excuse the juror.

24 **THE CLERK:** If you'd return to your seat, please, sir.
25 Juror number 68, Joshua D. Harrison.

1 (Whereupon juror 68, Joshua D. Harrison, a white male,
2 came forward)

3 **THE CLERK:** What says the State?

4 **MR. JONES:** Please present the juror.

5 **THE CLERK:** And the Defense?

6 **MS. AARON:** Please seat this juror.

7 **THE CLERK:** If you would have a seat in the jury box.
8 Juror number 15, Keri E. Bowen.

9 (Whereupon juror 15, Keri E. Bowen, a white female,
10 came forward)

11 **THE CLERK:** What says the State?

12 **MR. JONES:** Please present the juror.

13 **THE CLERK:** And the Defense?

14 **MS. AARON:** Please excuse the juror from the service in
15 this case.

16 **THE CLERK:** If you would return to your seat, please,
17 ma'am.

18 Juror number 89, Aaron M. Key.

19 (Whereupon juror 89, Aaron M. Key, a white male, came
20 forward)

21 **THE CLERK:** What says the State?

22 **MR. JONES:** Please excuse the juror.

23 **THE CLERK:** If you would return to your seat, please,
24 sir.

25 Juror number 13, Michelle H. Black-Batson.

1 (Whereupon juror 13, Michelle H. Black-Batson, a white
2 female, came forward)

3 **THE CLERK:** What says the State?

4 **MR. JONES:** Please present the juror.

5 **THE CLERK:** And the Defense?

6 **MS. AARON:** Please excuse the juror from service in
7 this case.

8 **THE CLERK:** If you'd return to your seat, please,
9 ma'am.

10 Juror number 20, Jerry W. Browne.

11 (Whereupon juror 20, Jerry W. Browne, a white male,
12 came forward)

13 **THE CLERK:** What says the State?

14 **MR. JONES:** Please present the juror.

15 **THE CLERK:** And the Defense?

16 **MS. AARON:** Please seat this juror.

17 **THE CLERK:** If you'd have a seat in the jury box,
18 please, sir.

19 **THE COURT:** Two alternates. One and two on each.

20 **THE CLERK:** Okay. This will be for the first
21 alternate. Juror number 39, Randy H. Elgin.

22 (Whereupon juror 39, Randy H. Elgin, a white male, came
23 forward)

24 **THE CLERK:** What says the State?

25 **MR. JONES:** Please present the juror.

1 **THE CLERK:** And the Defense?

2 **MS. AARON:** Please seat this juror.

3 **THE CLERK:** If you would have a seat in the jury box,
4 please, sir.

5 This will be for the second alternate. Juror number
6 78, Jill S. Hitt.

7 (Whereupon juror 78, Jill S. Hitt, a white female, came
8 forward)

9 **THE CLERK:** What says the State?

10 **MR. JONES:** Please present the juror.

11 **THE CLERK:** And the Defense?

12 **MS. AARON:** Please excuse the juror from service in
13 this case.

14 **THE CLERK:** If you would return to your seat, please,
15 ma'am.

16 Juror number 133, David E. Reed.

17 (Whereupon juror 133, David E. Reed, a white male, came
18 forward)

19 **THE CLERK:** What says the State?

20 **MR. JONES:** Please excuse the juror.

21 **THE CLERK:** If you would return to your seat, please,
22 sir.

23 Juror number 91, Tracy S. Klippert.

24 (Whereupon juror 91, Tracy S. Klippert, a white female,
25 came forward)

1 **THE CLERK:** What says the State?

2 **MR. JONES:** Please present the juror.

3 **THE CLERK:** And the Defense?

4 **MS. AARON:** Please excuse the juror from service in
5 this case.

6 **THE CLERK:** If you would return to your seat, please,
7 ma'am.

8 Juror number 79, Ashley D. Holcombe.

9 (Whereupon juror 79, Ashley D. Holcombe, a white
10 female, came forward)

11 **THE CLERK:** What says the State?

12 **MR. JONES:** Please present the juror.

13 **THE CLERK:** And the Defense?

14 **MS. AARON:** Please seat this juror.

15 **THE CLERK:** If you would have a seat in the jury box,
16 please, ma'am.

17 **THE COURT:** All right. Are there any motions regarding
18 jury selection from the State?

19 **MR. JONES:** No, sir, Your Honor.

20 **THE COURT:** Anything from the Defense?

21 **MS. AARON:** May it please the Court. May I speak with
22 the solicitor one minute before I respond?

23 **THE COURT:** Yes, ma'am.

24 (Pause)

25 **MS. AARON:** No motions, Your Honor.

1 **THE COURT:** All right. Folks, let me get you to do me
2 a favor. The bailiff is going to take you upstairs to the
3 courtroom where we're going to be trying this case. And
4 he'll put you in the jury box up there. Just have no
5 conversation about anything. Just -- we'll go -- we'll
6 reconvene up there in just a few minutes. So if you would
7 follow the bailiff, he'll take you upstairs.

8 (Whereupon the jury exited the courtroom at 11:25 am)

9 **THE COURT:** To the remainder of the panel, I'm going to
10 ask you to just keep your seats. I'm going to step off the
11 bench and Judge Miller's going to -- Judge Miller will be on
12 in a few minutes to select the next jury. And then you'll
13 have further instructions after that, okay? So we'll just
14 be at ease for a few minutes while we make this transition.

15 (Whereupon court was in recess at 11:26 am)

16 (Whereupon court reconvened at 11:43 am)

17 (Whereupon the jury entered the courtroom at 11:43 am)

18 **THE COURT:** Thank you, folks. Please have a seat.

19 Thank you. Ladies and gentlemen, we went to all the trouble
20 to bring you up here so that I could send you away. I'm
21 going to -- I'm going to let you go in just a moment and
22 excuse you for lunch.

23 We're going to start this trial this afternoon. We
24 have some pretrial matters that we're going to take up,
25 which will help get certain matters out of the way so that

1 the trial will go more smoothly and go more efficiently.

2 So we're going to remain and take care of those
3 pretrial matters. And those are non-jury matters. We don't
4 need your assistance with the pretrial matters. So instead
5 of having you sit around here, we're going to let you go
6 ahead and go to lunch.

7 I just need to send you with some instructions. You
8 are going to be the jury to hear this case. And it's very
9 important that you have no conversation with anybody about
10 this case. Don't allow anyone to talk with you about it.

11 I don't anticipate anyone would. But if anyone did
12 approach you or whatever, you let them know that you're a
13 juror and you're not allowed to talk about it, and that
14 should end it. If they insist on talking to you or persist,
15 you let me know who it is, and I'll make sure that that
16 ends. So you're not to have any conversation with anybody.

17 We live in a day and age now where these cell phones,
18 they're just -- really they're pocket computers. Well, I
19 tell you that to say this. You're going to take an oath to
20 try this case and to decide this case based upon the
21 evidence presented during the course of this trial. So it
22 would be very improper for you to attempt to do any
23 independent investigation.

24 In other words, to go on-line and try to, you know,
25 figure out anything about this case. Most of what's on-line

1 is garbage anyway. And the important thing is this, is that
2 you're going to be under oath to try this case based solely
3 upon the presentation of the evidence here in this court.
4 And so it would be highly improper to do that. So just -- I
5 tell folks all the time, just kind of put it out of your
6 mind and go enjoy your lunch.

7 Now, the restriction about talking about the case, that
8 applies to anyone, but it also means even amongst
9 yourselves. Sometimes jurors look a little funny at me
10 because they think, well, that's -- I thought that's what
11 we're supposed to do. Well, it is whenever the time is
12 appropriate.

13 But it's not appropriate to have any conversation with
14 anybody, even amongst yourselves until all of the evidence
15 has been presented and everything is in the record. So
16 until that is the case, you're not to really talk with
17 anybody at all about the case so that when you do come back
18 after lunch and you're reconvened, the bailiff will show you
19 where your jury room is, you'll come back and you'll
20 reconvene in the jury room.

21 And when you get back there, talk about anything in the
22 world you want to talk about, just don't talk about the
23 case, okay? And we'll get started once everyone is back.

24 Now, I'm going to ask you, if you would, to be back in
25 the jury room at 2:30. So that gives you a little over two

1 and a half hours for lunch. So if you would, please, make
2 sure you're back in time to find parking and get back into
3 the courtroom. And if you would be in the jury room at 2:30
4 and we'll start at that time.

5 So if everyone else would please remain seated. Folks,
6 I want to excuse you now to go to lunch. And we'll see you
7 back at 2:30, okay?

8 (Whereupon the jury exited the courtroom at 11:47 am)

9 **THE COURT:** Okay. What we do pretrial-wise will help
10 us get down the road here.

11 **MR. JONES:** Your Honor, I did serve on Ms. Aaron a
12 motion to comply with the Rape Shield Statute potential
13 testimony that could come up in this trial as to the
14 victim's other sexual activity. And I would ask that the
15 Defense be restrained from bringing up any other sexual
16 activity that the victim has acted on.

17 **THE COURT:** All right. Ms. Aaron, I'd be happy to hear
18 from you.

19 **MS. AARON:** May it please the Court, Your Honor. I did
20 receive the motion. I just, as I think the State expected,
21 served the required notice regarding the statute that we
22 would intend to speak of other instances.

23 The Rape Shield Statute is designed to prevent a
24 defendant from attacking the morality of the victim by
25 saying that there were other sexual encounters involving the

1 victim, therefore, she must somehow be at fault in this
2 sexual encounter. But case law supports an absolute
3 exception to the Rape Shield Statute when evidence of a
4 victim's contact is offered for a purpose other than to
5 attack her morality.

6 This case, there is testimony evidence, as I understand
7 it, from the victim. There's no physical evidence. There's
8 no medical evidence. It's testimony from the victim, and
9 that's it.

10 She has some significant behavioral problems. The
11 State has already indicated that they're going to attribute
12 or attempt to call a witness, expert witness, to attribute
13 those behavioral problems to being a victim of sexual abuse.

14 This victim has already complained, and as I understand
15 it, there are pending criminal charges in two other
16 instances where an adult and she have engaged in sex. They
17 may be, but for her age, consensual. But, obviously, she
18 can't consent.

19 So I'm not saying that they're rape charges. I'm
20 saying that they are CSC charges due to age. She's by all
21 accounts a promiscuous sixteen year old or thirteen year old
22 at that time.

23 So my purpose in talking about the other two instances,
24 which the victim spoke about in the forensic interview to
25 police, to relatives is to attribute her behavior, which is

1 going to be attributable to having sex as a young child to
2 attribute it to other people possibly other than my client.
3 And I think that evidence is tantamount to him being able to
4 provide a complete defense.

5 Because if the State's explanation that her acting out
6 and her behavior problems are due to a sexual abuse
7 situation, and I'm prevented from talking about two out of
8 three instances where she has alleged this conduct, then I
9 believe it prejudices my client, and he is unable to present
10 a complete defense.

11 **MR. JONES:** Your Honor, if I may. One, I don't intend
12 to argue that her behavioral problems are specifically
13 because of this particular Defendant. The expert that she's
14 talking about is going to talk about the process of
15 disclosure, sexual victim, sexual abuse in general. Of
16 course, it's a blind expert that has not talked to my
17 victim, does not know my victim or anything about this
18 particular case. So I'm not going to try and do that.

19 And that's -- it is an interesting point. In doing
20 some research on the Rape Shield Statute I came across State
21 v. Grovenstein where the court did allow the defense to get
22 into the prior sexual knowledge of the victim, but it was to
23 respond or rebut the state's argument that the only way this
24 six or seven year old in that particular case would have
25 known about this sexual activity is because of this

1 defendant.

2 And in that particular case the child had previously
3 done the same acts on another child of the same age, if that
4 makes sense. The child had been accused of doing something
5 to other children that that child then accused this
6 defendant of doing. And in that case the exception was
7 granted that, yes, the jury needs to know that.

8 But in this particular case, Your Honor, the fact that
9 she is a victim on another CSC, if she wants to talk about
10 that, where that particular defendant admitted the sex, Your
11 Honor, I don't see how that has anything to do with this
12 particular case and the facts of this case. And I don't
13 think the Defense counsel has articulated any -- any reason
14 that would be an exception to the Rape Shield Statute, Your
15 Honor.

16 I believe it is their intent to show that she has been
17 promiscuous, that she has had sex with other adults and,
18 therefore, she is making this up, and that's the only reason
19 we're here today, Your Honor.

20 **MS. AARON:** Your Honor, if I may. Since he did quote
21 Grovenstein, there's an absolute exception in that case that
22 I've already articulated. The Rape Shield Statute does not
23 bar evidence of a victim's sexual conduct if the evidence is
24 offered for a purpose other than to attack the victim's
25 morality.

1 I can't attack the victim's morality because she's
2 underage. She could walk around here with a sign on her.
3 That's inappropriate.

4 **THE COURT:** Didn't you just get through telling me,
5 Judge, this girl's promiscuous? We need to let the jury ...

6 **MS. AARON:** I don't intend to talk about her
7 promiscuity. I was trying to give you an idea about the
8 demeanor of this victim. That is not my intent.

9 If the State is indicating that Shauna Galloway-
10 Williams is not going to testify that the behavior problems
11 involving this child are -- fit into the child abuse
12 dynamic, if he tells me that that is not her purpose, and I
13 would doubt that because that's what she's called to say, if
14 her behavioral problems -- if she's not going to say that
15 her behavioral problems fit the child abuse dynamic, then I
16 would have no reason to bring up other people ---

17 **THE COURT:** I think what he said was she's not going to
18 allege that her behavioral problems are a result of the
19 alleged actions of your client.

20 **MR. JONES:** Well, Your Honor, first off, I don't see
21 why we're going to get into any behavioral problems at all
22 of the victim. I think that's completely irrelevant of any
23 behavior -- that's what we're talking about.

24 I don't want -- I think it's irrelevant that she has
25 alleged that another twenty-two year old, twenty-three year

1 old, she had sex with him, I think that's completely
2 irrelevant. So we shouldn't be talking about behavioral
3 problems at all is my point, Your Honor.

4 **MS. AARON:** Your Honor, and with the State v. Williams
5 case, which is kind of a prodigy of the other one, they did
6 call the expert witness in camera. And maybe we need to do
7 that. What I'm trying to do is preempt what I believe she's
8 going to say. She may not say that.

9 I don't intend to talk about behavioral problems with
10 this child. She did make a late disclosure. I would assume
11 that the witness is going to talk about that fitting into
12 the parameters of a child abuse dynamic or a sex abuse
13 dynamic.

14 If the term sexual abuse dynamic or anything like it is
15 discussed to explain this case, then if this child has
16 alleged that she has had sex with other adults, then her
17 behavior can be attributable to a sexual dynamic involving
18 those individuals, not just my client. And that's my point.

19 I don't believe the expert witness can attribute her
20 behavior to my client. And I don't believe she's going to
21 intend to. But if my client and this child's interaction is
22 the only evidence before the jury and there are interactions
23 with other adults having "consensual sex" with this child,
24 then that's the only evidence that's before the jury, and
25 they don't have the complete picture.

1 **MR. JONES:** And, Your Honor, ---

2 **MS. AARON:** So if we can call her in camera, maybe
3 that'll solve the problem.

4 **MR. JONES:** Your Honor, again, Ms. Aaron is assuming
5 that we're talking about the victim's behavior at all. The
6 victim's going to come in here and testify as to what
7 happened between the Defendant or what she's alleging the
8 Defendant did to her on multiple occasions. And another
9 witness is going to testify to something that she witnessed
10 happen. And the officer's going to testify to what he told
11 -- what the Defendant told the officer.

12 So she's -- Ms. Aaron keeps bringing up the victim's
13 behavior. I don't see -- she wants that to be, I believe
14 their defense, she wants that to be brought up so they can
15 see that this child has had sex with a couple of other
16 adults, one other adult, however many it is. But again,
17 that's the purpose of the Rape Shield is we're not focusing
18 on what we need to be focusing on.

19 **THE COURT:** All right. Obviously Officer Hamby is the
20 police department.

21 **MR. JONES:** That's correct, Your Honor.

22 **THE COURT:** All right. Minor

23 **MR. JONES:** That's the victim.

24 **THE COURT:** That's the victim. Peggy Robinson?

25 **MR. JONES:** Is the mother of the victim and girlfriend

1 of the Defendant.

2 **THE COURT:** All right. And Kelsey Beals?

3 **MR. JONES:** Kelsey Beals and Shauna Galloway are both
4 experts. I had a possible timing issue with Shauna
5 Galloway. I'm only going to call one of those, but it just
6 depends on where we are in the trial.

7 **THE COURT:** Right.

8 **MR. JONES:** One might be the expert or it might be the
9 other one's the expert.

10 **THE COURT:** Yeah. And you want to proffer that
11 testimony to see where that's going?

12 **MS. AARON:** Yes, sir. I see no reason to call an
13 expert other than to explain some problem or some issue the
14 jury would have problems understanding as a lay person.
15 That's the reason for calling an expert. And I would like
16 to, yes, sir, before we're prohibited from doing what ---

17 **THE COURT:** Chris, ---

18 **MS. AARON:** --- what we need to do.

19 **THE COURT:** --- have you got either one of those
20 experts here?

21 **MR. JONES:** They're not here at the moment. I can have
22 them here this afternoon, though, Your Honor.

23 **THE COURT:** How long would you think it would take to
24 proffer their testimony?

25 **MR. JONES:** Well, it would depend on the cross

1 examination, but ---

2 **THE COURT:** Yeah, I understand.

3 **MR. JONES:** Just to get my testimony out, thirty
4 minutes.

5 **THE COURT:** All right. We'll do that.

6 **MR. JONES:** I can have them here after lunch and try to
7 still do it.

8 **THE COURT:** If you could have them -- if you could have
9 them here, say, by 1:30.

10 **MR. JONES:** Okay. Yes, sir, Your Honor.

11 **THE COURT:** So we're going to table that issue at this
12 point and we'll just move on to the other ---

13 **MS. AARON:** Thank you, Your Honor.

14 **THE COURT:** Okay.

15 **MR. JONES:** The other issue, Your Honor, I think we
16 need to take up, I believe there's some Lyle evidence that I
17 intend to get into, Your Honor. As I briefly mentioned, the
18 victim was thirteen years old at the time of the acts that
19 occurred in the indictments and the time she disclosed the
20 abuse.

21 And in the disclosure to law enforcement and in
22 preparing for the case the victim has indicated that sexual
23 abuse began when she was six or seven years old when her
24 mother started dating the Defendant, however, at that time
25 it was touching, some oral sex and then culminated in the

1 month of July of 2013 with several actual sexual intercourse
2 acts, Your Honor. So I would intend to have the victim
3 testify to all of that.

4 I think there are several cases on point that indicate
5 it is admissible when the acts have been over several years,
6 but is a continuous illicit sexual abuse that culminates in
7 the sexual act, Your Honor.

8 I can go further and direct you to State v. Kirton and,
9 I believe, State v. Clasby gives a good analysis of what
10 Your Honor's supposed to go through, Your Honor. But I'll
11 allow Ms. Aaron to make some arguments and see how much
12 further I need to go into those.

13 **THE COURT:** Yes, ma'am.

14 **MS. AARON:** May it please the Court, Your Honor. I
15 would object first of all that this would be an attempt by
16 the solicitor to introduce evidence that was known on the
17 day the warrant was issued in July of 2013 that he cannot
18 prove beyond a reasonable doubt. So his effort in
19 introducing this evidence that the victim has been talking
20 about since the beginning, this isn't something that was
21 discovered over the course of time. Because he cannot prove
22 that beyond a reasonable doubt, why he's using Lyle as a
23 back door.

24 I would also point you to some dicta in one of the
25 cases that he mentioned, and I will put my hands on it in

1 just a minute, which talks about the only way that the State
2 can do this is common scheme or plan. But the common scheme
3 has to be the same type of abuse.

4 The abuse that's listed in the warrants and omitted
5 from the indictment, which would be another thing that I
6 would hope to talk about, but it's different. It's not the
7 same act.

8 The one particular case that did not allow the State to
9 do common scheme or plan evidence involved a different type
10 of sexual touching. And the court excluded it because it
11 wasn't exactly the same.

12 So I would submit to you that this is an attempt by the
13 State to introduce evidence they cannot prove by a
14 reasonable doubt to compound or to bolster the cases that
15 they chose to prosecute. And I would object to it.

16 **MR. JONES:** Your Honor, that's simply not true. In
17 State v. Kirton, the facts are almost exactly like this.

18 **THE COURT:** Y'all have ---

19 **MR. JONES:** Yeah, I have a cite, Your Honor. I'm
20 sorry. It's 381 S.C. 7.

21 **THE COURT:** 301?

22 **MR. JONES:** No, 381.

23 **THE COURT:** 381.

24 **MR. JONES:** S.C. 7.

25 **THE COURT:** 7?

1 **MR. JONES:** 7, yes, sir. It's a 2008 case, Your Honor.
2 And essentially the victim testified, or excuse me, the
3 indictment was for criminal sexual conduct, second degree.
4 The victim testified that over six or seven years there was
5 touching, touching the victim's crotch and making the victim
6 touch his penis and also oral sex.

7 And the court held that this is the six or seven
8 pattern -- year pattern of escalating abuse of the victim by
9 the defendant is the essence of grooming and continuous
10 illicit activity. And that is exactly what happened and
11 what we intend to show, Your Honor, in this case.

12 And it was admissible in 2009 in front of the South
13 Carolina Supreme Court. I do not -- I'm not aware of -- I
14 don't believe Ms. Aaron indicated what case she was
15 referring to, Your Honor.

16 And, again, in Kirton the Supreme Court said that when
17 prior bad acts are directed towards the same victim and are
18 very similar in nature, those acts are admissible in the
19 common scheme or plan, Your Honor. And, again, it mentioned
20 that the six or seven year pattern of escalating abuse was
21 the essence of grooming and a continuous illicit activity.

22 And I would also say that the acts in Kirton were not
23 the exact same. At first it was touching and then it moved
24 up to actual sexual intercourse.

25 **THE COURT:** Does anybody have a copy of that case that

1 I can look at?

2 **MS. AARON:** Your Honor, for the record, I would respond
3 to the escalation issue, which is the very -- and I'm
4 searching right now for the cite that I have. It's the very
5 -- is the essence of the case that I'm talking about. And I
6 will get it for Your Honor very shortly.

7 This is -- the case that we're trying today is not an
8 escalation. He's charged with CSC, third degree, which
9 doesn't even involve a sexual battery. The prior acts that
10 are being complained of do.

11 So this is not an escalation case. This is not a
12 grooming case. This is an attempt by the solicitor to
13 convict my client of six or seven year's worth of acts that
14 he does not believe he can prove beyond a reasonable doubt,
15 which is why the indictments are limited to date. I submit
16 to the Court that that is improper and that is the very
17 reason why prior bad acts are excluded.

18 **MR. JONES:** Your Honor, I appreciate her opinion, but
19 this is my case and it is a grooming case. And he's charged
20 with not only CSC, third, she failed to mentioned he's also
21 charged with CSC, second, with actually having sex with this
22 victim. And, again, the six or seven year pattern of
23 illicit -- continued illicit activity is the essence of
24 grooming as the Supreme Court said, Your Honor.

25 **THE COURT:** What's the pattern here or the allegations?

1 **MR. JONES:** The allegations are for six or seven years

2 ---

3 **THE COURT:** That's the six or seven years you're

4 talking about ---

5 **MR. JONES:** Yes, ---

6 **THE COURT:** --- in the case?

7 **MR. JONES:** In both cases. In Kirton they mention six
8 or seven years.

9 **THE COURT:** Right.

10 **MR. JONES:** And in the facts here that we intend to
11 present, the Defendant and the victim's girlfriend, or
12 excuse me, the victim's mother dated for six or seven years
13 before the child disclosed the sexual abuse. And in that
14 time-frame the victim alleges that he did touch her
15 inappropriately on a regular basis and performed oral sex on
16 her and she performed oral sex on him.

17 And, Your Honor, I also direct you to State v. Clasby.
18 I can give you a cite on that one as well.

19 **THE COURT:** All right.

20 **MR. JONES:** It's 385 S.C. 148.

21 **THE COURT:** And that's State versus who?

22 **MR. JONES:** That's State v. Clasby, C-l-a-s-b-y. And
23 in that case there were four prior incidents of touching,
24 however, the indictment was just for one date per digital
25 penetration. And, again, the court referred to Kirton and

1 indicated that this was an escalating pattern of abuse and
2 that it was only logical to bring those prior events in.

3 **MS. AARON:** And, Your Honor, maybe we need to proffer
4 the victim as well. But I think the key to my objection is
5 the escalating. If you hear from the victim to what
6 activity she alleges occurred over the six or seven years,
7 we are not escalating.

8 Grooming is a touching of the shoulder and then the
9 waist and then -- that's not what we have here as I
10 understand what the victim's statements have been. This is
11 not an escalation. I think that goes to the heart of why
12 our case is distinguishable from those two.

13 (Pause)

14 **THE COURT:** Solicitor, are you ready to proffer that
15 testimony?

16 **MR. JONES:** Of the victim?

17 **THE COURT:** Um-hum (affirmative).

18 **MR. JONES:** The victim is arriving at 1:00 today, Your
19 Honor. She's in a group home and had to be transported
20 here.

21 **THE COURT:** Well, we'll do that at 1:00 then.

22 **MR. JONES:** Yes, sir.

23 **MS. AARON:** Your Honor, I would want to mention one
24 particular case that is not a Lyle case, but it does talk
25 about the six year period of time. It's State versus Baker.

1 It is from February of 2015. It is at 411 S.C. 583.

2 And in that particular case the -- it's a little bit
3 different situation. The solicitor indicted two weeks
4 before trial a six year period rather than what Mr. Jones is
5 proposing, which is to simply mention these activities over
6 a six year period.

7 We've been preparing for trial based on the allegations
8 on the warrants, which were specific dates. And today we
9 learn that the solicitor intends to in effect have my client
10 defend a six year -- six to seven year period of time with
11 non-specific allegations.

12 And the court in Baker says with regard to that, aside
13 from the concrete example of prejudice, which they found in
14 Baker, we are unable to discern how any defendant could
15 effectively defend himself against a six year time-frame.

16 What the court in Baker determined is that the
17 defendant had been preparing his defense based on the
18 indictments that he was given, which is exactly what we have
19 been doing. And now to allow the solicitor, again, to
20 introduce evidence of prior bad acts that he claims are
21 common scheme, and he's going to argue are the same exact
22 acts as these particular dates, we are now in a position of
23 having to defend a six year time period with no notice and
24 effectively no threshold of beyond a reasonable doubt that
25 the jury would have to find with regard to this evidence.

1 So I would ask -- I would throw that one out there for
2 the Court's consideration, I assume, after we're going to
3 argue after proffer.

4 **MR. JONES:** I would say they did have notice because
5 it's in the discovery what the child's statement is and she
6 made that statement at that time. And I do think that State
7 v. Kirton is exactly on point, Your Honor, and that this is
8 exactly the kind of case and the kind of facts the Supreme
9 Court of South Carolina allowed ---

10 **THE COURT:** Was it in the discovery, Ms. Aaron?

11 **MS. AARON:** It was in the discovery, Your Honor. And
12 the solicitor chose not to indict for it. The solicitor ---

13 **THE COURT:** He didn't have to indict him for it.

14 **MS. AARON:** I understand, but if ---

15 **THE COURT:** If you're aware of it.

16 **MS. AARON:** I was absolutely aware of it. It's all
17 over the map. But I was absolutely aware of her
18 allegations.

19 It was in the discovery, but the solicitor elected
20 three instances where he believed he could prove what the
21 victim said beyond a reasonable doubt and did not indict my
22 client on any of that other information, yet it's going to
23 be presented to the jury in a situation where they're going
24 to be required to find him guilty beyond a reasonable doubt
25 on three instances, but hear about a six to seven year

1 period, which the court has said is impossible for the
2 defendant to ---

3 **THE COURT:** How is this case different from ---

4 **MS. AARON:** --- defend against.

5 **THE COURT:** --- Kirton?

6 **MS. AARON:** I think there's two reasons. One is the
7 escalation. This is not an escalation case.

8 **THE COURT:** It seems to mirror Kirton.

9 **MS. AARON:** Your Honor, I understand. If we had
10 escalation, it would, but this is not an escalation case.
11 He is charged in our trial today with less on one indictment
12 than she alleged happened six years ago. There's no way in
13 the world that's escalation.

14 If she'd alleged intercourse ---

15 **THE COURT:** What about the other two?

16 **MS. AARON:** I understand the other two, but they're
17 specific dates. If she's alleging intercourse over a six to
18 seven year period, now we have not escalated.

19 **MR. JONES:** She's not alleging intercourse ---

20 **MS. AARON:** We have not -- her testimony with regard to
21 the ---

22 **THE COURT:** Well, I got to hear her testimony.

23 **MS. AARON:** I understand. And maybe we'll ---

24 **THE COURT:** My understanding of her testimony, based on
25 just what's going on here, is it didn't start out with

1 intercourse.

2 **MS. AARON:** Well, if that's what she said, then that's
3 different than ---

4 **THE COURT:** I mean, ---

5 **MS. AARON:** --- what I understand it.

6 **THE COURT:** --- I don't know. I haven't heard it. So,
7 ---

8 **MS. AARON:** I understand.

9 **THE COURT:** --- obviously, I've got to wait and hear
10 that. So ---

11 **MS. AARON:** Yes, sir.

12 **THE COURT:** --- we'll have to do that. All right.
13 What else?

14 **MR. JONES:** Your Honor, all I have are Lyle, the Rape
15 Shield issue, which we're going to get to with the other
16 proffering of the witnesses.

17 There's statement of the co-defendant, Your Honor. He
18 did not admit to the sexual acts, however, he did admit to a
19 portion of something that is important in this particular
20 case. He was given Miranda and all that, however, there's
21 no video or no written statement. So I don't know if we
22 need to do the whole full Jackson/Denno thing.

23 **THE COURT:** Well, I mean, it's a statement by the
24 Defendant that he made.

25 **MR. JONES:** To law enforcement.

1 **THE COURT:** To law enforcement.

2 **MR. JONES:** Okay.

3 **THE COURT:** Yeah.

4 **MR. JONES:** Yes, sir, Your Honor.

5 **THE COURT:** We need to do that.

6 **MR. JONES:** Okay. Well, again, we'll have to do that
7 at 1:00 as well.

8 **THE COURT:** Guys, we can't push everything off to --
9 are you ready to do anything this morning? Do you have any
10 of your witnesses here?

11 **MR. JONES:** No, Your Honor. They're getting here at
12 1:00, Your Honor. Generally, -- I apologize. Generally, we
13 pick the jury and then begin after lunch. So that's what I
14 was preparing to do, Your Honor.

15 **THE COURT:** Well, that's what we're doing. But I --
16 I've got a jury coming back at 2:30 and it sounds like we
17 got way more than we can say grace over before we -- before
18 2:30. I mean, I -- I was prepared to take up pretrial
19 matters this morning so we could start at 2:30.

20 **MR. JONES:** Yes, sir, Your Honor.

21 **THE COURT:** Well, it doesn't -- we might as well break
22 for lunch at this point. I don't think there's anything we
23 can do that's constructive. And we'll just start back at
24 1:30.

25 **MR. JONES:** Yes, sir. And the victim and the officer

1 will be here at 1:00 -- at 1:30.

2 **THE COURT:** Well, the only reason I'm saying start at
3 1:30 is I've got to give, you know, the court personnel a
4 chance to get something to eat ---

5 **MR. JONES:** Yes, sir, Your Honor.

6 **THE COURT:** --- before we start back. Is there
7 anything we can do right now that we can resolve or do we
8 just need to come back at 1:30?

9 **MR. JONES:** Your Honor, I believe since we have to
10 proffer the two witnesses, ---

11 **THE COURT:** Anything from the Defense side?

12 **MS. AARON:** The only question I would have would just
13 to confirm that there's no prior record that the State
14 intends to cross examine my client regarding. I don't
15 believe there is.

16 **THE COURT:** Is there any prior history that you could
17 ---

18 **MR. JONES:** No, sir, Your Honor.

19 **THE COURT:** --- impeach with?

20 **MR. JONES:** No. And one thing I will mention is Ms.
21 Aaron did not give me a list of her witnesses. She said
22 that she did not do that, however, if she does present a
23 case ---

24 **THE COURT:** She doesn't have any except possibly her
25 client.

1 **MS. AARON:** That's correct.

2 **MR. JONES:** Okay.

3 **THE COURT:** And that's the concern -- but there's no
4 record with regard to the Defendant?

5 **MR. JONES:** That's correct. There's no record, Your
6 Honor.

7 **THE COURT:** Okay.

8 **MS. AARON:** And, Your Honor, I guess for the record,
9 while we're here, I would like to put on the record that the
10 State did strike a black juror. I had intended to consider
11 a Batson motion with regard to that.

12 I did speak with the solicitor. He indicated a
13 racially neutral reason for striking the juror, which
14 satisfied me. So in the event this record is ever reviewed
15 by someone later down the road, I wanted to put on the
16 record that we did have that discussion and he did present a
17 racially neutral reason.

18 **THE COURT:** Okay. All right. Well, let's start back
19 at 1:30 then. And we'll take it from there, okay?

20 **MR. JONES:** Yes, sir.

21 **THE COURT:** Court will be in recess til 1:30.

22 (Whereupon court was in recess at 12:19 pm)

23 (Whereupon State's exhibits 1 - 3 were marked for
24 identification)

25 (Whereupon court reconvened at 1:35 pm)

25 Q. Tell the Court just briefly how the investigation got

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

53

1 there and how you made contact with Mr. Phillips.

2 A. The police department was notified by a doctor's office
3 of a juvenile in their facility that had disclosed sexual
4 abuse. A road patrol officer had responded to that
5 location. And after verifying or hearing the story, he
6 contacted our investigations division, which was where I was
7 employed at the time or assigned at the time. And my
8 captain asked me to respond to the doctor's office to handle
9 the investigation.

10 Q. Okay. And did you go to the doctor's office?

11 A. I did.

12 Q. Okay. And just briefly, who did you talk to at the
13 doctor's office?

14 A. At first I talked with Dr. Richards. And then I talked
15 with Peggy Robinson and **Minor**

16 Q. Okay. And you did mention you did talk to Mr.
17 Phillips. Tell the Judge how you made contact with Mr.
18 Phillips.

19 A. Later on in the investigation the investigation was
20 moved from the doctor's office to the police department.
21 And after speaking with **Minor** and Peggy Robinson
22 further, I made contact with Mr. Phillips by his cell phone.
23 I requested him come to the police department. He agreed
24 and met me at the police department.

25 Q. Okay. And when you were talking with him in the police

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

54

1 department, can you just describe the room where you were.

2 A. It's our standard interview room, approximately nine or
3 ten by ten, a bench or a desk with two chairs, three chairs
4 in that room.

5 Q. And who all was in the room when you talked to him?

6 A. At that time it was just myself and him.

7 Q. Okay. Did he -- did Mr. Phillips appear to be under
8 the influence of any drugs or alcohol at the time?

9 A. No.

10 Q. Did he appear to be impaired by any mental or physical
11 disability?

12 A. No.

13 Q. Do you remember about how long the questioning lasted?

14 A. I don't recall right off.

15 Q. Was it -- would you say it was over three hours?

16 A. No, not with just his part. Now I was back and forth
17 between several different people during this time-frame.
18 And I was there more than three hours, but not just his
19 part.

20 Q. Okay. Was he ever denied access to the telephone or
21 the bathroom?

22 A. No. As a matter of fact, there's a telephone in the
23 room that we're in sitting on the desk.

24 Q. What about food or drink?

25 A. No. He never requested any, but never denied him any

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

55

1 either.

2 Q. Did you make him any promises or anything in exchange
3 for testifying or for, excuse me, talking to you?

4 A. No.

5 Q. Was he under arrest at the time you were talking to
6 him?

7 A. At that time, no.

8 Q. Was he free to go at any time during the questioning?

9 A. He was free to stop the questioning, however, I did
10 have active warrants on him at that time. And after the
11 interview was over he was placed under arrest for those
12 warrants.

13 Q. All right. And did you read Mr. Phillips his Miranda
14 warning?

15 A. I did.

16 Q. And how did you advise those rights?

17 A. On our standard form that the police department has.

18 **MR. JONES:** Your Honor, may I approach the witness?

19 **THE COURT:** Yes, sir.

20 Q. Deputy Hamby, I'm showing you State's exhibit 1. Would
21 you take a look at that for me. Do you recognize that?

22 A. Yes.

23 Q. Can you tell the Court what it is?

24 A. It's a copy of the form that we filled out that evening
25 before I talked to him.

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

56

1 Q. And is there anybody's signature on that form?

2 A. Yes.

3 Q. Okay. And whose is that?

4 A. The top signature where it says -- signature would be
5 Douglas Kelly Phillips and then below that as a witness
6 would be myself as the one who read the form to him.

7 Q. Did the Defendant appear to have any trouble
8 understanding that form and his rights?

9 A. No.

10 Q. Did his answers appear to be rational and responsive to
11 what you were asking him about?

12 A. Yes.

13 Q. Did you ever threaten or coerce the Defendant in any
14 fashion?

15 A. Absolutely not.

16 Q. How did he respond when you asked him if he wanted an
17 attorney?

18 A. He said that he understood it and he was willing to
19 talk to me about **Minor**

20 Q. Did he ever at any point change his mind throughout the
21 questioning and request an attorney?

22 A. No. He never requested an attorney at all. Towards
23 the end -- how our conversation ended is he got agitated and
24 he said he didn't want to talk anymore. And that's how we
25 wrapped up the interview.

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

57

1 Q. And was the statement video or audio recorded?

2 A. It was not.

3 Q. Did he write a statement?

4 A. He did not.

5 Q. Okay. How did you record or make a record of what Mr.
6 Phillips told you?

7 A. During the interview I was documenting, taking notes.

8 Q. Okay. Would you tell the Court what the Defendant told
9 you?

10 A. Yes. I called him there and post Miranda waiver I
11 informed him that we were up there to talk about **Minor**

12 **██████████** Started off the interview by -- this was on a
13 Tuesday. And the victim in this case said the most recent
14 incident had happened on that Sunday before at her house.

15 So I started the conversation off with him by asking
16 him if anything out of the ordinary had happened on that
17 Sunday night before. He stated nothing out of the ordinary
18 had happened.

19 He confirmed that he did stay at the Robinson's house,
20 which is in the City of Easley on that Sunday night. And
21 then he said on Saturday night they all had stayed at his
22 house.

23 And then the previous Friday night, which was another
24 key date that this -- the victim had given that they had all
25 stayed at the victim's house again. But again, he said

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

58

1 nothing out of the ordinary had happened.

2 And then I went on by asking him where he slept on that
3 Sunday night when he was at [Minor's] house. And at
4 that point he said, oh, you're talking about when [Minor] saw
5 me and Peggy having sex or woke up while me and Peggy were
6 having sex.

7 And I asked him, I said, well, how did that go? And he
8 told me that him and [Minor] had went into [Minor's] bedroom
9 to watch a movie. A little while later, mama, which is
10 Peggy Robinson, had come in there, watched a movie with
11 them.

12 According to him, [Minor] had fell asleep and him and
13 Peggy started having sex in the same bed where [Minor] was
14 sleeping and sometime during that ordeal [Minor] had woke up
15 and was observing them having sex. And he said at that
16 point they just both stopped having sex.

17 Q. Okay.

18 A. He also stated -- I asked him had incidents like that
19 ever happened before. He confirmed that it happened several
20 times at different places where [Minor] had observed him and
21 her mama having sex.

22 Then I directly asked him had he ever touched her in a
23 sexual manner. And he stated, no. And I asked had she ever
24 touched him in a sexual manner. And he stated, no.

25 Speaking with him further he changed his story at that

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

59

1 point and stated he remembered one time when he was staying
2 at Minor's house and that she had come in -- let's see.
3 That he had stayed at her house and she had tried to touch
4 him before.

5 And I asked him how that happened. And she said -- he
6 said it was about a year before this time-frame when I was
7 talking to him and that he was sleeping on the couch and she
8 had come in there and laid down beside him and was trying to
9 touch him in his private areas. Mr. Phillips stated that he
10 told her to stop and go back to bed and that she did that.

11 I asked if he had ever told her mama about that
12 incident. He said, no, he thought just telling her to stop
13 and go back to bed was enough and he never told Peggy
14 Robinson, which is Minor's mother.

15 And at that point -- during that time I was also
16 interviewing -- I had Ms. Robinson up there. And I was
17 going back and forth after he was not giving me anymore
18 information.

19 And Ms. Robinson had told me a totally opposite story.
20 And she said that if she could see Mr. Robinson -- Mr.
21 Phillips that she would tell him to tell the truth because
22 she was telling the truth. So I made it available for them
23 to see each other.

24 She told him that she was telling the truth, that he
25 needed to tell the truth. And while she was saying that, he

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

60

1 didn't say anything.

2 And then after he left -- she left out of the -- she
3 never came into the room, she was just in the doorway. And
4 after she left that area he changed his story again. And on
5 this third story he stated that he did remember a time -- he
6 actually said it happened about three or four times where
7 Minor had come on to him.

8 He remembered one particular time where she was
9 crawling on him and rubbing on him and stated that this
10 night he was asleep on the couch at their house again and
11 woke up and Minor had her hands down his pants when he woke
12 up and that he had told her to stop. And she went back to
13 bed.

14 And then I asked about telling her mother about that
15 incident. And he confirmed that he did. Or at that time he
16 said he did tell Ms. Peggy Robinson about that incident.

17 And then at that time is when I started confronting him
18 about his counter statements that was totally opposite of
19 what he just told me. And that's when he got agitated and
20 didn't want to talk anymore. And that's how the interview
21 ended.

22 Q. Okay. And when Kelly Phillips and Peggy spoke with
23 each other did they ever have a chance to be alone?

24 A. No.

25 Q. Okay. And were you witnessing them the entire time

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

61

1 they were talking?

2 A. Yes. I was in the room with Mr. Phillips. And another
3 officer had brought Ms. Robinson up the hallway to where the
4 door was open. And they could just see each other, but they
5 were never in the same room.

6 Q. Okay.

7 **MR. JONES:** And, Your Honor, I apologize. I believe I
8 forgot to ask that State's exhibit 1 be moved into evidence.
9 I believe I've asked all the proper questions. I just
10 forgot to ask that it be moved in.

11 **MS. AARON:** I have no objection.

12 **THE COURT:** All right. Without objection, State's 1 is
13 in evidence.

14 (Whereupon State's exhibit 1 was admitted into evidence
15 for this hearing)

16 **MR. JONES:** Thank you, Your Honor. That would be all
17 from the State.

18 **THE COURT:** Ms. Aaron.

19 **MS. AARON:** Your Honor, procedurally, and I didn't
20 interrupt this detective because we're not in front of the
21 jury, but he did make some statement with regard to what
22 Peggy Robinson told him. And I would, of course, object
23 that that's hearsay. I would ask that he be cautioned not
24 to testify to that in the presence of the jury.

25 **THE COURT:** Sure.

JONATHAN HAMBY - CROSS EXAMINATION BY MS. AARON

62

1 **MS. AARON:** I certainly didn't want to interrupt to do
2 that.

3 **Cross Examination by Ms. Aaron:**

4 Q. Detective, did you make any notes during your time that
5 you were -- in July of 2013 when you were talking to Mr.
6 Phillips?

7 A. Oh, I do take notes, yes.

8 Q. Do you have those notes with you?

9 A. No. After I transcribe them into my report, I no
10 longer keep them.

11 Q. So you throw them away?

12 A. Yes.

13 Q. And when did you write this report?

14 A. Shortly thereafter the interview.

15 Q. So the date of 7/30/2013 is the day you're saying that
16 you wrote the report?

17 A. I would have started on it that evening and then
18 followed up on the next day and finished it out. I mean,
19 it's a long report. So it took me a while to type the
20 report. But, yes, within a short time-frame.

21 Q. Don't you think it would have been important to record
22 this type of conversation?

23 A. It would have ---

24 **THE COURT:** All right.

25 A. --- been, yes.

JONATHAN HAMBY - CROSS EXAMINATION BY MS. AARON

63

1 **THE COURT:** Hold on. Okay. I was going to say -- go
2 ahead.

3 Q. What's your purpose for talking to him?

4 A. Purpose for talking to him is get his side of the
5 allegations that was made against him.

6 Q. So it's to -- if he's going to make any admissions to
7 you, it's to get those admissions made to you post Miranda
8 so that you can put them in your case?

9 A. He was being accused by a victim of a serious crime.
10 So I -- he was willing to cooperate with the investigation.
11 I ---

12 Q. I understand.

13 A. --- needed to interview him for the investigation.

14 Q. Is it your purpose to document any admissions he makes
15 so that they can go into your case file or into your case?

16 A. Of course.

17 Q. Post Miranda?

18 A. Yes.

19 Q. So your ear is out looking for "admissions"?

20 A. No. I'm documenting the interview. I mean, as I ask
21 questions and receive the answer. It's not looking for any
22 particular answer or, you know, I don't understand what
23 you're getting at, but, no, ---

24 Q. No, you don't ---

25 A. --- I mean, I just ---

JONATHAN HAMBY - CROSS EXAMINATION BY MS. AARON

64

1 Q. You're not going to answer my question the way -- I'm
2 not going to go there anyway. This room has a desk, two
3 chairs and a telephone?

4 A. Could be two chairs, could be three or four chairs
5 depending on ---

6 Q. Doesn't it have recording equipment ---

7 A. No.

8 Q. --- in it? No?

9 A. No.

10 Q. It's not equipped to record?

11 A. No.

12 Q. Do you have a portable cassette tape that you could
13 have -- a cassette recorder? It's old-timey, but could you
14 have taken that in there?

15 A. No.

16 Q. Does your phone record?

17 A. I don't know what phone I had at the time, but it may
18 have had a -- I don't know, but, I mean, it's a smartphone
19 issued. Do I record conversations on it? No.

20 Q. So you routinely don't record statements made by
21 Mirandized defendants?

22 A. Routinely as of 2013, yes.

23 Q. Do you now?

24 A. We have -- currently we have the rooms fitted up with
25 audio and video recording.

JONATHAN HAMBY - CROSS EXAMINATION BY MS. AARON

65

1 Q. And you now record statements given by defendants?

2 A. When applicable, yes.

3 Q. When applicable, what does that mean?

4 A. I mean, if it's occupied at the time or out of service,
5 I can't do it. But if it's available and I can do it and it
6 lends itself to it, yes, I do it.

7 Q. So why is it important now and not important then?

8 A. It's just as important either way, but ---

9 **THE COURT:** All right. I'm going to restrict this
10 hearing. This isn't cross examination in front of the jury.
11 This is whether or not the statement was given voluntarily
12 and given pursuant to Miranda.

13 **MS. AARON:** I understand, Your Honor.

14 **THE COURT:** So let's restrict it to that.

15 **MS. AARON:** I understand. Thank you, Your Honor.

16 **THE COURT:** Now, you -- now, that doesn't mean that --
17 in front of the jury you can go into all this, ---

18 **MS. AARON:** I understand.

19 **THE COURT:** --- you know.

20 **MS. AARON:** I think my purpose with this detective is
21 that there's no documentation of what the Defendant said,
22 how he said it, what his tone was ---

23 **THE COURT:** There's ---

24 **MS. AARON:** --- in an important -- except what he wrote
25 in his report.

JONATHAN HAMBY - CROSS EXAMINATION BY MS. AARON

66

1 **THE COURT:** Show me the law that requires it be
2 documented.

3 **MS. AARON:** It doesn't. I understand it doesn't.

4 **THE COURT:** Again, ---

5 **MS. AARON:** I think to be reliable ---

6 **THE COURT:** Again, you can go into all of this at
7 length in front of the jury, but for the purpose of this
8 hearing, I'd rather stick to the issue of whether or not --
9 and it may be your argument is that it's not reliable, but
10 -- so, you know, and that's -- since I understand what
11 you're saying, and you can certainly argue that.

12 **MS. AARON:** That would be my point, Your Honor, but ---

13 **THE COURT:** Yeah.

14 **MS. AARON:** --- if you believe that I've made it
15 sufficiently, then I'm not going to go any further or waste
16 anymore time.

17 **THE COURT:** I think you've -- well, for purposes of the
18 hearing, I think you've made it very clear that it could
19 have been recorded, it wasn't recorded and whatever the
20 significance that has.

21 **MS. AARON:** I understand.

22 **THE COURT:** Okay.

23 **MS. AARON:** And that's all I have on that issue.

24 **THE COURT:** Anything further of this witness?

25 **MR. JONES:** Nothing further of this witness, Your

1 Honor.

2 **THE COURT:** All right. Thank you very much, sir. You
3 may step down. Anything further as to this issue?

4 **MR. JONES:** Your Honor, I'd ask that you find that the
5 statement of the Defendant was freely and voluntarily given.

6 **THE COURT:** And, Ms. Aaron, I'd be happy to hear from
7 you.

8 **MS. AARON:** Your Honor, I would argue that reliability
9 is a significant issue in that from now on law enforcement
10 has determined that it is important to record the demeanor
11 of the Defendant to record how he makes a statement rather
12 than exactly the words that he says. And we don't even know
13 what he said because there's absolutely nothing in the
14 report in quotation marks. So I would object and to the
15 reliability of this officer transcribing whatever his notes
16 may say and then offering it as a statement given by my
17 client.

18 **THE COURT:** All right. It appears from the testimony
19 that the Defendant at least pursuant to what was testified
20 here today that he was not under the influence or any type
21 of concern that the officer had regarding his ability to
22 understand. He reviewed his Miranda rights with him.

23 There was a waiver of those rights initially, but then
24 there was a subsequent -- there was a opportunity that the
25 Defendant chose to exercise those rights and he did so. But

1 in between it appears that the initial statements were given
2 freely, voluntarily.

3 As far as the reliability, I think the testimony from
4 the officer was that he took notes throughout the
5 conversation and then he transcribed his notes into his
6 report, which was done that evening into the following day.
7 And that report is, I guess, in the case file.

8 I'm going to allow the testimony as to the statement.
9 I think it was given freely and voluntarily. It was,
10 although, not recorded, which as I stated earlier isn't a
11 requirement. There were notes taken. It was memorialized
12 in those notes through the report.

13 And then, again, the jury is going to be the ultimate
14 decider as to whether or not it's reliable or not. The jury
15 is the one that can believe the statement or can disbelieve
16 it. But I think for purposes of Jackson v. Denno, I think
17 it comes in. What next?

18 **MR. JONES:** Your Honor, then I think we can move on to
19 the expert. The State intends to call Ms. Kelsey Beals. I
20 believe it's specifically for the purpose of -- I believe it
21 was to a problem the Defense had as to whether or not we
22 could get into a certain part of the Rape Shield Statute.

23 **THE COURT:** Correct. That was my understanding.

