

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Alex Kinlaw, Circuit Court Judge

RECEIVED

Oct 17 2025

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

KEREEN DONYELL LEE,

APPELLANT

APPELLATE CASE NO. 2024-000745

RECORD ON APPEAL

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(USB-DETECTIVE PARIS DEFENDANT INTERVIEW), COURT’S EXHIBIT #2 (USB-
UNREDACTED INTERVIEW OF VICTIM AND DEFENDANT), AND COURT’S
EXHIBIT #3 (USB-REDACTED INTERVIEW OF VICTIM)**

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	2023-GS-23-03221
COUNTY OF GREENVILLE)	
)	
)	
)	
STATE OF SOUTH CAROLINA,)	
PLAINTIFF,)	
)	
vs.	)	TRANSCRIPT OF RECORD
)	
KEREEN DONYELL LEE,)	
DEFENDANT.)	
_____)	

April 22, 23 and 24, 2024
Greenville, South Carolina

B E F O R E:

THE HONORABLE ALEX KINLAW, JR., JUDGE, and a
jury.

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

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CHERYL A. SMITH
Circuit Court Reporter

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVD</u>
(State's Exhibits)			
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P R O C E E D I N G S

Monday, April 22, 2024

(WHEREUPON, proceedings commenced at 2:16 PM.)

THE COURT: All right. Let's go on the record in State vs. Kereen D. Lee. Let the record reflect the defendant is present along with counsel. Solicitor's office is also present with counsel.

What we had discussed earlier was picking a jury and starting this in the morning. Is that pretty much where we are? And then maybe use the excess time to go over some pretrial matters this afternoon?

MR. JOHNSON: Yes, Your Honor.

MR. GAMBRELL: That's correct.

THE COURT: Right. I think that's what it was.

Okay. All right. I've got the defendant's list and I've got the -- does the State have a witness list?

MR. JOHNSON: Yes, Your Honor. It's in the yellow folder.

THE COURT: Oh, fancy.

Okay. All right. And y'all premarked any exhibits or are you just going to do it when you ---

MR. JOHNSON: Yes, Your Honor. We're intending to do that tomorrow morning. Or we can do it this afternoon. Whatever is best for Cheryl.

THE COURT: All right. And let's see. The voir dire

1 here at 9:30.

2 Enjoy the evening. And I'm going to let you go right
3 now and we'll swear you in the morning. All right.

4 (WHEREUPON, the jury exits the courtroom at 3:59 PM.)

5 THE COURT: Okay. We're still on the record. I
6 don't think -- I think we know we've got a Jackson v.
7 Denno that we've got to deal with. I think y'all
8 mentioned that. You don't need Dr. Hall for the Jackson
9 v. Denno motion, or do you?

10 MR. GAMBRELL: Yes, Your Honor. She would testify.

11 THE COURT: On that motion?

12 MR. GAMBRELL: Yes, sir.

13 THE COURT: And what time is she going to be
14 available?

15 MR. GAMBRELL: She says 11 o'clock.

16 THE COURT: Okay. She can't do any earlier than
17 that?

18 MR. GAMBRELL: She said she had an evaluation she was
19 starting at 9 o'clock.

20 MR. JOHNSON: Your Honor, the State intends to call
21 the victim and the victim's mother first. I'm sorry.
22 Third and fourth witnesses would be who we introduce the
23 defendant's statement in through. So we can take it up
24 halfway through the witnesses, Your Honor, if that's to be
25 more amenable.

1 THE COURT: So in other words, somewhere between your
2 witnesses you call, we can squeeze that in?

3 MR. JOHNSON: Yes, Your Honor. We'd be fine with
4 that.

5 THE COURT: All right. And then the Court could make
6 a ruling regarding the voluntariness of the statement at
7 that time?

8 MR. GAMBRELL: Yes, sir.

9 THE COURT: Is that okay with -- I mean, we just -- I
10 guess we've got to figure it out and do it that way if
11 we're trying to accommodate some schedules.

12 MR. GAMBRELL: Right. Depending on if the Court --
13 how the Court rules on that issue, if the Court is
14 inclined to allow the statements in, there's some issues
15 with the statements themselves that I have.

16 THE COURT: I guess we'll cross that bridge when we
17 get to it.

18 MR. GAMBRELL: Yes, sir.

19 THE COURT: Because I don't know what they are.
20 We'll just have to -- but as far as in the morning, we've
21 got -- we're going to do opening statements and then you
22 can go directly into witnesses for the State, do you
23 think?

24 MR. JOHNSON: Yes, Your Honor.

25 THE COURT: Okay. And by that time, between the

1 breaks and the testimony, we should be close to
2 11 o'clock. We just need to set it up in the virtual
3 courtroom, right?

4 MR. GAMBRELL: Yes, sir. I informed her that she
5 would get a link. I have her email address, and I can
6 provide that to whomever.

7 THE COURT: To the virtual courtroom?

8 MR. GAMBRELL: Yes. I can just give her instructions
9 to log into that.

10 THE COURT: All right. Will she be logging into
11 WebEx from her ---

12 MS. MARCELLO: Yes, sir.

13 THE COURT: Just like she would ---

14 MS. MARCELLO: Into your virtual courtroom.

15 THE COURT: Do you have it?

16 MR. GAMBRELL: I usually access it through the
17 judicial web site.

18 THE COURT: All right. You're going to give it to
19 her?

20 MR. GAMBRELL: Yes, sir.

21 THE COURT: Okay. That's fine.

22 MR. JOHNSON: And, Your Honor, just to clarify if I
23 may. I believe the doctor from DDSN is coming just to
24 speak on behalf of the Jackson v. Denno.

25 In regards to competency, when this was on the trial

1 docket last year, Your Honor, it was continued for him to
2 be able to be evaluated for competency. He was evaluated.
3 He came back competent. He was deemed competent. We've
4 taken care of all that. But I just want to be clear that
5 the doctor is only for the Jackson v. Denno.

6 MR. GAMBRELL: Correct.

7 MR. JOHNSON: Okay.

8 THE COURT: Has the written report been made a part
9 of the record?

10 MR. JOHNSON: It has -- or it's been filed, Your
11 Honor. I have a copy if you'd like to make it a court's
12 exhibit.

13 THE COURT: Yeah. Let's make it a court's exhibit.

14 MR. JOHNSON: Yes, sir.

15 THE COURT: Do you have any objection to that?

16 MR. GAMBRELL: No objection.

17 THE COURT: Make it a court's exhibit.

18 MR. JOHNSON: Your Honor, the State is presenting
19 a ---

20 THE COURT: That's a copy of the evaluation?

21 MR. JOHNSON: Yes, ma'am -- yes, sir. Excuse me.
22 Court's 1.

23 THE COURT: All right.

24 (WHEREUPON, Court's Exhibit Number 1 was marked for
25 identification.)

1 MR. JOHNSON: Your Honor, the State also has a motion
2 to admit an out-of-court statement for the child, for her
3 interview since she was under 12 years old. We had that
4 motion, just our standard boilerplate motion.

5 THE COURT: Isn't that that standard boilerplate
6 motion?

7 MR. JOHNSON: Yes, sir.

8 THE COURT: You're familiar with that motion, aren't
9 you, Mr. Gambrell?

10 MR. GAMBRELL: I'm familiar with that statute, yes,
11 sir.

12 THE COURT: And there's no objection to that.

13 MR. GAMBRELL: I do have an objection.

14 THE COURT: What's your objection?

15 MR. GAMBRELL: I have several.

16 THE COURT: To that motion?

17 MR. GAMBRELL: Yes, sir.

18 THE COURT: Okay.

19 MR. GAMBRELL: Do you want to hear that now?

20 THE COURT: Do you want to do that now or tomorrow?

21 MR. JOHNSON: Yes, Your Honor. Just so we can go
22 ahead and get it taken care of.

23 THE COURT: Let's go ahead and deal with it now since
24 we've got to deal with it. Go ahead. Well, I'll tell you
25 what. Formally put the motion on the record. I know what

1 it is and you know what it is, but let's just put it on
2 the record and then we'll respond.

3 MR. JOHNSON: Your Honor, I'll call the officer to
4 get the facts of the case.

5 THE COURT: Yeah. Let's do it in a way where we can
6 sequentially do that.

7 MR. JOHNSON: The State calls Detective James Paris,
8 Fountain Inn Police Department.

9 THE COURT: Madam Clerk, do you want to swear him in?
10 WHEREUPON,

11 JAMES PARIS

12 After having been duly sworn, testified as follows:

13 THE CLERK: Thank you. You may be seated. And
14 please state your full name for the record.

15 THE WITNESS: James Myron Paris, II.

16 DIRECT EXAMINATION

17 BY MR. JOHNSON:

18 Q Detective Paris, where do you work and how long have
19 you worked there?

20 A I work at Fountain Inn Police Department. I've been
21 there since 2018. I think I just celebrated five years
22 there.

23 Q Were you in law enforcement before that?

24 A Yes, sir.

25 Q Can you tell us where?

1 A Travelers Rest Police Department. Started there in
2 2012.

3 Q What's your role at Fountain Inn?

4 A I am a police investigator, detective.

5 Q As part of that job, do you interview children as
6 witnesses and defendants of crimes?

7 A I do.

8 Q Can you tell the Court your training and your
9 experience as far as interviewing children?

10 A Yes, sir. I have specific training in child homicide
11 investigations and child abuse investigations. I've
12 worked numerous, probably over a hundred criminal sexual
13 conduct cases in my career. I've also probably worked
14 another hundred child abuse cases or so in my career. Part
15 of those investigations entail me conducting preliminary
16 and field interviews of minor children.

17 Q Ballpark, how many child interviews do you think
18 you've conducted?

19 A Hundreds.

20 Q Did you take a statement from the victim in this
21 case?

22 A I did.

23 Q How old was she at that time?

24 A She was ten years old.

25 Q When you were interviewing her, did you ask leading

1 or nonleading questions?

2 A Nonleading.

3 Q Did she give you a detailed statement of the account?

4 A She did.

5 Q Did it have internal coherence? Did it make sense?

6 A It did.

7 Q Did it match up with the evidence?

8 A It did.

9 MR. JOHNSON: All right. Your Honor, the State has
10 no further questions at this time.

11 THE COURT: Cross-examination, Mr. Gambrell?

12 MR. GAMBRELL: Thank you, Your Honor. May it please
13 the Court.

14 CROSS EXAMINATION

15 BY MR. GAMBRELL:

16 Q Investigator Paris, on this video I noted that you
17 can hear SB speak. Can you see her speak?

18 A I believe so, yes.

19 Q Because the copy that I had, you cannot see her at
20 all.

21 A Sir, without like pulling it up on the screen, I
22 mean, she was kind of sitting to my left, I believe. If I
23 recall correct, the room wasn't very well lit, but I'm
24 pretty sure you can see her.

25 Q You can see her entire person?

1 A I can't answer that intelligently, sir. I would have
2 to watch the video right now.

3 Q When is the last time you watched the video?

4 A Last week.

5 Q Okay. Do you recall if you could see her face on the
6 video?

7 A I believe so at some point. I don't know that you
8 can see it throughout the duration.

9 Q Can you see her -- at one point she gestures as to
10 how Mr. Lee was standing. Can you see her do that gesture
11 in the video?

12 A I don't believe you can see the gesture, no.

13 Q Okay. Did she give you any other statements during
14 the video that did not relate to this incident?

15 A Yes.

16 Q Okay. Are those statements contained in this video?

17 A I would have to refresh my memory on the video. I
18 believe that they are, yes.

19 Q Okay. And that was something that happened
20 previously.

21 A Correct.

22 Q Okay.

23 A Of the same nature.

24 MR. GAMBRELL: No further questions, Judge.

25 MR. JOHNSON: Briefly, Judge.

REDIRECT EXAMINATION

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BY MR. JOHNSON:

Q Was this recorded on your body-worn camera?

A Yes, sir.

Q Did you send her to the Julie Valentine Center?

A I did not.

Q Why not?

A Well, in my eight years of experience in law enforcement dealing with these cases, we try to limit the exposure to a minor child of how many times that they relive a trauma. Of course, having to recall that information and spell it out again for another interview is very traumatic. We did discuss doing the Julie Valentine.

Another point of issue was the year that this occurred. That was surrounding COVID-19 pandemic. Julie Valentine was booked out months. Based off of the facts in this case, we didn't feel -- we felt we already knew the facts from the interview. Again, I had training. My captain at the time had training specific to dealing with minor children in interviews. And we feel like we had the pertinent, relative information, and we thought it would just be absurd to send this minor to tell that story once again.

Q So is this a delayed disclosure or did you respond to

1 the scene shortly after the ---

2 A It was immediate. It was within an hour.

3 Q So the details were fresh?

4 A Yes.

5 MR. JOHNSON: All right. No further questions.

6 Thank you.

7 THE COURT: All right. Sir, you can step down.

8 What's the State's position?

9 MR. JOHNSON: Your Honor, I believe that this is an
10 admissible out-of-court statement of the juvenile child.
11 The statement meets all the criteria. It was not elicited
12 by leading questions. Detective Paris has been trained to
13 speak with juveniles. He's interviewed hundreds of them.
14 It contained a detailed account. The statement had
15 internal coherence. Furthermore, the child will be
16 testifying at trial, so she will be subject to
17 cross-examination and she was 10 years old. She was well
18 below the 10-year-old limit, Your Honor. I think, based
19 on the circumstances, this clearly falls within the
20 hearsay exception.

21 THE COURT: All right. Any argument in that regard?

22 MR. GAMBRELL: Yes, sir, Judge. If it's a video that
23 I viewed, I can't see the child in the video. Under the
24 statute under 17-23-175(2), it states that an audio and
25 visual recording of the statement has been preserved by

1 electronic means. I can't observe the child in the video.
2 And I think the statute says it's got to be audio and
3 video. And the purpose of that is, is so that you can
4 hear and see the child. The copy that I've got, you can't
5 see the child at all. So I would say with regard to that,
6 it doesn't meet what's required under the statute because
7 there's no visual representation of this child.

8 At one point she demonstrates, gives a demonstration.
9 You can't see that at all. And so ultimately, it's just
10 an audio recording of her statement, which I believe would
11 fall outside the requirements of the statute.

12 I have additional objections if you'd like to hear
13 them now.

14 THE COURT: Go ahead.

15 MR. GAMBRELL: All right. I would object on the
16 grounds that 17-23-175 violates the confrontation clause
17 of the Sixth Amendment as interpreted by Crawford v.
18 Washington under 541 U.S. 36, 2004.

19 With regard to that, you know, the requirements for
20 the admission of the statute for admissions of videotaped
21 forensic interviews are in direct conflict with provisions
22 of Crawford. Crawford interprets the confrontation clause
23 to be violated when out-of-court testimonial hearsay
24 statements of available witnesses are omitted. In this
25 case, the State admits in its motion that it expects the

1 child to testify at trial and be subject to
2 cross-examination. If the child is available to testify,
3 Crawford does not allow admission of her out-of-court
4 testimonial statements on videotape notwithstanding the
5 provisions of the statute.

6 I would also object on the ground that it violates
7 Maryland v. Craig. That's 497 U.S. 836, 1990. And under
8 that case, to be constitutional, testimony of a child
9 witness occurring outside the presence of the defendant
10 must be under oath with an opportunity for contemporaneous
11 cross-examination. And even if it is constitutional, the
12 application of 17-23-175 to admit out-of-court videotaped
13 statements should be limited to situations where the Court
14 makes a specific finding regarding the necessity of the
15 admitted evidence. And I would say that it's not
16 constitutional because it doesn't provide for an under
17 oath, contemporaneous cross-examination as required by
18 Craig.

19 MR. JOHNSON: Your Honor, in regards to the
20 constitutionality, I'll be pretty brief because the
21 Supreme Court has held it constitutional. It's not a
22 confrontation clause issue because, A, she is going to
23 testify. If she doesn't testify, there may be an issue.
24 However, she is going to testify, so therefore, the
25 confrontation clause is not involved in this because she

1 will be subject to cross-examination.

2 Furthermore, in regards to the video, when she's
3 speaking, part of the video you can't see her face. She's
4 sitting right here. The body cam is just to her right so
5 her face isn't in it. However, her face is in the body
6 cam earlier. It's very clear he's talking to her. She
7 identifies herself. He gets her information.

8 But further, Your Honor, that's not necessary for a
9 forensic interview. It's audio recorded. It's video
10 recorded. But the fact that she is not in it the entire
11 time is irrelevant. It's kind of holding this forensic
12 interview statute as if it's a DUI video from years gone
13 by. It's not because her head's clipped out of it during
14 some portions so it's not admissible at all. That goes to
15 the weight the jury wants to give it, Your Honor. But it
16 doesn't go to the admissibility of this. And that goes in
17 regards to her gestures and things like that. That's
18 argument for the jury. That's cross-examination. But
19 it's not for admissibility.

20 Your Honor, and based on the facts we elicited and
21 her age, I think this clearly falls in, Your Honor.

22 And the State also has a copy of the interview if you
23 wish to review it.

24 THE COURT: All right. Anything further,
25 Mr. Gambrell?

1 MR. GAMBRELL: Yes, Your Honor. Other than the
2 constitutional challenge, if there is additional
3 statements given that aren't about this incident, I would
4 object to them under Rule 404(b).

5 THE COURT: Are there?

6 MR. JOHNSON: Your Honor, there are in the unredacted
7 video. However, the State does not intend to get into any
8 404(b) evidence about his prior acts with family members.
9 Like I said, it's certainly there, but we do not intend to
10 present that to the jury at all.

11 MR. GAMBRELL: And, again, like I said, I think the
12 statute has -- it's not an audio or video. It's audio and
13 video. And I think the purpose of that is, is so that you
14 can see and hear the child testify. Otherwise, it could
15 be and/or. You can hear her, but you can't see her. And
16 I think the statute is clear. It's unambiguous. It has
17 to be both. I think Your Honor should review it to see if
18 it falls within the requirements of the statute.

19 THE COURT: Review the video?

20 MR. GAMBRELL: Yes, sir.

21 THE COURT: I don't have any problems doing that. Is
22 it something I can review later on?

23 MR. JOHNSON: Yes, Your Honor. It's a flash drive
24 that I was going to introduce as a court's exhibit that
25 has the unredacted interviews of both the defendant and

1 the victim.

2 THE COURT: Give it to me and I'll rule on it in the
3 morning.

4 MR. JOHNSON: Do you have any objection of making
5 this a court exhibit?

6 MR. GAMBRELL: No.

7 MR. JOHNSON: Can I go ahead and make it a court's
8 exhibit, Your Honor, so we don't have to do it tomorrow?

9 THE COURT: Right.

10 MR. JOHNSON: Your Honor, the State seeks to
11 introduce unredacted interviews of the defendant and
12 victim in this case. This will be Court's Exhibit 2.

13 THE COURT: All right. And you would have no
14 objection.

15 MR. GAMBRELL: Well, I would prefer you ---

16 THE COURT: Look at it first?

17 MR. GAMBRELL: --- view the redacted versions, the
18 ones that are going to be presented in court.

19 THE COURT: That's what's on there, right?

20 MR. JOHNSON: This is the full video, Your Honor.
21 But we have a state's exhibit that we plan to introduce at
22 trial is the redacted copy. We can ---

23 THE COURT: I'll look at whichever one you want me to
24 look at.

25 MR. GAMBRELL: Well, if you're going to rule on the

1 video that's going to be presented at trial, I would
2 prefer you view that video.

3 MR. JOHNSON: Your Honor, would it be an issue if we
4 use the same flash drive for court's exhibit and state's
5 exhibit? Will that cause an issue?

6 THE COURT: I don't have a problem with it.

7 MR. JOHNSON: The State seeks to introduce Court's
8 Exhibit 3, which is an interview of the victim of
9 Detective Paris's body cam.

10 THE COURT: And that's redacted?

11 MR. JOHNSON: This is the redacted version, Your
12 Honor. So you will have the unredacted video and the
13 redacted video.

14 THE COURT: All right. I'll look at them later on
15 this evening and I'll make a ruling tomorrow morning on
16 that issue.

17 MR. GAMBRELL: Yes, sir.

18 And, Judge, just one thing that came to mind after we
19 had discussed the housekeeping matter of the procedure
20 tomorrow. I think it does make a difference with regard
21 to opening statements whether or not his statements are
22 coming in. Because that's part of the evidence that
23 potentially we would or wouldn't talk about in our opening
24 statements.

25 THE COURT: You're talking about doing the Jackson v.

1 Denno ahead of time?

2 MR. GAMBRELL: Right. I mean, I think that makes a
3 difference on how the presentment of the case is even in
4 opening statements would be to the jury.

5 THE COURT: I mean, we can have a Jackson v. Denno
6 hearing before we move forward with the opening statements
7 if that's what you're asking.

8 MR. GAMBRELL: I would prefer that because then I
9 would know what's exactly going to be admissible.

10 THE COURT: And I would assume that a Jackson v.
11 Denno hearing would take less than 30 minutes? Or you
12 don't know.

13 MR. JOHNSON: The issue, Your Honor, is the witness
14 that he's going to call gets here at 11. Our witnesses
15 are ready, however, if it caused delay.

16 MR. GAMBRELL: We could start the Jackson v. Denno
17 hearing and then get to her at 11.

18 THE COURT: You want to do that? The record is going
19 to be choppy.

20 MR. GAMBRELL: I mean, we can start tomorrow morning
21 with the Denno hearing. And I may even call Mr. Lee as
22 part of that hearing as well.

23 THE COURT: But you're going to still need her?

24 MR. GAMBRELL: I would need her to establish his
25 intellectual disability.

1 THE COURT: So you're saying start the Jackson v.
2 Denno, stop it, wait till she gets here, then that? Why
3 would you want a choppy record like that?

4 MR. GAMBRELL: Well, we were going to start this
5 afternoon.

6 THE COURT: And I'm trying to accommodate your
7 witness. But, you know, ideally, I'd like that witness to
8 be here at 9 o'clock in the morning and we can do the
9 Jackson v. Denno. But, you know, you're saying she can't
10 do anything until 11 o'clock.

11 MR. JOHNSON: Your Honor, excuse me. I've spoken
12 with Mr. McCollum who's going to do the opening statement.
13 And we are fine not referencing any of his statements in
14 our opening. Just for the sake of court time, we'll just
15 do a brief opening just to leave open the possibility.

16 THE COURT: All right. So they're not going to make
17 any reference to the statements in their opening. Does
18 that make it a little better for you?

19 MR. GAMBRELL: I can work around that. Yes, sir.

20 THE COURT: You're going to have to work with that.
21 But we're trying to accommodate you, Mr. Gambrell, but,
22 you know, it's going to be tough.

23 MR. GAMBRELL: I understand.

24 THE COURT: I'd say we're doing the best we can.

25 MR. GAMBRELL: Yes, sir.

1 THE COURT: So you can work with that. So that
2 works?

3 MR. JOHNSON: Yes, Your Honor.

4 THE COURT: All right. And then we won't do the
5 Jackson v. Denno until she's able to be present. And
6 she's going to be present by way of WebEx at 11 o'clock.

7 MR. GAMBRELL: Yes, sir.

8 THE COURT: Okay. We'll do it that way. I don't
9 think it works logistically a good -- doesn't present a
10 transcript I would want to read where we start the Jackson
11 v. Denno, stopping it, and then coming back to it, you
12 know. I think from an appellate standpoint, I wouldn't
13 want to read a transcript like that. I think I'd like the
14 flow -- I'm just a concrete, sequential kind of guy. It
15 has to be concrete and sequential.

16 So we'll start, no reference to the statements, and
17 then when your witness gets here at 11 o'clock, we'll
18 bring her in via WebEx. And we'll have cross-examination,
19 the whole nine yards.

20 Have we got anything other than Jackson v. Denno and
21 my ruling on that particular motion? And I will look at
22 that. Anything else other than those?

23 MR. GAMBRELL: Depending on the ruling on the Jackson
24 v. Denno, yes.

25 THE COURT: You may have some others. You said that

1 earlier.

2 Any motions from the State?

3 MR. JOHNSON: No, Your Honor. None that I can think
4 of.

5 THE COURT: Okay. All right. I will be -- I'm
6 making a promise to this. It will take me a lot to keep.
7 It's going to take every ounce of my bone to keep this
8 promise. You know what I'm getting ready to say, too.
9 We're starting at 9:30. I'm going to be here at -- I'll
10 be here -- I'm going to be here at 9:15. How about that?
11 It works? I'm walking in at 9:15. I'll do my best.

12 (WHEREUPON, proceedings recessed at 4:23 PM; Court's
13 Exhibits 2 and 3 were marked for identification.)

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1 Tuesday, April 23, 2024

2 (WHEREUPON, proceedings reconvened at 9:48 AM.)

3 THE COURT: Okay. All right. Let's go back on the
4 record. This is in State vs. Kereen, and Kereen,
5 K-E-R-E-E-N, Donyell Lee.

6 And I think when we left off on yesterday, we just
7 had some jury selection and we'll swear the jury in in
8 just a little bit. And I think there was some discussion
9 regarding -- between the lawyers regarding the hearsay
10 statement. And I had the opportunity to look at and
11 review both things, the redacted version as well as the
12 full version. And based upon that review, I'm inclined to
13 grant the motion the State made as it relates to that.

14 We also had some discussion regarding the Jackson v.
15 Denno hearing. And I think, let the record reflect, that
16 counsel and the Court talked this morning in chambers,
17 and, of course, I'll let you, Mr. Gambrell, put on the
18 record the path in which everyone has agreed to follow.
19 So I'll let you do that.

20 MR. GAMBRELL: Thank you, Your Honor. May it please
21 the Court. We had intended to call Dr. Alicia Hall for
22 the purposes of this hearing in order to elicit testimony
23 from her regarding a portion of her report that she did
24 for Mr. Lee's competency evaluation we did back in July, I
25 believe, of last year. And we asked -- I was concerned

1 because the procedures that the Court was going to take
2 was to start the trial with openings and potentially
3 testimony and then go into the Denno hearing, which would
4 determine what evidence specifically regarding Mr. Lee's
5 statements would be admissible. And my concern was,
6 without knowing if those statements were going to be
7 admissible, I did not feel comfortable, you know, opening
8 and discussing the evidence without knowing what all the
9 evidence was going to be before the jury.

10 So we spoke with Your Honor and I spoke with the
11 solicitor's office. And Your Honor's agreed to take
12 judicial notice of the portion of her report that deals
13 with his intellectual disability and his IQ. Because
14 that's essentially what she was going to testify to. I
15 was not going to get into any other findings or
16 conclusions that she made under the competency evaluation
17 because I believe that's a different standard. I was
18 simply going to ask her questions with regard to his
19 disability. And Your Honor has agreed to take judicial
20 notice of that. So we were going to withdraw her as a
21 witness for that hearing, and therefore, we can do the
22 Jackson v. Denno hearing first and then proceed with the
23 opening of the case.

24 THE COURT: All right. Very well. And I think
25 that's the State's understanding as well, I think, based

1 on our discussion in chambers; is that correct?

2 MR. JOHNSON: Yes, Your Honor.

3 THE COURT: All right. And I'll take judicial
4 notice.

5 And I think that report from Dr. Hall was previously
6 marked as a court's exhibit.

7 MR. JOHNSON: It's Court's 1, Your Honor.

8 THE COURT: Court's 1.

9 MR. JOHNSON: Yes, sir.

10 THE COURT: All right. So let's go ahead. And are
11 you ready to proceed?

12 MR. GAMBRELL: Yes.

13 THE COURT: Go ahead.

14 MR. JOHNSON: Your Honor, the State would call
15 officer Jake Chupp.

16 THE COURT: All right.

17 WHEREUPON,

18 JAKE CHUPP

19 After having been duly sworn, testified as follows:

20 THE CLERK: Thank you. You may be seated. And
21 please state your full name for the record.

22 THE WITNESS: Jake O'Neill Chupp.

23 DIRECT EXAMINATION

24 BY MR. JOHNSON:

25 Q Officer Chupp, can you briefly give the judge a brief

1 background of your law enforcement experience?

2 A Yes. I'm currently employed with the South
3 Charleston Police Department in West Virginia. Prior to
4 that, I worked with the Fountain Inn Police Department
5 from April 21, 2014, through December 12th of 2023.

6 During my time with the Fountain Inn Police
7 Department, I worked in the Uniform Patrol Division for
8 six years. Three of those years I was a supervisor on the
9 road. And in 2017 I was moved over to the Investigations
10 Division.

11 Q All right. In regards to this case, did you have an
12 opportunity to speak with Mr. Lee?

13 A Yes.

14 Q Can you briefly explain what led up to that and the
15 interaction?

16 A Yes. So we were dispatched to [REDACTED] -- I'm sorry --
17 [REDACTED], which is in the city limits of Fountain
18 Inn, County of Greenville, for a possible criminal sexual
19 conduct case.

20 Q Did you see Mr. Lee when you arrived on scene?

21 A Yes.

22 Q What did you do then?

23 A Mr. Lee was towards the front of the yard towards the
24 road. He was smoking what I believed to be a cigarillo.
25 I asked him if he was Mr. Lee. He said yes. And at that

1 point I detained him.

2 Q Okay. And you put him in cuffs, put him in your
3 patrol car?

4 A Correct.

5 Q Was he under arrest?

6 A No.

7 Q Just detained?

8 A Correct.

9 Q All right. Did he appear to be under the influence
10 of alcohol or any drugs?

11 A No, sir.

12 Q Did he appear that he was understanding when you were
13 speaking with him?

14 A Yes.

15 Q Did you read him Miranda?

16 A I did.

17 Q Did you read that from memory or from a card?

18 A I read from a card.

19 Q I'm going to show you what's been introduced as
20 Court's Exhibit -- Court's Exhibit 2. It includes your
21 body cam, correct?

22 A Correct.

23 MR. JOHNSON: Your Honor, if I may publish the brief
24 clip of the Miranda.

25 THE COURT: Any objection?

1 MR. GAMBRELL: No objection.

2 THE COURT: All right.

3 (WHEREUPON, a portion of Court's Exhibit 2, a video, was
4 played in open court.)

5 BY MR. JOHNSON:

6 Q And this is your body cam right here?

7 A That's correct.

8 (WHEREUPON, a portion of State's Exhibit Number 2, a
9 video, continued to play in open court.)

10 BY MR. JOHNSON:

11 Q So that was the Miranda we were just speaking about?

12 A Correct.

13 Q So the first time you mirandized him he said he
14 didn't understood [sic]; is that correct?

15 A That's correct.

16 Q And then you went line through line?

17 A Correct.

18 Q And at the end of each line, did he indicate that he
19 understood or didn't understand?

20 A He did.

21 Q And when you asked him if he wanted to speak, what
22 did he say?

23 A I asked him if he wanted to speak with myself or an
24 investigator, and he said, "I want to speak with you."

25 Q Okay. Did he seem that he understood?

1 A Yes.

2 Q After that, did he explain what happened?

3 A Correct. He did.

4 MR. JOHNSON: Thank you. I don't have any further
5 questions for you at this time.

6 THE COURT: Cross-examination, Mr. Gambrell?

7 MR. GAMBRELL: Thank you, Your Honor. May it please
8 the Court.

9 CROSS EXAMINATION

10 BY MR. GAMBRELL:

11 Q Officer Chupp, when you detained Mr. Lee, there's no
12 doubt that he was in custody at that time.

13 A He was not under arrest, but he was detained, yes.

14 Q Okay. And he was in your custody.

15 A Correct.

16 Q And he was not free to leave at that point.

17 A That's correct.

18 Q Okay. So you read him his rights. The first time
19 you read them straight through, asked him if he
20 understood, he said "no."

21 A Correct.

22 Q Okay. And so the second time, did you explain to him
23 what it meant to have the right to remain silent?

24 A I did not because he indicated that he understood
25 what it meant.

1 Q But just previously he told you that he didn't
2 understand.

3 A That's correct.

4 Q And so you read the exact same words to him again and
5 he said that he did ---

6 A Correct.

7 Q --- understand.

8 But you didn't explain anything about what that means
9 to have the right to remain silent.

10 A No. Because he indicated that he understood what
11 that meant.

12 Q You thought that rereading the words was enough of an
13 explanation that he would now understand.

14 A Correct.

15 Q Okay. And you didn't read or explain to him what it
16 meant that anything that he said could be used against
17 him. You didn't explain what that meant to him.

18 A No. It seems pretty understandable. And, again, he
19 indicated that he understood what it meant.

20 Q And when you reread the first line "you have the
21 right to remain silent," the first time he says "yes."
22 But then the second time when you read the "anything that
23 you say can be used against you," he says "okay."

24 A That's correct.

25 Q Did you hear that on the tape?

1 A Correct.

2 Q Okay. So he didn't say yes, but he said "okay."

3 A That's correct.

4 Q All right. And you didn't explain any further about
5 what that means, that anything can be used against you.

6 A I did not. Again, he never indicated that he didn't
7 understand. He just indicated that he acknowledged it and
8 seemed to be understanding of it.

9 Q But he did the first time, though. I mean, when you
10 read it the first time, he said that he did not
11 understand.

12 A That's correct.

13 Q But you didn't provide any further explanation. You
14 just reread that line.

15 A That's correct. And he also -- I'm sorry. Go ahead.

16 Q Go ahead. I was going to say he just said "okay."

17 A That's correct.

18 Q And then when you explained to him that he had the
19 right to an attorney, when you read it the first time, he
20 says "no." And did you offer a further explanation of
21 what that means?

22 A I did not.

23 Q Okay. And when you read it to him the second time,
24 he said "okay."

25 A That's correct.

1 Q Okay. And then when you also read it the first time
2 if an attorney -- "if you cannot afford an attorney, one
3 will be provided for you," he said he didn't understand
4 that the first time. And then did you explain further
5 what that meant?

6 A I did not. Again, he indicated that he understood so
7 I moved onto the next one.

8 Q But after the first time he said "no," you didn't
9 offer a further explanation other than rereading that
10 line.

11 A That's correct.

12 Q Okay. And he says "okay" to that.

13 A Correct.

14 Q All right. Were you the one that booked Mr. Lee?

15 A Yes. I transported him to the police department and
16 put him in a holding cell.

17 Q And when you asked him if he had any -- you asked him
18 if he had any medical conditions?

19 A I don't know if I was the officer that did that. I
20 think there was another officer.

21 Q If it was on your body-cam footage, would you
22 remember then?

23 A Yes.

24 Q Okay. Do you need to see that footage to determine
25 if that was you?

1 A Yes. Because I don't honestly remember if it was me
2 or not.

3 Q Okay. We can pull that up if necessary.

4 MR. JOHNSON: Your Honor, the State doesn't object to
5 just taking this notice of this and discussing it later so
6 we don't have to show the entire clip.

7 BY MR. GAMBRELL:

8 Q But you asked him if he had any medical conditions.
9 Do you recall that?

10 A I don't recall it, but if we're moving forward with
11 it, then ---

12 Q He told you he was disabled. Do you recall that?

13 A I do not, no.

14 Q Do you recall asking him what the nature of his
15 disability was?

16 A I do not.

17 Q Do you recall him saying that he was slow?

18 A I do not.

19 Q Okay. If you knew that he had a disability with
20 regard to his intelligence, would that have changed the
21 way that you explained to him Miranda warnings at the
22 beginning?

23 A Probably not because, again, he indicated that he
24 understood after each time I read it the second time.

25 Q Even though he said no, that he didn't understand and

1 that you didn't offer any further explanation.

2 A The first he said "no." The second time he indicated
3 to me that he understood. I'm not a psychologist,
4 psychiatrist. I don't understand what his level of mental
5 disability would be if he would have explained it to me.

6 Q But you understand that he has to make an intelligent
7 and a knowing waiver of his rights.

8 A Correct.

9 Q And knowing that he has an intellectual disability,
10 would that cause you any concern that he actually knew
11 what his rights were?

12 A At that point in time, no.

13 Q Would it cause you any concern that he intelligently
14 waived his rights?

15 A I don't understand that question.

16 Q Knowing that he had an intellectual disability, would
17 that cause you any concern knowing that he made an
18 intelligent waiver of his rights?

19 A I don't -- I don't believe so. Because, again, this
20 was found out after if what you're saying is true and that
21 I spoke to him and he claimed to -- or he told me that he
22 had a mental disability, that was after the fact that I
23 mirandized him.

24 Q Even though the first time you read him his rights
25 and you asked him if he understood and he said "no."

1 MR. JOHNSON: Your Honor, I'm going to object. I
2 think this is asked and answered numerous times.

3 THE COURT: Let's move it along, Mr. Gambrell. I
4 think you've already asked that two or three times.

5 MR. GAMBRELL: That's all the questions I have.

6 THE COURT: You got anything on redirect?

7 MR. JOHNSON: Briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. JOHNSON:

10 Q That card, Miranda card that you read, is that in
11 layman's terms?

12 A Correct.

13 Q The first time he said he didn't understand, do you
14 think he truly didn't understand or was just being
15 obstinate?

16 A From what I appeared, he just seemed like he didn't
17 want to be there.

18 MR. GAMBRELL: Objection.

19 THE COURT: Oh, you're objecting from the seat. I
20 don't listen to objections from the seat.

21 MR. GAMBRELL: Objection, Your Honor.

22 THE COURT: All right. What's your objection?

23 MR. GAMBRELL: My objection is it calls for
24 speculation on behalf of ---

25 THE COURT: Overruled. Go ahead.

1 BY MR. JOHNSON:

2 Q So it seemed that he understood. He was just being
3 obstinate?

4 A Correct.

5 Q At any time, did he make any invocation of his
6 Miranda rights?

7 A No.

8 Q But he spoke to you.

9 A Correct.

10 MR. JOHNSON: No further questions.

11 THE COURT: Anything on recross?

12 MR. GAMBRELL: Nothing on recross.

13 THE COURT: All right. Sir, you can step down.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: All right. State calls its next --
16 another witness.

17 MR. JOHNSON: Thank you, Your Honor. The State calls
18 Detective Paris.

19 WHEREUPON,

20 JAMES PARIS

21 After having been duly sworn, testified as follows:

22 THE CLERK: Thank you. You may be seated.

23 THE COURT: Detective Paris, I know that chewing gum
24 is good for you, but I don't do chewing gum in my
25 courtroom.

1 THE CLERK: And please state your name for the
2 record.

3 THE WITNESS: James Myron Paris, II.

4 DIRECT EXAMINATION

5 BY MR. JOHNSON:

6 Q Detective Paris, you work for Fountain Inn Police
7 Department?

8 A Correct.

9 Q Did you have an opportunity to interview Kereen Lee
10 in regard to this case?

11 A Yes, sir.

12 Q Did you read him his Miranda rights?

13 A I did.

14 Q I'm going to show you what's been premarked as
15 State's 2 -- Court's 2. This is your body cam -- or,
16 excuse me, this is a flash drive with your interview on
17 it?

18 A It's the interview, yes, sir.

19 MR. JOHNSON: Your Honor, if I may publish.

20 THE COURT: All right. Any objection to publishing?

21 MR. GAMBRELL: No objection.

22 THE COURT: All right.

23 BY MR. JOHNSON:

24 Q While I'm pulling this up, did you read Mr. Lee his
25 Miranda rights?

1 A Yes, sir, I did.

2 (WHEREUPON, a portion of Court's Exhibit Number 2, a
3 video, was played in open court.)

4 BY MR. JOHNSON:

5 Q So he said he couldn't write well but he could read?

6 A That's correct.

7 (WHEREUPON, A portion of Court's Exhibit Number 2, a
8 video, continues to play in open court; Court's Exhibit
9 Number 4 was marked for identification.)

10 BY MR. JOHNSON:

11 Q All right. Detective Paris, I'm going to show you
12 what has been premarked as Court's Exhibit 4. Do you
13 recognize that?

14 A Yes, sir.

15 Q What is that?

16 A That is our department-issued and designed Miranda
17 waiver form and Miranda warning.

18 Q Is that what you read to Mr. Lee in this video?

19 A It is.

20 MR. JOHNSON: Your Honor, the State seeks to
21 introduce Court's 4.

22 THE COURT: Any objection?

23 MR. GAMBRELL: No objection, Your Honor.

24 THE COURT: All right. Introduced without
25 objection.

1 (WHEREUPON, Court's Exhibit Number 4 was admitted into
2 evidence.)

3 THE COURT: It will be State's Number 4?

4 MR. JOHNSON: This is Court's Exhibit 4.

5 THE COURT: Court's Exhibit 4. I'm sorry.

6 BY MR. JOHNSON:

7 Q All right. Detective Paris, so you read him his
8 Miranda rights?

9 A I did.

10 Q And why did you have him initial by each one?

11 A The initial means it's broken down, I think, into six
12 different lines. And it means after each line, if they
13 initial, they understand what they just heard or read.

14 Q And then what did you have him read out? Did he
15 reread his Miranda rights back to you?

16 A The form is designed in three parts. It's
17 biographical Miranda warning, and the last portion is the
18 Miranda Waiver. He read that aloud, and the purpose of
19 reading it aloud is to show that the person can understand
20 and comprehend what they read and make a decision of
21 whether or not they want to waive their rights.

22 Q And I notice you guys discussing the word "coercion."
23 Why did you discuss that?

24 A Most people, even college-educated people, get hung
25 up reading the word "coercion." On the form itself, the

1 definition is spelled out next to the word. And we define
2 that based off the fact that it's not a normal layman term
3 that people use on a daily basis. So we make sure that
4 the person understands "coercion" and that we are not
5 using it in any way.

6 Q So you explained it to him just in case he didn't
7 understand?

8 A Correct.

9 Q And he initials by all of those and signed at the
10 bottom?

11 A That's correct.

12 Q All right. Did you speak with him after this?

13 A I did.

14 Q Did he ever go back in his cell at any time?

15 A He did.

16 Q Why was that?

17 A He offered statements that were false. I placed him
18 in the cell advising him -- advising him that if he wished
19 to tell the truth, that he could request me to come back
20 and speak to him. And he ended up requesting me, so we
21 got him back out.

22 Q Did he re-initiate that conversation?

23 A He did.

24 Q At any time, did he appear under the influence of
25 alcohol or drugs?

1 A Not at all.

2 Q Did he appear to understand what you were explaining
3 to him?

4 A Very well.

5 Q So it looks like you read it to him, he read it to
6 you, and then he signed it.

7 A Correct.

8 Q But he had already been mirandized twice before he
9 got to you in the first place, correct?

10 A At least one other time, yes.

11 Q All right. When you brought him back out, did you
12 say so everything we talked about earlier on that paper
13 still applies?

14 A I did.

15 Q Did he ever invoke his Miranda rights?

16 A He never requested a lawyer, no.

17 MR. JOHNSON: Thank you.

18 No further questions for this witness, Your Honor.

19 THE COURT: Cross-examination?

20 MR. GAMBRELL: Thank you, Your Honor. May it please
21 the Court.

22 CROSS EXAMINATION

23 BY MR. GAMBRELL:

24 Q Detective Paris, when you filled out the waiver of
25 rights form, you filled that out for him, correct?

1 A If you're referring to the biographical portion at
2 the top, I did.

3 MR. GAMBRELL: Okay. And then you notated -- may I
4 approach, Your Honor?

5 THE COURT: Yes, sir.

6 MR. GAMBRELL: Handing him Court's Exhibit 4.

7 THE WITNESS: Thank you.

8 BY MR. GAMBRELL:

9 Q You notated where it says "I can read or write" next
10 to it "not well"?

11 A Yes, sir.

12 Q Because that's what he had informed you of.

13 A No. He informed me he could not write well, but he
14 said he could read.

15 Q Right.

16 A So I wrote "not well" there referring to he said he
17 could not write well. The purpose of that later was to
18 later on, if he were to offer a written statement, I would
19 have drafted it for him as he spoke because he said he
20 couldn't write well. That didn't come into play, however.
21 That's why I notated on this form.