24 **MR. JONES:** Okay. So, Your Honor, at this time the
25 State would call Kelsey Beals to the stand.

KELSEY BEALS - IN CAMERA VOIR DIRE

69

1 **THE COURT:** All right. Ma'am, if you would please come
2 around to be sworn.

3 **Kelsey Beals,** being duly
4 sworn testified as follows;

5 **THE CLERK:** Thank you, ma'am. If you would, have a
6 seat and state your name for the record, please.

7 **MS. BEALS:** Kelsey Beals.

8 **Direct Examination by Mr. Jones:**

9 Q. Ms. Beals, where do you currently work?

10 A. I work at the Julie Valentine Center.

11 Q. And what's your position there?

12 A. I'm a therapist.

13 Q. Okay. And do you have any other jobs or any other
14 things that you're responsible for?

15 A. As a therapist I see individual child and adolescent
16 clients, also, usually the young adult population. I run a
17 girls' group for teen girls who have been sexually abused.
18 And then I run a safe families' group for non-offending
19 caregivers of children who have been sexually abused.

20 And then at times I also have interns, clinical interns
21 completing their masters in clinical mental health
22 counseling, specifically from Clemson is all I've had.

23 Q. Okay. And describe briefly your educational
24 background, please.

25 A. I got my undergraduate degree and my doctorate in

KELSEY BEALS - IN CAMERA VOIR DIRE

70

1 science and psychology at Ohio State University. And I
2 graduated in 2010. And then I went on to get my Master's in
3 clinical mental health counseling at Clemson University.
4 And I graduated there in 2012.

5 Q. Do you have any specialized training that goes beyond
6 your education?

7 A. I do. After I got my Master's in education in clinical
8 mental health counseling I was a -- I was deemed a licensed
9 professional counselor in the State of South Carolina, a
10 Nationally Certified Counselor. I'm also a South Carolina
11 victim's service provider for working at a non-profit
12 center.

13 I'm EMDR trained, which is Eye Movement Desensitization
14 and Reprocessing. And that's a therapy technique that is
15 utilized in sessions that you have to go to extensive
16 training for and get certified in that. I'm also trained in
17 trauma focused cognitive behavioral therapy and mind-body
18 medicine techniques.

19 Q. Okay. How many years would you say you've been in this
20 field?

21 A. Including my internship, I've been there since 2011.
22 I, obviously, graduated in 2012 and I took a full-time
23 position at Julie Valentine Center immediately following.
24 And so practicing fully with my license for four years under
25 an internship status and then being supervised while I get

KELSEY BEALS - IN CAMERA VOIR DIRE

71

1 my full licensure, which is the typical process.

2 Q. And when did you get your full licensure?

3 A. In 2013.

4 Q. And how many clients would you say you've served
5 throughout your career?

6 A. So between groups and individual, I probably see about
7 a hundred to a hundred and fifty every year. And I've been
8 doing that since 2012. So ...

9 Q. Have you written any articles that have been published
10 and subject to peer review?

11 A. I have. In 2012 I co-authored an article with one of
12 my former professors. And it is about neglect, physical and
13 sexual abuse and PTSD, revolving around that -- around that,
14 which is Posttraumatic Stress Disorder.

15 Q. And do you teach or train others in your field?

16 A. Not necessarily in a formal level, but I am in charge
17 of the interns when they come. And so I'm their supervisor.
18 And so I do clinicals and staff cases with them and help
19 them in the -- in their process of graduating.

20 Q. And have you ever been qualified as an expert in child
21 sexual abuse, dynamics and disclosure?

22 A. Not in criminal court. In family court I know I was
23 deemed a professional or, I'm sorry, an expert at one point
24 in time, but I'm not -- I'm unsure as to what it was.

25 Q. Okay.

KELSEY BEALS - IN CAMERA VOIR DIRE

72

1 **MR. JONES:** Your Honor, that would be the extent of our
2 qualifications for the expert. We'd ask at this time she be
3 qualified as an expert in the field of child sexual abuse,
4 dynamics and disclosure.

5 **THE COURT:** Ms. Aaron, would you like to voir dire the
6 witness today as to her qualifications?

7 **MS. AARON:** Thank you, Your Honor.

8 **Cross Examination by Ms. Aaron:**

9 Q. As I'm listening to your history since 2010, are you in
10 the therapy field?

11 A. Yes.

12 Q. So your job -- describe what you do. What's your job?

13 A. So at the Julie Valentine Center I see clients ranging
14 from age three to adulthood for individual services. They
15 obviously are coming to the Julie Valentine Center because
16 they've been sexually abused or they've disclosed sexual
17 abuse.

18 And so they come and we work on individual processing
19 to heal. And with that there is different techniques that
20 I've been trained in that I utilize to help the child
21 through the therapeutic process.

22 Q. So you're helping them get better?

23 A. I would like to think so, yes.

24 Q. Okay. So the fact that something may have happened to
25 them in the past is not really your concentration. Your

KELSEY BEALS - IN CAMERA VOIR DIRE

73

1 concentration is how to take a child that has been presented
2 to you as a victim and move them forward through the
3 healing.

4 A. Yes. But in doing so I have to understand kind of
5 where they're coming from and maybe why they're going
6 through what they're going through. So there's extensive,
7 you know, obviously, you know, training that we go through
8 that helps us understand kind of the full process in
9 treating them in whole, not just from the day they walk
10 through our doors.

11 Q. Explain that to me.

12 A. So understanding, you know, maybe what that child's
13 been through in the sense of the -- when they come and they
14 see us at our center they are usually in a safe place
15 because someone's bringing them and someone believes them.

16 And so, obviously, before then they -- understanding
17 maybe they might not have been in a safe place or a safe
18 situation. And so understanding the dynamics and everything
19 that they've gone through to help them process through the
20 trauma that they've -- that they've been through.

21 Q. And so do you think you were probably qualified in
22 family court as a therapist?

23 A. Probably.

24 **MS. AARON:** I have no further questions, Your Honor. I
25 do object to her being qualified as an expert in child sex

1 abuse, dynamics and disclosure, however.

2 **THE COURT:** Basis of the objection?

3 **MS. AARON:** Your Honor, she has never been deemed an
4 expert in that field. And her testimony is that she is a
5 therapist. She deals with what the child presents to her
6 and helps them move forward to become whole again.

7 In terms of child sex abuse, dynamics and disclosure,
8 that's all happened. She's a therapist. And if she were to
9 talk about therapeutic techniques that she uses with a
10 child, you know, if that were the reason for qualifying her
11 as expert, we might go a little bit more in depth into that.
12 She has no training ---

13 **THE COURT:** What is your purpose in qualifying her as
14 an expert, solicitor?

15 **MR. JONES:** Your Honor, to explain to the jury the
16 sexual -- how children who have been sexually abused, the
17 process of disclosure that they go into and why sometimes
18 they don't disclose immediately. How in the world can it be
19 that there was six or seven years go by and this child does
20 not tell everything? How could it be that a child might
21 initially say just a little bit -- just a little bit of
22 something minor happened and then throughout the course of
23 time disclose more information? And why some children may
24 recant and say, well, this didn't happen at all and then
25 later come back and say this did happen, Your Honor. The

1 process by which sexual predators groom their victims, how
2 that happens over a course of time.

3 **THE COURT:** Well, I think you need to voir dire her
4 then ---

5 **MR. JONES:** As to those ---

6 **THE COURT:** --- as to that specific area.

7 **MR. JONES:** And I do have those questions prepared,
8 Your Honor. They're just -- they're in ---

9 **THE COURT:** Well, I mean, I'm talking about as far as
10 her qualifications.

11 **MR. JONES:** Okay.

12 **THE COURT:** I may have missed that.

13 **MR. JONES:** Well, they're in the form of opinion
14 questions. So typically I get them qualified as an expert
15 based on their experience and training and all that, but for
16 these -- are you saying for these purposes ---

17 **THE COURT:** Well, I think I need -- I need more
18 information as to ---

19 **MR. JONES:** What she's ---

20 **THE COURT:** --- her training ---

21 **MR. JONES:** --- testified to?

22 **THE COURT:** --- and spotting and observing those -- and
23 detecting those things you just went through.

24 **MR. JONES:** And I think Ms. -- to be fair, I think Ms.
25 Aaron misstated it a little bit. She is a therapist, but

1 she is a therapist to children who have been sexually
2 abused. But I'll go ---

3 **THE COURT:** No, I'm not -- I'm just saying -- I'm not
4 saying a therapist can't be qualified as an expert ---

5 **MR. JONES:** Yes, sir.

6 **THE COURT:** --- in this field that you're -- in this
7 area that you're talking about, but I just would like to
8 hear more about what, if any, training she has in that
9 particular area.

10 **MR. JONES:** Okay. Yes, sir, Your Honor.

11 **THE COURT:** In those -- in the areas you mentioned.

12 **MR. JONES:** Okay.

13 **Redirect Examination by Mr. Jones:**

14 Q. We'll go back and explain a little more to the Court
15 the specific training that you've received that applies
16 directly to children who have been sexually abused or how
17 that helps you in your -- in your career.

18 A. As ---

19 **THE COURT:** Not -- and let me just clarify, I guess,
20 for my purposes. Any training, not necessarily in -- once
21 that diagnosis is made, treating them as they work through
22 it, but making that diagnosis, being able to spot those
23 things and being able to address those things.

24 A. Okay.

25 **THE COURT:** Any training regarding those things.

KELSEY BEALS - IN CAMERA VOIR DIRE

77

1 A. So I have been running the safe families' group since
2 2012. And that group is, I guess, a little bit more
3 specifically, that group is for non-offending caregivers,
4 but the reason why they're in that group is because they
5 have at one point in time throughout the process have either
6 been non-believing or non-protective of their children. And
7 so we work through that group and not -- and it's a twelve
8 week group that's mandatory that they come through and they
9 learn about the disclosure process and all of that.

10 And so the trainings that I have been to, any type of
11 -- the Brighter Future Conference that's in the upstate,
12 they talk -- they're known for child maltreatment. And so I
13 go every year to learn more about kind of the effects of
14 child abuse, but then also, you know, signs and symptoms
15 related to that.

16 Anna Salters specifically spoke, I believe, in 2013.
17 And she is an expert or she is a professional in her field
18 that deals with the grooming process and helping to
19 understand -- helping to lead others to understand how
20 offenders do what they do, and how they groom, and how they
21 gain trust, and how they isolate and how they choose their
22 victims.

23 Q. And why is it -- why is it important to know that
24 information in your current position?

25 A. Because when children come to me they haven't

KELSEY BEALS - IN CAMERA VOIR DIRE

78

1 necessarily made the full disclosure process. And so
2 children only -- children will disclose when they feel safe.
3 And so a lot of times they'll test the waters and disclose a
4 little bit to see how it reacts. And that starts an
5 investigation process often.

6 And so they'll come to therapy and then they'll
7 gradually as they're able to work through it and they're
8 able to either feel safe to disclose more or be able to talk
9 about it in more detail. And so ---

10 Q. Tell the Court where you've learned in training or
11 education about the process of sexual abuse disclosure.

12 A. Through my internship at Julie Valentine Center and
13 through, you know, the Brighter Future Conference trainings
14 and then also Project Best is the trauma focused cognitive
15 behavioral therapy. And you have to take an online webinar
16 that helps you train and then go through a rigorous training
17 process with cases to -- and through that there's a lot of
18 education based off of, you know, how children -- what
19 happens to children and what they go through to get them to
20 enter the doors for therapy.

21 Q. And the same thing for grooming and anything else that
22 you believe, or excuse me, that you have knowledge of that
23 would help someone in understanding child sexual abuse in
24 general?

25 A. Can you repeat that?

KELSEY BEALS - IN CAMERA VOIR DIRE

79

1 Q. Any training or education you've received that you use
2 on a regular basis not only treating victims of child sexual
3 abuse, but help you understand child sexual abuse in
4 general?

5 A. Correct. And also helping, you know, non-offending
6 caregivers and others and other individuals out there on
7 kind of the process, and the grooming procedures, and
8 delayed disclosure and, you know, why children don't tell.

9 Q. Is there any other -- your time at Clemson or Ohio
10 State, did you go through and take any courses there that
11 talked about child sexual abuse or where you learned child
12 sexual abuse?

13 A. Not specifically. They're not -- there aren't any
14 offered at Clemson.

15 Q. Okay. So this is mainly through your training, and
16 your experience and your intern position?

17 A. Right. And I did both of my internships at the Julie
18 Valentine Center.

19 Q. Okay.

20 **THE COURT:** And you've been ---

21 Q. Tell the ---

22 **THE COURT:** --- since 2012?

23 A. As a graduate in my masters. I was there starting in
24 January of 2010 ---

25 **THE COURT:** Okay.

1 A. --- as an intern.

2 **THE COURT:** Okay.

3 Q. And tell the Court again -- you say you have written an
4 article that's been published and peer reviewed?

5 A. Um-hum (affirmative).

6 Q. What was the title of that article and briefly tell the
7 Judge what that was about.

8 A. Yes. The title of the article was Neglect, Physical
9 and Sexual Abuse: A Look at Posttraumatic Stress Disorder
10 in Children and Adolescents. And that was published in the
11 Michigan Journal of Counseling, Research, Theory and
12 Practice. And that was published in 2012.

13 Q. And when you were qualified as an expert in family
14 court, what were you there to testify about?

15 A. I can't speak to that specifically, but I know it was
16 for a client -- I think it was for an adult, a non-offending
17 caregiver's case. And I wasn't the child's therapist.

18 Q. Was it about criminal or was it about child sexual
19 abuse?

20 A. Yes.

21 Q. Okay. And you just can't remember what they called you
22 when they qualified you as an expert?

23 A. Correct.

24 Q. But you testified as to child sexual abuse?

25 A. Um-hum (affirmative). Yes, sir.

KELSEY BEALS - IN CAMERA VOIR DIRE

81

1 Q. Did you testify in general terms about your knowledge
2 and what you ---

3 A. Yes.

4 Q. --- what you come to find out through your training and
5 experience?

6 A. Yes.

7 MR. JONES: I don't believe, Your Honor, ---

8 THE COURT: All right.

9 MR. JONES: --- I have any other questions.

10 THE COURT: Anything further?

11 MS. AARON: I have no other questions, but I'd still
12 object to her being qualified as an expert in child sexual
13 abuse, dynamics and disclosure. She's never, ever testified
14 in that regard. There's no specific training with regard to
15 dynamics and disclosure. And the one time she was
16 qualified, we don't know what it was for.

17 THE COURT: All right. I'm going to overrule the
18 objection. I'm going to allow her to testify as she's got
19 training in the area, she's published in the area, she's --
20 in the area, specifically in that area. Post master is for
21 the last three years and prior to that for two years.

22 The fact that she has not been qualified as an expert
23 in circuit court to testify under that label of expertise
24 doesn't preclude her. Obviously, every expert has to have
25 their first day in court. But I'm going to allow it.

1 **MR. JONES:** Thank you, Your Honor.

2 **THE COURT:** Now, let me just speak out, and y'all can
3 address this, because my concern is -- I guess, Ms. Aaron,
4 I'm not clear on the reason or the purpose that you want to
5 get into the victim's prior sexual activity. But it may be
6 that you needed to hear this testimony to explain it? I'm
7 trying to understand it.

8 **MS. AARON:** I think I do, Your Honor. Because I think
9 her -- if her -- now that she's been qualified, if her sole
10 purpose is to talk about the dynamics of child sex abuse,
11 then the only person that this jury's going to hear could
12 possibly be responsible for this child's behavior is my
13 client when there are two other people, adults, who have had
14 sex with this child. So there could be two -- both are
15 charged with criminal sexual conduct. Her disclosure, her
16 demeanor, all of the things that this expert is going to
17 testify are attributable to child sex abuse can only be
18 attributable in this jury's mind to my client when there are
19 two other people it could be attributable to.

20 **MR. JONES:** Your Honor, my question is what behavior is
21 Ms. Aaron talking about? The behavior of the victim in this
22 case? That's not -- none of that -- I don't intend to bring
23 any of that in. I'm confused as to what she thinks I'm
24 going to bring out ---

25 **THE COURT:** Well, that might be what she was saying

1 earlier when she said she needed you to proffer this
2 testimony.

3 **MR. JONES:** Right.

4 **THE COURT:** So maybe we should proceed in that way.

5 **MS. AARON:** I don't understand -- if her intent -- I
6 don't understand what she plans to testify to ---

7 **THE COURT:** Right.

8 **MS. AARON:** --- if it's not what children who have been
9 sexually abused do. I don't know the purpose of her
10 testimony if that's not what she's going to testify to. And
11 if her purpose is to testify to what children who are
12 sexually abused do, then this jury can -- needs to hear that
13 there have been more than one individual who sexually abused
14 this child.

15 **MR. JONES:** Your Honor, she's going to testify to
16 delayed disclosure and the pattern of grooming. I -- the
17 State, we do not want to talk about other allegations of the
18 victim and the victim having sex with another twenty-three
19 year old man. And the Rape Shield Statute specifically
20 prevents the Defense from getting into that.

21 **THE COURT:** All right.

22 **MR. JONES:** So I'm certainly not going to bring out any
23 evidence of that. I'm trying -- through the Rape Shield
24 motion that I've served on Defense counsel, I'm trying to
25 prevent all that. And so I'm confused as to what Ms. Aaron

1 wants.

2 **THE COURT:** Well, when I look at the statute, I'm a
3 little confused as well. I mean, I know what you're saying.
4 You're saying depending on what this testimony is that --
5 and I'm just -- I don't know any of the facts of this case.
6 So this may not even be relevant.

7 But for example, if you had a victim who went through
8 this sexual trauma and didn't disclose it and waited a long
9 time before they disclosed it or they disclosed it and then
10 denied it and neither -- and your point is if what she's
11 going to testify to is those types of things are indicative
12 of someone who has been sexually abused, then it seems
13 improper because the only person that the State's going to
14 allege in this trial who abused her is this Defendant.

15 **MS. AARON:** That's correct.

16 **THE COURT:** Even though there may be evidence that
17 others did it as well prior to her interviewing her.

18 **MS. AARON:** That's correct. The mere fact that we're
19 calling her a victim of child sex abuse, you're only
20 allowing the jury one choice. And if they find that she --
21 that this expert is indeed credible and they find that this
22 child is a victim of child sex abuse, then you have withheld
23 two instances that could explain her situation.

24 You've only given the jury one choice, that if they
25 find she's a victim of child sex abuse, we know that she has

1 had sex with two other people, one was a caregiver, but
2 you're not allowing the jury to know that. So if they're
3 going to find that she's a victim, then they'd have to
4 logically find that she's a victim of my client, which is --
5 completely prevents him from presenting an appropriate
6 defense.

7 **THE COURT:** Well, when I look at the Rape Shield
8 Statute, the very thing you want to get into, it precludes
9 that. I mean, I don't think you argue with that. You know
10 what the statute says.

11 **MS. AARON:** Yes, sir, I do.

12 **THE COURT:** It precludes that kind of -- that very kind
13 of testimony. So I understand where you're coming from, but
14 I'm not sure that it's admissible. Solicitor, what's your
15 ---

16 **MS. AARON:** Your Honor, if I could address -- can I
17 just address ---

18 **THE COURT:** Yeah.

19 **MS. AARON:** --- the fact that I did agree with you, but
20 it only precludes it if I'm trying to introduce it from a
21 victim's standpoint. I'm not trying to say that she's out
22 there and doing all this stuff.

23 What I'm wanting the jury to hear is that other people
24 have done it to her. I'm not trying to blame her. There's
25 no one who's blaming her. There's no one who's attacking

1 her morality as a person, which is what the Rape Shield
2 Statute is designed to prevent.

3 What my point is is there are other people who have
4 done to her exactly what my client is alleged to have done.
5 And if the jury doesn't get to hear that and they find that
6 she is indeed a sexual abuse victim, then the only
7 conclusion they can draw is attributable to my client.

8 I am not trying to introduce any peripheral sexual
9 behavior from the victim's standpoint or on her behalf.
10 That's the difference.

11 I'm attempting to let the jury hear the whole story,
12 which is the State says my client did this to her, there are
13 two other people that have done it to her, who have charged
14 probable cause at least to -- to argue that there are two
15 other people that have -- that are charged with criminal
16 sexual conduct.

17 **THE COURT:** Solicitor.

18 **MR. JONES:** Your Honor, again, as you know, the actual
19 statute does carve out a few exceptions, Your Honor, when
20 the defense is trying to prove origin of semen, pregnancy or
21 disease. However, I do acknowledge there are a couple of
22 cases on the Rape Shield Statute that are relevant.

23 I think Ms. Aaron mentioned the Grovenstein case. And
24 my reading of that case, what the state tried to do and what
25 the solicitor did in all of his arguments -- it was, I

1 think, a six or seven year old child who was alleging that
2 the defendant played with the child's anus. And the
3 solicitor argued that how else would this six year old know
4 about these types of sexual acts if this didn't happen?

5 And what the court there said that when the state made
6 that argument the defense should have been allowed to bring
7 up that this child, the six year old, had previously been
8 accused of doing those same exact acts to someone else. So
9 when the state made that argument that how else would this
10 six or seven year old know about these sex acts if this
11 didn't happen, but the trial court did not let the defense
12 bring up how the child might have had other knowledge. But
13 in this particular instance I'm not arguing that.

14 The way I read that case and other cases like it is the
15 defense might be able to get into it to rebut the fact that
16 this innocent child -- there's no other way the child would
17 know about sex but for this particular defendant, but that's
18 only when the state makes that argument. And there's ---

19 **THE COURT:** But am I correct, though, and again, I
20 don't know what this young lady's testimony's going to be,
21 but if it's going to be given to explain why a person has
22 been sexually abused might act a certain way or respond a
23 certain way, then -- and I understand Ms. Aaron's point, is
24 that's all well and good if there's only one person accused
25 of molesting this child.

1 But if there's accusations and proof of two or three
2 folks molesting this child, then should the jury not at
3 least be aware, not that -- not the details of it, not the
4 fact that she may have consented over here or there, but
5 simply the fact that there's two other folks that have
6 allegedly abused her as well or the allegations are there so
7 that -- so that it doesn't appear that if the jury believes
8 this young lady's testimony, believes her, and believes that
9 for this young girl to respond as she did, she must have
10 been or likely was sexually abused, and the only abuser that
11 the State's claiming is this gentleman when you know there's
12 two others out there as well seems inappropriate.

13 **MR. JONES:** Well, Your Honor, then the Rape Shield
14 Statute doesn't apply to CSC with minors. In taking that
15 stance, the Rape Shield Statute would not apply to any
16 criminal sexual conduct with a minor case.

17 **THE COURT:** Well, sure it would. It would apply to
18 every case ---

19 **MR. JONES:** With -- you go ahead.

20 **THE COURT:** No, you go ahead.

21 **MR. JONES:** It would apply to the cases where the State
22 wouldn't need the Rape Shield Statute because there wouldn't
23 be anybody else accused of it. If what I understand you're
24 saying and what Ms. Aaron is arguing is that in a CSC with a
25 minor case, if there is a third party who is accused of also

1 sexually abusing the child, that should come in, but that's
2 exactly what the Rape Shield Statute says should not come
3 in.

4 **THE COURT:** I think the Rape Shield Statute is designed
5 to prevent basically putting the victim on trial for bad
6 conduct or bad reputation. Because it says evidence of
7 specific instances of the victim's sexual conduct, ---

8 **MR. JONES:** Right.

9 **THE COURT:** --- opinion evidence of the victim's sexual
10 conduct and reputation evidence of the victim's sexual
11 conduct is not admissible.

12 **MR. JONES:** And that's exactly what she's trying to get
13 in.

14 **THE COURT:** No. I think what she wants to get in is
15 that ---

16 **MR. JONES:** A specific instance of the victim's sexual
17 conduct.

18 **THE COURT:** I think what she wants to get in is that
19 the State is aware of the fact that there are more than one
20 abuser here. Not saying that -- am I correct, Ms. Aaron?
21 That's your purpose?

22 **MS. AARON:** That is exactly, yes, sir. And ---

23 **THE COURT:** In other words, so that the jury is not
24 left -- if the jury believes she was -- let me see if I can
25 explain it the way you intended it. What I hear Ms. Aaron

1 saying is if I don't allow anything other than this
2 testimony and the only thing the jury's ever going to hear
3 about is this Defendant's -- the allegations against this
4 Defendant when you know that there are two other instances,
5 two other people who have also sexually abused her, then
6 that's -- that's not fair because her testimony may be that
7 -- it may be a result of the other sexual abuse and he
8 didn't even touch her.

9 **MR. JONES:** Well, ---

10 **THE COURT:** He's innocent.

11 **MR. JONES:** What behavior are you talking about?

12 **THE COURT:** Well, I don't know because I haven't heard
13 it.

14 **MR. JONES:** And, again, my position is that if you're
15 carving out another exception ---

16 **THE COURT:** I'm not trying to carve out anything. I'm
17 trying to understand it so that I can make a proper ruling.

18 **MR. JONES:** I understand. I understand. To start with
19 the actual statute that says the evidence of specific
20 instances of a victim's sexual conduct ---

21 **THE COURT:** Well, that -- see, that's where I get hung
22 up. When I -- my plain meaning of the term, the victim's
23 sexual conduct, is conduct that the victim participates in
24 willingly, okay? Not if she was abused against her will.

25 **MR. JONES:** But it ---

1 **THE COURT:** I think the Rape Shield Statute says you
2 can't talk about that the victim's going around ...

3 **MR. JONES:** Your Honor, but this is statutory. It
4 doesn't matter -- she could have been a willing participant,
5 but because she was thirteen ---

6 **THE COURT:** No, I agree. I agree with you. That's why
7 I'm trying to figure out why we're going through all this
8 anyway.

9 Let's say -- I'm going to give you another example.
10 Let's say -- I don't know this young lady. But let's say
11 she was thirteen years of age and walked in to his -- well,
12 I heard a little bit of the testimony. Walked into his
13 room, pulled his pants down and performed oral sex on him or
14 wanted to. It's no defense that she was the one who
15 initiated it or wanted it or anything. That's no defense
16 and we wouldn't even be talking about this stuff. But it's
17 my understanding is that's not the way you're coming across
18 prosecuting the case.

19 **MR. JONES:** As far -- the other sex acts?

20 **THE COURT:** Yeah. The other sex acts appear to be
21 against her will.

22 **MR. JONES:** Those were -- she was a thirteen year old.
23 So it's statutory. But she's not alleging that they forced
24 her to have sex with her [sic].

25 **THE COURT:** What's the purpose of them then?

KELSEY BEALS - IN CAMERA PROFFER

92

1 **MR. JONES:** That's Ms. Aaron. She's the one who wants
2 to bring those in ---

3 **THE COURT:** No, what's the purpose of you actually
4 putting this young lady on the stand to testify at all?

5 **MR. JONES:** To testify about the grooming that occurred
6 the six or seven years prior to the actual sexual act and to
7 testify to the process of disclosure. Why did she never
8 tell in the six to seven years? Why did she never tell
9 anyone about this? Why did she choose to tell when she was
10 thirteen?

11 **THE COURT:** I tell you what. I think we just need to
12 proffer the testimony.

13 **MR. JONES:** Okay.

14 **THE COURT:** Because I'm not going to understand it and
15 what context she's going to be testifying in unless we hear
16 it.

17 **MR. JONES:** Yes, sir, Your Honor.

18 **THE COURT:** All right.

19 **Direct Examination by Mr. Jones:**

20 Q. Ms. Beals, in your field what does it mean -- what does
21 delayed disclosure mean?

22 A. Delayed disclosure means when children don't
23 immediately report a sexual abuse act or an improper
24 touching act when it -- right after it occurs. Instead
25 there is some time. And that can be varied, but some time

KELSEY BEALS - IN CAMERA PROFFER

93

1 in between the disclosure process and the actual act
2 happening.

3 Q. And how common is delayed disclosure in sexual abuse
4 that you're aware of?

5 A. One of the studies that has, it's Sorenson and Snow,
6 that has six hundred and thirty -- it's client members in
7 the study. And seventy-nine percent of them had delayed
8 disclosure.

9 Q. So seventy-nine percent of the people in that study
10 delayed disclosed?

11 A. Um-hum (affirmative).

12 Q. And why do victims of sexual abuse disclose at a later
13 date?

14 A. For a number of reasons. They can disclose at a later
15 date because they don't feel safe. They can be confused.
16 They can be unsure.

17 A lot of times, I think, individuals assume that sexual
18 abuse is a violent and aggressive act. And usually the
19 grooming process allows, you know, this -- a time for trust
20 to build up and for individuals to gradually desensitize the
21 victim to touch, to experiences, to inappropriate
22 experiences, to kind of test their boundaries. And so it's
23 very confusing for a child.

24 And they can also delay their disclosure because a
25 child's usually not being abused all day, every day. And so

KELSEY BEALS - IN CAMERA PROFFER

94

1 there's that -- the good elements. And so often they weigh
2 out the pros and cons of, you know, there's a lot of good
3 memories with this person as well.

4 Q. Okay. Describe the process of disclosure in your
5 field.

6 A. The process of disclosure is typically when a child
7 will disclose -- do children disclose everything all at
8 once? It happens. But typically what we see is children
9 disclose little by little. They kind of test the water.
10 They see how everyone reacts.

11 And a lot of times after they disclose a little bit and
12 see how everyone reacts, which is usually not necessarily in
13 the best way, that they kind of close up and they don't feel
14 comfortable or safe to be able to disclose anymore. And so
15 they'll -- they could take back their statement. They
16 could, you know, be in denial. They could pretend that, you
17 know, say that it didn't happen.

18 Q. Okay. Is there -- are there certain phases of
19 disclosure ---

20 A. So ---

21 Q. --- that are normal?

22 A. So there's accidental disclosure and then there's, you
23 know, there's purposeful disclosure. And a lot ---

24 Q. What's the difference in those two?

25 A. So purposeful means that the child's meaning to come

KELSEY BEALS - IN CAMERA PROFFER

95

1 out and disclose the sexual abuse. And accidental
2 disclosure often happens, obviously, by accident. And so
3 when it is by accident, a lot of times it's, you know, it
4 slips out, it -- they say it and then they kind of don't
5 necessarily don't mean to say it in -- in the timing that
6 it's said.

7 And a lot of times there's tentative disclosure, which
8 means like -- like I said, they're testing -- they're
9 testing the waters, they're testing kind of what -- how --
10 trying to see how everyone would react. And then there is
11 -- there's active disclosure, which means that they may feel
12 in a safe place to be able to talk more about it openly.

13 Q. And you might have mentioned this earlier, but I'm
14 going to go back ---

15 A. Okay.

16 Q. --- as far as why they can disclose at a later date.
17 Does -- children being exposed to sex, does that affect them
18 in any way as far as disclosing sexual abuse?

19 A. So a lot of times children -- if they're exposed to sex
20 or introduced to sex in an inappropriate way, they don't
21 know any different. So they may think ---

22 Q. Well, what does it mean to be introduced to sex in an
23 inappropriate way?

24 A. If they are being touched, if they're viewing sexual
25 activity, if they're viewing pornographic material. And

KELSEY BEALS - IN CAMERA PROFFER

96

1 those are just some examples. But if they're exposed to sex
2 in an inappropriate way, then they might not know that it's
3 inappropriate.

4 And so, you know, I think a common example would be
5 when children hear their parents cuss and then they go off
6 to school and they say one of those cuss words. They don't
7 necessarily know what it means. They don't necessarily know
8 that it's bad until they see a negative reaction and they
9 see the teacher calls home and says why would your child say
10 this?

11 And if a child is in an environment where they're not
12 necessarily aware that it's inappropriate, they don't
13 necessarily understand that it's inappropriate outside of --
14 outside of their home. And so, you know, children mimic
15 what they -- what they see and what they hear.

16 Q. And what -- what is meant by the grooming process in
17 your field?

18 A. The grooming process means the way that they -- the way
19 that a perpetrator gets -- builds trust with the client, is
20 able to isolate the client, is able to build a relationship
21 with the client and/or the family members in order to be
22 able to gradually expose this child to sexual abuse, but not
23 necessarily all at once.

24 And so the grooming process might mean spending quality
25 time with that child. There's giving gifts. There's making

KELSEY BEALS - IN CAMERA PROFFER

97

1 threats. And so, you know, the grooming process contributes
2 to why it would be so confusing for a child.

3 Q. Can sexual acts be a part of the grooming process?

4 A. With gradual, you know, with gradual exposure to touch.
5 There might be, you know, a slip of the hand or, you know,
6 touching someone's back in order to, you know, desensitize
7 them to make them feel like it's normal so then they can
8 kind of -- are able to figure out what that child is
9 currently comfortable with.

10 Q. And what about escalating sexual touches?

11 A. Absolutely the grooming process to kind of test their
12 boundaries. And then, you know, again with other grooming
13 processes of -- or other grooming techniques of giving
14 gifts, of spending quality time, of, you know, of giving
15 that child some of the attention that they -- that they may
16 want would be confusing for them because it -- if it's their
17 -- if it's an introduction to sex, they might not
18 necessarily know that it's wrong.

19 Q. And is engaging in sex in front of children -- could
20 that be considered grooming?

21 A. It would be desensitizing to show a child that --
22 especially in a capacity that it was not viewed as abnormal.

23 Q. What are factors that make sex abuse more or less
24 likely to occur?

25 A. Within a home?

1 Q. Within a home.

2 A. So Darkness To Light, one of the studies that they did
3 is that a child is twenty times more likely to be a victim
4 of childhood sexual abuse if living in a single parent
5 household with a live-in partner. So what that means is
6 that there's a bio parent that's in the home that's their
7 caregiver and then there's a live-in partner. They're
8 twenty times more likely to be sexually abused.

9 Q. Okay. And are there any other factors that you're
10 aware of in your field that make a child more likely to be
11 sexually abused or vulnerable to abuse?

12 A. If the child is, you know, is a loner, is shy. It
13 could really be anything. The offender -- an offender looks
14 for, you know, opportunities for that child to be alone. So
15 anything that would heighten their ability to have the
16 grooming techniques. So if a child needs attention or if a
17 child is available to be alone and have some alone time or
18 one-on-one time.

19 Q. Now what about violence in the home?

20 A. I have never -- I haven't read up on any recent studies
21 about violence in the home. But violence would certainly be
22 a grooming technique that would fall under the threats of if
23 they're scared to tell because of something bad might --
24 happening and then they see something dangerous or violent
25 happening in their home.

KELSEY BEALS - IN CAMERA PROFFER

99

1 Q. What about delayed development of the child?

2 A. I think that that would put them at risk in the sense
3 of that they might not -- they might be at risk in other
4 ways. They might be isolated often, not necessarily, you
5 know, socialized in that manner.

6 Q. Okay.

7 MR. JONES: No further questions, Your Honor.

8 MS. AARON: Your Honor, I don't have any cross
9 examination, but I do continue to object. Her mere, I mean,
10 her first sentence, victim of sexual abuse. This child
11 that's going to be offered to testify is going to be
12 labeled, has just been labeled as a victim of sexual abuse.
13 So if we don't allow the jury to know that this man is not
14 the only person accused of sexually abusing this child, then
15 we're not giving either him or the jury a fair shake.

16 Every -- I'll just reiterate my position that I am not
17 coming from a standpoint of the victim's morality. I am not
18 coming from a standpoint of what the victim did while these
19 other people were abusing her. If she participated, if she
20 didn't participate, I don't care. She liked it, didn't like
21 it, they forced it, I don't -- doesn't matter to me.

22 The point is that she's been labeled as a sexual abuse
23 victim. And if we don't allow the jury to know that she is
24 a sexual abuse victim at the hands of two other people,
25 allegedly, same situation my client's in, all three probable

1 cause, I don't know whether they've been indicted or not,
2 but that may, you know, that may have elevated his charge
3 just a tish, but all three accused of sexually abusing this
4 child.

5 And if we're going to call her a victim of sexual abuse
6 and we're going to talk about things that happen in a home
7 that make a child prone to sexual abuse, if we're going to
8 talk even just about the fact that she's being labeled a
9 victim of sexual abuse, then we're only telling a third of
10 the story. And we're only giving the jury one way to go.
11 Because if they believe what she's saying, she's an expert,
12 she's going to testify as to what she believes in her field,
13 if they believe that, then he's the only alternative. And
14 that's not the case.

15 I'm not talking about an allegation that I may have
16 known that she had sex with somebody at -- somewhere else.
17 These are people that are actually charged.

18 **MR. JONES:** Your Honor, as far as -- one, Ms. Beals did
19 not meet this victim, doesn't know her. She's talking about
20 child sexual abuse victims in general. And, two, the jury
21 obviously knows that the Defendant is charged with criminal
22 sexual conduct with a minor. And when she testifies,
23 they're going to know that she's making the allegations.

24 She is the victim of criminal sexual conduct according
25 to her allegations. And that's obviously my burden to

1 present all the facts and all that, but to go around saying
2 we can't refer to this child as a victim of criminal sexual
3 conduct, there's no statute, there's no case law that says
4 we can't do that. And there's no case law or no statute
5 with regards to the Rape Shield Statute that allows Ms.
6 Aaron to get into what she wants to get into, Your Honor.

7 **THE COURT:** Well, I don't know because the purpose --
8 the purpose of Ms. Beals' testimony is to, correct me if I'm
9 wrong now, Mr. Jones, is that this is a case, because
10 there's no forensic evidence, of the victim's allegations
11 against this Defendant. Your purpose for using Ms. Beals'
12 testimony is to show that her conduct conforms with that of
13 a person who has been sexually abused.

14 **MR. JONES:** With regard to Mr. Phillips.

15 **THE COURT:** Correct.

16 **MR. JONES:** That he ---

17 **THE COURT:** Correct.

18 **MR. JONES:** --- groomed her.

19 **THE COURT:** But you also have two other guys charged
20 with doing this to her. And so how does Ms. Beals'
21 testimony -- and, you know, and maybe that's the solution to
22 this is to allow Ms. Aaron on cross examination to ask her,
23 do you know if this girl has been abused by more than one
24 perpetrator? And if she says, no, or that wasn't presented
25 to me, then she could ask, well, if that was the case would

1 you still have these findings?

2 Because here's what you -- here's what you're trying to
3 do. And I know you're not trying to do it in an underhanded
4 way or a sneaky way, but when you've got three people
5 charged and alleged to have done this to this girl, and you
6 try them separately so you've got just him facing this jury,
7 and she testifies about the girl's conduct is consistent
8 with someone who's been sexually abused, and if the jury
9 believes that, then the only thing you're leaving the jury
10 is if you believe Ms. Beals, and you believe she was
11 sexually abused, and she says he did it, you have to find
12 him guilty when the truth might be that Ms. Beals' testimony
13 would be the exact same for the second perpetrator and be
14 the exact same for the third perpetrator and at any one time
15 any one of those three guys may not have done it.

16 But you're not giving the jury that information that --
17 because here's the thing. And I think you mentioned it
18 earlier, and I agree a hundred percent. If these other guys
19 did it, that doesn't make it okay that he did it. Or if
20 they didn't do it, it doesn't make it okay that he did.

21 So none of this makes it okay. She's underage. This
22 is statutory. I agree with you a hundred percent. But when
23 you're withholding relevant evidence -- and not
24 intentionally. You're not doing it intentionally. But
25 you're wanting me to withhold, under this Rape Shield

1 Statute, you want me to withhold the fact that there were
2 two other people that allegedly assaulted her, then I think
3 what Ms. Aaron said, you're not giving the jury the full
4 story of the facts.

5 **MR. JONES:** I understand. It sounds like you might
6 have made up your mind ---

7 **THE COURT:** No, I haven't made up my mind. That's what
8 -- I wouldn't be having this -- if I made up my mind, I'd
9 rule and move on.

10 **MR. JONES:** Well, Your Honor, my position is that if
11 that is your understanding of the Rape Shield Statute with
12 regard to criminal sexual conduct with a minor, I can't
13 think of a time where the Rape Shield Statute would keep out
14 other evidence of sexual activity with regard to a minor.
15 And it seems ---

16 **THE COURT:** Yeah, I know what you're saying because ---

17 **MR. JONES:** --- Ms. Aaron is saying anytime a minor is
18 charged with something the defense gets to talk about, hey,
19 she's slept with all kind of other people. And that's
20 exactly what she wants to do.

21 **THE COURT:** Well, no, because here's what you're doing.
22 And, listen, maybe I should just ask. Is the victim in
23 here?

24 **MR. JONES:** No, sir.

25 **THE COURT:** I don't want to offend anyone. But are the

1 allegations in this case that all this was consensual, but
2 she's underage?

3 **MR. JONES:** Well, she was underage -- yes.

4 **THE COURT:** Okay. Then here's the problem ---

5 **MR. JONES:** She ---

6 **THE COURT:** Why do you need -- why do you need this
7 testimony right here at all?

8 **MR. JONES:** Because it shows -- it goes to the grooming
9 that took place over the course of six or seven years.

10 **THE COURT:** But he's not the only one accused of doing
11 that.

12 **MR. JONES:** He's the only one accused of doing it over
13 six or seven years. The other instances are just one or two
14 times when she was thirteen.

15 **MS. AARON:** Well, he's not accused of doing it six or
16 seven years. He's accused of doing it three particular
17 instances. They've kitchen-sinked us with six or seven
18 years. The other warrants are specific dates.

19 But my information is that one of those individuals was
20 a caregiver. And they could kitchen-sink him with however
21 long he was the caregiver. So we're not -- our allegations
22 are not six or seven years. We're defending specific dates.

23 **THE COURT:** Well, here's the thing, Ms. Aaron. Now,
24 you're taking off and assuming a lot. Does she accuse this
25 caregiver of six or seven years with this? She's accusing

1 your client of it.

2 **MS. AARON:** I don't have it in my warrants. And I have
3 no way if she's accusing him because all I've seen is his
4 warrants.

5 **MR. JONES:** It's in the discovery. She's already
6 admitted this ---

7 **MS. AARON:** Not ---

8 **THE COURT:** No, no, not her client, the other ones.

9 **MS. AARON:** The other guy. I don't have his discovery.
10 I have no idea. But he was the caregiver.

11 (Pause)

12 **THE COURT:** Listen, Susan just pointed out to me -- if
13 you look at the language in the State versus Grovenstein, it
14 cites a case Commonwealth of New England. And it says here,
15 it says -- and I think this is directly on point with what
16 we've got here.

17 If a defendant challenges the reliability of a child's
18 testimony about sexual abuse it is unfair to deprive him the
19 right to show that the child has personal knowledge of
20 sexual acts and terminology if the victim had been sexually
21 abused in the past in a manner similar to the abuse in the
22 instant case and such evidence would be admissible at trial
23 because it is relevant on the issue of the victim's
24 knowledge about sexual matters.

25 Now, that's not directly on point because we're not

1 talking about a child, i.e., four year old who wouldn't know
2 about sexual things but for been exposed to it. But your
3 allegations here are based -- are mainly statutorily based,
4 which means there's no -- there's no -- you're not putting
5 up any testimony or you're not questioning whether or not
6 she has knowledge of sexual terminology or sexual things.
7 It's all based upon the fact that she's underage and these
8 -- the allegations are these three men have taken advantage
9 of that, right? That's essentially where we're at as far as
10 -- I'm talking about this case.

11 In this case the allegations are that this Defendant
12 has taken advantage of that fact regardless of her age and
13 had this interaction with her. So my question, again, goes
14 back to the need for this testimony because her testimony --
15 what is the need for her testimony again? You said it. And
16 I apologize ---

17 **MR. JONES:** Your Honor, it goes to, obviously, we'll
18 get into this when we get into Lyle, but the fact that the
19 child is saying that she was touched and forced to perform
20 oral sex for ---

21 **THE COURT:** She can still testify to all that.

22 **MR. JONES:** --- several ---

23 **THE COURT:** For several years.

24 **MR. JONES:** It goes to the jury as to why she did not
25 disclose to anyone as she was being abused for that long of

1 period. And then why did she wait til when she was at --
2 when she was thirteen.

3 And it goes to the fact of being in a single parent
4 home she's more likely to be a victim of sexual abuse. I
5 can't remember all that she testified to, Your Honor, off
6 the top of my head.

7 Why did she delay disclosure, Your Honor? She
8 testified to statistics on that. The process of disclosure.
9 And how engaging in sex is desensitizing. That's a major
10 part of this case.

11 Part of the allegations are the Defendant and his
12 girlfriend, who is the mother of the victim, had sex in the
13 bed while the victim laid there. And how that normalizing
14 sex ---

15 **THE COURT:** Right.

16 **MR. JONES:** --- is a part of grooming a sexual abuse
17 victim and because sexual abuse isn't something that's
18 common knowledge to jurors or to the general public. That's
19 why the State brings in an expert to educate them.

20 (Pause)

21 **THE COURT:** I tell you what, let me -- I'm going to
22 take a short recess. And I'll need to speak with y'all back
23 in chambers. But we're just going to take a little short
24 recess here, okay?

25 **MR. JONES:** You want us to give you a minute or follow

1 you, Your Honor?

2 **THE COURT:** What?

3 **MR. JONES:** You want us to give you a minute or follow
4 you?

5 **THE COURT:** No, you can -- y'all can come on.

6 (Whereupon court was in recess at 2:54 pm)

7 (Whereupon court reconvened at 3:30 pm)

8 **THE COURT:** Thank you, folks. Please have a seat. All
9 right. If we could, let's bring the jury in, please.

10 (Whereupon the jury entered the courtroom at 3:30 pm)

11 **THE COURT:** Ladies and gentlemen, I appreciate your
12 patience. You've been back here almost -- been back here an
13 hour now.

14 The pretrial legal matters that I've been dealing with
15 with the attorneys and I have been here dealing with are
16 taking a little bit longer than I anticipated they would.
17 And that's just -- it's probably a reflection on me just not
18 being as fast as I probably should be at times. But
19 needless to say, I don't want to waste any more of your
20 time.

21 So here's what we're going to do. I'm going to excuse
22 you to be back in the morning. We're going to start --
23 we're going to stay because we've got to finish the legal
24 matters that we're dealing with so that once we start the
25 trial, we can just flow. And so what we're going to do is

1 we're going to start this case first thing in the morning.

2 So when you get back in the morning, I anticipate --
3 I'll give you just a little brief introduction and then
4 we'll let the attorneys turn it over and present the case to
5 you. So I'm going to send you and ask you to be back at
6 9:00 and we'll get started then.

7 Now, it's a little different now because you're about
8 to go home. And if your family, friends and loved ones are
9 anything like mine, they're going to be very curious as to
10 what your day is like and whether or not you've been
11 selected. They may already know you've been selected. And
12 they're going to be curious.

13 I need you just to basically let them know, yes, you
14 were selected, you do have to be back in the morning, but
15 you're not allowed to talk about the case at all. And ask
16 them to please respect that.

17 Saying something as innocent as just simply it involves
18 a man by the name of Mr. Phillips and he was charged with
19 criminal sexual conduct with a minor in the second degree,
20 just simply the charge, the fact that you know about the
21 charge could possibly elicit the response that would somehow
22 affect your ability to remain fair and impartial. And
23 that's the key.

24 The whole key in not talking about it and not letting
25 people talking to you is to keep your ability to be fair and

1 impartial completely inside you so that when you hear the
2 testimony and the evidence, you're not affected by anything
3 outside this courtroom.

4 So if you would, just explain that you're not allowed
5 to discuss the case, you're not allowed to talk about what
6 even -- who the Defendant is, what the charges are or
7 anything, but that if they'll be patient, as soon as it's
8 over, you can tell them everything, and you will. But for
9 right now you just aren't allowed to talk about it and for
10 them to please respect that.

11 Now, when you come back in the morning, I don't know if
12 any of you have ever served on jury duty before as far as
13 actually in a trial, but jury service is physically taxing,
14 not necessarily from a muscular standpoint, but it is from a
15 mental standpoint. So you sit here all day listening to
16 testimony, and lawyers, and judges and stuff. It really --
17 it benefits you if you can come back in here in the morning
18 well rested.

19 So to the extent you can get a good night's rest, we
20 don't always have control over that, but to the extent you
21 can, try to get to bed early and try to get a good night's
22 sleep. Countless studies have shown that our minds work
23 much better when we're well rested. So if you can do that,
24 try to do that.

25 And if you would, be back here at nine in the morning.

1 And when everyone's reconvened, then we'll start the trial.
2 Okay? So everybody please remain seated. And, folks, we'll
3 see you back here at 9:00 in the morning.

4 (Whereupon the jury exited the courtroom at 3:34 pm)

5 **THE COURT:** Are we ready to then proceed with the, I
6 guess, the proffering for the Lyle -- for purposes of Lyle?

7 **MR. JONES:** Yes, Your Honor. Do we need to put a final
8 ruling for ---

9 **THE COURT:** Oh.

10 **MR. JONES:** --- the Rape Shield matter on the record?

11 **THE COURT:** Yeah. After considering everything, here's
12 what the Court has decided. It wasn't an easy decision
13 because I don't want in any way to be outside the rules and
14 the statutes regarding the Rape Shield Statute, but I think
15 there's some support in the case law under this very unique
16 situation, I think is unique.

17 The State is intending to put up testimony from Ms.
18 Beals and have her qualified as an expert and then to have
19 her put up testimony which essentially would state that the
20 -- that it is common -- and I'm not going to quote it
21 verbatim, but basically -- essentially what she's going to
22 be testifying to is that there's certain conduct of a person
23 who has been a victim of sexual abuse and conduct that is
24 consistent with that, such as delayed reporting, other
25 factors that this victim has been exposed to that would all

1 support her conduct, the way she handled the reporting and
2 all that, which would all be signs of someone who has been
3 sexually abused.

4 The -- and under a regular situation where a defendant
5 is accused of being that person who abused that individual,
6 then so be it, that testimony comes in and the jury gives it
7 whatever consideration.

8 In this situation we have more than one abuser. The
9 State has another person that has been indicted for this
10 offense. And so, therefore, I think trying to hold fast to
11 the purpose of the Rape Shield Statute, I think it is -- and
12 yet to allow the Defense to have a fair and open hearing and
13 be able to present a full and fair defense, I'm going to
14 allow testimony that another individual has been arrested
15 and charged with criminal sexual conduct in the second
16 degree against this victim.

17 And it's going to be limited to that scope, simply that
18 another person has been charged with that offense so that
19 the jury doesn't have the only option if they were to, in
20 their consideration of the evidence, were to believe all
21 that Ms. Beals has to say and conclude that the victim was,
22 in fact, sexually abused, but there's not only one
23 individual being accused of doing that.

24 And so I think it appropriate. And so I would allow
25 the testimony of Officer Hamby to the limited extent that

1 another individual has been arrested for this same charge
2 and is facing -- is currently facing those charges.

3 Now, the State, obviously, objects to that ruling and
4 takes exception to that ruling. And I want the record to be
5 clear that that's the case. And if there's anything else
6 you would like to add, Mr. Jones?