22 Q And the fact that he could not write well and, you
23 know, obviously had some deficiency in reading, did that
24 cause you any concern that he understood his rights?

25 A No. Not at all. I felt like I did a good job

1 explaining the rights. He indicated he understood what I
2 said.

3 Q Did you have his booking report prior to ---

4 A I did not. No, sir.

5 Q Okay. Now, you said that he initialed after each of
6 these six lines with regard to his rights. You had him do
7 that all at one time, correct?

8 A I did, yes, sir.

9 Q Okay. You did not read the first line to him and
10 have him initial and then go onto the next line.

11 A No, sir, I didn't.

12 Q Did you explain to him exactly what each line meant?

13 A I did.

14 Q You explained to him in further detail about his
15 right to remain silent.

16 A Well, it's hard to go in further details. Already
17 put pretty much at the bottom tier of understanding, sir.
18 He never questioned any of them. He indicated he
19 understood each of them. And then I did reiterate on some
20 points that he was free to stop talking to me at any time.

21 Q And then you had him sign on two places on the form,
22 correct?

23 A Yes, sir.

24 Q In the middle portion, he doesn't sign, but he prints
25 his name.

1 A Yes, sir. It's printed.

2 Q And then on the bottom portion, he also prints his
3 name. He doesn't sign it.

4 A That's right.

5 Q And then he misspells his last name by leaving off an
6 E.

7 A Uh-huh.

8 Q Would that give you any indication that he did not
9 fully understand what his rights were and the consequences
10 of him waiving his rights?

11 A No. That wouldn't give me any indication of that at
12 all. First of all, he did spell his name correctly at the
13 top. And if you listen to what's being said, he's able to
14 recall from memory his phone number, his Social Security
15 number, his date of birth. He spelled his name out
16 completely in the biographical portion as I wrote it. So
17 he seemed very intelligent to be able to recall those
18 things and understand what this form means.

19 Q And you've had a lot of opportunity in your
20 experience to speak with children, correct?

21 A Yes, sir, I have.

22 Q And a lot of children are able to remember those same
23 details.

24 A No.

25 Q Some children are.

1 A Most children cannot remember any of those details.
2 They can remember their birthday and how to spell their
3 name, but their phone number or their Social Security
4 number or things like that, no, they can't remember those
5 things.

6 Q Their address?

7 A A lot of times they can remember their address.

8 Q You had him read the waiver-of-rights paragraph?

9 A Yes, sir, I did.

10 Q And he obviously had some difficulty reading it?

11 A I don't think he had difficulty up the until the word
12 "coercion." He had some difficulty with that word.
13 Starting out the reading, I think he got kind of hung up
14 on the words of "I have read" or "have been read." But
15 those are the only two points where I felt there was any
16 kind of issue.

17 Q And then you did assist him with regard to
18 pronunciation of the word "coercion."

19 A Yes, sir. Which is common in interviews.

20 Q And so him having difficulty and even starting out
21 reading it, that didn't give you any concern about his
22 ability to comprehend that.

23 A No, sir. I had no concern about his comprehension of
24 this form. It was very clear to me that he understood it.

25 Q Okay. When you bring him back the second time, did

1 you go over his rights with him again?

2 A No, sir. I just reiterated that this form does still
3 apply, you know. We didn't have to have a conversation.

4 Q Did you show him the form?

5 A No, sir.

6 Q You simply referred to a previous form that he had
7 signed.

8 A Yes, sir. Minutes before. Uh-huh.

9 Q And it was at least 20 minutes before.

10 A I can't intelligently answer that. I mean, there was
11 some time had passed, yes.

12 Q But you did not remind him of any of his rights that
13 he had when he came back into that room the second time.

14 A No, sir. It's not required.

15 Q And you did not go over the fact that he would still
16 be subjected to waiving those rights.

17 A No, sir. Again, it's not required.

18 Q And, again, you didn't specifically say -- you just
19 referred to it as this form, the form that we did later
20 that's still -- earlier that still applies.

21 A That's correct.

22 Q Okay. Also, during the first taped interview, you
23 had mentioned to him that you were trying to help him.

24 A Yes. Absolutely.

25 Q Did you specify as to what that help was?

1 A No, sir.

2 Q Okay. And in the second interview, you, again,
3 offered to help him.

4 A Sure. Yeah. I would.

5 Q And did you specify what that offer of help was?

6 A Not to my recollection. I mean, I believe it would
7 be along the lines of entering him into some kind of
8 counseling or something along those -- based off the
9 nature of the case.

10 Q But there were many points during that time that you
11 didn't explain what that help was.

12 A No, sir. Just the word "help." I think people like
13 to know that someone's willing to try to help them.

14 Q At one point you said to him he had two choices, that
15 he could either go to trial and go to prison or confess
16 and get help.

17 A That's something I would have said, yes.

18 MR. GAMBRELL: Thank you very much.

19 THE COURT: Mr. Johnson?

20 REDIRECT EXAMINATION

21 BY MR. JOHNSON:

22 Q While you questioned Mr. Lee, how many stories did he
23 give you?

24 A Probably seven or eight.

25 Q So it was clear that he was trying to evade with the

1 line of questioning?

2 A Yes. Because one of the things he would do is try to
3 bring in a fact from a previous falsehood into the new
4 story. So that shows that you're trying to hang onto the
5 first lie and get to a reasonable story that I would
6 believe. But it's kind of hard to put logic on a lie, so
7 it wouldn't....

8 Q So it was clear that he understood what was going on
9 based on the fact that he was trying to evade you?

10 A Absolutely. Yes.

11 Q All right. And while he was in his cell, did he ever
12 invoke Miranda?

13 A No.

14 Q When you brought him back into the room for the
15 second time, you re-informed him that the same rights
16 apply.

17 A I did.

18 Q Do you have to do that?

19 A No, you don't.

20 Q That is your personal practice?

21 A Yes. I just wanted him to -- I wanted it to be clear
22 that, you know, if we did have a conversation, he could
23 stop speaking to me at any time. That's kind of why I
24 mentioned it.

25 MR. JOHNSON: Thank you, Detective. I don't have any

1 Further questions.

2 THE COURT: All right. Any recross, Mr. Gambrell?

3 MR. GAMBRELL: Nothing on recross, Judge.

4 THE COURT: Sir, you can step down.

5 THE WITNESS: Thank you, sir.

6 THE COURT: All right. Any other state's witnesses
7 on the Denno hearing?

8 MR. JOHNSON: No, Your Honor.

9 THE COURT: All right. Anything else?

10 MR. GAMBRELL: I'm going to call Mr. Lee to the
11 stand.

12 THE COURT: Yes, sir. Come on up, Mr. Lee.

13 THE CLERK: Put your left hand on the Bible and raise
14 your right hand. The other hand.

15 WHEREUPON,

16 KEREEN DONYELL LEE

17 After having been duly sworn, testified as follows:

18 THE CLERK: Thank you. You may be seated. And
19 please state your full name for the record in the
20 microphone.

21 THE WITNESS: Kereen Lee. Kereen Donyell Lee.

22 DIRECT EXAMINATION

23 BY MR. GAMBRELL:

24 Q Mr. Lee, how old are you?

25 A I'm 40 -- 42.

1 Q When's your birthday?

2 A [REDACTED].

3 Q So you're actually 41.

4 A Yeah. 41.

5 Q You'll be 42 this year.

6 A Yes.

7 Q Okay. How far did you go in school?

8 A 12 -- 12.

9 Q And when you were in school, were you in regular
10 classes?

11 A No.

12 Q What kind of classes were you in?

13 A I was in special ed.

14 Q Are you currently on disability?

15 A Yes.

16 Q What's the nature of your disability?

17 A Really, I don't know, really.

18 Q Do you know why you receive a check?

19 A I know I'm disabled.

20 Q Do you know how you're disabled?

21 A I can't -- no. Not really.

22 Q Do you remember when you were booked into jail and
23 they asked you if you had any medical conditions and you
24 told them that you were disabled?

25 A No.

1 Q Okay. Do you recall telling them that you were slow?

2 A No.

3 Q All right. Do you remember getting arrested on this
4 day back in 2020?

5 A A little bit.

6 Q Let me ask you this. How long have you been getting
7 a disability check?

8 A All my life.

9 Q Even when you were a kid?

10 A Yes.

11 Q Okay. Who was your representative payee?

12 A My brother.

13 Q All right. Do you remember sitting in the back of
14 Officer Chupp's patrol vehicle?

15 A Not really, but yeah.

16 Q You were handcuffed?

17 A Yeah.

18 Q Did you feel like as though if you wanted to leave
19 you could leave?

20 A No.

21 Q Okay. Do you remember him reading off of a card to
22 you?

23 A Yeah.

24 Q And he was reading your rights to you; do you recall
25 that?

1 A I think so.

2 Q And after he read the statement on the card, he asked
3 you if you understood that. And do you remember what you
4 said?

5 A I said "no."

6 Q And then he re-read it line by line. And when he
7 says, "You know you have the right to remain silent," you
8 said "yes."

9 A I said "okay." I didn't say yes.

10 Q Did you understand that you had the right to remain
11 silent?

12 A No. Not really.

13 Q Do you know what that means to have the right to
14 remain silent?

15 A No.

16 Q When he says to you, "Anything you say can be used
17 against you," you said "okay"?

18 A Yeah.

19 Q Do you know what that means, that anything can be
20 used against you ---

21 A No.

22 Q --- anything you say?

23 A No.

24 Q Do you not understand that when -- if you give
25 statements to the police, that they could potentially use

1 those statements against you to prosecute you?

2 A No.

3 Q When he told you that you have a right to an
4 attorney, what did you think that meant?

5 A I don't really know.

6 Q But you answered him, and you said "okay."

7 A Yes. Okay.

8 Q And then he said that if you couldn't afford an
9 attorney, that one will be provided for you. Did you
10 understand that?

11 A No. Not really.

12 Q And did he ask you if you wanted to make a statement
13 or if you wanted to talk to someone?

14 A Yeah. I think.

15 Q And then you said you wanted to talk to him.

16 A Yeah.

17 Q Did you understand that you didn't have to talk to
18 him?

19 A No.

20 Q Did you understand that anything you said to him
21 could potentially be used against you to prosecute you for
22 this case?

23 A No. Not -- no.

24 Q Do you recall meeting with Detective Paris at the
25 police station?

1 A Yes.

2 MR. GAMBRELL: May I approach the witness, Your
3 Honor?

4 THE COURT: Yes.

5 BY MR. GAMBRELL:

6 Q I'm going to show you what's marked as Court's
7 Exhibit 4. Do you recall that paper?

8 A (Reviews exhibit) Yes.

9 MR. GAMBRELL: May I approach the witness, Judge?

10 THE COURT: Yes, sir.

11 BY MR. GAMBRELL:

12 Q Mr. Lee, you didn't write this information at the
13 top.

14 A No.

15 Q But you gave him that information to write down. You
16 give him your name?

17 A Yeah.

18 Q And your date of birth?

19 A Yes.

20 Q And your address?

21 A Yeah.

22 Q How long have you lived at [REDACTED]?

23 A All my life.

24 Q You gave them your phone number?

25 A I don't remember that.

1 Q Okay. Do you remember when he went over these rights
2 with you line by line?

3 A He told me about it, but he ain't go over it.

4 Q You're saying he didn't explain what those rights
5 were to you?

6 A No. He just told me read the bottom.

7 Q Now, did he ask you to initial by each line?

8 A After he told me to read the bottom.

9 Q Is that your initials by each line? Did you write
10 those?

11 A Yes.

12 Q Okay. And you did that all at the same time. You
13 initialed each one of those at the same time.

14 A I had -- yeah.

15 Q Okay. My question is, he didn't read you the first
16 line and then have you initial it.

17 A No. He ain't read the first line.

18 Q Okay. He read them and then had you initial them all
19 at the same time.

20 A Yes.

21 Q Okay. Did he go over any of those lines with you?

22 A (Reviews exhibit) He read them, but he ain't go over
23 them.

24 Q Okay. He didn't explain them to you.

25 A No.

1 Q Okay. And as you testified previously, you didn't
2 understand what those meant.

3 A Yeah.

4 Q Okay. And then he had you read the paragraph at the
5 bottom.

6 A Yeah.

7 Q Okay. And did he explain to you what you were
8 reading?

9 A He just explained that word. But he didn't explain
10 the whole -- the whole waiver.

11 Q He didn't explain to you that if you sign that, that
12 you were waiving the rights that he had just said to you
13 that you had.

14 A Yeah. I think so.

15 Q Okay. So after he read it and he explained the word
16 "coercion" to you, he asked you to sign it.

17 A Yeah.

18 Q And the middle portion of it, you print your name,
19 Kereen Lee.

20 A Yes.

21 Q And on the bottom portion, you printed it but you
22 misspelled your last name.

23 A Yeah.

24 Q Did you realize that you had done that?

25 A No.

1 Q Okay. I guess my question to you is, Mr. Lee, did
2 you understand the rights that you have after you've been
3 arrested?

4 A No.

5 Q Do you understand that what law enforcement was
6 asking you to do was to waive those rights?

7 A No.

8 Q Do you know what that means, to waive your rights?

9 A No.

10 Q It means to give up your rights? Do you know what to
11 give something up?

12 A Yeah.

13 Q Okay. And so they were asking you to give up your
14 rights. Did you understand that?

15 A No.

16 Q Had you known your rights, had somebody explained
17 them to you, would you have given up those rights?

18 A No.

19 Q During the course of Detective Paris's questioning of
20 you, he said that he could help you. Do you remember
21 that?

22 A Not a thing.

23 Q You don't recall that?

24 A No.

25 Q Okay. Did you feel as though you had to talk to

1 Investigator Paris?

2 A I don't know.

3 MR. GAMBRELL: Okay. Thank you, Mr. Lee. That's all
4 the questions I have.

5 THE COURT: Cross-examination?

6 MR. JOHNSON: Thank you, Your Honor.

7 CROSS EXAMINATION

8 BY MR. JOHNSON:

9 Q Mr. Lee, where did you go to school? Just a few
10 questions. Where did you go to school, Mr. Lee?

11 A Hillcrest High School.

12 THE COURT: Pull your chair up to the microphone.

13 THE WITNESS: Hillcrest High School.

14 BY MR. JOHNSON:

15 Q And you went in the 12th grade, right?

16 A Yeah.

17 Q You've had jobs in your life; isn't that right?

18 A Yeah. Cutting grass, if you call that work, and
19 stuff.

20 Q You've also been in some trouble in your life,
21 haven't you?

22 A Yeah.

23 Q I'll just briefly read these. Had a malicious damage
24 to personal property, burglary second degree violent,
25 assault and battery, false information to police, burglary

1 second violent again, receiving stolen goods, auto
2 breaking, petit larceny, shoplifting, burglary third, more
3 burglaries, unlawful carry of a pistol, indecent exposure,
4 burglary second violent. You got a 15-year sentence
5 during that time, right ---
6 A Yeah.
7 Q --- at the Department of Corrections?
8 And in 2018, you picked up another receiving stolen
9 goods a couple years back?
10 A I don't remember that.
11 Q But those other ones, you remember getting those?
12 A (No verbal answer.)
13 Q These charges have been secured by conviction,
14 correct?
15 A Yeah. I did my time for them.
16 Q And in all those, you were read your Miranda rights?
17 Is that a yes?
18 A Yeah.
19 Q So you understood then, but you're saying you don't
20 understand them today.
21 A I didn't understand them then.
22 Q Okay. But you plead guilty ten times, but you're
23 saying you never understood that the trials -- you're
24 saying you never understood your rights. Isn't that
25 right?

1 A (Nods head affirmatively.)

2 Q Do you remember meeting with a doctor down at the
3 Department of Special Needs, DDSN, a few months back?

4 A I don't recall.

5 Q You don't remember that?

6 A But I have talked to a doctor before.

7 Q Okay. Your defense attorney asked you a lot of
8 questions today, hasn't he?

9 A (No verbal answer.)

10 Q It's not a trick question, Mr. Lee. Your defense
11 attorney has asked you a lot of questions; isn't that
12 right?

13 A Yeah.

14 Q And you've answered them, correct?

15 A Yeah.

16 Q And I've asked you questions and you've answered
17 those, correct?

18 A Yeah.

19 Q And you understood our questions?

20 A I have, but some of them.

21 Q But the ones you've answered, you understood?

22 A Yeah.

23 Q And you read this form, right, the one you just saw
24 on video of you reading out loud?

25 A Yeah.

1 Q Your waiver of rights, you read that? On the video
2 we just watched, you remember reading that?

3 A Yeah.

4 Q And you said you understood and you signed your name,
5 right?

6 A Yeah.

7 MR. JOHNSON: No further questions.

8 THE COURT: Anything else, Mr. Gambrell?

9 MR. GAMBRELL: Nothing further, Judge.

10 THE COURT: All right. Sir, you can step down.

11 All right. Any other witnesses, Mr. Gambrell?

12 MR. GAMBRELL: No, sir, Your Honor.

13 THE COURT: All right. Brief argument before the
14 Court rules on that issue. The word is "brief."

15 MR. GAMBRELL: I understand, Judge.

16 You know, the Court is tasked with determining
17 whether or not Mr. Lee has made a knowing and intelligent
18 waiver of his rights. You know, in the first interview
19 with Officer Chupp, you know, after he first read his
20 card, he says that he doesn't understand. That was his
21 first response. When Officer Chupp goes through each
22 line, he doesn't explain what they mean to him. He just
23 rereads the line. And then the first time he says "yes,"
24 and after the second and third he says "okay." I don't
25 think that that's a clear indication that he knows what

1 his rights are, especially based on his intellectual
2 disability.

3 And the Court has to look at the totality of the
4 circumstances, and you have to take into account the fact
5 that he has an IQ of 61 in determining whether or not he
6 knew what his rights were and then if he made an
7 intelligent waiver of those rights. And the key component
8 of that is his understanding of what his rights are and
9 his understanding of what a waiver means.

10 It would be fundamentally unfair to not explain to
11 someone with intellectual disabilities what their rights
12 actually are, what they mean to him so that he understands
13 instead of assuming when he says "okay" that he
14 understands. And then also, it would be fundamentally
15 unfair and a violation of his due process to find that he
16 intelligently waived those rights without knowing what
17 that waiver is, what that means, that he's giving up those
18 rights and that there's consequences to that.

19 And in this case, you know, based on the totality of
20 the circumstances, it would be a violation of his rights
21 because he obviously does not know what his rights are, he
22 doesn't fully understand what those rights are, and he
23 doesn't fully understand the consequences of a waiver of
24 those rights.

25 THE COURT: All right. Thank you, Mr. Gambrell.

1 Mr. Johnson?

2 MR. JOHNSON: Your Honor, I had a lot prepared, but
3 I'll be brief. There's case law on point, State v. Moses.
4 I have a copy if you'd like it, Your Honor. That's
5 390 S.C. 502. It's a very similar set of facts with a
6 defendant with a low IQ. In this case, he's younger than
7 Mr. Lee, he's got less life experience than Mr. Lee, and I
8 believe he's more limited than Mr. Lee. They read Miranda
9 to him, he signed the waiver, and the Court of Appeals
10 said it was enough.

11 Your Honor, I think in this case we have ample
12 evidence that his rights were presented to him. I'll be
13 the first to admit that a lot of times officers get it
14 wrong, however, in this case, Investigator Paris and Chupp
15 did this perfectly, in my opinion, Your Honor. They read
16 him his Miranda rights four times. They both reread them,
17 Mr. Paris -- or Detective Paris, excuse me, went through
18 them again even though he didn't have to line by line
19 explaining words when he's confused, Your Honor. I think
20 this is a perfect example of how someone needs to be read
21 their Miranda rights.

22 And, Your Honor, like I said, I have more I can go
23 into if you'd like to hear it as well as the case law,
24 however, I think this one is not a close call.

25 THE COURT: All right.

1 MR. GAMBRELL: If I could respond to that, Judge.

2 The Moses case was different. It was the child had a
3 learning disability, was not intellectually disabled. He
4 had a learning disability, and based on that, he was in
5 different classes in school. There's a distinction there.
6 And you can't equate the level of that individual's
7 understanding with the level of Mr. Lee's understanding.
8 We don't know if he has a learning disability. He
9 probably does. He's never been diagnosed with a learning
10 disability as far as I know. I don't know if they've ever
11 tested him for one. But, you know, his situation is, is
12 that he's been deemed intellectually disabled since he was
13 a child, and that has continued throughout his adulthood
14 with an IQ of 61. So I don't think that the Moses case is
15 quite on point with regard to this decision that you have
16 to make.

17 THE COURT: You know, Counsel, one of the things that
18 I think stood out in everything that I've heard was a
19 question that Mr. Johnson asked the defendant about his
20 prior criminal history. And let me tell you why that
21 question was important. The question Mr. Johnson asked
22 was you've been to court, and I think the number you used
23 was 11 times or something to that effect. What I'm
24 hearing and what I'm looking at, Mr. Gambrell and
25 Mr. Johnson, is this, this young man was in a criminal

1 court for at least ten or 11 times. He pled guilty before
2 a judge if you might say -- if not 11 times, at least a
3 majority of those times.

4 Both sides know very well that, obviously, the plea
5 that he gave or whether he went to trial on the burglary
6 where he got the 15 years at the Department of
7 Corrections, I am convinced that his appearance before a
8 judge, that many times that he was asked during the
9 colloquy are you pleading guilty freely and voluntarily,
10 the typical questions the Court would ask. And I think if
11 you pull the transcript, based upon what I'm hearing,
12 every time he answered the questions, he's very familiar
13 with the criminal system. He's been in it for the last
14 umpteen years. He's been before a judge for umpteen
15 years. I am absolutely positive -- I wasn't there, but
16 I'm sure that some judge asked him questions and said are
17 you doing this freely and voluntarily, is your plea -- is
18 this because you are guilty? These are the kinds of
19 questions that go to the issue of whether or not is he
20 giving competent answers? Does he understand what's being
21 asked of him? This is not like someone is coming to court
22 the first time, has no familiarity with the system. He
23 does. He knows what questions the Court may ask even in
24 those prior involvements.

25 But if you look at the video, and I saw it, when the

1 officer asked him to read what was on the paper, he read
2 it pretty fluidly. He was more fluid that day than he was
3 up here. He looked at it and said he didn't know anything
4 about that or he wasn't sure about it, those answers that
5 he gave today. But when asked to read that, he read it
6 pretty -- as a matter of fact, he read it pretty fluidly.
7 He even used the word or tried to pronounce the word
8 "coercion." The only reason that came up was, and I think
9 the officer did a good job, he said he didn't know what
10 that meant. And the officer explained it to him. And he
11 said he understood the explanation, because I think the
12 officer said -- you know, I don't know exactly what he
13 said, but after explaining it to him, he said he
14 understood that.

15 So -- and the Court looking at the totality of the
16 circumstances based upon what -- how he answered the
17 questions that day even when he read the statement, even
18 when he was asked individual questions by both of the
19 officers, he answered immediately. He answers the
20 questions.

21 So I think he was advised of his rights. I'm
22 convinced that he understood them. And I'm convinced that
23 he understood -- when he initialed the waiver, I'm
24 satisfied that it was freely and voluntarily done.

25 MR. JOHNSON: Thank you, Your Honor.

1 THE COURT: Okay. Anything else?

2 MR. GAMBRELL: Judge, with regard to the statements
3 that I think they're going to intend to introduce, I do
4 have some issues with those.

5 THE COURT: You know what statement he's referencing,
6 Mr. Johnson?

7 MR. JOHNSON: I do not, Your Honor.

8 THE COURT: All right. What statements are you
9 talking about, Mr. Gambrell?

10 MR. GAMBRELL: The videotaped statements of his
11 interviews. I can go -- I believe there's six separate
12 videos.

13 THE COURT: Six separate videos?

14 MR. GAMBRELL: Correct.

15 THE COURT: You need to see them all?

16 MR. GAMBRELL: Well, I mean ---

17 MR. JOHNSON: Your Honor, I can give some context to
18 this, if I may.

19 THE COURT: What I don't want to do, Mr. Gambrell,
20 I've got a jury that's been sitting back there since 9:30.
21 And, you know, and I did that based upon what you guys
22 told me yesterday. We tried to structure a time frame
23 based upon what you told me yesterday. You're telling me
24 that you want to see six videos and all that. I just
25 don't -- I'm not comfortable letting this jury sit back

1 there for another two or three hours while we do that. I
2 mean, because I'm trying to navigate the case based upon
3 what you guys tell me. And that's what I did. If I knew
4 that, then I would have told the jury to come back later.
5 But she had that with me on yesterday.

6 So what six videos are you talking about?

7 MR. GAMBRELL: Well, I said if Your Honor was
8 inclined to admit that evidence ---

9 THE COURT: I understand what you told me. But you
10 didn't tell me that you wanted to see six videos that
11 would probably change how I navigated the course of the
12 trial.

13 MR. GAMBRELL: Well, I don't think that the
14 objections I have are on about four of those. But they're
15 very specific.

16 THE COURT: But we need to see the videos, right?

17 MR. GAMBRELL: Well, they're very specific. Not the
18 whole video but the portions ---

19 THE COURT: How long is this going to take? Because
20 I need to figure out what to do with this jury back here.
21 How long is this going to take?

22 MR. GAMBRELL: I have about four -- there's about
23 four incidences that I object to.

24 THE COURT: That ain't my question. My question is,
25 how long do you think this is going to take? Because, you

1 know, and to be honest with you, it doesn't benefit either
2 side to have a jury sitting back there from 9:30 till
3 whatever. It doesn't benefit the State. It doesn't
4 benefit you. So all I'm asking is, give me a time frame.
5 It's almost 11 o'clock. I've got to figure out what to do
6 with this jury. We haven't even started the trial yet.

7 MR. GAMBRELL: Well, I mean, I don't know how long
8 it's going to take to set up for each video, but I could
9 find them pretty quickly because I have the time marked.

10 MR. JOHNSON: Your Honor, if I may, we reached out to
11 Mr. Gambrell months ago to try to work out redactions so
12 we could agree so we wouldn't be doing this. Most of the
13 redactions in this video are because of the cases State v.
14 Washington and State v. Brewer.

15 THE COURT: Right.

16 MR. JOHNSON: That's about the hearsay from the
17 officers because there is quite a bit in this under those
18 cases. So it certainly is not in our favor to cut this
19 out. However, with the lack of communication, we went
20 ahead and spent hours and days, truly, cutting out all of
21 these statements to make this so that Mr. Lee's rights
22 aren't being violated.

23 THE COURT: And that was shared with Mr. Gambrell?

24 MR. JOHNSON: Yes, sir.

25 MR. GAMBRELL: Last month, Judge.

1 MR. JOHNSON: Your Honor, we made it available on the
2 second he got on the case. He says he wasn't going to
3 watch them. So we gave him a physical disk with it on
4 there.

5 THE COURT: You've had it for at least a month.

6 MR. GAMBRELL: I provided the hard drive to them for
7 that.

8 THE COURT: But you've been provided what Mr. Johnson
9 is making reference to for at least a month.

10 MR. GAMBRELL: Correct.

11 THE COURT: So you're still not satisfied -- I think
12 that's the redacted versions you've sent.

13 MR. JOHNSON: Yes, sir. He has the original, he has
14 the redacted.

15 THE COURT: So you've still got issues with that?

16 MR. GAMBRELL: Well, the problem of it is, Judge, is
17 because that they're edited such that it's not one
18 continuous interview.

19 THE COURT: Well, did you discuss that with him
20 before we got here today? I mean, did y'all have -- when
21 you got what the State sent you and you had some issues
22 about it in terms of what -- did you contact Mr. McCollum
23 or Mr. Johnson and say, look, this is what I've got?
24 Let's go ahead and look at this part. Was that any
25 dialogue? I mean, are you waiting until today to do that?

1 MR. GAMBRELL: Well, the first time that we had that
2 discussion about it is when they gave me the hard drive.

3 THE COURT: A month ago.

4 MR. GAMBRELL: Right. And then I looked through that
5 to see if there were any Brewer or Washington or Carter
6 issues. And those are not what I have issues with.

7 THE COURT: Well, did you share with them what you
8 had issues with?

9 MR. GAMBRELL: Well, those issues only came up
10 recently when I was able to do research and find that
11 there were other issues in that tape.

12 THE COURT: Yeah. But you had it for a month. When
13 did you do the research?

14 MR. GAMBRELL: I've done it the last few weeks.

15 THE COURT: Did you share that with him what the
16 concerns were? That's what I'm asking.

17 MR. GAMBRELL: This week I did. Last week they were
18 both out of the office.

19 MR. JOHNSON: Your Honor, again, these were given, I
20 mean, six-plus months ago.

21 Further, Your Honor, we have multiple emails
22 documented where we tried to set up these meeting to have
23 this so we don't have to do this the day of, Your Honor.
24 And, again, I believe he's making a Rule 106 motion for
25 rule of completeness. However, the case law is pretty

1 sound that Rule 106 does not trump the constitutional
2 rights he has under Brewer and Washington.

3 MR. GAMBRELL: It's not just Rule 106, Judge.
4 There's 404(b) evidence in there that's improper.

5 THE COURT: You know, Mr. Gambrell, I'm all for a
6 level playing field in giving both sides an opportunity to
7 present their case. But as the trial judge, my obligation
8 also is to navigate the course of the trial in terms of
9 the jury and everything else. I'm a little concerned.
10 The word "concern" is really perturbed. I'm perturbed
11 that we're waiting until today when you had -- this is how
12 we practiced law in the old days.

13 In the old days, if you got the stuff the State sent
14 you, the redacted information, you should have immediately
15 sat down with both these lawyers. Don't come up here and
16 say they weren't in the office. You go over there and set
17 up a meeting and say, look, this is what we've got to do.
18 We've got to make sure we address these issues before we
19 get to court. Because I do not like on the 11th hour
20 coming up here looking at videos to sort of dissect some
21 stuff that the two of you could have probably already
22 done. He doesn't even know what you're talking about.

23 MR. GAMBRELL: Well, when they sent me the redacted
24 videos, Judge, I assumed that they think that
25 everything ---

1 THE COURT: You can't assume anything. Lawyers don't
2 -- good lawyers don't assume anything. Good lawyers sit
3 down and talk to each other before they come to court. I
4 like that. I don't like it at all when you wait until the
5 last minute to come up here and say, well, Judge, we've
6 got some -- because Mr. McCollum and Mr. Johnson, they
7 don't have a clue what you're talking about.

8 So I'm going to ---

9 MR. JOHNSON: Your Honor, I would request, if I may,
10 that we just make these timely objections at the point the
11 State presents them. If there's something in the video
12 that he wishes the State would present, he will have an
13 opportunity when he puts his case to show that. However,
14 I believe the State's entitled to present its case with
15 those redactions before the defendant's ---

16 THE COURT: I'm inclined to move forward with the
17 case, Mr. Gambrell. And at the appropriate time, when it
18 comes up, you can make the whatever objection. And if we
19 have to send the jury out and deal with it, we'll deal
20 with it in that manner. I'm not inclined right now to let
21 the jury sit back there two hours while we look at some
22 videos.

23 MR. GAMBRELL: My only concern would be that if the
24 jury does hear portions of it, it would prejudice Mr. Lee
25 because then the bell's already been rung. I don't know

1 how I can stop the tape prior to each ---

2 MR. JOHNSON: Your Honor, he's had these videos.

3 Mr. Gambrell has watched them. I think he knows what's in
4 them. If he needs to object, he may. But I believe
5 sitting here and going through these six videos, that will
6 take -- I mean, just based on how long everything else has
7 taken, we'll be talking to the jury after lunch.

8 MR. GAMBRELL: I know exactly on the timestamp. And
9 they're not long statements. They're ---

10 THE COURT: Well, you're wasting time because all
11 you're doing is talking to me, and I'm not listening to
12 what you're telling me. I'm listening to -- trying to
13 figure out what to do with this jury.

14 Let me just say this. Going forward, I think we had
15 an incident I think several months ago where lawyers had a
16 stand-your-ground hearing. And they wanted to do the
17 stand-your-ground hearing the same day that we were going
18 to do the trial. And I just said, listen, and I made it
19 very clear, if you have a hearing, doesn't have to be
20 stand your ground, if you've got a hearing that you know
21 is going to take up a little bit of the Court's time, then
22 I was willing -- if you know -- and I was going to be on
23 the roster for that week, why don't you just set up a time
24 with me? I had a court reporter. I was sitting there two
25 weeks, three weeks sitting. I could have heard it last

1 week, week before. We would have made it happen. That's
2 what I tell lawyers all the time if you've got a hearing.
3 Because we can't move things along when you're coming up
4 on the day of and then you've got a hearing that's going
5 to take a significant period of time.

6 So if this is going to take longer than an hour, I've
7 got a jury sitting back there two and a half, three hours.
8 I ain't doing that. I'm not doing that.

9 MR. GAMBRELL: I don't think it would take longer
10 than an hour.

11 THE COURT: Well, I asked you how long and you
12 wouldn't tell me.

13 MR. GAMBRELL: I mean, I can't tell you exactly my
14 time, but I can pinpoint exactly on these tapes where
15 they're at. And I don't think -- and they're very short
16 clips. And I do not think that it would take longer than
17 an hour.

18 THE COURT: Longer than an hour.

19 MR. GAMBRELL: Yes, sir.

20 THE COURT: And that will be the jury sitting back
21 there for two and a half hours. Not going to do that.

22 What we're going to do -- gentlemen, this is what
23 we're going to do. I'm going to bring this jury in, I'm
24 going to swear them in. And, obviously, this is going to
25 impact your second trial. I'm going to swear them in,

1 come back at 2 o'clock. And then y'all are going to sit
2 here and go through these videos and do that. That's how
3 we're going to do it.

4 We talked about how to navigate this trial, and you
5 didn't mention anything about how long all of this was
6 going to take, that you need -- I thought -- I thought you
7 had some motions and some videos that you've already seen.
8 You had an opportunity, Mr. Gambrell, to look at all this,
9 to have dialogue again with the State. You didn't do
10 that.

11 So any opposition to what I'm getting ready to do?

12 MR. JOHNSON: No, Your Honor.

13 MR. GAMBRELL: No, Your Honor.

14 THE COURT: All right. "Have a seat.

15 Bring this jury back out.

16 (WHEREUPON, the jury entered the courtroom at 11:00 AM.)

17 THE COURT: All right. The first thing I'm going to
18 do, ladies and gentlemen of the jury, I'm going to
19 apologize to you. Because I told you yesterday to get
20 here at 9:30, and I thought that we were going to get
21 started at 9:30. So I want to apologize to you for that.
22 We're going to have to do something logistically
23 different.

24 But the first thing I want to do is I'm going to get
25 Madam Clerk to swear you in and then I'll tell you what

1 we're going to do.

2 THE CLERK: If you'll please stand and raise your
3 right hand. And the correct response is "I will."

4 (WHEREUPON, the jury is duly sworn.)

5 THE CLERK: Thank you.

6 THE COURT: All right. We have issues or a couple
7 issues the Court needs to address. And, of course, I've
8 got to address those issues with the lawyers and it's
9 going to take a minute to do that. So what I wanted to
10 do, I didn't want you to sit back in that jury room longer
11 because you're going to look at each other and probably
12 not like each other anymore. I don't want that to happen.

13 So what I'm going to ask you to do, I'm going to send
14 you on an early lunch break. And when I say "early," you
15 have an opportunity to go home, feed the dog or whatever
16 and go to lunch. But I'm not asking you to come back
17 until 2 o'clock, believe it or not. So you've got a long
18 period of time to run an errand, do whatever you need to
19 do. And then just come back at 2 o'clock. And I assure
20 you that when you come back at 2 o'clock, we'll get
21 started.

22 So please, ma'am, please, sir, do not talk about the
23 case to anybody during that period of time. And I will
24 see you at 2 o'clock. Okay. Take care.

25 (WHEREUPON, the jury exits the courtroom at 11:02 AM.)

1 THE COURT: All right. Mr. Gambrell, your motion.

2 MR. GAMBRELL: Judge, the first issue I have is I
3 believe it's in Tape 3. I don't -- I mean, I have it, but
4 my computer's not hooked up to the system.

5 THE COURT: She can run it on Mr. Johnson's.

6 MR. GAMBRELL: And I go by the timestamps. It's on
7 the -- not on the video. It starts at 12:19:35. That
8 would be the time of day.

9 THE COURT: 12:19?

10 MR. GAMBRELL: Yes, sir.

11 THE COURT: 35.

12 (WHEREUPON, a portion of Court's Exhibit Number 2, a
13 video, was played in open court.)

14 MR. GAMBRELL: He says he has his boxers and his
15 shorts on.

16 THE COURT: Go back to 35. Who's controlling that?
17 You are?

18 MR. JOHNSON: I am, Your Honor.

19 THE COURT: All right. Go back to 35. That's where
20 you want to go back, 12:19:35?

21 MR. GAMBRELL: Yes, sir.

22 THE COURT: Okay. Let's go back to that.

23 (WHEREUPON, a portion of Court's Exhibit Number 2, a
24 video, continued to play in open court.)

25 MR. GAMBRELL: It begins -- what I'm objecting to

1 begins at 12:20:51.

2 (WHEREUPON, a portion of Court's Exhibit Number 2, a
3 video, continued to play in open court.)

4 MR. GAMBRELL: He's wearing pants in the video, but
5 he testifies that that morning he was just wearing shorts
6 and boxers. He's not wearing the same clothes. But he
7 has him demonstrate while he's wearing pants. I think
8 that's extremely misleading to the jury because it's not
9 what he said he was wearing.

10 MR. JOHNSON: Your Honor, I believe that's very
11 clearly explained in the video. Further, I don't think
12 that's prejudice at all. It's very easily explained
13 through us. And, again, he says in the video he explains
14 I was wearing different pants.

15 MR. GAMBRELL: But he says, well, your penis isn't
16 falling out right now as if what he was saying earlier,
17 you know, was a lie, didn't make sense. He's looking at
18 him wearing his pants and he's commenting on him jumping
19 up and down wearing his pants when before he was wearing
20 just box and shorts -- boxer shorts and shorts.

21 THE COURT: I'm still trying to follow you. I'm
22 trying to see the prejudicial ---

23 MR. GAMBRELL: He tells Investigator Paris that
24 earlier that morning during this incident that he's
25 wearing boxer shorts and shorts. And then he asks him to

1 demonstrate, to jump up and down. But he's got a pair of
2 pants on, not just boxers and shorts. He's wearing
3 different clothes than what he said he was wearing
4 earlier. And as he jumps up and down, Investigator Paris
5 says, well, your penis isn't falling out, which implies
6 that he was wearing the same clothes earlier than he did
7 before.

8 MR. JOHNSON: Your Honor, again, I don't think
9 there's anything prejudicial about it because that's
10 explained in the video. Further, we can explain it via
11 testimony. I don't think this adds anything. He's saying
12 that, sorry to be frank, but his pants were baggy, which
13 they are here, and that his erect penis fell out. And
14 he's -- they're discussing that. He asks him to show --
15 excuse me -- show him what he's talking about, and that's
16 what he does. I don't think -- I think chopping this up
17 would make it more confusing to the jury. And, again, I
18 don't believe it's prejudicial at all.

19 THE COURT: I think it's a question to let the jury
20 -- it's a factual determination for the jury to make a
21 decision as to what they saw. That's a factual
22 determination. I think that's squarely in the hands of
23 the jury to make that factual determination.

24 MR. GAMBRELL: It's extremely misleading, Judge,
25 because he's saying that he -- you know, he's making

1 comments on why he's saying that it's not falling out.
2 But clearly, he's wearing different clothes. I think that
3 that's misleading to the jury.

4 THE COURT: I understand that. But I rule I think
5 it's a jury question. I think let the jury decide.

6 What else have you got?

7 MR. GAMBRELL: Okay. It's also on Tape 3. And I
8 think it's 12:16:17.

9 THE COURT: All right. There's no sound.

10 MR. JOHNSON: Yes, Your Honor. These are part of the
11 redactions where we muted what the officer is saying when
12 he's presenting factual opinions.

13 (WHEREUPON, a portion of Court's Exhibit Number 2, a
14 video, continued to play in open court.)

15 THE COURT: You're objecting to that even though it's
16 muted, Mr. Gambrell?

17 MR. GAMBRELL: Well, when he cuts back in, he says
18 "you're ashamed of yourself." But prior to that he
19 says ---

20 THE COURT: The muted stuff, the muted part.

21 MR. GAMBRELL: The muted stuff, correct.

22 Officer Paris is saying -- Detective Paris is saying
23 that he can tell by looking at him that clearly, he's not
24 proud, that there was body language that he states that
25 you're ashamed of yourself. And then he says "you're

1 ashamed of yourself." So I think that just starting with
2 that question does not give the jury the benefit that it
3 was Detective Paris who was the one telling him that, that
4 he could tell that he was ashamed of himself.

5 THE COURT: That was redacted, the muted part, right?

6 MR. JOHNSON: Yes, Your Honor. The reason it was
7 redacted, in my opinion, was the -- what he's saying is I
8 can tell you're ashamed of yourself, that was just leading
9 into his question. Everything before that I think was
10 expert testimony of him saying I understand body language.
11 I can tell by your body language that you're hiding
12 something, or whatever he said. And, Your Honor, we cut
13 that out. Again, it helps our case, but we cut that out
14 because we assumed that would be objectionable." And I
15 believe it would be.

16 But I don't think that last statement of you're
17 ashamed of yourself, inviting a response, I think that's
18 when it starts being proper before a jury.

19 THE COURT: All right. So you're objecting to the
20 part where you cut off the previous question or statements
21 and the officer and just play "you're ashamed of
22 yourself." You think that's -- that's your 404, 403
23 objection?

24 MR. GAMBRELL: Correct.

25 THE COURT: So how do you want to remedy that? You

1 want the whole thing played?

2 MR. GAMBRELL: Well, because it's a leading question,
3 first of all. And he's the one that says that he's
4 observing him, and he can tell that he's ashamed of
5 himself. And it makes this look like not a legal
6 question.

7 THE COURT: My question is, you want the whole
8 statement read?

9 MR. GAMBRELL: I just want the statement said that
10 when he says that I'm looking at you and you're clearly
11 not proud of yourself.

12 THE COURT: So you want the whole thing played. You
13 want to go back to that timestamp, I think you said 17,
14 play it all the way to 33. Is that what you want?

15 MR. GAMBRELL: Well, 17 I think is where -- I don't
16 know if that's where it starts. But yes. It's right
17 before he says "you're ashamed of yourself."

18 MR. JOHNSON: Your Honor, might we watch it again so
19 I can refresh my ---

20 THE COURT: Yeah. Is there any way you can play it
21 without the mute on that part?

22 MR. JOHNSON: No, Your Honor. Just the way the
23 videos are edited, these are already clipped out. So if
24 we make any redactions, I've got to go pull the original
25 video.

1 THE COURT: All right. Let me hear what's -- let me
2 see what you've got.

3 (WHEREUPON, a portion of Court's Exhibit Number 2, a
4 video, continued to play in open court.)

5 MR. JOHNSON: And, Your Honor, again, I believe
6 that's a proper question. And, again, before that,
7 talking about how he understands body language, I think
8 that's improper on their behalf. I don't believe it
9 warrants going back and re-editing.

10 THE COURT: Did I hear correctly, he said "are you
11 ashamed of yourself" and he said "yes"?

12 MR. JOHNSON: Yes, Your Honor.

13 THE COURT: When that -- his response, yes, I'm the
14 only one that heard that?

15 MR. GAMBRELL: No. That was his response.

16 THE COURT: Okay. So what's your point?

17 MR. GAMBRELL: My point is that that appears to be a
18 response to a nonleading question when he says right
19 before that that I think that you're ashamed of yourself.

20 THE COURT: He said, "I think you're ashamed of
21 yourself."

22 MR. GAMBRELL: And he says "you're ashamed of
23 yourself," and then Kereen responds "yes."

24 THE COURT: So you're saying the officer said, "I
25 think you're ashamed of yourself," and then "you're

1 ashamed of yourself," and his response was "yes."

2 MR. GAMBRELL: Correct.

3 THE COURT: I don't see how that's prejudicial. He
4 answered the question.

5 MR. GAMBRELL: I'm just saying that makes it appear
6 as though it's not like he just asked that question.
7 Instead of saying that I think that you're ashamed of
8 yourself, you're ashamed of yourself. It's a leading
9 question.

10 MR. JOHNSON: I don't believe the first part of that
11 question does anything to prejudice the defendant at all.
12 It just shares the officer's belief that he's ashamed of
13 himself.

14 THE COURT: Well, the defendant could have said no or
15 he could not have answered.

16 I think if you're using a -- and I'm assuming you're
17 talking about a 404 analysis, prejudice versus probative
18 value. I don't see any prejudicial value in that. I
19 don't see any prejudice to this defendant, Mr. Gambrell,
20 so I'm not inclined to do anything in that regard.

21 MR. GAMBRELL: My next objection is -- I believe it's
22 on the same tape at marker 12:24:37.

23 THE COURT: Okay.

24 (WHEREUPON, a portion of Court's Exhibit Number 2, a
25 video, continued to play in open court.)

1 MR. GAMBRELL: Back it up a little bit.

2 (WHEREUPON, a portion of Court's Exhibit Number 2, a
3 video, continued to play in open court.)

4 MR. GAMBRELL: I object to him asking him about being
5 a sex addict. That would go into prior behavior. That's
6 covered under -- if you look at State v. Nelson, that's
7 propensity evidence, you know. Trying to use whether or
8 not he's a sex addict to say whether or not he would be
9 more likely to commit this crime, that's clearly
10 inadmissible.

11 THE COURT: What's the case?

12 MR. GAMBRELL: State v. Nelson.

13 THE COURT: Give me the cite.

14 MR. GAMBRELL: 331 S.C. 1, 501 S.E.2d 716.

15 THE COURT: That's a Court of Appeals case?

16 MR. GAMBRELL: It's a Supreme Court case.

17 THE COURT: I'm going to pull it up. Just a second.
18 Go ahead.

19 MR. GAMBRELL: Right. And it's clearly admissible as
20 propensity evidence. I mean, just because you're a sex
21 addict, yet they're trying to make it seem as though he
22 would be more likely to commit this crime. That's not
23 permitted. And also, his response to it was that he was a
24 Scorpio.

25 MR. JOHNSON: And, your Honor, I don't think this is

1 propensity evidence at all. The context of this is he's
2 trying to explain why he had an erect penis over this
3 young child. And that was his response was because he's a
4 sex addict because he's a Scorpio. We're not bringing
5 this in just to show that he's a sex addict and try to
6 persuade the jury and prejudice them. That's not at all
7 what's going on. These are just his answers -- or the
8 questions leading from his answers.

9 MR. GAMBRELL: My client does not say that he's a sex
10 addict. He's asked that. That's the first time that
11 phrase is used is when Investigator Paris asked him if
12 he's a sex addict.

13 THE COURT: All right. I'm trying -- I've got the
14 Nelson case in front of me. Tell me where in the Nelson
15 case you find something similar to what you're arguing.

16 MR. GAMBRELL: (As read) In a criminal case, the
17 State cannot attack the character of the defendant unless
18 the defendant places his character in issue. Crimes of
19 bad acts is generally inadmissible to prove the crime
20 unless the evidence tends to establish motive, intent,
21 scheme. It's not admissible for purposes of proving that
22 the accused possesses a criminal character or has a
23 propensity to commit the crime with which he's charged.
24 Such evidence could only invite the jury to infer that the
25 petitioner in this case was acting in conformity with the

1 caricature.

2 THE COURT: Yeah. It says: In a criminal case, the
3 State cannot attack the character of the defendant unless
4 the defendant first places his character in issue. How
5 did this defendant put -- using this case, how did this
6 defendant put his character in issue?

7 MR. GAMBRELL: He did not.

8 THE COURT: What do you say, Mr. Johnson?

9 MR. JOHNSON: Your Honor, may we play a little
10 beforehand just to give the full context?

11 THE COURT: Yeah. Go ahead.

12 (WHEREUPON, a portion of Court's Exhibit Number 2, a
13 video, continued to play in open court.)

14 MR. JOHNSON: The conversation was, again, he was in
15 the living room with the child with an erect penis, and
16 he's explaining it just happens. And then the officer --
17 the detective, excuse me, asked, you know, you're 38 years
18 old. It just doesn't happen when the wind blows. He kind
19 of asked him that. And that's when he goes into
20 explaining this. He's explaining why his penis is erect
21 with this child.

22 This isn't propensity evidence at all, Your Honor.
23 This is -- being a Scorpio and liking to have sex does not
24 mean you have the propensity to be a child predator. I
25 think that's a little too attenuating here.

1 And, again, Your Honor, I don't think this is -- him
2 saying that he's a Scorpio, and I believe he says he's
3 more sex addictive than other people, is ---

4 THE COURT: What did the video say when he asked him
5 something about the wind blowing? What was his response?

6 MR. JOHNSON: I think he said it does.

7 THE COURT: He does.

8 MR. JOHNSON: Yes, Your Honor.

9 And what was muted out before that was Detective
10 Paris, I believe, saying that doesn't happen, you know.
11 You're not like a little kid. This doesn't happen all the
12 time where, you know, this happens to you. And that's
13 what initiates this conversation.

14 THE COURT: All right. His response, Mr. Gambrell,
15 to the officer's question puts that at issue. And he put
16 it at issue.

17 MR. GAMBRELL: He has to put it in issue first before
18 they're allowed to introduce character evidence.

19 MR. JOHNSON: And, Your Honor, that's -- he does
20 because he's explaining why he was in this state.

21 MR. GAMBRELL: Mr. Lee would have to first place his
22 character at issue. Asking him if he's a sex addict ---

23 THE COURT: I'm talking about -- I'm talking about
24 the question about the wind blowing and all that, and his
25 response, yeah, that's how it is. That was his response.

1 So he put in -- he put the issue ---

2 MR. GAMBRELL: That's not about his character.

3 That's about ---

4 THE COURT: What's that about?

5 MR. GAMBRELL: That's about what happened on that
6 day.

7 THE COURT: I thought the question was so this
8 happens every time the wind blows, and he says "yeah."
9 Every time the wind blows, his answer was "yes."

10 MR. GAMBRELL: Not every time. He says "when the
11 wind blows."

12 THE COURT: Well, I don't know when the wind's going
13 to blow. But he asked him when the wind blows, did this
14 happen, and he said "yes." I don't know if the wind is
15 going to blow Tuesday, Wednesday or Thursday. That's what
16 he said.

17 MR. GAMBRELL: But that doesn't make him a sex
18 addict, Judge.

19 THE COURT: You called -- you used the word "sex
20 addict." The issue is, this case is about sex.

21 MR. GAMBRELL: Correct.

22 THE COURT: And did he put sex on the table when he
23 answered the question.

24 MR. GAMBRELL: I disagree. Because he could answer
25 the question about whether or not he has an erect penis.

1 But when he says -- that's a totally different question
2 than when he asked him if he's a sex addict, because that
3 goes to the man's character to be addicted to sex. And
4 his response is "I'm a Scorpio." I guarantee you he
5 doesn't even know what a sex addict is.

6 THE COURT: But he knows what a Scorpio is.

7 MR. GAMBRELL: He does know what a Scorpio is. But
8 that question, are you a sex addict, goes directly to his
9 character. And the State's not allowed to do that unless
10 Mr. Lee puts his character in place first, which he
11 doesn't.

12 THE COURT: I'll note your objection for the record,
13 Mr. Gambrell. The Court disagrees.

14 Go to the next one.

15 MR. GAMBRELL: The next one, Judge, is at the
16 beginning of Tape 5, it starts with -- and this is going
17 to include two tapes because there's the end of Tape 4
18 leads into the beginning of Tape 5.

19 MR. JOHNSON: Where would you like me to start?

20 MR. GAMBRELL: You can start it at Tape 5 because
21 that plays more context.

22 (WHEREUPON, a portion of Court's Exhibit Number 2, a
23 video, continued to play in open court.)

24 MR. GAMBRELL: You can stop it.

25 He says "I was thinking about my girl." But if you

1 go to the end of Tape 4, and I don't think this is on the
2 redacted version, this would be on the full tape,
3 Inspector Paris is asking him about his thoughts, what was
4 on your mind when it happened. And he says -- Mr. Lee
5 says, "I did know my penis touched her."

6 And then Inspector Paris said, "Let's say it didn't,
7 and let's say it was hard and you were standing awfully
8 close to her, why was your penis hard and why were you
9 standing so close to her and not at all? What thoughts
10 made your penis hard standing next to her?"

11 And that's when he says, "I was thinking about my
12 girl."

13 So everything prior to his response was redacted out.

14 MR. JOHNSON: Your Honor, I'm curious. That seems
15 like that helps the State with the officer testifying
16 about him standing over the child with an erect penis, the
17 officer making the statement. Again, it's in the State's
18 favor for the jury to hear that. However, as an officer
19 of the Court, I think that is in violation of Brewer and
20 Washington.

21 THE COURT: What do you say, Mr. Gambrell?

22 MR. GAMBRELL: Well, I mean, it goes to the question
23 of this case which is what is in his mind.

24 THE COURT: Well, what's your response to not being
25 in violation of what's set forth in the Brewer case and

1 Washington? Why do you say it's not a violation? What's
2 your response to that?

3 MR. GAMBRELL: Well, I would say that at least play
4 the part that says what thoughts -- what thoughts were on
5 your mind.

6 THE COURT: Well, his response to that question, the
7 latter part of that question was he was thinking about his
8 girl. Did he say that?

9 MR. GAMBRELL: Yes, sir.

10 THE COURT: So doesn't that accomplish the same
11 thing?

12 MR. GAMBRELL: It doesn't have the question. I guess
13 it implies -- I mean, there's no question that leads up to
14 that.

15 THE COURT: Well, he can take the witness stand and
16 you can ask him that question yourself. I mean, you can
17 ask a lot of these questions yourself. You put the
18 defendant on the witness stand and he's your witness, you
19 ask him anything you want to.

20 MR. GAMBRELL: I understand. But the jury is going
21 to have the video with them. So if that's the Court's
22 ruling...

23 THE COURT: Yes, sir.

24 MR. GAMBRELL: The last one would be at the end of
25 Tape 6.

1 MR. JOHNSON: You said Tape 6?

2 MR. GAMBRELL: Yeah.

3 And this is not on the redacted portion of it.

4 But he asked him what his intentions were being in
5 that room, and Mr. Lee says, "To talk to her, wake her up,
6 to get to know her more." That portion was muted.

7 THE COURT: So what's your position? What's your
8 point?

9 MR. GAMBRELL: My position is it goes to what his
10 intentions were.

11 THE COURT: The muted portion says to wake her up and
12 see what she was doing?

13 MR. GAMBRELL: To wake her up to talk to her to get
14 to know her more.

15 THE COURT: The child.

16 MR. GAMBRELL: Yes.

17 THE COURT: Why would he want to do that?

18 MR. GAMBRELL: I mean, they had just been living
19 there for a few days. I don't know. But, I mean, it goes
20 to his state of mind, like they're trying to show that he
21 had the intent to commit a sexual battery on this girl, so
22 that is an element of this crime. And if his intent to be
23 in that room was to talk to her to get to know her, it
24 goes to his state of mind.

25 MR. JOHNSON: Your Honor, assuming the objection is a

1 403 objection, I'm not sure that's prejudicial at all.
2 However, if he would like to introduce that in his case,
3 the State would certainly not object to this defendant
4 putting himself in the room. I don't think it
5 warrants ---

6 THE COURT: Is that the defendant's intention?

7 MR. GAMBRELL: Well, we're allowed to -- I mean, if
8 they're going to play the tape, then the aspects that are
9 in favor of Mr. Lee are also allowed to be played in that
10 tape.

11 MR. JOHNSON: Your Honor, the Rule 106 completeness,
12 that's if it's unfair, the State is putting in something
13 that's unfair. However, this is -- I don't think this
14 even gets close to unfair. It's a context that's going to
15 be repeated throughout the entire video that the jury is
16 going to see. However, the fact that this one thing is in
17 there, I don't think that becomes a 106 violation. I
18 think that's most proper through the defendant's case.

19 MR. GAMBRELL: The defendant doesn't have to put up a
20 case.

21 THE COURT: Well, at this point, we don't know what
22 the defendant's going to do. Because I guess at some
23 point, you'll tell me. But if you put up a case, then
24 that's a question you can ask him. You have to make that
25 call.

1 MR. GAMBRELL: Well, again, if they're offering this
2 into evidence, and we're allowed to -- if they offer that
3 into evidence to show that the statements that were made
4 in favor of the defense.

5 THE COURT: I'll note your objection for the record.
6 All right. What else have we got? Is that it?

7 MR. GAMBRELL: That's the last one.

8 MR. JOHNSON: Your Honor, while we have everybody
9 here, I would like to make the two objections we spoke
10 about in chambers.

11 THE COURT: Yes.

12 MR. JOHNSON: First would be the -- any objection to
13 go ahead and preclude any discussion through opening
14 statements, through witness testimony, any elicitation of
15 the potential penalty in this case, the 25 to life and the
16 mandatory life without parole. I think that is a veil
17 that we can never unring with the jury. So I'd just like
18 to go ahead and put that before Your Honor now for any of
19 the potential witnesses. I imagine they might want to get
20 into that, so I'd make that motion.

21 THE COURT: All right. You've advised your potential
22 witnesses?

23 MR. GAMBRELL: I'll talk to them about that, Judge.

24 THE COURT: Make sure you do that.

25 MR. GAMBRELL: I will.

1 MR. JOHNSON: And I'll speak with mine as well, Your
2 Honor.

3 THE COURT: Okay.

4 MR. JOHNSON: And then after that, the State would
5 move to sequester witnesses.

6 THE COURT: All right. Any objection?

7 MR. GAMBRELL: No objection.

8 THE COURT: All right. So I'll grant that motion to
9 sequester witnesses.

10 MR. JOHNSON: Thank you, Your Honor.

11 THE COURT: All right. Okay. So we've got a little
12 -- anything else? We've got a little time. Anything else
13 that's going to come up? Because when we get back at
14 2 o'clock, I intend to roll into opening statements.

15 MR. GAMBRELL: Nothing from the defense.

16 MR. JOHNSON: No, Your Honor. State's ready.

17 THE COURT: Be ready to go at 2 o'clock. 2:02, the
18 jury's coming out. Okay.

19 MR. JOHNSON: Yes, sir.

20 (WHEREUPON, a recess is taken at 11:29 AM; the jury
21 entered the courtroom at 2:26 PM.)

22 JURY INSTRUCTIONS

23 THE COURT: All right. Ladies and gentlemen of the
24 jury, the first remark that I'm going to make is going to
25 remind you what your second grade teacher told you. And

1 it's this: I need you to pay attention. I need you to
2 pay attention. Because I'll be watching to see if you pay
3 attention, and I'm sure these bailiffs will be watching
4 that you pay attention. But on a serious note, both sides
5 want you to pay attention. This case is important to both
6 sides, and it's their day in court. So we ask that you
7 pay attention.

8 I'm going to go over a few opening remarks with you
9 before we get started with opening statements.

10 In a criminal trial or any trial, for that matter,
11 there are two judges. There is the judge of the law and
12 the judge of the facts. Now, let me explain to you what I
13 mean when I say that. The judge of the law, State of
14 South Carolina gave me that role. They said that you're
15 the judge of the law. What does that mean? That means
16 that any issue that comes up in this trial as it relates
17 to what the law is I'm in charge of. So at the end of the
18 case when I charge you what the law is, you must go with
19 what I say the law is, not what you think it should be.
20 So you must follow me.

21 My job as the judge of the law, I rule on the
22 admissibility or inadmissibility of evidence. There may
23 be, from time to time, some objections made from either
24 side as it relates to an issue of law that I may have to
25 rule on. Sometimes I can rule on that issue immediately,

1 and then sometimes I need to send the jury out so I can
2 hear the lawyers' arguments and then rule on that
3 particular issue of law. So there could be times today
4 and tomorrow that I will tell you to leave the courtroom.
5 Please, ma'am, please, sir, don't talk to each other about
6 the case to deal with those issues.

7 Now, and I always liken my role as a simplistic way
8 of looking at it as the umpire at a baseball game. I'm
9 behind the plate, and I just call balls and strikes.
10 That's pretty much what I do.

11 Now, who's the judge of the facts? All of you. All
12 of you are the judge of the facts. I know nothing about
13 this case. I cannot -- I do not have an opinion about
14 this case. And so from time to time, if you look up to
15 look at my facial expression or the wrinkles in my
16 forehead or the wrinkles in my head to think that I have
17 an opinion as to what the case is about, disregard that
18 because I do not. Because you're the judge of the facts.

19 You may ask the question, how do we perform our role
20 as the judge of the facts? Very simple. When you got out
21 of your car this morning and came into this courthouse,
22 there are several things you brought with you. I know you
23 brought your car keys with you. But the other thing you
24 brought with you was your common sense, your years of
25 experience using your common sense.

1 And why do I say that? Because as the judge of the
2 facts, only you -- only you, all of you, determine the
3 credibility and believability of the witnesses. That's
4 your job. Only you can do that.

5 Now, how do you do that? Well, you use your common
6 sense, but also, you can listen to a witness and you can
7 believe some of what a witness says, none of what a
8 witness says. It's all up to you. That litmus test is
9 all up to you.

10 Now, evidence in this case is going to come before
11 the Court in several forms. Let me tell you what I'm
12 talking about. You're going to hear the testimony of
13 witnesses from that witness stand to my left. Okay. You
14 get to decide whether they're telling the truth, whether
15 or not they're telling the truth, or you could also
16 determine whether or not this particular witness has a
17 bias or some reason that that witness is testifying either
18 one way or the other. That's all up to you.

19 Now, you're also going to probably hear videos, you
20 may see a video, you may see a sketch, you may see
21 photographs. You may see any of those things. But what
22 do all those things have in common? They're all
23 considered evidence. And the witnesses' testimony, that's
24 all evidence.

25 So when you're looking at a video and you're looking

1 at a diagram or picture or anything like that, how do you
2 determine the believability of that document that's before
3 you? Same litmus test. You can look at a picture and you
4 can determine everything I'm seeing is correct. Or you
5 can look at and listen to a video. Everything I'm hearing
6 is correct. Or you can delete some of it, accept some of
7 it. It's totally up to you in terms of how you handle
8 that portion of it.

9 Now, in a few minutes, these lawyers are going to
10 give what is called opening statements. Opening
11 statements, just like that indictment that I showed you at
12 the beginning or showed the panel, that's not evidence of
13 guilt. Opening statements is sort of a roadmap, so to
14 speak, that the lawyers are going to direct. They're
15 going to tell you what they think what path the evidence
16 will travel on both sides. And then, at the conclusion of
17 the case when all the evidence has been submitted and
18 you've heard all of the witnesses, then they'll give what
19 is called closing statements. And closing statements is
20 sort of like now that you've heard everything, this is
21 what we think it showed. And they will have an
22 opportunity to do that.

23 In a criminal case, the burden falls squarely on the
24 shoulders of the State. The State must prove every single
25 element of the offense upon which the defendant is charged

1 beyond a reasonable doubt. Now, you're going to hear that
2 term again not only from me at the end of the case, you're
3 going to probably hear that term used by the State's
4 attorneys and you may also hear that term used by defense
5 counsel. Because that's the burden that the State has.

6 Now, and I said this earlier to the panel. I said
7 the burden in a civil case is the case must be proven by
8 the greater preponderance of the evidence. I don't know
9 if you've heard that term before or whether you served on
10 a jury where that term was used, but if you did, scratch
11 it because that's not what's going to be the standard.
12 The standard is you must determine that the State met its
13 burden by proving the defendant guilty beyond a reasonable
14 doubt. And then that's what you would consider in your
15 deliberations. All of you must unanimously agree upon any
16 verdict that you reach.

17 Of course, Mr. Foreman, you're in charge of
18 deliberations when I instruct you to do so. You're not to
19 have any discussions about the case as it progresses with
20 each other at all. You're not to begin any deliberations
21 at all until I instruct you to do so.

22 Now, I'm also probably going to define there's two
23 kinds of evidence: direct evidence and circumstantial
24 evidence. That would be something that I would define
25 during my charge that I'll give at the end of the case on

1 what the law, the applicable law is in the case.

2 So having said that, is the State ready to proceed?

3 MR. MCCOLLUM: Yes, Your Honor.

4 THE COURT: Defense ready to proceed?

5 MR. GAMBRELL: Yes, sir, Your Honor.

6 THE COURT: All right. The State can -- let's go,
7 opening statements.

8 MR. MCCOLLUM: Thank you, Your Honor. May it please
9 the Court.

10 THE COURT: Yes, sir.

11 OPENING STATEMENTS

12 MR. MCCOLLUM: Good afternoon. On March 31, 2020,
13 the victim in this case, 10-year-old SB [REDACTED] was
14 staying in a home that her mother, Monquies Bryant, shared
15 with her boyfriend, James Lee, along with members of
16 Mr. Lee's family. That home should have been a safe place
17 for SB [REDACTED]. But that was not the case.

18 On the morning of March 31, 2020, while SB [REDACTED] was
19 asleep in the living room on the couch, the defendant
20 entered that living room, stood over her with an erect
21 penis, and attempted to put it in her mouth. SB [REDACTED]
22 awoke, realized what the defendant was doing to her,
23 jumped up erratic and ran to her mother. Her mother
24 confronted the defendant, and afterwards called 9-1-1.

25 Shortly thereafter law enforcement arrived on the

1 scene. When they arrived on scene, they conducted an
2 investigation, and ultimately, they arrested the
3 defendant. And he sits here today indicted for attempted
4 criminal sexual conduct with a minor in the first degree.

5 As you've already heard and as I forewarn you now,
6 this is an ugly case with ugly facts. There will be
7 unpleasant things to hear and uncomfortable words. But it
8 is imperative and important that you pay attention through
9 the duration of this trial. I, along with my co-counsel
10 Mr. Johnson, will be presenting the State's case to you
11 for the duration of this trial.

12 As you heard from the judge, as you'll hear from me
13 and as you'll hear throughout the rest of this trial, the
14 State bears the burden of proving this case proof beyond a
15 reasonable doubt. It's a burden that we gladly accept.

16 As the judge instructed you, he will instruct you on
17 the law. But I want to tell you this. Proof beyond a
18 reasonable doubt is proof that leaves you firmly convinced
19 of the defendant's guilt. It is not proof beyond all
20 doubt.

21 Mr. Johnson and I will present the State's case to
22 you today with evidence. Again, as you heard from the
23 judge, evidence comes in many forms. I want to talk to
24 you today about two. There's direct evidence, evidence
25 that you will hear from witnesses on the witness stand

1 through testimony, and there's circumstantial evidence,
2 evidence where you can infer from facts presented to you
3 throughout the duration of this trial. And you're going
4 to take that evidence, and you're going to utilize it to
5 answer the essential question in this case. And that
6 question is: Did the defendant enter the living room by
7 [REDACTED] in Fountain Inn, South Carolina, stand
8 over the victim, SB [REDACTED] who was 10 years old at
9 the time, with an erect penis and attempt to put it in her
10 mouth?

11 Now, this is generally what this case is about. Let
12 me tell you what you can expect to hear. You can expect
13 to hear from the mother of the victim, Monquies Bryant.
14 You can also expect to hear from the victim herself,
15 SB [REDACTED] You will then hear from the members of
16 the Fountain Inn Police Department who arrived on scene
17 and investigated the case, Officer Jake Chupp and
18 Detective James Paris.

19 And, ladies and gentlemen, as the judge said, we all
20 have roles. His role is the judge of the law. The
21 attorneys' roles are to advocate for their respective
22 positions. But it is you, each one of you that are the
23 judge of the facts. You have to utilize the most
24 important tool, your common sense, again, to review the
25 evidence and to answer the essential question did the

1 defendant, Kereen Lee, enter the living at [REDACTED]
2 Street, Fountain Inn, South Carolina, stand over the
3 victim with an erect penis in an attempt to put it in her
4 mouth?

5 At the conclusion of this case, my colleague
6 Mr. Johnson will come before you and present the State's
7 closing argument. At the conclusion of his closing
8 argument, he will ask that you render a verdict of guilty,
9 and he will do so because the evidence supports that
10 verdict, because justice so demands it.

11 Thank you.

12 THE COURT: All right. Thank you, Counsel.

13 Mr. Gambrell?

14 MR. GAMBRELL: Thank you, Your Honor. May it please
15 the Court.

16 THE COURT: Yes, sir.

17 MR. GAMBRELL: Conscious intent. What did he
18 consciously intend? That's the question that I want -- I
19 would ask that each of you hold in your minds as you sit
20 through the presentation of this case. What did Kereen
21 consciously intend?

22 Now, you've already met Kereen during jury selection.
23 He's a 41-year-old intellectually disabled man. He lives
24 with his brother James, [REDACTED], Fountain Inn.

25 Back in March of 2020, James was in a relationship

1 with Monquies Bryant, and her three children, SB
2 Nile and Major, along with his two children, Jessiah and
3 James, Jr., they're a blended family, all live together as
4 well. His uncle Ed Lee lived there and Kereen's
5 girlfriend Barbara Simmons lived there. There was ten
6 people total in the house that lived at [REDACTED]
7 Street.

8 On March 31st, the date of the incident, there were
9 nine people at home. And from that incident, Kereen is
10 charged with attempt to commit sexual conduct in the first
11 degree.

12 Now, obviously, that morning the evidence is going to
13 show that SB and Jessiah were asleep on a sectional
14 sofa in the living room. And SB is going to testify
15 that something hit her lip. Now, that's not going to be
16 any direct evidence of what that is. The State's not
17 going to present any DNA evidence to show that whatever
18 hit her lip was Kereen's person, skin-to-skin contact.

19 She wakes up. She sees Kereen with his hands behind
20 his head and his penis exposed. She screams. She runs
21 out of the living room, down the hallway to her mother's
22 room.

23 Now, that entire incident happened so quickly that
24 when Jessiah is awakened by SB scream, the only
25 person she sees in the room is SB

1 Now, from those facts, the State has the burden of
2 firmly convincing you that Kereen consciously intended to
3 complete the act of fellatio on SB along with some
4 other overt act in furtherance of that attempt that wasn't
5 preparation. And that burden is the State's and the
6 State's alone. Kereen doesn't have to prove anything. He
7 doesn't have to prove what his intent was or wasn't. The
8 State has that entire proof.

9 Kereen is presumed innocent. He's as innocent of
10 this charge as anyone else in this courtroom, and that
11 presumption lasts all the way through this trial, all the
12 way until you get into your deliberation room and until
13 the State meets their burden to show that he is guilty
14 beyond a reasonable doubt.

15 You're also going to see a videotape of his
16 statements to the police. And I ask you to pay very close
17 attention to those statements that he makes, and in your
18 mind determine if any of those statements show that he
19 consciously intended to complete the act of fellatio on
20 SB

21 The law in this land states that it is entirely the
22 State's burden. And when you go through and you review
23 all the evidence in this case, the testimony as well as
24 the videotaped statements of Kereen, if you think that
25 there is a possibility that he is not guilty, Judge Kinlaw

1 is going to instruct you that under those circumstances,
2 you have to find him not guilty.

3 Thank you.

4 THE COURT: All right. Thank you, Counsel.

5 State can call its first witness.

6 MR. MCCOLLUM: Yes, Your Honor. Can we approach?

7 THE COURT: Yeah.

8 (WHEREUPON, a bench conference was held off the record.)

9 THE COURT: All right. I'm going to instruct
10 everyone who is a potential witness to step out at this
11 time. The only persons that I'll let remain would be the
12 investigating officers. I'll let the two of them remain.
13 Is that okay?

14 MR. GAMBRELL: Yes, sir.

15 THE COURT: All right. These two officers ---

16 MR. GAMBRELL: I would say the lead investigator,
17 typically, is the one that remains.

18 THE COURT: All right. Lead investigator, however
19 that is. Everybody else, please step out.

20 MR. JOHNSON: And, Your Honor, would the victim be
21 able to stay?

22 THE COURT: The victim will be able to stay.

23 Mr. Gambrell?

24 MR. GAMBRELL: Sir? All of our witnesses are out,
25 Your Honor.

1 THE COURT: All right. Okay.

2 MR. MCCOLLUM: The State calls Monquies Bryant.

3 THE CLERK: Please pause at the bench. Put your left
4 hand on the bible and raise your right hand.

5 WHEREUPON,

6 MONQUIES BRYANT

7 After having been duly sworn, testified as follows:

8 THE CLERK: Thank you. You may be seated. Please
9 state your full name for the record.

10 THE WITNESS: Monquies SB

11 DIRECT EXAMINATION

12 BY MR. MCCOLLUM:

13 Q Good afternoon, Ms. Bryant. What is your
14 relationship to SB

15 A Her mom.

16 Q On the morning of March 31, 2020, where were you
17 staying?

18 A Street.

19 Q Where is that located?

20 A Fountain Inn, South Carolina.

21 Q What county is that located?

22 A Greenville.

23 Q How long had you been staying there?

24 A Approximately three months.

25 Q And why were you staying there?

1 A Working at ZF in Fountain Inn, South Carolina.

2 Q So you were close to where you work.

3 A Yes.

4 Q While you were staying in that home, who stayed there
5 with you?

6 A James Lee, Eddie Louis Lee, Kereen Lee and Barbara
7 Simmons.

8 Q And who is James Lee to you? Who was James Lee at
9 that time?

10 A Boyfriend.

11 Q And in that residence, those individuals who stayed
12 in that residence, how were the sleeping arrangements?

13 A When you walk in the front door and you make a left,
14 Kereen Lee room is the first one to the left, James Lee
15 room was the second room to the left, and Eddie Lewis room
16 is the last room to the back.

17 Q And these are sequential to the living room?

18 A Yes.

19 Q Did you and James Lee share a room?

20 A Yes.

21 Q Did Kereen Lee share a room?

22 A With Barbara Simmons, yes.

23 Q Who is Barbara Simmons?

24 A His girlfriend.

25 Q While you were staying in the residence, did your

1 daughter stay with you?

2 A No. She was living with my mom.

3 Q But on different occasions, she would visit?

4 A Yes.

5 Q And this period in March, is that one of those
6 occasions?

7 A Yes.

8 Q Typically, not specific to March 31st, how would the
9 sleeping arrangements be when she stayed with you, when
10 your children stayed with you?

11 A Typically, the girls would be in our room, James and
12 I would be outside, and the boys would be in the living
13 room.

14 Q Was that the arrangement on this particular morning?

15 A No.

16 Q What was the arrangement -- or how was the
17 arrangement on the morning of March 31st?

18 A The boys was outside, the girls was in the living
19 room and James and I was in his room.

20 Q On the morning of March 31st, who all was present in
21 the home?

22 A Eddie Lewis Lee, James Lee, myself, Barbara Simmons,
23 Jessiah Lee, **SB** and Kereen Lee.

24 Q And was James present in the home the entire morning?

25 A No.

1 Q Where was he at?

2 A He leave -- left and went to work around seven.

3 Q On the morning of March 31st, were you awakened by a
4 disturbance?

5 A Yes.

6 Q Please explain to the jury what happened on that
7 morning.

8 A I was awakened by my daughter emotionally wrecked,
9 slobbering, throwing up.

10 Q When she approached you in that emotional state, was
11 that something you had seen before?

12 A No.

13 Q And you said emotional, slobbering. Were there any
14 other details about her emotional state?

15 A I've never seen her before.

16 Q You never seen her act that way before?

17 A (Shakes head negatively.)

18 Q When she came to you, did she indicate that something
19 had happened to her?

20 A Yes.

21 MR. GAMBRELL: Judge, I would object as far as
22 hearsay.

23 THE COURT: Overruled.

24 BY MR. MCCOLLUM:

25 Q Did she indicate where something had happened to her?

1 A Yes.

2 Q And where was that?

3 A In the living room.

4 Q Did she indicate when something had happened to her?

5 A Yes.

6 Q And I just want to take a moment to take a step back.

7 Is there anything unique about SB when she slept?

8 A Yeah.

9 Q What was that?

10 A She snores. She sleeps with her mouth open.

11 Q So at that time, SB has come to you, she's in a
12 very intense, emotional state; is that fair to say?

13 A Yes.

14 Q Based on your interactions with her, were you able to
15 make some conclusions?

16 A Yes.

17 Q And with the information that you had and the
18 conclusions you made, what did you do?

19 A I approached him.

20 Q You approach who?

21 A Kereen Lee.

22 Q What did you do?

23 A I approached him, and he said he didn't do it.

24 Q He said what?

25 A He didn't do it.

1 Q Did you ask him any questions prior to that?

2 A No. I was just hysterical myself.

3 Q Hysterical yourself.

4 At the time of this incident, how long had you been
5 in a relationship with James Lee?

6 A 19 years.

7 Q And after this incident, how long -- or were you in a
8 relationship after this incident?

9 A Yes.

10 Q For approximately how long?

11 A About three months.

12 Q And after that you separated?

13 A Yes.

14 Q Was it a mutual separation?

15 A Yes.

16 Q Did you move out of the home at [REDACTED] Street?

17 A Yes.

18 MR. MCCOLLUM: Beg the Court's indulgence.

19 THE COURT: Sure.

20 BY MR. MCCOLLUM:

21 Q Ms. Bryant, please answer the questions -- how old
22 was SB ---

23 A 10.

24 Q --- on March 31, 2021? 10 years old?

25 A 10.

1 MR. MCCOLLUM: Please answer any questions defense
2 counsel has for you.

3 THE COURT: Cross-examination, Mr. Gambrell?

4 MR. GAMBRELL: Thank you, Your Honor.

5 CROSS EXAMINATION

6 BY MR. GAMBRELL:

7 Q Hi, Ms. Bryant.

8 A Hi.

9 Q I think you testified that you had been staying at
10 the residence at [REDACTED] Street for three months?

11 A No. That's not what I said.

12 Q How long had you been there?

13 A I was working at ZF. That's why I was living there.
14 My children were staying with my mom.

15 Q And how long had you stayed there?

16 A Before the incident?

17 Q Yes.

18 A I can't remember, really. A good four or five years.

19 Q Okay. And were your children with your mom for that
20 four or five years?

21 A No.

22 Q How long had they been with your mom?

23 A They went with my mom when Kereen Lee got out of
24 prison.

25 MR. MCCOLLUM: Your Honor, we need to approach.

1 THE COURT: Yes.

2 (WHEREUPON, a bench conference was held off the record.)

3 THE COURT: All right. Ladies and gentlemen of the
4 jury, I'm going to have to send you to your jury room for
5 a few minutes. Please, ma'am, please, sir, don't talk
6 about the case to each other.

7 (WHEREUPON, the jury exits the courtroom at 2:54 PM.)

8 THE COURT: All right. I know the problem.

9 MR. MCCOLLUM: We're going to ask for curative
10 instruction.

11 MR. GAMBRELL: I'm going to ask for a mistrial,
12 Judge. There is no curative instruction.

13 MR. MCCOLLUM: He asked the question, Your Honor. We
14 weren't -- we were very careful to not elicit that
15 testimony. Mr. Gambrell asked the question that led to an
16 answer. Respectfully, given the defendant's prior
17 history, prior incidences, we avoided 404(b) testimony,
18 eliciting that testimony. Mr. Gambrell asked that
19 question. I know it wasn't a very specific question, but
20 it was a question that would allow for the door to be
21 opened. We would ask for a curative instruction and for
22 that answer to be stricken from the record. And we would
23 ask that the jury be instructed not to ---

24 MR. GAMBRELL: Judge, I was simply trying to
25 establish when she began living at that residence. I

1 asked her how long she had been there, when she started
2 living there. She could have answered with a time period
3 as far as a date, a month, a year. That had nothing to do
4 with Mr. Lee's incarceration. There's no way that I could
5 have anticipated that she would answer with regard to a
6 time period in reference to Mr. Lee.

7 MR. MCCOLLUM: Your Honor, I mean, Mr. Gambrell, in
8 prior motions, has alluded to the fact that there could be
9 potential 404(b) evidence, so he's aware of Mr. Lee's
10 prior criminal history. I'm certain he's talked to his
11 client, his client's family. There were some prior
12 allegations of uncharged abuse or questionable sexual
13 activity around the children. It is not a faraway shot to
14 think that that could be a potential answer." You'd have
15 to be careful in answering that question.

16 We prepared Ms. Bryant. We were careful ourselves
17 not to ask any questions that potentially elicit that type
18 of testimony, that type of 404(b) evidence into the
19 record. We believe it's appropriate that we have a
20 curative instruction issued, that this answer to be
21 stricken from the record and that you instruct the jury
22 that Mr. Lee was not in jail for the purposes of what
23 we're discussing today in this trial.

24 MR. GAMBRELL: I'm moving for a mistrial, Judge. I
25 don't think you can unring that bell. It wasn't a

1 question that that would have been any obvious answer.
2 I'm simply trying to establish what the timeline of her
3 being there is. She didn't have to answer it in the
4 timeline of Mr. Lee being in prison. She could have
5 answered it from a month or a year or any other point of
6 reference other than him being in prison. I wasn't
7 eliciting information that that would be an obvious answer
8 to.

9 MR. MCCOLLUM: Your Honor, if I may. The question,
10 and I spoke to my investigator, Mr. Gambrell asked is why
11 did the kids leave to go live with her mom. There was no
12 time period. It was why did the kids leave. The answer
13 to that question was because the defendant was getting out
14 of prison and coming to the home at [REDACTED] Street.
15 Ms. Bryant was aware that she was staying at the home with
16 the brother of the defendant James Lee who's also his
17 caretaker. There is no other anticipatory answer to
18 expect in this case.

19 THE COURT: I think the question that you asked,
20 Mr. Gambrell, was -- and let me just go back. You were
21 asking the witness how long had she been living there.

22 MR. GAMBRELL: Correct.

23 THE COURT: And she asked -- her response was, if I'm
24 correct, was do you mean before this incident?

25 And then you said "yes."

1 MR. GAMBRELL: Correct.

2 THE COURT: Then the witness's answer was I don't
3 know, somewhere between four to five years.

4 MR. GAMBRELL: Right.

5 THE COURT: Those are timeline questions that you're
6 asking. And that's your argument. But your next question
7 was why did they -- what was the question? Why did she
8 leave ---

9 MR. McCOLLUM: Why did the kids leave to go live with
10 their mom.

11 THE COURT: Why did the kids leave? That's not a
12 timeline question. And I'm saying is that -- see, you've
13 got to be real careful with ---

14 MR. GAMBRELL: I'm not sure that that was the
15 question that I asked.

16 THE COURT: That was.

17 MR. GAMBRELL: Can we ask the court reporter to
18 determine if that's the case?

19 THE COURT: She can go back that far.

20 MR. GAMBRELL: I think I asked when, not why.

21 (WHEREUPON, the previous two questions and answers were
22 read back.)

23 MR. GAMBRELL: I just asked how long they had been
24 there. I didn't ask why they had gone there. I asked how
25 long they had been there.

1 THE COURT: All right. Let me see y'all back in ---
2 ma'am, just sit there for a minute. Are you okay sitting
3 there?

4 Let's go back here.

5 (WHEREUPON, a recess is taken at 3:00 PM.)

6 THE COURT: All right. We're back on the record.

7 Mr. Gambrell, do you want to put your motion on the
8 record?

9 MR. GAMBRELL: Yes, Your Honor. At this time, on
10 behalf of Mr. Lee, I'd move for a mistrial based on the
11 testimony of this witness referring to his prior prison
12 sentence. That would be a violation of 404(b).

13 THE COURT: All right. I understand it's 404.

14 Mr. Johnson or Mr. McCollum?

15 MR. MCCOLLUM: Your Honor, the State would be
16 objecting to the defense's motion for a mistrial. We
17 believe a curative instruction would be appropriate in
18 this matter.

19 THE COURT: All right. And, ma'am, I'm going to give
20 -- first of all, I think a curative instruction at this
21 particular juncture of the trial would be appropriate.
22 I'm going to deny your motion for a mistrial. It's noted
23 for the record.

24 MR. GAMBRELL: Yes, sir. And I also would note that
25 I object to the curative instruction.

1 THE COURT: All right. And that's also noted for the
2 record as well.

3 Ma'am, I'm going to talk to you, and of course
4 counsel on both sides. You cannot bring up anything at
5 all regarding Mr. Lee's criminal history. Nothing. You
6 can't say anything about that. You know, if there's a
7 question that's posed to you and you bring up anything,
8 you cannot bring up anything regarding his past criminal
9 history. His record is not before the Court today. His
10 record is not on trial. He's on trial for this offense
11 and this offense only. What he did before he came in on
12 this offense is not relevant as it relates to any criminal
13 record that he may have. Do you understand that?

14 THE WITNESS: Yes, sir.

15 THE COURT: All right. I do not want this jury to
16 make any decisions based upon what you or any other
17 witness says about his criminal past.

18 THE WITNESS: Yes, sir.

19 THE COURT: I've instructed both of these lawyers, we
20 had this conversation before the trial even started, that
21 you've got to make sure that your witness is prepped in
22 terms of not going down that road. Do you understand
23 that? Do you have any question about that?

24 THE WITNESS: No, sir.

25 THE COURT: I mean, if you have a question, now is

1 the time to ask.

2 THE WITNESS: I understand.

3 THE COURT: You can't breath a word of anything that
4 you know about any criminal history regarding Mr. Lee.

5 THE WITNESS: Yes, sir.

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

7 MR. MCCOLLUM: Yes, Your Honor. Just as a part of
8 the curative instruction, we'd ask that you instruct the
9 jury that the answer was incorrect and it's to be stricken
10 from the record and should be disregarded by members of
11 the jury.

12 THE COURT: I'll handle it.

13 All right. Bring the jury back.

14 (WHEREUPON, the jury entered the courtroom at 3:08 PM.)

15 THE COURT: All right. We're back on the record.

16 Ladies and gentlemen of the jury, I instruct you that
17 the last answer that was given by this witness was
18 incorrect and should be stricken not only from your mind,
19 but I'm instructing Madam Court Reporter to strike it from
20 the record.

21 All right. Okay. And your objection is noted for
22 the record, Mr. Gambrell.

23 MR. GAMBRELL: Thank you, Your Honor.

24 THE COURT: Previous motion is noted.

25 MR. GAMBRELL: May it please the Court.

1 THE COURT: Yes, sir.

2 BY MR. GAMBRELL:

3 Q Ms. Bryant, do you remember what day of the week this
4 occurred on?

5 A No, I don't.

6 Q Do you know if it was a weekday or a weekend day?

7 A It was a weekend. I'm sure it was.

8 Q A weekend day?

9 A Uh-huh.

10 THE COURT: Make sure you say "yes" or "no" because
11 she has to take down what you say.

12 THE WITNESS: Yes. Weekend day.

13 BY MR. GAMBRELL:

14 Q If I told you it happened on a Tuesday, would that
15 surprise you?

16 A No.

17 Q Could it have happened on Tuesday, March 31st?

18 A I'm not sure.

19 Q Okay. And during that time, this was during COVID,
20 correct?

21 A Correct.

22 Q And the children would have been doing online
23 learning.

24 A Correct.

25 Q That would have taken place with their Chromebooks.

1 A Correct.

2 Q And each morning they would have to get up and log
3 into their Chromebooks.

4 A Correct.

5 Q How would they normally get up to do that? Did you
6 do that or did they get up on their own?

7 A At the time they wasn't doing online learning. They
8 hadn't even got Chromebooks from the school yet because
9 COVID had just hit.