7 **MR. JONES:** Your Honor, ---

8 **THE COURT:** Please feel free to do it.

9 **MR. JONES:** Nothing else I want to add, Your Honor. I
10 think I've ---

11 **THE COURT:** Okay.

12 **MR. JONES:** --- said my piece.

13 **THE COURT:** I think so. I mean, I -- and I understand
14 your concern. And, listen, I wrestled -- I wrestled with
15 it, but I think that's appropriate. So having said that, is
16 there anything else we need to take up, though, before we
17 get to the proffering for the Lyle issue?

18 **MR. JONES:** Nothing else as far as Rape Shield, Your
19 Honor.

20 **THE COURT:** Well, let me ask you this. Anything else
21 at all? Is **Minor** here? Is that her name?

22 **MR. JONES:** **Minor**

23 **THE COURT:** **Minor**

24 **MR. JONES:** Yes, Your Honor.

25 **THE COURT:** She's not here right now, right? I mean,

1 she ---

2 **MR. JONES:** She is here right now. Not in the
3 courtroom. I'm going to call her.

4 **THE COURT:** Right. And I don't want to have to bring
5 her in and out for anything. So is there anything else that
6 we need to take up, pretrial matters?

7 **MS. AARON:** Your Honor, I don't -- I don't know of any.
8 I mean, if we're proffering, I guess, to resolve the issue,
9 the Lyle issue, ---

10 **THE COURT:** Yeah.

11 **MS. AARON:** --- that's all I know with regard to her,
12 but, I mean, I don't know what's going to happen.

13 But I'm certainly -- I would ask Your Honor to -- I'm
14 not going to object during her testimony. I would hope that
15 it doesn't affect my client's rights in the future as far as
16 preservation goes.

17 **THE COURT:** This is just proffer.

18 **MS. AARON:** I'd just as soon hear what she has to say
19 ---

20 **THE COURT:** Yeah, it's just proffer. Once we're back
21 on the record with the jury present, ---

22 **MS. AARON:** I understand.

23 **THE COURT:** --- you'll have all the rights and
24 objections ---

25 **MS. AARON:** I understand.

11 **THE COURT:** All right. Let's go.

13 THE COURT: Minor if you'd please come around.

15 Minor being
16 duly sworn testified as follows;

17 **THE CLERK:** If you would, have a seat and state your
18 name for the record, please.

19 Direct Examination by Mr. Jones:

20 Q. Tell us what your name is, please, ma'am.

21 A. **Minor**

22 Q. And what's your full name?

23 A. **Minor**

24 Q. Okay. Can you tell us when your birthday is?

25 A. [REDACTED]/2000.

- 1 Q. [REDACTED]/2000? What's your mother's name?
- 2 A. Peggy Robinson.
- 3 Q. And in July of 2013 do you remember where you lived?
- 4 A. Yeah.
- 5 Q. Where was that?
- 6 A. I lived in Easley on [REDACTED].
- 7 Q. Do you remember who lived with you there?
- 8 A. Yes.
- 9 Q. Tell me.
- 10 A. It was me, my brother, and Kelly, but like he didn't
- 11 really live -- he -- his clothes were there. Like he stayed
- 12 mostly there.
- 13 Q. Okay. That's fine. And you mentioned your brother.
- 14 What's your brother's name?
- 15 A. JR [REDACTED]
- 16 Q. Okay. And I'm not sure you said, but did your mother
- 17 live with you too?
- 18 A. Yes, ma'am. Yes, sir.
- 19 Q. Okay. That's fine. And was that in Easley or where
- 20 was that?
- 21 A. That was in Easley.
- 22 Q. Okay. And you mentioned Kelly Phillips. How do you
- 23 know Kelly Phillips?
- 24 A. That was my mama's boyfriend at the time.
- 25 Q. Okay. Do you remember how long you knew him? Like how

1 old were you when you met him?

2 A. Well, when they first met, I knew him.

3 Q. Okay. And how old were you when they first met? Do
4 you remember?

5 A. Uh-Uh (negative).

6 Q. Okay. Do you remember on July 30th of 2013 going to
7 see Dr. Carla Richards?

8 A. Yes, sir.

9 Q. And did she work at Easley Pediatric Associates?

10 A. Yes, sir.

11 Q. And was that your doctor, somebody you went to ---

12 A. Yes.

13 Q. --- normally? And who went with you to the doctor's
14 office that day?

15 A. My mama.

16 Q. And did you tell Dr. Richards anything about Kelly
17 Phillips?

18 A. Yes.

19 Q. Tell me just briefly, and then I'll go into more detail
20 about it. What did you tell the doctor?

21 A. I told the doctor that I was being abused by him.

22 Q. Okay. And when you -- when you were at the doctor's
23 office can you tell me what the most recent or the closest
24 sexual abuse event was? Do you remember what that was?

25 A. It was like a week before.

1 Q. Okay. And was there ever a time where your mother was
2 in the same room when he sexually abused you?

3 A. No.

4 Q. Okay. And was there ever a time when you were in the
5 bed with Kelly Phillips and your mother came into the room?

6 A. Yes, sir.

7 Q. Okay. Why don't you tell the Judge or tell me about
8 that.

9 A. Well, it was nighttime and my brother was asleep. And
10 I was in the room watching a vampire movie. And he came in
11 ---

12 Q. Who's he?

13 A. Kelly Phillips came in.

14 Q. Okay.

15 A. And shut the door and locked it.

16 Q. Okay.

17 A. And then, like it was a while, and then my mama came
18 back there. And she knocked on the door and he got up and
19 let her in.

20 Q. Okay. And then what did your -- what did your mother
21 do? After Kelly got up and let your mother in, do you
22 remember what she did?

23 A. After she got in the room?

24 Q. Yeah.

25 A. Well, they had sex in front of me in my room.

Minor

IN CAMERA PROFFER

119

1 Q. Okay. So that same incident, that same night you said
2 you were in your room and you were watching a movie.

3 A. Yes.

4 Q. Okay. And then Kelly came into the room?

5 A. Yes.

6 Q. And did he get in bed with you?

7 A. Yes.

8 Q. Okay. And when he was in bed with you at that time did
9 he touch you in any -- in any way?

10 A. Yes, he did.

11 Q. What did he touch?

12 A. Like he was touching my breasts and like my vaginal
13 area.

14 Q. Okay. And then did your mother come into the room?

15 A. Yes, but she didn't see that.

16 Q. Right. Okay. And then your mother came into the room
17 and you said that they had sex in front of you?

18 A. Yes, sir.

19 Q. Were you asleep?

20 A. No, I was not.

21 Q. Did they -- did you have your eyes closed?

22 A. No, I did not.

23 Q. Okay. Did they think that you were asleep?

24 A. No, they did not.

25 Q. Okay. And how do you know that?

1 A. Because I was awake. And like before my mama came in
2 the room, he told me that he had already talked to her about
3 it and that she already knew.

4 Q. Okay. He told you that he already talked to her about
5 what?

6 A. Like messing with me and having sex with me, she knew
7 about it.

8 Q. Okay. So before that night had you ever had sex with
9 Kelly Phillips?

10 A. Yes.

11 Q. Okay. Was it close to that date when you had sex with
12 Kelly Phillips?

13 A. Yes, sir.

14 Q. Okay. Do you -- I know it's been a long time. So it's
15 okay if you don't remember. Is there any way you remember
16 the exact date?

17 A. No, sir, I don't.

18 Q. Okay. Was it in the month of July of 2013?

19 A. Yes, sir, it was.

20 Q. And do you remember that because that's close to when
21 you went to the doctor's office?

22 A. Yes, sir.

23 Q. You said that he had had sex with you before and it was
24 in the month of July?

25 A. Yes, sir.

Minor

IN CAMERA PROFFER

121

1 Q. Okay. Do you remember -- and again, because it was so
2 long ago you may not be able to remember, but do you
3 remember about how many times he actually inserted his penis
4 inside you?

5 A. Three.

6 Q. Three times? Okay. Before he actually had sex with
7 you, before Kelly Phillips had sex with you was there a time
8 where he just -- where he touched your breasts or touched
9 your vagina?

10 A. Yes, sir.

11 Q. Okay. And you said that they were -- do you remember
12 how long your mom was dating Kelly Phillips?

13 A. I mean, they were together for a long time like.

14 Q. Okay. Would you say you were about six or seven years
15 old when ---

16 **MS. AARON:** Your Honor, I said I wouldn't object, but I
17 would object to the solicitor testifying. She's simply
18 giving yes and no answers and no detail at all. I would
19 object to the solicitor testifying.

20 **THE COURT:** Object to the leading.

21 **MR. JONES:** Given the ---

22 **THE COURT:** Or sustained as to the leading.

23 **MR. JONES:** Your Honor, given the victim's age, do I
24 get a little leeway in leading?

25 **THE COURT:** I'll give you a little bit, but right now

1 ---

2 MR. JONES: Not that much?

3 THE COURT: --- she's not really testifying.

4 MR. JONES: Yes, sir, Your Honor.

5 Direct Examination by Mr. Jones Continued:

6 Q. So I'll ask the question again. Do you remember about
7 how old you were when your mom and Kelly started dating?

8 A. I was about six or seven.

9 Q. Okay. And when you were six or seven did any sexual
10 abuse occur?

11 MS. AARON: Your Honor, again, I want to object. Did
12 any sexual abuse occur? I think what happened ---

13 THE COURT: Can you rephrase the question?

14 MR. JONES: Yes, sir, Your Honor.

15 Q. Do you remember -- can you tell the Court, describe for
16 the Court at the earliest occasion that you remember being
17 sexually abused? I know we just talked about when you were
18 thirteen in July of 2013. Do you remember anything prior to
19 that?

20 A. Yes.

21 Q. Can you tell -- tell the Court about that?

22 A. When he had sex with me?

23 Q. No, not when he had sex with you or when he -- any type
24 of touching or ---

25 A. Yes, he did touch me inappropriately.

Minor

IN CAMERA PROFFER

123

1 Q. Okay. And tell me -- what does that mean to be touched
2 inappropriately?

3 A. Like when you -- like he touched my vaginal area and my
4 breasts.

5 Q. Okay. And how long do you say that he did that?

6 A. For a while.

7 Q. For a while? Can you put any months or years on how
8 long he did that?

9 A. Like -- like, I mean, it started like when they first
10 met.

11 Q. Okay. So you said he started touching you when they
12 first met?

13 A. Yes.

14 Q. Okay. And was there ever a period of time when he
15 stopped and he didn't do it anymore? Do you remember that?

16 A. Yes.

17 Q. Okay. And do you remember when that was?

18 A. Yeah. That was when Denise told him ---

19 Q. You can't -- I'll stop you there. You can't tell what
20 anybody else said or -- you can say what you observed, or
21 what you saw, or what you said, or what somebody else did,
22 but you can't tell me what somebody else said, okay?

23 A. Okay.

24 Q. Did you ever tell anyone about your sexual abuse? And
25 if so, tell me who you told.

1 A. Yes, I did.

2 Q. Okay. And who did you tell?

3 A. I told my mama.

4 Q. When did you tell your mother?

5 A. I told her like after he had did it, I told her. And

6 she -- she didn't really say anything.

7 Q. Okay. And who was the next person you told?

8 A. The doctor, Dr. Richards.

9 Q. And can you tell the Court about any sexual abuse that
10 occurred in McCormick at a lake house?

11 A. Yeah, but that was like -- it wasn't -- he didn't
12 actually have sex with me. It was like oral.

13 Q. That's fine. Tell the Court or tell me about oral sex
14 in McCormick.

15 A. He asked me to ...

16 Q. He asked you to what?

17 A. To suck his penis.

18 Q. Okay. And did you say anything? Do you remember
19 anything about that?

20 A. Yes.

21 Q. Okay. What did you do after he asked you to do that?

22 A. I did it.

23 Q. Okay. And did he do anything to you at that time?

24 A. Yes.

25 Q. Tell me what he did?

Minor

IN CAMERA PROFFER

125

1 A. He was touching my breasts and my vaginal area.

2 Q. Okay. Going back to when your mother came into the
3 room with you and Kelly, when they were having sex did he
4 touch you at all?

5 A. No, not when they were having sex, but before they did,
6 he touched me.

7 Q. Okay. At any point did you try to get up and leave
8 while they were having sex?

9 A. Yes.

10 Q. Okay. And what happened when you tried to get up and
11 leave?

12 A. He grabbed me.

13 Q. Where did he grab you?

14 A. He grabbed my shoulder.

15 Q. Okay. Did he say anything to you when he grabbed you?

16 A. He asked me where was I going.

17 Q. Okay. Did your mother -- well, you testified earlier
18 that in July of 2013 Kelly inserted his penis inside you.
19 Do you remember where those events took place? Like what
20 house?

21 A. It was at my house in my room.

22 Q. Do you remember anything specifically about when you
23 had sex with him, who else was in the home?

24 A. My mama and my brother, but they didn't see him do it.

25 Q. They didn't see him do it?

- 1 A. (Negative nod).
- 2 Q. Do you remember how you and Kelly had sex?
- 3 A. Yeah.
- 4 Q. Can you tell the Court, please?
- 5 A. Like my face was facing like that way.
- 6 Q. Okay. And then what -- and what else?
- 7 A. And my butt was in the air.
- 8 Q. And your butt was in the air?
- 9 A. (Affirmative nod).
- 10 Q. Okay. Is there any other way that you had sex with
- 11 Kelly?
- 12 A. (Affirmative nod).
- 13 Q. Can you tell me ---
- 14 A. When I was laying on my back.
- 15 Q. Okay. Do you remember anything specific about that?
- 16 A. No.
- 17 Q. Okay. Did you notice anything in particular about
- 18 Kelly's penis or his pubic hair?
- 19 A. Yeah.
- 20 Q. Tell the Court what you noticed about it.
- 21 A. It was bald.
- 22 Q. It was bald?
- 23 A. (Affirmative nod).
- 24 Q. In that he -- did you ever ask him about it or talk
- 25 about that?

1 A. Uh-uh (negative).

2 Q. Okay. When you say bald, was that -- how was it bald?

3 A. Like no hair.

4 Q. Okay. And did it look like it had been shaved?

5 A. Yes.

6 Q. Did you ever see Kelly and your mother have sex other
7 than the time you described?

8 A. Yes.

9 Q. How often did you see that?

10 A. Well, they had sex in my mama's room, and like when we
11 went out of town, we was in a motel room, they had sex.

12 **MR. JONES:** Beg the Court's indulgence.

13 **THE COURT:** Yes, sir.

14 (Pause)

15 **MR. JONES:** No further questions, Your Honor.

16 **THE COURT:** Cross.

17 **Cross Examination by Ms. Aaron:**

18 Q. Who told you to use the word vaginal area?

19 A. No one.

20 Q. Nobody told you to use that word?

21 A. Nobody.

22 Q. What -- is that the normal word that you would use if
23 you were talking to your friends?

24 A. Yes.

25 Q. You don't use any other words?

1 A. No.

2 Q. What about breasts, who told you to use the word
3 breasts?

4 A. Nobody. I said that on my own.

5 Q. You indicated to the solicitor that you and -- your
6 testimony is that you and Mr. Phillips had sex three times.
7 Sex meaning -- how do you describe sex?

8 A. Like when he inserts his penis in my vaginal area.

9 Q. Okay. And again, that's your description? Nobody
10 suggested that to you?

11 A. I know.

12 Q. No, I'm asking.

13 A. No. Me, yes. That's my ---

14 Q. So these three times were when?

15 A. When we were in McCormick.

16 Q. When was that?

17 A. I don't remember when we went.

18 Q. Like were you five, or eleven or yesterday? I mean,
19 when?

20 A. I mean, I was like nine.

21 Q. Okay. How many times have you been to McCormick?

22 A. I mean, we went down there a couple of times. I don't
23 remember how many times we've been to McCormick, but like we
24 went fishing and stuff down there.

25 Q. And when it happened at McCormick, where do you --

Minor

IN CAMERA PROFFER

129

1 where do you stay when you go there?

2 A. Well, Kelly owns his own camper down there. And we
3 stayed in that camper down there.

4 Q. And so when you say that you and he had sex during that
5 -- one of those visits, where were you?

6 A. We were in the camper.

7 Q. Where was everybody else?

8 A. They were outside.

9 Q. Is this during the day or at night?

10 A. This was during the day.

11 Q. And they're outside, like outside the door?

12 A. Yeah, but like they didn't see.

13 Q. But they were right outside of the door?

14 A. Yes, ma'am.

15 Q. And everybody else being who?

16 A. My mama, his ex-wife was down there with us one time
17 like ---

18 Q. Was that this time?

19 A. Um-hum (affirmative).

20 Q. Is that a yes?

21 A. Yes, ma'am.

22 Q. So -- and what's her name?

23 A. Denise.

24 Q. So your mom and Denise and who else -- who else was
25 down there ---

- 1 A. My brother.
- 2 Q. --- on this time? That's JR
- 3 A. Yes, ma'am.
- 4 Q. And who else?
- 5 A. And me.
- 6 Q. And you, obviously. Okay. So that was one time. When
- 7 were the other two times?
- 8 A. At my house and at his house.
- 9 Q. All right. At your house when?
- 10 A. Like it was in July of 2013.
- 11 Q. At your house?
- 12 A. Yes, ma'am.
- 13 Q. And what about his house?
- 14 A. At his house, like I don't remember the month, but we
- 15 did have sex at his house in his room.
- 16 Q. In July?
- 17 A. Yes, ma'am.
- 18 Q. Okay. Now when you talk about McCormick, you said you
- 19 thought you were nine?
- 20 A. Yes, ma'am.
- 21 Q. Why does that stick out in your mind?
- 22 A. Like why was I nine?
- 23 Q. Why do you think -- why do you think that that -- why
- 24 does that stick out in your mind that you were nine if you
- 25 went there many times?

Minor

IN CAMERA PROFFER

131

1 A. I mean, because we went down there a lot, but like I
2 know I was nine.

3 Q. How do you know you were nine?

4 A. Because that's my age. I know my age.

5 Q. So would that have been -- what month would that have
6 been?

7 A. Like -- it was like we went down there for the 4th of
8 July.

9 Q. So this 4th -- it would have been July of 2009?

10 A. No.

11 Q. When would that have been?

12 A. I was nine years old.

13 Q. Okay. But when ---

14 A. I wasn't saying 2009. I was nine years old.

15 Q. Okay. So what year would it have been?

16 A. Like -- in like August.

17 Q. What year?

18 A. What year? 2013.

19 Q. So in 2013 you -- in August of 2013 is when you're
20 alleging this McCormick happened?

21 A. Yes, ma'am.

22 Q. Okay. And you say that you met Kelly Phillips six or
23 seven years ago?

24 A. Yes, ma'am.

25 Q. So that would have been 2010, ---

- 1 A. Yes, ma'am.
- 2 Q. --- 2009? So you're talking about six or seven years
3 from now?
- 4 A. Yes, ma'am.
- 5 Q. The solicitor asked you before, I guess, of July 2013
6 ---
- 7 A. Yes, ma'am.
- 8 Q. --- if Mr. Phillips had ever touched -- well, he says
9 touched you inappropriately. So you said breasts and
10 vaginal area?
- 11 A. Yes, ma'am.
- 12 Q. And when did you say that that happened?
- 13 A. It was in July.
- 14 Q. In July of 2013?
- 15 A. Yes, ma'am.
- 16 Q. Okay. So you met him in 2010 and he touched your
17 vaginal area and your breasts in 2013?
- 18 A. Yes.
- 19 Q. Okay. Anytime before then?
- 20 A. Yes.
- 21 Q. All right. When before then?
- 22 A. Like when I was young. I was like seven. Well, I was
23 seven.
- 24 Q. How do you remember you were seven?
- 25 A. Because I remember my age.

1 Q. And what happened when you were seven?

2 A. He touched me inappropriately.

3 Q. And that would have been what year?

4 A. Like it was in 2013.

5 Q. It was in 2013 ---

6 A. Yes.

7 Q. --- was the first time that he touched you
8 inappropriately?

9 A. Yes.

10 **MS. AARON:** I don't have any further questions. Thank
11 you.

12 **THE COURT:** Anything further?

13 **MR. JONES:** Nothing further, Your Honor.

14 **THE COURT:** All right. Thank you very much, ma'am.
15 You may step down.

16 A. You're welcome, sir.

17 **THE COURT:** All right. Anything else?

18 **MR. JONES:** Your Honor, I believe this was -- I can't
19 remember whose motion it was, but in any event I intend to
20 elicit the testimony you just heard about the prior sexual
21 contact between the Defendant and the victim. I believe the
22 State -- the case I shared of State versus Kirton is on
23 point and that she alleged touching for several years
24 culminating in a sexual act where he inserted his penis into
25 her vagina.

1 I think it was obvious **Minor** got confused as to some
2 of the dates, Your Honor. I think that goes to -- Ms. Aaron
3 can argue that as to her credibility of a witness, but on
4 direct examination I think it was clear that she indicated
5 there were several years of touching in a sexual manner,
6 Your Honor. I would ask that pursuant to Lyle and State v.
7 Kirton that those incidents be allowed to come in.

8 **THE COURT:** Ms. Aaron.

9 **MS. AARON:** May it please the Court, Your Honor. I
10 understand that during the solicitor's testimony that he
11 argued that the Defendant touched the victim during that six
12 or seven year period, but her testimony from her mouth is
13 that the first time he touched her inappropriate was in
14 2013.

15 She did get twisted up in one situation where she said
16 she knows she was seven. That would -- she was born in the
17 year 2000. So that would have been in 2007, which was three
18 years prior to them meeting, according to her testimony.
19 The only date that she nailed down at this -- that Mr.
20 Phillips has not been indicted for is an August 2013
21 incident in McCormick.

22 **THE COURT:** She stated that the touching started when
23 he started seeing her mother.

24 **MS. AARON:** And then when I asked her when was the
25 first time he touched you inappropriately, she said July of

1 2013.

2 **THE COURT:** And that goes to her credibility.

3 **MR. JONES:** Your Honor, again, she testified slightly
4 differently when I was asking her questions. I think she
5 did get confused when Ms. Aaron was asking her questions.
6 She's a low -- she's low IQ, she's low functioning, Your
7 Honor.

8 **THE COURT:** Well, I mean, I'm just pointing out that I
9 think there's -- if not, there is -- there's testimony
10 somewhere in this record, because I recall somebody saying
11 it, that he started seeing her mother about six or seven
12 years before this charge came down. And she said that the
13 inappropriate touching began once he -- when he started
14 dating her mother. That was the testimony.

15 **MS. AARON:** I think that was the solicitor's testimony.
16 I don't ---

17 **THE COURT:** No, ma'am, that wasn't the solicitor's
18 testimony.

19 **MS. AARON:** Okay.

20 **THE COURT:** That was her testimony. He asked her when
21 did that begin. And she said when he started dating her
22 mama.

23 I'm going to allow it in. I think it goes to the
24 factors brought forth in Kirton. Obviously, Ms. Aaron will
25 be able to argue any credibility issues that there may be

1 regarding that, but I think it's appropriate. So I'm going
2 to allow it in. What else?

3 **MR. JONES:** Your Honor, that's it from the State.

4 **THE COURT:** Anything from the Defense that we can take
5 up today before we start in the morning?

6 **MS. AARON:** No, sir.

7 **THE COURT:** Okay.

8 **MS. AARON:** My client is on bond.

9 **THE COURT:** I'm going to allow him to remain on ---

10 **MS. AARON:** Okay.

11 **THE COURT:** --- on bond. I'm assuming there have been
12 no issues with Mr. Phillips appearing when he's supposed to
13 appear?

14 **MS. AARON:** No, sir. And the jury's not sworn. And I
15 really ---

16 **THE COURT:** Yeah.

17 **MS. AARON:** But I wanted to make, you know, be candid
18 with the Court that he is on bond and we would hope ---

19 **THE COURT:** Yeah. That's no problem. Let me just say
20 this, though, because I say this in all the cases whenever
21 this issue's brought up. Mr. Phillips, you're on bond and
22 certainly I'm going to allow you to remain under those
23 conditions.

24 What's important to understand, and I don't have any
25 belief that you won't 'cause, I mean, I don't know you, but

1 I'm assuming you'll be here. I just share this with
2 everybody that comes before me on a trial.

3 Once a trial begins, we will -- once the trial begins,
4 this case will go forward whether you're here or not.
5 You've got every right to be present throughout these
6 proceedings, but if you choose to withdraw yourself from the
7 proceedings by not showing back up, that doesn't mean the
8 proceedings cease. We will go forward either with you here
9 or without you here. You understand that, sir?

10 **MR. PHILLIPS:** Yes, sir.

11 **THE COURT:** Okay. So just, you know, I would suggest
12 that you listen carefully to Ms. Aaron. And whenever she
13 asks you to be here, just be here whenever she wants you to
14 be here.

15 I will say we're going to start tomorrow at 9:00. So
16 if there's nothing else that we can take up today, then
17 we'll be at ease then until 9:00 tomorrow. I'll be here a
18 little bit earlier than that. So if y'all need to come back
19 and talk with me, that's fine. But we'll start back at
20 nine.

21 **MR. JONES:** Thank you, Your Honor.

22 (Whereupon court was in recess at 4:11 pm)

1 **Tuesday, July 26, 2016:**

2 (Whereupon court reconvened at 9:10 am)

3 **THE COURT:** Is there anything we need to take up from
4 the State before we bring the jury out?

5 **MR. JONES:** No, sir, nothing from the State.

6 **THE COURT:** Anything from the Defense?

7 **MS. AARON:** Your Honor, I just have a question. Do you
8 allow the jurors to take notes?

9 **THE COURT:** I don't -- I don't mind if they do or
10 don't. It's not a very long trial.

11 **MS. AARON:** No. And I don't love it. So I just wanted
12 to sort of mention that.

13 **THE COURT:** You know, typically what I do, I don't
14 address it ---

15 **MS. AARON:** Right.

16 **THE COURT:** --- unless one of them asks me. And then
17 if -- and then if they ask me, I typically confer with you
18 guys before I respond back. I'd rather them not.

19 Listen, if this -- if this was going to be a two week
20 long trial, maybe. But I don't think people listen as well
21 when they're writing as they do if they're ---

22 **MS. AARON:** Right.

23 **THE COURT:** --- if they're listening. So I'm not going
24 to address it. And if they -- if anyone -- if any one of
25 them asks, then we'll -- we'll look at it.

1 **MS. AARON:** And what I was trying to avoid is saying no
2 in front of the, you know, and giving an indication that I
3 would object to them taking notes. So I wanted to go ahead
4 and put that on the record ahead of time ---

5 **THE COURT:** That's fine.

6 **MS. AARON:** --- if the issue arises.

7 **THE COURT:** Well, first thing, they don't have note
8 pads back there, do they?

9 **THE CLERK:** We can get note pads.

10 **THE COURT:** I know you could, but they don't ---

11 **THE CLERK:** No.

12 **THE COURT:** --- start out with -- I don't know that any
13 of them will even ---

14 **MS. AARON:** Right.

15 **THE COURT:** But if one of them comes out with -- I tell
16 you what I will do, if one of them comes out -- unless the
17 State has a different position.

18 **MR. JONES:** No, sir.

19 **THE COURT:** If one of them comes out with a pad, I'll
20 ask them to put it aside and ---

21 **MS. AARON:** Thank you.

22 **THE COURT:** --- explain to them why I'm not going to
23 have them do notes.

24 **MS. AARON:** That'd be great. Thank you.

25 **THE COURT:** Okay? All right. Well, let's bring them

1 out.

2 (Whereupon the jury entered the courtroom at 9:12 am)

3 **THE COURT:** Good morning, folks.

4 **THE JURY:** Good morning.

5 **THE COURT:** I hope everyone had a good night's rest and
6 ready to get started. A couple of preliminary things before
7 we start. Ladies and gentlemen, it's very important that
8 you folks are comfortable. Pat, do we have any control over
9 the temperature in here?

10 **THE CLERK:** Yes, sir.

11 **THE COURT:** Okay. If you get too hot, too cool, or
12 whatever, let me know. We'll try to adjust that.

13 Now, it'll be difficult to make everybody happy,
14 obviously. My wife is an absolutely wonderful woman, but if
15 it dips below eighty, she's freezing. And if it gets above
16 sixty-five, I'm hot. So we have that constant battle going
17 on in our house. But we do try to compromise, and we'll try
18 to do that here.

19 And the reason I asked the clerk as to whether we have
20 control, we have a crazy situation over in Florence. If we
21 want to change the temperature in our courtroom we have to
22 call some place in either Atlanta or Virginia or somewhere.
23 I don't know. I think it's their way of trying to conserve
24 energy, but in any regard, we can control it here, and we'll
25 try to do that.

1 The other thing is this, if you can't hear someone,
2 whether it be one of the lawyers, or whether it be a
3 witness, or whatever, please don't hesitate to get my
4 attention and let me know you didn't hear it. And I'll get
5 them to repeat whatever it was they said. It's important
6 that you hear everything that is going on throughout the
7 course of this trial.

8 Finally, with regards on that being comfortable note,
9 and I don't think there's any delicate way to put this.
10 There are times when mother nature calls and we've got to
11 answer that call. If that occurs, please, do me a favor,
12 let me know you need a break. We'll take -- we'll stop. It
13 doesn't matter if it's in the middle of a witness'
14 testimony, we'll stop and we'll take a break.

15 The last thing I want you to do is to sit there and
16 have that need to take a break to use the restroom and
17 think, well, I'll just wait for this witness to stop and
18 then this ends up being a lengthy witness and you end up
19 spending more time wondering when are they going to finish
20 rather than listening. So I want you to listen carefully to
21 everything that's presented here today.

22 So anytime -- the bottom line is this, anytime anybody
23 needs a break, let me know, we'll stop, we'll take a break
24 and then we'll start back. Okay?

25 Now, before I address you with some opening remarks I'm

1 going to ask Mr. Clerk to place you under your oath for your
2 role as jurors in this case.

3 **THE CLERK:** If you would, please, stand. Again, after
4 the oath is administered answer by saying I will. Raise
5 your right hand. You shall well and truly try the issue
6 joined in this case of the State versus Douglas Kelly
7 Phillips and a true verdict rendered according to the law
8 and evidence.

9 **THE JURY:** I will.

10 **THE CLERK:** Thank you.

11 **THE COURT:** Ladies and gentlemen, before we begin the
12 trial of this case I want to share a few things with you.
13 Many of you -- I don't know how many of you have ever sat in
14 on an actual jury trial. I will tell you this, if you've
15 done it before you've done something that is somewhat rare
16 for most people in this country. Most folks never get the
17 opportunity to do what you're doing here today, and that is
18 to actually be a part of an actual jury trial.

19 Most people's experience or exposure to jury trials is
20 what they've seen on television and what they've read in
21 books or possibly what they've seen in the movie screens.
22 We all know that those trials are -- they're full of drama,
23 action. It's Hollywood. It's designed to entertain you.

24 Now, during the course of this trial, while any number
25 of those things could occur, what's important to keep in

1 mind is this, and that is that this trial is not for your
2 entertainment. It is a fundamental part of our democracy.

3 In attempting to see that justice is done that process
4 can be slow, it can be very deliberate, sometimes it can be
5 repetitive. In other words, it's just very different from
6 what you've seen in the movies, read in books or seen on TV.

7 This courtroom is a place of honor. It is dedicated to
8 the protection and to the preservation of citizens' rights
9 through what many have called the greatest justice system
10 ever created.

11 The attorneys that appear before you are advocates for
12 the parties that they represent. But first and foremost,
13 they are officers of the court sworn to uphold the integrity
14 and the fairness of our judicial system. You should expect
15 them to be professional, competent and ethical in the
16 performance of their duties.

17 Now you've just taken an oath to try this case and to
18 reach a fair and a just verdict. And so you are also
19 expected to be ethical and reasonable in the performance of
20 your duties. And I have no doubt in my mind you'll do just
21 that. And I want to thank you for your contribution to our
22 system of justice here in Pickens County.

23 Now, I want to share some things with you that -- this
24 is not a charge on the law. I am going to charge you the
25 law that is applicable to this case at the end of the trial.

1 However, at this time I'm just going to kind of go over some
2 things with you to give you an idea procedurally how we're
3 going to proceed.

4 Now, the Defendant in this case, Mr. Phillips, is
5 charged by these indictments, which I read to you yesterday.
6 And as I indicated to you, he is charged with two counts of
7 criminal sexual conduct with a minor in the second degree
8 and one count of criminal sexual conduct with a minor in the
9 third degree. The elements of those charges I will explain
10 to you and tell you when I give you the charge on the law.

11 What's important for you to understand, ladies and
12 gentlemen, is that the indictments are simply the charge
13 which brings the case into this court. These indictments
14 are not evidence and they are not in any sense proof of the
15 allegations that they contain.

16 The Defendant has pled not guilty to these indictments.
17 And the State, therefore, has the burden of proving each of
18 the elements of these crimes beyond a reasonable doubt. It
19 will be your duty, ladies and gentlemen, to decide whether
20 or not the State has carried that burden.

21 Your purpose as jurors is to find and to determine the
22 facts of this case. If at any time I make any comment about
23 the facts, you must disregard those comments because only
24 you, the jury, can determine what the facts are in this
25 case. It is especially important that you perform your duty

1 of discerning the facts diligently and conscientiously
2 because ordinarily there's no way that I can correct an
3 erroneous determination of facts by a jury.

4 Now, on the other hand, but with equal emphasis the
5 same law that makes you the judges of the facts makes me the
6 judge of the law. The law that I give you is the only law
7 that you may consider. You must accept it and you must
8 follow it even though you may disagree with it.

9 I'm not allowed to tell you what I think about the
10 facts in this case. And you're not allowed to disagree with
11 me about what the law is or what you think the law should
12 be. Your job is to take the law as I give it to you, apply
13 it to the facts as you find the facts to be from the
14 testimony and the evidence that is presented in arriving at
15 your verdict.

16 Now, I touched on this yesterday, but until I tell you
17 it is appropriate to begin your deliberations you're to have
18 no conversation about this case with anybody. That includes
19 amongst yourselves whenever we take breaks and you're back
20 in the jury room. There's to be no conversation about this
21 case at all until I tell you it's appropriate to begin.

22 It is so important, ladies and gentlemen, that
23 throughout this trial you keep an open mind and that you do
24 not decide any issue in this case until all of the evidence
25 has been presented, the parties have had an opportunity to

1 address you in their closing arguments and I've given you
2 the charge on the law. Only then is it appropriate for you
3 to begin any deliberations.

4 Your solemn responsibility is to determine the guilt or
5 innocence of the Defendant. And your verdict in this case
6 must be based solely upon the evidence as it is presented to
7 you here in this case.

8 Now, in just a moment I'm going to recognize the
9 solicitor on behalf of the State for his opening statement.
10 Typically what occurs in those statements is he'll share
11 with you what he believes the evidence in this case will
12 show. Once he concludes his opening remarks, then Ms. Aaron
13 on behalf of the Defendant will have an opportunity to make
14 an opening statement, although she's not required to.

15 The thing that's important for you to understand is
16 this, what the attorneys tell you in their opening
17 statements is not evidence. They're not under oath.
18 They're not testifying.

19 What they're going to share with you is merely their
20 contention or their beliefs as to what they think the
21 evidence is going to show. The evidence in this case is
22 going to be presented to you through witnesses who are
23 placed under oath and testify from this witness stand and
24 any other exhibits that may come in during the course of
25 this trial.

1 Now, during the trial from time to time you may hear
2 one of the attorneys say, Judge, we have a matter of law we
3 need to take up with the Court. Or, Your Honor, may we
4 approach the bench? If I can resolve a matter up here at
5 the bench and allow you just to remain in place, I'll do
6 that, but it may be that I need to ask you to step back into
7 the jury room.

8 The only reason I would do that is simply this,
9 sometimes when I'm dealing with a matter of law it requires
10 me to make some comment about the evidence or the testimony
11 that was given in connection with a ruling that I have to
12 make.

13 Well, I told you earlier that I'm not supposed to have
14 any influence over you at all with regards to the facts of
15 this case. So to protect you from those comments I may ask
16 you to step back into the jury room, let me resolve that
17 matter of law and then bring you back out and we'll start
18 back where we left off.

19 In determining what the true facts are in this case,
20 folks, you're going to have to decide whether or not the
21 testimony of any witness is believable or not. It's going
22 to be my job to determine as a matter of law whether certain
23 testimony is allowed into this record. But once testimony
24 is allowed into this record, whether or not you believe it
25 is solely up to you to decide.

1 In deciding whether to believe a witness you have the
2 right to consider the interest of a witness, the bias of any
3 witness, the opportunity for the witness to have seen the
4 matters and the things about which they testify and the way
5 the witness acts on the witness stand. You have the right,
6 ladies and gentlemen, to consider anything in this record
7 that will help you to evaluate the testimony of the
8 witnesses.

9 That means it is very important and it is your duty to
10 pay close attention to all the witnesses, observe them,
11 listen carefully. Listen to the attorneys as well as to the
12 Court.

13 Don't let your thoughts wander. But pay strict
14 attention to all of the evidence that is presented so that
15 at the conclusion of all the evidence, after the lawyers
16 have addressed you with their closing remarks, and I've
17 given you the charge on the law, you will then be in a
18 position to go back into the jury room, begin your
19 deliberations and arrive at a verdict in this case.

20 Now, before I turn it over to the attorneys let me
21 first inquire from the State are there any objections or
22 exceptions to the Court's opening remarks?

23 **MR. JONES:** Nothing from the State, Your Honor.

24 **THE COURT:** Anything from the Defense?

25 **MS. AARON:** None from the Defense, Your Honor.

OPENING STATEMENTS - MR. JONES

149

1 **THE COURT:** Thank you, folks. Ladies and gentlemen,
2 please, if you would, give the attorneys your undivided
3 attention as they address you with their opening remarks.
4 Mr. Jones.

5 **MR. JONES:** Thank you, Your Honor. May it please the
6 Court.

7 **THE COURT:** Yes, sir.

8 **MR. JONES:** Ms. Aaron. On July 28th, 2013 fifty-two
9 year old Kelly Phillips got in bed with thirteen year old
10 Minor [REDACTED] He touched her vagina. He touched her
11 breasts. And then Peggy Robinson, who is Minor's [REDACTED] mother
12 and Kelly's girlfriend, came into that same room, got in bed
13 and had sex with Kelly Phillips while her thirteen year old
14 daughter laid beside her.

15 Two days later Minor [REDACTED] went to her pediatrician. She
16 told her doctor that Kelly Phillips had been abusing her for
17 years. Law enforcement was contacted. And Minor [REDACTED] told law
18 enforcement about two times in the month of July when Kelly
19 Phillips had sex with her and also about the incident on
20 July 28th where he touched her vagina and touched her
21 breasts.

22 When Peggy Robinson was questioned, the mother of the
23 victim, girlfriend of the Defendant, she said, yes, I did go
24 into that room where Kelly Phillips was laying in the bed
25 with my daughter and, yes, I had sex with Kelly Phillips

OPENING STATEMENTS - MR. JONES

150

1 while my thirteen year old daughter laid right beside us.

2 And she also said at some point in 2013 Kelly Phillips
3 told her that Kelly Phillips had sexually abused Minor

4 Those are the basic facts I intend to present.

5 You're going to hear from several witnesses. Minor

6 I mentioned, was the victim at the time. She was
7 thirteen. Now she's sixteen. Peggy Robinson will testify.

8 Detective Jon Hamby from the Easley Police Department and an
9 expert in child sexual abuse will testify as well.

10 That expert hasn't seen our victim, knows nothing about
11 the case. She'll just tell you general characteristics
12 about sexual abuse that you may not be aware of.

13 Now as you listen to everybody testify, in the back of
14 your mind I want you to ask yourself what reason does this
15 person have to lie? Why would this person come in here
16 under oath and lie? And remember that people lie to gain a
17 benefit or avoid some type of punishment.

18 Particularly when Minor testifies, what reason does
19 she have to come in here and lie? Listen to where she lives
20 now. Listen as she tells you about her life, the results,
21 the consequences of these allegations.

22 And as Peggy Robinson testifies, listen to where she
23 tells you she lives right now. Listen how this has affected
24 her life. Has she benefitted from what she told law
25 enforcement?

OPENING STATEMENTS - MR. JONES

151

1 I mentioned Kelly Robinson, or excuse me, Kelly
2 Phillips is charged with two counts of criminal sexual
3 conduct with a minor, second degree, and one count of
4 criminal sexual conduct with a minor, third degree. And
5 basically that means that I have to prove to you for the
6 criminal sexual conduct with a minor, second degree, that
7 Kelly Phillips committed a sexual battery on someone between
8 the ages of eleven to fourteen.

9 At the end of the trial the Judge is going to go into
10 way more detail about the specifics of each crime, but I
11 want to give you a heads up as to what I have to prove. The
12 sexual battery means that he inserted something into any
13 opening of the child, vaginal, oral or anal.

14 And for criminal sexual conduct with a minor, third
15 degree, I have to show that Kelly Phillips touched someone
16 under the age of sixteen in a lewd and lascivious manner for
17 the purposes of arousing his sexual desires or the child's
18 sexual desires. So essentially that means touching someone
19 for the purpose of arousing your sexual desires who was
20 under sixteen.

21 So those are the basic elements that I have to prove.
22 The burden is on me, who represents the State. And, again,
23 at the end of the trial, the Judge, when he charges you on
24 the law, he will talk about those charges in depth.

25 And I don't want to talk too long. So I want to leave

OPENING STATEMENTS - MS. AARON

152

1 you with this. When **Minor** comes in here today,
2 **Minor** has no support from a mother, she has no support from
3 a father, she has no support of any family. And when she
4 walks in here today she's going to walk all alone. She's
5 going to sit right there. And, ladies and gentlemen, that's
6 exactly how she goes through this world, all alone. Thank
7 you.

8 **THE COURT:** Thank you, Mr. Jones. Ms. Aaron.

9 **MS. AARON:** May it please the Court, Your Honor.

10 **THE COURT:** Yes, ma'am.

11 **MS. AARON:** Good morning, ladies and gentlemen. As I
12 told you early on -- and you won't have any trouble hearing
13 me, I guarantee you. My name is Cheryl Aaron. I practice
14 law in Clemson. I have been practicing law since 1983. I
15 used to be in Pickens. You may or may not have seen my
16 office right across the street years ago.

17 I actually started out in Gaffney. I was the first
18 woman to ever practice law in Cherokee County in 1983. So
19 I've been around a long time. I didn't go gray until last
20 year, but it sort of validates how long I've been doing
21 this.

22 I told you yesterday that it was my pleasure to
23 represent Mr. Phillips. And I really do mean that, not
24 because this is fun, but because I love what I do. My job
25 is to give you the other side of the story that the State

OPENING STATEMENTS - MS. AARON

153

1 doesn't want you to hear. If it were as easy as Mr. Jones
2 has just presented it to you, then there'd be no reason for
3 us to be here.

4 I liken the State's presentation to the unfortunate way
5 that I may have raised my children in one sense, that if I'm
6 walking with them in a store and we approach an adult and
7 they speak to them, ask them a question, what do I do? I
8 answer for them because I want them to look good. I don't
9 want them to say something silly. That's what kids do. But
10 I want control over the message, my kids growing up.

11 If Mr. Jones could testify, he'd have control of the
12 message. I suggest to you that that's not the way it works.
13 Our system is designed to take twelve people who know
14 absolutely nothing about anybody in this room and we ask you
15 to make the ultimate decision about what happened.

16 Now, that may sound very unusual to you. You'd be like
17 holy mackerel, how am I supposed to do this? Well, the
18 system two hundred and some-odd years ago when it was
19 designed was designed with tools. You will have tools.

20 You will have evidence, which is what you hear from
21 this chair. This is evidence. Evidence is not what I say.
22 Evidence is not what Mr. Jones says. Evidence is not what
23 the Judge says. Evidence is what you hear from this chair.

24 There's no basket at the door for you to leave your
25 common sense. You come in here with it fully intact. You

OPENING STATEMENTS - MS. AARON

154

1 make your decision in this case like you do in your life.
2 You've got kids running around your house, your kids,
3 somebody else's kids, you hear a crash in the bathroom,
4 you're not in the room, they both come running in, might
5 tell you different stories. How do you resolve that? You
6 weren't there. You have no idea. You listen. You use your
7 common sense.

8 And the only difference between that scenario and this
9 scenario is the Judge is going to tell you what the rules
10 are. You don't -- just like you were to decide who broke
11 this vase. You don't get to decide today who you believe a
12 little bit more than who you don't believe. That's not
13 where we are.

14 If you were in here on a wreck case on what we call a
15 civil case, he ran into me, no, he ran into me, who do you
16 believe more? We're done.

17 Two hundred and some-odd years ago when our system was
18 designed, that's not enough when you're going to call
19 someone a criminal, when you're going to call them a
20 criminal, you're going to type up a warrant, you're going to
21 arrest them, then you must prove every element of that
22 charge beyond any other reasonable explanation.

23 That's not an unreasonable threshold. That threshold
24 protects any person in our community who sits in that chair.
25 If the State's going to bring them in here and they're going

OPENING STATEMENTS - MS. AARON

155

1 to say you committed a crime, then they must be prepared
2 from this chair to prove that to you beyond any other
3 reasonable explanation.

4 The Judge will define reasonable doubt to you. Books
5 have been written about reasonable doubt. Very simply, the
6 State is going to put a pen in your hand figuratively or
7 literally at the end of this trial, and they're going to ask
8 you to write guilty on these indictments.

9 And if you've heard anything during this trial from
10 this chair that causes you to hesitate, then that's a
11 reasonable doubt. That's not a loophole. That's a
12 protection. Because if I don't like somebody and I want to
13 say something about them, or I'm confused, or I really do
14 believe what I'm saying, it's just simply not true, then the
15 person who's sitting in that chair deserves that protection.

16 When we're here with you today we don't ask you to do
17 anything other than be the kind of juror that you would want
18 to have when your loved one, your community member, your
19 neighbor is sitting in that chair. That's all we can ask of
20 you.

21 And that's very important. It was very important in
22 1983 when I started doing this, and I think it's even more
23 important now because our society wants to Google an answer.
24 I do it all the time. I need an answer, I don't go back to
25 what I learned. I want to Google it. I want immediate

OPENING STATEMENTS - MS. AARON

156

1 answers. This system was designed before that was around.

2 This is human thought. It is human thought.

3 What the Judge is going to ask you to do and what our
4 system asks you to do is two things. First thing, you have
5 to decide what happened. What are the facts? If we agreed
6 on the facts, it would be very easy. We do not. So you
7 first have to decide what are the facts. What happened?
8 Use what you hear from here to make that decision.

9 And then the Judge is going to tell you what the law
10 is. The law is not what you want it to be. It isn't what
11 you think it should be. It's what the Judge tells you it
12 is. It is a list of requirements that you must find beyond
13 any other explanation as you go down the list based on your
14 decision on the facts. And all of this must be unanimous.
15 Now, that may sound like a pretty difficult task for you,
16 but again, it's exactly what we do as human beings within
17 the rules that we sit here with today.

18 There are several kinds of evidence that you'll hear.
19 You'll hear -- you could hear, I don't know what you'll
20 hear, you could hear direct evidence, which is if you go
21 outside and it's raining and it's raining on you, that's
22 direct evidence. Somebody saw it, it happened. Somebody --
23 this is what they say happened.

24 You might also hear about circumstantial evidence. If
25 you see somebody walk in that door who's wet with an

OPENING STATEMENTS - MS. AARON

157

1 umbrella, you didn't see it rain, but you could conclude
2 that it's raining. But I'm going to tell you to be very,
3 very careful about either of those types of evidence because
4 you must be able to reach that conclusion beyond any other
5 reasonable explanation. And if the sprinkler system's on
6 outside and that's what got that person wet, that logical
7 conclusion that you were asked to reach, you can't reach
8 because there's another reasonable explanation.

9 People -- you may want to believe that people,
10 children, parents, we want to believe they tell the truth.
11 I suggest to you that lie is a big word. Lie is a powerful
12 word. People can say things that they really believe that
13 aren't true. For whatever reason they really believe it.

14 Does it make them feel better? Does it make them look
15 better? I don't know. But they can say things that they
16 really believe, but when you look at all the facts, they're
17 just simply not true.

18 I'm going to close with this, two things I want to tell
19 you. I'm not wearing a giant shirt that says free child
20 molesters. That's not -- that's not my job. I'm not
21 telling you that it's okay to molest a child.

22 What I'm telling you is if the State brings somebody in
23 and puts them in that chair and says we think you did this,
24 you're here to hear all the facts. If I were wearing a
25 shirt it'd say evidence. Evidence.

OPENING STATEMENTS - MS. AARON

158

1 I have a lawyer friend, big man, giant guy, a little
2 bit older than me, big head, big shoulders, commanding
3 presence, does a lot of trials, stands in front of a jury
4 and they're just mesmerized with him. He wears a big ring
5 because he can. It looks good on him. During an opening
6 statement he'll turn that ring around so all you see is a
7 gold band on the side. And he puts it in his hand and he
8 talks. And people are just -- they're just mesmerized.

9 And when they hear him, they listen to him. And what
10 he tells them when he's finished is please listen to
11 everything that goes on today because it's very important.
12 That's axiomatic. The Judge tells you that. But it is
13 important.

14 And the way he makes that point is that he says because
15 you never know when you might hear the gem. And he opens
16 his hand and there's this ring. They've been talking to him
17 for twenty minutes, they've never seen it. Listen to
18 everything.

19 Kelly Phillips appreciates your service today. This is
20 the first day since July of 2013 that somebody can right
21 this wrong. Somebody can do something about this. And
22 that's you.

23 I appreciate your service because you make the system
24 work. If you weren't here, this wouldn't get resolved. And
25 I appreciate you because you will listen, and I know you

1 will. You'll listen from beginning to end. You'll listen
2 to what the Judge tells you. And you will be the kind of
3 juror that you would want for anybody in that chair. Thank
4 you.