10 Q So they weren't doing any -- there was no learning
11 whatsoever?

12 A No.

13 Q They were not in school?

14 A No.

15 Q And they weren't doing online learning.

16 A (Nonverbal answer.)

17 Q Okay. And you said -- what time of day did this
18 happen?

19 A It was a little after seven.

20 Q Do you recall giving a statement to Investigator
21 Paris?

22 A Yes.

23 Q Do you recall him asking you to make it as detailed
24 as possible?

25 A Yes.

1 MR. GAMBRELL: May I approach the witness, Your
2 Honor?

3 THE COURT: Yes.

4 BY MR. GAMBRELL:

5 Q Does your statement indicate what time it was?

6 A (Reviews document) No, it doesn't. That says ten.

7 Q At the top.

8 A Uh-huh.

9 Q What time does it say?

10 A 10 a.m.

11 Q Okay. So is that what time it happened, not seven
12 but ten?

13 A If that's what time I gave the notice, then, yeah, it
14 was ten.

15 Q And you called 9-1-1, correct?

16 A Yes.

17 Q And was that shortly after this occurred?

18 A It was after I approached him, yes.

19 Q Okay. And how soon did law-enforcement get to your
20 house?

21 A About four or five minutes.

22 Q Okay. Did you say four or five or 45?

23 A It was about four or five minutes.

24 Q Okay. So pretty quickly?

25 A Yes.

1 Q Did you take SB to any medical providers after
2 this?

3 A No, I didn't.

4 Q At any time after this incident at all?

5 A After this incident, she ended up getting mental
6 health.

7 Q And who was that through?

8 A Excuse me?

9 Q Through who?

10 A Greenwood.

11 Q Greenwood?

12 A Uh-huh.

13 Q And who was that set up by?

14 A What is the name of it? Beckman.

15 Q And when was that started?

16 A Probably about a year ago.

17 Q So it would have been three years after this?

18 A Yes.

19 Q And what was the name of her physician there?

20 A I think her name was Trina. I don't remember Trina's
21 last name.

22 Q How often did she see her?

23 A At this point, she goes every other week. And she
24 sees counseling in school also.

25 Q Did you attend those with her?

1 MR. MCCOLLUM: Objection, Your Honor. Relevance.

2 THE COURT: Overruled.

3 BY MR. MCCOLLUM:

4 Q Ma'am?

5 A I didn't hear you.

6 Q Did you attend those with her?

7 A Yes.

8 Q Did you yourself seek any medical attention after
9 this?

10 A No.

11 MR. GAMBRELL: Thank you, Your Honor. That's all the
12 questions I have.

13 THE COURT: All right. Anything on redirect?

14 MR. MCCOLLUM: Yes, Your Honor.

15 THE COURT: Yes, sir.

16 REDIRECT EXAMINATION

17 BY MR. MCCOLLUM:

18 Q Ms. Bryant, this incident occurred approximately a
19 little over three years ago; is that correct?

20 A Yes.

21 Q At that time, you were in a very high emotional state
22 yourself?

23 A Yes.

24 Q As well as your daughter?

25 A Yes.

1 Q During that time, it may be a little difficult to
2 remember specific details; is that correct?

3 A Correct.

4 Q But generally, you understand what happened to your
5 daughter?

6 A Yes.

7 MR. MCCOLLUM: Thank you.

8 THE COURT: Any recross?

9 MR. GAMBRELL: Nothing further, Your Honor.

10 THE COURT: All right. Ma'am, you can step down.

11 All right. State can call its next witness.

12 MR. JOHNSON: Thank you, Your Honor. The State calls

13 SB [REDACTED]

14 THE CLERK: Please pause here at the bench. Lay your
15 left hand on the Bible and raise your right hand.

16 WHEREUPON,

17 SB [REDACTED]

18 After having been duly sworn, testified as follows:

19 THE CLERK: Okay. Please have a seat.

20 THE COURT: SB [REDACTED] how are you doing?

21 THE WITNESS: Good.

22 THE COURT: You're good? Doing all right?

23 All right. I know this young lady just asked you a
24 question about whether you're going to tell the truth. Do
25 you know the difference between telling the truth and

1 telling a lie?

2 THE WITNESS: Yes, sir.

3 THE COURT: You know that your mom told you that
4 difference. And you know that today is the day that
5 you've got to tell the truth. Do you understand that?

6 THE WITNESS: Yes, sir.

7 THE COURT: Are you going to do that for me?

8 THE WITNESS: Yes, sir.

9 THE COURT: Okay. All right.

10 DIRECT EXAMINATION

11 BY MR. JOHNSON:

12 Q Good morning, Ms. [REDACTED].

13 A Good morning.

14 Q What do you go by?

15 A SB [REDACTED]

16 Q Do you mind if I call you SB [REDACTED]

17 A Yes, sir.

18 Q What's your birthday?

19 A [REDACTED].

20 Q On March 31, 2020, how old were you then?

21 A 10.

22 Q 10.

23 What grade were you in back then; do you remember?

24 A Fourth, I think.

25 Q That was spring of 2020. COVID had just hit?

1 A Yes, sir.

2 Q Did you have a Chromebook yet?

3 A I don't think so.

4 Q So you were just out of school, basically, right?

5 A Yes, sir.

6 Q Not summer, though. COVID break, I think you call

7 it?

8 A Uh-huh.

9 Q What school did you go to then?

10 A Four Elementary.

11 Q And that was back on March 31, 2020?

12 A Yes, sir.

13 Q So I know your mother discussed it a little bit, but

14 where did you live back then?

15 A I lived with my grandma, sometimes with my dad. But

16 I was with my mom then for summer break, the COVID break.

17 Q Hellams Street?

18 A Yes, sir.

19 Q Is that in Greenville County?

20 A (Nods head affirmatively.)

21 Q How long were you visiting your mother at that house?

22 A Probably every weekend.

23 Q So you lived with your grandmother during the week

24 and your mother on the weekend?

25 A Yes, sir.

1 Q Where do you sleep when you were at Hellams Street?

2 A Sometimes it will be in the room because my mom and
3 Cliff would give us, me and Jessiah the room. And
4 sometimes the living room.

5 Q Again, I'm sorry to be repetitive but I just want to
6 be clear. Can you walk through for the jury everyone who
7 lived in the house and their relationship starting with
8 your mother?

9 A It was my mom, Cliff, Kereen, Barbara.

10 Q All right. So let's stop right here for a second.
11 You said your mom and Cliff. Who's Cliff?

12 A James Lee.

13 Q James Cliff Lee?

14 A Yeah.

15 Q But he goes by Cliff?

16 A Cliff he goes by.

17 Q That's your mother, Monquies boyfriend at the time,
18 right?

19 A Uh-huh.

20 Q Okay. So you've got your mom, your mom's boyfriend.
21 And it's your mom's boyfriend's house, James Lee?

22 A Uh-huh.

23 Q Who else was living there?

24 A Eddie Lewis and Barbara and Kereen.

25 Q All right. You said Kereen?

1 A (Nods head affirmatively.)

2 Q Do you see him in the courtroom today?

3 A Yes, sir.

4 Q Can you point him out for me?

5 A (Indicating.)

6 MR. JOHNSON: Your Honor, please let the record
7 reflect she pointed at the defendant at defense table.

8 THE COURT: All right. So noted.

9 BY MR. JOHNSON:

10 Q Are you nervous?

11 A (Nods head affirmatively.)

12 Q Can you tell the jury how you know Kereen Lee?

13 A That's Cliff's brother.

14 Q Were you close with Kereen Lee?

15 A No, sir.

16 Q You just knew of him from being around the house?

17 A Yes, sir.

18 Q All right. March 31st, where are you sleeping that
19 night -- or that morning, rather?

20 A I'm sorry.

21 Q That's okay.

22 A I was sleeping on the couch.

23 Q Who else was in the living room?

24 A Jessiah.

25 Q All right. Can you tell the jury what happened when

1 you woke up or how you woke up?

2 A I was asleep on the right side of my face, and when I
3 woke up, I seen Kereen standing over me with his private
4 part out of his pants. He wasn't doing this. He was
5 holding his private part.

6 Q I'm sorry this is awkward, but when you say "private
7 part," do you mean his penis?

8 A Yes, sir.

9 Q So you woke up, saw him holding his private part.

10 A (Nods head affirmatively.)

11 Q Did he touch you with it?

12 A Yes, sir.

13 Q Can you tell the jury about that, how you ended up
14 waking up?

15 A I can go into details.

16 Q Yeah. We'll go back to you're asleep. Take your
17 time.

18 A At first I thought it was my brothers because they
19 usually come in and out of the house to make breakfast.
20 And I felt something hit my lip. And it wasn't really
21 forceful, but the second time it was forceful. And I woke
22 up. And like you said, I sleep with my mouth open.

23 Q So the first time -- I'm trying to make sense of
24 what's going on. So the first time you felt something
25 touch your lip?

1 A Yes, sir.

2 Q Did you think anything about it at that time?

3 A No, sir.

4 Q Did you open your eyes?

5 A No, sir.

6 Q And then tell us about the second time you felt
7 something on your lip.

8 A It was forceful like nubbing (gesturing). And that's
9 when I woke up and I start panicking. I was screaming.
10 And I ran to the back of the room with my mom. And I was
11 holding my mouth and I was just pointing to his room.

12 Q Sorry. We've got to go slow. So you open your eyes.
13 Tell us what you saw again.

14 A I saw his penis taken out of his drawers.

15 Q Again, I'm sorry, but do you know if his penis was
16 hard or soft?

17 A It was hard.

18 Q Is that what he touched you with, like your lip?

19 A Yes, sir.

20 Q When you opened your eyes and you saw that, what did
21 you do then?

22 A I had to wake up first, but I started panicking. I
23 started screaming. And like he -- he was walking down the
24 hallway. He just kept looking back at me. And once he
25 went in the room, I started -- I ran down to the hallway.

1 And like the latch was locked, so I bust in the room.

2 And ---

3 Q Whose room is that?

4 A James.

5 Q Okay. James and your mother?

6 A Yes, sir.

7 Q Okay.

8 A And I start trying to tell my mama what was
9 happening. But like I was -- so, you know, I couldn't
10 really explain, so I was just pointing. But it finally
11 got out.

12 Q So when you woke up and you saw it, did Kereen take
13 off running? He's standing there? What happened?

14 A He was like -- he was walking at a fast pace. It
15 wasn't running.

16 Q But he was -- once he saw you were awake, he got out
17 of there?

18 A He got out of there.

19 Q And you said you went and told your mother?

20 A Yes, sir.

21 Q What did your mother do?

22 A She approached him.

23 Q You can be honest. What did she do to him?

24 A She approached him, and she started beating him. And
25 she was just -- the whole time she was just talking to

1 him. And she was -- her towel would drop because she
2 don't sleep with no clothes on. Her towel dropped, and
3 she was like -- she said, "This is what you want to see."
4 And she was like, "You did this to my daughter." And
5 that's when she walked out of the room. She went to the
6 front. Well, she grabbed her towel. She went out of the
7 room. And she called Cliff first, then she called the
8 police, then my uncle.

9 Q What was Kereen saying while she was beating him?

10 A He was like, "I didn't do it. I didn't do anything."

11 Q Without telling us specifically what you told law
12 enforcement, did they come out to your house?

13 A Yes, sir.

14 Q Did you tell them what happened?

15 A Yes, sir.

16 Q How shortly after the assault did you tell law
17 enforcement what happened?

18 A It was about four or five minutes.

19 Q So it was pretty quickly after?

20 A Yes, sir.

21 Q And you gave a statement to Detective Paris?

22 A Can you repeat that?

23 Q And you gave a statement to Detective Paris?

24 A Yes, sir.

25 Q How old are you today?

1 A 14.

2 Q And on that day, you were 10 years old, right?

3 A Yes, sir.

4 Q When he tried to put his penis in your mouth?

5 A Yes, sir.

6 MR. JOHNSON: All right. I don't have any more
7 questions for you, but please answer any questions defense
8 may have.

9 THE COURT: All right. Cross-examination,
10 Mr. Gambrell?

11 MR. GAMBRELL: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MR. GAMBRELL:

14 Q Hi, SB [REDACTED].

15 A Hey.

16 Q How are you doing?

17 A Good.

18 Q My name is Michael Gambrell. I represent Kereen.
19 And I'm just going to ask you a few questions if that's
20 okay.

21 A Yes, sir.

22 Q Okay. If you feel like you need to take a break at
23 any time, just let us know and we'll be sure to do that,
24 okay?

25 A (Nods head affirmatively.)

1 Q Are you on TikTok?

2 A Can you repeat that?

3 Q Are you on TikTok?

4 A Yes, sir.

5 Q You know how you scroll through TikTok and sometimes
6 you need a break?

7 A (Nods head affirmatively.)

8 Q If you need a break like that today, just let us know
9 and we'll stop and give you as much time as you need,
10 okay?

11 A Yes, sir.

12 Q Before today, have you spoken with anybody about what
13 you would testify to today?

14 A Yes, sir.

15 Q Who did you speak with?

16 A Mr. Seth and -- yeah. Just Mr. Seth.

17 Q Mr. McCollum and Mr. Johnson?

18 A Uh-huh.

19 Q When was that?

20 A It was when I first got here.

21 Q Today?

22 A Yes, sir.

23 Q Did you speak to them prior to today about this,
24 about your testimony?

25 A Yes, sir.

1 Q When was that?

2 A When I first got here earlier.

3 Q Okay. Before that time, was there any time that you
4 spoke with them?

5 A Whenever we had meetings, yes.

6 Q Okay. How many times did you meet with them?

7 A It was probably three or four times, I think.

8 Q And when was the last time you met with them before
9 today?

10 A I can't remember.

11 Q Okay. Did you speak with anybody else about your
12 testimony?

13 A No, sir.

14 Q Okay. And I think you testified that on the day of
15 the incident, you remember writing a statement for
16 Detective Paris?

17 A Yes, sir.

18 Q Okay. And you tried to put as much detail as you
19 could in that statement?

20 A Yes, sir.

21 Q And you wrote that statement pretty quickly after
22 this incident.

23 A Yes, sir.

24 Q Did you discuss your statement at all with the
25 solicitor's office?

1 A No, sir.

2 Q And you are 14?

3 A Yes, sir.

4 Q Do you have any issues with hearing or seeing?

5 A I'm just farsighted, but I can hear.

6 Q Okay. How would you describe your overall health?

7 A My health or my mental health?

8 Q Just your physical health.

9 A Oh, it's okay.

10 Q And I think you said you go to school at -- where do
11 you go to school now?

12 A Four elementary.

13 Q Okay. What grade are you in?

14 A Eighth.

15 Q Is it eighth grade? That's an elementary school?

16 A Can you repeat that?

17 Q You go to elementary school?

18 A No. I used -- I was in elementary school then.

19 Q What school are you at now?

20 A McCormick Middle School.

21 Q Got you.

22 And you're in the eighth grade?

23 A Yes, sir.

24 Q Okay. Do you like going to school?

25 A Yes, sir.

1 Q What's your favorite subject?

2 A ELA.

3 Q I'm sorry? ELA?

4 A ELA.

5 Q Do you play any sports?

6 A Softball, volleyball.

7 Q Do you participate in any other extracurricular
8 activities other than sports?

9 A No, sir.

10 Q Okay. Do you belong to any clubs at school?

11 A A majorette team and a hair club.

12 Q What would be a typical school day for you? How
13 would that go about?

14 A A lot of laughing, hook, and I still get my work
15 done.

16 Q How do you get to school?

17 A Bus.

18 Q And then you go to sports after school?

19 A Yes, sir.

20 Q And who do you live with now?

21 A My mother.

22 Q Just you and your mom?

23 A Uh-huh.

24 Q Does anyone else live there?

25 A Uh-huh.

1 Q Your two brothers don't live with you?

2 A They do.

3 Q Oh, okay. So is that Nile and Major?

4 A Yes, sir.

5 Q Other than the three of you and your mom, does anyone
6 else live there?

7 A Uh-huh.

8 Q I'm going to ask you some questions about when you
9 lived in Fountain Inn in 2020; do you understand?

10 A Yes, sir.

11 Q And you lived -- and as you call him Cliff Lee ---

12 A Uh-huh.

13 Q --- Mr. Lee's house in Fountain Inn.

14 A Yes, sir.

15 Q Okay. And at that time in March of 2020, had you
16 started online learning yet?

17 A No, sir.

18 Q You hadn't?

19 A Uh-huh.

20 Q Do you recall when that started?

21 A It was probably when -- after it happened and I went
22 back with my family.

23 Q Okay. Was that maybe later in April or sometime in
24 April?

25 A Yes, sir.

1 Q And then I think you said that night before that you
2 and Jessiah had fallen asleep on the couch.

3 A Yes, sir.

4 Q And what type of couch was this?

5 A It was a black leather couch.

6 Q And what was the shape of the couch?

7 A It was like shaped like a seven. She was on the long
8 part, I was on the shorter part.

9 Q Like an L or a seven?

10 A (Nods head affirmatively.)

11 Q Now, when you were asleep, do you remember if your
12 heads were together or if your feet were together?

13 A No. My head was -- her head was on my foot and my
14 head was on the other side of the couch.

15 Q Got you.

16 Now, the portion of the couch that you were on, was
17 that the one facing the wall with the window?

18 A No.

19 Q You were on the other side.

20 A I was on the side that faced the TV.

21 Q Okay. What was behind you?

22 A It was a window.

23 Q Okay. And that was the front of the house?

24 A Uh-huh.

25 Q Okay. And you were facing away from the center of

1 the couch.

2 A Uh-huh.

3 Q And then she was facing towards your feet.

4 A Uh-huh.

5 Q You have to say "yes" or "no."

6 A Yes, sir. I'm sorry.

7 Q That's all right. It's just that she has to take
8 down what you say so you have to say "yes" or "no."

9 And was there anything in the middle of the room?

10 A No. The table was moved towards the window.

11 Q Okay. So there was no coffee table or anything
12 there?

13 A No, sir.

14 Q Okay. Now, you testified that Mr. Lee had touched
15 you once, and that's when you woke up?

16 A No. The second time I woke up.

17 Q So how did you know that there was a first touch if
18 you were still asleep?

19 A I was -- like I said before, I heard my brothers
20 coming in and out the door, and I said that they come in,
21 I thought it was them in and out the door playing. So I
22 wasn't asleep, but I was asleep, you know. Like I wasn't
23 fully asleep, but I was asleep.

24 Q Okay. Like you felt something hit your lip.

25 A Yes.

1 Q But you didn't know what that something was.

2 A No, sir.

3 Q Okay. And then you say -- you testified this time
4 that there was a second touch?

5 A Yes, sir. And that was forceful. That's why I woke
6 up.

7 MR. GAMBRELL: May I approach the witness, Your
8 Honor?

9 THE COURT: Yes, sir.

10 BY MR. GAMBRELL:

11 Q Do you recognize that?

12 A Yes, sir.

13 Q What is that?

14 A That's what I wrote to Mr. Paris.

15 Q That's your statement?

16 A Yes, sir.

17 Q Okay. And could you read the first sentence?

18 A (As read) This morning I woke up because I felt
19 something hit my lip. So I woke up screaming from the top
20 of my lungs and I seen his private. And I was scared
21 because he tried to put his private in my mouth. And I
22 told my mom what had happened, and she went crazy.

23 Q Okay. Now, in your statement, you don't say that he
24 touched you two times. You just say you woke up because I
25 felt something hit my lip; is that right?

1 A Yes, sir.

2 Q And this was made right shortly after this incident,
3 correct?

4 A Yes, sir.

5 Q Is it fair to say that when you felt something hit
6 your lip, that's when you woke up?

7 A No.

8 Q That's what your statement says.

9 A I told you once that I -- I was asleep, but I wasn't
10 fully asleep. So when I heard my brothers and Cliff kids
11 coming in and out the door, I could hear that. But they
12 were playing, they were running. I thought they hit my
13 lip. But when it was forceful, that's when I woke up.
14 That's what I said.

15 Q And I think you also testified that when you woke up
16 and saw Mr. Lee, that he had his penis in his hand.

17 A Yes.

18 Q Do you recall telling Investigator Paris that when
19 you woke up and saw him, his hands were behind his head?

20 A No, sir.

21 Q If I showed you a videotape of your statement to
22 Mr. Paris where you said that ---

23 A Uh-huh.

24 MR. GAMBRELL: And I'm going to try to set that up,
25 Judge, if I can.

1 THE COURT: All right.

2 MR. GAMBRELL: Judge, is there a way to turn the
3 volume up?

4 (WHEREUPON, a video was played in open court.)

5 BY MR. GAMBRELL:

6 Q Did you hear your statement on the video?

7 A Yes, sir.

8 Q Okay. So when you were talking to Investigator
9 Paris, you told him that you saw him with his hands behind
10 his head.

11 A Uh-huh.

12 Q And you did not tell him that his hand was on his
13 penis.

14 A Right.

15 Q Okay. Now, when you said that something hit your
16 lip, you used the word "something" because you didn't know
17 what that was, correct?

18 A No. I probably just wasn't comfortable saying the
19 word.

20 Q But you told him that you had seen his penis or his
21 stuff?

22 A Uh-huh.

23 Q But you didn't say "something" at that point.

24 A Right.

25 Q Okay. And when you woke up, did you see him with his

1 hands behind his head?

2 A No. I just seen, you know, the thing in my face.

3 Q Okay. And that startled you.

4 A Yes, sir.

5 THE COURT: Keep your voice up for me.

6 THE WITNESS: Oh, I'm sorry.

7 THE COURT: Speak into that microphone.

8 BY MR. GAMBRELL:

9 Q And so at that point, you screamed?

10 A Yes, sir.

11 Q Do you remember what Kereen was wearing?

12 A I don't know if it was red or blue boxers, but I do
13 know that it was boxers.

14 Q Just boxers?

15 A Yes. And I think some shorts.

16 Q Okay. Did he try to grab you in any way?

17 A No, sir.

18 Q Okay. Did he say anything to you at that time?

19 A No. He probably muttered some words, but...

20 Q But the first thing you recall when you woke up is
21 seeing him standing in front of you.

22 A Yes, sir.

23 Q Okay. Now, when you screamed, did he run?

24 A No. He was -- he didn't run. He was walking like at
25 a fast pace back to his room.

1 Q And you say "back to his room," would that have been
2 out of the living room and to the left?

3 A Yes. Yes, sir.

4 Q Okay. And then you went to your mom's room.

5 A Yes, sir.

6 Q Okay. And, again, you don't say in your video
7 statement that there were two touches. You just said you
8 woke up because something hit you on the lip, right?

9 A Yes.

10 Q And then when you woke up, you saw him standing
11 before you, right?

12 A Yes.

13 Q And that's when you screamed.

14 A Yes.

15 MR. GAMBRELL: Thank you, SB.

16 THE COURT: Mr. Johnson?

17 MR. JOHNSON: Thank you, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. JOHNSON:

20 Q All right. SB making a lot of hay about his
21 hand placement.

22 A Uh-huh.

23 Q When you first woke up that day, were you more
24 focused on his hands or his erect penis in your face?

25 A His private part in my face.

1 Q And you're doing counseling right now?

2 A Yes, sir.

3 Q Are you being counseled because of his hand placement
4 or his penis in your face?

5 A His private part in my face.

6 Q And you remember the statement that you wrote that
7 Mr. Gambrell just showed you?

8 A Yes, sir.

9 MR. JOHNSON: Your Honor, may I approach?

10 THE COURT: Yes.

11 BY MR. JOHNSON:

12 Q And you were 10 years old when you wrote this, right?

13 A Yes, sir.

14 Q What's the first sentence?

15 A Woke.

16 Q So this morning I woke up. How do you spell "woke"?

17 A W-O-K-E. W-O-A-K.

18 Q And then lungs, how did you spell "lungs" when you
19 said "I was screaming from the top of my lungs"?

20 A L-O-N-G-S.

21 Q Couple misspellings?

22 A Uh-huh.

23 Q And you were 10 years old when you wrote this, right?

24 A Yes, sir.

25 Q Have you been trained to write police reports?

1 A Can you repeat that?

2 Q Have you been trained to write police reports?

3 A No, sir.

4 Q When you were 10 years old, you certainly didn't have
5 the training, right?

6 A No, sir.

7 Q Have you ever experienced anything like this before?

8 A No, sir.

9 Q And you wrote this 20 minutes after it happened.

10 A Yes, sir.

11 Q So are you shocked that you might have left out some
12 details about his hands?

13 A Can you repeat that?

14 Q Are you surprised or shocked that you might have left
15 out a detail about where his hand was?

16 A No.

17 Q We also talked about Jessiah who was in the room?

18 A Yes, sir.

19 Q You called her your stepsister. Is she your
20 stepsister?

21 A No, sir.

22 Q So can you explain, again, your relationship with
23 her?

24 A I consider her my stepsister because her dad and my
25 mom was going together.

1 Q So James Cliff Lee, your mom's boyfriend, that's his
2 daughter.

3 A Yes, sir.

4 Q So she is related by blood to Mr. Kereen.

5 A Yes, sir.

6 Q But not to you, correct?

7 A Yes, sir.

8 Q Are you and her still friends?

9 A No, sir.

10 Q Why not?

11 A I lost communication with everybody.

12 Q Because they're mad that you called the police in
13 this case?

14 MR. GAMBRELL: Objection, Your Honor.

15 MR. JOHNSON: I'll move on.

16 THE COURT: All right.

17 BY MR. JOHNSON:

18 Q So you said you're going to counseling.

19 A Yes, sir.

20 Q Sorry that got brought up. Now that it is, let's
21 talk about it. How often do you go talk to your therapist
22 or your counselor?

23 A Any day at school if I wake up like with a heavy
24 heart, I'll go to her just so I could have a good day.
25 And for outside of school, I actually have a therapist

1 that I can call over the phone, and we do meetings. And
2 then I have a physical therapist that I go see. And
3 that's like every week, every other week.

4 Q Your counseling, is it primarily based on what
5 happened to you with -- is this what initiated it?

6 A Yes, sir.

7 Q Do you want to go to a counselor? Is that fun for
8 you?

9 A No.

10 Q Are you having fun right now?

11 A No.

12 Q Did you have fun talking to a police officer about
13 Mr. Lee's penis being in your face?

14 A No.

15 Q Do you want to be here right now?

16 A No.

17 MR. JOHNSON: No further questions.

18 THE COURT: Any other questions, Mr. Gambrell?

19 MR. GAMBRELL: Just one.

20 RECCROSS EXAMINATION

21 BY MR. GAMBRELL:

22 Q SB when did you start counseling?

23 A The middle of seventh grade. Like a year ago.

24 MR. GAMBRELL: Thank you.

25 THE COURT: Anything else?

1 MR. JOHNSON: Just one question, Your Honor.

2 FURTHER REDIRECT EXAMINATION

3 BY MR. JOHNSON:

4 Q Have we met before today?

5 A Yes, sir.

6 Q Did I force you to say anything?

7 A Not at all.

8 Q What's the one thing I always told you to say?

9 A Be honest. Tell the truth.

10 MR. JOHNSON: Thank you.

11 THE COURT: All right. You can step down. Thank
12 you, ma'am.

13 State prepared to call its next witness?

14 MR. MCCOLLUM: Yes, Your Honor. The State calls
15 Officer Chupp, Officer Jake Chupp.

16 WHEREUPON,

17 JAKE CHUPP

18 After having been duly sworn, testified as follows:

19 THE CLERK: Thank you. You may be seated. Please
20 state your full name for the record.

21 THE WITNESS: Jake O'Neill Chupp.

22 DIRECT EXAMINATION

23 BY MR. MCCOLLUM:

24 Q Good afternoon, Officer Chupp.

25 A Good afternoon, sir.

1 Q Where are you currently employed?

2 A I'm currently employed with the South Charleston
3 Police Department in West Virginia.

4 Q And where were you employed on March 31, 2020?

5 A The Fountain Inn Police Department.

6 Q How long have you been in law enforcement?

7 A A total of -- April will make ten years.

8 Q And at the time of this incident, how long had you
9 been employed with the Fountain Inn Police Department?

10 A At the time of this incident, it would have been
11 roughly six years.

12 Q And at the time of this incident, what was your role?

13 A I was a supervisor on Uniform Patrol.

14 Q And what typically does that role entail?

15 A That typically entails approving reports done by
16 officers on your shift. For our department, you're over
17 three to four officers. Make sure their reports were
18 approved, done appropriately and correctly, did routine
19 what we called citizen reviews where you would call
20 individuals from the public that these officers interacted
21 with and speak with them, see what the officers could have
22 done better. Also entails reviewing their body camera to
23 just ensure they're doing the appropriate thing and the
24 right thing on certain calls. Essentially, just answering
25 calls as needed, taking calls when necessary as well.

1 Q Let's talk about that, answering calls. On March 31,
2 2020, did you respond to a call at [REDACTED] Street?

3 A Yes, I did.

4 Q And did you know what you were responding for?

5 A Yes. It was for a criminal sexual conduct
6 allegation.

7 Q Approximately how long after the 9-1-1 caller, how
8 long after you were dispatched did it take you to arrive?
9 Was it long? short?

10 A Once dispatched it was only a short amount of time.

11 Q So you arrived on scene at [REDACTED] Street.

12 Please talk to the jury about what you observed as you
13 arrived on scene.

14 A Yes. So I arrived on scene, and I observed the
15 defendant standing towards the front of the yard towards
16 the road. He was smoking some type of cigarillo.

17 I got out of the vehicle, asked him if he was the
18 individual that was still on scene from dispatch saying --
19 said the suspect who they identified as the defendant was
20 on scene. From there I detained him and put him in
21 handcuffs, do what we call a Terry frisk, and then placed
22 him in the backseat of my patrol car.

23 Q And when you arrived on scene initially, did the
24 defendant say anything to you that you can recall?

25 A The only thing I recall initially...

1 Q If you can't recall, that's fine.

2 A I don't recall. I apologize.

3 Q So after you have detained the defendant, the
4 defendant, is he, quote, unquote, under arrest?

5 A He's not necessarily under arrest, but he's not free
6 to leave at that point in time.

7 Q After you secured the defendant, what did you do
8 next? Did you make your way to the home?

9 A That's correct, yes.

10 Q Tell me what you observed as you're making your way
11 to the home.

12 A From my observations, there was multiple people
13 standing outside of the house to include the victim and
14 the victim's mother along with several other children and
15 several other adults.

16 Q Did you speak with any of the individuals around the
17 home?

18 A Yes.

19 Q Who exactly did you speak with?

20 A I originally spoke with the victim's mother, asked
21 her to explain what happened. And from there she called
22 the victim out and told the victim to describe to me the
23 details of the events that have unfolded that morning.

24 Q And when you spoke to the victim, did she disclose
25 when this incident occurred?

1 A She did.

2 Q And did she disclose where this incident occurred?

3 A She did.

4 Q And where did the incident occur?

5 A It occurred in the living room of the residence.

6 Q What is the address of that residence?

7 A That residence is [REDACTED] Street, which is in the
8 city limits of Fountain Inn, which is in the County of
9 Greenville.

10 Q And without getting into specific detail, did she
11 disclose where this incident happened?

12 A Yes, she did.

13 Q And generally, can you explain to the jury when the
14 incident happened?

15 A Yes. So it happened earlier that morning. I would
16 estimate approximately -- I don't have an exact timeframe,
17 but shortly before we were called is when this incident
18 occurred. It would have been some time that morning.

19 Q After speaking with the mother of the victim and the
20 victim, did you then go back to your vehicle?

21 A I did, yes.

22 Q Did you speak with the defendant?

23 A I did.

24 Q Prior to speaking with the defendant, what did you
25 do?

1 A So prior to speaking with the defendant, I advised
2 him of his Miranda rights, not once but twice.

3 Q And after that initial advisement of Miranda rights,
4 did he understand?

5 A After the initial one, no. From there I explained
6 each section of the Miranda rights to him and got an
7 acknowledgment that he understood each one.

8 Q And did you give him his Miranda rights from memory
9 or did you read it from a card?

10 A I read it from a card.

11 Q Is that standard procedure?

12 A For me, yes, it is.

13 Q And at the time when you were reading Miranda to the
14 defendant, did he appear coherent? Was he sober, able to
15 understand? I understand that initially he said he did
16 not, but afterwards.

17 A Yes. From -- from the second time he seemed to
18 understand what I was saying to him and understanding what
19 was going on.

20 Q And you had no question about his ability to
21 understand?

22 A That's correct.

23 Q After you advised him of Miranda, what did you do
24 next?

25 A After the second time of advising him of his Miranda

1 rights, I asked him to tell me his version of the events.

2 Q Did you ask him if he wanted to speak with you?

3 A Yes. I apologize. So I initially asked if he wanted
4 to speak with myself or investigator about the incident,
5 and he said, "I want to speak with you."

6 Q And those were his words?

7 A That's correct.

8 Q Officer Chupp, at the time of this incident, you were
9 a patrol officer; is that correct?

10 A That's correct. I was a sergeant on shift.

11 Q And as a part of your standard equipment, did you
12 wear a body-worn camera?

13 A That's correct.

14 Q Were you wearing a body-worn camera?

15 A Yes, I was.

16 Q Was it active and working?

17 A Yes, it was.

18 MR. MCCOLLUM: Your Honor, may I approach?

19 THE COURT: Yes.

20 (WHEREUPON, State's Exhibit Number 1 was marked for
21 identification.)

22 BY MR. MCCOLLUM:

23 Q Officer Chupp, I'm showing you what's been marked
24 State's Exhibit 1. Do you recognize this?

25 A Yes, I do.

1 Q What is it?

2 A This is my body-worn camera from the footage from the
3 day of the incident.

4 Q And how do you know that that is your body-worn
5 camera?

6 A I have reviewed it.

7 Q Is it a fair and accurate representation of the
8 events of March 31, 2020?

9 A Yes, it is.

10 MR. MCCOLLUM: Your Honor, at this time, the State
11 would move State's Exhibit 1 into evidence and move to
12 publish.

13 THE COURT: Any objection?

14 MR. GAMBRELL: Subject to my previous objection.

15 THE COURT: All right. Subject to the previous
16 objection, so noted for the record.

17 (WHEREUPON, State's Exhibit Number 1 was admitted into
18 evidence and played in open court.)

19 BY MR. MCCOLLUM:

20 Q Officer Chupp, was there anything in that initial
21 interview that stood out to you based on the statement
22 that the defendant gave to you?

23 A Yes.

24 Q What were those things?

25 A So one thing that stood out to me was when I first

1 asked him to tell me what happened, he said that he was --
2 correct me if I'm wrong. I don't remember verbatim. But
3 he was initially saying that he was standing over the
4 victim, and she woke up screaming.

5 Q Was there anything else that stood out what he said?

6 A Yes. There was that, and there was also the fact
7 that he said there were rats inside the home, and the rat
8 may have ran across her.

9 Q Officer Chupp, I just want to take you back a moment,
10 back to the point where you approached the home and you
11 spoke with Monquies Bryant, the victim's mother ---

12 A Yes.

13 Q --- and SB First, tell me about what you
14 observed with respect to their demeanor, their emotional
15 state.

16 A They were both emotionally disturbed. The victim had
17 almost cocooned herself in a way to kind of shelter and
18 protect herself. Both seemed distraught in my opinion as
19 well.

20 Q As a part of your investigation, were you able to
21 determine the age of SB at the time of this
22 incident?

23 A Yes.

24 Q How old was she?

25 A She was approximately 10 years old.

1 MR. McCOLLUM: Officer Chupp, please answer any
2 questions defense counsel has for you.

3 THE WITNESS: Yes, sir.

4 CROSS EXAMINATION

5 BY MR. GAMBRELL:

6 Q Officer Chupp, right?

7 A Yes, sir.

8 Q With a P?

9 A Two Ps. Yes, sir.

10 Q Got you.

11 You arrived on the scene at approximately 10:45?

12 A That sounds correct. Yes, sir.

13 Q Okay. You were the first officer on the scene?

14 A That is correct. Yes, sir.

15 Q And your duties when you arrive on the scene is first
16 assess the situation.

17 A That's correct.

18 Q To secure the scene if necessary.

19 A Correct.

20 Q And to interview witnesses.

21 A Correct.

22 Q Okay. And then at some point pretty quickly, you
23 became aware there was a situation possibly involving
24 inappropriate touching.

25 A That's correct. Yes, sir.

1 Q Did you determine how long prior to your arrival that
2 occurred?

3 A I honestly don't remember, but I know it was shortly
4 before we were called out is when it occurred. It was
5 sometime that morning.

6 Q It was a pretty short period of time.

7 A That's correct.

8 Q Okay. And you understood that this was a potential
9 criminal sexual conduct case. That's what you testified
10 to.

11 A Yes, sir. That's correct.

12 Q Okay. What steps did you take to protect possible
13 sites or items for potential DNA testing?

14 A I honestly don't remember. I have to say none that I
15 can think of, because at the time, I didn't have any --
16 when I first arrived, I didn't have any details of where
17 it happened, when it happened. Shortly after I got there,
18 that's when I obtained the details of the incident that I
19 could.

20 Q Right. And you're aware of what's commonly referred
21 to as touch DNA?

22 A Vaguely, yes, sir.

23 Q Okay. And it's basically where you can develop a
24 profile, DNA profile from skin cells from skin-on-skin
25 contact.

1 MR. MCCOLLUM: Objection, Your Honor. He's
2 testifying.

3 THE COURT: Sustained.

4 BY MR. GAMBRELL:

5 Q Does the Fountain Inn Police Department have standard
6 protocols or procedures to collect and preserve potential
7 biological evidence?

8 A I wouldn't say we have standards and procedures, but
9 we try to preserve the scene the best we can to obtain
10 that type of DNA or that type of evidence.

11 Q What would be the standard procedure to preserve that
12 evidence?

13 A Securing that article or item or piece of DNA the
14 best we can, whether it's on a person, on a bed in a room,
15 inside of a house, outside of a residence. Just securing
16 that area and trying to preserve that piece of evidence
17 the best way we can.

18 Q You did not instruct SB [REDACTED] about possible steps to
19 preserve any DNA on her person.

20 A To the best of my knowledge, that's correct. Yes.

21 Q Yes, you did not, right? I just want to make sure.
22 You did not give her any instructions.

23 A That's correct.

24 Q Okay. And you also didn't instruct her about
25 possible steps to preserve any DNA on her clothing.

1 A That's correct. Yes.

2 Q Let me ask you this. Would you be the officer tasked
3 with collecting those samples?

4 A Sometimes yes, sometimes no. The majority of the
5 time, we try to preserve it and then allow the
6 Investigations Division to come in and collect that.

7 Q Is there a separate division from investigations and
8 forensic or is that the same division?

9 A That is separate.

10 Q Okay. And so was the Forensic Division called out to
11 this incident?

12 A For this incident, no, they were not.

13 Q Who would be responsible to alerting them to come to
14 the incident?

15 A It could be any officer that's on scene. Could be
16 the lowest patrolman to -- all the way to somebody in
17 investigation, captain. Anybody that arrives on the scene
18 can request the Forensics Division to be called out to the
19 scene.

20 Q Okay. You testified that when you first read Kereen
21 his rights, he didn't understand them. He indicated to
22 you that he didn't understand them.

23 A Correct.

24 Q And then you testified that you explained each to
25 him, but in reality just reread the rights to him,

1 correct?

2 A That's correct. There's -- I'm no expert, but to me
3 they're pretty self-explanatory. That's broken down to a
4 level that anybody can understand, in my opinion.

5 Q But you didn't explain. You testified that you
6 explained it to him, and I'm just asking you that you just
7 reread the card to him, correct?

8 A Correct.

9 Q Okay. And you wrote a report of this incident?

10 A That's correct. Yes, I did.

11 Q And the purpose of a police report is to memorialize
12 what you do during the course of your time at the scene.

13 A Correct. Yes.

14 Q And that's done shortly after this incident.

15 A Correct.

16 Q And the reason that is is because the information is
17 still fresh in your mind.

18 A Correct. Yes.

19 Q And you try to put as much detail in your report as
20 you can.

21 A Correct.

22 Q Do you recall when your report was written?

23 A Not off the top of my head, no.

24 Q I think you did it on that same day.

25 A Okay.

1 MR. GAMBRELL: May I approach the witness, Judge?

2 THE COURT: Yes, sir.

3 BY MR. GAMBRELL:

4 Q Do you recognize that?

5 A I do. Yes, sir.

6 Q What is that?

7 A That is a copy of our Fountain Inn Police Department
8 incident report.

9 Q And is that the one that you drafted?

10 A Yes.

11 Q Now, you testified earlier that when you observed

12 **SB** and her mother, that they were emotionally
13 distressed and distraught, correct?

14 A From my observations, yes.

15 Q But you did not put that in your police report,
16 correct?

17 A That's correct.

18 Q And you had told me earlier that you try to
19 memorialize as much important things as you think in your
20 report.

21 A That's correct. Yes.

22 MR. GAMBRELL: Thank you.

23 I don't have any further questions, Your Honor.

24 THE COURT: All right. Anything further,

25 Mr. McCollum?

1 MR. MCCOLLUM: Yes, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. MCCOLLUM:

4 Q Officer Chupp, you were the initial responding
5 officer on the scene; is that correct?

6 A That is correct, yes.

7 Q And your primary task is to secure the scene; is that
8 also correct?

9 A That is correct. Yes.

10 Q At the time you arrived on scene, were there multiple
11 persons in the area?

12 A That is correct. Yes.

13 Q And so at the time, you were by yourself; is that
14 also correct?

15 A That is correct.

16 Q Additionally, when you speak to SB and Monquies
17 Bryant, you do memorialize that in your report; is that
18 correct?

19 A Can you ---

20 Q You do put in your report that you did speak to
21 SB and Monquies Bryant; is that also correct?

22 A That is correct. Yes.

23 Q But there could be -- and this could be human error
24 -- times where you may not get everything, but you do your
25 best to memorialize as much as possible.

1 A That is correct. Yes.

2 Q Given what you have to do at a given scene at a given
3 time.

4 A That is correct.

5 MR. MCCOLLUM: No further questions.

6 MR. GAMBRELL: Nothing further, Judge.

7 THE COURT: All right. Sir, you can step down.

8 THE WITNESS: Thank you, Your Honor.

9 MR. GAMBRELL: Is it possible to take a quick break?

10 MR. JOHNSON: Our next witness is our investigating
11 detective.

12 THE COURT: All right. How long do you anticipate?

13 MR. JOHNSON: Your Honor, I imagine there's about a
14 -- my direct will probably last 30, 40 minutes.

15 THE COURT: Your cross about the same thing?

16 MR. GAMBRELL: I would say that probably is.

17 THE COURT: All right. All right. Ladies and
18 gentlemen of the jury, we're going to put a pin in it for
19 the day, I guess, because I say so. We're going to put a
20 pin in it for the day, and I'm going to ask you to report
21 to your jury room tomorrow morning at 9:30. And I will
22 tell you this. We're not going to probably have the delay
23 tomorrow morning. We should come straight in and get
24 started.

25 So the reason I'm doing that now is because I think

1 that between the two lawyers, we could be here another
2 hour or so. So I'm just trying to give you an opportunity
3 to beat the traffic and then just come back here tomorrow
4 morning at 9:30, okay?

5 Please, ma'am, please, sir, do not talk about the
6 case to each other. And I'll see you tomorrow morning at
7 9:30, take care.

8 (WHEREUPON, the jury exits the courtroom at 4:11 PM.)

9 THE COURT: You want a break? You asked for a break,
10 right?

11 MR. GAMBRELL: I didn't need quite that long of a
12 break, Judge.

13 THE COURT: You have as much time as you need.

14 Anything else before we ---

15 MR. JOHNSON: Yes. Briefly, Your Honor. I just want
16 to put on the record the victim's mother came in while we
17 were playing Chupp's body cam -- or, excuse me --
18 Investigator -- Officer Chupp's body cam. She didn't hear
19 any testimony. I believe that she is able to be here
20 because the victim is a minor. However, we sent her out
21 just in case. But I just wanted to put that on the record
22 that that happened.

23 THE COURT: All right. Yeah. I would be okay with
24 her being in. I mean, she is the mother of the child, so,
25 you know, she -- I mean, since she's already testified.

1 MR. JOHNSON: Yes, Your Honor. Depending on who they
2 call, she may be subject to recall. But I just wanted to
3 let Your Honor make that call.

4 THE COURT: All right. Well, we'll just continue to
5 let her stay outside until we see what happens tomorrow.

6 MR. JOHNSON: Yes, sir.

7 THE COURT: Anything else, Mr. Gambrell?

8 MR. GAMBRELL: Not at this time, Judge.

9 THE COURT: All right. We'll stand down until about
10 9:30 in the morning.

11 (WHEREUPON, proceedings recessed at 4:13 PM.)

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Wednesday, April 24, 2024

(WHEREUPON, State's Exhibit Numbers 2 and 3 were marked for identification; proceedings reconvened at 9:54 AM.)

THE COURT: Anything before we get started?

MR. JOHNSON: No, Your Honor.

MR. GAMBRELL: Nothing from the defense, Judge.

THE COURT: Okay. Bring the jury out.

(WHEREUPON, the jury entered the courtroom at 9:56 AM.)

THE COURT: Good morning. Everybody good? Good.

State's ready to call its next witness?

MR. JOHNSON: Yes, Your Honor.

THE COURT: All right. Yes, sir.

MR. JOHNSON: The State calls Investigator James Paris with Fountain Inn Police Department.

WHEREUPON,

JAMES PARIS

After having been duly sworn, testified as follows:

THE CLERK: Thank you. You may be seated. And please state your full name for the record.

THE WITNESS: James Myron Paris, II.

DIRECT EXAMINATION

BY MR. JOHNSON:

Q Investigator Paris, can you tell the jury where you work?

A I work at the Fountain Inn Police Department. I'm a

1 detective there.

2 Q How long have you been in law enforcement? Can you
3 give them a brief background of your career?

4 A Sure. I started my career in 2012 at the Travelers
5 Rest Police Department. 2018 I went to the Fountain Inn
6 Police Department. Was in patrol for about six months,
7 promoted to sergeant. About six months later I was
8 promoted to detective.

9 Q So March 31, 2020, were you a detective?

10 A Yes, sir.

11 Q All right. On that day, did you respond to
12 [REDACTED] Street here in Greenville County?

13 A Yes, sir.

14 Q All right. Can you tell the jury how you arrived on
15 scene that day?

16 A I was actually on my way to work and overheard police
17 chatter over the radio of a possible criminal sexual
18 conduct case. I heard that a person had been detained and
19 elected to just respond directly to the residence without
20 being notified of anyone.

21 Q On that day, did you meet with Ms. SB [REDACTED]

22 A I did.

23 Q How old was she back then?

24 A 10 years old.

25 Q When it comes to speaking with children, do you have

1 any special training? Can you explain that to the jury?

2 Any experience as well.

3 A Throughout my entire career, I've dealt with hundreds
4 of children if not thousands, honestly. I've interviewed
5 hundreds in regards to child abuse, sex crimes or just
6 other criminal activities, you know, that either they
7 partook in or witnessed. I do have specialized training
8 in child homicide investigations which also has interview
9 and child re-enactments training. I also do have
10 extensive training in interview and body language
11 techniques.

12 Q All right. And did you meet and speak with
13 Ms. [REDACTED] that day?

14 A Yes, I did.

15 Q Where did you do that?

16 A Based off the year being COVID, we met with her in
17 the kitchen of their residence at [REDACTED] Street.

18 Q Did anybody else participate in that interview with
19 her?

20 A Participated, no. I did have Captain Woods who was
21 there that stood by kind of as interview security.

22 Q Was anybody there to influence her testimony?

23 A No. No influence happened.

24 Q I'm going to show you what's been premarked as
25 State's 2. Do you recognize that?

1 A Yes, sir.

2 Q All right. What is that?

3 A That is my body-worn camera footage of interviewing
4 the victim.

5 MR. JOHNSON: Your Honor, the State seeks to
6 introduce State's 2.

7 THE COURT: Any objection?

8 MR. GAMBRELL: No objection.

9 THE COURT: All right. Introduced without objection.
10 (WHEREUPON, State's Exhibit Number 2 was admitted into
11 evidence.)

12 MR. JOHNSON: Permission to publish.

13 THE COURT: Any objection?

14 MR. GAMBRELL: No objection.

15 THE COURT: No objection.

16 BY MR. JOHNSON:

17 Q All right. This is the interview you were talking
18 about?

19 A Yes, sir.

20 Q How was this recorded?

21 A On my body-worn camera.

22 (WHEREUPON, State's Exhibit Number 2, a video recording,
23 was played in open court.)

24 MR. JOHNSON: Investigator, we've seen this video
25 before but I'm just introducing it so we'll go ahead and

1 play it again.

2 (WHEREUPON, State's Exhibit Number 2, a video recording,
3 continued to play in open court.)

4 BY MR. JOHNSON:

5 Q All right. Detective, after that, what was your next
6 step in your investigation?

7 A There were other minor children in the home, so the
8 next step was I conversed with our chief and captain. We
9 discussed screening of the other minors to make sure that
10 no child abuse or sexual abuse was taking place.

11 Q Did you refer the victim to the hospital for a sexual
12 assault exam?

13 A No.

14 Q Why not?

15 A Again, based off the fact that we had -- I'm sorry.
16 Based off the fact we had a suspect in custody, he had
17 been charged, we knew what had taken place. Because we
18 knew what had taken place and that there was no alleged
19 ejaculation or penetration in the manner of what you would
20 typically think of as a rape, we did not believe that
21 trace DNA evidence would be present. Typically, by the
22 time someone, you know, licks their mouth or something of
23 that nature, that DNA would be gone. Subjecting a
24 10-year-old girl to the intrusiveness of a SANE kit would
25 -- what me and my administration felt was that would be

1 inappropriate for the allegation that had been made.

2 Q A rape kit as it's commonly referred to, does that
3 include a vaginal exam?

4 A It does.

5 Q Were there any indications that there was any vaginal
6 intercourse?

7 A No.

8 Q So it was a decision you made to not send her to the
9 hospital.

10 A Conscious decision. We did have a conversation with
11 the mother explaining that there could have been some kind
12 of transmission of an STD. It could be important to have
13 her screened for that.

14 And I would assume you're going to segue into the
15 forensic interview.

16 Q Next let's go to the DNA a little bit more.

17 A Okay.

18 Q So why didn't you swab for DNA or try to find DNA?

19 A Again, you know, if I were to come and touch any of
20 you on the mouth with my hand, what would be present is
21 trace DNA. The moment you lick your lips, well, that
22 trace DNA is gone.

23 MR. GAMBRELL: Judge, I'm going to object to that. I
24 don't think he's an expert in DNA.

25 THE COURT: I'm going to sustain that objection.

1 BY MR. JOHNSON:

2 Q Based on that, you chose or you didn't think there
3 was DNA evidence.

4 A Correct.

5 Q Because of the brief touching?

6 A Right.

7 Q Was there any indication that there was any ejaculate
8 at all?

9 A No.

10 Q If there was, would you have gotten a DNA test?

11 A Yes. Absolutely.

12 Q Okay. Next I'm going to show you what's been
13 premarked as State's 3. Do you recognize this?

14 A Yes, sir.

15 Q Are those your initials on it?

16 A It is.

17 MR. JOHNSON: Your Honor, the State seeks to admit
18 State's 3 into evidence.

19 THE COURT: Any objection?

20 MR. GAMBRELL: Just subject to my prior objections,
21 Judge.

22 THE COURT: All right. Subject to your objection, so
23 entered.

24 (WHEREUPON, State's Exhibit Number 3 was admitted into
25 evidence.)

1 BY MR. JOHNSON:

2 Q So after you interviewed everybody in the home, what
3 did you do next?

4 A I went to the Fountain Inn Police Department where
5 the suspect had been detained and advised he was under
6 arrest. Then I escorted him to the interview room of the
7 Fountain Inn Police Department and began advising him of
8 Miranda.

9 MR. JOHNSON: Your Honor, permission to publish
10 State's 3.

11 THE COURT: Any objection?

12 MR. GAMBRELL: No objection.

13 THE COURT: All right. Without objection.

14 BY MR. JOHNSON:

15 Q All right. Can you tell the jury what we're looking
16 at here?

17 A Yes. This is the interview room at the Fountain Inn
18 Police Department. Of course, it's table and chairs and
19 my cell phone and a notepad on the table.

20 (WHEREUPON, State's Exhibit Number 3, a video recording,
21 was played in open court.)

22 BY MR. JOHNSON:

23 Q What does the time stamp say in the top corner? Is
24 that 11:42 AM?

25 A Yes, sir. That's correct.

1 Q Is this pretty shortly after you were on the scene?

2 A Yes. It's within the hour.

3 (WHEREUPON, State's Exhibit Number 3, a video recording,
4 continued to play in open court.)

5 BY MR. JOHNSON.

6 Q All right. So on that first story, did anything
7 stand out to you?

8 A Well, clearly, I didn't accept that response to the,
9 you know, question. What did stand out is he offered a
10 statement saying his niece screamed, he went in to see
11 what was wrong with her, she covered her mouth and said
12 "I'm telling mom."

13 Well, I followed that up with body language of me
14 sitting back and kind of saying, okay. And then I asked
15 him, "Do we agree that you're in a bad situation," and he
16 said "yes." Why would someone agree they're in a bad
17 situations if they did nothing wrong?

18 MR. GAMBRELL: Judge, that's argument.

19 THE COURT: I agree.

20 MR. JOHNSON: We'll move on.

21 THE COURT: I think that's argumentative. I'm going
22 to sustain that objection.

23 BY MR. JOHNSON:

24 Q Go on to the next clip.

25 And I meant to ask you before, but other than what is

1 legally required for us to redact in these videos, have
2 you edited them at all?

3 A No, sir.

4 (WHEREUPON, State's Exhibit Number 3, a video recording,
5 continued to play in open court.)

6 BY MR. JOHNSON:

7 Q So what were you doing just there?

8 A When I stood up?

9 Q Yes, sir.

10 A I was placing Mr. Lee back into the holding cell.

11 Q Did he ever come back out of that cell?

12 A He did.

13 Q How did that come about?

14 A Mr. Lee requested to speak to me telling our
15 communications center through intercom that he wished to
16 tell me the truth.

17 Q Tell me if I missed anything. It's kind of hard to
18 understand with his mumbling. So he heard screaming; is
19 that correct?

20 A Correct.

21 Q And he ran in there, but they're still asleep?

22 A Correct.

23 Q And when he got in there, she jumped up?

24 A Correct.

25 Q Okay. So you put him in his cell here, and then what

1 initiated the conversation?

2 A He did.

3 Q He indicated he wanted to speak?

4 A That's correct.

5 (WHEREUPON, State's Exhibit Number 3, a video recording,
6 continued to play in open court.)

7 BY MR. JOHNSON:

8 Q During your investigation, did you determine whether
9 the two 10-year-old children had phones?

10 A I don't believe either of them had phones.

11 (WHEREUPON, State's Exhibit Number 3, a video recording,
12 continued to play in open court.)

13 BY MR. JOHNSON:

14 Q So I'm pausing at 12:18:51.

15 What is he saying he was doing?

16 MR. GAMBRELL: Judge, I think that the jury can
17 decide for themselves what Mr. Lee is saying. I mean, the
18 video is played for their benefit, not the benefit of
19 Detective Paris.

20 THE COURT: All right. I'm not going to let any
21 interpretation of the video.

22 MR. JOHNSON: Yes, sir.

23 THE COURT: The video speaks for itself. The jury
24 can make that determination.

25 MR. JOHNSON: Yes, Your Honor.

1 (WHEREUPON, State's Exhibit Number 3, a video recording,
2 continued to play in open court.)

3 BY MR. JOHNSON:

4 Q Stopping it at 12:31:40.

5 Detective Paris, during the course of this
6 investigation, did anyone find this pen top?

7 A No.

8 MR. JOHNSON: Okay. Playing again.

9 (WHEREUPON, State's Exhibit Number 3, a video recording,
10 continued to play in open court.)

11 BY MR. JOHNSON:

12 Q We spoke of this a little bit yesterday. Pausing at
13 107:37.

14 So just so we can get all our characters straight, so
15 you're talking about SB and Jessiah.

16 A Correct.

17 Q And how were they related, again?

18 A SB and Jessiah aren't related at all other than
19 Monquies, the mother, was dating Kereen Lee's brother.

20 And SB is her daughter, Jessiah is his daughter.

21 Q So Jessiah is Kereen Lee's ---

22 A Biological niece.

23 Q Okay. That's what you mean when you say "they're
24 blood"?

25 A Correct.

1 Q Okay. Playing it again.

2 (WHEREUPON, State's Exhibit Number 3, a video recording,
3 continued to play in open court.)

4 BY MR. JOHNSON:

5 Q Detective Paris, Mr. Lee has been charged with
6 attempted criminal sexual conduct with a minor under 11.
7 Can you walk the jury through how you came to that charge
8 based on the intent and the sexual battery that you saw?

9 A Essentially, you take the totality of what was stated
10 in the interview and you try to identify places where the
11 story has changed. It was evident that the story had
12 changed numerous times, kind of involved where the story
13 would keep some fact from the first story and then offer a
14 new fact like a rat or a TikTok video and a new version of
15 the story. Ultimately, we landed on the story where
16 Mr. Lee stated he was standing over a 10-year-old girl,
17 the victim, with an erect penis. The purpose of standing
18 there was to work himself up to arousal and then to go and
19 gratify himself sexually in the bathroom.

20 He stated that he looked at both girls. He looked at
21 the victim as well as Jessiah, but would not have done
22 anything with Jessiah because she was a blood relative.
23 Therefore, he was attracted to the victim and elected to
24 work himself up with her visual body and laying there
25 asleep.

1 Once you have sorted through the weeds of what the
2 suspect has said and you've identified places where truth
3 has been told and falsehoods have been given, you come to
4 a version of the truth. You couple that with a version of
5 the truth that the victim has given you and then you
6 arrive at the realization that Mr. Lee did have intentions
7 of sexual gratification and attempt ---

8 MR. GAMBRELL: Objection.

9 THE COURT: Hold on. Let me hear the objection.

10 MR. GAMBRELL: He said that what his intention was.
11 I don't think that he can speak to what's in Mr. Lee's
12 mind.

13 THE COURT: I'm going to sustain that. Strike that
14 from the record.

15 BY MR. JOHNSON:

16 Q What you're saying, you mean what you're going
17 through in your head for making the charge?

18 A Correct. I apologize. I was not trying to speak to
19 intent. I'm trying to speak to the charge element of the
20 attempt. So "intent" would have been a poor word, but the
21 attempt to commit a sexual battery of a minor.

22 Q And she was, again, under 11 years old?

23 A Correct.

24 MR. JOHNSON: No further questions. Thank you.

25 THE COURT: All right.

1 MR. GAMBRELL: Thank you, Your Honor.

2 THE COURT: Cross-examination.

3 CROSS EXAMINATION

4 BY MR. GAMBRELL:

5 Q Good morning, Detective Paris.

6 A Good morning, sir.

7 Q You've been in law enforcement for 14 years?

8 A Since 2012, so approaching.

9 Q And I think you said you've been a detective for four
10 years; is that correct?

11 A No. Since 2017.

12 Q So about seven years.

13 A I also -- I was also in investigations at my previous
14 agency.

15 Q You are the lead investigator on this case.

16 A Yes, sir.

17 Q Okay. And you heard the dispatch call. And do you
18 remember about what time you arrived on the scene?

19 A It was probably 10:30, 10:45, somewhere around there.
20 Maybe a little before. It was in the 10 o'clock hour.

21 Q Shortly after the incident.

22 A Yes, sir.

23 Q Okay. And as the lead investigator, your duties
24 would include supervising and directing other officers at
25 the scene?

1 A Yes. So as a detective, when you arrive on scene,
2 it's kind of your scene. You kind of point people in
3 directions, yes.

4 Q You also interview witnesses?

5 A Yes, sir.

6 Q And you identify, collect and try to preserve
7 evidence?

8 A Yes, sir.

9 Q And you try to identify and obtain as much evidence
10 as you can, correct?

11 A Yes, sir.

12 Q Because at some point, you know, the State is going
13 to have to rely on this evidence to present to a jury.

14 A In some regard, yeah.

15 Q And they use that evidence to prove to the jury their
16 case beyond a reasonable doubt.

17 A Oftentimes.

18 Q You also prepare a report that memorializes what you
19 did during the course of your investigation?

20 A Yes, sir.

21 Q And you try to make that report as detailed as
22 possible.

23 A Yes, sir.

24 Q And you try to include information that you believe
25 is most important in this case.

1 A Not in -- maybe throughout the duration of it, yes.
2 Overall, yes, you're right.

3 Q You wouldn't want to leave out any important details?

4 A Would try not to. Wouldn't say it wouldn't happen,
5 but we try not to.

6 Q And it's done in some time in close proximity to the
7 incident while your memory's fresh.

8 A In criminal investigations, oftentimes it's not done
9 very close to the incident time, especially in a smaller
10 agency like Fountain Inn Police Department. We have
11 enormous caseloads, so things kind of -- when it gets to
12 actually writing things out, it sometimes takes time.
13 Oftentimes, we can't get it done the same day. Sometimes
14 it may be a week later.

15 Q In this case, yours was done on April 3rd.

16 A Okay. Maybe. If that's -- I don't know what day I
17 submitted it.

18 Q So about four days later.

19 A That would be reasonable.

20 Q But you want to get as much detail in there because,
21 obviously, sometimes cases take a while to go to trial.

22 A Uh-huh.

23 Q And your memory's fresher four days after the
24 incident rather than four years after the incident.

25 A Sure.

1 Q And you interviewed Monquies Bryant.

2 A Yes. I believe so. I believe I obtained a statement
3 from her.

4 Q You interviewed SB

5 A Yes, sir.

6 Q And you did ask them to provide written statements.

7 A Yes, sir.

8 Q And this was done in close proximity to the time of
9 the incident.

10 A Yes. I think within the hour.

11 Q And you asked them to make them as detailed as
12 possible.

13 A Yeah. I kind of have verbiage I use to ask for that,
14 yes.

15 Q And the reason why that is, because their memory's
16 are still fresh.

17 A I don't want to be speculative. Yes, sir. Yes, sir.
18 That's why.

19 Q I mean, you want to try to put as much detail while
20 they're as close enough to the incident that they recall.

21 A It's not often the case, no, sir. I mean, we do like
22 to get the story out quickly, but we also tend to, you
23 know, want to get more of the story later.

24 Q Okay. You heard SB testimony yesterday.

25 A I did. Yes, sir.

1 Q At any time, did anyone instruct you to take an
2 additional statement from her?

3 A With this type of case, it's handled a little
4 differently. Based off of the trauma of the event, we try
5 to let them not relive the trauma, so we try to limit how
6 many times we're asking the questions or things of that
7 nature for reliving.

8 Q So that's no?

9 A I'm sorry. Go back to the question.

10 Q At any time, did anyone ask you or instruct you to
11 take an additional statement from SB [REDACTED]

12 A No.

13 Q And you did record an interview with her.

14 A I did.

15 Q And at one point -- and it's hard to see her in that
16 video, but at one point you asked her to demonstrate how
17 Mr. Lee was standing, correct?

18 A Uh-huh. Yes, sir.

19 Q And did she demonstrate that to you?

20 A Yes, sir. She did.

21 Q How did she demonstrate that to you?

22 A If my memory recalls, I think she put her hands
23 behind her head.

24 Q Like this (gesturing)?

25 A Yes, sir.

1 Q Okay. And, again, when you arrived on the scene, it
2 became pretty apparent quickly that this was an
3 inappropriate touching case?

4 A Actually, we were -- not an inappropriate touching
5 case. We were actually looking at criminal sexual conduct
6 case. We believed that penetration had occurred.

7 Q But ultimately, you did not charge him with that.

8 A Actually, I think we did initially charge him with
9 criminal sexual conduct with a minor.

10 Q So you were the one that initially charged him with
11 that?

12 A I believe so.

13 Q And did you make the decision to change that charge?

14 A Yes. Based off of facts of the case, it later was
15 determined this charge fit more properly.

16 Q Because there wasn't any penetration?

17 A Not because of that. Just because it was clear that
18 an attempt occurred.

19 Q But if there had been a sexual battery, you would
20 have maintained the first charge.

21 MR. JOHNSON: Objection, Your Honor. This is a line
22 of speculation.

23 THE COURT: I'll allow it. Go ahead.

24 THE WITNESS: Had there been proof beyond a
25 reasonable doubt that penetration occurred, certainly, I

1 would have pushed for a criminal sexual conduct first
2 degree.

3 BY MR. GAMBRELL:

4 Q Well, and actually, it doesn't even have to be beyond
5 a reasonable doubt, does it? You just have to have
6 probable cause.

7 A For -- for law enforcement, correct.

8 Q To bring the charge.

9 A Correct.

10 Q But based on your investigation, there was at least
11 allegations that there was skin-on-skin contact.

12 A Yes.

13 Q But you did -- like your testimony said previously,
14 you didn't attempt to take any biological evidence."

15 A No, sir.

16 Q Now, do you have the capability of doing that?

17 A I do.

18 Q Were you on scene with that capability?

19 A Possibly. I have a kit that I carry now. I'm not
20 sure if I had that kit then.

21 Q And what is in that kit?

22 A Distilled water and a Q-tip, you know, swabs that you
23 just utilize it and put it in a secure paper envelope.

24 Q So explain how you would obtain that biological
25 sample.

1 A You would wet the Q-tip with distilled water and then
2 rub that Q-tip along wherever you believed that sample
3 would be present. And you secure that in paper and submit
4 it to a DNA lab.

5 Q And you did not do that in this case.

6 A No.

7 Q Now, you could have done that without sending her to
8 get a rape kit, though.

9 A Sure.

10 Q And, I mean, it's possible that there could have been
11 biological samples to be collected.

12 A No, sir.

13 Q There's no possibility.

14 A No, sir.

15 Q How can you say that there's absolutely no
16 possibility?

17 A Well, previously, you said I wasn't a DNA expert so I
18 don't know how I can answer that.

19 Q If you're not a DNA expert, how can you know that
20 there's not any possibility?

21 A Well, I know that that -- if trace evidence did exist
22 there, it was contaminated based off of being on a person
23 and it's in a saliva-filled area. So that would have been
24 gone. It would have been deteriorated and not ---

25 Q Had it been on the exterior of her face.

1 A It wasn't alleged that he rubbed his penis all over
2 her face. It was alleged that he tried to put it in her
3 mouth.

4 Q Well, it was alleged that he hit her mouth.

5 A No. It was alleged that he tried to put it in her
6 mouth. It's stated in the video.

7 Q The video that she said -- she said she felt
8 something hit her mouth.

9 A And then woke up to find him trying to put his penis
10 in her mouth.

11 Q Woke up and he was standing above her with his hands
12 above her head.

13 Anyway, you did not try to attempt to collect any
14 biological evidence.

15 A No, sir.

16 Q But -- and you don't think that it would have been
17 successful.

18 A No, sir. I know it wouldn't.

19 Q You don't know that for certain.

20 A I do.

21 Q Okay. Anyway, there's no DNA evidence to present to
22 this jury today.

23 A No, sir.

24 Q Did you collect any of her clothes?

25 A No, sir.

1 Q Any possible bedding that she may have had?

2 A She was on a couch.

3 Q You asked Mr. Lee if she was covered up.

4 A Uh-huh.

5 Q It's possible that there could have been bedding?

6 A Before I asked was she covered up, I said, "Were you
7 looking at her body?"

8 He answered "yes."

9 I guess it would be up to interpretation of what he
10 was answering.

11 Q But you did not collect anything that she possibly
12 could have had on top of her.

13 A No.

14 Q Okay.

15 A It was asked if there was any ejaculate, and it was
16 stated no.

17 Q At no time during your interview with Mr. Lee did he
18 ever tell you that it was his intent to put his penis in
19 her mouth.

20 A No. He never said that.

21 Q Okay. And, again, it was your decision to charge
22 Mr. Lee with criminal sexual conduct with a minor first
23 degree.

24 A Is that a question or a statement?

25 Q It's a question.

1 A Yes, it was.

2 Q And based on the investigation, you could have
3 charged him with committing a lewd act, could you not? A
4 criminal sexual conduct in the third degree?

5 A I don't believe so.

6 Q If you believe that he had touched his penis to her
7 lip, could you have charged him with a lewd act?

8 A Based off of that, I feel like -- I mean, you could
9 because it's lesser included, but it's not -- it's a
10 completely different act of what occurred. A lewd act and
11 what actually occurred are two separate things.

12 Q But touching a penis to someone's mouth could be a
13 lewd act.

14 A Is that how you would classify it if I did that to
15 you?

16 THE COURT: All right. Sir, you can't -- he asks the
17 question, you answer the question. You don't get to ask
18 him a question.

19 All right.

20 BY MR. GAMBRELL:

21 Q If someone touches their penis on any part of a
22 person's body, you can charge ---

23 MR. JOHNSON: Your Honor, I object. I think these
24 are all just legal questions. I'm not sure of the
25 relevance here.

1 THE COURT: Well, I'm going allow it because I think
2 the question was -- that you asked was how he got to that
3 charge. So I'm going to allow that question.

4 MR. JOHNSON: Yes, Your Honor.

5 THE WITNESS: How I got to the -- okay. So to answer
6 your question is this a lewd act, of course this is lewd
7 and lascivious if you touch a penis to someone's mouth.
8 That's lewd and lascivious.

9 BY MR. GAMBRELL:

10 Q Okay. And any part of the body could be.

11 A Sure.

12 Q Right. In fact, you could still charge Mr. Lee with
13 committing a lewd act.

14 A Well, I don't think so because he's already been
15 charged with this.

16 Q But it's a separate offense, correct?

17 A I'm really confused at what you're trying to ask me,
18 sir.

19 Q I'm asking you, you charged him with attempt to
20 commit CSC in the first degree, but there's evidence that
21 he potentially could have committed just a lewd act. And
22 I'm saying, I'm asking you even though you've charged him
23 in this case with attempt to commit CSC first, you could
24 still charge him. You could have charged him then, but
25 you can still charge him now because it's a separate

1 offense.

2 A I don't believe so. I mean, based off of my
3 knowledge, he's already been charged.

4 Q Correct. And that's a separate offense, right?

5 A No. I think that it's one and the same. You're
6 asking if what he did was lewd or if it -- are you asking
7 me if this attempt to commit CSC or if this is a lewd act?

8 Q I'm not. I'm saying you charged him with attempt to
9 commit CSC on a minor first.

10 A Yes, sir.

11 Q And there are allegations that he touched his penis
12 to her mouth.

13 A Yes, sir.

14 Q Which also constitutes, as we agree, a lewd act?

15 A I think that is a lewd act, yes. But I wouldn't
16 charge that in this situation.

17 Q But you could charge that.

18 A I wouldn't. I don't know if I could or not. But no,
19 I would not charge this in this -- for any person I would
20 not charge touching a penis to a mouth as a lewd act. No,
21 sir. I wouldn't do that.

22 Q But you could do that.

23 A I have no idea. I never have done that or had
24 researched it appropriately to determine that.

25 Q But you just told me that if someone did touch a

1 penis to a person's body, that that's a lewd act.

2 A Sure. And also raping a person is a lewd act.

3 Q And that's a separate charge.

4 MR. JOHNSON: Your Honor, I believe this has been
5 asked and answered multiple times.

6 THE COURT: All right. Let's move it along.

7 MR. GAMBRELL: That's all the questions I have,
8 Judge.

9 THE COURT: Any redirect?

10 MR. JOHNSON: Briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. JOHNSON:

13 Q You heard testimony about the victim slobbering and
14 wiping her mouth. Would that affect a DNA sample?

15 A It would.

16 Q Okay. You talk about your written report. It is
17 your incident report. You also had a body cam on,
18 correct?

19 A I did.

20 Q We may not be able to show it, but it was recording
21 the entire time, correct? When you were interviewing
22 witnesses?

23 A When I was dealing with the public, yes.

24 MR. JOHNSON: No further questions. Thank you,
25 Detective.

1 THE COURT: Anything else?

2 MR. GAMBRELL: Nothing.

3 THE COURT: All right. Sir, you can step down.

4 THE WITNESS: Thank you, sir.

5 MR. JOHNSON: Your Honor, at this time, the State
6 rests.

7 THE COURT: All right. Ladies and gentlemen of the
8 jury, what I'm going to do is I'm going to send you back
9 to your jury room. Please, ma'am, please, sir, do not
10 talk about the case. We're going to see where we are in
11 terms of the posture of the case and I'll bring you back
12 out here and advise you in maybe about five to ten
13 minutes, okay? All right.

14 (WHEREUPON, the jury exits the courtroom at 11:22 AM.)

15 THE COURT: All right. We're on the record, Madam
16 Court Reporter.

17 The State has rested. Any motions of any kind?

18 MR. GAMBRELL: Yes, Your Honor. The defense at this
19 time would move for a directed verdict. Obviously, the
20 Court has to consider whether there's any direct or
21 substantial circumstantial evidence.

22 My position on the case is, based on SB [REDACTED]
23 [REDACTED] initial statements, there was an initial
24 something that hit her mouth. She wakes up and sees
25 Mr. Lee standing over her. Now, there's an inference that

1 can be made that it was his penis that hit her mouth.
2 That would be circumstantial evidence. Other than that,
3 there is no other evidence that this was an attempt to
4 commit a CSC with a minor in the first degree.

5 An attempt has to be the specific intent to commit
6 the underlying crime. And a specific intent is
7 consciously intend to complete the act.

8 So, you know, her testimony yesterday was different
9 from her statements before. They're inconsistent. And I
10 think the Court has to take that into consideration.

11 And I believe that under State vs. Hernandez, which
12 is 382 S.C. 620, 677 S.E.2d 603, 2009, you know, there has
13 to be more than a scintilla of circumstantial evidence in
14 order for it to meet the substantial standard. Sometimes
15 our Supreme Court has emphasized -- I've seen cases where
16 they've said that there's any direct or any substantial
17 circumstantial evidence, and then I've seen cases where it
18 says any direct or just substantial circumstantial
19 evidence.

20 So if the Court believes that there is direct
21 evidence, obviously, this wouldn't apply. But if we're
22 talking about specifically substantial circumstantial
23 evidence, I would ask the Court to make a finding of which
24 standard the Court is using to go by. And in that case,
25 our position would be that there is not substantial

1 circumstantial evidence to get the case to the jury.
2 Because obviously, a big part of this is going to be what
3 the specific intent was.

4 Nowhere in the videos does Mr. Lee ever say that he
5 intended to do it. If you look at State v. Reid, which is
6 an attempted CSC with a minor second, and that is 393 S.C.
7 325, 713 S.E.2d 274. That was from the Supreme Court in
8 2011. It was one of those Internet crimes where they were
9 trying to meet with somebody on the Internet.

10 And in that case, the evidence of intent was the
11 conversations between the defendant and who we thought was
12 a 14-year-old. And the Court looked at what his words
13 were. He had said that I want to meet up with you, I want
14 to have sex with you. And the Court said clearly that's
15 an indication of his specific intent.

16 And in this case there is no evidence of what Mr. Lee
17 intended to do. And couple that with the testimony of
18 Ms. Bryant, I believe that you're looking at simply a
19 circumstantial evidence case, and if so, it would have to
20 be substantial circumstantial evidence. And I don't think
21 that this case meets that burden.

22 THE COURT: All right. Mr. Johnson?

23 MR. JOHNSON: Your Honor, I think there is direct
24 evidence of the attempted CSC first. That's through
25 SB [REDACTED] testimony. She said he tried to put his penis

1 in her mouth. She explains it in great detail.

2 And as Mr. Gambrell says, there is circumstantial
3 evidence based on the fact that he is an adult male who
4 has admitted that he is attracted to this young child,
5 he's standing over her with an erect penis saying that he
6 wanted to gratify himself. I think that is more than
7 enough for substantial circumstantial evidence for a
8 directed verdict motion.

9 THE COURT: Thank you, gentlemen.

10 I think basically there is evidence of -- and I think
11 it's a jury question in terms of how they evaluate the
12 evidence. But I think for purposes of this motion, I
13 think that there was -- I'm satisfied that there's enough
14 direct evidence, at least based on the testimony. Of
15 course, the Court has to -- I mean the jury has to
16 evaluate the believability of the testimony, even the
17 victim. And I do think that there is substantial
18 circumstantial evidence that would require submission to a
19 jury.

20 So I think both the -- your jury is going to get an
21 opportunity to evaluate the weight of both the direct
22 evidence that's been presented as well as the
23 circumstantial evidence that's been. But for purposes of
24 this motion, I think the Court is within the parameters of
25 the case law that you cited, Mr. Gambrell. And I make a

1 finding that there is sufficient substantial
2 circumstantial evidence for a submission to a jury. So
3 I'm going to go ahead and deny your motion.

4 MR. GAMBRELL: Yes, sir.

5 THE COURT: All right. And I'll also note for the
6 record your previous motions that you made on yesterday as
7 well. I want the record to be protected in that regard.
8 And you know what motions you made on yesterday.

9 MR. GAMBRELL: Yes, Your Honor.

10 THE COURT: All right. I'm talking about the
11 mistrial motion and all of that.

12 MR. GAMBRELL: Correct.

13 THE COURT: Okay. Here's my question before we go
14 forward. First, I need to find out from you, you gave me
15 a witness list. How many of those witnesses are you going
16 to call?

17 MR. GAMBRELL: I intend to call Jessiah Lee and James
18 Cliff Lee.

19 THE COURT: Jessiah Lee and James Lee?

20 MR. GAMBRELL: Yes, sir.

21 THE COURT: Okay. And Mr. Lee, Kereen Lee will not
22 testify?

23 MR. GAMBRELL: That's correct. I would -- I need to
24 probably recheck with him this morning to make sure that
25 that is his intention. If I could have a moment to maybe

1 speak with him in the conference room.

2 THE COURT: Yeah. I'll tell you what we're going to
3 do is it's 11:30. I don't want to get too much into your
4 case around lunchtime.

5 MR. GAMBRELL: I don't think my witnesses are going
6 to be very long, Judge.

7 THE COURT: Okay. All right. So you could probably
8 handle both witnesses probably within 30 minutes?

9 MR. GAMBRELL: I think so.

10 THE COURT: All right. And I don't think
11 cross-examination should be that long.

12 MR. JOHNSON: No, Your Honor.

13 THE COURT: Okay. How much time do you need to talk
14 to him?

15 MR. GAMBRELL: Probably about five or ten minutes. I
16 just want to make sure that he understands what I'm
17 telling him and that I can get a clear, coherent response
18 from him.

19 THE COURT: All right. Well, I'm going to leave the
20 bench for about five minutes, and then I'll be back. And
21 then I'll find out whether he is going to testify. And
22 then we'll move forward with your part of the case.

23 MR. GAMBRELL: Yes, sir.

24 THE COURT: Okay. I'll be back in about five
25 minutes.

1 (WHEREUPON, a recess is taken at 11:29 AM.)

2 THE COURT: Mr. Gambrell, you had an opportunity to
3 speak with your client, Mr. Lee, about his decision to
4 testify or not testify?

5 MR. GAMBRELL: I have, Your Honor.

6 THE COURT: All right. What is his ---

7 MR. GAMBRELL: His decision is to not testify.

8 THE COURT: All right. Mr. Lee, would you stand for
9 me? All right. Raise your right hand.

10 (WHEREUPON, KEREEN DONYELL LEE is duly sworn.)

11 THE COURT: Can you hear me?

12 DEFENDANT LEE: Yeah.

13 THE COURT: All right. Now, your lawyer,
14 Mr. Gambrell, has indicated to the Court that it is your
15 desire not to testify on your behalf; is that true?

16 DEFENDANT LEE: Yes, sir.

17 THE COURT: All right. Now, is that your decision?

18 DEFENDANT LEE: Yes, sir.

19 THE COURT: You're sure.

20 DEFENDANT LEE: Yes, sir.

21 THE COURT: All right. Speak up so I can hear you.
22 Are you under the influence of anything at all that
23 may impact your judgment?

24 DEFENDANT LEE: No, sir.

25 THE COURT: All right. You're clear minded. You

1 understand what you're doing. I mean, your answer about
2 not testifying, is that your decision?

3 DEFENDANT LEE: Yes, sir.

4 THE COURT: Is it?

5 DEFENDANT LEE: Yes, sir.

6 THE COURT: All right. Do you need to talk to
7 Mr. Gambrell any more about your decision not to testify?
8 Let me just say this. You have the absolute right to take
9 this witness stand and tell this jury your side of the
10 story. That is your right. That is your constitutional
11 right. Nobody can take that from you. You can get up
12 here and tell your side of the story. You don't have to.
13 If you don't, I will instruct the jury during my charge
14 that they cannot hold against you your failure to testify
15 or your decision not to testify. I'll give them some
16 specific instructions. But I don't want you to leave here
17 this week thinking that you didn't have the opportunity to
18 tell your side of the story because you do. You have the
19 absolute right to sit in that witness stand, face those
20 jurors and tell them your side of the story. But what
21 your lawyer is telling me is that you don't want to do
22 that. You choose not to do that. Is that true?

23 DEFENDANT LEE: Yes, sir.

24 THE COURT: And that is your decision that you
25 thoroughly thought about.

1 DEFENDANT LEE: Yes, sir.

2 THE COURT: All right. Do you need any additional
3 time to think about that decision?

4 DEFENDANT LEE: No, sir.

5 THE COURT: Do you need any additional time to speak
6 to your lawyer about that decision?

7 DEFENDANT LEE: No, sir.

8 THE COURT: All right. And do you have any questions
9 of me regarding anything I just asked you or anything
10 regarding your decision not to testify or to testify? Do
11 you have any questions of me?

12 DEFENDANT LEE: No, sir.

13 THE COURT: Okay. All right. Any questions that I
14 missed, Mr. Gambrell?

15 MR. GAMBRELL: I don't believe so, Your Honor.

16 THE COURT: All right. Mr. Johnson?

17 MR. JOHNSON: No, Your Honor.

18 THE COURT: All right. I make the finding based upon
19 my extensive questioning of this defendant that he has
20 decided on the record that he does not want to testify.
21 And I asked him that question on three occasions and I'll
22 ask him again before I stop. And you do not want to
23 testify on your own behalf; is that correct?

24 DEFENDANT LEE: Yes.

25 THE COURT: You do not want to testify. Is that your

1 answer?

2 DEFENDANT LEE: No.

3 THE COURT: No, what?

4 DEFENDANT LEE: Yes, sir. I don't want ---

5 THE COURT: Speak up so I can hear you.

6 DEFENDANT LEE: I said I don't want to.

7 THE COURT: All right. You saw how loud you were
8 talking on that video? You can talk louder than that. So
9 tell me what you're saying.

10 DEFENDANT LEE: I said no, sir.

11 THE COURT: No, sir, what?

12 DEFENDANT LEE: I don't want to testify.

13 THE COURT: You don't want to testify. Okay. All
14 right. Have a seat.

15 All right. We're going to go ahead and move forward.
16 Everybody who needs to come in, please, ma'am, please,
17 sir, come on in.

18 We're getting ready to bring the jury back. We've
19 got two witnesses. Okay.

20 MR. JOHNSON: And, Your Honor, our out-of-town
21 witness, Officer Jake Chupp, can we release him from his
22 subpoena?

23 THE COURT: Yes.

24 Any objection?

25 MR. GAMBRELL: No objection, Judge.

1 THE COURT: All right. He can go.

2 All right. Bring the jury in.

3 (WHEREUPON, the jury entered the courtroom at 11:49 AM.)

4 THE COURT: All right. Is the defense ready to
5 proceed?

6 MR. GAMBRELL: We are, Your Honor.

7 THE COURT: All right. Call your first witness.

8 MR. GAMBRELL: We call Jessiah Lee.

9 THE CLERK: Please pause here at the bench. Lay your
10 left hand on the Bible and raise your right hand.

11 WHEREUPON,

12 JESSIAH LEE

13 After having been duly sworn, testified as follows:

14 THE CLERK: Thank you. You may be seated. Please
15 state your full name for the record.

16 THE WITNESS: Jessiah Cliya Lee.

17 THE COURT: Do you want to spell that for me?

18 THE WITNESS: J-E-S-S-I-A-H, C-L-I-Y-A, L-E-E.

19 MR. GAMBRELL: Thank you, Your Honor. May it please
20 the Court.

21 DIRECT EXAMINATION

22 BY MR. GAMBRELL:

23 Q Jessiah, how old are you?

24 A 17.

25 Q How are you related to Kereen Lee?

1 A He's my uncle.

2 Q And his brother is your father?

3 A Yes.

4 Q Okay. What's his name?

5 A James Lee.

6 Q Where do you live?

7 A With my mom.

8 THE COURT: Speak up just a little bit more.

9 THE WITNESS: With my mom.

10 THE COURT: Pull up your seat a little bit. Okay.

11 There you go.

12 BY MR. GAMBRELL:

13 Q And where is that?

14 A The address?

15 Q Yeah.

16 A 116 Riverview Drive.

17 Q That's here in Greenville?

18 A Yes.

19 Q Okay. Where do you go to school?

20 A Greenville Early College.

21 Q What grade are you in?

22 A 11th.

23 Q In March of 2020, I know that's four years ago, were
24 you at times that you stayed with your dad?

25 A I was there for the summer.

1 Q Okay. And this was during the COVID year of school.

2 A Yes.

3 Q Okay. How long had you been staying there?

4 A Since we had got let out of school.

5 Q Okay. And there were quite a few people staying
6 there at that time.

7 A Yes.

8 Q Do you remember March 31st of 2020?

9 A Yes.

10 Q And the night before that, where did you sleep?

11 A On the couch.

12 Q Did anyone else sleep on the couch with you?

13 A SB

14 Q Okay. And can you describe how you woke up that next
15 morning?

16 A I woke up to SB screaming.

17 Q And what did you see?

18 A SB beside me screaming.

19 Q Did you see anybody else in the room?

20 A No. It was just me and SB

21 Q And what did she do after that?

22 A I think that she went down the hall.

23 Q And you say you think. What's that based on?

24 A I really don't remember, but I know that her mom
25 found out so I'm pretty sure she went down the hall.

- 1 Q Did she get off the couch?
- 2 A Yes.
- 3 Q And did she -- how did she move from the couch? Did
4 she run? Did she walk?
- 5 A She ran.
- 6 Q Okay. And out of the living room?
- 7 A Yes.
- 8 Q Okay. Now, at that time, you have a little brother?
- 9 A Uh-huh.
- 10 Q His name is James, Jr.?
- 11 A Yes.
- 12 Q And there were two other boys that were staying
13 there, Nile and Major.
- 14 A Yes.
- 15 Q Okay. Now, where did they usually sleep?
- 16 A In the doghouse in the shed in the backyard.
- 17 Q Y'all call it the doghouse?
- 18 A Uh-huh.
- 19 Q Is it more like a man cave?
- 20 A Yes.
- 21 Q Okay. Now, is it attached to the house?
- 22 A No.
- 23 Q Were they sleeping there that night?
- 24 A Yes.
- 25 Q Were they in the house by the time you woke up that

1 morning?