5 THE COURT: Thank you, Ms. Aaron. Mr. Jones, you may
6 call your first witness.

7 MR. JONES: Thank you, Your Honor. The State calls
8 Minor to the stand.

9 THE COURT: All right. Minor come around,
10 please.

11 THE CLERK: If you would, place your left hand on the
12 Bible and raise your right.

13 Minor being
14 duly sworn testified as follows;

15 THE CLERK: Thank you. If you would, have a seat and
16 state your name for the record, please.

17 Minor My name's Minor

18 Direct Examination by Mr. Jones:

19 Q. Minor I'm going to stand right here so the jury can
20 see you and so you can hear me, okay?

21 A. Okay.

22 Q. You just told them what your name was. Can you tell us
23 when your birthday is?

24 A. /2000.

25 Q. Okay. And what's your mother's name?

- 1 A. Peggy Ann Robinson.
- 2 Q. And do you remember in July of 2013 where you lived?
- 3 A. Yes.
- 4 Q. What was that address?
- 5 A. [REDACTED]
- 6 Q. Do you remember who lived with you there?
- 7 A. Yes.
- 8 Q. Can you tell me who lived with you?
- 9 A. It was my mama, my brother, JR [REDACTED] and Kelly. But he
- 10 didn't really live there, but he was there a lot.
- 11 Q. He was there a lot. Did Kelly have his own house?
- 12 A. Yes, he did.
- 13 Q. Okay. Well, how do you know Kelly Phillips?
- 14 A. That is my mama's ex-boyfriend.
- 15 Q. Okay. Do you remember how old you were when you first
- 16 met him?
- 17 A. No.
- 18 Q. Okay. Do you know about how long your mother and him
- 19 dated?
- 20 A. I mean, not really.
- 21 Q. Okay. Tell the jury -- where do you live right now?
- 22 A. Crossroads.
- 23 Q. And what is that?
- 24 A. It's a level 3 behavioral management lock-down
- 25 facility.

Minor

- DIRECT EXAMINATION BY MR. JONES

161

1 Q. Okay. And how long have you been there?

2 A. Six months.

3 Q. Okay. Where were you before that?

4 A. Southeastern Children's Home.

5 Q. Okay. Do you remember on July 30th, 2013 going to see
6 Dr. Carla Richards?

7 A. Yes, sir.

8 Q. And who is Carla Richards?

9 A. That was the doctor that I had been seeing.

10 Q. Do you remember who went with you when you saw Dr.
11 Richards that day?

12 A. Yes, sir.

13 Q. Who was that?

14 A. My mama.

15 Q. Okay. Tell the jury what you told Dr. Richards about
16 Kelly Phillips.

17 A. Well, I got in there and she kept looking at me funny.
18 And she asked me what was wrong. And I told her that I was
19 being sexual abused.

20 Q. Okay. Did you tell 'em about how long you'd been
21 sexually abused?

22 A. No, I did not.

23 Q. Okay. Did you tell the doctor anything about the most
24 recent sexual abuse that occurred when you saw the doctor
25 that day?

1 A. Yes, sir.

2 Q. Tell the jury about that.

3 A. Like, it was like a couple of weeks before I went to
4 Dr. Richards for the Depo.

5 Q. Okay. And tell the jury about that. What happened?

6 A. When I went to the doctor?

7 Q. No, about the sexual -- the most recent sexual abuse,
8 if you -- the best you can remember.

9 A. Oh, yes. I was abused. Like, it was in my room.

10 Q. Okay. And tell the jury more about that abuse. Who
11 else was in the room?

12 A. My mama.

13 Q. Okay. And tell the jury what happened when your mother
14 came in the room and as she got into the room.

15 A. Well, my mama, she came and knocked on the door. And
16 he, Kelly, let her in.

17 Q. Did Kelly say anything to you as he was walking up to
18 the door?

19 A. Yes.

20 Q. What did he say?

21 A. He told me that she had already knew that he was
22 messing with me and stuff.

23 Q. Okay. And after he said that what happened?

24 A. He let her in.

25 Q. Okay. And tell the jury what happened after he let

Minor

- DIRECT EXAMINATION BY MR. JONES

163

1 your mother into the room.

2 A. When he let her in the room, they were having sexual
3 intercourse in front of me. And, yes, I was awake.

4 Q. Okay. So you were awake. Did you try to or did Kelly
5 touch you at all while you were in the room or while your
6 mother was in the room?

7 A. No, he did not.

8 Q. Okay. Did you ever try to leave?

9 A. Yes.

10 Q. What happened when you tried to leave?

11 A. He grabbed me.

12 Q. And did he say anything to you then?

13 A. No.

14 Q. Okay. Can you tell the jury that same night, that same
15 evening, can you tell the jury about any -- were you touched
16 -- did Kelly touch you at all before your mother got into
17 the room?

18 A. Yes.

19 Q. Okay. Tell the jury about that.

20 A. He was touching my breasts and my -- my vaginal area.

21 Q. Okay. Now you mentioned something happened a few weeks
22 earlier. Can you tell the jury about anything that happened
23 a few weeks earlier ---

24 A. Yes.

25 Q. --- with regard to Mr. Phillips?

1 A. Yes. Well, I was in my room and he came in there and
2 he had sex with me.

3 Q. And can you tell them anymore about that? What was --
4 did he say anything to you that you remember?

5 A. Yes. He told me not to tell anybody.

6 Q. Do you remember how -- how you had sex with him?

7 A. Yes.

8 Q. Can you tell the jury about that?

9 A. Like, my face was facing that way. And, like, my
10 bottom was in the air.

11 Q. Okay. Now, do you remember how old you were -- I think
12 I asked you this earlier and you said you didn't remember.
13 Do you remember how old you were when you met Kelly
14 Phillips?

15 A. No, I do not.

16 Q. Okay. If I showed you your statement would that help
17 you remember?

18 A. Yes, sir.

19 Q. Okay.

20 **MR. JONES:** May I approach the witness, Your Honor?

21 **THE COURT:** Yes, sir.

22 Q. Just take a minute and read through that statement,
23 okay? Just take your time.

24 (Pause)

25 A. Yes, sir.

Minor

- DIRECT EXAMINATION BY MR. JONES

165

1 Q. Okay. So tell the jury about how -- how old you were
2 when you met him. Do you remember now?

3 A. Yes.

4 Q. Okay.

5 A. I was seven.

6 Q. Okay. You were seven. Okay. And is that about --
7 that was when your mother started dating him, is that right?

8 A. Yes, sir.

9 Q. And on how many occasions -- you mentioned that you had
10 sex with him before in your room. How many occasions did
11 you have sex with Mr. Phillips?

12 A. Three.

13 Q. Three. Okay. And with regard to when you went to the
14 doctor's office in July of 2013 do you remember about where
15 in time those incidents were?

16 A. I don't remember.

17 Q. Okay. Were they -- were they close to that time when
18 you saw the doctor or were they far away?

19 A. They were close.

20 Q. Was there any other time that Mr. Phillips sexually
21 abused you?

22 A. Other than those three times?

23 Q. Um-hum (affirmative).

24 A. No, sir.

25 Q. Okay. Did anything happen other than you having sex

1 with him at any other time?

2 A. Other than he was touching me?

3 Q. Right.

4 A. That's it. He ...

5 Q. What's it?

6 A. That he just touched me after that. He didn't have sex
7 with me anymore.

8 Q. Okay. So he just touched you other than that?

9 A. Yes.

10 Q. Okay. And how long did that -- how long of a period of
11 time did that occur?

12 A. Seven.

13 Q. Seven what?

14 A. Years.

15 Q. Seven years?

16 A. (Affirmative nod).

17 Q. Do you remember any specific incident that occurred in
18 McCormick?

19 A. Yes, sir.

20 Q. Can you tell the jury about that.

21 A. Well, they were outside and he ...

22 Q. Who were outside?

23 A. My mom.

24 Q. Okay.

25 A. And he didn't ...

Minor

- DIRECT EXAMINATION BY MR. JONES

167

1 Q. It's fine. You can just say whatever you -- whatever
2 you want to say.

3 A. Okay. Well, like, he was touching me.

4 Q. And where did that occur?

5 A. In McCormick.

6 Q. Okay. And why were you in McCormick?

7 A. Because we were going down there, hunting season, to
8 hunt. Kelly was going to hunt. And my mom was going to
9 hunt. And ---

10 Q. That's fine. And what happened when you were in
11 McCormick with Mr. Phillips?

12 A. In regards to him touching me?

13 Q. Anything -- yes, with regards to him touching you.

14 A. He was touching me.

15 Q. Did you -- did you do anything to him?

16 A. Yes.

17 Q. Tell the jury what that was. You don't have to look at
18 -- look at your statement for everything. If you can just
19 remember, you can tell the jury ---

20 A. Yeah.

21 Q. That's fine.

22 A. Well, he asked me to -- to suck his private area, and I
23 did.

24 Q. Well, tell the jury what he actually said. Did he say
25 private area or do you remember?

- 1 A. No.
- 2 Q. No what?
- 3 A. He did not say private area.
- 4 Q. What did he say? You can say it.
- 5 A. Okay. He said dick.
- 6 Q. Okay. And did he do anything to you?
- 7 A. He touched me inappropriately.
- 8 Q. Okay. Did he do anything else to you at that time?
- 9 A. No, sir.
- 10 Q. Okay. Do you remember anything specific about Mr.
- 11 Phillips' private area?
- 12 A. Yes, I do.
- 13 Q. Tell the jury what you remember.
- 14 A. He had shaved his private area.
- 15 Q. And was that every time you saw his private area?
- 16 A. Yes, sir.
- 17 Q. In the month of July when you indicated that you had
- 18 sex with Mr. Phillips do you remember him saying anything to
- 19 you during -- while he was having sex with you?
- 20 A. He told me don't tell.
- 21 Q. He told you don't tell. And you described a time when
- 22 you saw your mother have sex with Mr. Phillips in the bed
- 23 with you.
- 24 A. Yes, sir.
- 25 Q. Were there any other times that you saw your mother and

1 Mr. Phillips have sex?

2 A. Yes. When we were at the motel Mr. Phillips and my
3 mama were having sex in front of me and my brother.

4 Q. Okay.

5 A. There were two beds in the motel. And me and my
6 brother were on one and them two were on the other.

7 Q. Let's be clear. When you -- when we say he had sex
8 with you, what do you mean? Can you describe what that is?

9 A. When he inserted his private area in my vaginal area.

10 Q. Okay.

11 **MR. JONES:** I beg the Court's indulgence, Your Honor.

12 **THE COURT:** Yes, sir.

13 (Pause)

14 Q. **Minor** do you ever remember a time where Mr. Phillips
15 performed oral sex on you?

16 A. Yes, sir.

17 Q. Do you remember when that happened or did it happen
18 more than once?

19 (Pause)

20 A. Yes. This occurred at my mom's house.

21 Q. Okay.

22 A. And it happened in the woods, too.

23 Q. And, **Minor** do you have a hard time remembering the
24 exact dates ---

25 **MS. AARON:** Objection to that type of question, Your

1 Honor. He's trying to rehabilitate. And I would object to
2 that question. It's up to the jury to determine what she
3 can and cannot remember.

4 **THE COURT:** Overruled.

5 Q. Do you have a hard time remembering exact dates when
6 something happened?

7 A. Yes, sir, I do.

8 Q. Okay. And how long ago -- well, it's 2016 right now,
9 right?

10 A. Yes, sir.

11 Q. And you told the doctor in 2013?

12 A. Yes, sir.

13 Q. Okay. And the sexual abuse that you described, was
14 that over a long period?

15 A. Yes, sir.

16 Q. Okay.

17 **MR. JONES:** No further questions, Your Honor.

18 **THE COURT:** Cross.

19 **MS. AARON:** Your Honor, may we approach?

20 **THE COURT:** Yes, ma'am.

21 (Whereupon a bench conference was held off the record
22 in the presence of the jury, but out of their hearing)

23 (Whereupon the bench conference was ended)

24 **MS. AARON:** I have no questions, Your Honor.

25 **THE COURT:** All right. Thank you very much, ma'am.

PEGGY ROBINSON - DIRECT EXAMINATION BY MR. JONES

171

1 You may step down.

2 A. You're welcome.

3 **THE COURT:** Thank you. Call your ---

4 **MR. JONES:** Your Honor, at this time the State calls
5 Peggy Robinson to the stand.

6 **THE COURT:** All right. Please bring Ms. Robinson in.

7 **THE CLERK:** If you would, place your left hand on the
8 Bible and raise your right the best you can.

9 **Peggy Robinson,** being
10 duly sworn testified as follows;

11 **THE CLERK:** Thank you, ma'am. If you would, have a
12 seat and state your name for the record, please.

13 **MS. ROBINSON:** Peggy Robinson.

14 **Direct Examination by Mr. Jones:**

15 Q. Ms. Robinson, what's your daughter's name?

16 A. **Minor**

17 Q. **Minor** what?

18 A.

19 Q. How do you know Kelly Phillips?

20 A. I dated him.

21 Q. How long did you date him?

22 A. I don't remember.

23 Q. Do you remember what year it was when you met him?

24 A. No.

25 Q. What address did you live at in Easley, South Carolina?

PEGGY ROBINSON - DIRECT EXAMINATION BY MR. JONES

172

1 A. [REDACTED].

2 Q. And who lived with you there?

3 A. Me, Minor and JR

4 Q. Okay. On July 30th, 2013 did you take Minor to her
5 pediatrician?

6 A. Yeah.

7 Q. And after that did you meet with Detective Hamby with
8 the Easley Police Department?

9 A. Yeah.

10 Q. Do you remember an incident that occurred on July 28th
11 of 2013 in Minor's bedroom?

12 A. Yeah.

13 Q. Tell the jury about that incident.

14 (Pause)

15 A. Minor was in her bedroom watching TV.

16 Q. Who was in the bedroom with her?

17 A. Kelly was sitting on the bed talking to her. We was
18 watching a movie.

19 Q. Say that again, please, ma'am.

20 A. Minor was in her -- Minor was in there watching a
21 movie.

22 Q. Okay.

23 A. And Kelly was sitting there watching the movie with
24 her.

25 Q. Did you go into that bedroom?

PEGGY ROBINSON - DIRECT EXAMINATION BY MR. JONES

173

1 A. Yeah.

2 Q. Tell the jury what happened when you entered the
3 bedroom.

4 A. I don't remember.

5 Q. You wrote a statement to Detective Hamby. If ---

6 A. I don't remember.

7 Q. --- I showed you that statement would that help you
8 remember?

9 A. Yeah, 'cause I don't remember.

10 **MR. JONES:** May I approach, Your Honor?

11 **THE COURT:** Yes, sir.

12 Q. If you'd look at that statement, please, ma'am.

13 A. I can't see it. You're going to have to bring it
14 closer. **Minor** was in -- **Minor** was in the bed ---

15 Q. Don't -- don't read the statement out loud, ma'am, ---

16 **THE COURT:** I need -- I don't need you to read it out
17 loud.

18 A. Okay.

19 **THE COURT:** If you would, you can read it to yourself
20 to help refresh your memory.

21 A. Okay. The only way I'm going to remember it is to read
22 it out loud because the only way I remember is to read it
23 out loud. That's the only way I'll remember it.

24 **MR. JONES:** Your Honor, at this point I'd -- she's
25 being hostile. And I'd like to ---

PEGGY ROBINSON - DIRECT EXAMINATION BY MR. JONES

174

1 A. I mean, I don't remember.

2 MR. JONES: --- treat her as a hostile witness.

3 THE COURT: Granted.

4 A. 'Cause I don't remember.

5 Q. Ms. Robinson, in the statement to Detective Hamby did
6 you say Minor was in bed with Kelly, but I was not in
7 there?

8 A. Yes, sir.

9 Q. Did you say when I got in there in the bed with them,
10 first we talked, and then we had sex? Did you say that?

11 A. Yes, sir.

12 Q. Did you say we had sex in front of her and she laid
13 there and watch us? Is that what you said in your
14 statement?

15 A. Yes, sir.

16 Q. Say that so the jury can hear you, please, ma'am.

17 A. I said yes, sir.

18 Q. And did you say around April or May we was talking
19 about being truthful?

20 A. Yes, sir.

21 Q. And Kelly told me what happened 4th of July of 2012?
22 Did you say that?

23 A. Yes, sir.

24 Q. Did you say that he told me that he let Minor play
25 with his dick? Is that what you said in your statement?

PEGGY ROBINSON - DIRECT EXAMINATION BY MR. JONES

175

1 A. I believe so.

2 Q. You believe so or yes?

3 A. Yes, sir.

4 Q. And did you say that he fingered her and asked her did
5 she like that and she said yes?

6 A. Yeah.

7 Q. And did you say it went a little further? She sucked
8 his dick, and then he eat her and he asked her did she like
9 it. Did you write that in your statement?

10 A. Yeah, I wrote that in the statement.

11 Q. Ms. Robinson, do you know anyone named Steve or Steven?

12 A. Yeah.

13 Q. Who is that?

14 A. It's a nephew.

15 Q. Who is that?

16 A. I said his nephew.

17 Q. And after you were arrested did you spend some time in
18 the LEC, the Pickens County Detention Center?

19 A. Yeah.

20 Q. And while you were in there did you ever make a jail
21 phone call to Steven? Did you talk to him over the phone?

22 A. I made a jail phone call to my mama and he answered the
23 phone.

24 Q. Okay. And when he asked you why didn't you tell
25 anybody did you say I didn't want to get Kelly in trouble?

PEGGY ROBINSON - DIRECT EXAMINATION BY MR. JONES

176

1 A. Yeah.

2 Q. Did you say Kelly is my world?

3 A. Sure did.

4 Q. And did you say I told Detective Hamby what Kelly told
5 me about McCormick last 4th of July?

6 A. Yeah.

7 Q. And as to the incident in your room with Kelly and
8 **Minor** did you say we was all in it together? We was laying
9 in bed beside her and it just happened?

10 A. Yeah, but it wasn't like we done it on purpose.

11 Q. Okay. And did you say to Steven, he ate her and she
12 sucked him at McCormick last 4th of July?

13 A. I believe so. I don't remember everything I said on
14 the phone.

15 Q. Okay. And did you say to Steven, what am I supposed to
16 do, tell them it didn't happen?

17 A. I reckon so, yeah.

18 Q. And did you tell Steven you told Detective Hamby what
19 you know?

20 A. I think so. I guess so, yeah.

21 Q. Did you make another jail phone call and talk to
22 someone named Denise? Do you remember talking to her on the
23 phone when you were in jail?

24 A. No, I don't. I mean, I don't remember talking to her.
25 I mean, I guess, yeah, I did.

PEGGY ROBINSON - DIRECT EXAMINATION BY MR. JONES

177

1 Q. Did you talk to Denise or not?

2 A. Yes.

3 Q. Did you tell Denise that you didn't want Kelly to get
4 in trouble?

5 A. I don't remember the conversation. I remember talking
6 to her, but I don't remember the conversation. Do you know
7 how much has happened since 2013 and now? I don't remember.

8 **MR. JONES:** Your Honor, at this point I think I need to
9 play the jail call for the witness, allow her to remember,
10 outside the presence of the jury.

11 **THE COURT:** All right. Let me take up this matter of
12 law, ladies and gentlemen. If you would, please, if you
13 need anything while you're back there, just let the bailiffs
14 know, if you need something to drink or whatever. Please
15 have no conversation about the case, and I'll bring you back
16 out shortly. Okay.

17 (Whereupon the jury exited the courtroom at 10:13 am)

18 **MS. AARON:** Your Honor, before ...

19 **THE COURT:** Okay.

20 **MS. AARON:** Before we do anything I need to put an
21 objection on the record to the solicitor's statement in
22 front of the jury. He just stated in front of the jury that
23 we have a phone -- taped phone conversation from the jail,
24 which I don't know if it's admissible or not. I don't know
25 who's going to authenticate it. I don't know that it would

1 be even allowed to be played to the jury until the Court
2 determines that it can.

3 He just announced that to the jury and then asked that
4 you consider it outside their presence. And they know
5 exactly or they think they know what we're doing in here.
6 So I would object to the solicitor's statement in front of
7 the jury talking about that jail -- recorded jail call.

8 She says she didn't remember. Then he needs to present
9 competent evidence. And he's allowed to do that. But he
10 can't just tell the jury we have a recorded call.

11 **MR. JONES:** Your Honor, this is just like if there was
12 a written statement. I would go to her and hand her the
13 statement. I would not move it into evidence like I've done
14 earlier.

15 However, in this case it is a recorded statement that
16 we have to have -- she admitted that she was in the
17 detention center for a time after she was arrested. She --
18 we had just talked about another jail phone call. Honestly,
19 if she had just -- if she would admit, that, yes, I did talk
20 to this person on the phone, there would be no need to do
21 this.

22 **THE COURT:** I'm going to overrule the objection.
23 Here's the situation. And it's unusual. With a statement,
24 a written statement, if a witness can't remember, can't
25 recollect, you can hand them the statement just as he did

1 with Ms. Robinson and asked her to read it.

2 She tried -- she attempted or she thought, initially,
3 she was supposed to read it out loud. And I explained to
4 her that she needs to read it to herself to recollect her
5 memory. We can't do that with a jury in place with a
6 recording.

7 So the jury needed to go out to -- it's no different
8 than handing somebody a piece of paper alleging this is
9 their statement asking them to review it and then asking
10 them did you make that statement? Yes, I made that
11 statement. And is it true that you said this? There's ---

12 **MS. AARON:** Your Honor, I know -- I'm sorry.

13 **THE COURT:** No, I'm sorry.

14 **MS. AARON:** I know you've ruled. And I'm not trying to
15 argue. I just would like to respond on the record to your
16 explanation.

17 I fully understood that that statement that he was
18 going to give her was admissible. And I had absolutely no
19 objection to it and no question at all that it would be
20 competent evidence for the jury to see.

21 That is different with this phone call. So that's my
22 objection is that I understand she can be impeached with her
23 written statement. She made it.

24 But now the jury knows there's a -- or thinks there
25 might be a recorded phone call. And that was my objection

1 is that that is not in evidence and has not been
2 authenticated.

3 **THE COURT:** All right. How do you propose to do this?

4 **MR. JONES:** I have a -- I apologize, Your Honor. I
5 wasn't planning on playing jail phone calls. I was planning
6 on her admitting that she did make these calls. I have --
7 the equipment is coming up. Just a laptop just for her to
8 hear. Obviously, the whole courtroom doesn't need to hear.
9 Just for her to hear the statement. And it's about a five
10 to seven minute long conversation.

11 **THE COURT:** With this individual?

12 **MR. JONES:** Yes, with this ---

13 **THE COURT:** No, I'm talking about the individual you
14 ---

15 **MR. JONES:** Yes, sir, Your Honor.

16 **THE COURT:** --- were questioning her about.

17 **MR. JONES:** So it's not a long ---

18 **THE COURT:** You're not playing all the jail
19 conversations?

20 **MR. JONES:** Oh, no, no, no, no, no. It's just with the
21 one individual.

22 **THE COURT:** The one ---

23 **MR. JONES:** It's about a five to seven minute long
24 conversation.

25 **THE COURT:** All right. Well, we'll be at ease while

PEGGY ROBINSON - DIRECT EXAMINATION BY MR. JONES

181

1 that's coming up.

2 **MR. JONES:** Yes, sir, Your Honor.

3 **THE COURT:** Folks, we're going -- why don't we just --
4 I say we're going to be at ease. We're basically going to
5 be at recess. If anyone needs to use the restroom or
6 whatever, go ahead. We'll be in recess for about five or
7 ten minutes.

8 **MS. AARON:** Thank you, Your Honor.

9 (Whereupon court was in recess at 10:17 am)

10 (Whereupon court reconvened at 10:40 am)

11 **THE COURT:** All right. Let's bring the jury back.

12 (Whereupon the jury entered the courtroom at 10:41 am)

13 **THE COURT:** All right. You may proceed.

14 **MR. JONES:** Thank you, Your Honor.

15 **Direct Examination by Mr. Jones Continued:**

16 Q. Okay. Ms. Robinson, after listening to the telephone
17 call do you now remember speaking to Denise on the jail --
18 on a jail phone call?

19 A. Yes.

20 Q. Did you tell her you didn't want to get Kelly in
21 trouble?

22 A. Yeah. Yes. I said yes.

23 Q. And was that in response to when she asked you why
24 didn't you tell anybody?

25 **MS. AARON:** Objection to hearsay, Your Honor. She can

PEGGY ROBINSON - DIRECT EXAMINATION BY MR. JONES

182

1 certainly testify to what she said.

2 **THE COURT:** Sustained.

3 Q. Did you tell Denise that I went in there and laid with
4 him?

5 A. Yeah.

6 Q. Did you say **Minor** was laying in with Kelly, and I was
7 laying behind him, and Kelly and I made out, and **Minor** was
8 laying in bed beside us? Did you say that?

9 A. Yeah.

10 Q. And did you tell Denise about a time after a Kid Rock
11 concert?

12 A. Yes.

13 Q. Did you tell Denise that after the Kid Rock concert
14 Kelly Phillips told you about 4th of July in McCormick the
15 year before?

16 (Pause)

17 Q. Ms. Robinson?

18 A. Yes.

19 Q. And did you tell Denise that's when Kelly Phillips told
20 you about sexually abusing **Minor** in McCormick?

21 A. Yeah.

22 Q. And did you say, when you took her to the pediatrician,
23 you didn't know **Minor** was going to up and run her mouth?

24 A. I think so, yeah. Yes. Yeah.

25 Q. Did you say Kelly told you, he told me he fondled her

PEGGY ROBINSON - DIRECT EXAMINATION BY MR. JONES

183

1 and he let **Minor** fondle him and then he put his mouth on
2 her?

3 A. I guess so, yeah. I believe so. I guess, yeah.

4 Q. And on May 25th of 2016 did you plead guilty to two
5 counts of unlawful neglect of a child?

6 A. Yep. Not because I wanted to, though.

7 Q. Okay. And in that guilty plea in front of a judge did
8 you swear to tell the truth under oath?

9 A. Yeah.

10 Q. And did you tell that judge that Kelly Phillips
11 admitted to you that he sexually abused your child?

12 A. Yeah.

13 Q. And did you admit to that judge that you had sex with
14 Kelly Phillips while your child was in the bed with you?

15 A. Yes. But again, it's not like we done it on purpose.

16 Q. Okay.

17 **MR. JONES:** No further questions, Your Honor.

18 **THE COURT:** Ms. Aaron.

19 **MS. AARON:** I have no questions.

20 **THE COURT:** Thank you, Ms. Robinson. You may step
21 down. All right. You may call your next witness.

22 **MR. JONES:** Your Honor, I beg the Court's indulgence.

23 **THE COURT:** Yes, sir.

24 (Pause)

25 **MR. JONES:** Your Honor, at this time the State calls

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

184

1 Detective Jon Hamby.

2 **THE COURT:** Detective Hamby, if you'd, please, come
3 around to be sworn, sir.

4 **Jonathan Hamby,** being
5 duly sworn testified as follows;

6 **THE CLERK:** Thank you, sir. If you would, have a seat
7 and state your name for the record.

8 **MR. HAMBY:** Jonathan Hamby.

9 **Direct Examination by Mr. Jones:**

10 Q. Mr. Hamby, where do you work?

11 A. I work for the Easley Police Department.

12 Q. And what's your current position there?

13 A. Currently I'm assigned to our Narcotics and Vice Unit
14 in our Investigations Division.

15 Q. And how long have you been working for the Easley
16 Police Department?

17 A. Eighteen years.

18 Q. In 2013 do you remember what your position was?

19 A. Yes.

20 Q. What was that?

21 A. I was assigned to our Criminal Investigations Division,
22 which is a detective. And we handle a variety of cases
23 except for narcotics.

24 Q. And tell the jury a little bit more about your
25 responsibilities and what you did in 2013 as a detective.

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

185

1 A. I was one of four in that division. Officers in
2 uniform go out commonly and take reports about various
3 things, whatever somebody's reporting.

4 If they do not have a suspect or if it's a major crime,
5 then those cases get referred back to our Detective
6 Division. And then the captain over that division assigns
7 those cases out to the detectives under him and we
8 investigate them.

9 Q. On July 30th of 2013 were you called out to Easley
10 Pediatric Associates?

11 A. I was.

12 Q. Was there another officer that got there before you?

13 A. Yes.

14 Q. And who was that?

15 A. Officer Reese.

16 Q. And what's his position?

17 A. He was a road officer at the time.

18 Q. Okay. What did you do when you first arrived at Easley
19 Pediatric?

20 A. I was notified of the report. And I met with Officer
21 Reese there, Dr. Richards, Peggy Robinson and Minor

22

23 Q. Do you know if Officer Reese -- did he talk to anybody
24 you didn't talk to?

25 A. No.

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

186

1 Q. Do you remember about what time you got there, morning
2 or afternoon?

3 A. It was almost 5:00, almost their closing time.

4 Q. And after you talked to everybody as a result of that
5 initial investigation what was your understanding of the
6 allegations?

7 A. That a thirteen year old had disclosed to the doctor
8 ---

9 MS. AARON: Objection to hearsay, Your Honor.

10 MR. JONES: Your Honor, he can talk about his
11 understanding of the investigation, what he learned from his
12 investigation.

13 MS. AARON: No, sir. I would say -- and I have a case
14 on point if we want to take that up.

15 THE COURT: Not necessary. Overruled. You can ask him
16 what he did as a result of his investigation.

17 MR. JONES: Yes, sir, Your Honor.

18 Q. So after you talked to everybody at the Easley
19 Pediatrics, what was your next step in your investigation?

20 A. Due to the doctor's office about to close and to get
21 out of that facility, I transported Ms. Peggy Robinson and
22 Minor [REDACTED] in different vehicles to the police
23 department to continue the investigation there.

24 Q. Okay. So who did you talk with -- say again who you
25 brought back to the police station.

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

187

1 A. Peggy Robinson, the mother, and Minor the
2 thirteen year old.

3 Q. Okay. And did you call anyone or get anybody else to
4 come back there with you?

5 A. Notified DSS of the situation and they met me at the
6 police department.

7 Q. Okay. And did you talk to Minor both at the
8 Pediatrics and at the police station?

9 A. I did.

10 Q. And as to the date and time of the sexual abuse
11 allegations did she tell you anything?

12 A. Yes.

13 Q. What were the date and place of the allegations that
14 she told you?

15 A. After speaking the date -- we were there on a Tuesday.
16 The 30th of July is when she went to the doctor and the
17 investigation started. The date that we were focused on was
18 the Sunday just before that Tuesday, two days prior. And
19 then the Friday before that, so we had the 28th and the
20 26th, was two incidences that she had details about.

21 And then about a week before that she named another
22 incident. Didn't have the exact date because of the time-
23 frame. And then it spread over a course of years of
24 different variety of abuse.

25 Q. Okay. Did you make contact with Kelly Phillips on that

1 day?

2 A. I did.

3 Q. Tell the jury how you did that.

4 A. In between dealing with DSS, the purpose of DSS, you --
5 in that situation, had to notify to take the children out of
6 the home officially and turn them over to DSS custody. So
7 that's what they were called for.

8 I was interviewing **Minor** and also Ms. Peggy Robinson
9 at the police department. During that time I had a cell
10 phone number for Mr. Phillips. I contacted him on that cell
11 phone number, requested that he meet me at the police
12 department to discuss the investigation. He agreed. And I,
13 later that evening, met him at the police department.

14 Q. And did you also question Peggy Robinson?

15 A. I did.

16 Q. And when Mr. Phillips came to the police station did
17 you have a chance to discuss with him the allegations?

18 A. I did.

19 Q. And did he appear to be under the influence of
20 anything?

21 A. No, he did not.

22 Q. Did he appear to have some sort of physical or mental
23 disability where he couldn't understand what was going on?

24 A. No.

25 Q. Did you ever deny him access to the bathroom, water or

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

189

1 anything like that?

2 A. No.

3 Q. Did he appear to be under any distress when you talked
4 to him?

5 A. No.

6 Q. Did he appear to be coherent?

7 A. Yes. He was able to answer any questions I asked him.

8 Q. Did he give you any reason to question whether he
9 understood what you were asking him?

10 A. No.

11 Q. Did you ever threaten or coerce him in any way?

12 A. No.

13 Q. Did you read him his Miranda warnings?

14 A. I did.

15 Q. And when did you read those Miranda warnings?

16 A. The time given was 10:06 pm.

17 **MR. JONES:** Your Honor, may I approach the witness?

18 **THE COURT:** Yes, sir.

19 Q. I'm handing you State's exhibit 1. Do you recognize
20 that?

21 A. Yes.

22 Q. What is it?

23 A. It's the standard notification of waiver of rights form
24 that the police department uses to document us reading
25 someone their rights and then waiving the same rights.

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

190

1 Q. And is that the form you read to Mr. Phillips?

2 A. It is.

3 Q. Is his name anywhere on there?

4 A. His name's on it several times along with his signature
5 and five lines that he initialed.

6 Q. Does that appear to be the same form that you gave to
7 Mr. Phillips?

8 A. Yes.

9 Q. Is it altered in any way?

10 A. No.

11 **MR. JONES:** And, Your Honor, I can't remember if we
12 actually moved this in earlier, but at this time if it's not
13 in evidence I would ask that State's exhibit 1 be moved into
14 evidence.

15 **THE COURT:** Any objection?

16 **MS. AARON:** I have no objection.

17 **THE COURT:** All right. Without objection, it's in
18 evidence.

19 **MR. JONES:** Thank you, Your Honor.

20 (Whereupon State's exhibit 1 was admitted into
21 evidence)

22 Q. All right. Now, tell the jury about the conversation
23 you had with Mr. Phillips when he was at the police station
24 after you had him sign his Miranda warnings.

25 A. I spoke with him. And at first he -- he denied --

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

191

1 well, I started off the conversation by asking him if
2 anything had happened out of the ordinary that Sunday
3 before, two days prior. And he said, no, nothing out of the
4 ordinary had happened, nothing stuck out in his mind.

5 So I asked him where he stayed that night. And he
6 stayed -- he said they -- he stayed at Ms. Robinson's house,
7 which is the address that was given earlier, [REDACTED]
8 [REDACTED], which is in the City limits of Easley.

9 And then he said that Saturday night before that they
10 had stayed at his house, which is in Liberty. And then the
11 Friday, which was the other date in question, the 26th,
12 they'd also stayed at Ms. Robinson's house that night.

13 And when I asked if anything out of the ordinary had
14 happened, he said no. I asked him on Sunday night, well,
15 where did you sleep? And at that point he said, oh, you
16 mean by Minor waking up and seeing me and Peggy having sex.

17 And I asked him a little more about that incident. And
18 at that time he said that he had went into Minor's room,
19 they were watching movies and a short time later Peggy come
20 in. And he said that he had thought Minor was asleep. Him
21 and Peggy started having sex in the same bed with Minor. A
22 short time after that they realized that Minor had woke up,
23 and they stopped having sex.

24 I confronted him and asked him had he ever touched her
25 in a sexual manner, Minor. And he said no. I asked him if

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

192

1 Minor had ever touched him in a sexual manner. And he said
2 no.

3 We kept talking and kept talking. And then he changed
4 his statement after that. And he said that Minor had tried
5 to touch him before. And I asked him about that incident.
6 And he said it happened about a year prior to the time I was
7 talking to him.

8 He said that he was at their house laying on the couch
9 and that she came in there and laid down beside him, was
10 trying to touch him in the privates and that he told her to
11 stop and go back to bed, and she left.

12 I asked him if she ever -- if he ever told her mother
13 about that incident. And he stated no, that -- I asked him
14 why not? And he said, well, I thought it was just good
15 enough to tell her to go back to bed and it was over with.
16 And that's kind of where it would start out interview-wise.

17 But since Peggy Robinson was giving me a different
18 story and she was wanting -- she was saying that he wasn't
19 telling the truth.

20 **MS. AARON:** Objection to hearsay, Your Honor.

21 **THE COURT:** Sustained as to hearsay.

22 A. So at that point I arranged for Ms. Robinson to come
23 down the hallway outside the room where I was in with Mr.
24 Phillips and they was able to see each other. At that point
25 she left. And he changed his story again after that

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

193

1 interaction of seeing her.

2 Q. Let me stop you right there. When they had -- when Ms.
3 Robinson, Peggy Robinson, saw Kelly Phillips at the police
4 station did they ever have a private time, a private
5 conversation without you being aware of it?

6 A. No.

7 Q. Did you have your eyes on them the whole time?

8 A. Yes. He was in the room with me and she was outside
9 the room.

10 Q. What do you mean she was outside the room?

11 A. The room I had him in, it's an interview room, standard
12 -- like an eight by eight, nine by nine little area.
13 There's a desk, couple of chairs, nothing else in there
14 except telephone. And she come down the main hallway
15 outside that room when the door was just propped open.

16 Q. She was in the doorway?

17 A. Yes.

18 Q. Okay. So continue on with what the conversation moved
19 to after he spoke with Peggy Robinson.

20 A. After that he changed his story again. And at this
21 point he -- he stated that he did remember a couple of
22 times, he said three or four, to where Minor did touch him
23 in a sexual manner. And I asked him to describe that, those
24 encounters.

25 He said it happened three or four times, that she would

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

194

1 come crawl on him and rubbing him in his private areas. And
2 he spoke of one incident in particular that he could
3 remember. And he stated that he was asleep on the couch in
4 their house and he woke up with her hands down his pants.
5 He made Minor stop and go back to bed at that point. And I
6 asked him if he'd ever told Peggy, the mother, about that.
7 And he said he did.

8 I asked him why the conflict of his stories and why his
9 story kept changing, pointed out that he was giving me
10 different stories and they were not consistent with each
11 other. And at that point he got mad and stopped cooperating
12 in the interview. That's how the interview ended.

13 Q. Okay. And was that conversation recorded in any way?

14 A. The interview with Mr. Phillips?

15 Q. Yes.

16 A. No. I took notes as I was talking to him.

17 Q. Okay. And that conversation occurred in 2013?

18 A. Yes.

19 Q. And why did you not have a video recording of that
20 conversation?

21 A. At the time the police department was not outfitted for
22 those capabilities. Within the last year we've -- we have
23 that now, but at the time we didn't have it.

24 Q. And as a result of your investigation of Minor and
25 Peggy, and Mr. Phillips and everything else you did, tell

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

195

1 the jury who you sought warrants on, please, and warrants
2 you sought.

3 A. I sought warrants on Mr. Phillips for the incidences on
4 that Sunday that was just prior to the doctor's visit. The
5 doctor's visit was on the 30th. So the Sunday the 28th for
6 the touching of her in the bedroom. That Friday before
7 that, which was the 26th, where he inserted his penis into
8 her.

9 And about a week before that she gave the date of the
10 20th, but when I looked it up on the calendar it was a
11 Saturday. And she said I know it wasn't a Saturday, it was
12 a weekday, but just before that. So it was the time-frame
13 of the 19th, he inserted her [sic] penis there. So he got
14 three charges out of those three incidences.

15 Q. And what about for Ms. Robinson?

16 A. Ms. Robinson was charged with unlawful neglect of her
17 children for, one, knowing about the allegations, knowing
18 about the abuse and not doing anything to it. And then for
19 the actual act on Sunday night of being in the bed having
20 sex with a daughter in the bed with her.

21 Q. And as a result of talking with **Minor** did you seek
22 warrants on anyone else? And you don't have to say his
23 name, but just tell me what the warrant was and if there was
24 anyone else you sought a warrant out for.

25 A. Yes. There was another incident where she had sex with

JONATHAN HAMBY - CROSS EXAMINATION BY MS. AARON

196

1 another adult male. And I got -- pulled a warrant on him.

2 Q. Okay.

3 **MR. JONES:** No further questions, Your Honor.

4 **THE COURT:** Cross.

5 **Cross Examination by Ms. Aaron:**

6 Q. Detective, do you have your report?

7 A. I do.

8 Q. Up there?

9 A. Yes.

10 Q. I want to direct you to the bottom of page 3. In
11 specific response to the solicitor's question you said that
12 Mr. Phillips said that, oh, yes, he remembered three or four
13 times where she touched his privates, rubbed on his
14 privates. Is that what you told the solicitor just now?

15 A. I may have. I'm not sure.

16 Q. Okay.

17 A. I just told him ---

18 Q. Does your report say something different?

19 A. Let me find out where you're talking about.

20 Q. Very bottom, last paragraph, the second sentence, which
21 begins Mr. Phillips.

22 A. I got you. And your question specifically?

23 Q. Does your report say something different than she
24 rubbed on his privates several times?

25 A. It says rubbing on him.

JONATHAN HAMBY - CROSS EXAMINATION BY MS. AARON

197

1 Q. So your report says Mr. Phillips then stated **Minor** had
2 come on to him three or four times, crawling on him and
3 rubbing on him, period?

4 A. Yes.

5 Q. No mention of rubbing on his privates three or four
6 times?

7 A. Correct.

8 Q. Is that something you just assumed?

9 A. No.

10 Q. Why would you say that?

11 A. That's what he told me.

12 Q. He told you privates? And ---

13 A. Yes.

14 Q. --- you didn't write it down?

15 A. Yes.

16 Q. Is there anything else he told you you didn't write
17 down?

18 A. I mean, I'm typing a report and just a little error I
19 looked over.

20 Q. So your testimony to this jury today is three years
21 later you wrote -- when did you write this report?

22 A. I wrote it that evening and into the next day because
23 it was a long report.

24 Q. So the latest could have been July 31st ---

25 A. Correct.

1 Q. --- of 2013?

2 A. (Affirmative nod).

3 Q. So you're telling this jury that your memory now is
4 that he meant privates three years later, but your
5 recollection when you wrote this report from your notes
6 don't say privates?

7 A. No. He said privates to me then, too. When I was
8 typing, if I just left it out, I left it out. But, I mean,
9 that's what -- we were talking in the conversation and he
10 said it more than one time.

11 Q. Yet it wasn't important enough within twenty-four hours
12 for you to put it in your report?

13 A. To me it's in the report.

14 Q. So rubbing on him and rubbing his privates are the same
15 thing?

16 A. I left that part out, ---

17 Q. No, answer ---

18 A. --- but in my ---

19 Q. --- my question. You can explain all you want ---

20 A. It can be, yes.

21 Q. I'm asking you, rubbing on him and rubbing on his
22 privates are the same thing?

23 A. It can be, yes.

24 Q. I understand it can be. I'm asking you if it is.

25 A. In my intentions in this report, yes.

JONATHAN HAMBY - CROSS EXAMINATION BY MS. AARON

199

1 Q. Again, I will ask you is there anything else he told
2 you that's not in your report?

3 A. No. I mean, according to me that is in the report
4 also. So ...

5 Q. So because you're assuming that when someone talks
6 about rubbing, they mean sexual?

7 A. No.

8 Q. In this context he means sexually?

9 A. He told me.

10 Q. Well, in your training as a law enforcement officer is
11 it important to write down exactly what you're told?

12 A. If I'm quoting someone, yes.

13 Q. But if you're not quoting them you can make
14 assumptions?

15 A. I didn't say assumptions. But word for word, I mean, I
16 can't quote the entire interview.

17 Q. Where are your notes?

18 A. They were entered -- used in the report.

19 Q. They were -- I'm sorry?

20 A. They were used when I entered the information into the
21 report.

22 Q. So you had a -- your testimony is you had a report and
23 you typed from that report, your handwritten report, into
24 this writing?

25 A. I took notes from the interview and used that to base

1 my report on, yes.

2 Q. And your sentence crawling on him and rubbing on him,
3 period, says nothing about privates in your report.

4 A. Correct. It's also -- it's not in quotation marks. I
5 mean, it's not a quote from him. It's just what he told me.

6 Q. Is there anything in this report that is a quote from
7 him?

8 A. Sure.

9 Q. Anything that's got quotation marks on it?

10 A. Yes.

11 Q. Where?

12 A. Towards the same page that you were referring to. It
13 says, oh, you mean **Minor** woke up and saw me and Peggy
14 having sex? That's in quotation marks.

15 Q. Okay. What else? Anything about this rubbing or
16 touching ---

17 A. No.

18 Q. --- in quotation marks?

19 A. No.

20 Q. And, in fact, that quote is the only one in here?

21 A. It may be.

22 Q. So my understanding your testimony is that you spoke
23 with this man on July 30th and you took handwritten notes?

24 A. Correct.

25 Q. And you used those notes to make your report?

JONATHAN HAMBY - CROSS EXAMINATION BY MS. AARON

201

1 A. Correct.

2 Q. And your report is what you gave everybody concerned
3 with the prosecution of this case?

4 A. Correct.

5 Q. And your report is different than your handwritten
6 notes?

7 A. No.

8 Q. No?

9 **MR. JONES:** Your Honor, I'm going to object. This has
10 been asked and answered several times.

11 **THE COURT:** I'm going to give you just a tad more
12 leeway, but then you need to move on.

13 Q. Your testimony is that your report is not -- your
14 handwritten notes are not different than this report.

15 A. My notes were used to base this report on. Of course,
16 they're not -- they're going to be different because I --
17 the report is in a report form. My notes were in note form.
18 If that's not -- they can't be the exact same -- they would
19 be the same. Notes or from the interview, the report covers
20 the entire investigation.

21 Q. I understand.

22 **MS. AARON:** I don't have any further questions. Thank
23 you.

24 **THE COURT:** Anything on redirect?

25 **MR. JONES:** No further questions, Your Honor.

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

1 **THE COURT:** Thank you very much, sir. You may step
2 down.

3 A. Thank you.

4 **THE COURT:** If you would, put that up here with the
5 court reporter. Thank you. You may call your next witness.

6 **MR. JONES:** Your Honor, the State would call Kelsey
7 Beals.

8 **THE COURT:** All right. Ms. Beals.

9 **MR. JONES:** Your Honor, I might need to check and see
10 if she's here, Your Honor. She's supposed to be here at
11 eleven, which is right now. But ...

12 **THE COURT:** I think someone's coming in. I don't know
13 if it's her or not.

14 **MR. JONES:** All right. Very good.

15 **Kelsey Beals**, being duly
16 sworn testified as follows;

17 **THE CLERK:** Thank you, ma'am. If you would, have a
18 seat and state your name for the record, please.

19 **MS. BEALS:** Kelsey Beals.

20 Direct Examination by Mr. Jones:

21 Q. Ms. Beals, where do you currently work?

22 A. The Julie Valentine Center in Greenville, South
23 Carolina.

24 Q. And what's your -- what's your job title there?

25 A. I'm a therapist for children and adolescents. And I

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

203

1 run the Safe Families group for non-offending caregivers.

2 Q. So you said you work for the Julie Valentine Center.

3 Do you have any other jobs that you ---

4 A. I am an owner in my own therapy practice, Gift

5 Counseling Center for Wellness.

6 Q. Okay. And in your job at the Julie Valentine Center

7 what are your current duties?

8 A. To see individual clients aging in the adolescent and

9 child range from three to eighteen. And then I also am

10 responsible for seeing young adults as well.

11 Q. And that might be the same answer to this, but what

12 services do you provide?

13 A. Therapeutic individual services for children who come

14 to the Julie Valentine Center who have been sexually abused.

15 And with the Safe Families group, it's for non-offending

16 caregivers who -- to help provide education and support

17 around kind of what -- what happened with their children.

18 Q. And you say non-offending caregivers, can you explain

19 that ---

20 A. So non-offending caregivers is a caregiver of a child

21 who's been sexually abused who is not named as an offender

22 but may have not done the -- in the eyes of DSS or law

23 enforcement the appropriate reaction or actions after the

24 disclosure of sexual abuse.

25 Q. Tell the jury about your basic education background,

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

204

1 please.

2 A. I got my undergrad in psychology, my Bachelor of
3 Science in psychology at the Ohio State University. And
4 then I received my Master's in education at Clemson
5 University in clinical mental health counseling in 2012.

6 Q. And tell the jury about any specialized training you
7 have beyond your official education at Ohio State and
8 Clemson.

9 A. So after I received my Master's in education I was -- I
10 took the licensing board. And I'm now a licensed
11 professional counselor in the State of South Carolina. I'm
12 also a Nationally Certified Counselor. I am a State -- a
13 South Carolina victim service provider for working for a
14 non-profit and for victim's of trauma.

15 And then I'm also trained in EMDR, which is Eye
16 Movement Desensitization and Reprocessing. And that is a
17 standardized therapeutic technique that's utilized in
18 therapy to help a child process through their traumatic
19 event.

20 I'm also trained in trauma focused cognitive behavioral
21 therapy. And that is also a standardized researched
22 therapeutic technique that is utilized for children that
23 have experienced trauma.

24 Q. And do you hold any professional licenses?

25 A. In the State of South Carolina I'm a licensed

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

205

1 professional counselor. And I'm also a Nationally Certified
2 Counselor through ACA, which is the American Counseling
3 Association.

4 Q. How many clients would you say you've served throughout
5 your career?

6 A. So I -- between individual clients and groups, I
7 probably serve about a hundred, hundred and fifty a year.
8 And I've been at the Julie Valentine Center full-time
9 practicing as a therapist since 2012.

10 Q. Do you teach or train others in any capacity?

11 A. My role as a therapist at the Julie Valentine Center is
12 to also take on clinical interns specifically at Clemson
13 University when they are going through their Master's in
14 education in clinical mental health counseling to help them
15 carry a caseload and to process cases and to provide
16 guidance throughout their Master's.

17 Q. Have you written any articles that have been published
18 and peer reviewed?

19 A. Yes. In 2012 I co-authored an article. And the
20 specific title is Neglect, Physical and Sexual Abuse: A Look
21 at Posttraumatic Stress Disorder in Children and
22 Adolescents. And that was published in the Michigan Journal
23 of Counseling, Research, Theory and Practice in 2012.

24 Q. Have you previously been qualified as an expert?

25 A. In general sessions, no. In family court, I have once

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

206

1 before. It was probably in 2013. So I'm unfamiliar with
2 exactly what I was qualified as.

3 Q. Okay.

4 **MR. JONES:** Your Honor, at this point I'd request that
5 Ms. Beals be qualified as an expert in the area of child
6 sexual abuse, dynamics and disclosure.

7 **THE COURT:** Any voir dire questions for this witness?

8 **MS. AARON:** Other than a repeat of yesterday, I can
9 certainly do that.

10 **THE COURT:** Well, I mean, if you'd like to, I mean, I
11 think you object to her ---

12 **MS. AARON:** I do.

13 **THE COURT:** --- being qualified as an expert in that
14 field.

15 **MS. AARON:** I do.

16 **THE COURT:** All right. I'm going to overrule the
17 objection and allow her to testify as an expert for that
18 field of study.

19 Ladies and gentlemen, let me explain -- and I'll
20 explain in more detail when I give you the charge on the
21 law. When a person is qualified as an expert witness, what
22 that means is that because of their training, education and
23 experience they are allowed to testify as to their opinions
24 based upon findings which they have gathered through their
25 -- in this case through their counseling or through their

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

207

1 experience in this field. They're allowed to give opinion
2 testimony.

3 The important thing to understand is this, is that when
4 someone is qualified as an expert witness, you give their
5 testimony the weight that you think it deserves. An expert
6 is not entitled to any greater weight than that of a lay
7 witness simply because they're an expert. You judge all the
8 testimony as you think appropriate. But for purposes of
9 this line of questioning and for this testimony, she is
10 qualified as an expert in the field that Mr. Jones has
11 suggested. All right.

12 **MR. JONES:** Thank you, Your Honor.

13 Q. Ms. Beals, how is your position funded at the Julie
14 Valentine Center?

15 A. We are a national non-profit. And so my specific
16 position is funded by the VOCA grant, which is Violence
17 Against Children Act. So it's a federally funded program.