2 A No.

3 Q Okay. Did they, at some point, come into the house?

4 A Yes.

5 Q Do you remember how long after you woke up they came
6 in the house?

7 A No. After all the commotion, I think they came in to
8 see what was going on.

9 Q Okay. And what happens after this incident? Did you
10 stay at home?

11 A Yeah. I stayed down at my dad's.

12 Q Who all was there still?

13 A Everybody was there still.

14 Q Except for Kereen?

15 A Yes.

16 Q Okay. And did you have an opportunity to interact
17 with **SB** that day?

18 A Yes.

19 Q And how would you describe her that day?

20 A We went back to normal.

21 Q Did you notice any change in her behavior at all?

22 A No.

23 MR. GAMBRELL: Okay. Thank you, Jessiah. Answer any
24 questions ---

25 THE COURT: All right. Cross-examination,

1 Mr. Johnson.

2 MR. JOHNSON: Thank you, Your Honor.

3 CROSS EXAMINATION

4 BY MR. JOHNSON:

5 Q So while you were sleeping on the couch, so I get
6 everything right, Monquies and James -- or Cliff, they
7 were in their bedroom?

8 A My dad wasn't at home.

9 Q He was already at work?

10 A Yes.

11 Q And you had Kereen and his girlfriend in their
12 room?

13 A Yes.

14 Q During the middle of the night?

15 A Oh, yes.

16 Q And then your brothers out back.

17 A Yes.

18 Q When **SB** screamed, is that when you woke up?

19 A Yes.

20 Q Were you awake before that?

21 A No.

22 Q Okay. So you only awoke when she screamed.

23 A Yes.

24 Q So you don't know what happened from when she woke up
25 until she screamed.

1 A Yes.

2 Q So you don't know what she experienced at all?

3 A No.

4 Q And you said she went back there and told her mom
5 what happened. What was what happened?

6 MR. GAMBRELL: Judge, I will object to that if ---

7 MR. JOHNSON: I withdraw, Judge.

8 THE COURT: All right. I'm going to sustain the
9 objection. Move on.

10 BY MR. JOHNSON:

11 Q So you don't know what happened.

12 A No.

13 Q You just heard her scream and her crying.

14 A Yes.

15 MR. JOHNSON: All right. Thank you. No further
16 questions.

17 THE COURT: Any on recross?

18 MR. GAMBRELL: Nothing on redirect, Your Honor.

19 THE COURT: Redirect. I'm sorry.

20 Yes, ma'am. You can step down.

21 All right. You can call your next witness.

22 MR. GAMBRELL: James Lee.

23 THE COURT: Mr. Lee, come forward.

24 THE CLERK: Please pause here at the bench. Lay your
25 left hand on the Bible and raise your right hand.

1 WHEREUPON,

2 JAMES LEE

3 After having been duly sworn, testified as follows:

4 THE CLERK: Thank you. You may be seated. Please
5 state your full name for the record.

6 THE WITNESS: My name is James Clifford Lee. .

7 MR. GAMBRELL: May it please the Court, Your Honor.

8 THE COURT: Yes, sir.

9 DIRECT EXAMINATION

10 BY MR. GAMBRELL:

11 Q Mr. Lee, do you go by Cliff? James?

12 A Either.

13 Q Either?

14 A Yeah.

15 Q Is there one that you prefer?

16 A Cliff.

17 Q What is your relation to Kereen Lee?

18 A That's my brother.

19 Q Okay. And is that your younger or older brother?

20 A Younger brother.

21 Q How much younger is he?

22 A Five years younger.

23 Q Okay. And when y'all -- when he came in when he was
24 born, who was in y'all's household?

25 A My grandmother and my mother.

1 Q Okay. And you and Kereen?

2 A Uh-huh.

3 Q Okay. Did you notice as he was growing up anything
4 different about him?

5 A Well, he -- he can't learn, you know what I mean?
6 He's just real slow at it. But to me it wasn't that
7 different because it's my brother, you know. He's just
8 slow.

9 Q Yeah. Did -- and at school, was he in any special
10 classes?

11 MR. MCCOLLUM: Objection, Your Honor. We need to
12 approach. May we approach?

13 THE COURT: Sidebar?

14 MR. MCCOLLUM: Yes, Your Honor.

15 (WHEREUPON, a bench conference was held off the record.)

16 THE COURT: All right. Go ahead, Mr. Gambrell. You
17 can proceed.

18 MR. GAMBRELL: Thank you, Your Honor.

19 BY MR. GAMBRELL:

20 Q During school, was Kereen in any special classes?

21 A He was in special ed.

22 Q Special ed classes.

23 Do you have any knowledge at any time when he was a
24 child if he was determined disabled?

25 A Yes.

1 Q Do you recall when that was?

2 A I'm going to say he was about 8.

3 Q At 8.

4 And what was the nature of his disability?

5 A That he couldn't learn past a 6-year-old.

6 Q So was it an intellectual disability?

7 A (Nods head affirmatively.)

8 Q When did your mother die?

9 A In 1994.

10 Q How old were you?

11 A I was 16 -- 15, 16.

12 Q And how old was Kereen?

13 A He's five years younger than me, so he was 9 or 10.

14 Q And has y'all's father ever been in your life?

15 A In mine but not his.

16 Q Okay. And where did y'all stay after your mom
17 passed?

18 A In the home that we're in now.

19 Q And did anybody stay with y'all?

20 A I had an aunt who lived with us.

21 Q And when you turned over the age of 18, did you
22 become Kereen's representative payee?

23 A Yes.

24 Q Okay. And are you also his power of attorney?

25 A I am.

1 Q Okay. And he lives with you?

2 A He does.

3 Q Okay. Do you pay all his bills?

4 A I do except for his cell phone bill.

5 Q Has he ever -- has he had a job?

6 A Not really. Just cutting grass or stuff like that.

7 MR. GAMBRELL: Okay. Thank you, Mr. Lee.

8 THE COURT: All right. Cross-examination?

9 MR. MCCOLLUM: Yes, Your Honor.

10 CROSS EXAMINATION

11 BY MR. MCCOLLUM:

12 Q Good afternoon, Mr. Lee.

13 A How are you doing?

14 Q Good. Thank you.

15 You love your brother; is that correct?

16 A Yeah.

17 Q And you potentially have been taking care of him
18 since you've been young and he's been young; is that
19 correct?

20 A Correct.

21 Q And you would do those things to ensure that he's
22 okay; is that correct?

23 A Say that one more time?

24 Q You would ensure that -- you would do the things to
25 ensure that he's in the best position to be part of his

1 life; is that correct?

2 A I try.

3 Q Would you also say the same for your daughter as
4 well? Is that correct?

5 A For my daughter, I try.

6 I have two sons, too. I try for those, too.

7 Q You said Kereen was diagnosed with an intellectual
8 disability.

9 A You said what now?

10 Q Kereen was diagnosed with an intellectual disability;
11 is that correct?

12 A That's correct.

13 Q That it affects his ability to learn and to perform
14 at school, perform tasks?

15 A (Nods head affirmatively.).

16 Q But it should not affect his moral compass; is that
17 correct?

18 A What do you mean?

19 Q It shouldn't affect if he's attracted to young
20 children; is that correct?

21 A I wouldn't know what nobody's brain does, but I
22 wouldn't say he's attracted to young girls.

23 MR. MCCOLLUM: Thank you.

24 THE WITNESS: You're welcome.

25 MR. GAMBRELL: Nothing on redirect.

1 THE COURT: All right. Sir, you can step down.

2 THE WITNESS: Thank you.

3 THE COURT: Any other witnesses, Mr. Gambrell?

4 MR. GAMBRELL: No other witnesses.

5 THE COURT: All right. Ladies and gentlemen of the
6 jury, you've heard all of the testimony from the State and
7 you've heard all of the witnesses and testimony from the
8 defendant. So what we're going to do right now is I'm
9 going to send you to lunch. And when you return from
10 lunch, you will hear the closing statements of both sides.

11 And as I told you at the start, that as I indicated
12 in opening statements, closing statements are just what
13 these -- both sides have indicated that the evidence that
14 has been submitted would show. And opening statements as
15 well as closing statements are not considered evidence.
16 That's just their opinions as to what the evidence shows.

17 So what I need you to do is go to lunch. Please,
18 ma'am, please, sir, do not talk about the case to anyone,
19 to each other or anyone. I'm going to let you come back
20 at 2 o'clock. So it's 12. You've got till 2 o'clock.
21 And then at 2 o'clock you'll come back. We'll go directly
22 into opening [sic] statements. And immediately after
23 opening statements, probably maybe a couple minute break
24 or so I'll charge you on the law and then, Mr. Foreman, we
25 would begin the process of deliberations.

1 Okay. So I'm going to send you to lunch, but I'll
2 see you back at 2 o'clock. Be in your jury room at
3 2 o'clock.

4 (WHEREUPON, the jury exits the courtroom at 12:05 PM.)

5 THE COURT: All right. Just briefly before we break,
6 we're still on the record, let me see that. I appreciate
7 -- I guess you had an opportunity, Mr. Gambrell, to take a
8 look at the proposed charge?

9 MR. GAMBRELL: I do, Judge.

10 And before that I would like to renew my motion for a
11 directed verdict as well.

12 THE COURT: All right. Okay.

13 MR. GAMBRELL: But yes. And I would have an
14 inclusion to that with regard to the specific intent
15 charge.

16 THE COURT: All right. As it relates to renewing the
17 motion for a directed verdict, the Court denies the same
18 based upon the same grounds as before.

19 MR. GAMBRELL: Yes, sir.

20 JURY CHARGE CONFERENCE

21 THE COURT: All right. So you've got a copy of what
22 was submitted to me?

23 MR. GAMBRELL: I do.

24 THE COURT: All right. And you were talking about
25 the intent provision?

1 MR. GAMBRELL: I don't know -- let me see if I can
2 find it. Yeah. There is a paragraph on intent, but this
3 is obviously a specific intent.

4 THE COURT: All right. Which line?

5 MR. GAMBRELL: Well, I just want to include the
6 language from State v. Reid, 679 S.E.2d 194.

7 THE COURT: Give me that cite again.

8 MR. GAMBRELL: 679 S.E.2d 194, 383 S.C. 285. I'm
9 sorry, Judge. I'm citing to the Court of Appeals
10 decision. There was a Supreme Court -- that case went up
11 to the Supreme Court. That cite it 393 S.C. 325,
12 713 S.E.2d 274, 2011.

13 THE COURT: Are you familiar with that case?

14 MR. McCOLLUM: I have it pulled up, Your Honor.

15 THE COURT: What specific language are you asking?

16 MR. GAMBRELL: Under A, the Supreme Court says: In
17 the context of an attempt crime, specific intent means
18 that the defendant intended to complete the acts
19 comprising the underlying offense.

20 THE COURT: Okay. Look on the paragraph right almost
21 to the end. It says: Criminal intent is a mental state,
22 a conscious wrongdoing. It is up to you to determine what
23 the defendant intended to do based on the circumstances
24 shown to have existed. How is that different than what
25 Reid says? I'm in that paragraph on -- the paragraph

1 right above the last paragraph. It says exactly ---

2 MR. GAMBRELL: I think that's a totally different
3 concept. This is taken straight from the Supreme Court.

4 THE COURT: Are you reading in the context of an
5 attempt ---

6 MR. GAMBRELL: Right. I think that's for general
7 intent is a mental state of conscious wrongdoing. That's
8 more of a general intent.

9 THE COURT: All right. Let me read. I'm in the Reid
10 -- is that the Reid case? Okay. It says: In the context
11 of an intent crime, specific intent means the defendant
12 intended to complete the acts comprising the underlying
13 offense. That's what you're talking about.

14 MR. GAMBRELL: That's correct.

15 THE COURT: All right. And then it says: the
16 evidence -- well, it's a jury question about that. But
17 anyway, that's the language.

18 You got that case in front of you?

19 MR. JOHNSON: We have it on our phone, Your Honor.
20 We haven't seen it before. However ---

21 THE COURT: What year is that case?

22 MR. GAMBRELL: It's 2011. And it's from an attempted
23 CSC minor second degree.

24 THE COURT: Okay. It's a Supreme Court case?

25 MR. GAMBRELL: That's correct.

1 MR. JOHNSON: And, Your Honor, there -- also, on the
2 second page, there is a specific paragraph for attempt or
3 it mentions specific intent.

4 THE COURT: Same page of what you gave me?

5 MR. JOHNSON: On -- or excuse me. Page 7. Excuse
6 me, Judge. Under the first degree CSC with a minor, it
7 has the attempt. That's taken from Judge Ralph King
8 Anderson's jury charge book. Your Honor, I think it just
9 explains it well. It says it and it's easy to understand.

10 THE COURT: Yeah. But I think his argument is this
11 was a general intent as to any particular offense. This
12 Reid case is about a CSC with a minor. Is that the
13 difference, Mr. Gambrell?

14 MR. GAMBRELL: Right.

15 And to be honest with you, Judge, I think I would
16 object to their whole intent paragraph because I think it
17 goes to -- it doesn't speak of what the intent that is
18 required for this crime which is specific intent.

19 MR. JOHNSON: It does, Your Honor. It's under the
20 attempt. It say specific intent.

21 MR. GAMBRELL: But it doesn't define what specific
22 intent is.

23 THE COURT: Okay. Where are you? You're on the page
24 that says "intent," right?

25 MR. JOHNSON: No, Your Honor. I would have no

1 objection to adding the Supreme Court's language.

2 THE COURT: All right. Adding that language cures
3 the difficulty?

4 MR. GAMBRELL: Well, my problem is, is that some of
5 their language that they're using in here is coming from
6 general intent.

7 THE COURT: Yeah. But, you know, I think if you add
8 the paragraph you're talking about, I think it cures your
9 issue, doesn't it?

10 MR. GAMBRELL: Yeah. But when you say "criminal
11 intent is a mental state of conscious wrongdoing," that is
12 more of a general intent. That's confusing to the jury
13 when you go through those statements.

14 THE COURT: Okay. Here's what I'll do. I'll take --
15 because I think that language says the same thing. But
16 since it's in that case, we'll take those two lines out
17 and put this line that's in the case. Does that cure you?
18 I'll get my law clerk to do that.

19 MR. GAMBRELL: Again, I would object to the sentence
20 after that -- to the paragraph after that.

21 THE COURT: Why?

22 MR. GAMBRELL: That criminal intent can arise from
23 action or failure to act and may arise from negligence,
24 recklessness or indifference to duty or to consequences
25 that are considered by the law to be equivalent of

1 criminal ---

2 THE COURT: What's your objection to that?

3 MR. GAMBRELL: Because that's more of a general
4 intent. This is a specific intent. I would say if you
5 would take out the last two paragraphs and replace it with
6 the language from Reid that I would be okay with.

7 THE COURT: What's the State's position?

8 MR. JOHNSON: Your Honor, I'm trying to find out
9 which paragraph we're talking about. I didn't have any of
10 this prior.

11 THE COURT: Are you talking about in Reid? All
12 right.

13 MR. GAMBRELL: I'm talking about the last two
14 paragraphs of the jury charges ---

15 THE COURT: On page 6.

16 MR. GAMBRELL: --- under the intent.

17 MR. JOHNSON: You said you want that last paragraph
18 out? Which one?

19 MR. GAMBRELL: The last two paragraphs.

20 MR. JOHNSON: Your Honor, I think I would have no
21 objection to removing that last paragraph. However, the
22 second to the last paragraph, the criminal intent is a
23 mental state, a conscious wrongdoing, I don't think that's
24 confusing at all. I think having that in there, it
25 explains to them who somebody might not have the

1 understanding of what criminal intent even means, coupled
2 with the language that he requested directly from the
3 Supreme Court explaining specific intent. And then ---

4 THE COURT: Okay. Listen to what I'm instructing my
5 clerk to do. I'm looking at Reid. It says: In the
6 context -- this is what we're going to say and I think it
7 will cover both of those paragraphs. In the context of an
8 attempt crime, specific intent means the defendant
9 intended to complete the acts comprised of the underlying
10 offense. Okay. I'm also going to say: In the context of
11 an attempt crime, specific intent means that the defendant
12 consciously intended the completion of the acts comprising
13 the offense. That covers both of those paragraphs.
14 That's what I'm replacing it with. That's what you asked
15 for.

16 MR. GAMBRELL: Correct.

17 THE COURT: And so we're going to take out -- you see
18 what I'm saying? It covers both ---

19 MR. JOHNSON: Yes, sir. Absolutely.

20 THE COURT: So we're going to take out these two
21 paragraphs.

22 MR. GAMBRELL: Could you read that part one more
23 time, Judge, what you're going to add?

24 THE COURT: All right. We're taking out the last two
25 paragraphs, and this is what it's going to say: In the

1 content of an attempt crime, specific intent means that
2 the defendant intended to complete the acts comprising the
3 underlying offense.

4 MR. GAMBRELL: Okay. I'm sorry.

5 THE COURT: In the context of an attempt crime,
6 specific intent means that the defendant consciously
7 intended the completion of acts comprising the offense.

8 MR. GAMBRELL: Yes, sir.

9 THE COURT: That's what I'm replacing these two
10 paragraphs with.

11 MR. GAMBRELL: Okay.

12 THE COURT: Okay. All right. What else have we got?
13 Is that it?

14 MR. GAMBRELL: That's it.

15 THE COURT: Okay. Jury form, really -- it's really
16 just simple. Indictment, attempted criminal sexual
17 conduct, guilty or not guilty, check, foreman signs. Real
18 simple. Nothing -- I mean, be glad to take a look at if
19 you want to, but it's real simple.

20 MR. JOHNSON: State's fine, Your Honor.

21 THE COURT: All right. So my law clerk is going to
22 do that. And then when we come back from lunch, we'll go
23 into closing.

24 So even though he didn't testify, you know, he did
25 put up some evidence. So you know how you ---

1 MR. JOHNSON: Yes, Your Honor.

2 THE COURT: All right. Anything else?

3 MR. GAMBRELL: Is it an open and closing and they
4 rebut to my ---

5 THE COURT: Yeah. They wouldn't get to rebut if you
6 hadn't put up anything.

7 MR. GAMBRELL: Correct.

8 THE COURT: They just sit quietly.

9 MR. GAMBRELL: I understand.

10 (WHEREUPON, a recess is taken at 12:16 PM; proceedings
11 reconvened at 2:03 PM.)

12 THE COURT: All right. Anything?

13 MR. GAMBRELL: Judge, it was brought to my attention
14 right before or right after we broke that I'm not sure
15 that I actually said the defense rests. So if we need to
16 put that on the record, I'm happy to do so.

17 THE COURT: Okay. I'll let you put that on the
18 record and then we'll go into closing arguments.

19 Okay. All right. I don't know if I need to do this.
20 I'll do it now as I may forget to do it later. We're
21 getting into the portion of the trial where there may be
22 -- at some point there's going to be a verdict in this
23 case at some point. And those of you who are sitting in
24 the pews, please, ma'am, please, sir, I don't want any
25 outbursts, any reaction at all. Please do that for me.

1 Let's just make this as orderly as we possibly can.

2 All right. Okay. Let's bring them.

3 (WHEREUPON, the jury entered the courtroom at 2:05 PM.)

4 THE COURT: All right. We're back on the record.

5 Mr. Gambrell?

6 MR. GAMBRELL: Yes, sir, Judge. The defense rests.

7 THE COURT: All right. Thank you so much.

8 All right. We are getting ready to go into closing
9 arguments. This is addressed to those of you in the pew.
10 I will not have anyone entering or exiting during closing
11 arguments and also the subsequent charge by the Court. So
12 make sure you are where you're supposed to be right now.
13 So I'm not going to let you in or out.

14 Okay. Ladies and gentlemen of the jury, you've heard
15 all of the testimony and received all of the evidence that
16 you're going to receive in this case from both sides. It
17 is now time for the attorneys to give you what is called
18 closing arguments.

19 Here, again, I know I'm repeating myself, but I'll
20 have to do that again. Opening statements they gave you
21 telling you what they think the facts should show and the
22 path that the facts and evidence would follow. You've now
23 seen all that evidence and you've heard all that
24 testimony, so now they get to give you closing arguments
25 and tell you what you've seen and what you've heard, in

1 their opinion what that led to in terms of what path that
2 would follow. Neither one of those statements, opening
3 statements nor closing statements, are considered evidence
4 in the case. It's just like the indictment. It's not
5 considered evidence at all.

6 So both sides are ready to move into closing
7 statements -- closing arguments?

8 MR. JOHNSON: Yes, Your Honor.

9 MR. GAMBRELL: Yes, Your Honor.

10 THE COURT: All right. The State has the burden, so
11 you go first, Mr. Johnson.

12 CLOSING ARGUMENTS

13 MR. JOHNSON: Thank you, Your Honor. May it please
14 the Court, Mr. Gambrell, Mr. Lee.

15 Ladies and gentlemen, this week we have had to talk
16 about some things that are uncomfortable and things that
17 are difficult and I want to apologize for that. No one
18 here in this entire courtroom ever has to think about this
19 kind of thing again.

20 However, unfortunately, child molestation, child sex
21 abuse is, in fact, a reality. But I think we need to look
22 at who has a choice here. All of you have a choice to be
23 here. You were all chosen to fulfill your duty for jury
24 duty, and we appreciate that, both sides.

25 Me and our team, we choose to work in this field,

1 this line of work. We have a choice to be here.
2 Mr. Gambrell chooses to defend the constitutional rights
3 of the accused. The one person that doesn't have the
4 choice to be here is Ms. SB [REDACTED] She didn't
5 choose this. She didn't choose to be the object of this
6 man's sexual desire. However, here we are.

7 And, again, back in my line of work being a
8 prosecutor, obviously, I don't get to pick the cases I
9 take. I don't get to choose what crimes happen in our
10 community. Sometimes victims are unable to testify.
11 They're too young. Sometimes they're not able to testify
12 because they're not here with us anymore. Sometimes
13 they're scared to testify. And obviously, with that,
14 sometimes I don't have all the evidence I want, that I
15 need. Sometimes the defendant doesn't make a statement.
16 They don't speak with law enforcement. They don't get
17 caught in lies. However, that's not what's going on
18 today. That's not what you heard this week.

19 Ladies and gentlemen, this is not a whodunit. No
20 doubt about it. I have to prove that he is guilty of
21 attempted criminal sexual conduct with a minor in the
22 first degree beyond a reasonable doubt.

23 As Mr. McCollum said in the beginning, beyond a
24 reasonable doubt is not beyond all doubt. You can believe
25 aliens did it. That's a doubt. That's not a reasonable

1 doubt. I know that's silly, but that illustrates the
2 point. It's got to be a reasonable doubt, and that's my
3 burden and I welcome it. That's what it should be.
4 That's what this country is built on. We have to prove
5 beyond a reasonable doubt.

6 Now I'm going to march through the evidence, explain
7 why we've done that. But before we do that, let's talk
8 about something you don't have to consider, totally
9 outside of your purview so that you don't have to consider
10 and shouldn't consider, can't consider is sentencing,
11 punishment, what you believe needs to be done. That's not
12 my job. That's not your job. That's His Honor's job. So
13 some of you may think that he deserves the book thrown at
14 him. Some of you think he should get counseling,
15 rehabilitation programs. But you don't have to discuss
16 that. Almost certain we are all on different pages on
17 that. But, again, we can't consider that. That's the
18 judge.

19 So what evidence do we have? As you've seen, this
20 case is based on testimony of the victim and the
21 defendant. You've got to weigh the victim's credibility.

22 I want you to look and think about what you saw from
23 Ms. **SB** Did she look like she was lying? Did she
24 look like she wanted to be here? Look at what incentive
25 she has to lie.

1 So if anybody has children or knows anything about --
2 or have been around children, you know that kids lie big.
3 If her goal was to get this man in trouble, is this the
4 lie that she would create? No.

5 When children lie, they lie big. Again, she would
6 have made up some fantastic story about some violent rape
7 with these incredible details to ensure that he's punished
8 to the max. Because that's how 10-year-olds think. A
9 10-year-old wouldn't wake up and make up this lie that her
10 uncle -- uncle stood above her and tried to put his penis
11 in her mouth. 10-year-olds don't think like that. She
12 doesn't know what an erect penis is, why that happens.
13 She's a 10-year-old. She's not used to being the desire
14 or the object of a 38-year-old man's desire. That's not
15 the kind of lie a kid would make. Again, kids lie big.

16 Furthermore, sometimes people lie for attention. And
17 that's when you look at her on the stand. Did that little
18 girl look like she was having a good time? Is this what a
19 girl her age dreams of, that you get to wake up one
20 morning when you're 10 years old and you get to see your
21 uncle's penis? And then you're so lucky you get to go
22 tell your mother about that, you've got to explain it in
23 detail. You have to wipe off your mouth. You have his
24 side of the family's upset with you that you came forward.
25 You get to do all that and she calls 9-1-1, her mother.

1 And she's lucky enough to be able to say that story to law
2 enforcement. And then she's lucky enough to come in here
3 and talk with a bunch of prosecutors and victim advocates
4 and keep telling that same story, same story that doesn't
5 change everybody.

6 Also, she could be lucky enough to get to wait for
7 four years to get a trial date and to come in here and be
8 lucky enough to explain it in a room full of strangers,
9 being on the record. All of a sudden, her name on the
10 indictment isn't SB. Everyone knows what little girl
11 we're talking about now, and to be cross-examined and have
12 her story picked apart. In what world is this what a
13 little girl dreams of?

14 She has life experiences that I'll never have, that I
15 can imagine I don't think that is something children dream
16 about. This is the fun story that everybody wants to be.
17 You heard she's a good student. She likes ELA class.
18 This is where she wants to be right before the
19 end-of-the-year exams? This is what she wants to kick off
20 her summer break? Give me a break. Give me a break. Her
21 story stayed consistent.

22 Up to that, what I just said, that is our
23 prototypical criminal sexual conduct case with a minor.
24 You have a child coming forward and disclosing it. We
25 have their word for it. Those are tough cases, no doubt

1 about it. Because it's her word against his. Happens all
2 the time. Again, that's the prototypical case. I submit
3 to you that that is beyond a reasonable doubt.

4 Fortunately, that's not a discussion we have to have
5 because there's so much more. We have the defendant's
6 stories, plural, stories. We have a confession from the
7 defendant.

8 Just because we're at trial here today does not mean
9 that this is a complicated case. This is straightforward.
10 The evidence is monumental.

11 Now, my plan was to go through and to watch these
12 videos again. However, since we watched them today, I
13 don't want to make this any longer than it has to be, so
14 I'm just going to pull out the quotes that I think are
15 relevant. In your jury room, you will have the flash
16 drives and all the evidence, so if you would like to watch
17 them, please do. If there's anything in here that you
18 don't remember or you think's different, watch the video.

19 So throughout the video and all the clips, he has all
20 these different stories. You've seen it. As Detective
21 Paris explained, they evolve. There's only one truth. He
22 has eight truths or eight stories, but only one truth.
23 The truth doesn't evolve. Pro tip from your local
24 prosecutor: If you're going to lie to police, pick a
25 story and stick to it.

1 But let's start with Mr. Lee's first story to Officer
2 Chupp. That's when he's in the back of the police cruiser
3 on body cam. So not the detective. Talk to the officer.
4 It's right after he's taken into custody. Again, Officer
5 Chupp had know idea of the facts. He got on scene, knew
6 this man was accused of something, detained him. He
7 wasn't under arrest. He just detained him, read him his
8 Miranda rights.

9 Mr. Lee says, "I didn't do anything. I heard her
10 scream. I came in there and looked down, and she jumped.
11 I looked down, and then when she jumped up, I asked her
12 what's wrong with her. That's all I did. I don't know.
13 I don't know nothing."

14 He goes on again, explains the story again in that
15 same video. "Yeah. I was in my room. I heard her
16 scream, so I went up there and looked down at -- and when
17 she looked up to me, I asked if she was all right. That's
18 all I did. I don't know if it was a rat or whatever it
19 was. I don't know. We do have little rats, and they will
20 crawl on you."

21 Obviously, Officer Chupp is -- he had no idea what's
22 going on. But these rats, because that's part of the
23 story because he knows **SB** woke up, something touched
24 her on the lip. So he's starting to talk this story
25 before questions are even being asked.

1 Story Number 2, this is to Detective Paris when he
2 first gets to the station after he's read Miranda. So,
3 again, he's read Miranda, his Miranda rights twice by
4 Officer Chupp. He's read them by Detective Paris, and
5 Detective Paris has him read them back to him. And each
6 time they ask if he understands, he says yes.

7 The second time, second story, Detective Paris asked
8 him what happened. Mr. Lee, again, says, "I was in my
9 room. I was watching TV. I heard my niece scream, so I
10 went to check on her. When I bent down, she jumped up and
11 started holding her mouth."

12 So now the rats have kind of gone away. Now the
13 story is I heard her scream. I ran in there. She was
14 still laying down somehow. And when I got over her, she
15 jumped up and something hit her mouth. So the first
16 evolution.

17 Story Number 3 kind of merged the previous two.
18 Mr. Lee says, "That's what happened. I was sitting in my
19 chair like this. I was watching TV. Matter of fact, I
20 was watching Martin. I heard my niece screaming. I went
21 in there. I looked down. She jumped up. I said, 'What's
22 wrong with you?' She just be like this," covers his
23 mouth. "I said, 'What's wrong with you?'

24 "She said, 'I'm going to tell my mama.'

25 "So I don't know what happened. We got rats. Rat

1 must have ran across her mouth."

2 And then in that same story, he talked about her
3 being asleep.

4 So there we have he heard her screaming. He gets up,
5 runs in the room, she's asleep. She's just screaming, but
6 now she's asleep. He goes over her. She jumps up and
7 hits her mouth, but it was probably a rat.

8 You can't put logic on a lie, as Detective Paris
9 says. This story is fanciful. He's just grasping for
10 straws, trying to think on his feet.

11 Fourth story, no more screaming. That's out the
12 window. Now it's a phone alarm goes off, one of the
13 girls' phones. As the evidence shows, these children
14 didn't have telephones. You're going to lie, know your
15 facts. They didn't have phones. **SB** was 10.

16 Mr. Lee, "My niece's phone alarm went off. I went in
17 there and cut the alarm off, went back to my room." Said
18 he sat there, watched TV. He went up, smoked a Black &
19 Mild. Later on he goes, "So I cut that off again. I had
20 gotten a little string with a little top, and I threw it.
21 I was hitting her with it, and I accidentally hit her in
22 the mouth. And then when I went over there, my pants be
23 baggy."

24 All of a sudden, it's not the rats. Now it's this
25 top on a string. And he knows he's got to explain why his

1 pants are down, so he starts laying the foundation for
2 baggy pants. Because he knows he's got to explain why his
3 erect penis was exposed. Again, laying the foundation.

4 Detective Paris asked, "So you're going to say your
5 penis just fell out?"

6 "Because my pants, I've got on boxers and shorts."

7 Detective Paris, another follow-up question, "Why was
8 your penis hard?"

9 "Because I just got out of the room with my girl."

10 Detective Paris, "How did your penis even get close
11 enough to hit her?"

12 Mr. Lee says, "I went up to her like this, and she
13 jumped up and did like that."

14 Detective Paris still, "Why was your penis hard?"

15 "I don't know. It gets hard on its own."

16 And to explain that, my favorite part, "Why was your
17 penis hard when you're standing over this 10-year-old
18 girl?"

19 "I'm a Scorpio. We're more sexual, more than any
20 other horoscope, so my thing gets hard when the wind
21 blows."

22 Story Number 5, now he's got a TikTok prank. I'm
23 sure many of you know what TikTok is, a social media
24 platform. "I hit her with a lid, a pen lid. I hit her
25 with a pen lid." And a quick sidebar, no pen lid was

1 found. There's no top with a string. He's just making
2 these up. It was not on scene.

3 Detective Paris is, "Okay. Where did you hit her?"

4 "I don't know."

5 "Why did you throw that at her?"

6 "I was playing a joke. I was fixing to do a TikTok
7 or something. I was fixing to do a TikTok but I forgot my
8 camera on my phone so I had to hit her with a top, a lid
9 top, but I didn't know where it went to. So I went back
10 to get my phone. I went back halfway. She did like this.
11 I went, 'What's wrong?' And I just looked at her. She
12 said she was going to tell her mom. I don't know."

13 Detective Paris, "Let's back up. You said you got
14 close to her and your penis fell out. Now you're saying
15 you were halfway across the room?"

16 "No. When I hit her, I was across the room with the
17 top." Now he's saying to the body cam, small house, but
18 he's saying he hit her with a top from across the room,
19 and then she got up. "I went over there and I was like,
20 'What's wrong?' She jumped up and her lip -- I thought I
21 hit her lip with the top on her lip. When she jumped, I
22 jumped. My pants fell and I tried to pull them up. And I
23 um..."

24 Detective Paris comes up and says, "So as you got
25 close to her, your penis fell out?"

1 "When I walk, my pants were already coming down. I
2 was walling and my pants were falling like this."

3 Detective Paris says, "So you think your penis came
4 out when you pulled your pants up?"

5 "Yeah."

6 "So you got real close and your penis was out?"

7 "That might be what happened."

8 Might be? Might be? You're talking about your
9 exposed penis in front of a 12-year-old girl --
10 10-year-old girl. Excuse me.

11 Story 6, this was the one where he's standing over
12 her with his erect penis. He's thinking about how cute
13 she is. Remember that? You watch that video again. He's
14 thinking about how cute she is. He wouldn't mess with her
15 now. She's too young, of course. He's telling the
16 officer this. Now, older, sure. I'm attracted to her.

17 And then she jumped up. He was standing there
18 admiring her, thinking about her, and then she jumped up
19 and something hit her lip. No more phone ringing. She's
20 not screaming anymore. The TikTok prank's out the window.
21 Starting to get closer.

22 And excuse me for talking about this in court, but he
23 talked about how he was horny and it was a moment of
24 weakness. Total shift in the story here. TikTok prank,
25 rat, now he's like, "I was horny. I was standing over her

1 and it was a moment of weakness."

2 He gets close. After stating he was horny, and at
3 the moment of weakness, he admitted that he wanted to go
4 to the bathroom to relieve himself, to masturbate.
5 Standing over her, he's getting worked up, and I just
6 don't know what happened. Blacked out. Again, another
7 absolute left turn.

8 Detective Paris asked, "So you were standing there
9 getting worked up, right?"

10 Mr. Lee, "That's when I was standing there. I was
11 just looking at what was going on. I was just sitting
12 there and I got hard. I don't know what happened after
13 that."

14 So now he wasn't erect, again, excuse me, because he
15 was in the room. He admits, says, "I was sitting there
16 getting worked up," and that's when his penis became
17 erect, standing over, again, let's not lose sight of it, a
18 10-year-old little girl.

19 Detective Paris, "Let me ask you this. You say you
20 don't remember. You think it's possible that you just got
21 overcame and you just went over there with your penis and
22 touched her mouth?"

23 Mr. Lee, "I don't know."

24 This is not an acceptable answer for this scenario.
25 "Did your penis touch her mouth when you were aroused?"

1 You already admitted you were sitting here looking at her,
2 attracted to her, getting aroused. Did your penis touch
3 her mouth?"

4 "I don't know."

5 Is that a reasonable response for a man who didn't do
6 this? He'd be like, oh, my God. No. That is terrible.
7 That is the child I loved. That's a family member. Not I
8 can't tell you. Sorry.

9 Story Number 8, Detective Paris, "Well, you were
10 having thoughts about it?"

11 "I have thoughts, but I ain't do it."

12 "What were your thoughts? Tell me that if you want
13 to."

14 He was thinking and said, "Well, if she were old
15 enough, I'd mess with her." Again, 10-year-old child.
16 This is what he thinks is reasonable to have a
17 conversation with a police officer. If I say these
18 things, they'll get off my trail. Yeah. I'd mess with
19 her if she was a little older, but not now. That's crazy.
20 We're talking about a little girl.

21 Detective Paris, "So what turns you on? Thinking if
22 she was old enough?"

23 Mr. Lee, "Yeah."

24 You're sitting -- standing over her thinking about
25 her being older.

1 "So just the thought of her being old enough got you
2 ready? What about her sister? Ain't that her sister
3 lying on the other side? What made you go to her instead
4 of Jessiah? You like Ms. Bryant more than Jessiah?"

5 He's very candid. He says, "I was thinking, well,
6 you know, that's my niece too."

7 Detective Paris says, "So you like them both?
8 They're both cute?"

9 "They're all right. Jessiah's my niece. That's my
10 real niece. She," as in SB ██████████ "that's just my --
11 that's just my brother's girlfriend's kid. I just call
12 her my niece. Of course I wouldn't do it to my blood
13 relative. But this is just my brother's girlfriend's
14 kid."

15 "Because she ain't blood?"

16 "Yeah."

17 "You don't mess with blood?"

18 Shakes his head no.

19 So there's this line. That's where he cuts it off.
20 Being sexually attracted to and acting on it to a
21 10-year-old that's not blood is fine, but the second she's
22 related to you, that crosses the line.

23 Detective Paris, "Do you regret anything about
24 today?"

25 Mr. Lee, "Yeah. I should not have been in that

1 living room where they're at. I should have stayed my
2 butt in my room."

3 He goes on. "If you could say something to her right
4 now, what would you say?"

5 "I'd apologize."

6 "What's there to apologize about if you didn't do
7 anything?"

8 "I'd like to apologize to her and tell her I'll stay
9 away from her."

10 "Why would you say those things? "

11 "I get close to her. Every time she comes up here,
12 this happens."

13 "Is it because you're so attracted to her?"

14 "I don't know. Maybe it is."

15 "You feel like you lost a bit of control this
16 morning?"

17 "Yeah." Mr. Lee admits he lost control.

18 "What would you be sorry about today?"

19 Mr. Lee says, "Whatever happened today. Like if my
20 penis hit her mouth, I'm sorry about that. I'm sorry that
21 I was so close to you. I won't be close to you anymore."

22 "If my penis hit your mouth? Come on.

23 "Just man-to-man, seriously, man-to-man, would you
24 sleep with her?"

25 "No." Then later says, "If she were old enough, I

1 might have sleep with her, maybe just put my penis in her
2 mouth."

3 Detective Paris, "What do you like about her so
4 much?"

5 "Her attitude."

6 Detective Paris says, "What is she, sassy or
7 something?"

8 "Yeah. You can say that."

9 "You don't like her body?"

10 "I like her personality."

11 Detective Paris says, "Well, what do you like in
12 women visibly?"

13 "I just like personality. I go for personality."

14 Later he goes, "What enticed you over there today?
15 Because she was asleep, couldn't talk? You know what I'm
16 saying?"

17 Mr. Lee, "I don't know." Not no, absolutely not.
18 That's a 10-year-old girl. What are you talking about? I
19 don't know what aroused me so much this day.

20 Each story changes. Each story gets a little closer
21 to the truth. The facts change constantly except for one
22 thing: his penis being out. Because he knows that's the
23 one you've got to explain away. That's what she saw.
24 That fact, once it's introduced, stays consistent.

25 A few other incriminating statements I think are

1 relevant: I need classes. She's growing up. She's cute.
2 I'm going to have thoughts, but I ain't do it. If she was
3 older, I'd mess with her. Thinking about her getting
4 older, that turns him on. She ain't blood. This was just
5 a moment of weakness. I lost control. If he could, he
6 would apologize to her. Again, we're talking about a
7 10-year-old. I know I've said that ten times, but I think
8 it is incredibly relevant. We're talking about a
9 10-year-old, these casual conversations about this.

10 Detective Paris is trained. Obviously, he knows what
11 he's trying to do. This man is talking about this, that a
12 small prepubescent girl, so casually being attracted to
13 her.

14 Now, what's he charged with? He's charged with
15 attempted criminal sexual conduct with a minor in the
16 first degree. It's a mouthful. So attempt, have to prove
17 a sexual battery and I have to prove that there's a victim
18 who's less than 11. So those are my three elements:
19 attempt, sexual battery, less than 11. She's 10, so the
20 third element's gone. So I just have to prove that he had
21 attempt for a sexual battery.

22 Now, I'm going to go through the law, but I don't
23 give the law. I'm just giving you a roadmap of kind of
24 what I'm thinking. The judge gives you the law. Anything
25 I say is different than what he says, you go with what he

1 says.

2 An attempt, what does an attempt mean? Can you just
3 think about something? Does that count? No. Just
4 thinking about it, it's not an attempt. You have to make
5 an act. The law is an overt act. You have to make a step
6 forward in the direction to fulfill your goals. For here,
7 it's the sexual battery of this child.

8 What is an overt act? So I'm sitting here thinking
9 where does the overt act start? I submit to you we have
10 it well before he puts his penis in her mouth. When this
11 man made the decision to go into a room with a sleeping
12 girl and become erect, that's an overt act. That gets us
13 there. Him just going in the room with an erect penis
14 exposed to the sleeping little girl, I submit that's
15 enough. We have more.

16 I think when he stands over her, he pulls his pants
17 down, exposes himself, that -- my goodness, if that's not
18 an overt act, what is?

19 And then beyond that, he touched her on the lip
20 twice. The first time, overt act; the second time harder,
21 overt act. I submit to you the evidence is clear that he
22 touched her lip. Why else would he be making stories up
23 about the top? But even if you don't buy it, I think you
24 should, but even if you don't, everything he already
25 confessed to, that's plenty. That's the overt act.

1 Next is a sexual battery. There's multiple of those.
2 This is a broad -- it's what typically is a rape/child
3 molestation statute. It gives you a lot of different
4 avenues.

5 Sexual battery means sexual intercourse, cunnilingus,
6 that's oral sex on a female, fellatio, that's oral sex on
7 a male, or any intrusion into the body of another however
8 slight. So you have all the standard sex practices that
9 gives you a criminal sexual conduct. But, again, if you
10 try to do any intrusion into another equals sexual
11 battery, however slight. As long as you go in .1
12 millimeters, that's an intrusion, that's a CSC.

13 Here he's charged with attempted CSC, criminal sexual
14 conduct. I apologize. I think there's evidence that
15 there was an intrusion. When you shove your penis in
16 someone's mouth, there was probably some slight intrusion.
17 However, law enforcement here didn't go overboard.
18 There's evidence of that. I mean, he told you on the
19 stand, Detective Paris, I want a beyond a reasonable
20 doubt. The intrusion happened, but we know the attempt
21 happened.

22 There are officers that go overboard a lot. I'll be
23 the first one to admit that. This is not one of those
24 cases. They charged with attempt. Again, I submit to you
25 the evidence is overwhelming.

1 For you to vote guilty or not guilty, I like to look
2 at it this way sometimes. Here's what you have to believe
3 for you to think this is just some concocted story. You
4 have to believe this man, who admitted that he's attracted
5 to that little girl, admitting to standing over him [sic]
6 with an erect penis, admitting to thinking about her and
7 fantasizing about her, stands over her, and at the same
8 time he does that, she happens to wake up, jump up, see
9 his penis, immediately make up a story, immediately
10 concoct this story, which is not far-fetched, run to her
11 mother and a minute later if not less tells her what
12 happened. So she concocted this story and it just
13 happened to be at the same time he, from his words, stood
14 over her with an erect penis, fantasizing about her.
15 Again, that is absolutely unreasonable. You can concoct
16 any doubt. That is not a reasonable one.

17 If you believe SB [REDACTED] story, if she leaves you
18 firmly convinced, you must find him guilty. That's the
19 standard, beyond a reasonable doubt. In other words, the
20 judge will explain, does it leave you firmly convinced of
21 his guilt. If you believe her, you've got to find him
22 guilty. If you're firmly convinced of what he tells you,
23 that's still attempted CSC.

24 Again, like I said, I know this is a trial in a
25 courtroom. This is not complex. Standing over a little

1 kid, going into the room where she sleeps with her mouth
2 open, becoming erect, fantasizing about her and
3 approaching her and standing over her, that is attempted
4 CSC. But he went further and he tried to put his penis in
5 her mouth twice. That gets us so far over the hump. That
6 is so far past beyond a reasonable doubt.

7 Ladies and gentlemen, if you have any doubt back in
8 the jury room, please, please watch those videos again.
9 Listen to how this man talks. And I know you can get numb
10 especially in this job and the world around this
11 courtroom. Never lose sight of how old that little girl
12 was.

13 Again, here she is today. She's 14. She's growing.
14 And she's smart. My goodness, she's smart. She's
15 articulate. She looks much older than she is. But she's
16 still a kid. She's 14. This was four years ago. Just
17 imagine that little girl four years ago.

18 Again, if you believe her, you've got to find him
19 guilty. If you believe him, you've got to find him
20 guilty.

21 Ladies and gentlemen, my job is to present to you the
22 evidence. I believe we have done that. We have presented
23 more than enough. I'm asking you to do what justice
24 demands. I'm asking you to find him guilty.

25 Thank you.

1 THE COURT: All right. Thank you, Mr. Johnson.
2 Mr. Gambrell?

3 MR. GAMBRELL: Thank you, Your Honor. Beg the
4 Court's indulgence. I'll get to that in just a second.

5 This is a difficult case. It's difficult for
6 everybody. And during jury selection, I try, based on the
7 information -- little bit of information that we have, to
8 select jurors who will not only be fair and impartial, but
9 will also decide this case on the evidence and not
10 emotion. And we don't get a lot of information, but
11 that's what I try to do is determine folks who will be
12 both fair and impartial to Mr. Lee and to the State but
13 who will also decide this case based on the evidence.

14 The purpose of this trial, there's only one purpose,
15 and that's to determine if the State has met their burden
16 of proof to each and every one of you that Mr. Lee is
17 guilty of an attempted criminal sexual conduct with a
18 minor. Not any other crime, not if he's a bad person, not
19 if he has bad thoughts. But they have to prove that
20 specific crime to you beyond a reasonable doubt. They
21 have to firmly convince you of every element of that
22 offense.

23 And I'm going to go through what I think is
24 important. And it does get a bit nuanced more so than
25 what counsel believes it to be. But make no mistake, that

1 is the reason why you all are here. That's the only
2 reason.

3 He's been charged with attempt to commit criminal
4 sexual conduct with a minor. I will disagree with counsel
5 on the definition of criminal sexual conduct. It's to
6 commit a sexual battery. That's true. And Judge Kinlaw's
7 going to give you the definition of what that is. But it
8 includes intercourse, cunnilingus, fellatio, anal
9 intercourse or an intrusion, however slight, of a person's
10 body or an object into the genitals or the anus of another
11 person. It's very specific in its definition. I think he
12 was alluding to any intrusion into any part of the body,
13 but it's limited to the genitals and the anus. That will
14 be in Judge Kinlaw's instructions.

15 In this case, we're talking about fellatio. And the
16 State would have to prove that Kereen attempted to enact
17 in fellatio with **SB**

18 Now, it really comes down to the attempt portion of
19 that. And if I could, I'm going to show... An attempt,
20 the State has to prove the defendant had the specific
21 intent to commit the underlying offense, and in this case
22 a sexual battery.

23 You know, being in a room with a minor with your
24 penis exposed, that's terrible. That is gross. That's
25 inappropriate. But they still would have to show that he

1 has this specific intent to commit a sexual battery along
2 with some overt act, as he stated, that's not mere
3 preparation.

4 And the next line, what is specific intent? And this
5 is what I brought up in my opening. Specific intent, they
6 have to show that the defendant consciously intended to
7 complete the acts comprising the underlying offense. It's
8 not enough to be standing in the room. That does not show
9 that he had the conscious intent to complete the act.
10 There has to be something further than that to show that
11 his intention was -- standing naked in a room with a minor
12 is not a crime. It's gross, it's disgusting, but it's
13 certainly not a criminal sexual conduct.

14 And let me go back to that real quick. There's no
15 allegations that there was a sexual battery that took
16 place. Investigator Paris said there was no penetration.
17 We didn't charge him with a sexual battery. They
18 determined that there wasn't one that took place. So you
19 have to go back to determine if there is no sexual
20 battery, then what constitutes the attempt?

21 Intent was that he intended to complete the sexual
22 battery. So you have to look at the evidence to determine
23 what was in his head. It's not what **SB** thought.
24 It's what was in Kereen's head. In order to do that, you
25 have to look at the evidence in this case. And the

1 evidence that you saw were the video statements that
2 Kereen gave.

3 And, again, you have to remember, this man is
4 intellectually disabled. But even Investigator Paris says
5 that his summary of what he stated was that he was
6 standing over her with his penis exposed and he was
7 aroused. Again, not condoning that. It's terrible. It's
8 gross. He ought to be ashamed of it. But you cannot
9 gather what his intent was just from that. You can't say
10 that he intended to do anything else from the statements
11 that he made. You either have to get it from him or you
12 have to get it from other evidence. And this is a nuance
13 case, so I'm going to ask you to think with that in mind.
14 At that point, there's been no crime committed.

15 So you have to look at what other evidence there is.
16 And the only other evidence is the testimony of SB

17 Now, she gives two versions of what happened. She
18 gives the version of what happened in close proximity to
19 the incident in a written statement and in the videotaped
20 statement, and then she gave the version of what happened
21 when she testified yesterday. And they're different. And
22 you have to decide -- and they're not just minor
23 differences.

24 In the initial statement, she said she felt something
25 hit her lip. She wakes up and she sees Kereen standing

1 over her with his hands behind her [sic] head. I asked
2 her on the stand if she told Investigator Paris that. She
3 said, "I never said that." Well, then I had to show her
4 the video.

5 . In her statement that she testified on the stand, she
6 said he was standing there with his hand on his penis.
7 That's not a minor discrepancy. And, in fact, that goes
8 really to the heart of the matter because one is more of a
9 posture -- posing posture, the other one is more of an
10 action posture. Well, why did that change? Why did she
11 change that story? She never said in any of her initial
12 statements that his hand was on his penis. In fact, she
13 said that she saw it and that he was standing there with
14 his hands behind his head. That's a completely different
15 situation than what she gave on the stand today --
16 yesterday.

17 And the first time that she gave the statement, she
18 says that she felt something hit her lip just once. And
19 then she testified that now there's twice. Well, her
20 statements seem to be getting more and more in her favor
21 than what originally she gave. And it makes sense because
22 if you think about what they have to prove, that Kereen
23 consciously intended to commit fellatio with her, it makes
24 more sense if he's standing there with his hand on his
25 penis, because that's more of an action move. Okay. If

1 he's standing there with his hands like this (gesturing),
2 we don't know what his intent was. Was it just to show
3 her his penis? If he hits her mouth, her lip with her
4 [sic] penis, this is what she said initially, "I felt
5 something hit my lip, and I woke up and he was standing
6 there with his hands behind his head."

7 The act of just hitting her lip is not an attempt to
8 commit sexual conduct. It's a lewd act. Investigator
9 Paris said if you touch your penis anywhere on someone's
10 place, that's a lewd act. They didn't charge him with
11 that. They could charge him that. They could still
12 charge him with that. But that act alone does not
13 constitute an attempt, because -- and my point would be
14 this. If you wanted to accomplish the act, why did he not
15 do it at that moment? If he intended to commit fellatio
16 with her, why did he not do it right then?

17 And, again, she said something hit her lip. Now,
18 later when she testified yesterday, she said it was a
19 penis. But I asked her why did she write "something" in
20 her statement and why did she tell them "something"? She
21 said it was because she didn't want to write "private
22 part." Well, she wrote that in her statement. I mean,
23 she wrote, you know, she woke up and saw his private part.
24 So you have to really distinguish the two different
25 situations here.

1 He's not charged with a lewd act. He's charged with
2 criminal sexual conduct, attempt to commit criminal sexual
3 conduct. And in order for them to prove that, they have
4 to show that he consciously intended to do that. If his
5 intent was to go over there just to commit a lewd act and
6 then to show her his penis, yes, it's gross and it's
7 disgusting, and he ought to be ashamed of himself. But
8 that's not attempting to commit a criminal sexual conduct.
9 There's no evidence that he intended to complete that act.
10 If he was going to complete that act, he would have done
11 it right at that time.

12 He's not charged with lewd act. If -- you cannot
13 make him guilty of an attempted criminal sexual conduct
14 because he committed a lewd act. You have to decide the
15 case on the facts as they're presented, and you have to
16 understand what is in his head. And it wouldn't make
17 sense for him not to complete the act if you believe that
18 it was his penis that hit her mouth. Because at that
19 time, why would he not just complete the act? That was
20 the perfect time. Was he going to complete the act
21 afterwards? It wasn't before then because she only
22 testified that she woke up when she felt something hit her
23 lip.

24 And, of course, if any of us were lying there, felt
25 something hit our lip, saw someone standing over us with

1 their penis exposed, we would think that that's what they
2 were trying to do. But it's not what's in our mind. It's
3 what's in their mind. And they have not shown that he had
4 a conscious intent to complete the act.

5 You know, he gave several different stories. He went
6 through, you know, different events putting him up and
7 into that place. But he never once said that that's what
8 he intended to do which is what they have to show. They
9 have to prove that to you.

10 And the State will also have to show -- you know, if
11 you think that there's a real possibility that the
12 defendant's not guilty, then you have to find him not
13 guilty. So if it's a real possibility that when Kereen
14 goes into the room -- and I'm not condoning anything that
15 he did. Going into the room with yourself exposed, not
16 condoning that. Not saying that's okay. But you're not
17 here to find that he's a bad person. You're here to
18 determine whether the State can prove that he consciously
19 intended to commit a sexual battery.

20 But he goes into that room. If it's a real
21 possibility that he was just -- maybe he did want to
22 commit a lewd act. Maybe he did hit her in the mouth with
23 his penis and then show him -- her his penis. If that's a
24 real possibility, if that's what he intended to do, then
25 you have to find him not guilty because that's not an

1 attempt to commit a criminal sexual conduct.

2 But, again, it's very nuanced in this case. But
3 walking into the room, exposing yourself, gross,
4 inappropriate, he should be ashamed of it, not a crime.
5 If he goes over there and touches her mouth with his
6 penis, gross, inappropriate, is a lewd act, but it's not a
7 criminal sexual conduct. He has to -- they have to show
8 that he attempted to commit fellatio. Just hitting her on
9 the lip is not enough. There has to be some further
10 intent of his, that that's what he intended to do. And in
11 this case, you don't have it.

12 You have two separate stories. Which of those two
13 versions do you think shows more of the truth? The one
14 that was given directly after the incident? She has no --
15 it was almost a half hour, maybe 45 minutes. She's got no
16 reason to make anything up or to tell, embellish. She
17 says that she felt something hit her lip, she woke up, she
18 saw him standing there with himself exposed.

19 In the second version, she says there were now two
20 hits, and that he then had his hand on his penis. That's
21 a completely different version. And I think that that
22 does call into question her credibility. Because that's
23 not a distinction that's easily -- that's not -- you know,
24 having a memory that's different than before. And when I
25 asked her about it, she could have said, well, yeah, he

1 had his hands on his head and then he put his hand on his
2 penis or the other way around. That was a completely
3 different version of what happened.

4 And the second version, the version that she gave on
5 the stand certainly sounds more like an attempt. It does.
6 Because that is an active pose. That is -- you know, you
7 aim with your hands. This version does not sound like a
8 conscious intent unless there's more than that.

9 So you have to decide if her credibility's in
10 question. If you consider the credibility of any witness,
11 if you find any part of the witness's testimony not
12 credible, you can discredit all of their testimony or you
13 can accept some testimony and discredit other parts of
14 their testimony. And in this case, I think you have to
15 really consider the fact that the first version that she
16 gives where she gives the written statement and the
17 recorded statement has to be closer to the truth in this
18 case, not the one that was given four years later at trial
19 trying to get a conviction. And I'm not blaming any
20 improper motive to her, but it certainly has become more
21 embellished over the four years. But typically, memories
22 fade over time.

23 So if you look at just that first version as the most
24 accurate version of what happened, she says in her written
25 statement that she felt something hit her lip. She woke

1 up screaming, and she saw him standing there with his
2 penis exposed. Of course she thought whatever hit her lip
3 was his penis and that that's what he was trying to do.
4 But it's not what she thought. It's what Kereen
5 consciously intended. And that's a very important
6 distinction, because they have to prove what he
7 consciously intended.

8 And in her audio statement -- or video statement, you
9 can't really see her but you can hear her. She basically
10 says the same thing except for the fact that now he's
11 standing there with his hands behind his head. Now, that
12 to me is not indicative of attempting to commit fellatio
13 on anyone. That's indicative of exposing yourself,
14 showing yourself, but it's not indicative of trying to put
15 your penis into someone's mouth to completion.

16 And, again, if you accept the fact that that was what
17 hit her lip and then she wakes up and sees him standing
18 there with himself exposed, what better time to have tried
19 to complete the act than when he hit her lip in the first
20 place? And you have to make the distinction because
21 hitting her lip, again, it's a lewd act, but it's not a
22 sexual battery and they still have to show that he
23 attempted to complete the act.

24 So if that was his intent, to complete the act of a
25 sexual battery, fellatio in this case, instead of just

1 hitting her lip, why wouldn't he just complete the act at
2 that point? When was he going to complete the act? After
3 she woke up and screamed and ran down to her mom's house?
4 That was the only time to show, to do, to complete the act
5 if you buy that that's what hit her lip, if he hit her lip
6 with his penis.

7 When was the time for him to complete this act?
8 Because right after that she gets up and runs. Jessiah
9 wakes up and says, "I heard her scream." And by the time
10 she looks, Kereen's not even in the room. So when exactly
11 was he going to complete the act?

12 And, again, just touching your penis on someone's lip
13 is not enough to show that you attempted to commit
14 fellatio. It's not a sexual battery. And the fact that
15 he's standing there with his hands behind his head even
16 further shows that he didn't commit that.

17 Now, if you believe that his hand was on his penis,
18 that's a different story. But why did that detail change
19 from the time of the incident to the time trial? That's a
20 much stronger case. Much stronger case. If you're
21 standing there with your hand on your penis, that
22 certainly shows more of a conscious intent because that is
23 what -- when you aim, that's what you put -- you use your
24 hand. When you're standing there with your hands behind
25 your head, that is a pose of -- a posture of posing, of

1 showing. That's not an active pose. It's a posturing
2 pose. And I know this distinction is very nuanced, but
3 it's extremely important because the crux of this case
4 really comes down to what was Kereen's intent.

5 And I'm not suggesting that he's blameless in this
6 situation. Not suggesting they he should have been in
7 there with his penis exposed. But we're not here to
8 determine if he's a bad person or if he had bad thoughts,
9 if he's attracted to young girls. The only purpose of
10 this trial is to determine if the State has proven beyond
11 a reasonable doubt every single element of the crime he's
12 charged with, not if he's guilty of some other crime.

13 He could potentially be guilty of a lewd act for
14 putting his penis on her mouth, but you can't find him
15 guilty of committing a -- attempt to commit a sexual
16 conduct for committing a lewd act. There's more to it
17 than that. And like I said, they can still charge him
18 with that.

19 But if there is a real possibility that Kereen goes
20 into that room for whatever reason, apparently he's the
21 only one that's awake at this time in the house of the
22 other eight people that are staying there, exposes
23 himself, is aroused, all that's terrible. It's
24 inappropriate, it's gross. Hadn't committed a crime yet.
25 If he goes over there and hits his penis on her mouth,

1 it's gross, it's inappropriate. That's a lewd act.

2 Where is his attempt to commit criminal sexual
3 conduct? You have to show that he had the conscious
4 intent to complete the act. If he wasn't going to
5 complete it at that point, when was he going to complete
6 it? And I know that's a very nuance distinction, but
7 that's what the law requires sometimes. It's not that,
8 well, he did something bad so we have to convict him. He
9 did something, you know, inappropriate. He committed a
10 lewd act, so we have to convict him of this. That's not
11 your job. It's not your job to bring the charge. It's
12 not your job to prosecute the case. The only job of the
13 jury is to determine if the State has met its burden and
14 that you're firmly convinced that he had the conscious
15 intent to commit a sexual battery. Nothing in his
16 videotapes, he didn't say that that was his intent. He
17 didn't say that he intended to do anything.

18 And, again, you know, this man is intellectually
19 disabled. So, you know, he should be ashamed of being in
20 there exposing himself aroused. He should be ashamed of
21 that. Maybe he does need help. But you cannot convict
22 him on that. You have to convict him on the evidence
23 before you according to the law that's been given to you
24 from Judge Kinlaw.

25 And the law is going to state that he has to

1 consciously intend to complete the act. And the evidence
2 that you have before you is insufficient of that. Because
3 if there is a real possibility that he came in there and
4 exposed himself and even touched her on the lip to show
5 her his penis, if that is a real possibility, you have to
6 find him not guilty.

7 You can't get into his mind to determine anything,
8 what his intent was by anything else than what was
9 presented to you. You can't think, well, of course he
10 meant to do that. Well, why? What does the evidence
11 show? Well, the evidence shows that something hit her
12 lip, she wakes up and sees himself exposed. That's what
13 you have to determine what his intent was. You cannot use
14 the fact that he simply hit her on the mouth with his
15 penis. There has to be something further than that.

16 And, again, what better time to complete the act than
17 then? If he intended to go in there and to place his
18 penis in her mouth, what better time to do it than at that
19 moment when he hits her in the mouth with his lip [sic]?
20 I know that's a terrible thing to make a distinction on
21 because it's a gross act. No one should be violated like
22 that. It's disgusting. But you still have to show some
23 evidence that he intended to complete that act. And after
24 he does that, assuming that you believe that that's what
25 happened and he's standing there like this, what evidence

1 does he have to complete the act at that point?

2 Again, if it's a real possibility that he was there,
3 exposed himself, hit her in the lip and just for showing
4 her his penis, if that is a real possibility, you have to
5 find him not guilty. And I know that that's a hard
6 decision to make because you would have to admit that he
7 did something else that was illegal, something else that
8 was inappropriate and gross. But you're not to decide
9 that. That's not the purpose of this trial. That may be
10 the purpose of another trial, but that's not the purpose
11 of this trial.

12 This trial, the purpose is, is to determine if the
13 State has proven that he committed an attempt to commit.
14 And if that is a real possibility, that he just came in,
15 exposed himself and hit her in the mouth and was standing
16 there showing her his penis, then you have to acquit. The
17 law states that you have to acquit. And I know it's a
18 terrible thing to do, but, again, that's what your duty
19 under these circumstances are unless you can find
20 something else that shows he had the conscious intent to
21 complete the act of putting his penis in her mouth.

22 Now, again, there's no evidence that he did do that,
23 that he did put his penis in her mouth, so you have to --
24 from the facts, not from what you think is going to
25 happen, you can't speculate about what you thought

1 happened. You can only go on the facts that are presented
2 in this case.

3 You don't have to like Mr. Lee. You can think that
4 he's -- has issues. You can think that he needs help.
5 But none of those reasons can allow you to convict him of
6 this crime until the State has produced sufficient
7 evidence of it. And I know that's a hard decision to
8 make, but that's what the law requires.

9 But when you go back there and discuss the case, if
10 there is a possibility that Kereen was there for any other
11 purpose, for the purpose of what I just explained, of
12 going in there, exposing himself, committing a lewd act,
13 if that is a real possibility that that's what happened,
14 then, unfortunately, you do have to acquit him. You can't
15 convict him of attempted criminal sexual conduct for
16 committing a lewd act. You can only convict him of that
17 if you can show and prove by the evidence that he
18 consciously intended to complete the act of oral sex.

19 And my question to you is, where is that evidence?
20 Is it the evidence that he was there naked? That's not
21 enough. That's not even a crime. It's gross. It's not a
22 crime. Is it that he touched her mouth with his penis?
23 Well, that's a lewd act. But where's the intent to commit
24 oral sex? And if he was going to do that, then why did he
25 not do it at that time? That is the most opportune time

1 to do it.

2 There was no sexual battery in this case. Had he
3 placed his penis in her mouth, that would have been
4 enough. That would have completed the act. That would
5 have been a sexual battery. He wouldn't be charged with
6 attempt. He would be charged with CSC first with a minor.
7 Where's the other evidence that he intended to do that
8 when she wakes -- when she feels something hit her lip and
9 he [sic] wakes up and he's standing there like this.
10 There's no other evidence to show that he intended to
11 complete the act after that.

12 Again, you cannot convict him for being guilty of a
13 lewd act. You cannot convict him for guilty of attempted
14 criminal sexual conduct with a minor. I know that's a
15 difficult decision to make, but the law requires it. You
16 didn't bring the charge. That wasn't in your purview.
17 You didn't prosecute the charge. The only job that you
18 have is to determine whether he's guilty of that specific
19 crime based on these specific facts.

20 And I ask that you also keep in mind that there is
21 something to SB [REDACTED] changing her story, because, you
22 know, initially, when she says that his hands are behind
23 his head, that makes it a lot less of an attempt to commit
24 a sexual battery than it does when his hand's on his
25 penis. That's a very big distinction.

1 I'm not asking you to like Mr. Lee. I'm not asking
2 you to have any sympathy for him. I'm not asking you to
3 condone him being in the room with her with his penis
4 exposed. I'm not even asking you to condone him if he
5 touched her mouth with his penis. That's awful and it's
6 gross and he should be ashamed of himself. But what I am
7 asking you to do is to apply the law to this case based on
8 the facts that you were presented and find him not guilty
9 of an attempt. Because under the circumstances, you just
10 cannot get to that conclusion. You can't get there.

11 And if you uphold your oath, the oath that you took,
12 you have to try this case truly and fairly. And you
13 cannot -- you can hold him accountable for everything that
14 he does, but you cannot find him guilty unless you
15 absolutely are firmly convinced that he was in that room
16 to put his mouth on that girl's penis. And that has to be
17 based on the evidence that was -- I'm sorry. Put his
18 penis on that girl's mouth -- in her mouth. Because that
19 has to be based on the evidence that was presented to you
20 today and yesterday. And there's insufficient evidence to
21 do that.

22 You can prove a lot of other things. You can prove
23 that he exposed himself to her. You can prove that he
24 committed a lewd act on her. But you can't prove that he
25 consciously intended to commit oral sex. There's not

1 enough evidence to do that. And I know that's a hard
2 decision to make, but that's the task that you've been
3 dealt. And I know that you all will decide this case on
4 the facts and not on your emotions or not on what you want
5 to happen. You are going to apply the law to the facts in
6 this case and I know that you will come back with an
7 appropriate verdict.

8 Thank you.

9 MR. JOHNSON: Ladies and gentlemen, you heard a
10 couple times about completing the act. For the record,
11 completing the act is called criminal sexual conduct with
12 a minor. We're here for attempted criminal sexual
13 conduct. I'm not going to belabor that anymore.

14 And fellatio, he said it wasn't completed. You don't
15 have to be a willing participant. The victim doesn't have
16 to be a willing participant for fellatio to commence. The
17 victim doesn't have to be awake for fellatio to commence.
18 It's did he try to put his penis in her mouth. Again, if
19 he put it in her mouth, we wouldn't be here on an attempt.

20 He does not have to finish. She does not have to
21 want to take part in it for that to be a fellatio. Again,
22 I'll move on.

23 And the next was the intent. Again, belabor. He
24 didn't have any specific intent to do a sexual battery.
25 What in the world are we talking about? He just had his

1 erect penis standing over a 10-year-old that he's aroused
2 by his own admission multiple times, standing over her and
3 was touching her lip with it. He wasn't doing anything
4 weird. And I wasn't trying to put it in her mouth. I was
5 just standing there with my erect penis over a 10-year-old
6 child who I'm attracted to. Why else would you pull out
7 your erect penis and put it on a child's mouth? In what
8 world is that a real possibility? No evidence of intent?
9 There's no better evidence of intent. Oh, my goodness.
10 Admitting to pulling your erect penis out and putting it
11 on a little girl's mouth, admitting that but saying that's
12 not enough because you can't read his mind, if that's the
13 standard, how could you ever prove a criminal sexual
14 conduct?

15 Again, think about what other evidence could exist.
16 Erect penis on her lips. Why didn't he complete it?
17 Because she woke up and screamed and ran. That's why I
18 didn't complete it. He touched her mouth, she didn't wake
19 up. Then he touched more forcefully. She woke up,
20 screamed and ran to her mother. Because she didn't lay
21 there and take it, this man didn't do anything wrong? Oh,
22 my gosh. Oh, my gosh. Please don't fall for that trick.
23 Please don't fall for that.

24 And then he went on to talk about **SB** story
25 changing. Her story changes, you've got to throw it out.

1 Let's not forget how many changes this man's story had.
2 Countless. But they want you to think because she messed
3 -- mixed up where his hand was that there was no sexual
4 battery? Yeah, we admit my penis was on her mouth, but
5 her hand story, that's throwing doubt in the mix. Please
6 don't fall for that. We're talking about a 10-year-old
7 who doesn't understand anything about sex, seeing an erect
8 penis, figuring out what in the world is going on. And
9 she's sitting here being picked apart because she didn't
10 remember where his hand was? Don't fall for that. Think
11 about that logically.

12 And, again, if there's any changes in the story,
13 everything that matters in that little girl's story was
14 the same from start to finish. This man lied through his
15 teeth throughout the entire interview and told eight
16 different stories. Go back and watch them. Go back and
17 listen to her interview with Detective Paris if you think
18 her story has changed so much. It hasn't.

19 I'm not trying to prove he's a bad person. I don't
20 think that's -- even as a prosecutor, I don't think that's
21 something a human can ever know about another human. I'm
22 not alleging that. I don't know him personally. The
23 question is, did Kereen Lee attempt a sexual battery? Did
24 he attempt to put his penis in that little girl's mouth?
25 In what world did he not do that? He's sitting here

1 admitting to you, again, my hands were here. Clearly I
2 wasn't trying to put it in her mouth. I was just hitting
3 it on her lips. I mean, I feel like we're in the twilight
4 zone.

5 And then his intellectual disability, and, again, I'm
6 sympathetic to that. I don't want to harp on it. But
7 they're acting like this man is a 5-year-old who can't
8 think for himself. Watch that video. He's smart enough
9 to sit here and make up stories and try to get out of it.
10 He's not some helpless person that can't be held
11 responsible. He's a 38-year-old man who's held jobs, who
12 has life experiences. You can't do what he did. You
13 can't do that to 10-year-olds.

14 Again, whatever the outcome is, not for us to think
15 about. The judge's job. The question is, did he do what
16 he confessed to doing? Just because she woke up and
17 started crying, and just because she didn't let him finish
18 doesn't mean it didn't happen.

19 Again, did he intend to do it? Why else would you go
20 into a room with a little girl sleeping that you're
21 aroused by, go up to her and pull out your erect penis and
22 try to put it in her mouth? Saying there's no evidence of
23 an attempted CSC? That is outlandish. That is lawyer
24 tricks. Don't fall for it. Watch the videos again if you
25 need to.

1 it is my responsibility to preside over the trial of this
2 case, which I have done, and I also have the duty to rule
3 on the admissibility or inadmissibility of evidence during
4 the trial, which I have done.

5 You are only to consider the competent evidence
6 before you. If there is any testimony that I ordered
7 stricken from the record, and I did a couple times during
8 the trial, you must disregard that testimony. You are
9 only to consider the testimony which has been presented
10 from this witness stand and the exhibits and pictures.
11 The exhibits can be in the form of pictures, can be in the
12 form of videos, could be in the form of sketches. You saw
13 some videos. You saw all that. You only consider that
14 evidence that's been presented to you. And you will have
15 all of those tangible pieces of evidence in the
16 deliberation room at the conclusion of my remarks. But
17 that's the evidence that you are to consider.

18 I have the additional duty to charge you on the law
19 in this case. Now, as I told you at the beginning, you've
20 got to listen to me as to what the law is, not what you
21 think the law may be. You can't have an opinion about the
22 law because if you do, then you're doing my job, and I've
23 got to tell you what the law is and you have to apply the
24 law as I give it to you. If you already have an idea of
25 what the law is or what the law should be, you should

1 disregard it.

2 In every case tried in this court before a jury, a
3 jury becomes the sole and exclusive judge of the facts.
4 And I told you that at the beginning. A trial judge
5 cannot state, comment or make any statement to the jury
6 about what the facts are. And I told you at the beginning
7 I know nothing about this case, and I have no opinion,
8 none whatsoever, about the facts of this case. I have
9 none. And if you looked over at me, you thought I had
10 one, then you disregard what you saw because I don't have
11 an opinion.

12 You the jury are the sole judge of the facts in the
13 case. You are not to infer from what I have said during
14 the progress of this trial in terms of my ruling on the
15 admissibility or inadmissibility of evidence that those
16 comments mean that I have an opinion regarding the facts
17 of the case because I do not. Just before me, my duty as
18 the judge of the law in this case. This matter is a
19 matter solely for you to determine based on the evidence
20 that's been presented to you.

21 As I told you at the beginning, I read this
22 indictment at the beginning of the trial and I told you
23 that this piece of paper is the indictment. It's not any
24 evidence of guilt. Even as Mr. Lee sits over there right
25 now, he still has a cloak of innocence on him and that

1 cannot be removed until -- unless you, all 12 of you agree
2 that the State has met its burden of proof as to the
3 offense upon which Mr. Lee is charged, and that proof must
4 be beyond a reasonable doubt. In other words, all of the
5 elements of the offense -- and we'll get into the elements
6 in just a minute -- the State has the absolute burden to
7 prove all of the elements of the offense. Not just some,
8 not two or three, but they must prove all of the elements
9 of the offense upon which the defendant is charged. And
10 I'll go over that with you in a little bit.

11 The indictment charges this defendant with Count 1 of
12 attempted criminal sexual conduct in the first degree. I
13 remind you that the fact that the defendant was arrested,
14 charged and indicted in this case is not evidence in this
15 case and cannot be considered by you as evidence of guilt
16 in the case, nor does it create a presumption or inference
17 of guilt. This document is simply the formal written
18 instrument which contains the charges.

19 Now let's talk about the presumption of innocence.
20 The defendant has pled -- which everyone has the right to
21 do in a criminal case, this defendant has pled not guilty
22 to this indictment. And when that happens, it puts the
23 burden on the State to prove him guilty, him or her
24 guilty. A person charged with committing a criminal
25 offense in South Carolina is never required to prove him

1 or herself guilty.

2 I charge you that it is an important rule of law that
3 the defendant in a criminal trial, no matter what the
4 seriousness of the charge may be, will always be presumed
5 to be innocent of the crime for which the indictment was
6 issued unless guilt has been proven by evidence satisfying
7 you the factfinders of the guilt beyond a reasonable
8 doubt. This presumption of innocence does not end when
9 you begin your deliberations, but it accompanies the
10 defendant throughout the trial until you reach a verdict
11 based on the evidence that's been presented to you
12 satisfying you that the State has met its burden of proof
13 proving this defendant guilty beyond a reasonable doubt.

14 What about the presumption of innocence is like a
15 robe of righteousness placed around the shoulders of the
16 defendant which remain and cannot be stripped until the
17 evidence satisfies you the jurors that the State has met
18 its burden.

19 Now, the State has the burden of proving the
20 defendant guilty beyond a reasonable doubt. Some of you
21 may have served as jurors in civil cases and some of you
22 may have served as jurors in a criminal case where you
23 were told that it's only necessary to prove that the fact
24 is more likely than true, by the greater weight or
25 preponderance of the evidence. Well, that's in civil

1 cases. That's civil cases. So if you heard that before,
2 erase that from your mind because that's not the standard
3 that's utilized here in criminal court. In criminal
4 cases, no matter whether it's in this court, magistrate's
5 court, no matter where it is, the State's proof must be
6 more powerful than that. It must be beyond a reasonable
7 doubt.

8 Reasonable doubt is the kind of doubt that would make
9 a reasonable person hesitate to act. Proof beyond a
10 reasonable doubt is proof that leaves you firmly convinced
11 of the defendant's guilt.

12 There are few things in the world that we know with
13 absolute certainty, and in criminal cases, the law does
14 not require proof that overcomes every possible doubt.
15 If, based on your consideration of the evidence and using
16 your common sense, you are firmly convinced the defendant
17 is guilty of the crime charged, then you must find him
18 guilty. If, on the other hand, you think there is a real
19 possibility that the defendant is not guilty and the State
20 has not met its burden, you must give the defendant the
21 benefit of the doubt and find him not guilty. Facts and
22 circumstances that merely place upon the defendant a grave
23 suspicion of the crime charged or that merely raises a
24 speculation or conjecture of the defendant's guilt are not
25 sufficient to authorize a conviction of the accused by you

1 the jury.

2 Now let's talk about direct and circumstantial
3 evidence. There are two types of evidence that were
4 presented in this case: direct evidence and
5 circumstantial evidence. Direct evidence is defined as
6 the testimony of a person who claims to have actual
7 knowledge of a fact such as an eyewitness. It is evidence
8 which immediately establishes the main fact to be proved.

9 Circumstantial evidence, on the other hand, is proof
10 of a chain of facts or circumstances indicating the
11 existence of a fact. It is evidence which immediately
12 establishes collateral facts from which the main fact may
13 be inferred.

14 I know I said a lot, but let me just give you an
15 example. If you walked into this courthouse and the sun
16 was out when you walked in, and then you went back out and
17 the sun was out but there was raindrops all over your car,
18 you would just assume that while you were in here, at some
19 point, it rained for a minute. That's sort of a
20 simplistic definition or example of circumstantial
21 evidence. Based upon the circumstances, you would just
22 assume that it rained a little bit. You wouldn't know how
23 long, but you would know that it rained a little bit while
24 you were in here. That's sort of what circumstantial
25 evidence is.

1 But the law makes no distinction between the weight
2 or value to be given to either direct or circumstantial
3 evidence. In other words, your job is the factfinders.
4 Using your common sense, you are to weigh the credibility
5 and believability of direct evidence or circumstantial
6 evidence. That is purely in your realm. You should weigh
7 all the evidence in the case.

8 However, to the extent the State relies on
9 circumstantial evidence, all the circumstances must be
10 consistent with each other. In other words, if the State
11 is relying on circumstantial evidence to the extent the
12 State relies on that, all of the circumstances must be
13 consistent with each other, and when taken together, point
14 conclusively to the guilt of the accused beyond a
15 reasonable doubt. If these circumstances merely portray
16 the defendant's behavior as suspicious, the proof has
17 failed. After weighing all of the evidence, if you're not
18 convinced of the guilt of the defendant beyond a
19 reasonable doubt, you must find the defendant not guilty.

20 Now, I will say this at this particular juncture.
21 I'm saying a lot of stuff. I'm saying a lot of words.
22 But I'm going to send you back to your jury room
23 everything that I just said. You will have it in front of
24 you to read again if you need to go back over anything
25 that I just said. So don't be alarmed. You will have

1 everything I just said with you.

2 Now, let's talk about credibility of witnesses and
3 credibility of evidence. You must determine the
4 credibility of the witnesses who testified in this case.
5 You should pay no attention to titles or anything like
6 that or any -- you listen to the testimony of the witness
7 that appeared on this witness stand. It becomes your duty
8 as jurors to analyze and to evaluate the evidence and
9 determine which evidence convinces you the truth no matter
10 where it comes from. You've got to determine that.

11 In determining the believability of witnesses who
12 have testified in this case, you may believe one witness
13 over several or several over one; you may believe some of
14 what a witness says or you may not believe anything of
15 what a witness says. That's totally up to you.

16 And in terms of the litmus test that you use in terms
17 of evaluating the evidence that's presented, sketches,
18 videos or anything of that nature, you determine the
19 believability and credibility of that evidence. Because
20 you put that evidence in the same bucket you would put the
21 testimony of witnesses, and then you determine whether or
22 not you're going to believe everything that's on that
23 piece of evidence that you've been given or some of it or
24 none of it. It's up to you.

25 Now, you notice that in this case the defendant did

1 not testify. Let me instruct you on that. And listen
2 very carefully. I instruct you and emphasize -- and I
3 underline the word "emphasize" -- that the fact that the
4 defendant did not testify or present any evidence is not a
5 factor to be considered by you in any way in your
6 deliberation. The fact that Mr. Lee did not testify is
7 not to be considered by you at all in your deliberation on
8 the question of guilt or innocence. Let me read that
9 because I want to be sure. I instruct you and emphasize
10 that the fact the defendant did not testify or present any
11 evidence is not a factor to be considered by you in any
12 way in your deliberations. In this case, he did not
13 testify. It should not be considered by you in your
14 consideration of the question of guilt or innocence. It
15 must not be considered by you in any manner.

16 The defendant has the constitutional right to remain
17 silent. That's one of our constitutional protections that
18 all of us have. And the assertion of this right must not
19 be considered by you in your deliberations. I repeat,
20 under oath that you are to draw no conclusion whatsoever
21 from the fact that the defendant in this case did not
22 testify. The fact that this defendant did not testify
23 should not even be discussed by you in the jury room. And
24 if that discussion takes place, I'm instructing the jury
25 foreman to let me know. The burden of proof, as I have

1 stated to you, is on the State. The defendant is not
2 required to prove his or her innocence. The burden of
3 proof remains on the State to prove guilt beyond a
4 reasonable doubt.

5 Now, you've heard the word "intent." And lets talk
6 about the word, how intent factors into your evaluation of
7 a criminal offense.

8 In order to establish criminal liability, criminal
9 intent is required. For example, the mental state
10 required to be proven by the State for a particular crime
11 might be purpose, intent, knowledge, recklessness or
12 criminal negligence.

13 Criminal intent must be proven by the State beyond a
14 reasonable doubt. Criminal intent is always a matter that
15 must be determined by you the jury from the circumstances
16 surrounding the situation.

17 There's no way to prove intent to a mathematical
18 certainty. There is no way medical science can dissect a
19 person's mind and determine what the person had in mind.
20 So the law says that criminal intent may be inferred from
21 the circumstances shown to have existed at the time. This
22 is how you make a determination of whether or not the
23 element requiring intent was present.

24 It is not necessary to establish intent by direct and
25 positive evidence, but intent may be established by

1 inference in the same way as any other fact by taking into
2 consideration the acts of the parties and all of the
3 circumstances of the case at the time.

4 In the context of an attempted crime, specific intent
5 means the defendant intended to complete the acts
6 comprising the underlying offense. In the context of an
7 attempted crime, specific intent means that the defendant
8 consciously intended the completion of the acts comprising
9 the offense.

10 Now, let's talk about the charge and the elements of
11 the charge upon which Mr. Lee is charged. This defendant,
12 Mr. Lee, is charged with attempted first-degree criminal
13 sexual conduct with a minor. The State must prove beyond
14 a reasonable doubt that the defendant attempted to engage
15 in a sexual battery with the victim.

16 Attempt, the definition of "attempt": an attempt is
17 an effort to accomplish a crime which does not succeed.
18 An attempt includes a specific intent to do a particular
19 act along with an act falling short of the act intended.

20 The State must show more than mere preparation and
21 intent. There must be some overt act committed in an
22 effort to commit the crime.

23 "Intent" means intending the result which actually
24 occurs, not accidentally or involuntary intent. Intent
25 may be shown by acts in the conduct of the defendant and

1 other circumstances from which you may naturally and
2 reasonably infer intent. Let me read that again.

3 "Intent" means intending the result which actually occurs,
4 not accidentally or involuntarily. Intent may be shown by
5 acts and conduct of the defendant and other circumstances
6 from which you may naturally and reasonably infer intent.

7 Sexual battery. All right. This is part of the
8 statute. A sexual battery is sexual intercourse,
9 fellatio, anal intercourse or any intrusion, however
10 slight, of any part of a person's body or of any object
11 into the genital or anal openings of another person's body
12 except when the intrusion is accomplished for medically
13 recognized treatment or diagnostic purposes. And I'll
14 read that again. A sexual battery is sexual intercourse,
15 fellatio, anal intercourse or any intrusion, however
16 slight, of any part of a person's body or of any object
17 into the genital or anal openings of another person's body
18 except when the intrusion is accomplished for medically
19 recognized treatment of persons.

20 "Fellatio" is defined as the oral stimulation of the
21 penis.

22 Consent, willingness, indifference or ignorance on
23 the part of the minor, if any, as to what was taking place
24 does not in any way affect the charge of criminal sexual
25 conduct with a minor because an unmarried person under the

1 age of 14 cannot legally consent to sexual intercourse.

2 Next, the State must prove beyond a reasonable doubt
3 one additional factor. For those charges of criminal
4 sexual conduct in the first degree, you must find that the
5 alleged victim was less than 11 years old at the time of
6 the alleged battery.

7 All right. I have given you some remarks regarding
8 the trial of the case, some things that you need to
9 consider, the definition of reasonable doubt, gave you a
10 definition of criminal intent and I also gave you the
11 requirements under the statute that must be met by the
12 State to prove this defendant guilty beyond a reasonable
13 doubt.

14 And I said earlier when you evaluate, when you look
15 at the evidence and you begin your deliberations, keep in
16 mind that the burden is on the State, and the State must
17 prove all of the elements of the offense upon which the
18 defendant is charged, in this instance being Mr. Lee.
19 They must prove those elements beyond a reasonable doubt.
20 That's the burden that's on the shoulders of the State,
21 and that is their responsibility.

22 Now, as I said earlier, I am going to put a paperclip
23 on these remarks. They are in the order just like I said
24 it. So you can go back, and I'll give this to you,
25 Mr. Foreman, and you can have this. And anybody that

1 needs to look at it can have an opportunity to look at it
2 again.

3 Now, I have also prepared a verdict form. Pay no
4 attention to the order in which I have either "guilty" or
5 "not guilty" because I had to put it in some order. But
6 this verdict form says: The State of South Carolina,
7 County of Greenville, State of South Carolina vs. Kereen
8 Donyell Lee, Indictment Number 2020-GS-23-03221, in the
9 Court of General Sessions for the 13th Judicial Circuit.
10 And it says "verdict form." And it says this: We the
11 jury, as to the indictment of attempted criminal sexual
12 conduct with a minor first degree, in violation of
13 Section 16-3-0655(A)(1) of the South Carolina Code of Laws
14 as amended, unanimously find the defendant, there's a line
15 that says "guilty," and there's a line that says "not
16 guilty."

17 Mr. Foreman, your responsibility would be, after the
18 jury has completed their deliberations and there's a
19 unanimous verdict, then it's your responsibility to check
20 the appropriate box. And under that, there it says "jury
21 foreperson," and you are obligated to sign the verdict
22 form. And then you would be giving this -- and date it.
23 You would be giving this to one of the bailiffs when your
24 deliberations are completed.

25 You're not to begin any deliberations until I

1 instruct you to do so because I need to confer with the
2 attorneys before we send the exhibits back and all the
3 evidence back.

4 Now, if there is any question during deliberations,
5 the question cannot come from the individual jurors. It
6 must come from you. The question -- and if you need some
7 pieces of paper, that will be provided to you by the
8 bailiff. But the question must come from the foreman.

9 If there is something else that's going on in the
10 jury room that I need to be aware of, and I understand
11 because you're in charge, that I need to be aware of, then
12 that must come from you.

13 So I am going to -- please, ma'am, please, sir, do
14 not talk about the case to each other. So I'm going to
15 excuse you.

16 The two alternates, I need you to come -- I'm going
17 to excuse you, and then the bailiff is going to bring the
18 two of you back to me.

19 All right. I'm going to excuse all of you. And I'll
20 instruct the bailiff when I need to see the alternates
21 back, the two. Not right now, though.

22 (WHEREUPON, the jury exits the courtroom at 3:36 PM.)