18 Q. So is your salary or compensation contingent upon what
19 you testify to or how you testify today?

20 A. Absolutely not.

21 Q. Have you had any contact with the victim in this case?

22 A. No.

23 Q. Did you read any of the reports from law enforcement on
24 this case?

25 A. No.

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

208

1 Q. Have you read any statements or seen any other evidence

2 ---

3 A. No.

4 Q. --- in this particular case?

5 A. No.

6 Q. In your field what does delayed disclosure mean?

7 A. Delayed disclosure -- well, disclosure in and of itself
8 is the process in which a child reports or tells what has
9 happened to them. And so delayed disclosure is just that.
10 It is a process. It is not necessarily a single event.

11 And I think that that's really hard for some people to
12 kind of understand because if something happens, then we
13 expect them to say all of it at once. And so delayed
14 disclosure is the act in which children kind of maybe say a
15 little bit, test the waters, see how people react and then
16 if they ever do feel safe, then they're able to continue
17 that process and work as they're -- as they're healing and
18 as they feel safe.

19 Q. How common is delayed disclosure in a sexual abuse
20 case?

21 A. Yeah. So because delayed disclosure is a process, it's
22 actually very common. In a study in Sorenson of Snow -- and
23 Snow, approximately seventy-nine percent of children -- and
24 I believe the study was with six hundred and thirty victims.
25 And seventy-nine percent of them disclosed at a later date.

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

209

1 Q. And why do victims disclose at a later date?

2 A. They can disclose at a later date for a number of
3 reasons. In my experience in my field many of the reasons
4 kind of fall under the same scope of children can be
5 concerned for their safety, they can fear for their safety.
6 That doesn't necessarily mean just physical safety. It
7 could also be contributing to the family dynamics or the
8 family system, how the family's going to be affected.

9 Children are natural protectors of their parents and
10 the people that they love. And so often when they do
11 disclose a little bit and they see kind of their lives be
12 flipped upside down, then they're hesitant to disclose
13 anymore because they don't want to see something bad happen
14 to their family.

15 They could also, you know, they also delay disclose or
16 it takes time for them to disclose because sexual abuse is a
17 very confusing situation. The dynamics between an offender
18 and a victim, there's that power. There's a power struggle.

19 There's often a previous relationship that may have
20 been healthy. And the child is -- so if a child is with an
21 adult and there is -- and there's sexual abuse that's going
22 on, there's often the ability for children to not
23 necessarily understand what's going on. If this is the
24 first time that they have been introduced to sex and it's
25 been in an inappropriate way, it's often very confusing for

1 them.

2 And I think that also goes because we think of sexual
3 abuse often as a violent or aggressive act. And very much
4 so it's not. It's very -- the grooming process and the
5 grooming techniques that take place naturally make that
6 child feel more comfortable and break down these child's
7 defenses physically, emotionally and mentally.

8 Q. Still on to disclosing at a later date, does
9 normalization of sexual activity affect that at all?

10 A. So if a child is introduced to sex in an inappropriate
11 way and it's never been introduced to them before, then they
12 don't necessarily know that it's inappropriate.

13 And so, you know, an example that I always give my
14 clients is if parents are speaking in the home and one of
15 them cusses and they never address it with the child, they
16 never say that it's wrong, they never, you know, correct the
17 child, the child might go into school thinking that cussing
18 is absolutely appropriate.

19 Now, when they get in trouble for cussing and then the
20 child -- the teacher calls the parents, you know, that child
21 has no awareness of what is appropriate or what's not.
22 Caregivers' roles are to show what is appropriate and what's
23 not.

24 Q. Can you describe the process of disclosure? I think
25 you touched on it a little bit, but ---

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

211

1 A. Yeah.

2 Q. --- in your field what is the process ---

3 A. Absolutely.

4 Q. --- of disclosure?

5 A. So initially very commonly is denial. It is very
6 common for children to deny that anything has happened
7 because it's our body's natural way of protecting ourselves.
8 And moving forward, once there is a disclosure, there's the
9 tentative phase and the active phase.

10 The tentative phase is when a child may be ambiguous or
11 uncertain or kind of vacillating between, you know, it did
12 happen, it didn't happen. And this is, again, them testing
13 the boundaries, testing the waters of, you know, am I going
14 to be believed? That's one of the reasons why children
15 don't tell.

16 It's been instilled in them that, you know, you won't
17 be believed. No one will believe you. This will be your --
18 this will be your fault. You're responsible for what
19 happened. And so this is their way of kind of testing those
20 waters and seeing -- seeing who would be appropriate and
21 supportive.

22 And then it -- it can move into the active phase, which
23 is they're able to describe in detail certain instances or
24 situations or events that have happened. And this happens
25 when they have -- when the child feels that they have a safe

1 caregiver or a safe adult to be able to speak to about this.

2 And then going into kind of the second phase of delayed
3 disclosure, there's often what's called recanting, which
4 means that the child might take back what they said. And
5 that is simply, you know, that can be due to, you know, the
6 circumstances that arise after they've disclosed. They see
7 chaos ensue, and so they want to take it back.

8 And then the next phase is reaffirmation. So
9 reaffirming that it did, in fact, happen, that they do feel
10 safe to be able to talk about.

11 Q. Why do victims go into a gradual phase or a tentative
12 phase?

13 A. A tentative phase? To naturally test the waters to see
14 if people do believe them. There's a lot of hesitancies as
15 to why children don't tell. They -- they may feel, again,
16 at risk. They may feel unsafe. They may fear. They may
17 feel shame and guilt.

18 And one of the main reasons also is because our bodies
19 are meant to react to stimuli. And so if it felt good or if
20 it didn't hurt, a lot of times children are confused and
21 don't necessarily understand that what happened to them was
22 wrong.

23 And so if they're being introduced in an inappropriate
24 way, then there's an ability, you know, there's a reason
25 that they don't understand it. And it's because it's never

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

213

1 been introduced to them in an appropriate way before.

2 Q. What does the term grooming mean in your field?

3 A. Grooming is a word that is used to describe the
4 process, or the techniques or the dynamics that an offender
5 uses to gain trust and access to the victim. And, you know,
6 more specifically the way grooming -- grooming is a process.
7 It takes time. And it is strategic. A lot of it seems
8 harmless at first, but it's done with ill intention.

9 So the -- in grooming techniques the offender would --
10 an individual would gain access to the child. And that
11 would mean gaining trust between the victim and their
12 families in that person. It would mean that they -- they
13 play a role. They play a role in the child's life. And
14 usually that's an active role.

15 And, you know, and then -- and then from there, once
16 they gain the trust, then they move on to being able to
17 isolate the victim. And I know that that is a serious word,
18 but it's really just being able to potentially spend time
19 alone with the child, being able to take the child places,
20 being able to spend time alone with just one-on-one contact
21 where the child feels comfortable to be able to do so.

22 And then from there then, you know, establishing the
23 sense of secrecy in the relationship. And that doesn't
24 necessarily mean that the entire relationship is a secret.
25 It could mean that instances in the relationship are

1 secretive.

2 So, for instance, if they go to the grocery store
3 together and the child usually is not allowed to drink soda,
4 and the offender buys the child soda and says, you know,
5 don't tell, you know, your caregivers about what we -- what
6 we did here because that's just between you and me. Well,
7 that's instilling secrecy in the relationship.

8 Now, that sitting by itself is absolutely harmless, but
9 it's done with ill intention. And once the child is holding
10 those secrets, then there's -- there's an element of
11 confusion in the sense of if I keep this secret what other
12 secrets do I need to keep?

13 And once the secrecy is established into the
14 relationship, then the next phase is to introducing the
15 child to sexual activity. And it could be desensitizing the
16 child and using their power role and their power dynamic to
17 introduce different sexualized aspects into a child's life.
18 That could be desensitizing physical touch barriers. That
19 could be exposing them to something that's inappropriate and
20 testing the child's boundaries and what they are or are not
21 comfortable with and continuing that until the actual sexual
22 acts ensue.

23 Q. So what about escalating sexual acts going from just
24 touching of certain areas to the actual sex act? Would that
25 be part of grooming?

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

215

1 A. Correct. And so that's kind of the desensitizing to
2 gradual touch, you know, desensitizing to exposure,
3 desensitizing to -- and that's -- and that's just once a
4 child doesn't tell about one thing, then if you escalate,
5 then they might not be able -- they might not be telling
6 about another thing.

7 Q. What about engaging in sex in front of children? How
8 does that fit in with grooming and with sexual abuse in
9 general?

10 A. So again, if a child is introduced to sexualized
11 behavior or sex in an inappropriate way, and if that's their
12 first introduction to it, then they don't necessarily know
13 that it's bad or good.

14 And kind of like the cussing example that I used
15 earlier, if parents are cussing in front of their child and
16 they never discuss that it's bad words, those are just words
17 to a child and their parents used them. So they may feel
18 like it's okay that they use them in school. And so
19 exposing a child to sexualized behavior or exposing them to
20 sex in an inappropriate way can absolutely lower their
21 inhibitions and show -- and show them that that is
22 appropriate at the time.

23 Q. What about children in mimicking tells you more about
24 sexual abuse?

25 A. So children -- children naturally, you know, mimic what

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

216

1 they hear. Again, if mom drops a cuss word, then child may
2 drop -- may talk to you about it. And, you know, and might
3 -- and might say that cuss word. And so, you know, once
4 they see sexualized acts they might -- it might be normal to
5 them. It might seem normal to them, you know.

6 If -- if you take out the trash every day and you don't
7 like taking out the trash, but you take it out because your
8 parents say so or your -- you see your parents do it. They
9 don't necessarily -- and the only people that they take out
10 the trash with are their parents.

11 Now, what if someone came up to you and told you that
12 taking out the trash was really bad, it was inappropriate
13 and it was against the law? That would be quite a shock
14 because you grew up seeing mom and dad take out the trash.
15 You even had to take out the trash sometimes.

16 And so, you know, children aren't necessarily able to
17 determine what's appropriate and what's not. It's
18 caregivers and whoever's in a position of power to show that
19 child what is appropriate.

20 Q. What are some factors that make sexual abuse more
21 likely to occur?

22 A. There's quite a few. One that comes to mind is if a
23 child is living in a single ---

24 **MS. AARON:** Your Honor, I'm going to object to this
25 questioning. She's been asked what are the factors in a

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

217

1 home that make sex abuse more likely to occur? I submit to
2 Your Honor that that is the very definition of vouching,
3 which is what we discussed yesterday.

4 **THE COURT:** Let me get y'all to step over here real
5 quick.

6 (Whereupon a bench conference was held off the record
7 in the presence of the jury, but out of their hearing)

8 (Whereupon the bench conference was ended)

9 **THE COURT:** Folks, let me get you to step back in the
10 jury room. Let me deal with this issue of law, and I'll
11 bring you back out. It won't take very long.

12 (Whereupon the jury exited the courtroom at 11:31 am)

13 **THE COURT:** All right. I think they're -- I think the
14 jury's out. Yes, ma'am, Ms. Aaron.

15 **MS. AARON:** Your Honor, I object to the question that
16 the solicitor asked of this witness basically saying "what
17 are factors that the child may present with that would lead
18 you to believe that the abuse likely occurred?" And I'll
19 put that in quotation marks.

20 Your Honor, I submit that that is improper vouching for
21 -- and what it's saying is if the child says anything that's
22 on this list, then child abuse, sexual abuse has likely
23 occurred. And that is absolutely prohibited with an expert
24 witness. It's prohibited with the forensic examiner, but
25 also with an expert witness.

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

218

1 State versus Portillo, P-o-r-t-i-l-l-o, 2014 case, 757
2 S.E. 2d 721, 757 S.E. 2d 721, expert can testify so long
3 that it does not constitute vouching. In this case what the
4 witness did was talk about hand gestures that the child did.
5 And clearly the witness says the child knew what she was
6 doing or he was doing by exhibiting these hand gestures.

7 And the court said that's vouching. That's saying that
8 if the child is doing these hand gestures, they know what
9 they're doing, so they must have been abused. And the court
10 considered that vouching.

11 The witness also ---

12 **THE COURT:** How can she vouch for a witness or for a
13 victim who she's never talked to and she knows nothing
14 about? She's testifying, if I understand the testimony
15 correctly, to these general factors that they look for in
16 their investigation or in their analysis of a situation.

17 **MS. AARON:** I understand the Court's position. Her
18 experience is not in analyzing a situation. Her experience
19 and which one of the reasons I objected to her as an expert
20 in child sexual abuse dynamics is that her training and
21 experience is therapy, taking a child as they present
22 themselves to her and ---

23 **THE COURT:** Well, she also has training in the other
24 area as well.

25 **MS. AARON:** I understand. And I understand -- I'm not

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

219

1 arguing with the Court. I just ---

2 **THE COURT:** Yeah.

3 **MS. AARON:** I'm trying to make my argument clear. It's
4 my position that her training is therapy. And she takes the
5 child as the child presents themselves and moves them
6 forward to heal, making no determination of whether the
7 abuse actually did happen or not. It's not her concern that
8 it did happen.

9 She may see certain characteristics in certain
10 children, which helps her in her therapy, but we're going to
11 the ultimate issue of whether it happened or not, not
12 whether this child benefitted from therapy. And when we go
13 to the ultimate issue of whether it actually happened or
14 not, she's getting ready to give a list of factors that can
15 happen in any home ---

16 **THE COURT:** How is this any different from her previous
17 testimony?

18 **MS. AARON:** Because her previous testimony has talked
19 about -- about things that -- and I want to be heard on the
20 issue -- the word disclosure as well. But of things that
21 she has done with someone who presents themselves as a child
22 abuse victim. Why a child ---

23 **THE COURT:** She's explaining why ---

24 **MS. AARON:** --- abuse victim may -- may do certain
25 things.

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

220

1 **THE COURT:** Correct.

2 **MS. AARON:** They may. They may not.

3 **THE COURT:** Correct.

4 **MS. AARON:** But if you start making a list of what
5 makes it likely that it's happened ---

6 **THE COURT:** Well, maybe it's a poorly worded question.
7 I don't know if that's what her testimony is. Not ---

8 **MS. AARON:** Well, ---

9 **THE COURT:** --- knowing her testimony.

10 **MS. AARON:** --- I think that's exactly what he wants.

11 He wants a list because apparently there's some study
12 somewhere that says that if a single parent lives with a
13 live-in person, then there's an escalated percentage, based
14 on her testimony yesterday, an escalated percentage of sex
15 abuse.

16 I believe -- my position is that that is improper
17 vouching and that is not the purpose -- certainly not within
18 her expert purview, but that's -- I've been overruled on
19 that issue. But that -- for the jury to hear -- they need
20 -- they've heard from the victim, they've heard from some
21 other people with regard to what may or may not have
22 happened, for them to hear that there is some esoteric list
23 out there of potential things going on in this home that
24 make what this child says more or less likely to have
25 occurred is improper.

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

221

1 **THE COURT:** Well, I mean, you characterize it as some
2 esoteric list. She or I think the testimony is that these
3 are factors that they look for in her field.

4 **MS. AARON:** Her field is therapy. These are not
5 factors she looks ---

6 **THE COURT:** We're not ---

7 **MS. AARON:** --- for.

8 **THE COURT:** --- going to keep beating ---

9 **MS. AARON:** I understand.

10 **THE COURT:** --- that up, Ms. Aaron. I've ruled on
11 that.

12 **MS. AARON:** I understand.

13 **THE COURT:** And so she's qualified to testify to her
14 opinion in the field that I've ruled that she's an expert
15 in.

16 **MS. AARON:** She does not use that list in her work.

17 **THE COURT:** She may not use it in her therapy with
18 people, but she may -- I don't know if she uses it as a tool
19 in dealing with these folks. I don't know. That probably
20 needs -- can be asked. Solicitor.

21 **MR. JONES:** Your Honor, one, as to vouching, the
22 Supreme Court's ruled in State v. Brown that the testimony
23 that she's about to testify to or that has been testified to
24 is absolutely not vouching, it's not bolstering mainly
25 because she did not interview this victim. She's not

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

222

1 commenting on what the victim said. She knows nothing about
2 this victim. So she -- because she doesn't know what she
3 said, she can't bolster or vouch for that particular
4 witness.

5 In State v. Brown the expert witness was asked the
6 exact same question that I just asked her about factors that
7 make sexual abuse -- make victims, make children more
8 vulnerable to sexual abuse. And the Supreme Court said that
9 that is acceptable.

10 **MS. AARON:** That is not the same question he asked. I
11 still object to that question. But his -- his assertion now
12 is that he's wanting to ask her what makes children more
13 vulnerable to sexual abuse. That may be a perfectly valid
14 question, I'm not going to admit it is, but I think it's
15 totally different than what makes it more likely to have
16 occurred?

17 **MR. JONES:** I did not ask what made it more likely to
18 have occurred.

19 **THE COURT:** I sustain your objection as to the form of
20 that question.

21 **MS. AARON:** I think his exact question was what are
22 factors in the home that may make sexual abuse more likely
23 to occur?

24 **THE COURT:** And I sustain your objection to that.

25 **MR. JONES:** And that wasn't my question. I understand

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

223

1 ---

2 **THE COURT:** Well, ---

3 **MR. JONES:** My question ---

4 **THE COURT:** Then don't ask it because I've sustained
5 her objection.

6 **MR. JONES:** Yes, sir. What factors make sexual abuse
7 -- make a child more vulnerable to sexual abuse?

8 **THE COURT:** And I know you object ---

9 **MS. AARON:** Same objection.

10 **THE COURT:** The same objection ---

11 **MS. AARON:** Yes, sir.

12 **THE COURT:** --- because you object to this whole line
13 of questioning.

14 **MS. AARON:** Brown also states, Your Honor, that this
15 testimony may be an attempt to corroborate what the victim
16 is saying. And if all you have is the victim's testimony,
17 that attempting to corroborate the victim's testimony is not
18 harmless and it piles on and it is improper.

19 So I would like to state -- I understand I'm -- that
20 I'm posing this as part of my objection. I understand your
21 ruling.

22 **THE COURT:** Well, I'm not done with my ruling yet. I'm
23 thinking.

24 **MR. JONES:** Your Honor, if you'd like to read State
25 versus Brown, I have it here for you.

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

224

1 **THE COURT:** Yeah, I would like to have a copy, please.

2 (Pause)

3 **THE COURT:** Mr. Jones, you've gone through all of the
4 testimony that explains various situations on why children
5 delay response, the factors involved in that, all of those
6 things which go to explain or at least lay a foundation of
7 explaining the conduct in this case.

8 And now we seem to be taking -- now a step further to
9 go beyond the conduct in this case and to have the testimony
10 go to the central issue in the case, and that is whether or
11 not she was sexually abused. In reading State v. Brown it
12 just appears that you're taking this a little bit further
13 than the case went in State v. Brown. I'm going to sustain
14 the objection ---

15 **MR. JONES:** Your Honor, ---

16 **THE COURT:** --- to that question.

17 **MR. JONES:** Yes, sir. I understand that, but I'd like
18 ---

19 **THE COURT:** Go ahead.

20 **MR. JONES:** I understand your ruling, but those are the
21 exact questions that were used in State versus Brown.

22 **THE COURT:** Which you went through. You've been
23 through them all.

24 **MR. JONES:** No, Your Honor. The question was asked
25 what factors make children more vulnerable to abuse in State

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

225

1 versus Brown?

2 **THE COURT:** Where is that in here?

3 **MR. JONES:** Well, Your Honor, ---

4 **THE COURT:** Is that in the bolstering section over
5 here?

6 **MR. JONES:** I think it's in the bolstering section.
7 But to be completely honest with you, that case was tried in
8 this circuit. And the solicitor still works for our office
9 who tried the case. And these questions that were used were
10 from that particular case. So in all candor, that's how I
11 know that it was asked in that particular case.

12 **THE COURT:** All right.

13 (Pause)

14 **MR. JONES:** Your Honor, not to talk while you're
15 reading, but Kromah is also a case about vouching for a
16 child's credibility. And before Brown, a lot of these CSC
17 cases, Your Honor, were tried with the actual forensic
18 interviewer that interviewed the child. And the problem
19 with that the court found was that it appeared that the
20 interviewer was some sort of human lie detector test.

21 So after Brown the State typically uses a blind expert
22 that does not know the child, never talked to the child and
23 cannot vouch for the child's credibility. And that's
24 exactly what Kromah talked about, Your Honor, where it
25 talked about how the forensic interviewer should avoid

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

226

1 stating the child was told to be truthful, providing opinion
2 as to the child's veracity or vouching for the child's
3 believability or suggesting the interviewer believed the
4 child's allegations. And that's not what she's doing right
5 here, Your Honor.

6 If these factors that she's about to testify to
7 shouldn't come in, then the rest of her testimony could be
8 subject to the same objection.

9 (Pause)

10 **THE COURT:** Well, the testimony you're eliciting from
11 this witness in looking at the factors, it is beyond the
12 ordinary knowledge of the jury. And through my earlier
13 ruling I believe that Ms. Beals is qualified through her
14 experience and education to be an expert in this field.

15 A concern that I'm having is -- and I don't know
16 anything about the other case that was tried here or where
17 that question came out of. That's certainly not a question
18 that's in State v. Brown. At least I haven't seen it in
19 there.

20 And you went from presenting this testimony that
21 explained the conduct of folks who have possibly suffered
22 sexual abuse and we're taking it now further -- a step
23 further to say that if these factors are present, I mean,
24 now you're going to use this testimony to prove that the
25 abuse did occur.

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

227

1 Give me your question ---

2 **MR. JONES:** Your Honor, ---

3 **THE COURT:** --- again. I don't even -- give me your
4 question again.

5 **MR. JONES:** Yes, sir, Your Honor.

6 **THE COURT:** 'Cause I'm -- I'm stuck on the question
7 that Ms. Aaron objected to. What is -- what is going to be
8 your question to this witness?

9 **MR. JONES:** What factors make children more vulnerable
10 to child abuse? And, Your Honor, I mean, we'll go straight
11 to Rule 702 with experts of scientific, technical or other
12 specialized knowledge to assist the trier of fact to
13 understand the evidence or determine -- or to determine a
14 fact in issue. A witness qualified as an expert by
15 knowledge, skill, or experience, training, or education may
16 testify in the form of opinion or otherwise. And that's
17 exactly what this is, Your Honor.

18 And, Your Honor, if I could continue the three-prong
19 test that you alluded to as to whether the expert testimony
20 is admissible. It's, first, whether the subject-matter is
21 beyond the ordinary knowledge of the jury, which I'd argue
22 ---

23 **THE COURT:** It is.

24 **MR. JONES:** --- this is.

25 And next, while the expert doesn't need to be a

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

228

1 specialist in that range of field to find that he is -- that
2 the proffered expert had, indeed, acquired the requisite
3 knowledge and skills to qualify as an expert.

4 **THE COURT:** She did.

5 **MR. JONES:** You said that she did.

6 And, finally, you must evaluate the substance of the
7 testimony and determine whether it is reliable. So the only
8 issue are those three.

9 **MS. AARON:** Your Honor, I'm going to resist the
10 temptation to be quiet because you ruled three quarters of a
11 page of notes ago, and I have not stood up because you
12 didn't ask me, but if I were to I would say that Brown says
13 that expert's testimony is relevant. I understand Mr. Jones
14 talking about the three-prong test. The testimony is
15 relevant to help the jury understand various aspects of
16 victim's behavior and provide it insight into the often
17 strange demeanors of sexually abused children. That is
18 straight out of Brown.

19 What he's going into has nothing to do with the
20 victim's behavior or the child's demeanor. It has to --
21 it's going to environmental factors that make it more likely
22 to have occurred.

23 **THE COURT:** All right.

24 **MS. AARON:** Which is why I objected.

25 **THE COURT:** All right. I'm going to note your

KELSEY BEALS - DIRECT EXAMINATION BY MR. JONES

229

1 exception, but I'm going to sustain the objection.

2 **MR. JONES:** Yes, sir, Your Honor.

3 **THE COURT:** All right. Let's bring the jury in.

4 (Whereupon the jury entered the courtroom at 12:00 pm)

5 **THE COURT:** I'm sorry. Go ahead, Mr. Jones. You may
6 proceed.

7 **MR. JONES:** Yes, sir, Your Honor.

8 **Direct Examination by Mr. Jones Continued:**

9 Q. Ms. Beals, tell the jury, what are some common
10 characteristics of victims of sexual abuse as they go
11 through adolescents?

12 A. As children who have been sexually abused as they go
13 through adolescents there is often -- there could be
14 promiscuity, acting out in a way to gain or meet their needs
15 of affection, potentially the only way that they know how or
16 that they've been introduced to. It could also be fear of
17 adults or people in power or rebellion against people in
18 power or adults and just mistrust in general in adults.

19 Q. And are children, from statistics that you're aware of,
20 are children more likely to be abused by strangers or by a
21 loved one?

22 A. So according to Darkness to Light approximately ninety
23 percent of children who have been abused are abused by
24 someone that's known not only to the child, but also to the
25 family, which, obviously, creates an environment for it to

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

230

1 be easier to gain trust and create a relationship with that
2 child. So this idea of stranger/danger is very rare.

3 **MR. JONES:** I beg the Court's indulgence.

4 **THE COURT:** Yes, sir.

5 (Pause)

6 **MR. JONES:** No further questions, Your Honor.

7 **THE COURT:** Cross.

8 **MS. AARON:** I have no questions, Your Honor.

9 **THE COURT:** Thank you very much, ma'am.

10 A. Thank you.

11 **THE COURT:** You may step down. Any objections to this
12 witness being excused?

13 **MS. AARON:** Oh, I have none. No, sir.

14 **MR. JONES:** Nothing from the State, Your Honor.

15 **THE COURT:** Thank you very much, ma'am. You're free to
16 go. Mr. Jones.

17 **MR. JONES:** I'm sorry, Your Honor. I beg the Court's
18 indulgence for a moment.

19 **THE COURT:** Sure.

20 (Pause)

21 **MR. JONES:** Your Honor, we'd like to briefly recall
22 Detective Hamby. And that'll be my last witness, Your
23 Honor.

24 **THE COURT:** All right. You're still under oath, sir.

25 **Jonathan Hamby,** having

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

231

1 been previously sworn testified as follows;

2 **Direct Examination by Mr. Jones:**

3 Q. Detective Hamby, on July 30th, 2013, you testified
4 earlier about that day. You testified that you interviewed
5 Kelly Phillips?

6 A. Correct.

7 Q. What's his full name?

8 A. Douglas Kelly Phillips.

9 Q. Okay. And do you know his date of birth?

10 A. [REDACTED], 1961.

11 Q. Okay. And do you see the man that you questioned on
12 that day in the courtroom?

13 A. Yes.

14 Q. Could you point to him, please.

15 (Whereupon the witness pointed to the Defendant)

16 A. In the striped shirt.

17 **MR. JONES:** Your Honor, let the record reflect that the
18 detective pointed to the Defendant.

19 **THE COURT:** So it does.

20 Q. Is that the same man that admitted that he dated Peggy
21 Robinson?

22 A. Yes.

23 Q. And that made statements about Minor [REDACTED]

24 A. Yes.

25 Q. And that all those events you testified to with regard

JONATHAN HAMBY - DIRECT EXAMINATION BY MR. JONES

232

1 to Minor [REDACTED] and Kelly Phillips occurred in Pickens
2 County?

3 A. Yes.

4 MR. JONES: No further questions, Your Honor.

5 MS. AARON: Nothing on redirect.

6 THE COURT: Thank you, sir. You may step down. Is
7 that the State's case?

8 MR. JONES: Your Honor, at this time the State rests.

9 THE COURT: All right. Thank you, Mr. Jones.

10 Ladies and gentlemen, the State has rested their case,
11 but we are not yet done. And so the law requires -- and we
12 do this, this is for all -- both criminal and civil cases,
13 that at the close of the State's case in a criminal case or
14 the close of the plaintiff's case in a civil case, then I
15 have to take up matters of law with the attorneys before we
16 proceed.

17 And so it's noontime. We're going to stay and do that,
18 but there's no reason for you to sit back there while we do
19 that. I'm going to go ahead and let you take off for lunch.

20 What I'm going to ask you to do is to be back at 1:30.
21 It's -- that gives you a little -- just shy of an hour and a
22 half for lunch. I'll tell you what, let's do this. Yeah,
23 1:30. That'd be good.

24 And always as you've done, maintain your ability to
25 remain fair and impartial. Don't let anyone talk to you.

1 Don't talk with anybody about the case. Just kind of relax
2 and have a good lunch. I'd ask you to be back in here at
3 1:30 and we'll get started once everyone's returned.
4 Everyone else, please remain seated while the members of the
5 jury are excused.

6 (Whereupon the jury exited the courtroom at 12:06 pm)

7 **THE COURT:** All right. At this time I'll take up
8 motions at the close of the State's case.

9 **MS. AARON:** May it please the Court, Your Honor.

10 **THE COURT:** Yes, ma'am.

11 **MS. AARON:** I would move at this time for the Court to
12 issue or to direct a verdict in favor of my client, that the
13 State has not produced sufficient and/or reliable evidence
14 in order to prove the allegations contained in the
15 indictments.

16 **THE COURT:** All right. I'm going to respectfully deny
17 that motion, Ms. Aaron. There's evidence in the record
18 depending on how the jury views it. I think it's a factual
19 question for the jury. And I think there is evidence in the
20 record depending on how the jury weighs that evidence
21 whereby they could find. And so I'm going to respectfully
22 deny that motion.

23 Have you -- anything further with regards to any
24 motion?

25 **MS. AARON:** No, sir.

1 **THE COURT:** Have you discussed with Mr. Phillips the
2 Defense's case and whether or not you intend to put up --
3 well, whether he intends to testify or whether you intend to
4 put up a case?

5 **MS. AARON:** I have, many times. And we decided that we
6 would discuss that now that the evidence has concluded.

7 **THE COURT:** Okay. Well, let's do this. Are you ready
8 to make that decision or do you need time over the lunch
9 break?

10 **MS. AARON:** If I could have five minutes I'll see if
11 he's ---

12 **THE COURT:** Yeah.

13 **MS. AARON:** --- changed his mind.

14 **THE COURT:** Well, go ahead and do that. You can talk
15 to him. But understand this -- and, Mr. Phillips, I'll
16 address you as well. It's not etched in stone until the
17 time comes.

18 **MS. AARON:** Right.

19 **THE COURT:** So y'all go ahead and talk and let me know
20 what you decide. And then I'll talk with Mr. Phillips
21 about, you know, I'll just reaffirm what -- your discussions
22 as far as his constitutional rights. And then if during the
23 lunch break he changes his mind, he can just notify the
24 Court that that's occurred. I mean, up until we get ready
25 to start back, it'll be his decision.

1 **MS. AARON:** Well, I guess we can just wait til then.

2 And then we won't have to waste the Court's time.

3 **THE COURT:** Well, let me go ahead and at least discuss

4 ---

5 **MS. AARON:** Yes, sir.

6 **THE COURT:** --- with him his rights.

7 **MS. AARON:** Absolutely.

8 **THE COURT:** Mr. Phillips, and I know you and Ms. Aaron
9 have talked extensively. So I'm just going to go over those
10 things with you.

11 You understand that a person charged with a criminal
12 offense has, obviously, numerous constitutional rights, but
13 two of those rights in particular are your right to testify
14 or your right to remain silent. We all -- all of us have
15 those two rights.

16 You can choose to testify. And if you did, then, of
17 course, you would take the stand, you'd be placed under
18 oath, you would take the stand, you'd respond to Ms. Aaron's
19 questions, but you would also be required to respond to Mr.
20 Jones' questions. You understand that?

21 **MR. PHILLIPS:** Yes, sir.

22 **THE COURT:** All right. And we've already discussed any
23 prior record that could possibly used -- be used to impeach.
24 And there is none. So there wouldn't be any questions
25 regarding any prior history or any prior record. It would

1 simply be answering questions from both attorneys. You
2 understand?

3 **MR. PHILLIPS:** Yes, sir.

4 **THE COURT:** Now, you also have the right to remain
5 silent. Under our court system, as you heard me discuss
6 with the jury early on, a person is presumed innocent of
7 charges that are brought against them until and unless the
8 State can prove that person's guilt beyond a reasonable
9 doubt to the satisfaction of the jury.

10 So you don't have to prove anything. You don't have to
11 do anything. The burden of proof is on the State. It rests
12 there. And you don't have to do a thing.

13 You can exercise your constitutional right to remain
14 silent. And if you did that, obviously, neither Ms. Aaron
15 nor Mr. Jones would ask you any questions. You would not be
16 subject to any questioning.

17 And I would instruct the jury, when I give them the
18 charge on the law, I would tell them that the State has the
19 burden of proof, that you do not have to prove anything,
20 that you are presumed innocent of these charges and the fact
21 that you have chosen to exercise your constitutional right
22 to remain silent cannot be considered by the jury in any way
23 in their deliberations as to your guilt or innocence.

24 I would explain to them that the fact that you chose to
25 remain silent could not even be discussed in the jury room,

1 you have no burden to prove anything, the State carries the
2 burden of proof. And I would instruct them that during
3 their deliberation or prior to their deliberations.

4 Now, I'm going to give you during the lunch break to
5 discuss that with Ms. Aaron further. But what I want to
6 share with you is this. Ms. Aaron, she's an outstanding
7 attorney. She can give you her best and wisest counsel.
8 You can talk to family members and get their thoughts and
9 opinions. But here's the bottom line. Mr. Phillips, for
10 you as well as for me or anyone else, 'cause we're dealing
11 with your constitutional right, whether or not you intend to
12 exercise that right has to come from you. It's your
13 decision.

14 I encourage you to get wise counsel from your attorney,
15 but the bottom line is the choice has to be yours because
16 it's your right. And so whatever response you give me when
17 we get back, understand that my concern is going to be that
18 it is your decision and that no one forced you or coerced
19 you in way to make that decision. You understand, sir?

20 **MR. PHILLIPS:** Yes, sir.

21 **THE COURT:** Okay. All right. Well, having said that,
22 we'll give you that time over the lunch break to discuss it
23 ---

24 **MS. AARON:** Thank you, Your Honor.

25 **THE COURT:** --- further. If either side has any

1 specific request to charge that you're looking for, I mean,
2 I've got the statutes and I've got those things, but if you
3 have any specific request to charge, I would appreciate it
4 if you could either get that to us via email or, I mean, if
5 you've got a hard copy, that's fine. But if you do have --
6 if you do have it under email and you want to send it to us,
7 please send it in Word form, not a pdf document so that we
8 can cut and paste on it.

9 If you do or if you are going to send something via
10 email you can send it to Susan. And that's at just
11 trussolc@sccourts.org. Anything else before we adjourn for
12 the lunch break?

13 **MR. JONES:** Your Honor, could we get a copy of your
14 proposed charges?

15 **THE COURT:** Well, I don't think we have it ready right
16 this minute.

17 **MR. JONES:** Yes, sir.

18 **THE COURT:** We'll certainly go over it before we get to
19 that point.

20 **MR. JONES:** Yes, sir.

21 **THE COURT:** And make sure -- and let you see
22 everything. Okay. All right. If there's nothing else,
23 then we'll be in recess til 1:30.

24 **MS. AARON:** Thank you, Your Honor.

25 (Whereupon court was in recess at 12:15 pm)

1 (Whereupon court reconvened at 2:12 pm)

2 **THE COURT:** Thank you, folks. Please have a seat. All
3 right. Ms. Aaron, y'all have had the lunch break to talk
4 with Mr. -- between you and Mr. Phillips as to his
5 intentions to either put up a case and testify or to not.
6 Has he made a final decision on that?

7 **MS. AARON:** Your Honor, he indicates to me he does not
8 wish to testify.

9 **THE COURT:** All right. Mr. Phillips, let me ask you,
10 sir, is that correct, sir?

11 **MR. PHILLIPS:** Yes, sir.

12 **THE COURT:** All right. And that's been your decision
13 -- we talked before we broke for lunch.

14 **MR. PHILLIPS:** Yes, sir.

15 **THE COURT:** No one's forced you into making that call
16 ---

17 **MR. PHILLIPS:** No, sir.

18 **THE COURT:** All right. Well, we'll certainly -- we'll
19 honor that request to or your decision to exercise your
20 constitutional right. So we'll do that.

21 So I think -- let me tell you how I typically do this
22 is -- and I know we have a matter we need to put on the
23 record. We'll do that as well.

24 But typically what I would do at this time is rather
25 than bring the jury out, have you stand and rest on the

1 record, send them out, take up matters of law, then bring
2 them back in, what I would like to do at this point is let's
3 put that matter on the record that you want to put on the
4 record.

5 **MS. AARON:** Yes, sir.

6 **THE COURT:** And then let you -- then we'll proceed to
7 motions at the close of the evidence. Then when the jury
8 comes out we'll be ready to just proceed with the closing
9 arguments.

10 And I think I'm correct, the Defense has put nothing
11 into the record, is that correct?

12 **MS. AARON:** That's correct.

13 **THE COURT:** As far as evidence?

14 **MS. AARON:** That's correct.

15 **THE COURT:** Okay. So we'll recognize Mr. Jones on
16 behalf of the State and then your closing.

17 However, earlier in the case we did a sidebar when Miss
18 [REDACTED] Miss Minor [REDACTED] was testifying. And there
19 was a sidebar as to in her testimony in response to Mr.
20 Jones' question as to what she told the doctor at her
21 examination. She simply testified that she told the doctor
22 what happened with regards to her allegations regarding Mr.
23 Phillips. And then we had a sidebar. And Ms. -- Cheryl, I
24 lost your last name.

25 **MS. AARON:** Aaron.

1 **THE COURT:** Aaron.

2 **MS. AARON:** No problem.

3 **THE COURT:** I didn't want to call you Cheryl on the
4 record, but ---

5 **MS. AARON:** That's okay.

6 **THE COURT:** But Ms. Aaron brought up an objection
7 wanting to explore that on cross examination as far as the
8 order in which she reported to the doctor. And at the
9 sidebar I indicated that I wasn't going to allow us to go
10 down that road.

11 So I did tell her, however, we were -- just to not
12 break up the testimony, I did tell her that we would put
13 that objection on the record. And so we're going to do that
14 at this time. And I'll let you verbalize your objection for
15 the record, Ms. Aaron.

16 **MS. AARON:** Thank you, Your Honor. And you explained
17 it, I think, very completely. My concern was that the jury
18 would not understand that the victim went to the doctor's
19 office and immediately began talking about a sexual
20 encounter with another individual and then disclosed
21 something about my client.

22 And I thought at that time that the jury should hear
23 that. When I asked Your Honor, Your Honor made his ruling,
24 I respect that and just wanted to have that as part of the
25 record.

1 **THE COURT:** All right. And the Court ruled that I
2 wasn't -- wasn't going to allow -- we talked earlier and we
3 handled it on the record earlier about the -- that I thought
4 it was appropriate that the jury be made aware that another
5 individual has been accused of this same offense with this
6 same victim during this time-frame. And I was going to
7 allow that in.

8 And that did come in through Investigator Hamby, but
9 that I wasn't going to allow going into detail with regards
10 to that. And so that was my overruling of that objection,
11 but I want the record to be clear that there -- she did make
12 that objection and then certainly note her exception to the
13 Court's ruling.

14 So at this point, if there's nothing else that we need
15 to put on the record, I'll hear from you with regards to
16 motions at the close of all the evidence.

17 **MS. AARON:** Your Honor, I would again renew my motion
18 for directed verdict on behalf of my client for the same
19 reasons as previously argued.

20 **THE COURT:** All right. And, again, respectfully deny
21 that motion. As I said earlier, I think it's a factual
22 issue. I think there is facts in the record depending on
23 how the jury views those facts. And it's a weight issue
24 that the jury -- that is the province of the jury and not
25 for the Court. And so I'm going to allow the jury to do

1 their work.

2 Now, here's what we're going to do. Pat's going to
3 make us a couple of copies of this charge. And this will
4 take just a few minutes. When this is done printing, Chris,
5 Cheryl, if y'all want to grab a copy and look over it.

6 It's lengthier than it really, I mean, it looks
7 lengthier than it is. I'm half blind. So I have to make it
8 big and double spaced.

9 (Pause)

10 **THE COURT:** Y'all let me know, now, when you've had a
11 chance to review it, if there are any things that we need to
12 do to it.

13 **MR. JONES:** No objection from the State, Your Honor.

14 **MS. AARON:** None from the Defense, Your Honor.

15 **THE COURT:** Okay. All right. Then what I'll do is
16 I'll bring the jury out. And once I bring them out, Cheryl,
17 I'll recognize you on behalf of the Defense and let you rest
18 on the record.

19 **MS. AARON:** Thank you, Your Honor.

20 **THE COURT:** And then I'll explain to them that we have
21 taken up those matters and we're ready to move into the
22 closing, okay? All right. Bring the jury in, please.

23 (Whereupon the jury entered the courtroom at 2:25 pm)

24 **THE COURT:** Folks, let me -- before we get started back
25 after the lunch break here, Mr. Hinkle?

1 **MR. HINKLE:** Yes, sir.

2 **THE COURT:** Could I get you two gentlemen to swap
3 seats? I'm going to ask you to serve as the foreman of the
4 jury. Let me explain what that entails.

5 It's not -- it's not anything to be concerned about.
6 Sometimes people go, oh no, you know, but all it is is this.
7 Folks, we have found over the years that when you deal with
8 a group of folks, it's just easier to deal -- to have one
9 person kind of be the spokesman for the group so that if at
10 any time while you're back during deliberations you have any
11 questions about anything, Mr. Hinkle, if you could just
12 write the question out and pass it to the Court, I'll look
13 at it.

14 If I can respond by writing back, I'll do that or I may
15 bring you out as a panel and respond back. But that's
16 really the main role of the foreperson, just to be the
17 communication between the jury panel and the Court.

18 The foreperson represents all of you so that if anybody
19 has a question, don't hesitate to ask your question, and the
20 foreperson will send it out to me. It doesn't have to be
21 his question, it can be anyone's. But that's the main role
22 of the foreperson.

23 The other thing I would tell you is this, is that
24 whenever it comes time for you to deliberate everybody must
25 be present for those deliberations so that -- what that

1 means is that if someone needs to excuse themselves, for
2 example, use the restroom, then the foreperson would ask
3 that the discussions cease while that person's gone. When
4 they return, then start back.

5 And the reason simply is that everybody has the benefit
6 of the deliberations and the discussions. Okay? So thank
7 you for your willingness to do that.

8 Oh, and on that same -- while I'm on that note, your
9 verdict in this case, the verdict in all the trials we try
10 here, your verdict must be unanimous. Now I tell you that
11 simply to say this, because your verdict must be unanimous,
12 what that indicates or signifies is that you're all equal
13 members of the jury. No one person's vote or thoughts or
14 opinions carry any more weight than anyone else's.

15 A foreperson even -- just because he carries that title
16 of foreperson doesn't mean that his opinion or his thoughts
17 or his vote carries any more weight. Everybody's an equal
18 member of the jury. And your verdict in this case, whatever
19 it may be, must be unanimous, okay?

20 Now, if you recall when we broke for lunch the State
21 had rested their case. And so we're now ready to proceed
22 and would recognize Ms. Aaron on behalf of the Defense.

23 **MS. AARON:** May it please the Court, Your Honor.

24 **THE COURT:** Yes, ma'am.

25 **MS. AARON:** The Defense rests.

1 **THE COURT:** All right. Thank you very much, ma'am.

2 Folks, while we were on the lunch break and we came
3 back, Ms. Aaron was kind enough to let the Court know that
4 the Defense was going to be resting their case. And the
5 reason she was letting me know that is this, as I told you
6 when we started the case, or excuse me, not when we started,
7 but before we broke for lunch that I have to take up matters
8 of law at the close of the State's case. Well, we did that.
9 When you went to lunch we stayed and took care of that.

10 Well, I also have to take up matters of law at the
11 close of all the evidence. Ms. Aaron was kind enough during
12 the break before we started back to let me know that the
13 Defense would be resting. So rather than bring you out,
14 have her rest on the record and then have to send you back
15 out to take up the matters of law, it enabled us to go ahead
16 and take up those matters of law while you were already out.
17 That's why we're a little bit delayed getting started back
18 from lunch.

19 But in any case, since she let me know that ahead of
20 time we were able to take up those matters. And so now
21 we're ready to proceed to the next phase of the trial. And
22 that is what is typically referred to as closing arguments.

23 Ladies and gentlemen, the evidence in the case is
24 closed. It's the testimony that you heard from the witness
25 stand and any exhibits that came in during the course of the

CLOSING ARGUMENTS - MR. JONES

247

1 trial. Those items you'll have with you in the jury room.

2 But the evidence is closed.

3 The same thing I told you as it regarded the lawyers'
4 opening statements, that is that it's not evidence, is the
5 same thing I'm going to tell you with regards to their
6 closing arguments. Their closing arguments is not evidence,
7 but it is their opportunity to argue to you what they
8 believe the evidence in this case has shown. And so it's
9 important just as with their opening statements that you
10 give them your close and undivided attention as they address
11 you with their closing arguments.

12 Once they've concluded arguments I will then give you
13 the law that applies to this case. And you will then be in
14 a position to go back into the jury room and begin your
15 deliberations. So at this time I would recognize Mr. Jones
16 on behalf of the State.

17 **MR. JONES:** Thank you, Your Honor.

18 If we're lucky enough we come into this world with a
19 supportive mother, supportive father who try to teach us
20 right from wrong as we're a young child and go into our
21 teenage years. And they definitely make mistakes sometimes,
22 but they always try to have our best interest at heart,
23 right? That's what your mother and your father are supposed
24 to do.

25 **Minor** is in the complete custody and care of

CLOSING ARGUMENTS - MR. JONES

248

1 the State of South Carolina. Doesn't have anybody to look
2 out for her best interest. As she walked in here today she
3 got on that stand, she talked about her sexual experience
4 with Kelly Phillips as a thirteen year old and younger.
5 Think about the courage that it took for her to get up there
6 and talk about that.

7 It's very uncomfortable to talk about your sexual
8 experiences. Adults don't do that. People in polite
9 conversation don't talk about those sorts of things. This
10 was very, very uncomfortable for Minor to get up
11 there and testify just as uncomfortable as it was when she
12 told her doctor and just as uncomfortable as it was when she
13 told Detective Hamby.

14 Remember what I said in my opening about why people
15 lie? Why do people lie? They want to avoid punishment or
16 they want to gain some type of reward. So a child might lie
17 and say, yeah, I did my chores when they really didn't
18 because they know that because they didn't do their chores
19 they're going to get punished. Or sometimes maybe an adult
20 might lie on their resume to get a job. They want to get
21 some benefit. Because sometimes the truth has consequences,
22 has harsh consequences.

23 So what have been the consequences for Minor after she
24 made these allegations, after she told her doctor, after she
25 told Detective Hamby? For three years she's been in DSS

CLOSING ARGUMENTS - MR. JONES

249

1 custody living in group homes, living in a child facility in
2 Greenville.

3 And all she had to say was never mind, this didn't
4 happen, this didn't happen. These consequences have been
5 too harsh. Let's go back to where I was. Let's go back to
6 living with my mother. Let's go back to living with my
7 brother in the same home. But she won't do that because the
8 story she's telling is the truth, even with these harsh
9 consequences that she's had to go through.

10 I'm sorry I have to refer to my notes. I have a lot I
11 want to talk about in my closing. As she testified -- I
12 mentioned how uncomfortable and horrible it had to be to
13 come talk about a sexual experience in front of people that
14 you don't know. Did this look fun to that child? Did she
15 look like she had a good time when she did this?

16 And let me go to Peggy Robinson's testimony, the mother
17 of the child. Let's think about the options, the possible
18 stories she could have told law enforcement when she was
19 confronted.

20 Option one is what she did. She told law enforcement,
21 yes, I had sex with Kelly Phillips in the bed with my
22 daughter. Yes, Kelly Phillips told me earlier in that year
23 about a time when he performed oral sex on my daughter and
24 my daughter performed oral sex on him, and I didn't tell
25 anybody.

CLOSING ARGUMENTS - MR. JONES

250

1 What have been the consequences for her? Lost custody
2 of her children, charged with a crime, sent to prison. Why
3 in the world would she lie about that? Look at the
4 consequences -- look what happened to her after she told law
5 enforcement all of this. So why did she tell law
6 enforcement about what happened? Because it's the truth.

7 She said the same story to Detective Hamby. She said
8 the same story on telephone calls to people that she knows.
9 And she said the same story when she came in this courtroom
10 and swore under oath and pled guilty to unlawful neglect.

11 What other option did she have at the time when talking
12 to Detective Hamby? She could have said, whoa, **Minor's**
13 saying what she's saying, I don't know anything about it. I
14 don't know anything about what Kelly did to her or what she
15 did to Kelly. I don't know anything.

16 No, I've never had sex in the bed where my thirteen
17 year old daughter was laying right beside me in that bed.
18 What would have been the consequences then? Would she still
19 have been charged? Would she still be in prison? Losing
20 custody of her children? That was the incentive to lie.
21 She told the truth.

22 And what did she say in those phone calls when I was
23 questioning her? Someone that she knows asked her, well, if
24 you knew about this why didn't you tell anybody? I didn't
25 want to get Kelly in trouble. I loved him.

CLOSING ARGUMENTS - MR. JONES

251

1 That's why she didn't tell anybody up until she got --
2 til the child disclosed to the doctor and law enforcement
3 got involved. It was the first time Peggy Robinson told
4 anybody and actually told the truth. But before that she
5 was trying to protect Kelly Phillips because she loved him.

6 You heard from the expert that testified about the
7 process of disclosure for her child sexual abuse victims and
8 why sometimes it takes a little bit of time for the child to
9 tell anyone about it. What were those reasons? You might
10 love that person. Other than the sexual abuse, you might
11 have a good relationship. He dated her mother for six or
12 seven years, acted as a father figure, supported them
13 financially. And he bought her things. It was clear her
14 mother loved him.

15 But a very important point she made was having sex in
16 front of the children normalizing sex where a child doesn't
17 even know that what's happening to them is wrong. What was
18 the example she gave about cursing? A child's in the home,
19 six, seven, eight years old, everybody around them curses
20 all the time, they don't know anything different.

21 And they go to school when they're in first or second
22 grade and say a curse word. The teacher tells them, no, you
23 can't say that. That's the first time in that child's life
24 they've ever heard somebody say you can't say that
25 particular word. Think about it.

CLOSING ARGUMENTS - MR. JONES

252

1 And the cursing example's also a good example of
2 mimicking. The expert testified that when children see sex
3 on a regular basis they think that's normal. They mimic
4 that behavior. Well, he and mom have sex. I've seen them
5 have sex. Now he and I are having sex. This is the normal
6 thing. It's what people do.

7 The expert also testified as to grooming. Over the
8 course of several years the sexual acts escalate. This
9 touching, eventually touching them on their private parts,
10 touching them on their breasts, touching them on their
11 vagina.

12 And then when they get a little bit older, past
13 pubescent, they're used to me touching them, they see the
14 mother and I having sex all the time, this is just a normal
15 thing, it's no big deal, we're having sex. And it's no big
16 deal because the child sees the mother and him have sex all
17 the time.

18 Who was the first person that she disclosed to?
19 Remember that? It was the doctor. It was her pediatrician.
20 The first person in this story with any credibility,
21 responsible adult is talking to this child. And finally the
22 child feels comfortable enough to tell them what's been
23 going on.

24 Detective Hamby testified what Kelly Phillips told him
25 when he came -- when Kelly Phillips came to the police

CLOSING ARGUMENTS - MR. JONES

253

1 station. At first he was blatant, no, I don't know what --
2 I don't know what in the world you're talking about.

3 Then it was well, Minor did touch me one time, but I
4 didn't tell anybody about it. I told her to stop and that's
5 all that needed to happen. She stopped.

6 And then he said, well, actually, Minor touched me
7 three or four times. I caught her one time with her
8 reaching her hand down my pants. And then I did tell her
9 mother. Why in the world did it take a little of time for
10 that story to come out? Because it's not the truth.

11 Kelly Phillips tried to blame Minor Well, she's
12 thirteen. She's coming on to me. She couldn't keep her
13 hands off of me.

14 I want to briefly go over the offense that Mr. Phillips
15 is charged with. I mentioned it earlier, criminal sexual
16 conduct with a minor, second degree. The Judge, like I
17 said, is going to go into more detail about it, but I wanted
18 to discuss it with you briefly.

19 The law says a person is guilty of criminal sexual
20 conduct with a minor in the second degree if the actor
21 engages in a sexual battery with a victim who is fourteen
22 years of age or less, but who was at least eleven years of
23 age. Okay.

24 There's no dispute, Minor said she was thirteen.
25 Y'all heard her date of birth. The Detective told you what

CLOSING ARGUMENTS - MR. JONES

254

1 date he questioned the Defendant and questioned the victim.
2 The victim was thirteen years of age when she disclosed.
3 And the time on the indictments is for that particular age.
4 So that's what we're talking about.

5 The detective also testified to what the -- how old the
6 Defendant was. He was fifty-two years of age at the time.
7 I think you can look at him right now and detect that he is
8 over the age the statute requires.

9 And the other charge that he's charged with is criminal
10 sexual conduct with a minor, third degree. And this one is
11 a little wordier, sounds a little more complicated. A
12 person is guilty of criminal sexual conduct with a minor in
13 the third degree if the actor is over the age of -- is over
14 fourteen years of age and the actor wilfully and lewdly
15 commits or attempts to commit a lewd or lascivious act upon
16 the body or its parts of a child under the ages of sixteen
17 with the intent of arousing or appealing to or gratifying
18 the lusts, passions, sexual desires of the actor or the
19 child.

20 So that was saying a lot to say that he has to be over
21 fourteen and the victim has to be under sixteen. And he
22 touches her body for the purpose of arousing his sexual
23 desires.

24 So that would be for the touching of her body that
25 Minor described on the night of the time when her mother

CLOSING ARGUMENTS - MR. JONES

255

1 came into the bedroom and had sex with him while she was in
2 the bed. Before that occurred Minor testified that he did
3 touch her vagina and touched her breasts.

4 So that is -- those facts go to the CSC with a minor,
5 third, and the other instances where Minor testified as to
6 the actual sex that occurred or when the criminal sexual
7 conduct with a minor in the second degree.

8 I briefly want to talk about reasonable doubt. The
9 Judge is going to explain that to you as well. I as the
10 State have to convince you beyond a reasonable doubt that
11 the Defendant is guilty. And the Judge is going to go into
12 detail, again, about what reasonable doubt is.

13 But let me just say this on reasonable doubt. When you
14 took your oath, when the clerk asked you to stand up and
15 raise your right hand, you didn't swear to look for
16 reasonable doubt, you swore to look for truth.

17 And if reasonable doubt were here, you wouldn't have to
18 look for it.

19 **MS. AARON:** Object, Your Honor, to this argument. I
20 very rarely object, but he just told the jury that it's not
21 their responsibility to look for reasonable doubt. And I
22 believe that's contrary to what you're going to charge them.

23 **THE COURT:** I sustain that objection.

24 **MR. JONES:** Your Honor, I did not advise them that it
25 was not their -- okay, Your Honor. I apologize.

CLOSING ARGUMENTS - MR. JONES

256

1 The Judge is going to tell you about reasonable doubt.
2 There are very few things in this world that we know with
3 absolute certainty and that criminal cases does not require
4 proof to overcome every possible doubt. Listen to the Judge
5 as he tells you about reasonable doubt. And if he tells you
6 anything different than what I just said, listen to what he
7 says, okay?

8 Peggy Robinson failed to protect her daughter. Not
9 only failed to protect her daughter, she allowed Kelly
10 Phillips to have access to her daughter because she loved
11 Kelly Phillips. She was desperate for love. And she was
12 willing to sacrifice her child even though he told her that
13 he was sexually abusing her. She cared for him more than
14 her own child.

15 Peggy Robinson used **Minor** for her purpose, to
16 have a man that was in her life. And Kelly Phillips used
17 **Minor** for his purpose, essentially as a sex toy.
18 Was there for his use whenever he wanted it. Where Peggy
19 Robinson failed to protect her child it's up to you to find
20 justice for **Minor** and protect her even though her
21 mother has failed.

22 And I want to leave you with this. When I was younger
23 I used to go fishing with my grandfather all the time. And
24 he would always like to tell me life lessons and really
25 serious stuff even though I just wanted to go fishing at

CLOSING ARGUMENTS - MS. AARON

257

1 this pond.

2 And I don't remember all of what he said,
3 unfortunately. I wished I -- I wished I did, but one thing
4 he told me stuck out. He said, Christopher, you remember
5 this. In life if you can't discipline yourself, one day
6 somebody's going to do it for you. And today's the day for
7 Kelly Phillips. Thank you.

8 **THE COURT:** Thank you very much, Mr. Jones. Ms. Aaron.

9 **MS. AARON:** May it please the Court, Your Honor.

10 Ladies and gentlemen, thank you very much for paying
11 attention. I'm going to need my glasses. Thank you for
12 your service. I told you before that this was a very
13 important day for Mr. Phillips.

14 I think it's Abraham Lincoln that once told us that
15 jury service is the single most important service that you
16 can provide to your community in peacetime. And I believe
17 that you now know why that's important.

18 The solicitor has brought a case to you today. And he
19 has just asked you, put a pen in your hand and find Mr.
20 Phillips guilty for all three of these charges. The Judge
21 is going to tell you when you get ready to consider what
22 you've heard that you must be firmly convinced of his guilt
23 beyond any other explanation, beyond any other reasonable
24 doubt.

25 I'm going to ask the bailiff to -- well, actually, I

CLOSING ARGUMENTS - MS. AARON

258

1 might be able to do this because you've got it set up.

2 We've talked about the tools that our system gives you to
3 determine guilt.

4 Your first job is to find the facts. With any luck, it
5 won't fall. Your first job is to find the facts. Now, how
6 do you do that? You do that with evidence from this chair.

7 So what do we know? We know that this child and this
8 mom went to the doctor's office. We know that after they
9 spoke with the doctor the police were called. We know that
10 based on what was told to the police three people were
11 arrested.

12 You heard what Mr. Phillips was arrested for. You
13 heard what Ms. Robinson was arrested for. And you heard
14 that there's a third person arrested for criminal sexual
15 conduct, second degree, with this child.

16 You heard from Kelsey Beals. Works with the Julie
17 Valentine Center. Thank goodness for people in the world
18 like her because this horrible thing happens to children.
19 It happens in our community. It happens in a lot of places.
20 Thank goodness she is trained as a licensed therapist to
21 help these children, to help them move on.

22 You don't -- she testified she didn't have any
23 interaction with the child that testified, but she could
24 tell you about children she had worked with and common
25 characteristics. She's a therapist. It's not an

CLOSING ARGUMENTS - MS. AARON

259

1 investigator.

2 She's not concerned with that tracking to find out if
3 it really happened. She's going to work with this child
4 that she's counseling with at that moment or all of these
5 children based on what she's told.

6 Absolutely nothing, I submit to you, that she told you
7 is evidence in this case. She may have described to you the
8 characteristics of a child who'd been abused sexually. She
9 did describe the characteristics of a child that's been
10 abused sexually.

11 So if you find that this child has, if she possesses
12 these characteristics, you have -- let's put up here what
13 evidence you have, but is Mr. Phillips to blame? Who's this
14 other guy charged with the same thing? Is this child
15 exhibiting characteristics of a sexual abuse victim because
16 of this guy or because of Mr. Phillips?

17 If I'm going to put a pen in your hand right now and
18 ask you to make that determination, you can't. Thank
19 goodness for Kelsey Beals and her life's work, but it
20 provided you zero to help the solicitor convict Mr.
21 Phillips.

22 So what else is there? Officer, after he listens to
23 what he's heard in the doctor's office, what does he do? He
24 talks to Ms. Robinson, he talks to this child, he talks to
25 Mr. Phillips. And what is he told? We understand from the

CLOSING ARGUMENTS - MS. AARON

260

1 child that he is told that she and Mr. Phillips had sex. So
2 on our evidence list we can put that **Minor** testified they
3 had sex. He inserted his private part into her vaginal
4 area.

5 I wish that everybody in the world talked like that.
6 And I wish that teenager or sixteen year olds talked like
7 that, but I suggest to you that that is a -- that is not a
8 normal choice of words for a sixteen year old. And that is
9 probably not the first time that she has talked about
10 someone inserting their private part ---

11 **MR. JONES:** Objection, Your Honor. She's slandering
12 the victim.

13 **MS. AARON:** I said talked about. I didn't say ---

14 **THE COURT:** She said ---

15 **MS. AARON:** --- any activity.

16 **THE COURT:** --- there was probably ---

17 **MS. AARON:** Not the first time ---

18 **THE COURT:** Sustained.

19 **MS. AARON:** --- that she has talked about. No, that's
20 what I said. I had no intention of slandering the victim's
21 -- I understand your -- Court's ruling. I said not the
22 first time she had talked about. I'm talking about her
23 choice of words.

24 **THE COURT:** All right.

25 **MR. JONES:** She said it's not the first time she's

CLOSING ARGUMENTS - MS. AARON

261

1 talked about someone inserting their private part into her
2 private part.

3 **THE COURT:** Clarify your comment.

4 **MS. AARON:** I understand ---

5 **THE COURT:** For other people.

6 **MS. AARON:** I understand.

7 **THE COURT:** Go ahead.

8 **MS. AARON:** I certainly am not trying to cast
9 dispersions on this child. My point to you is insert my
10 private -- their private part into my vaginal area is not
11 natural language. You be the judge of where that came from.

12 So this detective hears on July the 30th at 7:00, a
13 little bit before five, 16:44, a little bit before five,
14 that this child alleges that she has had sex with Kelly
15 Phillips at her home, in her room. What do you do as a law
16 enforcement officer?

17 Well, what is there out in the world? There's
18 underwear, semen on it. There's sheets, there's pillows,
19 there's carpet, there's comforters, there's black lights on
20 the carpet, there's the car, there's her clothes, there's a
21 medical exam. Let's make a list of all of those pieces of
22 evidence that this investigator gathered when he heard what
23 she told you, that she'd had sex with Kelly Phillips.

24 He's a law enforcement investigator. They're going to
25 bring this case to you and they're going to want you to

CLOSING ARGUMENTS - MS. AARON

262

1 believe that this law enforcement officer was told that they
2 had sex, yet there's nothing. So if somebody else says it,
3 what do you do? Do you want to see some evidence?

4 We can put **Minor's** name up here. She testified. I'm
5 aghast. You heard three dates. I don't pick these dates,
6 the State picks the dates. **Minor** testified a few weeks
7 before the doctor's visit she and Kelly Phillips had sex,
8 inserted his private part into her vaginal area, three weeks
9 before. Well, the doctor's office visit is 7:30. Listen to
10 the dates the Court gives you.

11 I understand sixteen, thirteen years old may not be
12 able to remember dates. But every time the solicitor asked
13 her a question about what this man did to her she couldn't
14 answer it unless she read her statement that she wrote on
15 July the 30th of 2013.

16 This was presented as a fairly significant series of
17 events, yet, yeah, yeah, yes, he did that. Why? Why? I
18 suggest to you, and this is my suggestion, if this is not
19 what you think, you disregard it, I suggest to you that
20 there was a disclosure, clearly about criminal sexual
21 conduct with another person because he was charged in that
22 doctor's office that day with that mama present ---

23 **MR. JONES:** Objection, Your Honor. She's speaking --
24 she's mischaracterizing the facts and she knows it. That's
25 absolutely not true.

CLOSING ARGUMENTS - MS. AARON

263

1 **THE COURT:** The testimony was the mother was asked to
2 leave the room. Is that your point?

3 **MR. JONES:** She just said that the mother was in the
4 room when the disclosure occurred.

5 **THE COURT:** The jury will decide the facts ---

6 **MS. AARON:** That's -- I understand.

7 **THE COURT:** --- of the case. All right.

8 **MS. AARON:** Trying to remember where I was. If you
9 remember it differently, you remember it differently. I
10 suggest to you that there was a incident described involving
11 another individual who is now charged with criminal sexual
12 conduct degree -- in the second degree. Same situation,
13 same charge.

14 Is mama worried about her parenting decisions? Does
15 mom think she's going to get in trouble? Does **Minor** think
16 she's going to get in trouble? Why, if it's the truth, do
17 you have to read what you wrote on July 30th of 2013?

18 Because you wrote it out to save your skin on that day.
19 Because you're going to get in trouble. Your mama's going
20 to get in trouble. And you might get kicked out of the
21 house. Her testimony was he doesn't live there. He's not a
22 parent.

23 But, boy, something has happened. We'd better figure
24 out how to fix it. That's why we write it out on July 30th
25 of 2013, and we can't say a word in detail about it to the

CLOSING ARGUMENTS - MS. AARON

264

1 solicitor without looking at the paper. I suggest to you
2 that is exactly why.

3 You are asked to find this man guilty of criminal
4 sexual conduct in the second and third degree because of
5 characteristics, which may or may not be attributable to
6 him. 50/50 chance, 20/30, 20/80, you don't know.

7 You're being asked to convict him of criminal sexual
8 conduct in the second degree with zero physical evidence
9 that is in the world. I'm not making this stuff up.

10 Why do we record defendant's confessions now but we
11 didn't then? So that we can write on our report she was
12 rubbing on him, but we can testify that she was rubbing on
13 his private parts. I submit to you that that's pretty
14 significant difference.

15 Don't rub on me. Don't rub on my private parts.
16 That's pretty significant difference. This report was
17 written on July the 30th. No mention of private parts, yet
18 we testified to it here.

19 I am not telling you that getting amorous with your
20 girlfriend in a bed with a child in bed with you is a good
21 decision. But thank goodness good decisions aren't crimes
22 or they'd be building on to this courthouse. I'm not
23 telling you that's a good decision.

24 That is not proof of criminal sexual conduct in the
25 second degree. That is not proof of criminal sexual conduct

CLOSING ARGUMENTS - MS. AARON

265

1 in the third degree. And if you believe that this child was
2 a victim of sexual abuse at the hands of an adult, you only
3 have half the story.

4 That's what this day is all about. Because when you
5 listen to the whole story -- the solicitor doesn't have
6 control over it anymore.

7 When the Judge reads you the law he's going to tell you
8 that you must be firmly convinced beyond any other
9 explanation, beyond any reasonable doubt that the State has
10 proven their case of criminal sexual conduct in the second
11 and third degree. And if you need to recap and review the
12 evidence in order to do that, it's going to be pretty quick.

13 I am not wearing a t-shirt that says free child
14 molesters. I'm wearing a t-shirt that says evidence. You
15 going to bring a case, you need to have the evidence. You
16 can't just say it. Because any person sitting in that chair
17 has the right to know the evidence against them. And it
18 better be more than just somebody saying it. And that's all
19 it is.

20 In the beginning I asked you to be the jury that you
21 would want for any person sitting in that chair. And that's
22 what I'm asking you to do now.

23 My very large friend with the ring used to tell me that
24 you should end on a dramatic note when you do your closing
25 argument. I don't -- I'm not going to end on a dramatic

CHARGE OF THE COURT

266

1 note, but I'm going to tell you what I want you to do
2 because it's important.

3 The State has brought this case to you today and asked
4 you to find this Defendant guilty beyond any reasonable
5 doubt. I had suggested to you that more than a little
6 reasonable doubt exists. And I am going to ask you to find
7 him not guilty.

8 And by finding him not guilty you are saying that the
9 State has a high burden of proof and they have failed to
10 bring you the evidence. Be the kind of jury that you would
11 want for anybody in that chair. Thank you.

12 **THE COURT:** Ladies and gentlemen, when we started this
13 case I told you that you were the judges of the facts and
14 I'm the judge of the law. So during the course of the trial
15 while the attorneys have been presenting to you the facts in
16 the case, it's been appropriate for me to be up on the
17 bench, out of the way and let that occur.

18 Well, we've now reached the portion of this trial when
19 you and I are in this together. You as the judges of the
20 facts and me as the judge of the law. So I think it
21 appropriate that I come down and be with you as I give you
22 the law that is applicable to this case. And I'm going to
23 read this verbatim so that I don't misquote anything or
24 leave anything out.

25 Mr. Foreman and members of the jury, you've heard the

CHARGE OF THE COURT

267

1 evidence and the arguments of both parties. I will now
2 explain to you the rules of law that you must follow and
3 apply in deciding this case. When I have finished you will
4 go into the jury room and you'll begin your discussions,
5 which we sometimes call deliberations.

6 Your decision must be based only on the evidence
7 presented here. You must not be influenced in any way by
8 either sympathy for or prejudice against anyone.

9 The indictments charge the Defendant, Douglas Kelly
10 Phillips, with two counts of second degree criminal sexual
11 conduct with a minor and one count of third degree criminal
12 sexual conduct with a minor. I'll remind you the fact that
13 the Defendant was arrested, charged and indicted in this
14 case is not evidence in the case. And it cannot be
15 considered by you as evidence of guilt in this case. Nor
16 does it create any presumption or inference of guilt.

17 The indictments are simply the formal written
18 instrument which contains the charges made against the
19 Defendant. The indictments are the formal documents by
20 which the case is brought into this court.

21 Now, I will give you a copy of these instructions to
22 have with you in the jury room. During your deliberations
23 you may refer to these instructions to guide you in your
24 decision-making. You must follow the law as I explain it
25 even though you may disagree with it. And you must follow

CHARGE OF THE COURT

268

1 all of my instructions as a whole. You must not single out
2 or disregard any of the instructions on the law.

3 The Defendant has pled not guilty to these charges.
4 And that plea puts the burden on the State to prove the
5 Defendant guilty. A person charged with committing a
6 criminal offense in South Carolina is never required to
7 prove him or herself innocent.

8 I charge you that it is an important rule of law that
9 the defendant in a criminal trial, no matter what the
10 seriousness of the charge may be, will always be presumed to
11 be innocent of the crime for which the indictment was issued
12 unless guilt has been proven by evidence satisfying you of
13 that guilt beyond a reasonable doubt. This presumption of
14 innocence does not end when you begin your deliberations,
15 but it accompanies the Defendant throughout the trial until
16 you reach a verdict of guilt based on evidence satisfying
17 you of that guilt beyond a reasonable doubt.

18 Presumption of innocence is not a mere legal theory.
19 It's not just a legal phrase. But it is a substantial right
20 to which every defendant is entitled unless you, the jury,
21 are satisfied from the evidence of the Defendant's guilt
22 beyond a reasonable doubt.

23 So what is a reasonable doubt in the law? Some of you
24 may have served as jurors on civil cases where you were told
25 that it is only necessary to prove that a fact is more

CHARGE OF THE COURT

269

1 likely true than not true such as by the greater weight or
2 the preponderance of the evidence. In criminal cases the
3 State's proof must be more powerful than that. It must be
4 beyond a reasonable doubt.

5 Proof beyond a reasonable doubt is proof that leaves
6 you firmly convinced of the Defendant's guilt. There are
7 very few things in this world that we know with absolute
8 certainty. And in criminal cases the law does not require
9 proof that overcomes every possible doubt.

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

16 As I said before, you must consider only the evidence
17 that I have admitted into this case. Evidence includes the
18 testimony of witnesses and the exhibits that have been
19 admitted. But anything that the lawyers say is not evidence
20 and is not binding on you.

21 You should not assume from anything that I have said
22 that I have any opinion about any factual issue in this
23 case. Except for the instructions to you on the law, you
24 should disregard anything that I may have said during this
25 trial in arriving at your decision about the facts.

CHARGE OF THE COURT

270

1 Your own recollection and interpretation of the
2 evidence is what matters. In considering the evidence you
3 may use reasoning and common sense to make deductions and to
4 reach conclusions.

5 Now, there's two types of evidence that -- which are
6 generally presented during a trial. There's direct evidence
7 and there's circumstantial evidence. Direct evidence is the
8 testimony of a person who claims to have actual knowledge of
9 a fact such as an eyewitness. Circumstantial evidence is a
10 proof of a chain of facts and circumstances indicating the
11 existence of a fact.

12 Crimes may be proven by circumstantial evidence to the
13 extent that the State relies on circumstantial evidence.
14 All of the circumstances must be consistent with each other
15 and when taken together point conclusively to the guilt of
16 the accused beyond a reasonable doubt. If these
17 circumstances merely portray the Defendant's behavior as
18 suspicious, the proof has failed.

19 Now, the law makes absolutely no distinction between
20 the weight or the value to be given to either direct or to
21 circumstantial evidence. Nor is a greater degree of
22 certainty required of circumstantial evidence than of direct
23 evidence.

24 You should weigh all of the evidence in this case. The
25 State has the burden of proving the Defendant beyond --

CHARGE OF THE COURT

271

1 guilty beyond a reasonable doubt. And this burden rests
2 with the State regardless of whether the State relies on
3 direct evidence, circumstantial evidence or some combination
4 of the two.

5 Now, when I say you must consider all of the evidence,
6 I don't mean that you must accept all of the evidence as
7 true or accurate. You should decide whether you believe
8 what each witness has had to say and how important that
9 testimony was.

10 In making those decisions you may believe or disbelieve
11 any witness in whole or in part. The number of witnesses
12 testifying concerning a particular point doesn't necessarily
13 matter.

14 To decide whether to believe any witness I suggest that
15 you ask yourself a few questions. Did the witness impress
16 you as one who was telling the truth? Did the witness have
17 any particular reason not to tell the truth? Did the
18 witness have a personal interest in the outcome of the case?
19 Did the witness seem to have a good memory? Did the witness
20 have an opportunity and an ability to accurately observe the
21 things he or she testified about? Did the witness appear to
22 understand the questions clearly and answer them directly?
23 Did the witness' testimony differ from other testimony or
24 other evidence?

25 But keep in mind that a simple mistake does not mean

CHARGE OF THE COURT

272

1 that a witness wasn't telling the truth as he or she
2 remembers it. People naturally tend to forget some things
3 or to remember them inaccurately. So if a witness misstated
4 something, you must decide whether it was because of an
5 innocent lapse in memory or an intentional deception. The
6 significance of your decision may depend on whether the
7 misstatement is about an important fact or about an
8 unimportant detail.

9 Now, the rules of evidence ordinarily do not permit
10 witnesses to testify to opinions or conclusions. There's an
11 exception to this rule that exists for witnesses which we
12 call expert witnesses. A witness who by education and
13 experience has become an expert in some art, science, or
14 profession or calling may state an opinion as to relevant
15 and material matter in which that witness claims to be an
16 expert. They may also state the reasons for that opinion.

17 You should consider any expert opinion received into
18 evidence in this case and like any other evidence give it
19 the weight that you think it deserves. An expert witness'
20 testimony is to be given no greater weight than that of any
21 other witness simply because the witness is an expert.
22 Further, you're not required to accept an expert's opinion
23 even though it's not contradicted.

24 Now, I instruct you and I emphasize the fact that the
25 Defendant, Douglas Kelly Phillips, did not testify in this

CHARGE OF THE COURT

273

1 case is not a factor to be considered by you in any way in
2 your deliberations and in your consideration on the question
3 of guilt or innocence of Mr. Phillips. It must not be
4 considered by you in any manner whatsoever. A defendant has
5 the constitutional right to remain silent. And the
6 assertion of this right must not be considered by you in
7 your deliberations.

8 I repeat, under your oath you are to draw no
9 conclusions whatsoever from the fact that Mr. Phillips did
10 not testify. The fact that Mr. Phillips did not testify
11 should not even be discussed in the jury room. The burden
12 of proof, as I have stated to you, is on the State. A
13 defendant is not required to prove his or her innocence.
14 The burden of proof remains on the State to prove guilt
15 beyond a reasonable doubt.

16 Now, the indictments in this case allege several
17 different offenses against the Defendant. The charges are
18 as follows; On indictment 2013-GS-39-2327 it alleges second
19 degree criminal sexual conduct with a minor. Indictment
20 2328 also alleges second degree criminal sexual conduct with
21 a minor. And indictment 2329 charges third degree criminal
22 sexual conduct with a minor.

23 Each count or each indictment is a separate and
24 distinct offense. You must decide each count or indictment
25 separately on the evidence and the law that is applicable to

CHARGE OF THE COURT

274

1 it uninfluenced by your decision as to any other count. The
2 Defendant may be convicted or acquitted on any or all of the
3 offenses charged. You will be asked to write a separate
4 verdict of guilty or not guilty for each charge on each
5 indictment.

6 Now, the Defendant is charged with two counts of
7 committing the offense of second degree criminal sexual
8 conduct with a minor. In order to prove second degree
9 criminal sexual conduct the State must first prove beyond a
10 reasonable doubt that the Defendant engaged in a sexual
11 battery with the victim.

12 A sexual battery is sexual intercourse, cunnilingus,
13 fellatio, anal intercourse or any intrusion, however slight,
14 of any part of a person's body or of any object into the
15 genital or anal openings of another person's body except
16 when the intrusion is accomplished for medically recognized
17 treatment or diagnostic purposes.

18 The State must then prove beyond a reasonable doubt
19 that the victim was at least eleven years old, but not more
20 than fourteen years old at the time of the sexual battery.

21 Consent, willingness, indifference or ignorance on the
22 part of the minor, if any, as to what was taking place does
23 not in any way affect the charge of criminal sexual conduct
24 with a minor because an unmarried woman under the age of
25 fourteen cannot legally consent to sexual intercourse.

CHARGE OF THE COURT

275

1 Now, the Defendant is also charged with the offense of
2 third degree criminal sexual conduct with a minor. In order
3 to prove this offense the State must prove beyond a
4 reasonable doubt that the Defendant is over fourteen, excuse
5 me, that the Defendant is over fourteen years of age and
6 wilfully and lewdly commits or attempts to commit a lewd or
7 lascivious act upon or with the body or its parts of a child
8 under sixteen years of age with the intent of arousing,
9 appealing to or gratifying the lusts, passions or sexual
10 desires of the Defendant or of the child.

11 Wilfully means voluntarily, intentionally with specific
12 intent to do something the law forbids. Lewd means obscene,
13 lustful, indecent or lecherous. Lascivious means tending to
14 incite lusts, lewd, indecent, obscene or tending to deprave
15 the morals in respect to sexual relations.

16 Now, your verdict in this case, as I told you earlier,
17 must be unanimous. You must all agree on the decision on
18 each of these indictments. Your deliberations are secret.
19 You will never have to explain your verdict to anyone. Each
20 of you must decide the case for yourself, but only after
21 fully considering the evidence with the other jurors. So
22 you must discuss the case with one another in trying to
23 reach an agreement.

24 While you're discussing the case don't hesitate to re-
25 examine your own opinion and change your mind if you become

CHARGE OF THE COURT

276

1 convinced that you were wrong. But don't give up your
2 honest beliefs just because others think different or
3 because you simply want to get the case over with.

4 A form of verdict has been prepared for your
5 convenience. You'll take that verdict form to the jury room
6 and when you've reached a unanimous agreement, then, Mr.
7 Foreman, you'll sign the verdict form and you'll mark the
8 appropriate selection.

9 Those verdict forms are in the front of the book.
10 There is three of them, one for each indictment. And you'll
11 either -- the two options are either guilty or not guilty.
12 Whatever the decision is of the jury, you'll mark the
13 appropriate slot.

14 And as I said, there are -- there's one for indictment
15 2327, which is the second degree criminal sexual conduct
16 with a minor on or about July 26th. Then there's indictment
17 2328, which is the second degree criminal sexual conduct
18 with a minor on or about July the 19th. And then there's
19 the indictment 2329 as to third degree criminal sexual
20 conduct. And that was on or about July the 28th, 2013. And
21 they'll be in the front of this notebook so that you'll have
22 them in -- once the jury has arrived at verdicts on each of
23 those.

24 Now, if you should desire to communicate with the
25 Court, you have any questions about anything, Mr. Foreman

CHARGE OF THE COURT

277

1 would write down that question and pass it out to the Court.

2 And I'll deal with it as promptly as possible.

3 I'm going to send you back into your jury room, but
4 don't begin your deliberations quite yet. I'm going to --
5 and this won't take very long. I'm going to just briefly
6 talk with the attorneys to make sure that I have the charge
7 down properly. If there's any changes I need to make or
8 anything like that, I'll bring you back out and I'll let you
9 know what those are.

10 If the charge is good as is, we'll collect any of the
11 exhibits that are to come back, and when you get the
12 exhibits and this notebook, that's your cue to begin your
13 deliberations, okay? So if you would, please, step back
14 into the jury room and await these items.

15 (Whereupon the jury exited the courtroom at 3:26 pm)

16 **THE COURT:** Are there any objections or exceptions to
17 the charge from the State?

18 **MR. JONES:** Nothing from the State, Your Honor.

19 **THE COURT:** Anything from the Defense?

20 **MS. AARON:** No, sir.

21 **THE COURT:** Folks, would y'all get with Susan and make
22 sure -- is it just the one exhibit?

23 **MR. JONES:** That's it.

24 **THE COURT:** Okay. Well, then we don't need to do that.
25 I think we can count to one. So that's good. All right.

1 Then if you would, take this back to them. I need the two
2 alternates to step out. And if you could tell them that
3 they can begin their deliberations.

4 (Whereupon the alternates entered the courtroom and the
5 jury began deliberating at 3:27 pm)

6 **THE COURT:** Ms. Holcombe, Mr. Elgin, listen, I want to
7 thank you for your service on this case. The role of the
8 alternate is a tough job. You have to sit here and go
9 through everything that the main panel goes through. You
10 have to hear everything. You have to be present for
11 everything because if any member of the panel isn't able to
12 proceed with the deliberations, then you would have had to
13 step in their place and, of course, you would have to have
14 the benefit of all the information.

15 And so the role of the alternate's tough because I
16 relate everything to -- my wife tells me I relate everything
17 to football. This is like you've practiced all week, you've
18 hit, you've sweated, you've gutted it out and now here it is
19 Saturday afternoon, we're ready to kick off and the coach
20 tells you you can't play. That's kind of the role of the
21 alternate. It's a tough role to have, but it's very
22 important. So I want to thank you for your service with
23 regards to that.

24 I'd like to tell you that you're done for the week, but
25 we do have the jury panel coming back in the morning for

1 another case that we need to pull a jury on. So if you
2 would, I'm going to excuse you at this time and ask you to
3 be back at 9:00 in the morning. Just report down to the big
4 courtroom ---

5 **THE CLERK:** This courtroom.

6 **THE COURT:** Oh, I'm sorry. This courtroom?

7 **THE CLERK:** Yes, sir.

8 **THE COURT:** I apologize. Come back up here and just
9 report to the jury panel just like the regular panel.
10 They'll be sitting out here. Okay? So 9:00 tomorrow.
11 Thank you very much.

12 And any restriction about talking about the case is
13 lifted. Y'all can talk about the case to anybody you want
14 to talk to or you don't have to talk about it. It's up to
15 you.

16 (Whereupon the alternates exited the courtroom)

17 **THE COURT:** All right, folks, we'll be at ease then.

18 (Whereupon court was in recess at 3:30 pm)

19 (Whereupon court reconvened at 4:30 pm)

20 **THE COURT:** Please remain seated, folks. The jury has
21 passed out a question, folks. And I'll just read it
22 verbatim. What specifically was the mother told by the
23 Defendant per her testimony? The only thing I can think
24 that is appropriate to do is to let them know that we can
25 replay that portion of the mother's testimony and let them

1 hear it. Any other -- any other or different thoughts by
2 the State?

3 **MR. JONES:** No, Your Honor. I think that's the only
4 way to do it.

5 **THE COURT:** Anything from the Defense?

6 **MS. AARON:** No, sir. Is there -- was it only discussed
7 once? I mean, I don't know how you'd find that. I don't
8 know if you -- unless you play the whole thing.

9 **THE COURT:** I'm going to give Susan whatever time she
10 needs ...

11 **MR. JONES:** Your Honor, I believe I questioned her
12 several times about it with regards to her statement to law
13 enforcement, with regards to her statement to family members
14 on the phone ---

15 **THE COURT:** Right.

16 **MR. JONES:** --- and with regards to pleading under
17 oath.

18 **THE COURT:** But if I recall, and I may be wrong, as you
19 went through things that she was -- like the phone calls and
20 those things, I think there was a section that you
21 questioned her strictly as to what Mr. Phillips told her.

22 **MR. JONES:** No, Your Honor. In every instance and
23 every statement she told law enforcement what Kelly told her
24 she told the family members or friends on the telephone what
25 Mr. Phillips told her and again, too, on the record. And I

1 do believe that I asked her about that on each particular
2 piece, particular topic.

3 **THE COURT:** Well, then I think what we need to do is we
4 need to get to the point in the testimony where you begin to
5 -- where you begin to ask her ...

6 **MR. JONES:** What did you tell whoever what Kelly told
7 you?

8 **THE COURT:** Right, with regards to what Mr. Phillips
9 may have told her. And what I do, folks, I -- some lawyers
10 object to this. They say, Judge, I think they ought to hear
11 everything if they're going to hear something. Well, my
12 belief is that at this point -- that may be true on a
13 statement that you're trying to get into a record, but at
14 this point this is the jury asking to hear something.

15 So I tell the jury -- I always tell the jury we'll play
16 this for you, we'll play as much of it or as little of it as
17 you want to hear. You just let the Court know when you've
18 heard enough. And I let it be whatever they want to hear.
19 I'm not going to force them to listen to something they
20 don't want to listen to.

21 **MR. JONES:** Yes, sir.

22 **MS. AARON:** I have no objection to that, Your Honor. I
23 think if we -- we're just careful not to cherry pick where
24 we start and just start before it becomes essential and then
25 let it go on if they want.

1 **THE COURT:** Yeah. I just think we'll start -- if Susan
2 can find it. I'm sorry, Susan, to do this to you, but if we
3 can start where the first question -- whatever the first
4 question was about what Mr. Phillips told her.

5 **MR. JONES:** Well, Your Honor, now that I think about
6 it, I think it might be more appropriate to play the
7 testimony of Ms. Robinson from start to finish and allow the
8 jury to tell you when they've heard what they wanted to hear
9 because allowing -- I'm sure Ms. Susan will do a wonderful
10 job, but I'd hate for her to miss when the first time Ms.
11 Robinson ---

12 **THE COURT:** I'm not ---

13 **MR. JONES:** --- said something.

14 **THE COURT:** Essentially it may end up being that, but
15 I'm not sure -- like some of the preliminary testimony I
16 just don't think is necessary because she really wasn't
17 answering your questions initially until you asked to treat
18 her as a hostile witness. And that's when she began to
19 answer the questions.

20 **MR. JONES:** Okay.

21 **THE COURT:** Let me -- let's let Susan do a little of
22 looking. She can tell us. All right. Susan, I hate to put
23 that burden on you, but if you can find where the
24 questioning began as to what she was told by Mr. Phillips,
25 whether it was her saying it to somebody else, but anywhere

1 where she starts to discuss what he told her. That's what
2 they're asking for. So we'll just be at ease while -- to
3 give Susan that opportunity.

4 (Whereupon court was in recess at 4:35 pm)

5 (Whereupon court reconvened at 4:45 pm)

6 (Whereupon the jury entered the courtroom at 4:46 pm)

7 **THE COURT:** Mr. Foreman, I got your message. And I'm
8 sorry it took a little while. We had to get set up. Your
9 note specifically was what specifically was the mother told
10 by the Defendant per her testimony? And we have brought
11 that testimony back up for you.

12 Now, here's what I need from you. We're going to start
13 the testimony where we believe that -- where she began to
14 discuss what she was told and we'll play that.

15 We're going to let it play. Whenever -- if you've
16 heard what you need to hear and you don't need to hear
17 anymore, just get my attention and we'll stop it at that
18 point. But we'll let you hear as much of it as you need to
19 hear.

20 If -- as we get -- as we get through the testimony,
21 when we get to it, if y'all recall when the mother was on
22 the stand there was a matter of law that I had to take up.
23 So if we get to that, we'll pause briefly and let Stacy
24 [sic] switch files so she can switch and -- where the
25 testimony picks up again, okay? So when we play this, y'all

1 let us know if you need it louder or softer or whatever you
2 need, okay? Stacy [sic]. Stacy -- Susan.

3 (Whereupon the following testimony of Peggy Robinson
4 was played for the jury)

5 Q. And did you say around April or May we was talking
6 about being truthful?

7 A. Yes, sir.

8 Q. And Kelly told me what happened 4th of July of 2012?
9 Did you say that?

10 A. Yes, sir.

11 Q. Did you say that he told me that he let **Minor** play
12 with his dick? Is that what you said in your statement?

13 A. I believe so.

14 Q. You believe so or yes?

15 A. Yes, sir.

16 Q. And did you say that he fingered her and asked her did
17 she like that and she said yes?

18 A. Yeah.

19 Q. And did you say it went a little further? She sucked
20 his dick, and then he eat her and he asked her did she like
21 it. Did you write that in your statement?

22 A. Yeah, I wrote that in the statement.

23 Q. Ms. Robinson, do you know anyone named Steve or Steven?

24 A. Yeah.

25 Q. Who is that?

1 A. It's a nephew.

2 Q. Who is that?

3 A. I said his nephew.

4 Q. And after you were arrested did you spend some time in
5 the LEC, the Pickens County Detention Center?

6 A. Yeah.

7 Q. And while you were in there did you ever make a jail
8 phone call to Steven? Did you talk to him over the phone?

9 A. I made a jail phone call to my mama and he answered the
10 phone.

11 Q. Okay. And when he asked you why didn't you tell
12 anybody did you say I didn't want to get Kelly in trouble?

13 A. Yeah.

14 Q. Did you say Kelly is my world?

15 A. Sure did.

16 Q. And did you say I told Detective Hamby what Kelly told
17 me about McCormick, last 4th of July?

18 A. Yeah.

19 Q. And as to the incident in your room with Kelly and
20 **Minor** did you say we was all in it together? We was laying
21 in bed beside her and it just happened?

22 A. Yeah, but it wasn't like we done it on purpose.

23 Q. Okay. And did you say to Steven, he ate her and she
24 sucked him at McCormick, last 4th of July?

25 A. I believe so. I don't remember everything I said on

1 the phone.

2 Q. Okay. And did you say to Steven, what am I supposed to
3 do, tell them it didn't happen?

4 A. I reckon so, yeah.

5 Q. And did you tell Steven you told Detective Hamby what
6 you know?

7 A. I think so. I guess so, yeah.

8 Q. Did you make another jail phone call and talk to
9 someone named Denise? Do you remember talking to her on the
10 phone when you were in jail?

11 A. No, I don't. I mean, I don't remember talking to her.
12 I mean, I guess, yeah, I did.

13 Q. Did you talk to Denise or not?

14 A. Yes.

15 Q. Did you tell Denise that you didn't want Kelly to get
16 in trouble?

17 A. I don't remember the conversation. I remember talking
18 to her, but I don't remember the conversation. Do you know
19 how much has happened since 2013 and now? I don't remember.

20 (Whereupon the jury signaled to the Court and the
21 testimony of Peggy Robinson was stopped)

22 **THE COURT:** Okay. Thank you very much, ladies and
23 gentlemen. Please -- you can return to your deliberations.

24 (Whereupon the jury exited the courtroom at 4:52 pm)

25 **THE COURT:** Susan, I apologize for calling you Stacy.

1 **MADAME COURT REPORTER:** That's all right.

2 **THE COURT:** I work with a Stacy back home. Okay,
3 folks, let's remain at ease while the jury continues their
4 deliberations. If I could get you to make this a -- mark
5 that as a Court exhibit, please.

6 (Whereupon Court's exhibit 1 was marked)

7 (Whereupon court was in recess at 4:53 pm)

8 (Whereupon court reconvened at 4:59 pm)

9 **THE COURT:** All right. Ladies and gentlemen, I'm told
10 by the court personnel that the jury has reached a verdict.
11 And I stand here as y'all do, and I have no idea what it is,
12 but I want to speak to this for just a moment. And I do
13 this with every case that I try, whether it's a civil case
14 or criminal case because it doesn't make any difference.

15 My point is going to be this, every time we try a case
16 there are folks in the courtroom that agree with the jury's
17 verdict, there are folks that disagree with it. That's
18 common. The important thing is this, though. And I say
19 this to everybody. I don't ask anyone to agree with the
20 jury's verdict or not. All I ask is this, that it be
21 received in a professional manner.

22 Whether you agree with it and want to cheer or disagree
23 with it and want to make some comment, neither one of those
24 is appropriate. The jury is -- they're not performing,
25 they're just doing a service. And whatever verdict they

1 reach was arrived at through their collective deliberations.
2 And they're deserving of having it received in a respectful
3 manner.

4 I don't tolerate anything less. And I say that for
5 this reason. I also don't expect people to be machines or
6 robots. I realize that cases like this involve emotions and
7 involve human feelings. And so I say that to tell you if
8 you don't think you can control your emotions, regardless of
9 what the verdict is, then I would ask that you step out of
10 the courtroom while we receive the verdict because, and I
11 say this for y'all's benefit, I will not tolerate any type
12 of disturbance in front of this jury.

13 And so if it occurs, the deputies are here, whoever
14 does it, they're going to take you into custody immediately
15 and I'm going to hold you in contempt of court. I'm not
16 trying to be cold. I'm not trying to be hard hearted. It's
17 just appropriate that this panel have their verdict received
18 in a professional manner. And so anything less is not going
19 to be acceptable.

20 And I'm telling you this now so that if you don't think
21 you can control your emotions, you can step out and not get
22 involved in a contempt charge. All right? So, having said
23 those things, is the State ready to receive the jury's
24 verdict?

25 **MR. JONES:** Yes, sir, Your Honor.

VERDICT OF THE JURY

289

1 **THE COURT:** Is the Defense ready?

2 **MS. AARON:** Yes, Your Honor.

3 **THE COURT:** Okay. Bring them in, please.

4 (Whereupon the jury entered the courtroom at 5:02 pm)

5 **THE COURT:** Mr. Foreman, has the jury reached a
6 unanimous verdict, sir?

7 **MR. FOREMAN:** Yes, sir, it has.

8 **THE COURT:** If you don't mind, if you could pass the
9 verdict form up to the -- Mr. Clerk, please. Thank you,
10 sir.

11 (Pause)

12 **THE COURT:** Mr. Clerk, if you would, please, sir,
13 publish the verdicts of the jury.

14 **THE CLERK:** Yes, sir. This is the State of South
15 Carolina versus Douglas Kelly Phillips, indictment -- it's
16 indictment number 2013-GS-39-2327, second degree criminal
17 sexual conduct with a minor, we, the jury, find the
18 Defendant guilty.

19 Indictment number 2013-GS-39-2328, second degree
20 criminal sexual conduct with a minor, we, the jury, find the
21 Defendant, Douglas Kelly Phillips, guilty.

22 Indictment number 2013-GS-39-2329, we, the -- as to the
23 third degree criminal sexual conduct with a minor, we, the
24 jury, find the Defendant, Douglas Kelly Phillips, guilty.

25 Is this your verdict and still your verdict so say you

VERDICT OF THE JURY

290

1 all by raising your right hands?

2 (Whereupon all members of the jury raised their right
3 hand)

4 **THE CLERK:** Thank you very much. Your Honor.

5 **THE COURT:** Thank you, sir. Ladies and gentlemen, I
6 want to thank you for your service this week. Pat, let me
7 ask you a question real quick.

8 **THE CLERK:** Yes, sir.

9 (Pause)

10 **THE COURT:** Folks, I appreciate your service this week.
11 There are things that I'm doing here while a trial's going
12 on, but I'm observant. I watch juries. And I want to thank
13 you because it appeared throughout these proceedings that
14 everyone was very attentive to what was being presented.

15 I didn't see anyone -- and I hate to say terms like
16 this because I'd like to believe that it doesn't occur, but
17 in all candor sometimes some jurors will look bored or I've
18 had sometimes where they've seemed to have dozed off. None
19 of that went on this week. Everyone was very attentive and
20 very in tune with what was being presented. And I want to
21 thank you for that.

22 Now, we do have another case that we're going to
23 proceed on beginning tomorrow morning, but just in talking
24 with Mr. Clerk, it appears that we have enough jurors in the
25 pool to handle that matter. So I'm going to give you the

1 balance of the week off. So this will conclude your service
2 for this week.

3 Now, you recall on Monday when I spoke to you as a
4 panel as a whole, I told you that State law only provides
5 for you to serve on jury duty in circuit court once every
6 three calendar years. You have earned an exemption for the
7 balance of this year, all of 2017 and all of 2018 so that if
8 you receive a summons for jury service here in circuit court
9 during that time-frame and you wish to be excused from that
10 service, you can claim that exemption.

11 Now, I do tell folks that it is just an exemption. It
12 doesn't mean you're not qualified to serve. You certainly
13 are. And if you get a summons and you would like to serve,
14 then I would encourage you to do so. But you do have that
15 exemption if you do choose to exercise that.

16 Also, if you need a work excuse, there'll be one
17 that'll be mailed to you in your check when you receive your
18 check for your service this week. If anyone needs a work
19 excuse prior to that, and the Clerk's Office is closed right
20 now, but if you come back tomorrow we can get that for you
21 if you need it before you get your check. Okay?

22 Folks, again, I want to thank you for your service.
23 It's a high honor that you do to your community when you
24 serve on jury duty. And we don't take it lightly. We
25 understand that every one of you have somewhere else that

1 you either would rather be or you need to be. And you've
2 made a sacrifice this week through your service. And I
3 appreciate it very much.

4 If there's nothing else then, if everyone else would
5 please remain seated. Folks, I'm going to excuse you and
6 you're excused for the balance of the week.

7 Mr. Hinkle, -- get Mr, Hinkle to just hang back. I
8 just need him to -- just need to get him to sign something
9 that -- and Pat's bringing it out to him.

10 (Whereupon the jury exited the courtroom at 5:09 pm)

11 (Whereupon Court's exhibit 2 was marked)

12 **THE COURT:** All right. At this time I will take up any
13 motions at the conclusion of the reading of the verdict.

14 **MS. AARON:** Your Honor, I would make a motion for you
15 to set aside the verdict for all the reasons that I argued
16 previously, but also given the fact that the jury wanted to
17 know an answer to a question and when they heard about
18 testimony regarding activity in McCormick County they came
19 out with a verdict very quickly after that. And so I would
20 submit to Your Honor that they had considered items not
21 occurring in Pickens County and for that reason also I would
22 ask you to set aside the verdict.

23 **THE COURT:** All right. Thank you, Ms. Aaron. I'm
24 going to respectfully deny that. I think it's -- it was
25 evidence in the record for them to consider. And it went to

1 the -- well, that was part of the testimony that went to the
2 issue of -- what's the term, Mr. Jones?

3 **MR. JONES:** I'm sorry, Your Honor?

4 **THE COURT:** What's the term, the build up, the lead up,
5 the escalation?

6 **MR. JONES:** Escalation, the Lyle evidence.

7 **THE COURT:** Yeah, related to that. And I -- and again,
8 don't know that that was the deciding factor. That
9 testimony would have simply gone to the third degree
10 criminal sexual conduct charge and not the second degree
11 charge. But I think it was a jury call, and I'm going to
12 respectfully deny the motion.

13 **MS. AARON:** Okay.

14 **THE COURT:** All right. Is there anything further
15 before we proceed?

16 **MR. JONES:** Nothing from the State, Your Honor.

17 **THE COURT:** Do you have any sentencing sheets? Ms.
18 Aaron, I'm kind of open as far as -- I'll certainly hear
19 from you. If Mr. Phillips would like to address the Court,
20 he certainly ---

21 (Whereupon the Clerk was speaking to the Court)

22 **THE COURT:** But what I was going to say is if Mr.
23 Phillips would like to address the Court, he's certainly not
24 required to, but if he would like to, I'll hear from him.
25 And I know you've passed up some things, which I'm going to

1 consider as well, but if anyone else would like to address
2 the Court, I'll hear from anyone that would like to address
3 the Court.

4 **MS. AARON:** Thank you, Your Honor. I have passed up
5 character letters from one, two, three, four, five, six
6 individuals for Your Honor's consideration that we would
7 want you to review prior to sentencing. I suspect a couple
8 of members of his family will also want to speak on ---

9 **THE COURT:** Sure.

10 **MS. AARON:** --- his behalf ---

11 **THE COURT:** And I'll hear from ---

12 **MS. AARON:** --- at the appropriate time.

13 **THE COURT:** --- them at the appropriate time.

14 **MS. AARON:** Yes, sir.

15 **THE COURT:** All right. I'll hear from you right now,
16 ma'am.

17 **MS. AARON:** Your Honor, you heard the testimony in the
18 case. It was certainly incomplete in our estimation. Mr.
19 Phillips, other than the admission that he made to the
20 deputy that they slept in the same -- that they had sex in
21 the bed with the child, he has denied, pled not guilty to
22 the charges and continues to deny them.

23 I do believe it was a very, very muddy, non-specific
24 case, but it deals with a very difficult issue. And I
25 understand that it's a difficult issue for the jury.

1 Mr. Phillips is -- was not married to Ms. Robinson, but
2 he did contribute to the support of the children. He is a
3 hard worker. He has a job, has had a job continuously.
4 There are times when he and I have had to meet late in the
5 day because he does not want to leave work.

6 He has been on bond since the very first day that he
7 was granted bond. He has had no violations. He has
8 reported absolutely every time he's supposed to. He's
9 wearing an ankle monitor and has worn it without issue since
10 the beginning.

11 **THE COURT:** Did he serve any time before making bond?

12 **MS. AARON:** He indicates -- I'm sure the solicitor has
13 the exact date, but he indicates to me it was about fourteen
14 days. That was prior to my representation of him.

15 **THE COURT:** Okay.

16 **MS. AARON:** But he has worn an ankle monitor since
17 then. I would submit to you according to section 24-1340 --
18 I would ask you to consider credit for that time. I think
19 it's not unusual to receive jail credit for your time on
20 monitoring. It is considered house arrest. And I think 24-
21 1340 -- and I have that section I can hand up.

22 **THE COURT:** If you would, please.

23 **MS. AARON:** Yes, sir.

24 **THE COURT:** I don't -- I typically -- it depends on the
25 situation surrounding ---

1 **MS. AARON:** I understand.

2 **THE COURT:** --- the monitoring.

3 **MS. AARON:** I understand.

4 **THE COURT:** If it's a situation that someone actually
5 is restricted to house arrest, I'd certainly consider that.
6 But if they're wearing an ankle monitor and they're allowed
7 to be out and about and free and going wherever they need to
8 go and working and everything else, then I may -- I'll
9 review it.

10 **MS. AARON:** Certainly he was allowed to work, but he
11 wasn't allowed to roam the streets.

12 **THE COURT:** Okay.

13 **MS. AARON:** I mean, we have letters to his bondsman
14 letting him know when he visits our office. So there were
15 restrictions ---

16 **THE COURT:** Okay.

17 **MS. AARON:** --- on his monitoring. And I do believe he
18 wants to speak to the Court.

19 **THE COURT:** Sure. Mr. Phillips, I'll be more than
20 happy to hear from you, sir.

21 **MR. PHILLIPS:** Yes, sir. Ms. Cheryl stated that I'm a
22 hard working man. I raised two children on my own. I am
23 divorced, but me and my ex-wife, we still -- we still get
24 along with each other.

25 And like she said, there was a lot of things left out,

1 you know, that we couldn't bring into the court. And as I
2 say, you know, I still deny the charges, you know, to
3 maintain my innocence even though the outcome was different.

4 **THE COURT:** Yes, sir. Okay.

5 **MR. PHILLIPS:** And I'd like to appreciate, you know,
6 everybody that came. Everybody here, y'all know I love you.
7 I know y'all look out for me. And I'd like, you know, to
8 thank you, Judge, for your time.

9 **THE COURT:** All right. Thank you, sir. Is there
10 anyone else that would like to address the Court?

11 **MS. AARON:** Is there anyone else that would like to
12 speak?

13 **MR. CAIN:** Yeah, I'd just ---

14 **THE COURT:** Sir, if I could just -- and if you've got a
15 loud voice, that's okay if you want to speak from there.

16 **MR. CAIN:** Okay.

17 **THE COURT:** I just need your name for the record,
18 please.

19 **MR. CAIN:** Okay. Steven Cain.

20 **THE COURT:** Mr. Cain. Okay.

21 **MR. CAIN:** I'd just like to say, you know, I guess in
22 your sentencing, maybe some leniency, I guess. He's a good
23 man. He's basically helped raise me since I was a kid. I'm
24 his nephew. Never doubted him from the start.

25 And like I said, there's a lot left out in this. And I

1 don't think the proof was there. I guess all we can ask now
2 is, you know, for a little leniency on him or maybe what you
3 may have saw.

4 We've got to respect what the jury put out there, but
5 he's a good man. He's helped a lot of people and this ain't
6 him. And there was a lot left out and a lot that if it'd
7 been put on the table it would have been a game changer.
8 And, you know, just for us, we ask for leniency on him.

9 **THE COURT:** All right, sir. Thank you, Mr. Cain. And
10 I appreciate everyone who's been here this week supporting
11 both sides. Yes, ma'am, your name, please.

12 **MS. PHILLIPS:** Denise Phillips.

13 **THE COURT:** Ms. Phillips?

14 **MS. PHILLIPS:** Denise Phillips.

15 **THE COURT:** Yes, ma'am.

16 **MS. PHILLIPS:** Your Honor, I'm the ex-wife. I was
17 married to this man for twenty-six years. I know this man
18 better than anybody else. These allegations are not true.
19 And I do ask for your leniency.

20 And I understand the jury has brought back guilty, but,
21 please, find some way to be lenient on him. He's a good man
22 in every way to everybody. He wouldn't hurt a child. He'd
23 never do anything like that. He raised, you know, we raised
24 two, three almost. And, Your Honor, he's not that man.
25 That's not him. So please, if you can, find some leniency

1 for him.

2 **THE COURT:** Thank you, ma'am. Yes, your name, please.

3 **MR. PHILLIPS:** Yes, sir. I'm Michael Phillips.

4 **THE COURT:** Yes, Mr. Phillips.

5 **MR. PHILLIPS:** I'm his brother.

6 **THE COURT:** Yes, sir.

7 **MR. PHILLIPS:** And he's a good man. He's raised kids,
8 grandkids, everything else. He's worked hard all his life
9 for what he's had. And like my nephew said, there's a lot
10 to this story that's not told. And I'm just asking you for
11 leniency on him, you know, because he has a family and a
12 family that loves him deeply. And everything didn't come
13 out here. And I just want you to be lenient on him.

14 **THE COURT:** All right. Thank you, sir. Thank you for
15 being present. Ma'am, your name, please.

16 **MISS PHILLIPS:** My name is Amber Phillips.

17 **THE COURT:** Yes, ma'am.

18 **MISS PHILLIPS:** I am the daughter of Mr. Phillips.

19 **THE COURT:** Yes, ma'am.

20 **MISS PHILLIPS:** Through all this it's just been a
21 hardship. And I know deep down my daddy would never hurt
22 anybody in any way.

23 He made me along with my mom the woman I am today and
24 showing me how to raise my two children. And everything
25 that my family has been through from losing my brother back

1 in 2002, we have tried to stick together as a -- as a
2 whole. And I just want -- I just want some leniency.

3 (Pause)

4 **MISS PHILLIPS:** And on that -- being on that ankle
5 bracelet and having restrictions, he has missed a lot with
6 my children who are four and eleven of going to games,
7 birthday parties, Christmas and stuff like that on account
8 of all this. And that's just -- I just feel it's not -- I
9 feel it's not right that he should have to do this -- do
10 that because it's not fair to my kids. And they're not --
11 they don't understand in a way that they should.

12 But please have some kind of leniency -- if I could
13 have some kind of closure to this, I mean, I know the jury
14 has the verdict and stuff like -- and all that, but as
15 everybody has said, there was so much that was left out.

16 **THE COURT:** Thank you, ma'am. Anyone else? Anything
17 else, ma'am?

18 **MS. AARON:** No, sir.

19 **THE COURT:** Mr. Jones, is there anything on behalf of
20 the State?

21 **MR. JONES:** Yes, sir. I believe the DSS agent would
22 like to speak on behalf of **Minor**

23 **THE COURT:** Sure.

24 **MS. WILLIAMS:** LaSonya Williams with the Department of
25 Social Services.

1 **THE COURT:** Thank you, Ms. Williams.

2 **MS. WILLIAMS:** I just feel it's only fair for me to
3 speak on behalf of **Minor** and be able to say some of the
4 things that she said to me personally. I don't want anyone
5 to forget that when this -- these incidents occurred she was
6 a child and she still is a child.

7 The jury and the courtroom heard that she lives in a
8 group home and has lived there since the day she decided to
9 disclose to the doctor. She doesn't have a family. No one
10 here on this side of the courtroom is a member of her
11 family.

12 Her mother is incarcerated. Her dad is absent from her
13 life. She doesn't have any aunts or uncles. No one is here
14 for her except for myself as an agent of the Department of
15 Social Services, who is her legal guardian and has been
16 since she came into care. Her Guardian ad Litem sits here
17 with her and this team of support from the solicitor's
18 office. So I'm here to speak for her.

19 In **Minor's** mind she wants him to get the maximum
20 because you cannot take back those years that she has lost.
21 She has missed Christmases as well. She has missed holiday
22 events as well. And she will spend those events in a group
23 home without family support.

24 She has suffered mental, emotional and sexual abuse at
25 the hands of those adults in her life. She now has to sit

1 in a locked facility without any hope of a family future at
2 this very moment because we cannot stabilize her even though
3 we have tried with therapy and treatment because you cannot
4 take back those events that have occurred to her.

5 Ms. Beals spoke about trauma. The trauma this child
6 experienced can never be explained fully to anyone's
7 capacity or anyone's imagination because it didn't happen to
8 us. But when it happens to a child, they live it every
9 single day. And the effects of that comes out in their
10 behavior.

11 So, yes, she may be a wild one as one once described
12 her. She may be promiscuous as one once described her, but
13 it's because of the effects of the abuse that she suffered
14 while in the care of these adults that were -- that she
15 trusted in her life.

16 I also wanted to say that it is hard for a child to
17 disclose as Ms. Beals indicated because they fear that no
18 one will believe them. And to this day no one has still
19 believed **Minor** other than people who sit on this side of
20 the courtroom. Even her mother on the witness stand was
21 reluctant to tell about what happened all those years while
22 in her care. And now she has to live with that.

23 We are now having to face the reality that she may
24 never have to -- be able to write to her mother, call her
25 mother or see her mother because of what the effects may be

1 of her mother -- based on what she did today.

2 So I just want the Court to understand that this is not
3 to be taken lightly, that this is a child's life we're
4 talking about. And now we're trying our very best to help
5 prepare her to live a fruitful and productive life after
6 these events have occurred in her life.

7 And I just don't want anyone to belittle that at all
8 and say leniency is the answer because no one has given
9 **Minor** any leniency from day one. No one has nurtured her,
10 cared for her or loved her and supported her in the way that
11 parents and family and friends should.

12 But we as DSS are going to do our very best to make
13 sure this child has the life that she deserves to have by
14 continuing to provide her with treatment, with support,
15 loving and care so that hopefully we can find a family, who
16 is not her biological family, who will embrace her in spite
17 of what she's gone through and treat her with decency and
18 respect that she deserves. And that's all I have to say on
19 her behalf. Thank you.

20 **THE COURT:** Thank you, Ms. Williams. And thank you for
21 your service to the community. Anything further from the
22 State?

23 **MR. JONES:** No, sir, Your Honor.

24 **THE COURT:** All right. Folks, I'm not going to keep
25 everyone here for any lengthy period of time, but I am going

SENTENCE OF THE COURT

304

1 to ask for your patience for just -- literally just a couple
2 of minutes. I do want to be -- take that opportunity to
3 read these things that have been presented to me and
4 consider those as I decide what I think to be appropriate.
5 So I'm going to just ask that you remain patient for just a
6 couple of minutes while I -- while I do that.

7 (Whereupon court was in recess at 5:26 pm)

8 (Whereupon court reconvened at 5:33 pm)

9 **THE COURT:** Thank you, folks. Please have a seat.

10 Folks, just like I shared with you before the jury came out
11 and I told you that I don't expect anyone to -- I don't
12 expect anyone to agree or disagree with a jury's verdict,
13 just to receive it in a professional manner, in a somewhat
14 similar vein, I don't ask anyone to agree or disagree with
15 me about what sentence I impose because I don't know that
16 anyone has ever imposed a sentence where everybody is in
17 agreement with it. There usually is folks who are going to
18 disagree.

19 All I can tell you is that the sentence that I do
20 impose, I believe to be appropriate under the facts and
21 circumstances that have been presented to this Court, under
22 the facts and circumstances as I witnessed here throughout
23 the trial. It's the hardest part of my job. It's nothing
24 that I look forward to every week as I go to work, but it is
25 part of my work. I take no joy ever in having to sentence

SENTENCE OF THE COURT

305

1 anybody.

2 I take a lot of -- take a lot into consideration. I
3 consider a lot of the things that have gone on. I've heard
4 a lot today about the jury not hearing everything and not
5 getting the whole story. I do know this, the jury heard
6 everything that was appropriately before the jury. There
7 have been comments made, but no one really said what they
8 were thinking or what they meant by that, everything wasn't
9 heard.

10 But it came out in the testimony during the course of
11 this trial that there's another gentleman who is also
12 accused of this same conduct with regards to **Minor**
13 And I don't know if that's what's been referred to. Ms.
14 Williams had mentioned comments and things being said as far
15 as **Minor's** actions.

16 But here's the thing that just resonates with me over
17 and over. And that is I don't really care what **Minor** did
18 or didn't do. This is a fifty plus year old gentleman. He
19 should know exactly how to handle any of that. There was
20 testimony in this record that she came on to him, that she
21 made herself available to him, attempted to have a
22 relationship with him.

23 I'm just repeating what was testified to. And that
24 makes -- if it's true. I'm not saying it's true or it's not
25 true. But if it's true, it makes absolutely no difference.

SENTENCE OF THE COURT

306

1 A thirteen year old has no authority, no freedom to make his
2 or herself available for these type of sexual acts.

3 And if they are exposed to them, then the person, the
4 jury got it right, the person's guilty. The jury doesn't
5 need anybody to agree or disagree with their sentence, or
6 excuse me, with their verdict. So it doesn't really matter
7 what anyone thinks.

8 But for what it's worth, I agree with their verdict. I
9 think they got it right. I think this is a tragedy both for
10 Mr. Phillips and all of his family and the tragedy for the
11 Robinsons and the way they've chosen to go through this
12 life. There's nothing -- nothing good here. And it's
13 tragic.

14 And Ms. Williams said it very artfully and wonderfully.
15 And I just hope and pray that this young lady can get to the
16 other side of this as emotionally, healthy as she possibly
17 can. I don't doubt that Mr. Phillips is not the only one
18 who has abused this child, but that doesn't excuse what's
19 occurred here.

20 On indictment 2013-GS-39-2327 and 2328, the sentence of
21 -- let me ask you this. The amount of time that he's been
22 on the GPS monitoring?

23 **MS. AARON:** Would have been since August of 2014. So I
24 can -- I can calculate that.

25 **THE COURT:** I have an app on my phone, but I don't ---

SENTENCE OF THE COURT

307

1 **MS. AARON:** That's okay. I can calculate it.

2 Actually, it's probably going to be -- it's almost August of
3 2016. So that's three years. So I would say a thousand,
4 ninety-five days give or take. And that gives him actually
5 being in jail a month. I don't think he was in jail a total
6 month. So ...

7 (Pause)

8 **THE COURT:** On indictment 2327 the sentence of the
9 Court is that you be committed to the State Department of
10 Corrections for a period of twenty years. You're to be
11 given credit for a thousand, eighty-five days time served.

12 On indictment 2013-2328 the sentence of the Court is
13 that you are to be committed to the State Department of
14 Corrections for a period of twenty years, given credit for
15 that thousand, eighty-five days.

16 And 2013-GS-39-2329 the sentence of the Court is that
17 you be committed to the State Department of Corrections for
18 a period of fifteen years, giving you credit for the
19 thousand, eighty-five days.

20 Those sentences are going to run concurrent with each
21 other. And you're to be placed in any type of -- and I
22 don't know all what's available within the Department of
23 Corrections, but any type of sex offender treatment that is
24 available through the Department of Corrections, you're to
25 be placed in. And you also are required to register as a

SENTENCE OF THE COURT

308

1 sex offender for the remainder of your life. Good luck to
2 you, sir.

3 **MR. JONES:** Thank you, Your Honor.

4 **MS. AARON:** Thank you, Your Honor.

5 (Hearing Ended at 5:42 pm)

6 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Pickens County, South Carolina, on the 25th - 26th day of July 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

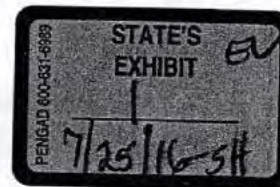
December 31, 2016

S/Susan W. Hudgins

Circuit Court Reporter

EASLEY POLICE DEPARTMENT

NOTIFICATION / WAIVER OF RIGHTS

CASE NUMBER 2013-03456

Name of Officer Giving Individual's Rights

Jon Hamby
 (Printed Name)

Date Rights Given

7-30-13

Time Rights Given

10:06 pm

Witnesses to Rights Notification

(Printed Name)

(Printed Name)

Before we ask you,

Douglas Kelly Phillips
 (Printed Name)

, any questions, you must understand your rights

as follows:

- DKP 1. YOU HAVE THE RIGHT TO REMAIN SILENT.
- DKP 2. ANYTHING YOU SAY CAN AND WILL BE USED AGAINST YOU IN COURT.
- DKP 3. YOU HAVE THE RIGHT TO TALK WITH A LAWYER FOR ADVISE BEFORE WE ASK YOU ANY QUESTIONS AND HAVE YOUR LAWYER WITH YOU DURING QUESTIONING.
- DKP 4. IF YOU HAVE NO MONEY TO PAY A LAWYER'S FEE, THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU WITHOUT COST, IF YOU WISH.
- DKP 5. IF YOU DECIDE TO ANSWER QUESTIONS NOW WITHOUT A LAWYER PRESENT, YOU STILL HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME YOU WISH. YOU ALSO HAVE THE RIGHT TO STOP ANSWERING ANY QUESTIONS AT ANY TIME UNTIL YOU TALK WITH A LAWYER.

I, Douglas Kelly Phillips, understand my rights to remain silent and to have a lawyer (free, if I can not afford a lawyer) with me during any questioning. I am willing to answer questions answer questions, without a lawyer present, at this time. There have been no promises made to me nor has there been any threat, pressure, or coercion of any kind used against me in order to get me to waive my rights. I fully understand that I can stop answering any questions at any time I so choose.

Douglas Kelly Phillips 7-30-13 10:09 pm
 (Signature) (Date) (Time)

Witnesses:

LC Andy 7-30-13 10:09 pm
 (Signature) (Date) (Time)

(Signature) (Date) (Time)

WITNESSES

Jon Hamby

Easley Police Department

7/31/2013

ARREST WARRANT NUMBER

2013A3920400822

ACTION OF GRAND JURY

TRUE BILL

Date FEB 18 2014

Christopher Byers
Foreperson of Grand Jury

VERDICT

GUILTY

Foreperson of Petit Jury

Date: 7-26-16

DOCKET NO. 2013-GS-39-2327
BBH

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

FEB 18 2014 TERM 2013

THE STATE

vs.

DOUGLAS KELLY PHILLIPS

Indictment for

0396

CRIMINAL SEXUAL CONDUCT WITH A MINOR
2ND DEGREE (11-14)

VIOLATION § 16-03-0655(B)

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE
(11-14)

At a Court of General Sessions, convened on

the Grand Jurors of Pickens

County present upon their oath:

That DOUGLAS KELLY PHILLIPS did in Pickens County, on or about the 26th day of July, 2013, commit a sexual battery on **Minor**, who was fourteen years of age or less but who was at least eleven years of age. This is in violation of § 16-3-655(B)(1) [formerly § 16-3-655(2)] of the South Carolina Code of Laws (1976) as amended.

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

Brenda Hunter
SOLICITOR

WITNESSES

Jon Hamby

Easley Police Department

7/31/2013

ARREST WARRANT NUMBER

2013A3920400821

ACTION OF GRAND JURY

TRUE BILL

Date FEB 18 2014

Christopher Byers
Foreperson of Grand Jury

VERDICT

GUILTY

John Hamby
Foreperson of Petit Jury

Date: 7-26-16

DOCKET NO. 2013-GS-39-^{BBH} 2328

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

FEB 18 2014

TERM 2013

THE STATE

vs.

DOUGLAS KELLY PHILLIPS

Indictment for

0396

CRIMINAL SEXUAL CONDUCT WITH A MINOR
2ND DEGREE (11-14)

VIOLATION § 16-03-0655(1)

[illegible]

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE
(11-14)

At a Court of General Sessions, convened on _____
County present upon their oath:

the Grand Jurors of Pickens

That DOUGLAS KELLY PHILLIPS did in Pickens County, on or about the 19th day of July, 2013, commit a sexual battery on **Minor**, who was fourteen years of age or less but who was at least eleven years of age. This is in violation of § 16-3-655(B)(1) [formerly § 16-3-655(2)] of the South Carolina Code of Laws (1976) as amended.

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

Brenda Hunter
SOLICITOR

WITNESSES

Jonathan C Hamby

Easley Police Department

7/30/2013

ARREST WARRANT NUMBER

2013A3920400817

ACTION OF GRAND JURY

VERDICT

GUILTY

Foreperson of Petit Jury

Date: 7-26-16

DOCKET NO. 2013-GS-39-^{BBH} 2329

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

FEB 18 2014

TERM 2013

THE STATE

VS.

DOUGLAS KELLY PHILLIPS

Indictment for

3661

CRIMINAL SEXUAL CONDUCT WITH A MINOR
3RD DEGREE

VIOLATION § 16-03-0655(C)

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR 3RD DEGREE

At a Court of General Sessions, convened on

the Grand Jurors of Pickens

County present upon their oath:

That DOUGLAS KELLY PHILLIPS did in Pickens County, on or about the 28th day of July 2013, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of **Minor**, a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-03-0655(C) of the South Carolina Code of Laws (1976) as amended.

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

Brian Hunter
SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

317

COUNTY OF Pickens
 STATE VS.
Douglas Kelly Phillips

AKA: _____
 Race: WHITE Sex: M Age: 55
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED]
 City, State, Zip: Liberty, SC 29657
 DL#: [REDACTED] SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

in violation of § 16-03-0655(B) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

78892

Jones, Christopher L.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2013-65-39-2328 + 2329
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Credit for 1085 days to Sent.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 (Assessments 107.5 %) _____ \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Susan Higgins

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2141

Sentence Date: 7-26-2016

STATE OF SOUTH CAROLINA

318

COUNTY OF

Pickens

STATE

VS.

Douglas Kelly Phillips

AKA:

Race: WHITE

Sex: M

Age: 55

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Liberty, SC 29657

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor, or Attempt - victim 11 to 14 yrs of age inclusive - Second deg.

in violation of § 16-03-0655(B)

of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS(CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

78892

Jones, Christopher L.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

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☒ State Department of Corrections,☐ County Detention Center,

for a determinate term of

20

days/months/years or

☐ under the

Youthful Offender Act not to exceed

years

and/or to pay a fine of \$

; provided that upon the service of

days/months/years and/or payment

of \$

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

2013-GS-39-2327 + 2329

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

Credit for 1085 days time served.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

\$100

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

§ 14-1-211(A)(2) (DUI Surcharge)

\$12

§ 56-5-2995 (DUI Assessment)

\$25

§ 56-1-286 (DUI Breath Test)

\$500

Proviso 47.9 (Public Def/Prob)

\$25

§ 14-1-212 (Law Enforce. Funding)

\$150

§ 14-1-213 (Drug Court Surcharge)

\$50

§ 50-21-114 (BUI Breath Test Fee)

\$40/ea

§ 56-5-2942(J) (Vehicle Assessment)

\$5

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

\$

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2013GS3902328

A/W#: 2013A3920400821

Date of Offense: 7/19/2013

S.C. Code § : 16-03-0655(B)

CDR Code #: 0396

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0655(B) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS(CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

78892

Jones, Christopher L.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,

for a determinate term of

20

days/months/years or

☐ under the

Youthful Offender Act not to exceed

years

and/or to pay a fine of \$

; provided that upon the service of

days/months/years and/or payment

of \$

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

2013-GS-39-2327 + 2329

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

Credit for 1085 days time served.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

\$100

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

§ 14-1-211(A)(2) (DUI Surcharge)

\$12

§ 56-5-2995 (DUI Assessment)

\$25

§ 56-1-286 (DUI Breath Test)

\$500

Proviso 47.9 (Public Def/Prob)

\$25

§ 14-1-212 (Law Enforce. Funding)

\$150

§ 14-1-213 (Drug Court Surcharge)

\$50

§ 50-21-114 (BUI Breath Test Fee)

\$40/ea

§ 56-5-2942(J) (Vehicle Assessment)

\$5

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$

\$

\$

\$

\$

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\$

\$

\$

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2141

7-26-2016

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS **319**COUNTY OF Pickens
STATE VS.
Douglas Kelly PhillipsAKA: _____
Race: WHITE Sex: M Age: 55
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: LIBERTY, SC 00000
DL#: [REDACTED] SID#: _____*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: SEX/ Criminal Sexual Conduct with Minor 3rd Degree - U/16yrs & actor over 14yrsin violation of § 16-03-0655(C) of the S.C. Code of Laws, bearing CDR Code # 3661☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

78892

Jones, Christopher L.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2013-GS-39-2327+2328☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. Credit for 1085 days to be served.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)	\$	\$ 3.75
TOTAL	\$	\$ 128.75

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel. § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Susan Hodgins

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2191Sentence Date: 7-26-2016

FORM 5

STATE OF SOUTH CAROLINA)

County of Pickens)

IN THE COURT OF COMMON PLEAS

Douglas Kelly Phillips #369118)

Full name and prison number (if any) of Applicant)

JUN 25 A 9 13

2019-CP-39. 228

v.)

CLERK OF COURT
PICKENS COUNTY APPLICATION FOR
SOUTH CAROLINA

State of South Carolina)

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution, 4460 Broad River Rd.
Columbia, SC 29210
2. Name and location of Court which imposed sentence Pickens County Courthouse,
County S.C.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013-GS-39-2327
 - (b) 2013-GS-39-2328

- (c) 2013-GS-39-2329
5. The date upon which sentence was imposed and the terms of the sentence: July 26, 2016
- (a) 20 yrs.
- (b) 20 yrs.
- (c) 15 yrs. Minus 1085 days credit to run concurrent
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty Yes
- (c) after a plea of nolo contendere N/A
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. S.C. Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Conviction Affirmed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Filed Jan. 9, 2019
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Counsel Assistance
- (b) Denied Due Process
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attachment (11a)
- (b) See Attachment (11b)
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
N/A

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. N/A
- iii. N/A

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) N/A
- (b) N/A
- (c) N/A
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? I had retained an attorney, but I was never brought before a judge for an arraignment or plea.
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Richard Warder Gulle S.C.
- ii. Cheryl Aaron Clemson S.C.
- iii. Cheryl Aaron Clemson S.C.
- (b) the proceedings at which each such attorney represented you:
- i. None
- ii. Trial Proceeding and
- iii. Trial Proceeding and

Ineffective Assistance of Counsel

(Attachment 11a)

11a. Defense Counsel declined to cross examine accuser during “trial.” Defense counsel did cross examine accuser in a camera “proffer.” Accuser gave conflicting testimony that questions their credibility. This testimony was with the jury ordered out. Jury was denied hearing this testimony. When defense counsel was given the opportunity to cross examine the accuser during the trial with the jury present, counsel declined to do so. This is ineffective assistance of counsel.

Defense counsel also declined to cross examine accuser’s mother when given the opportunity. This testimony was also conflictive. The witness gave an affidavit that she had been coerced by the investigating detective. Defense Counsel has this affidavit but failed to present it during “trial.” This is ineffective Counsel Assistance.

Defense Counsel declined to cross examine “expert witness” when given the opportunity during “trial.” Defense Counsel did question witness in camera “proffer” which was the detective investigating the case which had no evidence to back his testimony.

Counsel advised defendant not to testify in his own defense.

Counsel also failed to convey to the jury the fact that the defendant has no prior history of sexual misconduct of any kind. This is ineffective Counsel assistance.

Denied Due Process

(Attachment 11b)

11b. I was never brought before a judge for arraignment or plea. If a hearing was held, I was not informed about it. I'm sure if a hearing was held it was recorded by the court reporter via transcripts or something. The only time I was in a courtroom or spoke to a judge about the charges against me was 3 yrs. After my arrest when I was to stand trial for these charges on July 25, 2016. I was denied "Due Process."

19. State clearly the relief you seek in filing this application:
To have my conviction overturned based on civil rights violation, being denied
process and ineffective counsel assistance. Requesting my sentence be vacated
immediately and nothing less than a new trial.
20. Are you now under sentence from any other court that you have not challenged?
No

STATE OF SOUTH CAROLINA)

County of Pickens)

VERIFICATION

I, Douglas Kelly Phillips, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Douglas Kelly Phillips

SWORN to and subscribed before me this 18
 day of June, 2019.

[Signature] (L.S.)
 Notary Public

My Commission Expires: 11/15/2020

CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

JUN 25 A 9 10

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Douglas Kelly Phillips SCDC# 369118, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Douglas Kelly Phillips
Applicant

SWORN or affirmed to and subscribed before me this

18 day of June, 2019.

[Signature]
Notary Public

My Commission Expires: 11/15/2026

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

JUN 25 A 9 18

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Douglas Kelly Phillips, #369118,	)	Case No.: 2019-CP-39-828
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The State (Respondent), making its return to the application for post-conviction relief filed by Douglas Kelly Phillips (Applicant) on June 25, 2019, would respectfully show this Court:

I. Procedural History

Applicant is presently incarcerated according to orders of commitment of the Pickens County Clerk of Court. During its February of 2014 term, the Pickens County Grand Jury indicted Applicant for third-degree criminal sexual conduct with a minor (2013-GS-39-2329) and two counts of second-degree criminal sexual conduct with a minor (2013-GS-39-2328 and -2327). Applicant was represented by Cheryl Aaron, Esquire, (Counsel) and Assistant Solicitor Christopher Jones of the Thirteenth Circuit Solicitor's Office prosecuted the case. On July 25-26, 2016, Applicant appeared before a jury for a trial with the Honorable Thomas A. Russo, presiding. After the conclusion of trial, the jury found Applicant guilty as indicted, and Judge Russo sentenced him to imprisonment for fifteen years for the third-degree offense and for twenty years for each of the second-degree offenses, with all sentences running concurrently, and with credit for time served. Judge Russo also ordered that Applicant was to be placed in sex-offender treatment, if available, by the Department of Corrections, and ordered that he register as a sex offender.

Applicant timely filed a notice of appeal. Chief Appellate Defender Robert M. Dudek perfected Applicant's appeal, and Assistant Attorney General Frederick Schumacher, IV, represented Respondent. On appeal, Applicant argued the trial court erred in ruling that the victim's testimony that Applicant had molested her on previous occasions was admissible. Final Brief of Appellant-Respondent at *i*, State v. Phillips, Op. No. 2019-UP-016 (S.C. Ct. App. filed January 9, 2019) (per curiam). The Court of Appeals affirmed in an unpublished opinion. State v. Phillips, Op. No. 2019-UP-016 (S.C. Ct. App. filed January 9, 2019) (per curiam). The Remittitur was issued on January 25, 2019.

II. Current Application

Respondent interprets the allegations raised by Applicant as follows:

1. Ineffective assistance of trial counsel
 - a. Counsel failed to cross-examine the victim.
 - b. Counsel failed to cross-examine the victim in an in camera proffer.
 - c. Counsel failed to cross-examine the victim's mother.
 - d. Counsel failed to introduce an affidavit of the victim's mother that the investigating detective had coerced her.
 - e. Counsel failed to cross-examine an expert witness.
 - f. Counsel failed to question the investigating detective.
 - g. Counsel advised Applicant not to testify at trial.
 - h. Counsel failed "to convey to the jury the fact that [Applicant] [had] no prior history of sexual misconduct of any kind."
2. Denied due process
 - a. "I was never brought before a judge for arraignment or plea. If a hearing was held, I was not informed about it. I'm sure if a hearing was held it was recorded by the court reporter via transcripts or something. The only time I was in a courtroom or spoke to a judge about the charges against me was 3 yrs. After my arrest when I was to stand trial for these charges on July 25, 2016. I was denied 'Due Process.'"

Applicant prays that the PCR court would vacate his conviction and remand his case for a new trial.

Attached to this return and incorporated by reference are the records of the Pickens County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, Applicant's appellate records, and the post-conviction relief application. Respondent reserves the right to amend this return upon its receipt of any relevant materials.

III. Response to Applicant's Claims of Ineffective Assistance of Counsel

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that trial counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must

have prejudiced Petitioner such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668. Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 697. Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney. Id. at 690.

Respondent submits that Applicant cannot likely cannot show any ground for relief; however, Respondent requests an evidentiary hearing in order to address the questions of fact raised that the record may not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve the matter. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV. Response to Applicant's Claims of Ineffective Assistance of Counsel

Pursuant to S.C. Code Ann. § 17-27-70(c), the Court may summarily dispose of an application if there is no genuine issue of material fact in the “pleadings, depositions and admissions and agreements of fact . . .” and the movant is entitled to judgment as a matter of law. Summary dismissal without a hearing is appropriate only when it is apparent on the fact of the application that a hearing is not needed for the development of a factual record and the applicant is not entitled to relief. Mose v. State, 420 S.C. 500, 505, 803 S.E.2d 718, 720 (2017) (citing Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005)). The Court, in considering the motion for summary dismissal without the holding of an evidentiary hearing, must assume the facts presented by Applicant as true and view them in the light most favorable to Applicant. Robertson v. State, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016) (citing McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013)).

An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint;
or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20(A).

Because an application for post-conviction relief is not a substitute for a direct appeal of trial court error, and because of the modern simplification of criminal jurisdiction jurisprudence in South Carolina, the overwhelming majority of cognizable claims fall under the broad umbrella of

“ineffective assistance of counsel,” a contention under the Sixth Amendment to the Constitution of the United States. See Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (“Allegations of trial court error are not cognizable on PCR.”). Post-conviction relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). Only in certain cases may an inmate present a claim for post-conviction relief based on constitutional violations other than instances of the ineffective assistance of counsel. Fortune v. State, Op. No. 27932 (S.C. Sup. Ct. filed Dec. 4, 2019) (Shearouse Adv. Sh. No. 47 at 6). Applicant’s claim of a due process violation does not support a cognizable claim for post-conviction relief under any of the statutory grounds. Therefore, Respondent moves for summary dismissal of this allegation pursuant to S.C. Code Ann. § 17-27-70(c) (2003).

Even if this claim is properly before this Court, and even if Applicant’s claim to have not pleaded not guilty before his trial, Applicant likely cannot show his due process rights were violated. Arraignment is a merely formality, the absence of which does not violate a defendant’s due process rights if he had sufficient notice of the accusations made against him and an adequate opportunity to defend himself. State v. Ariail, 311 S.C. 35, 36, 426 S.E.2d 751, 752 (1993) (citing Garland v. Washington, 232 U.S. 642 (1913)). The formality of arraignment may be waived by a defendant. Id. at 36-37, 426 S.E.2d at 152-53 (finding counsel’s statement to the circuit court that the defendant waived arraignment was sufficient to establish the defendant’s waiver) (citation omitted).

V. Motion for a More Definite Statement

Respondent moves for a more definite statement as to Applicant’s allegations. Applicant alleges that his due process rights were violated because he was never taken before a judge for an arraignment or plea. Applicant fails to set forth with specificity the facts and circumstances upon

this claim is based. The Uniform Post-Conviction Procedure Act requires that Applicant must “. . . specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Furthermore, Rule 8(a), SCRCPP, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.”

Applicant has failed to state with any specificity the specific facts giving rise his due process allegation. Additionally, the undersigned has difficulty in understanding the nature of the allegation or the basis therefor. Respondent moves pursuant to Rule 12(e), SCRCPP, to require Applicant to provide a more definite statement of his claims. Respondent moves to require Applicant to file an additional amended or supplemental application well in advance of any evidentiary hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended or supplemental application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

VI. Denial of All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VII. Future Amendments and the Discovery Process

Applicant must specify any claims he intends to raise at the post-conviction relief evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant is represented by counsel, that attorney and not the Applicant is the only individual authorized to file amendments to this application for post-conviction relief. See Rule 11, SCRCRCP. Pro se filings will not be considered at the evidentiary hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, Op. No. 27921 (S.C. Sup. Ct. filed October 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, Respondent will move for a continuance in the matter. See Love, at 24 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

VIII. Conclusion

WHEREFORE, Respondent requests that an evidentiary hearing be held on Applicant’s claims and requests that the Applicant be required to amend his Application in order to provide a more definite statement as requested herein.

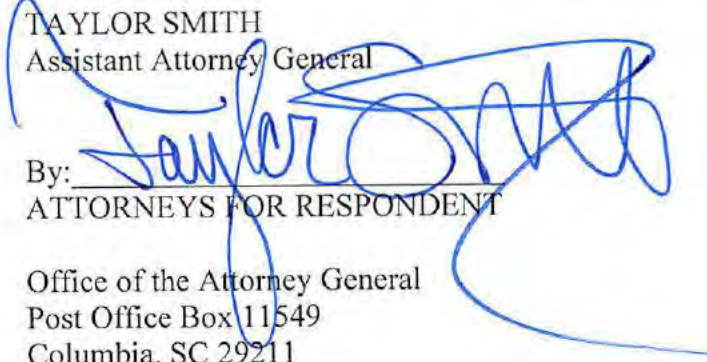
Respectfully submitted,

ALAN WILSON
Attorney General

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January 24, 2020

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF PICKENS	)	
	)	
	)	2019-CP-39-0828
DOUGLAS KELLY PHILLIPS, #369118	)	
	)	
Applicant,	)	
	)	
vs.	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** on the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Don A. Thompson, Esquire
107 Smithwood Court
Simpsonville, South Carolina 29681

DATED this 24th Day of January, 2020.



 Eva Cook, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA
2 COUNTY OF GREENVILLE

IN THE COMMON PLEAS
13th JUDICIAL CIRCUIT

3 DOUGLAS K. PHILLIPS,
4
5 Applicant,

6 vs.

CASE NO. 2019-CP-39-0828

7 THE STATE OF SOUTH CAROLINA,
8
9 Respondent.

10 HEARING BEFORE: HONORABLE DANIEL D. HALL

11 DATE: March 9, 2023

12 TIME: 9:40 AM

13 LOCATION: Greenville County Courthouse
14 305 E. North Street
15 Greenville, SC 29601

16 REPORTED BY: LORA L. McDANIEL,
17 Registered Professional Reporter

18
19 APPEARANCES:

20 ATTORNEYS FOR THE APPLICANT
21 DON A. THOMPSON, ESQ.

22 ATTORNEYS FOR THE RESPONDENT
23 TAYLOR SMITH, ESQ.
24
25

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1

I N D E X

2

DIRECT CROSS REDIRECT RECROSS

3

WITNESS/EXAMINATION

4

DOUGLAS K. PHILLIPS

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BY MR. THOMPSON

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BY MR. SMITH

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CHERYL L. AARON

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BY MR. SMITH

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BY MR. THOMPSON

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CERTIFICATE OF REPORTER Page 35

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E X H I B I T S

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(No Exhibits Proffered)

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DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1 MR. THOMPSON: Mr. Phillips is in leg irons and in
2 shackles. A good bit of the questions are going to require him
3 to look at his transcript, on the lines on the transcript. Is
4 it possible to have one hand cut loose so he could be able to
5 maneuver?

6 THE COURT: That's a courtroom security issue.
7 I'll leave that to the courtroom security to make that
8 determination.

9 THE DEPUTY: Your Honor, like I explained to
10 Counsel, especially if they come from SCDC, we typically don't
11 touch them.

12 THE COURT: We'll be patient. We'll take his time.
13 We'll deal with that. I'm not going to order them to remove
14 his handcuffs.

15 State ready to proceed?

16 MR. SMITH: Yes, Your Honor. This is a case where
17 we have a witness joining by Webex. I think she's on standby
18 for this morning. I just wanted to see if The Court was ready.

19 THE COURT: Mr. Thompson, is the Applicant ready to
20 proceed?

21 MR. THOMPSON: We are, Your Honor.

22 THE COURT: Go ahead and call your case, Mr. Smith,
23 while I'm pulling up --

24 MR. SMITH: This is the case Phillips V. State,
25 case number 2019-CP-39-828.

1 Mr. Phillips was indicted in 2014 for criminal
2 sexual conduct with a minor in the third degree and two counts
3 of criminal sexual conduct with a minor in the second degree.

4 He was tried before a jury in July of 2016 and
5 found guilty as indicted. He was sentenced to 15 years in
6 prison for the third-degree offense and 20 years for each of
7 the second-degree offenses with all running concurrently. And
8 he was ordered to register as a sex offender.

9 His lawyer filed a Notice of Appeal. And on
10 appeal, his appellate lawyer argued that Judge Russo, who was
11 the trial judge, erred in ruling the victim's testimony that
12 Mr. Phillips had molested her previously was admissible. And
13 the Court of Appeals affirmed that in an unpublished opinion.
14 And Mr. Phillips then filed his application.

15 And it's my understanding today that he is only
16 going to move forward on the issues that are raised in his pro
17 se application.

18 THE COURT: Thank you.

19 Mr. Thompson, I'll hear from you.

20 MR. THOMPSON: Yes, sir, Your Honor, that is
21 correct. In fact, I believe I talked with Mr. Phillips about,
22 I'll let him confirm it, two of the issues he raised; counsel
23 failed to convey to the jury the fact that he had no prior
24 history of sexual misconduct and the allegation that he was
25 never brought before a judge for arraignment or plea.

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1 I told him those were non-starters from the
2 beginning. I don't believe we're going to go forward on that.
3 Is that correct, Mr. Phillips?

4 MR. PHILLIPS: Correct.

5 THE COURT: What are we going forward on?

6 MR. THOMPSON: The main thing, Judge, the minor
7 victim who was in-camera hearing where she testified. And
8 counsel cross-examined her in that hearing. Her statements
9 conflicted with each other.

10 Then when it came time to testify in front of the
11 jury, there was no cross-examination by counsel as to the
12 conflicting stories.

13 THE COURT: It's the issue he was deficient for
14 failing to cross-examine the child witness?

15 MR. THOMPSON: The child and for failing to raise
16 an issue with an adult witness.

17 THE COURT: Are you ready to proceed?

18 MR. THOMPSON: We are, Your Honor.

19 THE COURT: Call your witness.

20 MR. THOMPSON: Mr. Phillips, go right up there.

21 THE CLERK: Mr. Phillips, place your left hand on
22 the Bible and raise your right hand the best you can.

23 DOUGLAS KELLY PHILLIPS
24 being first duly sworn, testified as follows:

25 THE CLERK: Thank you. You may be seated.

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1 Please state your full name for the record.

2 MR. PHILLIPS: Douglas Kelly Phillips.

3 MR. THOMPSON: If it please The Court.

4 THE COURT: Yes.

5 DIRECT EXAMINATION

6 BY MR. THOMPSON:

7 Q. Mr. Phillips, you're incarcerated at this time, are
8 you not?

9 A. Yes, sir.

10 Q. Where at?

11 A. Tyger River Correctional Institution in Enoree,
12 South Carolina.

13 Q. How long have you been there, do you know?

14 A. Since September.

15 Q. Where were you incarcerated before that?

16 A. Broad River Correctional Institution, Columbia.

17 Q. You were convicted in 2016 on some charges; is that
18 correct?

19 A. Yes, sir.

20 Q. What were those charges?

21 A. Criminal sexual conduct with a minor, first degree
22 and second degree.

23 Q. Did you plead guilty to those charges, or did you
24 have a jury trial?

25 A. I had a jury trial.

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1 Q. Do you recall when that trial took place?

2 A. It was in July of 2016, I believe.

3 Q. And you've heard Mr. Smith give the history of the
4 appeal and all that; is that correct?

5 A. Yes, sir.

6 Q. Now, let's go back to the case itself. Did it
7 involve a minor victim?

8 A. Sir?

9 Q. Did the charges against you involve a minor victim?

10 A. Yes, sir.

11 Q. Who was that victim?

12 A. MINOR [REDACTED].

13 Q. Did you know her?

14 A. Yes, sir.

15 Q. How did you know her?

16 A. A girl I was dating, that was her daughter.

17 Q. How long had you dated the girl?

18 A. Approximately six years.

19 Q. Had you known MINOR [REDACTED] the whole time?

20 A. Yes, sir.

21 Q. Did y'all live together?

22 A. No, sir.

23 Q. Did y'all do things together?

24 A. Yes, sir.

25 Q. This will come up. Did you own some property in

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1 McCormick?

2 A. Yes, sir, I had some property leased, hunting
3 property.

4 Q. Now, how did all this come about, about you being
5 charged, do you recall?

6 A. Well, yes, sir. MINOR had made some allegations
7 against me that I had been molesting her.

8 Q. Did she make those allegations to a doctor?

9 A. Yes, sir. Yes, sir.

10 Q. Do you remember when that occurred?

11 A. I'm thinking it was July. I believe July of 2016.

12 MR. THOMPSON: If I may approach, Your Honor?

13 THE COURT: Yes, you may.

14 BY MR. THOMPSON:

15 Q. I'm going to show you page 117, line six. Does
16 that give the date of when she talked to the doctor?

17 A. Yes, sir, somewhere.

18 Q. What date is that?

19 A. July 30, 2013.

20 Q. She disclosed on July 30, 2013; right?

21 A. Yes, sir.

22 Q. Do you recall what she disclosed, what was alleged
23 she disclosed?

24 A. No, sir, not really. I don't know the whole
25 details about what -- are you talking about what she said to

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1 the doctor?

2 Q. Yes.

3 A. No, sir.

4 Q. You were present during your trial; is that
5 correct?

6 A. Yes, sir.

7 Q. Do you recall when she said the last event
8 occurred?

9 A. In July to my recollection.

10 MR. THOMPSON: May I approach again?

11 THE COURT: Yes, you may.

12 THE WITNESS: Yes, sir.

13 BY MR. THOMPSON:

14 Q. I'll show you on page 117 again, line 25.

15 A. Okay.

16 Q. Does that say it was like a week before?

17 A. Yes, sir.

18 Q. Do you know whether or not there's any -- she made
19 any allegations prior to that? Of it happening prior to that?

20 A. No, sir.

21 Q. You don't recall?

22 A. No, sir.

23 Q. Do you recall how many times she said it happened?

24 A. No, sir.

25 Q. Let me show you page 121, line five. Let's start

1 at line one. Tell me if I'm reading this correct.

2 A. Okay.

3 Q. Okay. Do you remember, again, because it was so
4 long ago, you may not be able to remember. Do you remember how
5 many times he actually inserted his penis inside you?

6 A. Uh-huh.

7 Q. Her answer was three; is that correct?

8 A. Yes, sir.

9 Q. All this happened during in-camera proper?

10 A. Right.

11 Q. Three times is what she testified to. The first
12 time being the week before she disclosed it; correct? Then did
13 she say it happened again in July?

14 A. I can't recall.

15 Q. Let me show you page 120. Starting basically,
16 starts up about line four. It goes on down through there.
17 Look at line 18.

18 A. Uh-huh.

19 Q. Does that say: Okay, it was in the month of July
20 2013?

21 A. Yes, sir.

22 Q. Do you recall when she said the first incident
23 occurred?

24 A. No, sir.

25 Q. Do you recall where she said it occurred?

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1 A. No, sir.

2 Q. Do you recall where she said all three of these
3 events occurred?

4 A. No, sir.

5 Q. Again, I'm going to show you transcript, page 125,
6 start on line 19. Am I reading this correct?

7 Do you remember where those events took place,
8 like, what house?

9 And her answer: It was at my house in my room.

10 A. That's correct.

11 Q. Did she at some point in time also say one of those
12 events took place in McCormick?

13 A. Yes, sir.

14 Q. You said you had some property in McCormick; right?

15 A. Yes, sir.

16 Q. Did y'all go to McCormick on a regular basis?

17 A. I went down there, you know, to deer hunt and fish.
18 I had a place on the lake down there so, you know, probably
19 once a month. I kept grass cut and kept the place up.

20 Q. Did your girlfriend go with you?

21 A. Yes, sir.

22 Q. Did **Minor** go with you?

23 A. Yes, sir.

24 Q. In the in-camera hearing, your attorney
25 cross-examined **Minor**; is that correct?

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1 A. Yes, sir.

2 Q. Do you recall where she said the three incidents
3 occurred?

4 A. No, sir, I don't recall.

5 MR. THOMPSON: May I approach again?

6 THE COURT: Yes, you may.

7 BY MR. THOMPSON:

8 Q. I'll show you page 128. Start line 14. This is
9 her testimony. **Minor's** testimony; right?

10 A. Uh-huh.

11 Q. These three times were when? That was the
12 question.

13 A. Uh-huh.

14 Q. Her answer: When we were in McCormick.

15 A. Okay.

16 Q. Is that different than what she testified to in
17 direct?

18 A. Yes, sir.

19 Q. Also, did she say when it happened in McCormick?

20 A. She said in August. First, if I'm not mistaken,
21 she said in July. Then she changed from July 2013 to August of
22 2013.

23 Q. Let's go back and cover something. She reported to
24 a doctor on July 30, 2013; correct?

25 A. Yes, sir.

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1 Q. She indicated the incidents occurred -- the last
2 incident occurred a week before that. And then there was
3 another one occurred in July; right?

4 A. (Witness moves head up and down).

5 Q. When asked about McCormick when it happened, I'm
6 going to show you page 131, line 15: Okay. So what year would
7 it have been? That was the question.

8 A. Uh-huh.

9 Q. Answer: Like in August.

10 A. Yes, sir.

11 Q. What year?

12 What year? 2013.

13 So in 2013, you in August 2013, is when you're
14 alleging in McCormick it happened?

15 A. Uh-huh.

16 Q. Where were you starting August 5th or August 6,
17 2013?

18 A. I was incarcerated at Pickens County Law
19 Enforcement Center.

20 Q. You had been arrested on these charges; correct?

21 A. Yes, sir.

22 Q. Nothing could've happened in McCormick in August?

23 A. In July, no, or August.

24 Q. You weren't in McCormick at all in July?

25 A. No, sir.

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1 Q. I'm also going to -- her testimony was, especially
2 cross, was all over the place, was it not?

3 A. Yes, sir.

4 Q. How old was she?

5 A. Thirteen.

6 Q. Thirteen at the time?

7 A. Yes, sir.

8 Q. I'm going to show you page 133, line one or
9 starting with line one. Questioning her. What happened when
10 you were seven?

11 He touched me inappropriately.

12 That would've been what year?

13 Like, it was 2013.

14 Was she seven in 2013?

15 A. No, sir, her birthday -- she was born in 2000. She
16 would've been 13 at the time.

17 Q. Did she have some problems, mental problems or
18 anything like that?

19 A. Not, nothing, mental problems, no, sir, not that I
20 knew of.

21 Q. She was living in a home for troubled youths; is
22 that correct?

23 A. To my understanding, you know, after the Department
24 of Social Services, you know, took the children from their
25 mother, they placed them in foster homes and she couldn't --

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1 they couldn't control her. So they put her in some kind of
2 lock-down place or something where they kept them because she
3 was uncontrollable. That's my understanding.

4 MR. SMITH: Objection; foundation.

5 THE COURT: I sustain the objection.

6 BY MR. THOMPSON:

7 Q. Your attorney tried to have her testimony excluded,
8 did she not?

9 A. I guess.

10 Q. Let me approach again.

11 A. I ain't sure.

12 Q. On page 134, I'm going to start down at the bottom.
13 Your attorney said, when I asked her -- this is with Ms. Aaron
14 in the court: When I asked her first time you touched her
15 improperly, she said July 2013.

16 The Court said: That goes to her credibility; is
17 that correct?

18 A. Yes, sir.

19 Q. Your attorney from that was -- scratch that.

20 When **Minor** testified in front of the jury in the
21 trial, did any of all this date confusion and all come out or
22 was it just straight?

23 A. No, sir. Nobody -- no questions were asked about
24 it.

25 Q. When the State's Attorney questioned her,

1 prosecutor, she didn't give any of these answers, did she?

2 A. I assume. I can't remember. I assume she did.

3 Q. Did your attorney cross-examine her?

4 A. No, sir.

5 Q. Did your attorney ask any questions of her?

6 A. No, sir.

7 Q. None of this discrepancy was brought out in front
8 of the jury?

9 A. It was never disputed at all.

10 Q. In front of the jury?

11 A. Yes, sir.

12 Q. The little girl's mother testified, too; right?

13 A. Yes, sir.

14 Q. Had the girl's mother given -- let's back up.

15 When you first got arrested, did you have an
16 attorney?

17 A. Not when I first got arrested, no, sir.

18 Q. Did you hire somebody?

19 A. Yes, sir.

20 Q. Who did you hire?

21 A. Richard Warder.

22 Q. When you hired Mr. Warder, was he given -- was
23 somebody in your family given a piece of paper from the girl's
24 mother making a statement?

25 A. The mother gave a statement to Mr. Warder's

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1 paralegal.

2 Q. A written statement?

3 A. Yes, sir.

4 Q. You did not continue with Mr. Warder, did you?

5 A. No, sir.

6 Q. You had Ms. Aaron?

7 A. Yes, sir.

8 Q. Do you know whether or not that statement was
9 transferred to Ms. Aaron?

10 A. Yes, sir.

11 Q. Ms. Aaron had it?

12 A. Yes, sir.

13 Q. Did you ever see the statement?

14 A. Yes, sir.

15 Q. Was the statement of the girl's mother in support
16 of you?

17 A. Yes, sir.

18 Q. When the girl's mother testified in the trial, did
19 your attorney present that statement?

20 A. No, sir.

21 Q. Do you believe that, if your attorney had
22 cross-examined **Minor** and her mother, that there may have been
23 reasonable doubt raised in your case?

24 A. Yes, sir.

25 MR. SMITH: Objection; speculation.

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1 THE COURT: I'm sorry?

2 MR. SMITH: I'm objecting to speculation.

3 THE COURT: I'll overrule the objection.

4 MR. THOMPSON: If I may have a moment, Your Honor.
5 I may be close to finished.

6 (A pause transpired.)

7 MR. THOMPSON: I have no further questions. Answer
8 any questions of Mr. Smith.

9 THE COURT: Thank you. Mr. Smith.

10 MR. SMITH: No questions. Thank you.

11 THE COURT: Thank you. You can step down,
12 Mr. Phillips.

13 (The witness exited the stand.)

14 THE COURT: Mr. Thompson, call your next witness.

15 MR. THOMPSON: That would be the applicant's
16 showing, Your Honor.

17 THE COURT: Mr. Smith, I have Ms. Aaron that
18 appears in my virtual courtroom. And appears Mr. Warder is in
19 the courtroom. Court is ready for you to call your first
20 witness.

21 MR. SMITH: I'm going to pull her up on my laptop
22 and happy to let Mr. Thompson look on.

23 THE COURT: Ms. Aaron, this is Judge Hall. Can you
24 hear me?

25 MS. AARON: Yes, sir.

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1 THE COURT: You need to start your video so that we
2 can see you. There we go.

3 Mr. Smith, the Attorney General, is not on yet. He
4 is getting on. If you'll just be patient a little bit.

5 MS. AARON: No problem.

6 (A pause transpired.)

7 THE COURT: Mr. Smith, if you'll unmute.

8 MR. SMITH: Testing.

9 THE COURT: There we go. Mr. Smith, if you'll mute
10 while I'm talking. I think that will cut that noise.

11 Mr. Smith -- I'm sorry. Ms. Aaron, if you'll raise
12 your right hand.

13 CHERYL L. AARON
14 being first duly sworn through video conference, testified as
15 follows:

16 THE COURT: Answer any questions Mr. Smith may
17 have.

18 DIRECT EXAMINATION

19 BY MR. SMITH:

20 Q. Good morning. Can you hear me?

21 A. Yes. Can you hear me? Am I loud?

22 Q. Yes, we can. Loud and clear. Can you tell me
23 about when were you admitted to practice law in South Carolina?

24 A. 1983.

25 THE COURT: Hold on just a minute. Lora, can you

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1 hear her.

2 THE COURT REPORTER: Yes.

3 MR. SMITH: I can probably put the microphone
4 closer.

5 THE COURT: What I was doing yesterday, I was
6 muting and unmuting myself when people spoke. That was pretty
7 awkward. Make sure she can hear. If you need to move the
8 microphone, that would be good.

9 BY MR. SMITH:

10 Q. Ms. Aaron, can you give me a summary of your legal
11 experience.

12 A. I have divided my 39 years between prosecution and
13 the criminal defense, large portion; some civil, some real
14 estate.

15 Q. How did you come to be involved in Mr. Phillip's
16 case?

17 THE COURT: Something happened. We're not hearing
18 her.

19 MR. THOMPSON: I assumed she disappeared.

20 MR. SMITH: I think my Internet connection is gone.
21 I'll try again.

22 THE COURT: Ms. Aaron, this is Judge Hall. Can you
23 hear me?

24 THE WITNESS: Yes, sir, I never went out of audio.

25 THE COURT: I think Mr. Smith is having difficulty

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1 with his computer. She's saying it's audio. She's not having
2 a problem hearing. We couldn't hear you, Ms. Aaron. I think
3 that was the problem.

4 MR. SMITH: I think I'm back.

5 BY MR. SMITH:

6 Q. Can you tell me, did Mr. Phillips originally retain
7 you when you was first returning?

8 A. It's my understanding that Richard Warder was his
9 first attorney. At some point he retained Paul Aaron, who is
10 my husband. We practiced law, not at the same firm. We would
11 associate each other. He primarily did family court and some
12 criminal defense. I did primarily criminal defense.

13 Mr. Aaron was retained and associated me to assist
14 with the case.

15 Q. Did you discuss that association with Mr. Phillips?

16 A. Yes, actually. As it turned out when he came in
17 for one of his conferences, he brought his ex-wife, who was
18 actually a victim in one of my prosecution cases. And so we
19 had known each other and had discussed that, that connection as
20 well. He knew that.

21 Q. Did you get a copy of Mr. Warder's file for
22 Mr. Phillips?

23 A. I'm not sure exactly what I got from him that
24 originated in Mr. Warder's office. I did get a folder of
25 original calendars, notes, letters. And then I obviously

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1 requested discovery and got the State's file. I wouldn't be
2 able to differentiate which came from Mr. Warder's office and
3 which came later.

4 Q. You know that you did get some things from
5 Mr. Warder; is that right?

6 A. I did. Yes.

7 Q. Did you review those things?

8 A. Yes.

9 Q. Can you tell me the facts of this case as best you
10 remember them.

11 A. What stands out to me is what is unfortunately, I
12 guess, a typical case in this situation with a latent report or
13 allegations that were in the past. As I recall, child lived
14 with Kelly and his girlfriend, who was the child's mother.

15 The child at one point was sexually active with an
16 individual. She was caught with that person. She was examined
17 by a physician. She was sent to the police station and
18 mentioned Kelly Phillips' name. And there were no --
19 obviously, had been in the past; there was no forensic
20 evidence.

21 The victim was all over the map. Her mother was in
22 jail. It was just a case where the victim was going to
23 testify. And other than the State's attempt to bolster her
24 testimony through a therapist or forensic examiner, there
25 wasn't going to be a lot of meat.

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1 We felt like with the identification of the other
2 perpetrator and the thin line that was drawn between this
3 victim and Mr. Phillips, that was the substance of the defense.

4 Q. Did you discuss all of that with Mr. Phillips
5 before trial?

6 A. Absolutely. There was a plea offer on the table.
7 I can't recall if it was offered to Mr. Warder or not. It was
8 offered to me at some point, and we talked seriously about that
9 and the danger of a child victim testimony and the jury for
10 some reason wanting to believe them. We struggled with that
11 offer. I know Kelly struggled with the offer at one point or
12 maybe I think twice. He indicated that he wanted to accept it.
13 We scheduled a plea and then it just ate at him, and he
14 couldn't do it.

15 Q. Have you been able to review the trial transcript?

16 A. Yes.

17 Q. And do you also -- sounds like you have an
18 independent recollection of this case, too; is that right?

19 A. I have some independent recollection. You never
20 like to lose. Things in the cases kind of stick with you in
21 the years. I did review my trial notes as well.

22 Q. Can you tell me why you cross-examined the minor
23 victim in the proffer before trial but not during -- not when
24 she testified during the State's case in chief?

25 A. It's my recollection that both the victim and the

1 victim's mom were wild card witnesses. You just were never
2 sure of what they were going to say. The State could lead them
3 all over and make them say things, and then you could
4 cross-examine them and they would say something different.

5 The victim used -- the victim used words that I
6 would not attribute to someone her age such as vaginal
7 penetration and inserted his penis and those kind of things.
8 One of our strategies in cross was to see how we could do with
9 the coaching aspect.

10 She was not, in my mind, a good witness in front of
11 the jury for Kelly because she was all over the place. And I
12 had no idea what she would say or if in the testimony in front
13 of the jury she would make it worse.

14 Q. Okay. Is that the opinion you formed after hearing
15 her testimony during the pretrial proffer?

16 A. Yes. I did some things in the cross that I thought
17 would give me an indication how successful we would be. I did
18 not believe we were successful in cross.

19 Q. Did you also have some understanding of things she
20 had said in the past through reviewing discovery?

21 A. Yes. She had -- I don't think she even mentioned
22 Kelly's name first. I think she mentioned someone else when
23 talking to the police. And the revelation with regard to
24 Kelly, the allegation, never came out until after she was
25 confronted with another sexual relationship with a third party.

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1 We discussed that a lot.

2 He did not have any confidence in her ability to
3 tell what he considered to be the truth. And it was
4 demonstrated in much that she didn't say.

5 Q. You touched on this to an extent. I want to make
6 it explicit. Tell me why you did not cross-examine the
7 victim's mother when she testified during the State's case in
8 chief.

9 A. She's one of the people I remember vividly. She
10 was in an orange jumpsuit, she had handcuffs on, sitting in the
11 witness chair, kind of on the edge. Her head was down, her
12 wrists were between her knees. And she was -- the transcript
13 can't reveal her tone but she was very combative. And, again,
14 a complete wild card.

15 She had made a statement. She had a written
16 statement that she had made in Mr. Warder's office recanting.
17 There wasn't any pinning her down on anything positive with
18 regard to the recanting. And her testimony would be necessary
19 in order to get it in.

20 There was no way she was going to back that up. I
21 was afraid of what she would say. Not that it had any merit,
22 but I was just afraid of what she would say.

23 Q. Did you discuss the recanting statement with
24 Mr. Phillips?

25 A. Yes. He thought it was the winner. He thought,

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1 get this in there. And I think Kelly had faith that these
2 people would tell what he believed to be the truth. They both
3 sadly disappointed him.

4 Q. Did you not see any potential benefit in
5 questioning the victim's mother about the statement, the
6 recanting statement?

7 A. No. I think that was fraught with problems.

8 Q. Can you sort of lay out for me what you thought the
9 problems might be.

10 A. I mean, I think lawyers have a general bad rap
11 anyway of trying to make people say what we want them to say.
12 I mean, had I been on the prosecution side I would've argued,
13 had she wanted to recant, she would've gone to the police. And
14 I just didn't think that was valuable to discuss in front of
15 the jury.

16 Q. And you testified that she was in a jumpsuit. Do
17 you know why she was in a jumpsuit?

18 A. She was in jail. She was also charged with some
19 form of neglect for the child because there was an allegation
20 that they had -- the mother and Kelly had relations in front of
21 the child. I don't know if it was that charge or something
22 else. She was in jail.

23 Q. Can you tell me about Mr. Phillips' statement as it
24 came in through the law enforcement officer's testimony.

25 A. What about it?

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1 Q. What was your recollection of that statement?

2 A. I have my notes from the Jackson v. Denno hearing.
3 I don't have a specific recollection about the statement.

4 MR. SMITH: One moment, please.

5 Your Honor, may I ask Mr. Thompson just to clarify
6 if I've addressed all the issues raised?

7 MR. THOMPSON: Yes.

8 MR. SMITH: Thank you. No more questions.

9 THE COURT: Ms. Aaron, if you'll answer any
10 questions that Mr. Thompson may have for you.

11 MR. THOMPSON: I'm going to slide over so she can
12 see me. Hi, Ms. Aaron.

13 MS. AARON: Hello.

14 CROSS-EXAMINATION

15 BY MR. THOMPSON:

16 Q. How are you doing?

17 A. Good. How are you?

18 Q. Pretty good.

19 **Minor**, the minor victim, she was a State's
20 witness; is that correct?

21 A. She was.

22 Q. And she was testifying against Mr. Phillips?

23 A. She was.

24 Q. There was an in-camera hearing, a proffer of her
25 testimony; correct?

1 A. Yes.

2 Q. Do you recall when she indicated that something had
3 occurred when she disclosed to the doctor?

4 A. I don't remember the specific dates, no. I do
5 remember that the dates were definitely a moving target.

6 Q. If I said July 30th of 2013 and that's what the
7 transcript says, would you deny that?

8 A. Oh, I would agree that's what she said, yes.

9 Q. Would you agree in the testimony, when asked when
10 the closest event penile penetration occurred prior to July 30,
11 she testified it was the week before?

12 A. Yes, she did testify to that.

13 Q. And then the Solicitor questioned her about the
14 time before that. And she said it was earlier in July. Do you
15 agree with that?

16 A. I would agree with whatever the transcript says.

17 Q. There was one thing she said had occurred three
18 times. One of them occurred in McCormick, do you recall that?

19 A. I do recall a big discussion about McCormick, yes.

20 Q. In the transcript when the prosecutor asked her
21 where all this occurred at, page 125 around line 19, she
22 indicated it occurred at her house. Do you remember that?

23 A. I do.

24 Q. McCormick was not at her house; is that correct?

25 A. That's correct.

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1 Q. You cross-examined her in the proffer hearing?

2 A. I did.

3 Q. When asked -- I'm at page 128 around line 14 --

4 when asked where it occurred, she responded to you the

5 incidents all occurred at McCormick; is that correct?

6 A. Right.

7 Q. Then later she changed and said that one occurred

8 at her house in July 2013?

9 A. Right.

10 Q. She also had a problem with how old she was and

11 when her birthday was, did she not?

12 A. She did. Her own birthday.

13 Q. And she was -- and how old she was. At one point

14 she was seven in 2013.

15 A. Uh-huh.

16 Q. Do you recall how old she would've been?

17 A. No. I can't.

18 Q. If I say she was born in 2000 --

19 A. That would help.

20 Q. At one point during her cross-examination, your

21 cross-examination, you asked her when the incident at McCormick

22 happened. And her response was August of 2013; is that

23 correct?

24 A. It was.

25 Q. Mr. Phillips was actually arrested August 5, 2013,

1 was he not?

2 A. He was.

3 Q. You raised the issue of trying to keep her
4 testimony out. And you raised the issue from Judge Russo that
5 she was all over the place and not a reliable witness; is that
6 correct?

7 A. That is correct.

8 Q. He allowed it in saying it dealt with her
9 credibility?

10 A. Yes, sir.

11 Q. All of this was out of the presence of the jury?

12 A. It was.

13 Q. In the course of the trial when she testified in
14 front of the jury -- I'm going to point it out, I know
15 Mr. Smith probably objected to it -- she told the jury that she
16 lived in a behavioral management house; right?

17 A. I don't remember exactly what she told them but she
18 wasn't at home.

19 Q. I'm on page 160, starting line 21, about line four
20 of 161.

21 A. If that's what it said, then that's what she said.

22 Q. When she testified in front of the jury, her
23 testimony was fairly consistent with what she told the
24 Solicitor in the proffered hearing; is that correct?

25 A. Yes.

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1 Q. They didn't have the inconsistencies that came up
2 during your cross; is that correct?

3 A. No.

4 Q. Why did you not -- did you question her at all in
5 front of the jury?

6 A. I did not.

7 Q. Why did you not question her in front of the jury
8 and bring up all these inconsistencies?

9 A. The only thing that I found that she was consistent
10 about was that she had sex with Kelly Phillips. Her
11 inconsistencies were dates. How old she was. At one point she
12 was 9. She was 7. She was 11.

13 A 13-year-old, especially with what I observed
14 about her, and it's hard to tell in the transcript, if you had
15 asked her a question about a banana, she probably would've said
16 yes. I mean, she was all over the place. And, again, the only
17 thing consistent is that she had sex with him multiple times.
18 She could've been as young as nine.

19 In my estimation, the fact that she was
20 inconsistent about the dates -- had she been 35, that's another
21 issue. She was a young teenager. I did not feel the risk of
22 emphasizing the activity that was charged was worth questioning
23 her about her inconsistencies and dates and places.

24 And there was no mention of McCormick in the
25 State's case, obviously. The jury, it had been suggested to

1 them this occurred in other places. I did not feel that was
2 beneficial.

3 Q. If she testified uncontested, the jury had nothing
4 else to go on but her testimony; correct?

5 A. Her testimony was not consistent with other
6 allegations that was -- she had this third person out there.
7 This third person that she had sex with.

8 I elected from a strategic standpoint to emphasize
9 all of that at closing because, if the State brings a case to a
10 jury, I would think the jury wants more than one person young
11 testifying. They want some kind of corroboration. That's
12 where we felt like the strength was.

13 And it wasn't going to be in allowing her another
14 20 or 30 minutes to emphasize the relationship and try and
15 upset this woman in front of this jury because she couldn't get
16 the date right.

17 Q. You tried to keep her testimony out saying it was
18 all over the place?

19 A. Right.

20 Q. The judge ruled it was admissible, and it was an
21 issue of credibility.

22 A. That's correct.

23 Q. If her testimony was an issue of credibility,
24 couldn't you attack the credibility with all of the
25 inconsistencies in her cross during the proffer?

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

1 A. I certainly could have. And I did in the cross. I
2 tried some things in the cross to see how it was going to go.
3 I did not feel like that was going to play well with the jury.

4 If anything, it was going to re-emphasize the
5 relationship and make them feel sorry for her because that
6 woman was picking on her because a 13-year-old could not
7 remember a date. In my estimation, it was not worth the risk.

8 Q. More than just a date, wasn't it? It was also
9 locations?

10 A. Correct.

11 Q. And McCormick is nowhere close to Easley, is it?

12 A. No, but that throws in another allegation. And it
13 also throws her down under 11.

14 MR. THOMPSON: I don't believe I have any further
15 questions. Thanks, Ms. Aaron.

16 THE COURT: Any redirect, Mr. Smith?

17 MR. SMITH: Yes, Your Honor.

18 REDIRECT-EXAMINATION

19 BY MR. SMITH:

20 Q. Ms. Aaron, do you take any -- what considerations
21 do you -- what things do you take into consideration when you
22 are dealing with a witness who may be a low-functioning person?

23 A. What do you mean?

24 Q. I don't know if you recall, at one point the
25 Solicitor referred to the victim, I think he said she has a

1 low-functioning IQ. Do you recall that?

2 A. I don't recall that specifically. I do recall that
3 I probably wouldn't have doubted that.

4 Q. Do you think it would've helped -- well, I believe
5 you said this. Were you weary of having the jury hearing
6 testimony that the victim was actually even younger when the
7 sexual activity occurred?

8 A. Oh, very much so, especially if it came out of her
9 mouth. If it came out of her mouth, I thought Kelly was going
10 to be at some point responsible for it and that was not a good
11 thing in my estimation.

12 MR. SMITH: No more questions.

13 MR. THOMPSON: Nothing.

14 THE COURT: Thank you. Thank you, Ms. Aaron.
15 You're excused.

16 (The Webex was ended.)

17 THE COURT: That's all the Webex testimony we have;
18 is that right, Mr. Smith?

19 MR. SMITH: That's correct, Your Honor. State
20 rests.

21 THE COURT: Anything further from the Applicant?

22 MR. THOMPSON: No, sir.

23 THE COURT: Thank you. I'll take it under
24 advisement. I'll issue my ruling within 10 days.

25 (The hearing was concluded at 10:26 a.m.)

DOUGLAS PHILLIPS v. STATE OF SOUTH CAROLINA

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CERTIFICATE OF REPORTER

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I, Lora McDaniel, Registered Professional Reporter
and Notary Public for the State of South Carolina at Large, do
hereby certify that the foregoing transcript is a true,
accurate, and complete record.

8

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10

I further certify that I am neither related to, nor
counsel for, any party to the cause pending or interested in
the events thereof.

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Witness my hand, I have hereunto affixed my official
seal this 11th day of July, 2023 at Spartanburg, Spartanburg
County, South Carolina.

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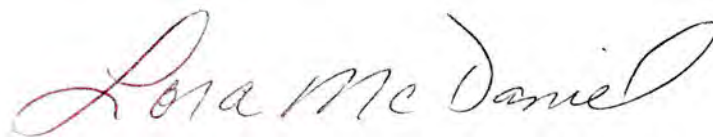
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Lora L. McDaniel,
Registered Professional Reporter
My Commission expires:
August 9, 2026

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	Clerk of Court-Pickens County, SC APR 14 '25 AM 9:14
COUNTY OF PICKENS	)	FOR THIRTEENTH JUDICIAL CIRCUIT	
	)		
Douglas Kelly Phillips, #369118	)	Case No: 2019-CP-39-0828	
	)		
Applicant,	)		
v.	)	ORDER OF DISMISSAL	
	)	(with prejudice)	
State of South Carolina,	)		
Respondent.	)		

This matter comes before the Court by way of an application for post-conviction relief filed by Douglas Kelly Phillips (Applicant) on June 25, 2019. An evidentiary hearing was held on March 9, 2023, at the Greenville County Courthouse with the Honorable Daniel D. Hall presiding. Applicant was present with his counsel Don A. Thompson Esq. Assistant Attorney General Taylor Smith of the South Carolina Attorney General's Office represented the State. This Court received testimony from Applicant and Cheryl Aaron, Esq. At the conclusion of the hearing, this Court took the matter under advisement. On March 21, 2023, this Court ruled that post-conviction relief must be denied and directed counsel for Respondent to submit a proposed order.

The Court now issues this order with its findings of facts and conclusions of law as required under S.C. Code Ann. § 17-27-80. Based upon the record of the case, the evidence presented at the evidentiary hearing held in this matter, the argument of the parties, and consideration of the applicable statutory and case law, this court finds that the applicant has failed to establish any deficient performance on the part of counsel and/or any prejudice resulting from counsel's performance required under *Strickland v. Washington*, 466 U.S. 668 (1984) and *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989), or any other cognizable claim allowed under S.C. Code Ann. § 17-27-20. Consequently, Applicant's request for post-conviction relief should be and is

DENIED and the application is **DISMISSED** with prejudice.

GENERAL PROCEDURAL HISTORY

Applicant is presently incarcerated according to orders of commitment of the Pickens County Clerk of Court. During its February of 2014 term, the Pickens County Grand Jury indicted Applicant for 3rd degree criminal sexual conduct with a minor (2013-GS-39-2329) and two counts of 2nd degree criminal sexual conduct with a minor (2013-GS-39-2328; -2327).

On July 25-26, 2016, Applicant's case was called to trial with the Honorable Thomas A. Russo, presiding. Applicant was represented by Cheryl Aaron, Esq., (Trial Counsel) and Assistant Solicitor Christopher Jones of the 13th Circuit Solicitor's Office prosecuted the case. The jury found Applicant guilty as indicted, and Judge Russo sentenced Applicant to imprisonment to fifteen (15) years for 3rd degree criminal sexual conduct with a minor and to twenty (20) years for each count of 2nd degree criminal sexual conduct with a minor, to be served concurrently and with credit for time served. Judge Russo also ordered that Applicant was to be placed in sex-offender treatment, if available, by the Department of Corrections, and ordered that he register as a sex offender.

Direct Appeal

Applicant, through counsel, filed a notice of appeal. Chief Appellate Defender Robert M. Dudek perfected Applicant's appeal, and Assistant Attorney General Frederick Schumacher, IV, represented Respondent. On appeal, Applicant argued the trial court erred in ruling that the victim's testimony that Applicant had molested her on previous occasions was admissible. The Court of Appeals affirmed in an unpublished opinion. *State v. Phillips*, Op. No. 2019-UP-016 (S.C. Ct. App. filed January 9, 2019) (per curiam). The Remittitur was issued on January 25, 2019.

CURRENT ALLEGATIONS

In his *pro se* application filed on June 25, 2019, Applicant alleges trial counsel was ineffective in the following ways:

1. Counsel failed to cross-examine the victim;
2. Counsel failed to cross-examine the victim in an in-camera proffer;
3. Counsel failed to cross-examine the victim's mother;
4. Counsel failed to introduce an affidavit of the victim's mother that the investigating detective had coerced her;
5. Counsel failed to cross-examine an expert witness;
6. Counsel failed to question the investigating detective;
7. Counsel advised Applicant not to testify at trial;
8. Counsel failed "to convey to the jury the fact that [Applicant] [had] no prior history of sexual misconduct of any kind."

Applicant additionally alleges that he was denied due process as follows:

1. "I was never brought before a judge for arraignment or plea. If a hearing was held, I was not informed about it. I'm sure if a hearing was held it was recorded by the court reporter via transcripts or something. The only time I was in a courtroom or spoke to a judge about the charges against me was 3 yrs. After my arrest when I was to stand trial for these charges on July 25, 2016. I was denied 'Due Process.'"

Applicant prays that the PCR court would vacate his conviction and remand his case for a new trial.

At the beginning of the evidentiary hearing, PCR counsel clarified that Applicant was abandoning the allegation that Counsel failed "to convey to the jury the fact that [Applicant] [had] no prior history of sexual misconduct of any kind," and the due process allegation that he was never brought before a judge for arraignment or plea. (PCR Tr. 4). PCR Counsel clarified that the main allegation that Applicant was proceeding on was "the minor victim who was in-camera

hearing where she testified. And counsel cross-examined her in that hearing. Her statements conflicted with each other. Then when it came time to testify in front of the jury, there was no cross-examination by counsel as to the conflicting stories” as well as that counsel did not raise issue with an adult witness, *i.e.* the victim’s mother. (PCR Tr. 5). In regard to the allegations that trial counsel failed to cross-examine an expert witness, failed to question the investigating detective, and advised Applicant not to testify at trial, this Court considers these allegations to be abandoned as no evidence or testimony was presented for this Court to consider.

STANDARD OF REVIEW: INEFFECTIVE ASSISTANCE CLAIMS

This Court is guided by the familiar test: To show a violation of the Sixth Amendment, an applicant must show that counsel’s representation fell below an objective standard of reasonableness, and but for counsel’s error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). “A reasonable probability is a probability sufficient to undermine confidence in the outcome” of the trial. *Strickland*, at 694. It is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, at 689. It is the applicant’s burden to prove, by a preponderance of the evidence, that he is entitled to relief. Rule 71.1 (e), SCRPC. *See also Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) (“the burden of proof is on the applicant to prove the allegations in his application”).

To conduct a fair review of counsel’s performance, a reviewing court must “eliminate the distorting effects of hindsight” and attempt “to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” *Strickland*, 466 U.S. at 689. Further, it is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, at 689. It is the applicant’s burden to prove, by a preponderance

of the evidence, that he is entitled to relief. Rule 71.1 (e), SCRCP. *See also Speaks*, 377 S.C. at 399, 660 S.E.2d at 514 (“the burden of proof is on the applicant to prove the allegations in his application”).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court denies relief on the merits after considering the pleadings, the trial transcript as well as additional attachments, testimony at the PCR hearing, and the arguments of counsel. Specifically, at the evidentiary hearing, this Court had the opportunity to observe the witnesses, consider their demeanor, listen to their testimony, and judge their credibility accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. §17-27-80 (2003).

INEFFECTIVE ASSISTANCE OF COUNSEL ALLEGATIONS

Failure to Cross-Examine Victim at Trial

Applicant alleges that counsel was ineffective for failing to cross-examine the victim during trial. This Court finds that Applicant has failed to establish counsel acted deficiently by foregoing cross-examination of the victim, and failed to show that there exists a reasonable probability the outcome of trial would have been different had trial counsel done so. *See Strickland, supra*.

Pre-trial and Trial Testimony of the Victim

Prior to trial, the State notified the Court of its intent to introduce evidence in accordance with *Lyle*,¹ that in the victim’s disclosure to law enforcement and in preparation for trial, the victim indicated that the abuse began when she was six or seven years old which was when her mother began dating Applicant. (Trial Tr. 38). At that time, the abuse was described as “touching, some

¹ *State v. Lyle*, 125 S.C. 406, 118 S.E. 803 (1923).

oral sex and then culminated in the month of July 2013 with several actual sexual intercourse acts[.]” (Trial Tr. 38-39). The State indicated that its intent would be to have the Victim testify as to that history of abuse. (Trial Tr. 39).

Trial counsel objected to the victim testifying as to any prior abuse because the common scheme exception dictates that the alleged behavior must constitute the same type of behavior as the underlying charge its admitted to prove. (Trial Tr. 39-40). Trial counsel argued that the alleged prior abuse is not the same type for which the Applicant is charged. (Trial Tr. 40). She argues that Applicant is charged with CSC 3rd degree and an escalation of behavior over time is not a required element of that charge rendering the victim’s testimony of any prior sexual relations with the Applicant improper. (Trial Tr. 40-42). The Court delayed ruling on the State’s motion until subsequent the victim’s proffered testimony.

Upon proffered direct examination, the victim testified that her birthday was [REDACTED] 2000. (Trial Tr. 115). She met Applicant when he and her mother began dating when she was six or seven years old. (Trial Tr. 122). When asked what she told her pediatrician, Dr. Carla Richards, she responded that she told the doctor she was being abused by Applicant. (Trial Tr. 117). She confirmed that her mother was never in the room when Applicant sexually abused her. (Trial Tr. 118).

When asked about the incident in her bedroom, she testified that she was in her bedroom watching a movie, and Applicant came into her room and locked the door. (Trial Tr. 118). A while later, her mother knocked on the door, Applicant let her in, and her mother and Applicant had sex in front of her in her room. (Trial Tr. 118). The victim testified that when Applicant had initially come into her room and locked the door, he was “touching my breasts and like my vaginal area,” but her mother did not see. (Trial Tr. 119). She testified that prior to her mother entering her

bedroom, Applicant told her that her mother was aware that Applicant was “messaging with me and having sex with me, she knew about it.” (Trial Tr. 120). When she tried to leave the room while her mother and Applicant were having sex, Applicant grabbed her to prevent her from leaving. (Trial Tr. 125). She noted the incident was similar to an earlier occasion when Applicant and her mother had sex in front of her and her brother in a motel room. (Trial Tr. 127).

The victim testified that Applicant actually inserted his penis inside of her three times prior to July of 2013. (Trial Tr. 121). She testified that Applicant started touching her inappropriately when he started dating her mother. (Trial Tr. 123). She testified that she told her mother about the abuse but she “didn’t really say anything.” (Trial Tr. 124). She testified that Applicant inserted his penis inside her in July of 2013 and that the abuse occurred at her house in her room. (Trial Tr. 125). She testified to an incident in McCormick which Applicant asked the victim to “suck his penis,” while he touched her breasts and vagina. (Trial Tr. 124-125).

On cross-examination, trial counsel questioned the victim on her vocabulary as related to “vaginal area” and if she was told to use that word. (Trial Tr. 127). When asked to describe sex, the victim stated, “like when he inserts his penis in my vaginal area.” (Trial Tr. 128). Trial counsel asked her when the assaults occurred, and she responded that one of the three instances of intercourse occurred in McCormick when she was nine years old, in Applicant’s camper. (Trial Tr. 128-129). People in the area, but not in the camper, included her mother, her brother, and Applicant’s ex-wife, Denise. (Trial Tr. 129). The other two instances of intercourse occurred at her home and Applicant’s home. (Trial tr. 130). The victim recalled that she had intercourse with Applicant in her home in July of 2013, but could not recall when she had intercourse with Applicant at his home until counsel suggested that it occurred in July of 2013. (Trial Tr. 130).

Trial counsel further questioned the victim about the McCormick incident, asking her why she thought she was nine when it occurred, triggering the following exchange:

Trial Counsel: Okay. Now when you talk about McCormick, you said you thought you were nine?

Victim: Yes, ma'am.

Trial Counsel: Why does that stick out in your mind?

Victim: Like why was I nine?

Trial Counsel: Why does that stick out in your mind that you were nine if you went there many times? [cleaned up]

Victim: I mean, because we went down there a lot, but like I know I was nine.

Trial Counsel: How do you know you were nine?

Victim: Because that's my age. I know my age.

Trial Counsel: So what month would that have been? [cleaned up]

Victim: Like -it was like we went down there for the 4th of July.

Trial Counsel: So this would have been July of 2009?

Victim: No.

Trial Counsel: When would that have been?

Victim: I was nine years old.

Trial Counsel: Okay. But when –

Victim: I wasn't saying 2009. I was nine years old.

Trial Counsel: Okay, so what year would it have been?

Victim: Like - in like August.

Trial Counsel: What year?

Victim: What year? 2013.

Trial Counsel: So in 2013, you- in August of 2013 is when you're alleging this McCormick Happened?

Victim: Yes, ma'am.

Trial Counsel: Okay. And you say that you met [Applicant] six or seven years ago?

Victim: Yes, ma'am.

Trial Counsel: So that would have been 2010, ---

Victim: Yes, ma'am.

Trial Counsel: --- 2009? So you're talking about six or seven years from now?

Victim: Yes, ma'am.

Trial Counsel: The solicitor asked you before, I guess, of 2013 ---

Victim: Yes, ma'am.

Trial Counsel: --- if [Applicant] had ever touched- well, he says touched you inappropriately. So you said breasts and vaginal area?

Victim: Yes, ma'am.

Trial Counsel: And when did you say that that happened?

Victim: It was in July.

Trial Counsel: In July of 2013?

Victim: Yes, ma'am.

Trial Counsel: Okay. So you met him in 2010 and he touched your vaginal area and your breasts in 2013?

Victim: Yes.

Trial Counsel: Okay. Anytime before then?

Victim: Yes.

Trial Counsel: All right. When before then?

Victim: Like when I was young, I was like seven. Well, I was seven.

Trial Counsel: How do you remember you were seven?

Victim: Because I remember my age?

Trial Counsel: And what happened when you were seven?

Victim: He touched me inappropriately.

Trial Counsel: And that would have been what year?

Victim: Like it was in 2013.

Trial Counsel: It was in 2013- -

Victim: Yes.

Trial Counsel: - was the first time he touched you inappropriately?

Victim: Yes.

(Trial Tr. 130-133).

After hearing further argument, the Court found the victim's testimony regarding the prior alleged abuse admissible. The Court observed the record showed the abuse began when the victim was six or seven years old, approximately the time Applicant and Peggy began dating. Recognizing the confusion in the victim's testimony, the Court noted trial counsel could argue any credibility issues on cross-examination. (Trial Tr. 135-136).

At trial before the jury, the victim testified regarding the bedroom incident similarly to her testimony upon proffer. *See* Trial Tr. 162-163. When asked about the incident that happened a few weeks prior, the victim testified that Applicant had come into her room and had sex with her and told her not to tell anybody. (Trial Tr. 163-164).

After providing the victim with the statement she made to Detective Hamby, the victim testified that she met Applicant when she was seven, which was about the time her mother began dating him. (Trial Tr. 165). She testified that she had sex with Applicant three times, that she could not remember when, but they were close in time to when she saw her pediatrician. (Trial Tr. 165). When asked if there were any other times when Applicant sexually abused her, she responded in the negative. (Trial Tr. 165-166). When asked if anything other than sex happened between her and Applicant, she responded only that he touched her. (Trial Tr. 166). When asked how long Applicant was touching her, she confirmed that it was seven years. (Trial Tr. 166).

She then testified to the McCormick incident in which Applicant asked her to “suck his private area” and touched her inappropriately. (Trial Tr. 166-167). Additionally, she recalled the incident in a motel when Applicant and her mother had sexual intercourse while she and her brother were in the room. (Trial Tr. 169). The solicitor then asked if the victim had a difficult time remembering specific dates due to the abuse occurring over a long period of time, which she responded that she did. (Trial Tr. 170). After an off-the-record bench conference, trial counsel forewent her cross-examination of the victim. (Trial Tr. 170).

PCR Testimony

Applicant's testimony mostly consists of information that is in the record. Applicant testified that his conviction involved a minor victim who was the daughter of Peggy Robinson, who he was dating at the time the allegations were made. (PCR Tr. 7). He testified that he dated Peggy for approximately six years, he knew the minor victim the entire time he was dating her mother, and that he did not live with Peggy. (PCR Tr. 7). He testified that he had previously leased hunting property in McCormick, South Carolina. (PCR Tr. 7-8). Applicant recalled that the victim had made allegations against him that he was molesting her however Applicant could not recall

when the allegations were made. (PCR Tr. 8). After reviewing the record, Applicant testified that the victim had made allegations to a doctor on July 30, 2013. (PCR Tr. 8). Applicant testified that he was incarcerated at Pickens County Law Enforcement Center in August of 2013 and that he wasn't in McCormick in July of 2013, so nothing could have happened with the victim in McCormick in that time frame. (PCR Tr. 13-14). Applicant testified that the victim would have been thirteen years old in 2013, though the victim testified that she was seven years old in 2013. (PCR Tr. 14). Applicant testified that trial counsel did not cross-examine the victim and that the victim's discrepancies were not disputed in front of the jury. (PCR Tr. 16).

Trial counsel testified that Applicant's case consisted of a latent report of sexual abuse allegations of Applicant, who was dating the victim's mother at the time. (PCR Tr. 22). She testified that the victim was caught being sexually active with an individual and when she was sent to the police station, she mentioned Applicant's name. (PCR Tr. 22). She testified that the victim was "all over the map," her mother was in jail, and other than the State's attempt to bolster the victim's testimony through a therapist or forensic examiners, there "wasn't going to be a lot of meat." (PCR Tr. 22). She testified that the substance of the defense was the identification of the other perpetrator, who was also charged in relation to sexual activity with the victim.

As to the allegation that trial counsel was ineffective for not cross-examining the victim in front of the jury, trial counsel testified that both the victim and her mother were "wild card witnesses." (PCR Tr. 23-24). She testified that she never knew what either were going to say and that they could say certain things on direct but something different on cross-examination. (PCR Tr. 24). After hearing the victim's testimony during the proffer, trial counsel testified that she did not believe the victim was a good witness for Applicant because she was all over the place, and trial counsel had no indication of what she would say or if she would say something worse in front

of the jury. (PCR Tr. 24). She testified that the victim used words such as “vaginal penetration” and “inserted his penis” which she didn’t believed to be attributable vocabulary to someone of the victim’s age. She added that one of her strategies on cross during the proffer was to see how the coached aspect of the victim’s testimony could be dealt with in front of a jury. (PCR Tr. 24). Trial counsel testified that she discussed the situation with Applicant thoroughly and Applicant did not have any confidence in the victim’s ability to tell what he considered to be the truth. (PCR Tr. 25).

Trial counsel testified that the only thing she found to be consistent with the victim’s testimony was that she had sex with Applicant, and that her inconsistencies were dates and how old she was. (PCR Tr. 31). She added that the victim was a young teenager at the time of trial and that she did not feel the risk of emphasizing the activity that was charged was worth questioning her about her inconsistencies of dates and places. (PCR Tr. 31). Further, trial counsel added that there was no mention of the abuse occurring in McCormick in the State’s presentation of the case and trial counsel did not see the benefit in risking that the jury heard another potential location was where prior abuse occurred. (PCR Tr. 31-32). She testified that she wanted to be able to address the lack of corroboration and inconsistencies in closing, and that she felt like the strength of their case was the absence of corroboration. (PCR Tr. 32). She testified that she did not think that her cross-examination was going to play well with the jury and if anything, it was going to re-emphasize the relationship and make the jury feel sorry for the victim because she was being picked on for not remembering a date. (PCR Tr. 33).

Findings

The record supports that upon pretrial matters, trial counsel challenged the State’s intent to question the victim in regard to other instances of sexual abuse by Applicant, which predated the charges Applicant was facing at trial. Trial counsel conducted a cross-examination of the victim’s

proffered testimony and subsequently, in response to the State's motion to admit the testimony, trial counsel argued that the victim's testimony indicated that the first instance of abuse took place in 2013 which did not support a history of abuse. Trial counsel added that the victim testified she was seven years old in 2013 when Applicant first started abusing her, which trial counsel emphasized that the victim had "twisted up" the dates and ages of when the abuse allegedly occurred.

This Court credits trial counsel's testimony that she was weary of the details the victim would testify to, considering her proffered testimony was inconsistent as to the dates, locations and her own age of when the abuse occurred. Not only was the victim testifying as to the incidents which Applicant was charged, but the victim was permitted to testify to previous incidents which led up to the incidents for which Applicant was on trial.

Additionally, Applicant did not present testimony that indicated he asked trial counsel to cross-examine the victim after he had discussed with trial counsel that it was not in his best interest to do so. Further, Applicant presented no information that trial counsel should have used to effectively cross exam the victim. The victim disclosed the abuse to her pediatrician on July 30, 2013, and the victim alleged that numerous incidents occurred in that same month, which is not an impossibility. Applicant's PCR testimony that the abuse could not have happened in July of 2013 because he was not in McCormick, offers no weight considering the solicitor established that the victim had trouble remembering specific dates, and the State did not allege that the charged incidents occurred in McCormick.

Strickland requires that "every effort be made to eliminate the distorting effects of hindsight" and that counsel's decisions be evaluated at the time they were made. 466 U.S. at 689, 104 S.Ct. 2052. "[W]hen counsel articulates a valid reason for employing a certain strategy, such

conduct generally will not be deemed ineffective assistance of counsel. The validity of counsel's strategy is viewed under an 'objective standard of reasonableness.'" *Lounds v. State*, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008).

Instead of highlighting the discrepancies of the victim's testimony on cross-examination, trial counsel addressed the victim's credibility in her closing argument. In closing, trial counsel emphasized that three people were arrested after the victim disclosed abuse allegations to the doctor and subsequently to the police. Those three people are the victim's mother, Peggy Robinson, Applicant and a third individual arrested for criminal sexual conduct, 2nd degree, with the victim.

Trial counsel noted Dr. Beals' testimony that the victim's characteristics she observed are conducive with a child who has been abused sexually but called into question if these characteristics of abuse were at Applicant's hands or from the other individual charged for abusing the victim. (Trial Tr. 259). She adds that no physical evidence has been presented, and the only indication that the abuse occurred was through the victim's statement that she had sex with Applicant. (PCR Tr. 261).

Trial counsel underscores that every time the victim was asked a question regarding the abuse, the victim was unable to answer the question without reading her statement she wrote on July 30, 2013, in which she reports that Applicant "inserted his private part into her vaginal area." (Trial Tr. 260, 262). She submits that the statement was made to avoid potential consequences, whether that be for Peggy or the victim herself. (Trial Tr. 263). Trial counsel points out the inconsistency between the report, which the victim indicates that she was "rubbing on" Applicant, and the victim's trial testimony that she was "rubbing his private parts." (Trial Tr. 264).

Upon review of the discrepancies trial counsel identifies in her closing, the record supports trial counsel's PCR testimony that the defense strategy was to place doubt as to whether Applicant

or the other unidentified charged individual abused the victim, thereby providing an explanation as to the victim's behavior being consistent with a child who has been sexually abused and reason as to why there appears to be discrepancies in the victim's description of events. Because trial counsel described that the victim's testimony was difficult to predict and coupled with the fact that she is a thirteen-year-old attempting to recall allegedly years' worth of abuse, it is reasonable for counsel to highlight the inconsistencies in closing rather than attempting to use them for impeachment purposes. Moreover, given that this was a sexual abuse case involving a young teenager with the abuse potentially occurring as early as seven years old, it may have been prudent for counsel to forgo cross examination of the victim to avoid the exposure of unnecessarily prejudicial information, as well as to avoid picking apart the victim's testimony based on discrepancies of dates, locations and ages.

The solicitor acknowledged that the victim had trouble remembering dates and details, and had trial counsel further questioned the victim in regard to those details, it is unlikely that the determination of guilt would have been affected.

Failure to Cross-Examine Peggy Robinson (Victim's Mother)

Applicant alleges that trial counsel was ineffective for failing to cross-examine the victim's mother, Peggy Robinson. This Court finds that Applicant has failed to establish counsel acted deficiently by foregoing cross-examination of Peggy Robinson and failed to show that there exists a reasonable probability the outcome of trial would have been different had trial counsel questioned Peggy in regard to her recantation. *See Strickland, supra.*

Trial Testimony of Peggy Robinson

At trial, after initially being uncooperative in answering the solicitor's questions, the solicitor requested that Peggy be treated as a hostile witness. (Trial Tr. 171-173). The Court granted

as such. (Trial Tr. 174). Peggy confirmed that in her statement to Detective Hamby that she stated she had found Applicant and the victim in the victim's room watching a movie, joined them in the bedroom, and then had sex with Applicant while the victim watched. (Trial Tr. 174). Peggy confirmed that in her statement, she stated that she had a conversation with Applicant about "being truthful," and during that conversation Applicant told her that on July 4, 2012, Applicant had let the victim "play with his dick," followed by both of them performing oral sex on each other. (Trial Tr. 174-175).

After Peggy's arrest while she was in jail, she called her mother and her nephew answered the phone. She confirmed that her nephew asked her why she didn't tell anyone about the abuse, and she told him that she didn't want to get Applicant in trouble, and that he is her world. (Trial Tr. 175-176). She confirmed that she told her nephew about the incident in the victim's bedroom as well as the incident on July 4, 2012. (Trial Tr. 176). She confirmed that she commented to her nephew, "what am I supposed to do tell them it didn't happen?" (Trial Tr. 176).

Peggy also confirmed that she spoke with Denise, Applicant's ex-wife, while she was in jail and told her that she didn't want Applicant to get in trouble. (Trial Tr. 181). She confirmed that she told Denise about the incident in the victim's bedroom as well as the July 4, 2012, incident. (Trial Tr. 182). She confirmed that she told Denise that when she took the victim to the pediatrician, she didn't know the victim was going to tell the pediatrician about the incidents. (Trial Tr. 183).

PCR Testimony

In regard to the allegation involving the failure to cross-examine Peggy Robinson, Applicant testified that he initially hired Richard Warder, Esq., to represent him. (PCR Tr. 16). He testified that Peggy gave a statement to Mr. Warder's paralegal in support of Applicant. (PCR Tr.

16-17). Applicant testified that he knew trial counsel had the statement and that he believes if she had cross-examined Peggy that reasonable doubt could have been raised. (PCR Tr. 17-18).

Trial counsel testified that Peggy was combative and “a complete wildcard.” (PCR Tr. 25). Trial counsel testified that Peggy had a written statement recanting her statement she had made to Detective Hamby. (PCR Tr. 25). She testified that there was no way that Peggy could back up her statement and that she was afraid of what Peggy would say, regardless of whether it had any merit. (PCR Tr. 25). She testified that Applicant believed the recantation to “be a winner” and that she thought that Applicant believed that these people would tell what he believed to be the truth, but they disappointed him. (PCR Tr. 25-26). Trial counsel testified that she believed the recantation was “fraught with problems” and that she anticipated that the prosecution would have argued that had she wanted to recant, Peggy would have gone to the police. Trial counsel testified that she didn’t think that was valuable to discuss in front of the jury. (PCR Tr. 26).

Findings

This Court finds that counsel was not deficient in forgoing a cross examination of Peggy Robinson. Again, great deference is given to counsel’s performance, and counsel’s decisions are evaluated at the time they were made. *Strickland, supra*. Even if trial counsel had questioned Peggy regarding her recantation, the State presented evidence which called into question Peggy’s credibility and her motivations for recanting. Under the circumstances, trial counsel’s decision to not question her on the recantation due to her objective unreliability was a reasonable strategy.

Further, Peggy was incarcerated at the time of Applicant’s trial and confirmed that she pled guilty to two counts of unlawful neglect of a child which stemmed from the incident in the victim’s bedroom where she had sex with Applicant while the victim was present. (Trial Tr. 183). It is a reasonable concern that further testimony from Peggy could damage Applicant’s defense

considering she admitted guilt in a separate incident – one of a sexual nature involving the same victim – of which Applicant was not on trial.

Even so, Applicant has not presented Peggy Robinson as a witness, nor has he identified the information that Peggy recanted. *See Bannister v. State*, 333 S.C. 298, 509 S.E.2d 807 (1998) (finding that our Supreme Court “has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness’ failure to testify at trial.”); *Edwards v. State*, 392 S.C. 449, 710 S.E.2d 60 (2011) (“where evidence produced during PCR proceedings is cumulative to or does not otherwise aid evidence introduced at trial, no prejudice results from counsel’s failure to bring it forward.”)

To establish that Applicant was prejudiced due to trial counsel’s alleged deficiency, Applicant must show that “the factfinder would have had a reasonable doubt respecting guilt.” *Strickland*, 466 U.S. at 695, 104 S.Ct. 2052. On direct, the State had established that Peggy regretted incriminating Applicant and indicated that Peggy considered saying that “it didn’t happen.” If the jury had heard that Peggy had recanted her statement to Detective Hamby accusing Applicant of abusing the victim, the State – on redirect – undoubtedly would have called into question her motivation for making that statement and why she made it to Applicant’s former attorney rather than to the police.

While, if found to be credible, Peggy’s recantation certainly would diminish the evidence against Applicant, the benefit of questioning Peggy about the recantation must be evaluated against the legitimate concerns regarding her credibility and the unpredictability of her testimony. *See Edwards v. State*, 392 S.C. 449, 710 S.E.2d 60 (2011). It is unlikely that if trial counsel cross-examined Peggy in regard to her recantation, that the jury would have given it any credence

considering the testimony the State elicited on direct examination, and the incriminating statements Applicant made to the police.

Applicant is unable to meet his *Strickland* burden, and this Court finds that trial counsel was not deficient in her decision to forgo cross-examinations of the victim and her mother. Further, Applicant has not shown that there is a reasonable probability that had trial counsel cross examined the victim and her mother, that the jury would have reasonable doubt respecting guilt. *Strickland, supra.*

CONCLUSION

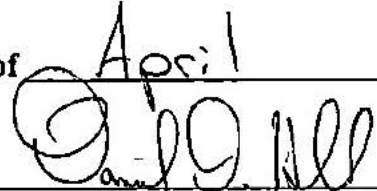
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations during his trial. Therefore, this PCR application must be **DENIED** and **DISMISSED** with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. Respondent's motion to dismiss is granted and Applicant's application is dismissed with prejudice; and
2. Applicant is remanded to the custody of Respondent for completion of his sentence.

AND IT IS SO ORDERED this 4th day of April, 2025.


THE HONORABLE DANIEL D. HALL
Presiding Judge

York, South Carolina