23 THE COURT: All right. Any exception to the charge
24 by the State?

25 MR. JOHNSON: No, Your Honor. Not from the State.

1 THE COURT: Any exceptions from the defense?

2 MR. GAMBRELL: No, sir.

3 THE COURT: Okay. All right. Y'all want to -- the
4 exhibits are all over the place.

5 (Pause in proceedings.)

6 THE COURT: We'll stand at ease.

7 (Pause in proceedings; the two alternate jurors entered
8 the courtroom.)

9 THE COURT: First of all, I want to thank both of you
10 for serving as alternates. And I noticed that you've both
11 been paying attention, and I appreciate all that. And if
12 you have an opportunity to serve as a juror again no
13 matter where it is, whether it's in city court,
14 magistrate's court, Federal Court, jump at the
15 opportunity. It's a noble service.

16 Now, you're excused. Here's the deal. You can stay
17 if you want to, and I'll put you somewhere out in the pews
18 or whatever. But if you want to go, I want to let you go.
19 So what do you want to do?

20 UNIDENTIFIED JUROR: Go.

21 THE COURT: You're going to go?

22 UNIDENTIFIED JUROR: Been there his long, might as
23 well see the end.

24 THE COURT: You're going to stay? All right.

25 Do you want to stay, too?

1 UNIDENTIFIED JUROR: I think I'll go.

2 THE COURT: I've got one go, one stay. All right.
3 Sir, you -- yeah.

4 MR. JOHNSON: Your Honor, if one of the juror's going
5 to stay, can we keep him on just in case something happens
6 with another juror?

7 THE COURT: One of them says he's going to stay.

8 MR. JOHNSON: So he'll still be sworn in just in case
9 something happens with a sitting juror?

10 THE COURT: Yeah, yeah. The only thing I'm going to
11 do is, you know, I hate to put him in rooms where he's
12 just staring at the walls.

13 MR. JOHNSON: Yes, sir.

14 THE COURT: So if he wants to -- this juror -- what's
15 your juror number?

16 JUROR NUMBER 132: 132.

17 THE COURT: 132 wants to stay, I'll just put him back
18 here.

19 MR. JOHNSON: Yeah. I have no objection.

20 THE COURT: Is that okay with you?

21 MR. JOHNSON: Yeah.

22 THE COURT: All right. Mr. Gambrell, is that all
23 right with you? I was going to put the juror who wanted
24 to stay back out here.

25 MR. GAMBRELL: Yes, sir, Judge. We won't talk to

1 him.

2 THE COURT: And then the juror that wants to leave,
3 he can leave. All right.

4 So he'll tell you how to come back around here. Just
5 follow them. He'll tell you how to get there.

6 (WHEREUPON, a recess is taken at 3:41 PM; the jury starts
7 their deliberations.)

8 THE COURT: Anything before we bring the jury out
9 from the State?

10 MR. JOHNSON: Nothing from the State, Your Honor.

11 THE COURT: Defense?

12 MR. GAMBRELL: No, sir.

13 THE COURT: All right.

14 (WHEREUPON, the jury entered the courtroom at 6:15 PM.)

15 THE COURT: All right. Mr. Foreman, the bailiff had
16 advised the Court that the jury has reached a verdict; is
17 that true?

18 JURY FOREPERSON: Yes, Your Honor.

19 THE COURT: All right. Pass the verdict form to the
20 bailiff.

21 All right. Madam Clerk, would you please publish the
22 verdict.

23 VERDICT

24 THE CLERK: The State of South Carolina, County of
25 Greenville vs. Kereen Donyell Lee, defendant. We the jury

1 as to the indictment of the attempted criminal sexual
2 conduct with a minor first degree in violation of
3 16-03-0655(A)(1) of South Carolina Code of Laws 1976 as
4 amended unanimously find the defendant guilty.

5 If you would, when I call your name and number,
6 please answer "yes" or "no."

7 The verdict that was just published was the verdict
8 you reached in the jury room. I ask you, was it your
9 verdict then and is it your verdict now? Juror
10 Number 170, Gina Skrobola?

11 JUROR NUMBER 170: Yes, it was.

12 THE CLERK: Number 6, Elizabeth Anderson?

13 JUROR NUMBER 6: Yes.

14 THE COURT: 167, Arash Shariatpanahi?

15 JUROR NUMBER 167: Yes.

16 THE CLERK: 102, Mark Johnson?

17 JUROR NUMBER 102: Yes.

18 THE CLERK: 139, Yeziel Nieves?

19 JUROR NUMBER 139: Yes.

20 THE CLERK: 13, Joshua Bertelsman?

21 JUROR NUMBER 13: Yes.

22 THE CLERK: 59, Jacob Draplin?

23 JUROR NUMBER 59: Yes.

24 THE CLERK: 116, Jared Lockaby?

25 JUROR NUMBER 116: Yes.

1 THE CLERK: 46, Chimil Claudio Cortes?

2 JUROR NUMBER 46: Yes.

3 THE CLERK: 172, Daniel Smith?

4 JUROR NUMBER 172: Yes.

5 THE CLERK: 130, Tiara McGee?

6 JUROR NUMBER 130: Yes.

7 THE CLERK: 137, George Nelson?

8 JUROR NUMBER 137: Yes.

9 THE CLERK: Did I miss any juror numbers?

10 THE COURT: All right. Thank you, Madam Clerk.

11 Ladies and gentlemen of the jury, first of all, I
12 want to thank you for your service this week. Both sides
13 obviously appreciate your attentiveness during this trial,
14 a very difficult trial. And it's been a very difficult
15 week for you. But certainly, I still want you to be
16 encouraged at the opportunity to serve as a juror in our
17 judicial system. The system's not perfect, but it's the
18 system that we have. So if you get an opportunity to
19 serve at any future date, whether it's this court or the
20 Court of Common Pleas, please take the opportunity to
21 serve.

22 We no longer have -- we will not have any other
23 trials this week, so your service for this week is over.
24 And I appreciate your service. And hopefully, our paths
25 will cross again. And I'm sure it will. So I appreciate

1 you serving as jurors this week.

2 You're free to go. This bailiff here will give you
3 some instructions and take your badges and that kind of
4 thing. Okay.

5 (WHEREUPON, the jury exits the courtroom at 6:20 PM.)

6 THE COURT: All right. Anything before the Court
7 before sentencing, Mr. Johnson or Mr. Gambrell? Anything?

8 MR. JOHNSON: Nothing from the State, Your Honor.
9 Investigator Lindsay Kicklighter is bringing the paperwork
10 up now.

11 THE COURT: Okay. All right.

12 MR. GAMBRELL: Judge, I would move for a new trial at
13 this point. And then I do have a motion to place on the
14 record, I guess, at sentencing.

15 THE COURT: Okay. Go ahead.

16 MR. GAMBRELL: And this is to protect his record on
17 appeal. But I would move to quash the notice of LWOP and
18 ask for an individualized sentencing hearing much like
19 pursuant to the Atkins case where because of -- and the
20 Court has his competency evaluation. It makes it pretty
21 clear that Mr. Lee is intellectually disabled. And I
22 believe that, under the same circumstances, giving him a
23 life without parole would violate is Eighth Amendment
24 constitutional right to not be uncruelly punished.

25 MR. JOHNSON: Your Honor, he has been deemed

1 competent. We've gone forward with the trial. As the law
2 states and is mandatory, life without parole, Your Honor.

3 THE COURT: What's your other motion?

4 MR. GAMBRELL: I would just ask that you rule on that
5 motion. Yes, sir.

6 THE COURT: You want me to rule on that motion now?
7 Because you had a motion for a new trial.

8 MR. GAMBRELL: Yes, sir. Both.

9 THE COURT: What's the basis for the new trial
10 motion?

11 MR. GAMBRELL: Just that the verdict is not supported
12 by the evidence.

13 THE COURT: All right. Well, I'll go ahead and deny
14 your new trial motion, and I'll go ahead and deny the
15 other motion as well.

16 MR. GAMBRELL: Thank you.

17 THE COURT: It is noted for the record.

18 Okay. All right. She's going to be back in a couple
19 minutes, you think?

20 MR. JOHNSON: Yes, sir.

21 THE COURT: Okay. All right. Well, while we're
22 waiting, I'd be more than happy to hear anything you want
23 to tell me or, Mr. Lee, you want to tell me. I mean, you
24 don't have to speak, but you can if you want to.

25 Okay. What I need you to do -- can y'all come up

1 here? All right. Be glad to hear from -- while we're
2 waiting on the paperwork, I'll be glad to hear from you,
3 Mr. Lee, or your lawyer, Mr. Gambrell.

4 Yes, sir, Mr. Lee.

5 DEFENDANT LEE: I got a 2-year-old son, and I want to
6 be with him so bad right now. And -- and this ain't
7 right. I ain't supposed to have no life sentence. But I
8 know parole. I ain't supposed to have it. And I'm
9 trying. Will you please have mercy on me. I know it's
10 undoable, but I just want to have mercy, please. Can you
11 give me certain -- more reasonable. If I can be better,
12 I'll do for my son. I just had a son and I'm trying to be
13 there with him. But...

14 THE COURT: Let me ask you this, Mr. Lee. And I
15 think I asked counsel this at the beginning of the trial
16 and I'll ask you. You were advised by your attorney, I
17 think you were present when I asked that question, you
18 were advised by your attorney that if there was a
19 conviction in this case, that you would be life without
20 parole eligible. I asked that question and you were
21 standing right there and your lawyer -- as a matter of
22 fact, I'll tell you what your lawyer said: Your Honor, I
23 have advised Mr. Lee of that, and I will do it again. And
24 he turned around and he advised you again that if there
25 was a conviction, that was possible and that my hands

1 would essentially be tied. You knew that. You knew that.
2 And I was very careful in making sure that you were
3 advised of that. That's my job. And I remember I asked
4 that question before a jury was even picked. As a matter
5 of fact, it was pretrial that I asked that question. And
6 your lawyer indicated on the record -- if I'm misstating
7 anything, Mr. Gambrell, you tell me. You indicated to me
8 that I have advised him of that, but I will advise him
9 again. Did you not say that?

10 MR. GAMBRELL: Yes, sir.

11 THE COURT: Okay.

12 DEFENDANT LEE: Can I say something now?

13 THE COURT: Huh?

14 DEFENDANT LEE: Can I say something now?

15 THE COURT: Yeah.

16 DEFENDANT LEE: I just had my son, too. This is my
17 first son. Will you please have mercy on me just a little
18 -- just a little bit. Please. I want -- I ain't -- I
19 ain't had my dad when I was growing up. I try to be there
20 for my son.

21 THE COURT: Do you know what I haven't heard from
22 you, Mr. Lee, since you've been standing here? I haven't
23 heard a single word of apologizing to this victim for what
24 occurred. You're sitting there begging for something for
25 yourself, but you haven't said a single word about that

1 you're sorry, apologizing to this victim for what
2 occurred. That never came out of your mouth. It was all
3 about you, what you want.

4 DEFENDANT LEE: No, it wasn't. No, it wasn't.

5 THE COURT: I'm just telling you what you said when
6 you stood up here.

7 DEFENDANT LEE: Well, I apologized to her, too. I
8 said that. I apologize for whatever pain. I just want to
9 be with my first son. I ain't had no father raising up.
10 All I had was my grandma and my brother.

11 THE COURT: Well, Mr. Lee, my hands are tied. I
12 can't do anything.

13 DEFENDANT LEE: That's all. I ask for mercy.

14 MR. JOHNSON: Your Honor, would you like me to
15 present the indictments for his priors?

16 THE COURT: Yeah. Go ahead while we're waiting.

17 MR. JOHNSON: Your Honor, he was served notice with
18 intent to seek life without parole on May 15, 2023. He
19 and his attorney at the time were served.

20 THE COURT: Almost a year ago?

21 MR. JOHNSON: Yes, sir.

22 THE COURT: All right.

23 MR. JOHNSON: His prior record, he has a substantial,
24 Your Honor, but we'll just go through the three enhancing.
25 He has a burglary second violent degree, this is

1 Indictment Number 2005-GS-23-01122, again, burglary
2 second, violent; the second count is 2005-GS-23-01206,
3 again for burglary second violent; and a 2001-GS-23-2399,
4 again for burglary second.

5 Your Honor, I'll pass these up. The indictments are
6 included as well, Judge.

7 THE COURT: All right. Let the record reflect that
8 I've taken -- Mr. Johnson indicated that notice to seek
9 life without parole was served on Mr. Gambrell the 23rd
10 day of May of last year -- or May of last year?

11 MR. JOHNSON: Yes, sir.

12 MR. GAMBRELL: It was served on his previous
13 attorney. Yes, sir.

14 THE COURT: His previous attorney. But you were
15 given the file from the previous attorney; is that
16 correct?

17 MR. GAMBRELL: I was notified of that, yes.

18 THE COURT: All right.

19 MR. JOHNSON: Your Honor, it's also filed with the
20 clerk of court.

21 THE COURT: And the record reflects it is also filed
22 with the clerk of court.

23 So, Mr. Lee, you were advised what the potential
24 penalty would be if you got a conviction. So my hands are
25 tied. The law ties my hands. Nothing I can do.

1 MR. LEE: They first gave me 0 to 10, but I didn't
2 take it because I ain't -- because I ain't do it. But now
3 then they're trying to plead -- now they're trying to get
4 me to plea for 25. I still didn't take it. They wouldn't
5 go down, back down to the 1 to 10. I do the 10 -- I mean
6 the 0 to 10.

7 THE COURT: It's still too late for that now,
8 Mr. Lee.

9 MR. JOHNSON: Your Honor, would you like the
10 defendant to sign or do you plan on doing it?

11 THE COURT: Give it to his lawyer.

12 SENTENCING

13 THE COURT: All right. Let the record reflect that
14 all the statutory requirements have been met by the State.
15 Let the record also reflect that the proper notice was
16 sent to the -- given to the defendant and counsel.

17 So on indictment ending in 03221, the State vs.
18 Kereen Donyell Lee, the sentence of the Court, that you be
19 committed to the South Carolina Department of Corrections
20 for a life sentence without the possibility of parole.

21 Good luck to you.

22 (WHEREUPON, a recess was taken at 6:33 PM.)

23 THE COURT: All right. We're back on the record.

24 I was advised by Mr. McCollum that the victim in the
25 case would like to address the Court. I will give her an

1 opportunity to do so.

2 All right. Ma'am, I'm going to need you to stand. I
3 think you're tall enough to speak into that microphone.

4 State your full name.

5 MS. [REDACTED] SB [REDACTED]

6 THE COURT: Speak loud enough so I can hear you.

7 What do you want to tell me?

8 MS. [REDACTED]: I wanted to start by saying I'm sorry,
9 not sorry for speaking up, for finally getting my justice
10 for myself, but I'm sorry that this had to happen the way
11 it did a little after you brought your son into this
12 world. I pray that you take time to get the help that you
13 need and you can keep up with your son while doing it.

14 I want you to know that I have no hate in my heart
15 against you. My only question is why? I was a young
16 girl, and what happened to me changed the way I will look
17 at men forever. I've been through so much concerning this
18 which is mental breakdowns, therapy every week even as far
19 as having to be put in a mental health facility. For a
20 long time, I wasn't comfortable wearing anything that
21 shows my skin like normal teen girls would wear.

22 Throughout this whole case, I haven't seen anything
23 but fake love with your family, everybody calling my
24 mother, my mother's phone like she's the victim. I was
25 never looking for a sob story throughout this whole case.

1 All I ever wanted to know was why.

2 Once again, I hope you get the help that you need and
3 I wish you well.

4 THE COURT: Thank you, ma'am.

5 All right. Court is adjourned:

6 (WHEREUPON, proceedings concluded at 6:36 PM; Court's
7 Exhibit Number 5 was marked for identification.)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

I, CHERYL A. SMITH, 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 the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 22nd, 23rd and 24th day of April, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

December 1, 2024

Cheryl A. Smith
Cheryl A. Smith, CVR-M
Court Reporter

WITNESSES

James M Paris II

Fountain Inn Police Department

3/31/2020

ARREST WARRANT NUMBER

2020A2320200144

ACTION OF GRAND JURY

TRUE BILL *Bria CBL*

~~*[Signature]*~~
FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Mal 2 John 4/24/24

Foreperson of Petit Jury
Date:

DOCKET NO. 2020-GS-23-03221

AAK

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

October

TERM 2020

THE STATE

vs.

KEREEN DONYELL LEE

Indictment for

0385

ATTEMPTED CRIMINAL SEXUAL CONDUCT
WITH A MINOR FIRST DEGREE

VIOLATION § 16-03-0655(A)(1)

ENTERED
ACCT

[Signature]

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED CRIMINAL SEXUAL CONDUCT WITH A
MINOR FIRST DEGREE

OCT 06 2020

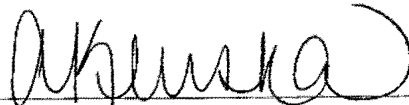
At a Court of General Sessions, convened on

the Grand Jurors of Greenville

County present upon their oath:

That KEREEN DONYELL LEE did in Greenville County, on or about March 31, 2020, attempted a sexual battery on S. B., who was less than eleven years of age. This is in violation of §16-03-0655(A)(1)[formerly 16-03-655(1)] of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

BAR # 102755

Constance Holloway
State Director/General Counsel
Janet Brock Priest
Associate State Director
Operations
Lori Manos
Associate State Director
Policy
Harley T. Davis, Ph.D.
Chief Administrative Officer
Quincy Swygert
Chief Financial Officer
Greg Meetze
Chief Information Officer



South Carolina
Department of Disabilities
and Special Needs

3440 Harden Street Extension
 Columbia, South Carolina 29203
 (803) 898-9600
Toll Free: 888/DSN-INFO
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74 APR 22 AM 8:39
 BRICE GARRETT COC GUIL SC

July 26, 2023

Paul B. Wickensimer, Clerk of Court
 Greenville County Courthouse
 305 East North Street, Suite 232
 Greenville, South Carolina 29601

Re: **Keenan Donyell Lee**
Warrant(s): 2019A2320200353-356, 2020A2320200144

Dear Mr. Wickensimer


In accordance with the Court Order issued by the Honorable Alex Kinlaw, Jr., Judge of the Thirteenth Judicial Circuit, General Sessions Court, an evaluation on the above-named individual was conducted by the South Carolina Department of Disabilities and Special Needs.

Please find the enclosed Forensic Evaluation with the Court.

Please contact me at 803-898-9694 should you have any questions or need additional information.

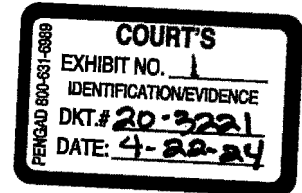
This six (6) page document is hereby certified to be the original court ordered evaluation report issued pursuant to S.C. Code Ann. §44-23-410 or 17-24-10 (1976) et. seq.

Sincerely,


 Alicia V. Hall, Ph.D.
 Office of Clinical Services
 Division of Operations

Enclosure

cc: Seth Johnson, Greenville County Solicitor's Office
 Rachel A. Kepley, Defense Counsel
 Constance Holloway, DDSN General Counsel
 DDSN File



Constance Holloway
Interim State Director/General Counsel
Janet Brock Priest
Associate State Director
Operations
Lori Manos
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EVALUATION OF COMPETENCY TO STAND TRIAL

Name	Keenen Donyell Lee	Gender	Male
County	Greenville	Race	African-American
Date of Evaluation	7/19/2023	Date of Birth	██████████
Place of Evaluation	SCDDSN Midlands Center	Age	40 years
Examiners	Alicia V. Hall, PhD -Lead Examiner Brian Hawkins, MS- Second Examiner		
Charge(s)	Unlawful Carrying a Pistol; Possession of a Stolen Pistol; Possession of Weapon by Convicted Felon; Use of Firearm while Under Influence Criminal Sexual Conduct, First Degree		

Purpose of Evaluation

This evaluation was conducted pursuant to an order dated 6/7/2023 (received by DDSN on 6/12/2023) and signed by the Honorable Alex Kinlaw Jr., Presiding Circuit Court Judge of the Greenville County Court of General Sessions. The order required that Mr. Lee be evaluated by the Department of Disabilities and Special Needs, to determine his competency to stand trial pursuant to State v. Blair, 275 S.C. 529, 273 S.E. 2d 536 (1981) and Section 44-23-410, Code of Laws of South Carolina (Supp. 2012). Mr. Lee's charges stemmed from alleged incidents on 11/22/2019 and 3/30/2020.

Limits of Confidentiality

Before the interview started, Mr. Lee was advised of the purpose of the evaluation, and that the results and content of the evaluation would be communicated to his defense counsel, the prosecution, and the court. In addition, he was informed of the possibility that the examiner(s) might be called to testify regarding the content and results of the evaluation. He demonstrated an adequate understanding of the purpose of the evaluation. Mr. Lee agreed to proceed with the evaluation and signed the notification form prior to the interview.

Summary of Evaluation Results

Presence of Intellectual Disability	Yes
Competency to Stand Trial	Yes

Evaluation Procedures:

Mr. Lee was interviewed on 7/19/2023 for approximately 120 minutes by the undersigned and Mr. Hawkins, who concurs with opinions in this report.

Sources of Information

1. Interview of the defendant on 7/19/2023 for approximately 2 hours
2. Court order for competency to stand trial evaluation dated 6/7/2023
3. SCDDSN Eligibility and Closure Forms
4. SCDJJ Psychological Consultation by Kevin Irmiter dated 6/11/1998
5. Social Security Administration Benefit Verification letter dated 7/7/2023
6. Palmetto Health Richland Medical records dated 8/5/2017
7. Greenville County School District Psychological Evaluation dated 10/8/1996
8. SCDMH Episodes of Care
9. The defendant's National Crime Information Center criminal history record
10. Information from Greenville County pertaining to his current charges including:
 - a. Arrest warrants 2019A2320200353-356 & 2020A2320200144
 - b. Incident and supplemental reports
 - c. Statement by the defendant
 - d. Witness statements
 - e. Statement by the alleged victim

Relevant History:

History in this section is as provided by the defendant in the interview on 7/19/2023, and supplemented by information available in other records. Mr. Lee is a 40-year-old, African-American man, who was born on [REDACTED]. He is the younger of two siblings. It was reported his mother died in 1994 due to injuries sustained in a car accident. Mr. Lee's father was not present consistently in his life. Mr. Lee reported he was raised by his grandmother in Fountain Inn, SC. SCDJJ Psychological Consultation (6/11/1998) indicated the defendant and his brother were raised by their maternal aunt Ester Bailey, who was their legal guardian after the mom passed away. Mr. Lee reported was living in Fountain Inn, with his older brother. He reported he is single and has an infant son Kareen Lee Jr. Mr. Lee is currently on bond.

Educational History

Mr. Lee reported he last attended West Greenville Alternative School. He stated he was expelled from his home school for "fighting." He stated he was enrolled in Special Education classes because "because I was a slow learner." According to Greenville County School District, Mr. Lee was a special education student. He was classified as an Educable Mentally Disabled student (now referred to as Intellectual Disability). He was placed in a self-contained program because of his educational and behavioral needs. The school psychologist recommended the "emphasis should be placed upon helping the student to develop adequate self-help skills. These might encompass physical hygiene, appearance, proper eating habits, etc." Mr. Lee reported dropping out of school in the 10th grade.

Employment History

Mr. Lee reported a brief history of gainful employment. He said worked for a family friend's landscaping company cutting grass. He stated he is currently unemployed, and his sole source of income are his Social Security disability benefits. He stated his brother manages his finances. A letter from the Social Security Administration (7/7/2023) confirmed that Mr. Lee began receiving the SSDI financial benefit as a Disabled Adult on 9/30/2000. He is required to have a representative payee on his account.

AKH

Medical History

Mr. Lee denied a history of seizures, strokes, head injuries with loss of consciousness, or other serious medical conditions. He also denied current medical problems.

Records from Palmetto Health Richland indicate Mr. Lee was admitted to the Emergency Department on August 5, 2017 by ambulance from the Broad River Correctional facility. He was treated for multiple stab wounds in the abdomen and stab wound to the right neck. He also had a scalp laceration. He's wounds were treated (closed via staple) and he was released to corrections on 8/7/2017.

Substance Use History

Regarding substance use, Mr. Lee reported he tried cannabis and K2 once as a young adult. He reported he typically drinks two beers a day. He denied he ever being addicted to a substance or having difficulty not using. He denied using other drugs.

Mental Health History

According to Mr. Lee, he has never been diagnosed with a mental illness. He has no history of inpatient or outpatient treatment. He denied a history of suicidal or homicidal thoughts.

According to the SCDMH Episodes of Care, Mr. Lee is a former client of Greenville Mental Health Center from (5/11/1994– 6/24/1994, 1/26/1999 – 6/18/1999, 1/12/2000 – 6/22/2000, 8/09/2008 – 03/03/2009). He was diagnosed with Attention-Deficit/Hyperactivity Disorder. Records were unavailable due to SCDMH's record retention policy. The form also shows Mr. Lee was evaluated in his local emergency department by the SCDMH Telepsychiatry service in once 2015 and once 2017, but it is not clear in which emergency department he was evaluated.

DDSN History

According to the SCDDSN Consumer Data Support System, Mr. Lee is a former DDSN consumer. He was determined eligible for services from Thrive Upstate in 1998. He was discharged from services in 2009 because he was incarcerated.

Psychological Test Results:

The results of previous psychological testing indicate Mr. Lee's intellectual functioning is in the extremely low range.

(Greenville County School District)

10/08/1996	Wechsler Intelligence Scale for Children-III	Full Scale IQ	61
		Verbal IQ	56
		Performance IQ	72
	Vineland Adaptive Behavior Scale	Adaptive Behavior Composite	63
		Communication	76
		Daily Living	66
		Socialization	64

Behavioral Observations and Mental Status

Mr. Lee was seen at the SCDDSN Midlands Center on 7/19/2023. He was transported to the evaluation by his brother. He is a 40-year-old, African-American man who presented with adequate hygiene. He was cooperative and exhibited appropriate eye contact throughout the evaluation. He correctly identified the date, day of the week, and location. The rate, volume, and tone of his speech were within normal limits.

MLH

He presented with goal-directed, linear thinking and did not demonstrate difficulties with attention or concentration. He appeared to have memory deficits as evidence by his inability to recall two of three words after a short delay. Mr. Lee reported his mood as "tired, I stayed up watching my son" and demonstrated appropriate affect (i.e., observed expression of emotion). He denied current suicidal ideation and homicidal ideation. Mr. Lee denied visual and auditory hallucinations (e.g., hearing voices), and delusions (i.e., false fixed beliefs).

Mr. Lee's presentation varied throughout the evaluation. He has a response style in which he tends to answer, "I don't know." He seemed more able to demonstrate his knowledge base when the interview style was conversational rather than posing questions. When the examiners directly questioned Mr. Lee, he would tend to say he did not know the answer or give an almost correct response. For example, he stated a dog has three legs and the colors on the American flag were "red, white, and yellow." The undersigned explained to the defendant that he was expected to answer the questions the best of his ability. He appeared to respond to the redirection. However, during the competency questions the examiner had to remind him to put forth his best effort once again.

The undersigned does not believe Mr. Lee was seeking to actively mangle but was using a strategy that has been useful in the past and serves two functions. One, the defendant has learned once he says "I don't know" or answers incorrectly, people lower their expectations of him. This allows Mr. Lee to meet the lower expectations without having to try hard to do so. Or it allows him to get out of performing task he does not want to do. This is a learned behavior which is not uncommon in the ID population.

Evaluation for Competency to Stand Trial

Mr. Lee required some education on the criminal justice system. While he has had numerous experienced with the criminal justice system, he is a novice to the trial process. Thus, most of the time spent educating Mr. Lee was on the trial process. This section reflects his knowledge base after education.

Mr. Lee was unable to state his formal charges. However, he was able to articulate what he has been accused of in his own words. He stated he has been accused of "having sex with minor, somebody too younger." He stated he also has weapon charges "They saying I can't have a gun because I'm a convicted felon and it [the gun] was stolen." He was able to provide details about the charges, such as when and where alleged incidents occurred, and who the alleged victim was. Mr. Lee knew that his charges are serious, and he was in trouble because of the charges. He was able to describe the seriousness of his charge in relation to a more serious and a less serious charge. Mr. Lee was unaware of the penalty he could receive if he was convicted of the charges, but learned he was facing "twenty-five to life" for his most serious charge of Criminal Sexual Conduct with a Minor. He knew his attorney was his best source of information regarding possible/likely sentences. He also understood should he be convicted, he may have to register as a sex offender.

When asked for his lawyer's name, Mr. Lee stated "I don't know." He stated he has met with his lawyer "two times" regarding this case. He stated he thinks Ms. Kepley "is alright." Mr. Lee stated he does not trust his lawyer, but they could work together in his case. When asked if Ms. Kepley has done anything to make him wary of her, she replied, "No. She hasn't done anything. I just have a hard time trusting people." He indicated he has given his lawyer his side of the story. He was aware of the confidential nature of the communication between him and lawyer. Mr. Lee stated sometimes he has experienced difficulties communicating with his lawyer. He stated, "Most stuff I don't know or understand." When asked if he lets his lawyer know if he does understand something he said sometimes. He stated she can break it down for him but sometimes he requires his brother's help to understand. He stated his lawyer's role was "to be on my side." He knew his lawyer was for him and wanted him to be found not guilty. Mr. Lee knew that his attorney would want him to get an easier rather than a harder sentence if he is convicted.

Mr. Lee was familiar with the pleas and consequences of the pleas available in court. He was able to correctly define the pleas in his own words. He defined guilty as "They did it" and not guilty as "They ain't do it." He was able to correctly state the consequences of the guilty and not guilty pleas. Mr. Lee knew that pleading guilty means receiving a sentence such as "give you time, probation, or house arrest." He stated pleading not guilty means "The judge got to find out all the evidence before he can know if you're guilty or not." He appeared to have difficulty recalling the word trial but understood the process.

Mr. Lee was familiar with the roles of the various court officials. He was able to demonstrate he understood the adversarial nature of the courtroom situation. For example, he knew the solicitor was against him and wanted to prove that he is guilty. He defined the solicitor's role as "Prove I'm guilty." Also, he knew he should not talk to the solicitor without his attorney being present stating, "No, he could turn it around, use it against me." Mr. Lee stated the judge's responsibility was "to listen the lawyers and decide guilty or not." He also knew judge determines the sentence should he be found guilty. He could name the penalties at the judge's disposal (prison time, probation, and house arrest). He was able to correctly define each of the possible sentences. Mr. Lee understood the role of the jury if he decided to have a jury trial. He reported the jury consists of 12 members of the community, who would decide if he is guilty or not guilty. He also understood the jury's decision had to be unanimous.

Mr. Lee understood the use of evidence and witnesses in a hypothetical court case and in his case. He defined evidence as "Clues like money, camera, gun." Mr. Lee defined a witness as "Somebody who seen it." He stated the possible witnesses against him were "the police." In addition, Mr. Lee knew his lawyer was his best source of information regarding possible evidence and witnesses in his case. He also stated that if someone were on the witness stand giving false testimony that the appropriate course of action would be to "tell the lawyer." Regarding his own testimony, Mr. Lee stated that he could not be forced to talk in court but understood his lawyer would be the best person to help him decide if he should testify on his own behalf.

Mr. Lee was familiar with the concept of plea bargaining. He reported a plea bargain was how he resolved all his previous charges. (Mr. Lee has an extensive criminal history dating back to the 1990s). He understood in order to accept a plea deal he would have to enter a guilty plea. Mr. Lee understood he would receive a lesser punishment in exchange for a guilty plea. He was able to demonstrate an ability to use his knowledge about plea bargains to make reasoned decisions about his case with the aid of his lawyer.

Mr. Lee was able to state the importance of appropriate courtroom behavior.

Conclusion:

Mr. Lee meet the criteria for a diagnosis of Intellectual Disability, which requires concurrent deficits in intellectual and adaptive functioning, present during the developmental period. He is a former DDSN consumer in Intellectual Disability Division. In addition, he receives SSDI Benefits. Should Mr. Lee want to reinstate his DDSN services in the future he has to reapply to his local DSN board. There was no evidence of the presence of mental health issues.


Regarding his capacity to understand the proceedings against him, Mr. Lee was able to demonstrate an understanding of his charge, as well as a factual and a rational understanding of legal proceedings. Additionally, he demonstrated the capacity to apply the factual information to a rational consideration of plea options.

Regarding his capacity to assist his attorney in his defense, Mr. Lee's thought processes and speech were logical, coherent, and organized, indicating he should have no difficulty communicating rationally with his attorney. He demonstrated the ability to reason logically about options related to his case and should be able to do so with counsel. His responses to hypothetical situations indicate he would be able to utilize counsel effectively should he become confused or distressed with legal proceedings. Mr. Lee acknowledged appropriate courtroom behavior, and his demeanor during our interview suggests he would be able to exhibit such behavior in the courtroom and attend adequately to the proceedings. His expectations of his attorney and the legal system appeared reasonable and logical.

In summary, Mr. Lee expressed understanding of the nature of the charge against him and the possible consequences. He demonstrated the ability to comprehend and retain new information regarding legal proceedings, and he demonstrated the capacity to use information to make rational decisions about his case. Mr. Lee's rational understanding of such proceedings appears to be good. Given Mr. Lee's intellectual disability, he may require re-education about his case from his lawyer as his case moves forward. In addition, he could benefit from complex topics being broken down into simpler terms, the court moving at a slower pace than it does typically, and to give the defendant frequent opportunities to check in with his attorney to ensure he is understanding the procedures. Thus, Mr. Lee appears to have the capacities to understand the proceedings against him and to assist his attorney in his own defense should he choose to do so.

We therefore respectfully offer the following opinions:

Presence of Intellectual Disability	Yes
Competency to Stand Trial	Yes


 Alicia V. Hall, Ph.D.
 Chief Psychologist
 State-Level Psychological Examiner
 SC License # 1068
 SCDDSN Central Office

Date signed: 7/24/2023

Officer(s) Present:
WOODS
PAE'S

Case Number: 20 003016
Water/Food: (Y) / (N)

Education History: 325
Work History: _____

FOUNTAIN INN POLICE DEPARTMENT

Michael Hamilton, Chief of Police
300 N. Main St. Fountain Inn South Carolina 29644
(864) 862-4461

Date: 03/31/2020 Begin Time: _____

Name: Kereen Donyell Lee D.O.B.: [REDACTED]

Address: [REDACTED] Street Ft INN Phone: 864 74-4401

SSN: [REDACTED] Ht: 505 Wt: 130 Hair: BLK Eyes: BLK

My Education Highest Level: 12th I Can Read and Write: KL (initial) NOT WELL

YOUR RIGHTS

1. Before we ask you any questions, you must understand your rights. KL (initial)
2. You have the right to remain silent. KL (initial)
3. Anything you say can be used against you in a court of law. KL (initial)
4. You have the right to talk to a lawyer for advice before we ask you any questions and to have a lawyer with you during questioning. KL (initial)
5. If you do not have the money to pay a lawyers fee, the court will appoint one to represent you without cost if you wish. KL (initial)
6. If you decide to answer questions now without a lawyer present, you will still have the right to stop answering at anytime. KL (initial)

You have the right to stop answering at anytime until you talk with a lawyer. Kereen Lee
(Signature)

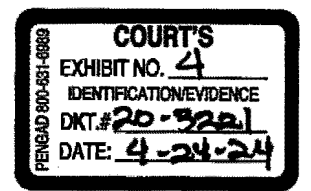
WAIVER OF RIGHTS

I have read or have been read this statement of my rights and understand what my rights are. I am willing to make a statement and answer questions at this time. I do not wish to speak to a lawyer at this time and understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.
(Coercion: to force to act or think in a given manner; to compel by pressure or force {American Heritage Dictionary, 1973}) KL (initial)

Signature: Kereen Lee Date: 3/31/20

Interviewer: _____ Time Completed: 11:47

Witness: M. A. Woods 94/k1 End of Interview: 11:55



STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	INDICTMENT(S): 2020GS2303221
	)	<i>2020DA2320200144</i>
STATE OF SOUTH CAROLINA	)	NOTICE OF INTENTION TO SEEK
	)	SENTENCE OF IMPRISONMENT FOR
	)	LIFE WITHOUT THE POSSIBILITY
	)	OF PAROLE
)	
v.)	
)	
KEREEN DONYELL LEE,)	
Defendant.)	
_____)	

23 MAY 16 PM 10:50
Paul Wickens - COC GJL SC


TO: KEREEN DONYELL LEE, DEFENDANT, and RACHEL KEPLEY, ESQUIRE, ATTORNEY FOR THE DEFENDANT:

PLEASE TAKE NOTICE that the State, through the Office of the Thirteenth Circuit Solicitor, will seek a sentence of imprisonment for life without the possibility of parole should the Defendant suffer conviction on the charge of Criminal Sexual Conduct, First Degree or any other qualifying offense pursuant to the above-named indictment. The State will seek this sentence pursuant to S.C. Code of Laws § 17-25-45 based upon the Defendant's prior convictions, which include:

Offense: Burglary 2nd Degree – Violent
Ind. No.: 2005GS2301206
Date of Imposition of Sentence: June 2, 2005

Offense: Burglary 2nd Degree – Violent
Ind. No.: 2005GS2301122
Date of Imposition of Sentence: June 2, 2005

Offense: Burglary 2nd Degree – Violent
Ind. No.: 2001GS232399
Date of Imposition of Sentence: July 9, 2003



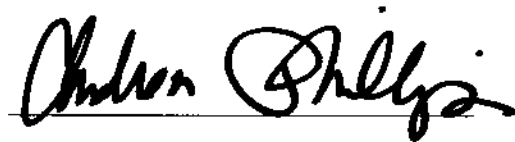
Seth Johnson
Assistant Solicitor
Thirteenth Judicial Circuit

Greenville, South Carolina
Date: May 15, 2023

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) THIRTEENTH JUDICIAL CIRCUIT
 COUNTY OF GREENVILLE)
) Ind. 2020GS2303221
 STATE OF SOUTH CAROLINA)
)
) **AFFIDAVIT OF SERVICE**
)
 v.)
)
 KEREEN DONYELL LEE,)
 Defendant.)
 _____)

23 MAY 16 AM 10:50
Paul Wickersham - CDC CIVIL SC

Personally appeared Andrea Phillips who being duly sworn, says she/he is Legal Investigator (title) for the Thirteenth Circuit Solicitor's Office and that he/she served a copy of the Notice of Intention to Seek Sentence of Imprisonment for Life Without the Possibility of Parole dated 05/15/23, in the above-entitled action, delivering to the Defendant's Attorney, Rachel Kepley, personally, and leaving with her a copy of the same on the 16th day of May, 2023.



Thirteenth Circuit Solicitor's Office

Sworn to me before this
16 day of May, 2023



Notary Public for South Carolina

My Commission Expires: 10-9-23

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) THIRTEENTH JUDICIAL CIRCUIT
 COUNTY OF GREENVILLE)
) Ind. 2020GS2303221
 STATE OF SOUTH CAROLINA)
)
) **AFFIDAVIT OF SERVICE**
)
 v.)
)
 KEREEN DONYELL LEE,)
 Defendant.)
 _____)

23 MAY 16 AM 10:50
 Paul Wickens/SCDC/CDC/SC

Personally appeared Andrea Phillips who being duly sworn, says she/he is Legal Investigator (title) for the Thirteenth Circuit Solicitor's Office and that he/she served a copy of the Notice of Intention to Seek Sentence of Imprisonment for Life Without the Possibility of Parole dated 05/15/23, in the above-entitled action, delivering to the Defendant named above personally, and leaving with him a copy of the same on the 16th day of May, 2023.

Andrea Phillips
 Thirteenth Circuit Solicitor's Office

Sworn to me before this
16th day of May, 2023.

Sydney Love
 Notary Public for South Carolina
 My Commission Expires: 9/13/31

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF)
) WARRANT # 2020A2320200144
STATE OF SOUTH CAROLINA) INDICTMENT # 2020GS2303221
))
vs.) **MOTION FOR ADMISSION**
) **OF OUT-OF-COURT STATEMENT**
KEREEN DONYELL LEE,) **OF CHILD PURSUANT TO**
DEFENDANT) **S.C. CODE SECTION 17-23-175**

24 APR 22 AM 8:38
Erica Garrett CDC GAL SC

PLEASE TAKE NOTICE that the undersigned Attorney for the State moves this Honorable Court pursuant to S.C. Code Section 17-23-175 for admission of out-of-court statement(s) made by the victim/witness in the above-captioned case, to wit: **SB** [REDACTED] Date of Birth: [REDACTED] S.C. Code Section 17-23-175 was enacted as part of the Sex Offender Accountability and Protection of Minors Act of 2006.

Statement of Law

An out-of-court statement by a child under the age of twelve is admissible in a General Sessions Court proceeding upon satisfaction of the provisions set forth in S.C. Code Section 17-23-175 and a finding by the Court that the statement(s) provides "particularized guarantees of trustworthiness." In the present case, the victim/witness was under the age of twelve years at the time of the making of said statement(s) or functioned cognitively, adaptively, or developmentally under the age of twelve at the time of the making of the statement(s). Furthermore, the defendant is currently charged with an offense which would require registry pursuant to the provisions of Article 7, Chapter 3, Title 23 (South Carolina sex offender registry).

Evidence offered by the State pursuant to this section includes recorded statements made by the child victim/witness to the following persons in relation to the above-captioned case: James Paris, Fountain Inn Police Department.

The State offers the following facts in support of the admission of the aforementioned out-of-court statement(s):

- (1) the statement was given in response to questioning conducted during an investigative interview of the child, pursuant to S.C. Code Section 17-23-175(A)(1);
- (2) an audio and visual recording of the statement has been preserved by electronic means, pursuant to S.C. Code Section 17-23-175(A)(2);
- (3) The child is expected to testify at trial and is subject to cross-examination on the elements of the offense and the making of the out-of-court statement(s), pursuant to S.C. Code Section 17-23-175(A)(3).


The State contends that the totality of the circumstances surrounding the making of the statement(s) provides particularized guarantees of trustworthiness. The State requests an

in-camera review by the Court for consideration of the following factors in support of the admission of said evidence pursuant to S.C. Code Section 17-23-175 (B):

- (1) whether the statement was elicited by leading questions;
- (2) whether the interviewer has been trained in conducting investigative interviews of children;
- (3) whether the statement contains a detailed account of the offense;
- (4) whether the statement has internal coherence; and
- (5) sworn testimony of any participant which may be determined as necessary by the Court.

For the foregoing reasons, the State moves to introduce evidence and/or testimony of the out-of-court-statement(s) made by the child concerning details of the alleged criminal offense(s) in this case. Furthermore, the State contends that upon consideration of the totality of the circumstances, that said statement(s) possess particularized guarantees of trustworthiness sufficient for admissibility within the provisions of S.C. Code Section 17-23-175.

Respectfully Submitted,



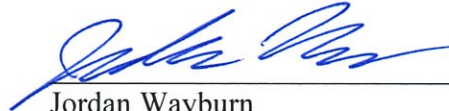
Seth Redus Johnson
Assistant Solicitor
Thirteenth Circuit Solicitor's Office

Date: 4/22/24
Greenville, South Carolina

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Jordan Wayburn
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

RECEIVED
Oct 17 2025
SC Court of Appeals

This 17th day of October, 2025.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Alex Kinlaw, Circuit Court Judge

RECEIVED

Oct 17 2025

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

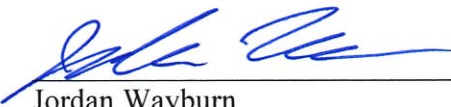
KEREEN DONYELL LEE,

APPELLANT

APPELLATE CASE NO. 2024-000745

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Joshua A. Edwards, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 17th day of October, 2025.



Jordan Wayburn
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT