

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Berkeley County

Honorable Thomas W. McGee, III, Circuit Court Judge

JERAMY DALE PARKS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002417

APPENDIX

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 2 COUNTY OF BERKELEY } CASE NO. 2014-GS-08-259,
 3 } 260, 261, 262, 263, 264,
 } 2015-GS-08-1478,
 } 2015-GS-08-1480

4 STATE OF SOUTH CAROLINA, }
 5 } Transcript of Record
 6 Plaintiff, }
 7 vs. }
 8 JERAMY PARKS, } Date:
 9 Defendant. } September 14 - 16, 2015

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11 B E F O R E:

12 The Honorable DEADRA JEFFERSON

13 A P P E A R A N C E:

14 * * * * *

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 17
 18
 19 Denise J. Lauder, RPR

20 Ninth Judicial Circuit

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 23
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1 A P P E A R A N C E S

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1 (State v. Parks, 9/14/2015, Berkeley
2 County Circuit Court, Moncks Corner, South
3 Carolina, 11:57 a.m.)

4 THE COURT: Ladies and gentlemen, we
5 are going to select a jury for the case of the
6 State of South Carolina versus Jeramy -- and that
7 is spelled J-E-R-A-M-Y -- Dale Parks. We are going
8 to go through a process that is called voir dire,
9 which is simply a legal term meaning that I am
10 going to ask you some questions so that the
11 attorneys can more effectively exercise their
12 peremptory challenges in the jury selection
13 process.

14 If a question applies, I need you to
15 stand, and in a loud and clear voice give me your
16 name, your juror number, an answer to the question
17 if applicable, and remain standing until the Court
18 has completed questioning you.

19 Before we begin that process I will
20 have Counsel for the State to stand and introduce
21 themselves, as well as anyone who will be assisting
22 them in the trial of the case, and also give us the
23 name of the lawyers in their office.

24 I would also ask Counsel for the
25 defense to provide us with that same information,

1 as well as have the client stand and face the
2 panel. You may proceed.

3 MS. WILLIAMS: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 MS. WILLIAMS: My name is Anne
6 Williams. I'm an Assistant Solicitor in the Ninth
7 Circuit in Berkeley County. This is Debbie
8 Herring-Lash. She will be sitting with me on this
9 case. In our office is Camilla Sass, Price Segal,
10 Justin Nickels, Wilton McNeill. Also in our office
11 is Mason West, and the Deputy Solicitor that runs
12 our office is Brian Alfaro. For this case we also
13 have Investigator Brian Sutton from the Berkeley
14 County Sheriff's Office.

15 THE COURT: Mr. Schwacke.

16 MR. SCHWACKE: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 MR. SCHWACKE: Good morning. My name
19 is David Schwacke. I'm an attorney for the Public
20 Defender's Office. I'll be representing Mr. Parks,
21 along with Ms. Deborah Littlejohn from our office.
22 And also present is Julie Chivers and Mr. Chad
23 Shaw.

24 THE COURT: Thank you.

25 Ladies and gentlemen, bear with me one

1 moment.

2 Again, if a question applies to you,
3 stand, and in a loud and clear voice give us your
4 name and juror number.

5 We will be proceeding on the following
6 Indictment, 2014-GS-08-259, which is the State
7 versus Jeramy Dale Parks, an Indictment for
8 criminal sexual conduct with a minor in the first
9 degree. That indictment alleges as follows: That
10 Jeramy Dale Parks, date of birth [REDACTED], 1981,
11 did in Berkeley County, South Carolina, on or
12 between August 15, 2012 and May 30th, 2013, commit
13 a sexual battery upon a minor, who was less than
14 11 years of age, to wit: Penal genital penetration
15 upon MINOR 1 [REDACTED], date of birth, [REDACTED],
16 2007, alleging a violation of Code Section 16-36-55
17 under the Code of Laws, as amended.

18 2014-GS-08-260, an Indictment for
19 criminal sexual conduct with a minor. That
20 Indictment alleges that Jeramy Dale Parks, date of
21 birth [REDACTED], 1981, did in Berkeley County,
22 South Carolina, on or between August 15, 2012 and
23 May 30, 2013, commit a sexual battery upon a minor
24 who was less than 11 years of age, to wit: Penal
25 anal penetration upon MINOR 1 [REDACTED], date of birth

1 [REDACTED], 2007, alleging a violation of Code
2 Section 16-36-55.

3 Indictment 2014-GS-08-261, an
4 Indictment for criminal sexual conduct with a minor
5 in the first degree. That Indictment alleges that
6 Jeramy Dale Parks, date of birth [REDACTED], 1981,
7 did in Berkeley County, South Carolina, on or
8 between August 15, 2012 and May 30, 2013, commit a
9 sexual battery upon a minor less than 11 years of
10 age, to wit: Fellatio upon MINOR 1 [REDACTED], date of
11 birth [REDACTED], 2007, alleging a violation of
12 Code Section 16-36-55.

13 2014-GS-08-262, an Indictment for
14 criminal sexual conduct with a minor, first degree.
15 That Indictment alleges that Jeramy Dale Parks,
16 date of birth [REDACTED], 1981, did in Berkeley
17 County, South Carolina on or between August 15,
18 2012 and May 30th, 2013, commit a sexual battery
19 upon a minor, who was less than 11 years of age, to
20 wit: Cunnilingus upon MINOR 1 [REDACTED], date of birth
21 [REDACTED], 2007, alleging a violation of Code
22 Section 16-36-55.

23 And Indictment 2014-GS-08-263, an
24 indictment for criminal sexual conduct with a
25 minor, third degree. That Indictment alleges that

1 Jeramy Dale Parks, date of birth [REDACTED], 1981,
2 being over the age of 14 years, did in Berkeley
3 County on or about August 15, 2012 and May 30th,
4 2013, willfully and lewdly commit, or attempt a
5 lewd or lascivious act upon or with the body of one
6 MINOR 1 [REDACTED], a child under the age of 16, with
7 the intent of arousing, appealing to and gratifying
8 the lush, passion, and sexual desires of the actor
9 or such child, alleging a violation of Code Section
10 16-36-55(C).

11 Indictment 2014-264, an Indictment for
12 unlawful conduct toward a child. That Indictment
13 alleges that Jeramy Dale Parks in Berkeley County,
14 South Carolina, on or about August 15, 2012 and
15 May 30, 2013, have charge or custody of MINOR 2
16 [REDACTED] and did place the child at unreasonable
17 risk of harm, affecting the child's life, physical
18 or mental health or safety, alleging a violation of
19 Code Section 63-5-70 of the Code of Laws.

20 And Indictment 2015-GS-08-1478, an
21 Indictment of criminal sexual conduct with a minor,
22 first degree. And that indictment alleges that in
23 Berkeley County, South Carolina, between August 1,
24 2012 and May 30, 2013, the Defendant, Jeramy Dale
25 Parks, date of birth [REDACTED], 1981, did commit a

1 sexual battery, to wit: Digital penetration upon
2 the victim, MINOR 1, a minor, less than 11
3 years of age, alleging a violation of Code Section
4 16-3-655(a)(1) of the Code of Laws.

5 And 2015-GS-08-1480, unlawful conduct
6 towards a child. And that Indictment alleges that
7 in Berkeley County, South Carolina between
8 August 1, 2012 and March 15, 2013, the Defendant,
9 Jeramy Dale Parks, while having charge or custody,
10 or being the parent or guardian, or being
11 responsible for the welfare of the minor child,
12 MINOR 1, did unlawfully place the minor
13 victim at unreasonable risk of harm affecting the
14 child's life, physical or mental health or safety,
15 or unlawfully and maliciously do, or cause to be
16 done, bodily harm to the child so that the life or
17 health of the child was in danger or likely to be
18 endangered, alleging a violation of Code Section
19 63-5-70 of the Code of Laws, and each Indictment
20 alleging each action to be against the peace and
21 dignity of the State of South Carolina.

22 Again, ladies and gentlemen, if any of
23 the questions that I ask apply to you, please
24 stand, and in a loud and clear voice give us your
25 name, your juror number, an answer to the question

VOIR DIRE

1 if applicable, and remain standing until the Court
2 has completed questioning you.

3 Is there any member of the panel
4 related by blood or marriage to Jeramy Dale Parks,
5 MINOR 2, or MINOR 1? If so, please
6 stand.

7 THE JURY PANEL: (None)

8 THE COURT: Does any member of the
9 panel have a close personal or social relationship
10 with Jeramy Dale Parks, MINOR 2, or MINOR 1
11 ? If so, please stand at this time.

12 THE JURY PANEL: (None)

13 THE COURT: The following are a list of
14 potential witnesses in this case. I would ask that
15 you listen very carefully. MINOR 1, Candace
16 Parks, J. P., B. G., MINOR 2
17, D. G., Maxwell Gifford, Don Elsey
18 of the Lowcountry Children's Center, Lauren Morgan
19 Dorchester Children's Center, Officer Katie Yates,
20 Officer Barlow of the Summerville Police
21 Department, Dr. Sara Schuh, Medical University of
22 South Carolina, Markita Qualls Johnson of MUSC,
23 Detective Brian Fenton, Stacy Cross, Justin Mizell,
24 Cory Arrington, all of the Berkeley County
25 Sheriff's Department, Susan Tindall, Keisha

VOIR DIRE

1 Simpkins, Senora Waiter, all of the Department of
2 Social Services, Damien Massey, Diane Wilson,
3 Deanna Duke, Sylvia Harrison, Mary Arnold, Casey
4 May, Deborah Wade, Connie Castanon or Castanon, C A
5 S-T-A-N-I-O-N -- T-A-N-O-N -- Allison Foster,
6 Angela Steele, Dr. Matthew Blue, both of Nason
7 Medical Center, Dr. Eric Brittain, Summerville
8 Medical Center, Thelma Phelps, and James Miller.

9 Is there any member of the panel
10 related by blood or marriage to any of the people
11 that I have just listed, or does anyone have a
12 close personal or social relationship with any of
13 these individuals, or has anyone ever been treated
14 by any of the doctors or other health professionals
15 listed? If so, please stand at this time.

16 THE COURT: Yes, ma'am. Tell me your
17 name and juror number.

18 PROSPECTIVE JUROR: Andreya Hamilton,
19 67.

20 THE COURT: Yes, ma'am.

21 PROSPECTIVE JUROR: Katie Yates,
22 Summerville Police Department, I work very closely
23 with her, friends; and Dr. Brittain, I'm an ER tech
24 at Summerville Medicine, and I work side by side
25 with him.

VOIR DIRE

1 THE COURT: As a result of these
2 experiences, do you feel that you can remain fair
3 and impartial and render a fair and impartial
4 decision in this case, based solely on the evidence
5 as it will be presented and on the law as the Court
6 will instruct?

7 PROSPECTIVE JUROR: Yes, ma'am.

8 THE COURT: Thank you. You may take
9 your seat.

10 Yes, sir; your name and your juror
11 number.

12 PROSPECTIVE JUROR: James Morrell,
13 juror number 114.

14 THE COURT: Yes, sir.

15 PROSPECTIVE JUROR: Officer Cory
16 Arrington, I have a social relationship, plus he's
17 the son of a co-worker.

18 THE COURT: When you say social
19 relationship, define that for me. Is it an
20 acquaintance or do you see him regularly?

21 PROSPECTIVE JUROR: Periodically, and
22 I've known him since he was very young.

23 THE COURT: As a result of this
24 experience, do you feel that you can remain fair
25 and impartial and render a fair and impartial

VOIR DIRE

1 decision in this case, based solely on the evidence
2 as it will be presented and on the law as the Court
3 will instruct?

4 PROSPECTIVE JUROR: I do.

5 THE COURT: Thank you, sir. You may
6 take your seat.

7 Yes, ma'am.

8 PROSPECTIVE JUROR: Valerie R. Lowndes,
9 97.

10 THE COURT: Yes, ma'am.

11 PROSPECTIVE JUROR: I wanted the Court
12 to be aware I have a professional relationship
13 where I've spoken with Don Elsey and Berkeley
14 County Sheriff's Office members often on many of my
15 cases.

16 THE COURT: As a result of this
17 experience, do you feel that you can remain fair
18 and impartial and render a fair and impartial
19 decision in this case, based solely on the evidence
20 as it will be presented and on the law as the Court
21 will instruct?

22 PROSPECTIVE JUROR: Yes, Your Honor.

23 THE COURT: Thank you, ma'am. You may
24 take your seat.

25 Has any member of the panel ever been

VOIR DIRE

1 represented by any of the attorneys involved in
2 this case or any of the lawyers in their offices?
3 If so, please stand at this time.

4 Yes, ma'am. Tell me your name and
5 juror number.

6 PROSPECTIVE JUROR: Andrey Hamilton,
7 67.

8 THE COURT: And who represented you?

9 PROSPECTIVE JUROR: Keisha White for my
10 son, Public Defender's Office.

11 THE COURT: As a result of this
12 experience, do you feel that you can remain fair
13 and impartial and render a fair and impartial
14 decision in this case, based solely on the evidence
15 as it will be presented and on the law as the Court
16 will instruct?

17 PROSPECTIVE JUROR: Yes, ma'am.

18 THE COURT: You may take your seat.

19 Yes, ma'am.

20 PROSPECTIVE JUROR: Again, Your Honor,
21 I just wanted the Court to be aware of my
22 professional relationship with Public Defenders on
23 certain cases.

24 THE COURT: Your name and juror number?

25 PROSPECTIVE JUROR: Valerie Lowndes,

VOIR DIRE

1 97.

2 THE COURT: As a result of this
3 experience, do you feel that you can remain fair
4 and impartial and render a fair and impartial
5 decision in this case, based solely on the evidence
6 as it will be presented and on the law as the Court
7 will instruct?

8 PROSPECTIVE JUROR: Yes, ma'am.

9 THE COURT: Thank you, ma'am. You may
10 take your seat.

11 Is there any member of the panel
12 related by blood or marriage to, or have a close
13 personal or social relationship with any of the
14 lawyers involved in this case, any of the lawyers
15 in their offices, or anyone employed in any
16 capacity in their offices? If so, please stand at
17 this time.

18 THE JURY PANEL: (None)

19 THE COURT: Is there any member of the
20 panel who has any knowledge of the alleged facts
21 and circumstances in this case? If so, please
22 stand at this time.

23 THE JURY PANEL: (None)

24 THE COURT: Is there any member of the
25 panel who has read, watched, or listened to any

VOIR DIRE

1 media accounts of this case, that includes anything
2 in the newspapers, radio, television or Internet?
3 If so, please stand at this time.

4 THE JURY PANEL: (None)

5 THE COURT: Has any member of the panel
6 formed or expressed an opinion about any issue or
7 matter involved in this case? If so, please stand
8 at this time.

9 THE JURY PANEL: (None)

10 THE COURT: Is there any member of the
11 panel aware of any bias or prejudice towards either
12 the State or the defense in this case? If so,
13 please stand at this time.

14 THE JURY PANEL: (None)

15 THE COURT: Is there any member of the
16 panel who is a member of the grand jury which
17 issued the indictments in this case? If so, please
18 stand at this time.

19 THE JURY PANEL: (None)

20 THE COURT: Is there any member of the
21 panel who is a member of or a contributor to any
22 group which has as its primary concern the
23 promotion of law enforcement or victim's rights?
24 These would include Mothers Against Drunk Driving,
25 Students Against Drunk Driving, Citizens Against

VOIR DIRE

1 Violent Crimes, People Against Rape, Citizens
2 Advocating a Return to Decency and Ethics, Parents
3 Empowered to Save Teens, or any other type of
4 community watch group. If so, please stand at this
5 time.

6 THE JURY PANEL: (None)

7 THE COURT: Is there any member of the
8 panel who has a moral, philosophical, or religious
9 opposition to sitting in judgment of a fellow human
10 being? If so, please stand at this time.

11 THE JURY PANEL: (None)

12 THE COURT: Is there any member of the
13 panel who has had what they considered an
14 unpleasant experience with law enforcement such
15 that it would affect your ability to be fair and
16 impartial? Is so, please stand at this time.

17 THE JURY PANEL: (None)

18 THE COURT: And I need you to listen
19 carefully to this question because it refers to
20 previous employment, not current employment. Is
21 there any member of the panel who has previously
22 worked in this area where they were a mandated
23 reporter? If so, please stand at this time.

24 THE JURY PANEL: (None)

25 THE COURT: And, again, this refers

VOIR DIRE

1 to --

2 Yes, ma'am. Your name and your juror
3 number?

4 PROSPECTIVE JUROR: 36, Elizabeth
5 Clausen. As a psychologist, I have a private
6 practice and I would consider that to be mandatory
7 reporting of child -- sexual abuse of a child.

8 THE COURT: As a result of this
9 experience, do you feel that you can remain fair
10 and impartial and render a fair and impartial
11 decision in this case, based solely on the evidence
12 as it would be presented and on the law as the
13 Court will instruct?

14 PROSPECTIVE JUROR: Yes.

15 THE COURT: Thank you, ma'am. You may
16 take your seat.

17 Is there any member of the panel who
18 has a family member employed in law enforcement?
19 If so, please stand at this time.

20 I need you to tell me your name, juror
21 number, which relative it is, and what agency, and
22 remain standing.

23 Yes, ma'am.

24 PROSPECTIVE JUROR: Mary Collins, juror
25 38.

VOIR DIRE

1 THE COURT: And who is it?

2 PROSPECTIVE JUROR: My brother-in-law.

3 THE COURT: And which agency?

4 PROSPECTIVE JUROR: Charleston County
5 Deputy.

6 THE COURT: Yes, ma'am, on the first
7 row.

8 PROSPECTIVE JUROR: Michelle Smith,
9 163, my brother-in-law is a Berkeley County Deputy.

10 THE COURT: And, ma'am.

11 PROSPECTIVE JUROR: Andrey Hamilton,
12 67. My father, Michael Miller, Berkeley County
13 Sheriff's Office.

14 THE COURT: And, sir, in the blue
15 shirt?

16 PROSPECTIVE JUROR: Gary Fellers, 54,
17 daughter-in-law is a SLED agent.

18 THE COURT: And behind you in the back,
19 yes, sir.

20 PROSPECTIVE JUROR: Mark Peters, 128,
21 brother-in-law, City of Hannahan.

22 THE COURT: As a result of these
23 experiences, do you all feel that you can remain
24 fair and impartial and render a fair and impartial
25 decision in this case, based solely on the evidence

VOIR DIRE

1 as it will be presented and on the law as this
2 Court will instruct? If the answer is yes, please
3 take your seat.

4 Let the record reflect that all
5 answered yes.

6 Again, this refers to former
7 employment, not current employment. Is there any
8 member of the panel who was formerly employed in
9 law enforcement? If so, please stand at this time.

10 Yes, sir. Tell me your name and your
11 juror number.

12 PROSPECTIVE JUROR: Christopher Veazey,
13 180.

14 THE COURT: What agency was it, sir?

15 PROSPECTIVE JUROR: Berkeley County,
16 City of Hannahan.

17 THE COURT: As a result of this
18 experience, do you feel that you can remain fair
19 and impartial and render a fair and impartial
20 decision in this case, based solely on the evidence
21 as it will be presented and on the law as the Court
22 will instruct?

23 PROSPECTIVE JUROR: Yes, ma'am.

24 THE COURT: Thank you, sir. You may
25 take your seat.

VOIR DIRE

1 Is there any member of the panel who
2 has been the victim of a violent crime? If so,
3 please stand at this time.

4 THE COURT: Yes, ma'am, name and juror
5 number.

6 PROSPECTIVE JUROR: Andreya Hamilton,
7 67.

8 THE COURT: And was it you or a family
9 member?

10 PROSPECTIVE JUROR: It was on me.

11 THE COURT: As a result of this
12 experience, do you feel you can remain fair and
13 impartial and render a fair and impartial decision
14 in this case, based solely on the evidence as it
15 would be presented and on the law as the Court will
16 instruct?

17 PROSPECTIVE JUROR: Yes, ma'am.

18 THE COURT: You may take your seat.

19 Again, this is in reference to former
20 employment, not current employment. Is there any
21 member of the panel who has formerly been employed
22 in any social service type industry or any industry
23 that regarded any type of psychological
24 counselling? If so, please stand at this time.

25 PROSPECTIVE JUROR: At this time?

VOIR DIRE

1 THE COURT: Yes. You're currently
2 employed in that area? Or were you formerly
3 employed?

4 PROSPECTIVE JUROR: I formerly was
5 employed.

6 THE COURT: Are you currently
7 employed?

8 PROSPECTIVE JUROR: No, I'm not.

9 THE COURT: Okay. Tell me your name
10 and juror number.

11 PROSPECTIVE JUROR: Elizabeth Clawson.

12 THE COURT: Yes, ma'am.

13 PROSPECTIVE JUROR: I had worked as a
14 psychologist. I worked for different agencies,
15 mental health agencies I worked with, as well as
16 victims in abuse cases. And, also, I had my own
17 private practice formerly.

18 THE COURT: As a result of this
19 experience, do you feel that you can remain fair
20 and impartial and render a fair and impartial
21 decision in this case, based solely on the evidence
22 as it will be presented and on the law as the Court
23 will instruct?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Thank you, ma'am. You may

VOIR DIRE

1 take your seat.

2 This is a very delicate question and I
3 apologize in advance for having to go into such a
4 personal area. If anyone does not feel comfortable
5 answering this question in the presence of your
6 fellow jurors, please make me aware of it and I
7 will speak with you privately with the court
8 reporter and the attorneys.

9 Is there any member of the panel or any
10 member of your family ever been the victim of a
11 sexual assault? If so, please stand at this time.

12 And I will start at the front and move
13 back. Ma'am, tell me your name and your juror
14 number.

15 PROSPECTIVE JUROR: Michelle Smith,
16 163.

17 THE COURT: Do you wish to speak with
18 the Court openly or privately?

19 PROSPECTIVE JUROR: It's fine.

20 THE COURT: Okay. Was it you or a
21 family member?

22 PROSPECTIVE JUROR: Me.

23 THE COURT: Okay. If you would remain
24 standing.

25 Ma'am, in the striped shirt, your name

VOIR DIRE

1 and juror number?

2 PROSPECTIVE JUROR: Aimee Melancon,
3 108.

4 THE COURT: Was it you or a family
5 member?

6 PROSPECTIVE JUROR: It was me.

7 THE COURT: Do you wish to speak with
8 the Court openly or privately?

9 PROSPECTIVE JUROR: I can speak openly.

10 THE COURT: Okay. And, ma'am, over in
11 the corner in the black?

12 PROSPECTIVE JUROR: Jodi Corona, 40.

13 THE COURT: Do you wish to speak with
14 the Court openly or privately?

15 PROSPECTIVE JUROR: Openly is fine.

16 THE COURT: Was it you or a family
17 member?

18 PROSPECTIVE JUROR: It was myself and
19 my sister.

20 THE COURT: And, ma'am, in the black
21 jacket?

22 PROSPECTIVE JUROR: Andrey Hamilton,
23 juror number 67.

24 THE COURT: Do you wish to speak to
25 the Court openly or privately?

VOIR DIRE

1 PROSPECTIVE JUROR: It's fine.

2 THE COURT: Was it you or a family
3 member?

4 PROSPECTIVE JUROR: It was my daughter.

5 THE COURT: And, ma'am, in the
6 turquoise -- I think it's light green.

7 PROSPECTIVE JUROR: Connie Willis, 93.

8 THE COURT: Do you wish to speak to the
9 Court openly or privately?

10 PROSPECTIVE JUROR: That's fine.

11 THE COURT: Was it you or a family
12 member?

13 PROSPECTIVE JUROR: Both.

14 THE COURT: And, sir, standing next to
15 you?

16 PROSPECTIVE JUROR: Christopher Pappas,
17 124; my sister and my wife.

18 THE COURT: And, ma'am, in the --

19 PROSPECTIVE JUROR: Pamela Phillips,
20 130; family member.

21 THE COURT: And behind you, yes,
22 ma'am.

23 PROSPECTIVE JUROR: Juror 36, family
24 member.

25 THE COURT: As a result of these

VOIR DIRE

1 experiences, do you all feel that you can remain
2 fair and impartial, and render a fair and impartial
3 decision in this case, based solely on the evidence
4 as it will be presented and on the law as the Court
5 will instruct? If your answer is yes, please take
6 your seat.

7 PROSPECTIVE JURORS: (Seated)

8 THE COURT: Let the record reflect that
9 all answered yes.

10 And, again, I know this is an intensely
11 personal question as well, it's not our intent to
12 embarrass anyone. If you wish to speak to the
13 Court privately, please make me aware of that. Is
14 there any member of the panel who has ever been
15 involved with the Department of Social Services?
16 If so -- and that means with them intervening in
17 your family. If so, please stand at this time.

18 Starting at the front, yes, ma'am.
19 Your name and juror number.

20 PROSPECTIVE JUROR: Angelina Billings,
21 juror number 13. With my son.

22 THE COURT: And next to you?

23 PROSPECTIVE JUROR: Chastity Veltman,
24 and with my son.

25 THE COURT: And behind you, yes,

VOIR DIRE

1 ma'am.

2 PROSPECTIVE JUROR: Michelle Smith,
3 163. It was my parents when I was a child.

4 THE COURT: And in the back, yes, sir.

5 PROSPECTIVE JUROR: Christopher Pappas,
6 124. It was with my children.

7 THE COURT: And, yes, ma'am, in the
8 gray.

9 PROSPECTIVE JUROR: Pamela Phillips,
10 130; currently with my grand kids.

11 THE COURT: And, yes, ma'am.

12 PROSPECTIVE JUROR: Tammy Taylor, 171,
13 my daughter.

14 THE COURT: As a result of these
15 experiences, do you all feel that you can remain
16 fair and impartial and render a fair and impartial
17 decision in this case, based solely on the evidence
18 as it would be presented and on the law as the
19 Court will instruct? If your answer is yes, please
20 take your seat.

21 Let the record reflect that all
22 answered yes.

23 This is another intensely personal
24 question. It is not the Court's intent to
25 embarrass, and if you wish to speak to the Court

JURY SELECTION

1 privately, make me aware of it. Is there any
2 member of the panel who has ever been accused in a
3 sexual assault case? If so, please stand at this
4 time.

5 PROSPECTIVE JUROR: (None)

6 THE COURT: Any does any member of the
7 panel know of any reason whatsoever why he or she
8 should not serve as a juror in this case, with
9 particular emphasis placed on your ability to be
10 fair and impartial to both the State and the
11 defense? If so, please stand at this time.

12 PROSPECTIVE JUROR: (None)

13 THE COURT: Is there any additional
14 questions from the State?

15 MS. WILLIAMS: Not from the State.

16 THE COURT: From the defense?

17 MR. SCHWACKE: None, Your Honor.

18 THE COURT: Strikes are 10 and 5. Who
19 is going to demonstrate for me? Do I have a
20 bailiff that would demonstrate?

21 Ladies and gentlemen, if your name is
22 called, you will come forward as the bailiff is
23 going to demonstrate for us -- ladies and
24 gentlemen, if your name is called, please come
25 forward with all of your personal belongings and

JURY SELECTION

1 stand where the bailiff is standing, facing back
2 toward the panel, and we will either seat or excuse
3 you as a juror.

4 Again, we thank you for your patience
5 during this process.

6 Ladies and gentlemen, I would ask that
7 you give the clerk your attention.

8 THE CLERK: Ladies and gentlemen of the
9 jury, as I call your name, please come forth and
10 bring your personal belongings with you. If I say,
11 seat the juror, please have a seat in the jury box
12 to my right. If I say, please excuse the juror,
13 please return to your original seat.

14 Juror number 40, Jodie Corona.

15 What say you for the State?

16 MS. WILLIAMS: Please present the juror.

17 THE CLERK: What say you for the
18 defense?

19 MR. SCHWACKE: Please excuse the juror.

20 THE CLERK: Excuse the juror.

21 Juror number 159, Charlie Simmons.

22 What say you for the State?

23 MS. WILLIAMS: Please present the
24 juror.

25 THE CLERK: What say you for the

JURY SELECTION

1 defense?

2 MR. SCHWACKE: Seat the juror.

3 THE CLERK: Seat the juror.

4 Juror 196, Gwendolyn Woodward.

5 What say you for the State?

6 MS. WILLIAMS: Please present the

7 juror.

8 THE CLERK: What say you for the

9 defense?

10 MR. SCHWACKE: Please seat the juror.

11 THE CLERK: Seat the juror.

12 Juror 95, Margaret Lianas.

13 What say you for the State?

14 MS. WILLIAMS: Please present the

15 juror.

16 THE CLERK: What say you for the

17 defense?

18 MR. SCHWACKE: Please seat the juror.

19 THE CLERK: Seat the juror.

20 Juror 28, Vincent Canady.

21 What say you for the State?

22 MS. WILLIAMS: Excuse the juror.

23 THE CLERK: Excuse the juror.

24 Juror 103, Joy McDowell.

25 What say you for the State?

JURY SELECTION

1 MS. WILLIAMS: Please seat the juror.

2 THE CLERK: What say you for the
3 defense?

4 MR. SCHWACKE: Please seat the juror.

5 THE COURT: Seat the juror.

6 Juror 58, Steven Frutos.

7 What say you for the State?

8 MS. WILLIAMS: Court's indulgence.

9 Please excuse the juror.

10 THE CLERK: Excuse the juror.

11 Juror 173, Sofilda Totonì.

12 What say you for the State?

13 MS. WILLIAMS: Please seat the juror.

14 THE COURT: What say you for the
15 defense?

16 MR. SCHWACKE: One moment, Your Honor.

17 Please excuse the juror.

18 THE CLERK: Excuse the juror.

19 Juror 12, Perscilla Baylock.

20 What say you for the State?

21 MS. WILLIAMS: Please excuse the
22 juror.

23 THE CLERK: Excuse the juror.

24 Juror 52, Tracy Evans.

25 What say you for the State?

JURY SELECTION

1 MS. WILLIAMS: Please present the
2 juror.

3 THE CLERK: What say you for the
4 defense?

5 MR. SCHWACKE: Please excuse this
6 juror.

7 THE CLERK: Excuse the juror.
8 Juror 130, Pamela Phillips.

9 What say you for the State?

10 MS. WILLIAMS: Please present the
11 juror.

12 THE CLERK: What say you for the
13 defense?

14 MR. SCHWACKE: Please excuse the juror.

15 THE CLERK: Excuse the juror.

16 Juror 99, James Maykovich.

17 What say you for the State?

18 MS. WILLIAMS: Please present the
19 juror.

20 THE CLERK: What say you for the
21 defense?

22 MR. SCHWACKE: Please excuse the juror.

23 THE CLERK: Excuse the juror.

24 Juror 38, Mary Collins.

25 What say you for the State?

JURY SELECTION

1 MS. WILLIAMS: Please present the
2 juror.

3 THE CLERK: What say you for the
4 defense?

5 MR. SCHWACKE: Please excuse the juror.

6 THE CLERK: Excuse the juror.

7 Juror 29, Dana Clark.

8 What say you for the State?

9 MS. WILLIAMS: Please present the
10 juror.

11 THE CLERK: What say you for the
12 defense?

13 MR. SCHWACKE: Please seat the juror.

14 THE CLERK: Seat the juror.

15 Juror 32, Stephen Carter.

16 What say you for the State?

17 MS. WILLIAMS: Please present the
18 juror.

19 THE CLERK: What say you for the
20 defense?

21 MR. SCHWACKE: Please seat the juror.

22 THE CLERK: Seat the juror.

23 Juror 150, Chester Sacknievich.

24 What say you for the State?

25 MS. WILLIAMS: Please present the

JURY SELECTION

1 juror.

2 THE CLERK: What say you for the
3 defense?

4 MR. SCHWACKE: Please seat the juror.

5 THE CLERK: Seat the juror.

6 Juror 70, Lauren Hanson.

7 What say you for the State?

8 MS. WILLIAMS: Please present the
9 juror.

10 THE CLERK: What say you for the
11 defense?

12 MR. SCHWACKE: Please seat the juror.

13 THE CLERK: Seat the juror.

14 Juror 195, Brenda Woodruff.

15 What say you for the State?

16 MS. WILLIAMS: Please present the
17 juror.

18 THE CLERK: What say you for the
19 defense?

20 MR. SCHWACKE: Excuse the juror in this
21 case.

22 THE CLERK: Excuse the juror.

23 Juror 189, Cornelia Whitt.

24 What say you for the State?

25 MS. WILLIAMS: Please present the

JURY SELECTION

1 juror.

2 THE CLERK: What say you for the
3 defense?

4 MR. SCHWACKE: Please seat the juror.

5 THE CLERK: Seat the juror.

6 Juror 13, Angelina Billings.

7 What say you for the State?

8 MS. WILLIAMS: Court's indulgence.

9 Please excuse the juror.

10 THE CLERK: Excuse the juror.

11 THE COURT: State has exhausted four
12 strikes.

13 THE CLERK: Juror 101, Latoya McCoy.

14 What say you for the State?

15 MS. WILLIAMS: Please present the
16 juror.

17 THE COURT: What say you for the
18 defense?

19 MR. SCHWACKE: Please seat the juror.

20 THE CLERK: Seat the juror.

21 Juror 114, James Morrell.

22 What say you for the State?

23 MS. WILLIAMS: Please present the
24 juror.

25 THE CLERK: What say you for the

JURY SELECTION

1 defense?

2 MR. SCHWACKE: Excuse the juror.

3 THE CLERK: Excuse the juror.

4 Juror 171, Tammy Taylor.

5 What say you for the State?

6 MS. WILLIAMS: Court's indulgence.

7 Please excuse the juror.

8 THE CLERK: Excuse the juror.

9 THE COURT: The State has exhausted
10 its strikes.

11 THE CLERK: Juror 34, Robbie Clark.

12 Any challenges of cause from the State?

13 MS. WILLIAMS: Not from the State.

14 THE CLERK: What say you for the
15 defense?

16 MR. SCHWACKE: Please seat the juror.

17 THE CLERK: Seat the juror.

18 Juror 43, Patice Davis.

19 Any challenges for cause from the
20 State?

21 MS. WILLIAMS: No, not from the State.

22 THE CLERK: What say you for the
23 defense?

24 MR. SCHWACKE: Please seat the juror.

25 THE CLERK: Seat the juror.

JURY SELECTION

1 THE COURT: Two alternates, strikes are
2 1 and 2.

3 THE CLERK: Juror 14, Hannah Billings.
4 What say you for the State?

5 MS. WILLIAMS: Present the juror.

6 THE CLERK: What say you for the
7 defense?

8 MR. SCHWACKE: Please seat the juror.

9 THE CLERK: Seat the juror.
10 Alternate number 2. Juror number 128,
11 Mark Peters.

12 What say you for the State?

13 MS. WILLIAMS: Please present the
14 juror.

15 THE CLERK: What say you for the
16 defense?

17 MR. SCHWACKE: Please excuse the juror.

18 THE CLERK: Excuse the juror.

19 Juror 18, Thomas Green.

20 What say you for the State?

21 MS. WILLIAMS: Please present the
22 juror.

23 THE CLERK: What say you for the
24 defense?

25 MR. SCHWACKE: Please excuse the juror.

JURY SELECTION

1 THE CLERK: Excuse the juror.

2 THE COURT: Defense has exhausted its
3 strikes.

4 THE CLERK: Juror 42, Jesse Cruz.
5 What say you for the State?

6 MS. WILLIAMS: Please excuse the juror.

7 THE CLERK: Excuse the juror.

8 THE COURT: State has exhausted its
9 strikes.

10 THE CLERK: Juror 181, Chastity
11 Veltman.

12 Any challenge for cause from the State?

13 MS. WILLIAMS: Not from the State.

14 THE CLERK: Any challenges --

15 MR. SCHWACKE: None from the defense.

16 THE CLERK: Seat the juror.

17 THE COURT: Are there any motions
18 regarding the selection of the jury? From the
19 State?

20 MS. WILLIAMS: No, Your Honor.

21 THE COURT: From the defense?

22 MR. SCHWACKE: One moment, Your Honor.

23 THE COURT: Uh-huh.

24 MR. SCHWACKE: No, Your Honor.

25 THE COURT: To the balance of the

1 panel, we thank you for your time and attention
2 today. We just need you to call the jury
3 information line after 6:00 this evening for
4 further instructions. Have a great afternoon.
5 You're excused.

6 Ladies and gentlemen, you've been
7 selected for the case of the State of South
8 Carolina v. Jeramy Dale Parks. I'm going to send
9 you to your jury room so that I can discuss some
10 scheduling matters with the attorneys.

11 During this break, please do not
12 discuss the case in any manner whatsoever. Please
13 don't speculate about what you think it may or
14 could be about. Also, the bailiffs are going to
15 get your cell phone numbers while we're having this
16 break.

17 We appreciate your patience. It should
18 be brief. If would go with the bailiffs please.

19 (Jury out, 12:45 p.m.)

20 MS. WILLIAMS: We may have one issue.

21 THE COURT: I'm going to deal with
22 that in just a moment.

23 MS. WILLIAMS: Okay.

24 THE COURT: Mr. Schwacke, did you file
25 any motions?

1 MR. SCHWACKE: I did.

2 THE COURT: Where are they?

3 MR. SCHWACKE: I e-mailed them.

4 THE COURT: While I read them on my
5 computer, I need a hard copy.

6 MR. SCHWACKE: All right.

7 MS. WILLIAMS: I think I have an extra
8 copy, let me see.

9 MS. LITTLEJOHN: And then we have some
10 oral ones as well.

11 THE COURT: Does the State intend to
12 introduce any Lyle motions?

13 MS. WILLIAMS: Yes, we do, Your Honor.

14 THE COURT: I didn't ask for any
15 argument. I read your argument.

16 Has the State provided counselling
17 records as requested by the defense?

18 MS. WILLIAMS: Your Honor, we have
19 provided all of the counselling records that we
20 have. This case was set for August 24th, and at
21 that time when we got Mr. Schwacke's motion, we
22 offered to sign a consent order for him to get
23 whatever records he thought he needed in addition
24 to what the State had in their possession.

25 We gave him the name of the counselors

1 that we knew of for MINOR 2 and MINOR 1
2 . And then we e-mailed him again and called
3 him again and said, what can we help you do to get
4 these records, and we never heard back from Mr.
5 Schwacke.

6 MR. SCHWACKE: We did abandon that,
7 Your Honor.

8 THE COURT: So this motion is moot?

9 MR. SCHWACKE: That's correct. It was
10 filed originally with the case.

11 THE COURT: Okay. And I assume what
12 you've handed me you've already filed, correct?
13 I'm talking to you.

14 MR. SCHWACKE: I'm not sure they have
15 actually been clocked in.

16 THE COURT: I need you to make sure.
17 These copies you gave me I'm going to write on
18 because they're not going in anybody's file. I
19 need you to make sure that you run copies and get
20 them filed today.

21 MR. SCHWACKE: I will.

22 THE COURT: How old is the victim?

23 MS. WILLIAMS: She is seven right now,
24 Your Honor.

25 THE COURT: Are you abandoning this

1 motion regarding incompetency or are you -- do you
2 want to proceed on this?

3 MR. SCHWACKE: We would like to proceed
4 on that.

5 THE COURT: I will do that at the time
6 she testifies, and that's limited to her ability to
7 understand and know the difference between the
8 truth and a lie.

9 MR. SCHWACKE: Yes, ma'am.

10 THE COURT: Okay. Does the State have
11 any indication that this child is incompetent?

12 MS. WILLIAMS: None, Your Honor.

13 THE COURT: Okay. Based on what I saw
14 in that tape, she is fairly articulate and she
15 would know the difference between right and wrong,
16 so I assume that's a superfluous motion.

17 Motion for an in camera hearing and
18 Lyle. All right. Basically, it -- it appears that
19 most of -- well, all of the defense motions are
20 filed in response to things it is anticipating the
21 State is going to do, which are covered by the
22 State's motions, other than the one that has been
23 abandoned, because most of them deal with Lyle, and
24 the other is a motion to sever.

25 Now, I anticipate that the State's

1 argument is going to be that this is res gestae --

2 MS. WILLIAMS: Yes, Your Honor.

3 THE COURT: -- and is a part of a
4 continuum of events. Is that your argument in a
5 nutshell, Ms. Williams?

6 MS. WILLIAMS: Yes, Your Honor.

7 THE COURT: What would the defense
8 have in contravention of that? Because it appears
9 to me from the facts they have alleged that would,
10 in fact, be the case.

11 MR. SCHWACKE: I think what the --
12 obviously, what the State intends to do is move the
13 Dorchester offences into the --

14 THE COURT: No. We're talking about
15 the unlawful conduct charge. Talking about the
16 charge with MINOR 2 where they alleged this
17 happened as a continuum of these events and was
18 part and parcel -- in another words, res gestae.
19 And I want to know what argument you would have in
20 contravention of that argument.

21 MR. SCHWACKE: Basically, Your Honor,
22 that the unlawful conduct charge is of a different
23 type and variety than that of the sexual assault
24 charges.

25 THE COURT: Do you have any evidence

1 that it did not or any evidence that you're going
2 to present -- not that you have a burden or have to
3 present anything, but I would imagine through the
4 cross-examination process -- is there anything that
5 you would be able to articulate that this did not
6 -- in the light most beneficial to the State that
7 it was not a part of these events; in other words,
8 that he did not have some issue as a result of
9 trying to defend his sister, my words, not theirs?

10 MR. SCHWACKE: Your Honor, this family
11 has been involved with DSS since 2009. Six
12 different times there have been forensic
13 examinations performed on some of these kids.

14 THE COURT: Okay.

15 MR. SCHWACKE: In those they are
16 relating the abuse that I believe the State is
17 going to tend to introduce to establish the
18 offence.

19 THE COURT: Well, let me ask -- maybe
20 I was premature in what I read. What evidence
21 would the State be presenting to support a charge
22 of unlawful conduct with a minor, MINOR 2 ?

23 MS. WILLIAMS: Your Honor, MINOR 2
24 [REDACTED], at least on one occasion, got involved in
25 a domestic violence episode where the defendant was

1 verbally and physically abusing his mother because
2 she confronted him about the sexual abuse of
3 MINOR 1. And in addition to that, there was
4 times when MINOR 1 would watch the physical
5 abuse of MINOR 2, MINOR 2 would see
6 the sexual abuse of MINOR 1. They were all
7 told that they couldn't tell.

8 There was just an atmosphere of fear
9 that permeated this home that prevented these
10 children from disclosing the abuse.

11 So in addition to the facts --

12 THE COURT: I have never heard the
13 State try to prove a case of unlawful conduct with
14 those types of circumstances. Now, him hitting the
15 child or hitting the mother in the presence of the
16 child as a result of confrontation might well
17 satisfy the elements, but to say a general
18 atmosphere would support an unlawful conduct charge
19 I think is --

20 MS. WILLIAMS: I'm not saying that --

21 THE COURT: -- tap dancing on the
22 line.

23 MS. WILLIAMS: I'm not saying that
24 that's what supports the unlawful conduct. I'm
25 saying that he beat MINOR 2 repeatedly,

1 verbally abused --

2 THE COURT: Now, that's different.

3 MS. WILLIAMS: That's what I'm saying.

4 I guess what I'm trying to say.

5 THE COURT: But, generally, that would
6 then be -- would that be an unlawful conduct charge
7 or would that be an assault charge if he beat him
8 continuously?

9 MS. WILLIAMS: I think it can be
10 either. But there was just so much continuous
11 abuse of MINOR 2, verbal abuse, emotional
12 abuse, and physical abuse, and what we're saying is
13 that in addition to the fact that the facts are
14 intertwined, it's relevant because it contributed
15 to an atmosphere in that home that prevented these
16 children from disclosing a lot of the things that
17 happened, because during the ten months the
18 defendant was back in the home, against the safety
19 plan, none of the children told DSS. They didn't
20 really disclose to their counselors --

21 THE COURT: That's an evidentiary
22 issue, though. That's not elements of an offense.

23 MS. WILLIAMS: I'm not saying it's the
24 elements, and I apologize if that's -- I'm just
25 trying to say why it's relevant in terms of res

1 gestae.

2 THE COURT: Well, you're sort of
3 mixing apples and oranges. I need to know what
4 you're going to present in support of the elements
5 of an offence of unlawful conduct. If you want to
6 say an atmosphere of fear was created in this home,
7 that's not the --

8 MS. WILLIAMS: That's not the elements.

9 THE COURT: -- of unlawful conduct.
10 That's an evidentiary issue that you would be
11 trying to present in support of your claim that
12 this CSC happened. That's a totally different
13 issue. But if you say, and what you intend to
14 present in support of the offense of unlawful
15 conduct toward a child, is that it's a continuum of
16 events this child was hit by him, that's different.

17 MS. WILLIAMS: Yes. He was
18 continuously beaten by the defendant, he was
19 verbally abused by the defendant, he was neglected
20 by the defendant.

21 THE COURT: Well, neglect is not
22 unlawful conduct. Not traditionally.

23 MS. WILLIAMS: It was a continuum of
24 events where he was abused by the defendant
25 continuously.

1 THE COURT: Well, I would take it up
2 outside -- it's really an evidentiary issue, not a
3 severance issue, Mr. Schwacke, at this point,
4 because based on the State saying it's -- the one
5 isolated event where they say he went to defend his
6 mother, it's also intertwined and it would be res
7 gestae and there really would not be a basis for
8 sever and I wouldn't sever, but when we get to --
9 when we start talking about the evidentiary issues
10 of this case, I'm not going to allow the State to
11 introduce any of that in the presence of the jury
12 without an in camera hearing, and then I will make
13 a decision as to what will come in and what will
14 not come in.

15 So some of it would support the
16 elements of unlawful conduct and some of it is
17 evidentiary. There's no -- unlawful is one of
18 those nebulous sort of laws. It's a catchall.

19 MR. SCHWACKE: And --

20 THE COURT: It could be you leaving
21 your child in the car unattended. It could be
22 speeding with your child in the car. It would be
23 getting arrested in the presence of the child.
24 There's a lot of things that fall under the ambit
25 of unlawful conduct.

1 MR. SCHWACKE: Your Honor, under State
2 v. Tucker --

3 THE COURT: The cases that you cite
4 generally are talking about co-defendants being
5 severed. Totally different set of -- well, it's
6 not a different set of elements, it's the same
7 elements, but it's a totally different factual set
8 of circumstances. Here the State is alleging there
9 was a continuum of events that took place over a
10 course of time, and that during this course of time
11 this happened to this child. It's really in the
12 nature of res gestae.

13 MR. SCHWACKE: And what --

14 THE COURT: Because it wouldn't make
15 sense otherwise.

16 MR. SCHWACKE: What's going to happen
17 here is, during the course of all these motions,
18 you're going to hear the State wants one thing and
19 then the State wants something --

20 THE COURT: Well, I have to take it up
21 one at a time.

22 MR. SCHWACKE: I understand.

23 THE COURT: You're going to have to
24 make a contemporaneous objection.

25 MR. SCHWACKE: But within this

1 particular motion that we have made to sever --
2 it's clear what the State's elements are to have to
3 prove for a CSC with a minor and also the lewd
4 acts, and it's a very different level of proof than
5 what would satisfy a verdict for unlawful conduct,
6 because neglect is a possibility. I know it's not
7 the standard definition of it, but within our
8 law --

9 THE COURT: You have two different
10 victims, different standards, different
11 applicability, but a continuum of events that would
12 not make sense outside of one another. It wouldn't
13 make sense -- it's almost like where you would have
14 -- trying to think of an analogous factual set of
15 circumstances.

16 But then the next thing that you would
17 argue that the elements of the CSC would not be
18 applicable or admissible in this trial with this
19 other child and that -- it doesn't make sense
20 outside of that context; otherwise, you would just
21 think for no reason he hit this child out of the
22 blue and that doesn't make sense.

23 MR. SCHWACKE: And the --

24 THE COURT: If he did hit this child;
25 I don't know that it happened. I wasn't there.

1 MR. SCHWACKE: Well, again, this family
2 has been in contact with DSS for an extended period
3 of time with multiple interviews. None of what the
4 State just told you they intend to use to prove is
5 contained in any of these recordings.

6 THE COURT: That's how you impeach
7 somebody. That's a weight issue. It goes to their
8 burden of proof.

9 MR. SCHWACKE: Well, just I guess for
10 the record, our motion to sever was to eliminate
11 the prejudice that would arise from --

12 THE COURT: What prejudice?

13 MR. SCHWACKE: -- having -- if the jury
14 is to be instructed on unlawful conduct towards a
15 child, that is a vague and nebulous statute as you
16 have already indicated. And that --

17 THE COURT: I might have used those
18 words; I meant catchall. It's a catchall for
19 multiple offences or multiple things that could
20 happen to a child or in the presence of a child.

21 MR. SCHWACKE: So, again, the level of
22 proof for the State to show on the unlawful conduct
23 of a child is far and away from the sexual
24 gratification requirement of the statute dealing
25 with the lewd act. Far and away from the actual

1 sexual assault, the definition of a battery. And
2 so the State's attempting to lob on top of our
3 client with these other charges simply to sort of
4 curry favor with the jury in terms of -- of these
5 charges, and as a result it becomes prejudicial to
6 our client because -- and it's certainly confusing
7 to the jury if you're going to be instructing them
8 on this additional charge.

9 THE COURT: If that's the case, every
10 time I had multiple charges with a defendant, the
11 jury would be confused and it just doesn't bear
12 out.

13 MR. SCHWACKE: But you're going to have
14 different standards of --

15 THE COURT: No, it's all beyond a
16 reasonable doubt. There's no difference standard.
17 There are elements, but their burden is still
18 beyond a reasonable doubt. And juries have
19 multiple charges all the time and they're
20 instructed that there are multiple offenses, and
21 the State had to meet its burden on every single
22 one of them. He can be acquitted on all of them.
23 He can be convicted on all of them.

24 You can convict or acquit on any -- any
25 division of them, but ultimately the State still

1 has the burden of proving each and every element of
2 everything he's charged with. He doesn't have any
3 burden, but they do, and it's a stiff one.

4 MR. SCHWACKE: How does Your Honor
5 charge criminal neglect?

6 THE COURT: I don't know. I would to
7 have to look at my instruction on that. I haven't
8 done it in a while, but it wouldn't be criminal
9 neglect. It would be what the actual statute
10 reads, which is unlawful conduct toward a child.

11 MR. SCHWACKE: Which includes neglect.

12 THE COURT: I would have to look at
13 the statute because my instructions use the
14 statutory language.

15 MR. SCHWACKE: Yes, ma'am.

16 THE COURT: But it would only be for
17 that -- well, there are two charges. There's one
18 for her for unlawful conduct, which we'll see about
19 that, and then there is one for unlawful conduct
20 towards this child.

21 MR. SCHWACKE: Well --

22 THE COURT: I'm a little confused,
23 frankly, as to why the State charged him with
24 unlawful conduct toward her, but I'm going to have
25 to wait and see if they can present any facts in

1 support of that.

2 MR. SCHWACKE: All of this raises an
3 issue that we had not filed written motions on, but
4 intended to make. I don't know what order you wish
5 to proceed, but one of these Indictments alleging
6 this unlawful conduct was just presented to the
7 grand jury last Wednesday. We were just notified
8 of that.

9 THE COURT: But were you surprised by
10 the facts that were alleged in it or did you
11 already know about it?

12 MR. SCHWACKE: Well, it adds -- not
13 only does that charge add --

14 THE COURT: That's not my question.

15 MR. SCHWACKE: My client's --

16 THE COURT: That's like when the civil
17 lawyer says, they just moved to amend to conform to
18 the facts and, you know, that's different than
19 they've been in discovery for three years and they
20 already knew what it was, what the person was
21 alleging. So it really doesn't come as any
22 surprise and they were prepared to defend against
23 it.

24 So the issue becomes, did you know this
25 was what they were going to allege and were you

1 prepared to defend against it?

2 MR. SCHWACKE: Not as to the unlawful
3 conduct charge. In all fairness, I would have to
4 admit we had substantial notice of --

5 THE COURT: But the issue is the facts
6 and circumstances; were you on notice of the facts
7 and circumstances of the charge?

8 MR. SCHWACKE: I don't know what the
9 facts and circumstances are going to be regarding
10 her. I do not.

11 THE COURT: And that is -- you're
12 referring then to Indictment No. 2015-1480?

13 MR. SCHWACKE: That's correct.

14 THE COURT: And what facts would the
15 State be seeking to present regarding the unlawful
16 conduct charge on the minor MINOR 1 ?

17 MS. WILLIAMS: Your Honor, the facts
18 would be -- first of all, the children or -- she is
19 one of the children -- weren't fed properly, they
20 didn't have hairbrushes, they weren't bathed, there
21 were times when she had MRSA when she didn't go to
22 the doctor. There was a lot of sexual abuse that
23 didn't rise to the level of an indictment, but she
24 was continuously touched and sexually abused.

25 THE COURT: He hasn't made the argument

1 yet, but you can't morph an unlawful conduct
2 indicted as an uncharged CSC. That becomes Lyle
3 and that becomes problematic. If you have a
4 separate set of facts to support an unlawful
5 conduct charge, which is not getting medical
6 treatment and not providing for the daily -- not
7 amenities, but the daily necessities of life,
8 that's different, but uncharged criminal sexual
9 conduct charge is not going to support an unlawful
10 conduct charge.

11 MS. WILLIAMS: Verbal abuse, emotional
12 abuse, neglect, lack of medical care at times.

13 THE COURT: And then the question
14 becomes, when did you put Mr. Schwacke on notice.

15 MS. WILLIAMS: This is all in the file.
16 It's nothing new, Your Honor.

17 THE COURT: When did you put him on
18 notice that you intended to charge his client with
19 this such that he could mount a defense?

20 MS. WILLIAMS: I understand. Well,
21 it's not new evidence, but we did give him an
22 e-mail three weeks ago letting him know that we
23 were going to charge it, but all of this
24 information is in the file. There's all kinds of
25 things that she says in her interview. She's never

1 had a hairbrush. He's known extensively about the
2 MRSA. All of that is in the file.

3 There was not enough food in the home.
4 There was constant domestic violence and beatings
5 that this kid watched of her siblings and her
6 mother, and they didn't have adequate living
7 conditions --

8 THE COURT: Yeah, but see, that's
9 really almost in the nature of Lyle and it is
10 extremely prejudicial to say that he beat her in
11 the presence of her mother and, therefore, that
12 constitutes a neglect charge. That constitutes a
13 CDV charge that you bring against him. It's
14 creative, but I'm just not certain that it's going
15 to come in.

16 Now, I need to know from you, Mr.
17 Schwacke, were you on notice about these
18 allegations of the lack of medical treatment, of
19 the neglect, of the lack of providing the
20 necessities, which comes under the heading of
21 neglect, verbal and emotional abuse, and the MRSA?

22 MR. SCHWACKE: MRSA we're aware of.
23 The issue on MRSA is whether or not that his --

24 THE COURT: Well, the question becomes,
25 were you aware of it and were you able to mount a

1 defense for your client? Were you sufficiently
2 aware of these allegations?

3 MR. SCHWACKE: MRSA we've been aware of
4 all along, but to say it went -- it went untreated
5 is just inaccurate.

6 THE COURT: Well, now that's a factual
7 issue. I'm not the juror. I don't know if it was
8 treated or not. I assume they'll have some
9 witnesses to support the allegation.

10 MR. SCHWACKE: The State presented
11 documentation to me indicating that the child had,
12 in fact, been treated for the MRSA. To say it went
13 untreated is misleading to Your Honor.

14 THE COURT: I'm not the finder of fact;
15 it really doesn't matter if it's misleading to me
16 because I'm not the person ultimately that makes
17 the decision. The question on your motion and what
18 is the applicable standard is, one, were you on
19 notice of the allegation? Did you have enough
20 notice to mount a defense on these allegations?

21 The barometer is not when the
22 indictment was filed. We all know that there are
23 lots of times that cases rock along for a year or
24 two years and the State just forgets to indict
25 people, or they wait until the last minute to

1 indict people, but the defense is prepared and
2 they're ready to defend it, it doesn't come to any
3 surprise to them. That's what I'm trying to
4 ascertain.

5 Is all of this a surprise to you and
6 have you been able to mount an adequate defense to
7 these allegations for your client?

8 MR. SCHWACKE: The only information
9 that I had about the matters that would constitute
10 unlawful conduct are those contained in the video
11 that you have watched yourself. So, Your Honor, on
12 behalf of my client I can indicate to you that
13 anything beyond that is a surprise to me, and most
14 of what the State has spoken here today of is
15 surprising to me because it's not part and parcel
16 of that interview.

17 THE COURT: Are you telling me that
18 you are not prepared to or you have not had
19 adequate time to prepare a defense on that
20 indictment?

21 MR. SCHWACKE: That's correct.

22 THE COURT: Okay. So basically what
23 you would be doing then -- I guess you could say
24 severing -- I don't know that that's the accurate
25 word. You would really be continuing it to give

1 you adequate time to be prepared on that
2 indictment. And I think that if he says that these
3 things come as a surprise to him, such that he has
4 not been able to mount an adequate defense for his
5 client, I don't think you can force him to go
6 forward.

7 MS. WILLIAMS: So we're talking about
8 severing --

9 THE COURT: We're talking about
10 2015-1480, which is the unlawful conduct towards
11 the child regarding the victim, MINOR 1 .

12 MS. WILLIAMS: Okay. We understand.

13 THE COURT: So that indictment will be
14 severed.

15 Now, as it regards the State's motion,
16 which is, excuse me -- does the defense plan to
17 introduce any evidence on the violation of the Rape
18 Shield Statute?

19 MR. SCHWACKE: Your Honor, to say it's
20 in violation of the Rape Shield Statute -- there's
21 case law that allows -- and it's State v.
22 Fonseca -- case law that allows evidence of methods
23 by which a child victim has acquired the
24 knowledge --

25 THE COURT: What evidence are you

1 seeking to introduce regarding that?

2 MR. SCHWACKE: Well, it's part and
3 parcel of the video that you have observed. In it
4 on two different occasions the victim in this case
5 indicates that one of her siblings also has --

6 THE COURT: I'm sorry, repeat it.

7 MR. SCHWACKE: That one of her siblings
8 had been involved in sex, or at least -- well, sex
9 acts, because on one occasion she indicates that he
10 was naked in the closet. He asked her to give him
11 oral sex. There was another occasion where --

12 THE COURT: Let me --

13 MR. SCHWACKE: -- the child says --

14 THE c: Let me interrupt you one second
15 because it made me think of something I want to ask
16 before I forget. The State is seeking to introduce
17 this recorded interview. Do you object to that or
18 are you in agreement with that?

19 MR. SCHWACKE: Can you just require
20 them to go through the process, Your Honor?

21 THE COURT: So that you're not lodging
22 an objection to the admissibility --

23 MR. SCHWACKE: I haven't --

24 THE COURT: Well, I need to know in
25 advance.

1 MR. SCHWACKE: I am going to object to
2 it which will require them at that point to go
3 through the process.

4 THE COURT: But if they meet that --

5 MR. SCHWACKE: I agreed to let them
6 provide it to you so that in advance of the hearing
7 that you would have had the opportunity to review
8 it, but that doesn't mean that I'm, by any means,
9 agreeing to it coming in.

10 THE COURT: Well, you don't have to
11 consent to them giving it to me, because I need to
12 look at it in advance, but my question is, and it's
13 a simple one, do you -- I guess I'm trying to
14 figure out do you agree on the admissibility of
15 this or do you not?

16 MR. SCHWACKE: We do not. We do not.
17 That's not to say they'll be able to establish the
18 process, but we do not.

19 THE COURT: All right. So you can
20 continue -- so then my other question -- I forgot
21 what I asked you. I apologize.

22 MR. SCHWACKE: You were asking what
23 evidence of third-party guilt and --

24 THE COURT: Well, that really wouldn't
25 be third-party guilt, is it?

1 MR. SCHWACKE: Your Honor, under the
2 Fonseca case it allows -- all right. There are
3 three cases that I will cite to you on rape shield
4 law. The first is State v. Fendley --

5 THE COURT: I don't really want to hear
6 argument because I'm not going to hear any of this
7 before trial. I'm going to hear it during the
8 course of the trial so that I can have a
9 contemporaneous record. I'm going to proffer all
10 of this outside the jury's presence, and then I'm
11 going to rule on it, because I'm not going to have
12 two trials.

13 And even if I heard it before, it's
14 going to develop differently at trial and it's not
15 going to be permanent. It's not a final decision.
16 And people testify differently at trial than they
17 testify in camera, and so my preference is to hear
18 it before any of the matters that are subject to
19 the State's motions in limine, and those include --
20 and maybe not in the order that they were filed,
21 but -- let's see.

22 I apologize, I got myself out of order
23 here. That includes evidence to exclude other
24 sexual assaults. Anything that deals with rape
25 shield -- anything that deals with Lyle, which is

1 other prior bad acts, which I understand they would
2 be seeking to introduce regarding acts that
3 happened outside of the -- they allege happened
4 outside of the State of South Carolina; and
5 anything regarding third-party guilt I would
6 require them, or you, that prior to the
7 introduction or entertaining any line of
8 questioning in that regard, you would need to let
9 the Court know that you have a matter of law to
10 take up outside the jury's presence, and at that
11 time we would hear the testimony in camera and then
12 I'll hear arguments, and then I'll
13 contemporaneously rule on it. And that would will
14 include the video.

15 MS. WILLIAMS: Your Honor, with regard
16 to the video, Mr. Schwacke was kind enough to make
17 an edited version of the video that doesn't have
18 the portion where the child says that her
19 six-year-old brother also humped her, and I wanted
20 to provide that to the Court.

21 THE COURT: Okay.

22 MS. WILLIAMS: This is one that he has
23 reviewed. I have given him a transcript if --

24 THE COURT: Let me ask you a question:
25 Do you all have any objection to his edited version

1 of it?

2 MS. WILLIAMS: No.

3 MR. SCHWACKE: I object to my own
4 version. I simply did that because I had the
5 capability --

6 THE COURT: That doesn't negate your
7 objection, but I need to know what their position
8 is.

9 MS. WILLIAMS: We don't. We sat and
10 watched it with Mr. Schwacke. He was kind enough
11 to do it because he has some technological skills
12 with, you know, videos, and he also edited out some
13 information about MRSA that we agreed to.

14 I understand that he objects to that
15 now, but I did want to provide it to the Court so
16 that you would have the alternate version.

17 THE COURT: Thank you. Appreciate it.

18 MS. WILLIAMS: And it just says,
19 Forensic Interview Edited, and it's not marked or
20 anything.

21 THE COURT: Thank you.

22 Before you go into anything that would
23 be in the nature or be considered a prior bad act
24 with the minor MINOR 2, that would need to
25 be heard in camera as well. Anything outside of

1 what you alleged to be this battery basically that
2 took place in the home as a part of res gestae or a
3 continuum of these events, it needs to be heard in
4 camera.

5 Now, that doesn't mean that he doesn't
6 have the responsibility to contemporaneously
7 object, and I may hear all of it in camera; I don't
8 know. But that depends on how the objections
9 develop. But in terms of -- I'll give you a
10 heads-up, so to speak, to anything else that he's
11 lumped into that category that would be need to be
12 heard in camera prior to being presented to the
13 jury.

14 MS. WILLIAMS: Thank you. That would
15 be through Candace Parks and also through MINOR 2
16 [REDACTED]. So we will make sure that we proffer
17 those.

18 THE COURT: All right. Now, I also
19 need to know have any offers been extended to the
20 defendant?

21 MR. SCHWACKE: Yes, Your Honor, they
22 have.

23 THE COURT: And I'm asking for PCR
24 purposes. What offers were extended to the
25 defendant?

1 MR. SCHWACKE: The actual offer, Your
2 Honor, was plead to one count of criminal sexual
3 conduct with a minor in the first degree straight
4 up, and two counts of unlawful conduct, with
5 sentences to run concurrent.

6 THE COURT: And when was that offered
7 and when was that set to expire?

8 MR. SCHWACKE: It was offered in March
9 of 2014, and it technically by writing expired June
10 2nd, 2014, but it was sort of left available to a
11 point. But there is no offer pending now.

12 THE COURT: Okay. And did he accept
13 or reject that offer, Mr. Schwacke?

14 MR. SCHWACKE: He did not accept.

15 THE COURT: And did he do that with or
16 against your advice?

17 MR. SCHWACKE: It would have been my
18 advice that he --

19 THE COURT: I'm sorry, I can't hear
20 you.

21 MR. SCHWACKE: It would have been my
22 advice that he accept the plea.

23 THE COURT: Sir, stand for me and
24 raise your right hand to be sworn.

25 JERAMY DALE PARKS,

JERAMY PARKS - EXAM BY THE COURT

1 being first duly sworn, testified as follows:

2 THE DEFENDANT: Yes, ma'am.

3 EXAMINATION

4 BY THE COURT:

5 Q. You can put your hand down, sir.

6 Sir, did Mr. Schwacke fully explain to
7 you the nature of the State's offer?

8 A. Yes, Your Honor.

9 Q. Did you understand your conversation
10 with him?

11 A. Yes, ma'am.

12 Q. Did you accept or reject the offer?

13 A. Reject.

14 Q. And did you do that freely and
15 voluntarily and of your own will?

16 A. Yes, ma'am.

17 Q. Did you feel anybody forced you to do
18 it?

19 A. No, Your Honor.

20 Q. Do you feel you were under any duress
21 or suffering from any mental disabilities or under
22 the influence of any drugs or alcohol?

23 A. No, ma'am.

24 THE COURT: What is the -- what is the
25 exposure on a CSC first?

1 MR. SCHWACKE: Twenty-five to life,
2 Your Honor.

3 THE COURT: And CSC third is.

4 MS. WILLIAMS: Zero to 15.

5 THE COURT: And unlawful conduct is 0
6 to 10?

7 MR. SCHWACKE: Yes.

8 THE COURT: Sir, you can take your
9 seat.

10 Does he have any criminal record or
11 criminal history?

12 MS. WILLIAMS: He does, Your Honor.

13 THE COURT: What is the criminal
14 record?

15 MS. WILLIAMS: He has an assault and
16 battery second that was pled down from a lewd act.

17 THE COURT: With who?

18 MS. WILLIAMS: It's an old ABHAN, 2007.

19 THE COURT: In South Carolina?

20 MS. WILLIAMS: Yes, Your Honor, in
21 Charleston County.

22 THE COURT: And who was the victim in
23 that case?

24 MS. WILLIAMS: It was two little girls
25 that lived next door.

1 THE COURT: And was he placed on the
2 central registry or did he have to register as a
3 result of that?

4 MS. WILLIAMS: It was the central
5 registry, Your Honor. Not the sex offender
6 registry.

7 He has an arrest out of Georgia for a
8 child sexual act, but we couldn't confirm if that
9 was a conviction.

10 MR. SCHWACKE: It was not an
11 conviction.

12 THE COURT: Okay. So it was just a
13 charge that's never been adjudicated.

14 MR. SCHWACKE: I believe was dismissed.

15 THE COURT: All right. Is there
16 anything else we need to deal with before we
17 proceed with opening instructions and arguments
18 after lunch? From the State?

19 MS. WILLIAMS: Your Honor, just one
20 thing, that the State neglected to introduce Denita
21 Brown, our paralegal, that sits right next to the
22 jury. And juror number 43, Patice Davis, went to
23 school with Anita and knows her --

24 THE COURT: Well, I asked if there was
25 anyone that knew anyone employed in any capacity in

1 your office.

2 MS. WILLIAMS: I understand. I just
3 wanted to be candid with the Court.

4 THE COURT: She didn't -- what was her
5 number?

6 MS. WILLIAMS: Number 43, Patice Davis.

7 THE COURT: Is there any request for
8 the Court to conduct additional voir dire from the
9 State?

10 MS. WILLIAMS: Not from the State.

11 THE COURT: From the defense?

12 MR. SCHWACKE: Your Honor, I think if
13 you could just for the record make an inquiry.

14 THE COURT: That's fine. And tell me
15 your paralegal's name again.

16 MS. WILLIAMS: Her name is Denita
17 Brown, Your Honor.

18 THE COURT: Now, I also need to ask,
19 what of these witnesses on the State's witness list
20 will you not be calling? Because I understand that
21 you all basically threw in the kitchen sink, and I
22 need to know for scheduling purposes so I'll know
23 how to allocate our time what we're actually
24 dealing with.

25 MS. WILLIAMS: There are some we won't

1 be able to tell until after others testify, but
2 there's others -- Cory Arrington --

3 THE COURT: I need the numbers on your
4 list. That's number 15.

5 MS. WILLIAMS: The ones we know for
6 sure that we won't be calling is number 15 and 14
7 and 13. I'm sorry, we are calling number 15.
8 Number 13 and 14 we won't be calling and numbers
9 29, 28, and 27, Dr. Brittain, Blue and Steele, and
10 number 25 Debra Wade. There may be some other
11 others we may not call, but we need to see.

12 THE COURT: So you're telling me you're
13 calling 24 witnesses?

14 MS. WILLIAMS: We're definitely calling
15 20, but there's four that we may not.

16 THE COURT: No. I already took off the
17 ones you told me you weren't calling. I have a
18 list of 30 people, and when I subtract those folks,
19 that's when I come out with the number I just
20 indicated.

21 I have a list of witnesses 1 through
22 30, and you just indicated to me that you were not
23 calling six of them, which is 24.

24 MS. WILLIAMS: Okay. I'm sorry, number
25 22, Sylvia Hariston we won't be calling, and Senora

1 Waiter, number 19.

2 THE COURT: Okay. I think I don't have
3 to tell you all that we need to be efficient with
4 our time because we are going to be hard-pressed to
5 finish the trial by Friday with that number of
6 witnesses. So I expect everyone to comport
7 themselves accordingly.

8 Please bring in the jury.

9 And I'm appointing number 103 as the
10 foreperson.

11 MR. SCHWACKE: Your Honor, just for the
12 record, prior to --

13 THE COURT: Close that door for me,
14 please.

15 MR. SCHWACKE: Prior to the jury being
16 sworn, the Defendant is not waiving jurisdiction,
17 demands strict proof of that.

18 THE COURT: I would assume that you
19 would.

20 MR. SCHWACKE: Under State v. Evans, it
21 has to be specifically moved for by the Judge.

22 THE COURT: Okay. But, you know they
23 don't have to say -- I mean, they can infer the
24 county -- all they have to do is say the address.

25 MS. LITTLEJOHN: Your Honor, you would

1 be questioning that one juror outside of the
2 presence --

3 THE COURT: Yes. No. I'm going to ask
4 the entire panel.

5 (Jury in, 1:29 p.m.)

6 THE COURT: Ladies and gentlemen, you
7 have been incredibly patient with us and I
8 appreciate it. We've gotten a lot accomplished, it
9 took a little longer than I anticipated, and if
10 you're like me, you're very hungry and I understand
11 that you would like to get some lunch. We are
12 going to break for lunch until -- and that clock is
13 a little fast. I have 1:28. We're going to break
14 until 2:30 for lunch.

15 During this break, please do not
16 discuss the case among yourselves and please don't
17 speculate about what you think it may or could be
18 about. We will resume with opening instruction and
19 opening argument, and I anticipate that we will get
20 through a couple of witnesses today before we break
21 for the evening.

22 Before we begin the trial of the case
23 and before I have the clerk swear you, I need to
24 ask, is there any member of the panel who is
25 related by blood or marriage, or has a close

1 personal or social relationship with Denita Brown
2 who is employed with the Solicitor's Office? If
3 so, if you would stand.

4 A JUROR: (Standing)

5 THE COURT: And, ma'am, your name and
6 juror number?

7 A JUROR: My name is Patice Davis,
8 number 43.

9 THE COURT: And, ma'am, how are you
10 acquainted with Ms. Brown?

11 A JUROR: I've known her all my life.

12 THE COURT: Okay. How often would you
13 say you see her?

14 A JUROR: Well, now that I've married,
15 so I don't see her that often now.

16 THE COURT: Okay. As a result of this
17 experience, do you feel that you can remain fair
18 and impartial?

19 A JUROR: Yes, ma'am.

20 THE COURT: Do you feel you can render
21 a fair and impartial decision in this case, based
22 solely on the evidence as it would be presented and
23 on the law as the Court will instruct?

24 A JUROR: Yes, ma'am.

25 THE COURT: Thank you, ma'am. You may

1 take your seat.

2 If you all will stand for me please and
3 raise your right hands to be sworn.

4 Is there any exception from the State?

5 MS. WILLIAMS: Not from the State, Your
6 Honor.

7 MR. SCHWACKE: May we approach for a
8 second?

9 (Bench conference.)

10 MR. SCHWACKE: Judge, I didn't
11 introduce Keisha White, who is with our office.

12 THE COURT: We had people stand up who
13 said she had represented them in the past. Do you
14 want me to ask the question?

15 THE COURT REPORTER: Judge, it's not
16 coming through on my microphone.

17 THE COURT: You all need to talk right
18 here so she can --

19 THE COURT REPORTER: It's not coming
20 through. My microphone is not working.

21 THE COURT: You all are whispering.
22 You need to talk right here.

23 Do you want me to do it? Do you all
24 want me to ask?

25 MS. WILLIAMS: Go ahead. That's fine.

1 (End of bench conference)

2 THE COURT: Ladies and gentlemen, is
3 there any member of the panel who is related by
4 blood or marriage to, or have any social or
5 business relationship with Keisha White, who is an
6 attorney employed with the Public Defender's
7 Office? If so, please stand at this time.

8 THE JURY PANEL: (None)

9 THE COURT: Let the record reflect
10 there has been no response.

11 Ladies and gentlemen, please stand and
12 raise your right hands to be sworn.

13 THE JURY,
14 being first duly sworn, testified as follows:

15 THE JURY: We do.

16 THE CLERK: Thank you. Please be
17 seated.

18 THE COURT: Ladies and gentlemen,
19 again, we are breaking until 2:30 for lunch.
20 During the break, please do not discuss the case.
21 Please don't speculate about what you think it may
22 or could be about. Please do not do any
23 independent research on the Internet regarding any
24 issue or matter involved in the case. Please do
25 not read, watch, or listen to any media accounts

1 about this case.

2 Also, please do not post anything about
3 your statuses on any social networking sites. That
4 includes, Instagram, Facebook, Twitter, Snap Chat,
5 Periscope ... there are so many, I've lost track.
6 I rather pride myself however of being aware of
7 Periscope since I'm not very technologically
8 astute, nor do I have any social media accounts.

9 But, in any event, a very innocent
10 comment could be so very easily misinterpreted.
11 People now are so attached to these services that
12 it's a constant stream on their telephone, and you
13 would be amazed of the people that call us and tell
14 us what you have said, and they are not on jury
15 duty.

16 To avoid that altogether, we would ask
17 that you refrain from making or posting anything
18 regarding your jury service. Again, we would not
19 want an innocent comment to be misinterpreted.

20 And when you return to the courthouse,
21 there will be a bailiff waiting on you downstairs
22 that will bring you directly up to the jury room.
23 And in that process, in the parking lot,
24 restaurants, otherwise, please don't have any
25 contact with anybody that you don't recognize to be

1 a fellow juror. Again, people look very different
2 outside the courthouse than in the courthouse, and
3 we would not want an innocent conversation to be
4 misinterpreted.

5 You all have been incredibly patient
6 with us. We appreciate it, we appreciate your
7 service. Hope you all have a great lunch and we
8 will see you at 2:30. If you would go with the
9 bailiffs please.

10 (Jury out, 1:32 p.m.)

11 THE COURT: Anything before we adjourn
12 for lunch? From the State?

13 MR. SCHWACKE: Your Honor, I'm assuming
14 we're going to be sequestering witnesses.

15 THE COURT: You didn't ask, but if you
16 need that, you need to ask for it so that I can
17 rule on it.

18 MR. SCHWACKE: I'm now requesting that
19 witnesses be sequestered.

20 THE COURT: Any exception to the
21 witnesses being sequestered?

22 MS. WILLIAMS: Yes, Your Honor. Just
23 the mother of the minor victim and the case agent,
24 Brian Fenton.

25 THE COURT: And by statute that can't

1 be excluded.

2 MR. SCHWACKE: We're talking about the
3 mother of the victim?

4 MS. WILLIAMS: We're talking about the
5 mother who has adopted her, her legal mother.

6 MR. SCHWACKE: Your Honor, we're fine
7 with that.

8 We had Thelma Phelps listed as a
9 witness. She is no longer a witness for us.

10 THE COURT: I will redact her from your
11 list. That leaves -- you had Jeramy Parks, the
12 Defendant. I deliberately did not read his name
13 because he has no obligation to testify, but he had
14 already been included in voir dire, and you had
15 Maxwell Gifford and James Miller. I assume they're
16 still on the list?

17 MR. SCHWACKE: They are still on the
18 list. They are on the State's list too.

19 THE COURT: All right. Great. See you
20 after lunch. If you have any exhibits you need to
21 premark that you agree upon, if you could get with
22 the court reporter and get it accomplished, I would
23 greatly appreciate that.

24 (A luncheon recess transpired.)

25 (State's Exhibits 1 - 15, were

1 previously marked by the Solicitor's Office for ID
2 only.)

3 THE COURT: All right. State ready to
4 proceed?

5 MS. WILLIAMS: State is ready.

6 THE COURT: Defense ready to proceed?

7 MR. SCHWACKE: Yes, Your Honor.

8 THE COURT: Were there any exhibits
9 that you have premarked?

10 MS. WILLIAMS: We do have some
11 premarked, but they're not agreed to.

12 THE COURT REPORTER: No, I did not
13 premark any.

14 THE COURT: Then I don't need to know
15 what they are. You will just have to introduce
16 them as you normally would.

17 So the State -- the defense did not
18 have anything either that you all agreed upon?

19 MS. WILLIAMS: He hasn't given us
20 anything.

21 THE COURT: Okay.

22 Do we have pads for the jury?

23 THE BAILIFF: Yes, ma'am.

24 (Jury in, 3:47 p.m.)

25 THE COURT: Ladies and gentlemen, we

1 appreciate your patience. As I told you during the
2 jury qualification, there will be times during this
3 process when you all would be waiting on us. While
4 you've been waiting, I've disposed of two other
5 cases from the trial docket that are completely
6 unrelated to this case. It took a little longer
7 than we anticipated, so I appreciate your patience.

8 Jury service is the only time when you
9 can be waiting but you're actually working. So
10 being able to dispose of those cases actually
11 decreased the Court's need for the jury this week.
12 So, again, I appreciate your patience and we do not
13 take your time for granted.

14 As I explained to you, the case that
15 we're about to try and the case that you've been
16 selected for is the State of South Carolina v.
17 Jeramy Dale Parks. I'm now going to give you some
18 preliminary instructions so that you will better
19 understand procedurally how a case is tried and so
20 that you will better understand what is happening
21 as we proceed in trial.

22 Again, these are just introductory
23 remarks. They are not a charge on the law. And so
24 that you know, charge and instructions are
25 interchangeable terms. Charge is a legal term of

1 art that simply means instruction. So when you
2 hear me say charge and instruction, they mean --
3 the words mean the same thing. I will instruct you
4 on the law applicable to this case at the end of
5 the trial before you retire to consider your
6 verdict in this case. This is merely an
7 explanation of our procedures.

8 During the course of this trial, you
9 will be given the opportunity to take notes. Each
10 of you has a notepad. I would ask that you write
11 your juror number on the very first page of that
12 notebook so that you will know which pad belongs to
13 you, and you will be able to readily identify which
14 notepad belongs to you.

15 I will give you some additional
16 instructions about note-taking, but please know
17 that during breaks and recesses, your notes will be
18 secured and you don't have to be concerned about
19 anybody intruding on your privacy by reading notes
20 that you may take during the course of the trial.

21 The Defendant is charged by several
22 indictments filed in this court that I have already
23 gone through, but briefly he is charged with
24 criminal sexual conduct with a minor in the first
25 degree, four counts, and criminal sexual conduct

1 with a minor, third degree, and one count of
2 unlawful conduct toward a child, and an additional
3 count of criminal sexual conduct with a minor in
4 the first degree.

5 The elements of these offenses I will
6 explain to you at the conclusion of the case. And
7 we refer to those as the elements of the cause of
8 action; in other words, the element -- each crime
9 has elements which the State is required to prove
10 beyond a reasonable doubt. And I will explain
11 those elements to you at the conclusion of the
12 trial.

13 The indictments, ladies and gentlemen,
14 are simply the charge or charges by which a case is
15 brought into court, and they are not in any sense
16 evidence of the allegations they may contain. The
17 Defendant has pled not guilty to these indictments.
18 The State, therefore, has the burden of proving
19 each and every element of the indictments beyond a
20 reasonable doubt. And it will be your duty to
21 decide whether the State has met that burden or
22 not.

23 Your purpose as jurors is to find and
24 determine the facts of the case. You are the sole
25 judges of the facts in this case. If at any time I

1 make any comment regarding the facts of this case,
2 you must disregard it. You are to determine the
3 facts from the testimony that you hear and the
4 other evidence that may be introduced during the
5 course of the trial.

6 It is up to you to determine the
7 inferences which you feel may be properly drawn
8 from the evidence. It is especially important that
9 you perform your duty of determining the facts
10 diligently and conscientiously, because ordinarily
11 there is no way to correct an erroneous
12 determination of the facts made by a trial jury.

13 On the other hand, and with equal
14 emphasis, the same law that makes you the judges of
15 the facts, makes me the judge of the law. The law
16 as given by the Court is the only law you may or
17 must consider. You must accept and follow it even
18 though you may disagree with it. The Court cannot
19 tell you what the facts are and you cannot disagree
20 with the Court about what the law is or what the
21 law should be.

22 Your responsibility, ladies and
23 gentlemen, is to take the law as I instruct it and
24 apply it to the facts as you find them from the
25 testimony of the sworn witnesses and other evidence

1 that may be introduced during the course of the
2 trial. After doing that, you will render your
3 verdict, a true and just verdict under the solemn
4 oath that you have taken as jurors in this case.

5 Until I advise you to begin your
6 deliberations, you must not discuss this case with
7 anyone. That includes among yourselves, your
8 friends, family member, or anyone involved in the
9 case. After the case is submitted to you, you must
10 discuss it only among your 12 in the jury room.

11 The attorneys and the parties have been
12 advised that they should not speak to you at all,
13 so if you should see them in the hallway, on the
14 way to your cars during lunch, or even at a local
15 restaurant during lunch, and they should not speak
16 with you, please don't think they are being
17 unfriendly. They are simply strictly following the
18 Court's instructions. Again, we would not want an
19 innocent conversation to be observed and
20 misinterpreted.

21 During the trial you are not to read,
22 listen to, or watch any media accounts about this
23 case; that includes anything in the newspaper,
24 radio, television or Internet. And you are not to
25 do any independent research regarding any issue or

1 matter involved in this case on the Internet.

2 Ladies and gentlemen, you are bound to
3 decide this case from the testimony that you will
4 hear from the sworn witnesses and the other
5 evidence that will be introduced uninfluenced by
6 anything that you could or may hear outside of the
7 courtroom whether before or during the course of
8 the trial.

9 It is essential that you maintain an
10 open mind and not decide any issue in this case
11 until all of the evidence has been presented, the
12 parties have made their closing arguments, and I
13 have instructed you on the law in this case. It is
14 your solemn responsibility to determine the guilt
15 or innocence of the Defendant, and your verdict
16 must be based solely on the evidence as it is
17 presented to you in this trial and on the law as I
18 will instruct you during and at the close of the
19 trial.

20 In just a moment the Solicitor will
21 make an opening statement in which she will explain
22 to you what she believes the issues to be in this
23 case. The attorney for the Defendant may also make
24 an opening statement, although he is not required
25 to do so.

1 Ladies and gentlemen, keep in mind that
2 what the attorneys say during their opening
3 statements is not evidence in this case. It is
4 only their representation as to what they believe
5 the evidence will show in this case. The evidence
6 in the case will be presented to you by the
7 testimony of sworn witnesses from the witness stand
8 and/or by exhibits that may be introduced by
9 evidence.

10 From time to time during this trial you
11 will hear the attorneys say, Your Honor, I object.
12 Just as in sports, business, or any other
13 structured activity, there are certain rules that
14 the attorneys must obey in the presentation of the
15 evidence. These rules have a definite purpose;
16 they ensure that you receive the most trustworthy
17 and reliable evidence available.

18 An objection is the procedure that the
19 attorney uses to call a possible violation of these
20 Rules to my attention as the judge of the court,
21 and for this reason you should never hold an
22 attorney's objection against them, nor should you
23 conclude from the Court overruling or sustaining an
24 objection that I favor one side or the other. In
25 fact, in any good trial there should be a lot of

1 objections so you all should expect them.

2 In line with that, you will also hear
3 the attorneys say, Your Honor, we have a matter of
4 law, or sometimes they may ask to approach the
5 bench, or I may ask them to approach the bench, or
6 it may even be necessary for us to exclude you from
7 the courtroom for a short while as we discuss
8 matters of law. The reason we do this, as I've
9 explained, is that you are the finders of the
10 facts, and sometimes when I'm discussing matters of
11 law with the attorneys, it might be necessary for
12 me to make a comment about the facts in connection
13 with ruling whether a statute applies or a rule of
14 procedure or evidence rule applies; and for this
15 reason we exclude you from the courtroom so that in
16 no way will you be influenced by anything that the
17 Court may say or do in connection with the facts of
18 this case.

19 In determining what the true facts are,
20 you must decide whether or not the testimony of a
21 witness or witnesses is believable. It is my
22 responsibility to rule as a matter of law as to
23 whether certain testimony is admissible at all or
24 not, but once the testimony is admitted, whether or
25 not you believe it is solely a matter for you to

1 determine.

2 In deciding whether to believe a
3 witness you have the right to consider the interest
4 of any witness, the bias of any witness, the
5 prejudice of any witness, the opportunity for the
6 witness to have seen the matters and things about
7 which the witness may testify, and the way the
8 witness acts on the witness stand, something we
9 commonly refer to as demeanor.

10 You have a right to consider anything
11 that is in the record that would help you evaluate
12 the testimony of the witnesses. That means, ladies
13 and gentlemen, that it is your duty to pay close
14 attention to the witnesses, to observe them, to
15 listen to them, and to pay close attention to the
16 attorneys and the court.

17 Although I know it is very difficult,
18 please do not let your thoughts wander, but give
19 strict attention to the testimony so that at the
20 end of the testimony, after the arguments of the
21 lawyers and the charge on the law is given by the
22 Court, you will then be in a position to determine
23 what the true facts are, apply the law to those
24 facts and, thus, render a true and just verdict in
25 this case.

1 During the course of this trial you
2 will be given the opportunity to take notes.
3 Note-taking is a privilege that you may choose to
4 exercise or choose not to exercise. Not everyone
5 finds note-taking helpful to them, so do not feel
6 that you are required to take notes. If you should
7 decide to take notes, please do not try to record
8 everything that is said; it's physically
9 impossible. Even a slow to moderate speaker speaks
10 at 200 words a minute, and as you can imagine,
11 that's a lot of words to try to take down. As the
12 fact-finders, it is essential that you rely on your
13 powers of observation.

14 Please do not allow note-taking to
15 become a distraction to you. You may want to keep
16 an outline of the main points and arguments that
17 are being made so that when you retire to
18 deliberate, you can allow your notes to refresh
19 your memory.

20 During breaks and recesses, your notes
21 will be left in your seats, and we do that to make
22 sure there is no premature temptation to deliberate
23 prior to the conclusion of the case.

24 I would remind you that your notes are
25 for your specific and your individual purposes.

1 They're not to be shared with anyone else. They
2 are only to be used to refresh your own memory. I
3 would also remind you that your notes should not be
4 considered any more reliable than a fellow juror's
5 memory. Their memories should be considered just
6 as reliable as notes taken by a fellow juror.

7 Madame Forelady, it is your
8 responsibility to fill out the verdict form, and I
9 will give you additional instructions regarding
10 that at the conclusion of the case, as well as
11 write out any questions that the jury may have
12 during deliberation.

13 Ladies and gentlemen, the foreperson is
14 simply an administrative -- they serve an
15 administrative function. They fill out the verdict
16 form, write out any questions you may have during
17 deliberations. That person does not have any
18 greater vote or voice than you do. It's purely
19 administrative and it's purely random in the
20 selection. We do that, again, to make sure that we
21 have a person available in that capacity to fill
22 out the verdict form and otherwise.

23 In order to preserve everyone's rights,
24 I will give the parties an opportunity to take
25 exception to anything the Court has said by way of

OPENING STATEMENT BY MS. HERRING-LASH

1 opening instructions.

2 Any exception from the State.

3 MS. WILLIAMS: No, Your Honor.

4 THE COURT: From the defense?

5 MR. SCHWACKE: No, Your Honor.

6 THE COURT: Ladies and gentlemen, I
7 would ask that you give the attorneys your
8 undivided attention. The State may proceed.

9 MS. HERRING-LASH: May it please the
10 Court.

11 THE COURT: Yes, ma'am.

12 MS. HERRING-LASH: She's my daughter
13 and I will do what I want to her. That is what
14 Jeramy Parks said, what he believed, and how he
15 acted toward his little daughter MINOR 1. He made
16 this very telling statement when Candace Parks, his
17 wife and MINOR 1's mother, caught him sexually
18 assaulting MINOR 1. Yes, her mother caught him
19 doing this and did nothing, but lie to law
20 enforcement and DSS.

21 The family lived in Berkeley County
22 between August of 2012 and March of 2013. At that
23 point in time, they did have involvement with DSS
24 and Mr. Parks was not to be living in the home by a
25 safety plan. DSS visited the home, they spoke to

OPENING STATEMENT BY MS. HERRING-LASH

1 the children, those that could talk -- there were
2 in all six children. MINOR 1 had four brothers and
3 one baby sister.

4 And all of these children that could
5 talk spoke to the DSS workers, even at school, and
6 never told them that he was there. They were
7 afraid to talk about this. DSS kept going there
8 and looking and, finally, in March of 2013, after
9 an anonymous phone call, they went in the evening
10 hours and found Jeramy Parks there.

11 The children were removed, and after
12 being placed in foster care for about a month,
13 MINOR 1 finally felt like she could talk and she
14 was interviewed and told about what had been going
15 on.

16 As a result of that interview,
17 Mr. Parks was charged with the crimes that the
18 judge has explained to you already. I'll briefly
19 just go over some of the elements of those charges.
20 The element of the charge are the things that the
21 State has to prove in order to present to you the
22 case.

23 The elements of criminal sexual conduct
24 with a minor in the third degree, the Defendant is
25 over the age of 14, the Defendant willfully and

OPENING STATEMENT BY MS. HERRING-LASH

1 lewdly committed or attempted any lewd or
2 lascivious act upon or with the body of a child
3 under 16 with the intent of arousing or appealing
4 to or gratifying the lust and passion of such
5 child. This is what most of us would normally
6 think of as child molestation; fondling, short of
7 penetration, the touching on the private parts of
8 an adult to a child.

9 He was also charged, as you have heard,
10 with criminal sexual conduct with a minor in the
11 first degree. Now the elements of that is that the
12 actor, in this case Jeramy Parks, committed a
13 sexual battery, and I will explain to you in a
14 moment what a sexual battery is, and that the
15 victim is less than 11. So those are the only
16 elements that are involved.

17 One of the things that you may notice
18 when you look at those elements is that you don't
19 see an element of force or coercion or violence
20 that is required. This is because it makes it a
21 crime the fact that the child is under the age of
22 11. So physical force and violence is not an
23 element that the State must prove, just her age,
24 his age, and that a sexual battery occurred.

25 Now, sexual battery could be

OPENING STATEMENT BY MS. HERRING-LASH

1 intercourse, cunnilingus, and cunnilingus is the
2 mouth onto the female genitalia, fellatio, which is
3 the male penis into the mouth, anal intercourse or
4 any intrusion, however slight, into any part of a
5 person's body, or an object into the genital or
6 anal opening of another person's body, unless that
7 is done for some medically-recognized purpose.
8 Those are the charges that we are here on today.

9 As I said, MINOR 1 was placed in foster
10 care back at that time. When she went into foster
11 care she was five. Today she is almost eight years
12 old, she will be eight in October, and she will --
13 she thankfully really does not remember all of the
14 details that she remembered back in 2013 when she
15 was placed into foster care, but she will take the
16 stand this afternoon and tell you what she does
17 remember.

18 It's hard to predict how any witness
19 will react to being on the witness stand and to
20 being in this environment. Some of you may even
21 have been a little scared or hesitant when you had
22 to stand up out there and say something. It is
23 multiplied when you have to talk about something so
24 intimate and so scary, so we cannot predict, but
25 you'll -- in her interview back in 2013, she was a

OPENING STATEMENT BY MS. HERRING-LASH

1 bit matter of fact when she first told.

2 Now she understands what really was
3 happening, that she didn't really have a good
4 knowledge of what exactly was going on back then
5 when she was just six, but now she does.

6 And it not only causes some discomfort,
7 but it also causes her to be very anxious. And
8 anxiousness in children often presents as giggling,
9 silly, or hesitancy. We don't know how it will be,
10 but she will attempt to explain to you what she
11 remembers.

12 Now, child sexual abuse is very
13 different than other kinds of crimes. It's very
14 different than the crimes that you see talked about
15 on TV. First of all, it's almost exclusively
16 perpetrated in the privacy and secrecy of a home.
17 It's not like a DUI or a robbery that may be out in
18 the street or in a store that people see and can
19 testify about. The witness is the child or family
20 members.

21 It is not the kind of crime, like a
22 burglary or a robbery, when law enforcement can go
23 out and find the items that were stolen and bring
24 here to you. The child's innocence is stolen and
25 you can't put that in an evidence bag and bring it

OPENING STATEMENT BY MS. HERRING-LASH

1 to court.

2 Very often there is no physical kind of
3 damage, you don't have any x-rays of broken bones.
4 The doctors are usually here to explain why there
5 is no physical evidence in a case of child sexual
6 trauma. The trauma is emotional, and you can't see
7 that in an x-ray or an exam.

8 The other thing is -- I said it's
9 usually in the child's home so that when -- and the
10 children do not tell immediately. You rarely have
11 a 911 call. What that means for you, as far as the
12 evidence that you may get, you don't have like the
13 victim that is taken immediately to the emergency
14 room for a medical exam. It could be months or
15 weeks, days since there was an assault.

16 SLED has a protocol that tells the
17 nurses and the doctors that do the exams, that if
18 it's been more than 72 hours, you don't swab
19 looking for what you see on TV as DNA, that it's
20 too late for that. And when you think about it,
21 what you're looking for when they look at the
22 hospital for DNA is trace body fluid left or, you
23 know, hair left, or something.

24 If it's -- if the person has bathed,
25 changed clothes, gone to the bathroom, gone about

OPENING STATEMENT BY MR. SCHWACKE

1 their everyday living, you wouldn't be able to swab
2 and find anything.

3 Also, because it is in their own home,
4 as I said earlier almost all of the time, we don't
5 have Crime Scene going in and searching for
6 evidence that the person's been there and you can
7 prove that, oh, he was in this house, because he
8 lived there. Finding his semen on his own couch
9 doesn't prove anything to us, or finding -- the
10 fact that they can prove that he was there doesn't
11 prove anything because that's where he lived.

12 You will hear testimony then from
13 MINOR 1, from DSS, law enforcement, other family,
14 people, and you will hear from Candace Parks. She
15 will tell you what she saw. And after you hear
16 this testimony, we would ask you to pay attention,
17 and at the end to find Jeramy Parks -- to find a
18 verdict that speaks the truth that he violated his
19 daughter because he could.

20 MR. SCHWACKE: May it please the Court.

21 THE COURT: Yes, sir.

22 MR. SCHWACKE: Good afternoon. Since
23 I've been an attorney since 1981, I've seen a lot
24 of different things, and I've worn a lot of
25 different hats. The one that I'm wearing today is

OPENING STATEMENT BY MR. SCHWACKE

1 as an attorney representing Mr. Parks, and I'm
2 honored to do that.

3 Now, you-all are going to say, Mr.
4 Schwacke, how can you say that to us? These
5 charges are horrendous. And I'm sure that was
6 probably a lot of peoples' reaction when they first
7 heard the charge today. But I've taken an oath,
8 just like the Solicitor has taken -- even the judge
9 has taken an oath -- to swear to uphold and defend
10 the constitution of the state and the United
11 states.

12 And I'm honored to be a part of that
13 process because it guarantees a lot of protections
14 to people to make sure that they aren't convicted
15 except on the basis of evidence of guilt beyond a
16 reasonable doubt.

17 And no matter what your reaction was
18 when you heard these charges read to you this
19 morning, you all indicated that you're going to be
20 fair to the State and to Mr. Parks. And that's all
21 we can ask of you, is to be fair and impartial and
22 to listen to the evidence, because things are not
23 always as they might first appear.

24 So we invite you to listen to the
25 evidence. We invite you to listen to the

OPENING STATEMENT BY MR. SCHWACKE

1 cross-examination of those witnesses and we ask you
2 again to be fair and impartial. Because in the
3 end, when all is said and done, this might not be
4 the case as strong as the State wants you to
5 believe it is. Thank you.

6 THE COURT: State may proceed.

7 MS. HERRING-LASH: The State would call
8 MINOR 1 -- MINOR 1 .

9 See that lady standing right there,
10 MINOR 1 , go to her. Okay?

11 MR. SCHWACKE: Your Honor, may we
12 approach?

13 THE COURT: Yes.

14 (Bench conference)

15 MR. SCHWACKE: We had asked for the
16 determination of her competency prior to her actual
17 testimony --

18 MS. LITTLEJOHN: Outside the
19 presence --

20 THE COURT: Well, they can go through
21 that in her presence. They can ask whether she
22 knows. I've done it both ways, but --

23 MS. WILLIAMS: They're presumed to
24 be --

25 THE COURT: Yeah. The case law says

MINOR 1 - DIRECT EXAM BY MS. HERRING-LASH

1 they are presumed to be unless they -- there's some
2 indication they're not.

3 Overruled. You may proceed.

4 MR. SCHWACKE: Subject to our
5 objection.

6 THE COURT: Uh-huh.

7 (End of bench conference.)

8 MINOR 1, _____

9 being first duly sworn, testified as follows:

10 THE COURT: You may proceed.

11 MR. SCHWACKE: Please note my
12 objection.

13 THE COURT: Noted and overruled.

14 THE CLERK: If you will say your full
15 name for this lady right here.

16 THE WITNESS: MINOR 1 .

17 DIRECT EXAMINATION

18 BY MS. HERRING-LASH:

19 Q. Can you spell your last name, MINOR 1 ,
20 for her?

21 A. _____ .

22 Q. Thank you.

23 MINOR 1 , how old are you?

24 A. Seven.

25 Q. And do you know your date of birth?

MINOR 1 - DIRECT EXAM BY MS. HERRING-LASH

1 Your birthday?

2 A. (Shaking head)

3 Q. How old will you be when you have your
4 birthday?

5 A. Eight.

6 Q. Where do you live?

7 A. Old Beach Hill Road, Thomson Boulevard,
8 Casey May Way.

9 Q. Casey May Way?

10 A. (Nodding)

11 Q. Okay. Who lives with you?

12 A. Mom, dad, and my two sisters, and my
13 four brothers.

14 Q. Oh, you have a big family, huh?

15 A. (Nodding)

16 Q. And do you go to school?

17 A. Yes.

18 Q. And what school do you go to?

19 A. Beach Hill Elementary School.

20 Q. What grade are you in?

21 A. Second.

22 Q. And, MINOR 1, do you know where you are
23 today?

24 A. In the courtroom.

25 Q. Okay. And when you're in the

MINOR 1 - DIRECT EXAM BY MS. HERRING-LASH

1 courtroom, are you supposed to -- what are you
2 supposed to talk about?

3 A. The truth.

4 Q. And, MINOR 1, is it good or bad to tell
5 the truth?

6 A. Good.

7 Q. What about to tell a story or a lie,
8 would that be good or bad?

9 A. Bad.

10 Q. MINOR 1, what color is this pen?

11 A. Blue.

12 Q. If I said this pen was pink, would I be
13 telling the truth or a lie?

14 A. Lie.

15 Q. If I said this pen was blue, would I be
16 telling the truth or a lie?

17 A. Truth.

18 Q. Okay. And, MINOR 1, do you remember
19 putting your hand on the Bible?

20 A. Yes.

21 Q. What did you promise to tell?

22 A. The truth.

23 Q. Okay. And are you going to tell the
24 truth today?

25 A. Yes.

MINOR 1 - DIRECT EXAM BY MS. HERRING-LASH

1 THE COURT: Any exceptions?

2 MR. SCHWACKE: There would be, Your
3 Honor.

4 THE COURT: Okay. Approach.
5 (Bench conference)

6 THE COURT: Right here. What's the
7 basis of the objection?

8 MR. SCHWACKE: Debbie is going to make
9 this objection.

10 THE COURT: Do you have any good-faith
11 argument that she's not competent to know the
12 difference between the truth and a lie?

13 MS. LITTLEJOHN: It's not just about
14 the truth and the lie, it's about the
15 particularized guaranteedness that you-all -- can't
16 say these words real well, you-all know what I'm
17 saying -- the particularized guaranteedness of
18 trustworthiness which encompasses the whole thing,
19 the whole element of it. She didn't know --

20 THE COURT: Sometimes I forget my
21 birthday.

22 MS. LITTLEJOHN: Yeah, but that's
23 because we're all getting older. But --

24 THE COURT: Sometimes I don't know my
25 left from my right. That doesn't mean I'm not

MINOR 1 - DIRECT EXAM BY MS. HERRING-LASH

1 competent; and I've got a law degree.

2 MS. LITTLEJOHN: I'm not going to call
3 her on that because we all are.

4 THE COURT: It has nothing to do with
5 age. I've had issues with that since first grade.

6 MS. LITTLEJOHN: I would like to get
7 into some more of it, some more questioning of her
8 to get the full circle of --

9 THE COURT: I think I have enough
10 perspective because I've seen more. She's
11 competent; she knows the difference between the
12 truth and a lie. If you want to impeach her,
13 that's up to you. Regarding her ability to recall
14 and otherwise, that wouldn't make her any less
15 competent. There are adults who can't recall
16 things.

17 MS. LITTLEJOHN: Thank you, Your Honor.
18 (End of bench conference.)

19 THE COURT: The objection is overruled.
20 You may proceed.

21 BY MS. HERRING-LASH:

22 Q. MINOR 1, you said that you go to Beach
23 Hill Elementary?

24 A. Yeah.

25 Q. And you're in the second grade?

MINOR 1 - DIRECT EXAM BY MS. HERRING-LASH

1 A. (Nodding)

2 Q. Do you have some friends there?

3 A. Uh-huh.

4 Q. What are some of their names that you
5 can remember today?

6 A. Peyton, Jocelyn, and Abby, and Morgan,
7 and Austin.

8 Q. I think that's enough, but you have
9 lots of friend at school, huh?

10 A. Yes.

11 Q. And you can tell us about them today
12 and tell us their names? You did, huh?

13 And, MINOR 1, what do you like to do at
14 school?

15 A. Math.

16 Q. Oh, you do? What do you do at home for
17 fun?

18 A. Play outside.

19 Q. And you have lots of brothers and
20 sisters to play with?

21 A. Yes.

22 Q. Now, MINOR 1, you told us where you
23 live on Casey May Lane. And did you live somewhere
24 else before you moved to Casey May Lane?

25 A. Uncle Mike's house.

MINOR 1 - DIRECT EXAM BY MS. HERRING-LASH

1 Q. And when you lived at Uncle Mike's
2 house, who lived there with you?

3 A. Daddy Jeramy, Candace, Mike, and B. G.,
4 MINOR 2, D. G., and J. P., and L. P..

5 Q. And you said Daddy Jeramy and then you
6 said another J. P.. Do you have a little brother
7 named J. P., too?

8 A. Yes.

9 Q. So two Jeramies?

10 A. Yes.

11 Q. Do you see Daddy Jeramy in the
12 courtroom today?

13 A. (Nodding)

14 Q. Where is he?

15 A. (Indicating)

16 Q. What does he have on?

17 A. A suit.

18 MS. HERRING-LASH: Okay. Let the
19 record reflect that she has identified the
20 Defendant.

21 THE COURT: You may proceed.

22 MR. SCHWACKE: Your Honor, just a
23 matter --

24 THE COURT: No speaking objections.
25 Approach.

MINOR 1 - DIRECT EXAM BY MS. HERRING-LASH

1 (Bench conference.)

2 MR. SCHWACKE: Your Honor, these
3 pictures they're getting ready to introduce now
4 were taken from some extended period of time after
5 she no longer lived in the house.

6 THE COURT: Do you have any indication
7 this is not a realistic --

8 MR. SCHWACKE: When they lived in the
9 house there was ongoing construction going on by --

10 THE COURT: Still looks that way.

11 MR. SCHWACKE: -- by the owners.

12 THE COURT: Still looks that way.

13 MR. SCHWACKE: This outside picture,
14 obviously I think is fine. It's the interior --

15 THE COURT: We're talking about
16 logistics, which is where things are located. You
17 don't have any indication that fixtures have been
18 moved --

19 MR. SCHWACKE: Yes.

20 THE COURT: The tub is in a different
21 place now?

22 MR. SCHWACKE: Yes, it is based on --

23 THE COURT: I think this would be
24 better evidence of it then, because this is how
25 they contend it was when she lived there. How it

MINOR 1 - DIRECT EXAM BY MS. HERRING-LASH

1 is subsequent is irrelevant.

2 MR. SCHWACKE: I don't think they can
3 say that's how it was.

4 THE COURT: Well, I don't know; I have
5 to hear if they can lay the foundation.

6 MS. WILLIAMS: She can recognize the
7 things --

8 MR. SCHWACKE: That's different than
9 saying that's how it was.

10 THE COURT: Well, I don't know what
11 she's going to say. You're going to have to wait
12 and object when they seek to introduce them, to see
13 if they can lay the appropriate foundation for the
14 pictures.

15 Thank you.

16 (End of bench conference)

17 THE COURT: The objection is premature.
18 You may proceed.

19 By MS. HERRING-LASH:

20 Q. MINOR 1, I'm going to show you a
21 picture. Okay?

22 MS. HERRING-LASH: And this has been
23 marked for State's ID Number 1 only.

24 Q. (BY MS. HERRING-LASH) What is that?

25 A. Mr. Mike's house and Mr. Mike and his

MINOR 1 - DIRECT EXAM BY MS. HERRING-LASH

1 dog.

2 Q. Okay. MINOR 1, is that how the house
3 looked when you lived there?

4 A. Yes, ma'am.

5 MS. HERRING-LASH: At this time, we
6 would move in State's Exhibit Number 1.

7 THE COURT: Any objection?

8 MR. SCHWACKE: Not to that particular
9 picture.

10 THE COURT: Marked and admitted
11 without objection.

12 (STATE EXH. 1 in evidence.)

13 BY MS. HERRING-LASH:

14 Q. You said that used to live there,
15 right?

16 A. (Nodding)

17 Q. Why did you have to move from there?

18 A. Because Jeramy Dad did bad stuff to me.

19 Q. And can you tell what bad stuff he did
20 to you?

21 A. He humped me and he put his finger
22 inside me.

23 Q. Okay. Let's go back. When you say, he
24 humped me, where were you when that happened?

25 A. On the couch.

1 Q. And tell us what hump means. What
2 happens?

3 A. It means someone on top of a girl and
4 their private's touching each others private.

5 Q. And so, were you the girl?

6 A. (Nodding)

7 Q. And where were you?

8 A. On the couch.

9 Q. And how were you on the couch? Were
10 you sitting or standing or laying?

11 A. Laying down.

12 Q. And where was Daddy Jeramy?

13 A. On the couch on top of me.

14 Q. Okay. And did you have clothes on or
15 off or something else?

16 A. On, and pulled down.

17 Q. Okay. Where were they pulled down to?

18 A. (Indicating)

19 Q. Can you stand up?

20 A. (Shaking head)

21 Q. You can't. Okay. Are you saying here
22 or here or here? (Indicating)

23 A. To my knees.

24 Q. To your knees.

25 And did Daddy Jeramy have clothes on or

1 off?

2 A. On, and pulled down.

3 Q. Okay. And what happened when he was
4 laying on top of you?

5 A. (No response)

6 Q. What did hump mean?

7 A. It means he put his private in my
8 private.

9 Q. And did that happen?

10 A. (Nodding)

11 Q. And do you know another name for your
12 private?

13 A. Penis and vagina.

14 Q. Which one is your private, the penis or
15 the vagina?

16 A. Vagina.

17 Q. Okay. And how did that feel when he
18 put his penis in your vagina?

19 A. Bad.

20 Q. And did he put his penis anywhere else?

21 A. Yes.

22 Q. Where was that?

23 A. In my mouth.

24 Q. Okay. And where were you when that
25 happened?

1 A. On the couch.

2 Q. Did that ever happen in any other room?

3 A. Nope.

4 Q. Okay. And when he put his penis in
5 your mouth, were you sitting or laying or --

6 A. Laying.

7 Q. Okay. And what about him?

8 A. Sitting.

9 Q. Okay. So he was sitting when he put
10 his penis in your mouth?

11 A. (Nodding)

12 Q. And what happened with the penis when
13 it was in your mouth?

14 A. Umm -- (Indicting)

15 Q. Did Daddy Jeramy say anything to you
16 about that stuff?

17 A. (Shaking head)

18 Q. Did he ever put his penis in any other
19 part of your body?

20 A. Nope.

21 Q. Okay. And did you ever have to go in
22 the shower with Daddy Jeramy?

23 A. Yes.

24 Q. What happened at the shower?

25 A. I had to rub his penis like this.

1 (Indicating)

2 Q. With your hand -- or how -- can you
3 show me again what you mean?

4 A. (Indicating)

5 Q. Okay. And what happened when you did
6 that?

7 A. (No response)

8 Q. How did you know to do that?

9 A. He told me.

10 Q. And did he tell you to do that one time
11 or more than one time?

12 A. More than one time.

13 Q. And when you talked about him putting
14 his penis in your vagina, did that happen one time
15 or more than one time?

16 A. More than one time.

17 Q. And when you talked about him putting
18 -- you said he put his finger in your private also?

19 A. Uh-huh.

20 Q. You didn't tell us anything about that.
21 Where were you when that happened?

22 A. I was on the couch.

23 Q. Okay. And where was Daddy Jeramy?

24 A. On the couch laying on top of me?

25 Q. And how many times did that happen?

MINOR 1 - DIRECT EXAM BY MS. HERRING-LASH

1 Once or more --

2 A. More than once.

3 Q. And what about did he put his penis in
4 your mouth one time or more than one time?

5 A. More than one time.

6 Q. Now, when you say on the couch, did you
7 sleep on the couch or did you have a bed?

8 A. Sleep on the couch.

9 Q. Did you have a bed also?

10 A. No, a sleeping bag.

11 Q. A sleeping bag. Did you have a
12 bedroom?

13 A. (Nodding)

14 Q. I'm going to show you a picture,
15 MINOR 1, that has been marked as ID only, State's
16 Number 5.

17 Do you recognize that picture, MINOR 1?

18 A. (Nodding)

19 Q. And what is that?

20 A. My hallway.

21 Q. And what can you see in that picture?

22 A. My bedroom door, Mr. Mike's room, and
23 the laundry room.

24 Q. Okay. And is that how Mr. Mike's
25 trailer looked when you lived there?

MINOR 1 - DIRECT EXAM BY MS. HERRING-LASH

1 A. Nope.

2 Q. How was it different?

3 A. It was no thing out here, it was inside
4 of that door. (Indicating)

5 Q. It was inside that door. What about
6 your door, was it like that?

7 A. Uh-huh.

8 Q. And what was your door?

9 A. A curtain.

10 Q. A curtain.

11 MS. HERRING-LASH: Your Honor, at this
12 time we would offer to move in State's
13 Exhibit Number 5.

14 THE COURT: Any exception?

15 MR. SCHWACKE: Same as previous, Your
16 Honor.

17 THE COURT: Overruled. It's been
18 authenticated. Objection goes to weight, not
19 admissibility.

20 Is that State's Number 5?

21 MS. HERRING-LASH: Yes, Your Honor.

22 THE COURT: Marked and
23 admitted.

24 (STATE EXH. 5 in evidence.)

25 BY MS. HERRING-LASH:

MINOR 1 - DIRECT EXAM BY MS. HERRING-LASH

1 Q. And in that bedroom, who all slept in
2 there?

3 A. Me and J. P. and L. P..

4 Q. Now, when you -- say those names a
5 little closer, because they don't know the names of
6 your brothers. What are they?

7 A. B. G., MINOR 2, D. G., J. P., and L. P..

8 Q. And that's little J. P.; is that
9 right?

10 A. Yeah.

11 Q. Okay. And how would you get to the
12 couch if that was your bed, or can you explain that
13 to us?

14 A. Jeramy Dad carried me.

15 Q. Okay. And how would he -- where would
16 he carry you from and to?

17 A. My bed -- from my bed to the couch.

18 Q. Okay. And would that happen at daytime
19 or nighttime?

20 A. Nighttime.

21 Q. And where would momma Candace be?

22 A. On the couch.

23 Q. And did momma Candace see what happened
24 to you?

25 A. Uh-huh.

MINOR 1 - DIRECT EXAM BY MS. HERRING-LASH

1 Q. What did she do?

2 A. Nothing.

3 Q. Okay. And was she on the couch all the
4 time or some of the time?

5 A. Some of the time.

6 Q. Okay. Was she always at home or was
7 she gone sometimes?

8 A. Gone sometimes.

9 Q. Do you know where she would go?

10 A. Store.

11 Q. And were you brothers there?

12 A. Yep.

13 Q. And did any of your brothers see, or do
14 you know?

15 A. No brothers did.

16 Q. Did your brothers stay in their room or
17 did they come into the living room?

18 A. They were in their room.

19 Q. MINOR 1, I'm going to show you a
20 picture that's been marked for ID as State's
21 Exhibit Number 4. What is that a picture of?

22 A. A living room.

23 Q. Okay. And when you look at that living
24 room, can you see where the couch that you've been
25 telling us about was?

MINOR 1 - DIRECT EXAM BY MS. HERRING-LASH

1 A. Right by the wall.

2 Q. Okay. And now did Uncle Mike's house
3 have -- look like this?

4 A. Nope.

5 Q. What's different?

6 A. The couch used to be there, the chair
7 wasn't there, and that wasn't there and this wasn't
8 there, this wasn't there, but this was the same.

9 Q. That's the same door?

10 A. This was the same.

11 Q. And the couch --

12 A. That's new furniture there.

13 Q. Okay. It's kind of messy there, isn't
14 it?

15 A. Because they was making it around.

16 MS. HERRING-LASH: Okay. Your Honor,
17 at this time we would offer into evidence State's
18 Exhibit Number 4.

19 THE COURT: Any objection?

20 MR. SCHWACKE: Same objection.

21 THE COURT: Noted and overruled. The
22 photo has been authenticated sufficiently.
23 Objection goes to weight, not
24 admissibility.

25 (STATE EXH. 4 in evidence.)

MINOR 1 - DIRECT EXAM BY MS. HERRING-LASH

1 BY MS. HERRING-LASH:

2 Q. MINOR 1, I'm going to show you the
3 pictures behind you that you've been looking at.
4 Turn around. Just tell us now, what is that a
5 picture of? Because these people didn't see the
6 other picture that you were looking at?

7 A. Mr. Mike's up there and that's the dog
8 and that's Mr. Mike.

9 Q. And that looks like the house that you
10 lived in? Is that your house that you lived in?

11 A. Yep.

12 Q. And State's Exhibit Number 4, MINOR 1,
13 what is what that picture of?

14 A. The living room.

15 Q. If you push this button right here, can
16 you show us where the couch was? Was it up against
17 that wall?

18 A. (Indicating)

19 Q. Right there?

20 A. (Nodding)

21 Q. You have to say yes, so this lady can
22 write it down. Yes or no?

23 A. Yes.

24 Q. And I'm going to show you State's
25 Exhibit 5. And where was your room?

1 A. (Indicating)

2 Q. And what was your room door made of?

3 A. A curtain.

4 Q. And what else can you see in that
5 picture?

6 A. Mr. Mike's door, the laundry room, the
7 laundry basket, and washing machine and dryer.

8 Q. Okay. Now, you want to turn around so
9 you can talk into the microphone so the people can
10 hear you better. Okay?

11 When you're pointing at that blue door,
12 you said that's Mr. Mike's room?

13 A. Yes.

14 Q. And so Mr. Mike's room was at the way
15 end of that hallway?

16 A. Yep.

17 Q. And where was the living room?

18 A. It was over -- it's before the hallway
19 started.

20 Q. Before the hallway started. So his
21 room was way in the back; is that right?

22 THE COURT: You may want to manage her
23 with that laser.

24 MS. HERRING-LASH: Okay.

25 BY MS. HERRING-LASH:

MINOR 1 - DIRECT EXAM BY MS. HERRING-LASH

1 Q. I'm going to take this one away from
2 you because we're done. Okay?

3 Thank you.

4 MS. HERRING-LASH: Court's indulgence
5 for one moment.

6 THE COURT: Yes, ma'am.

7 BY MS. HERRING-LASH:

8 Q. MINOR 1, when you were on the couch --
9 well, let me ask you this first. Do you know what
10 the word slobber means?

11 A. (Nodding)

12 Q. What is slobber?

13 A. Wet stuff.

14 Q. Uh-huh. And where does slobber come
15 from?

16 A. Your mouth.

17 Q. And did you ever get slobber on you
18 from Daddy Jeramy?

19 A. Yes.

20 Q. And where did you get it?

21 A. On my vagina.

22 Q. On your vagina. Did that happen one
23 time or more than one time?

24 A. More than one time.

25 Q. So just to go over and make sure what

1 you have said happen, what did you say Daddy Jeramy
2 did to your vagina?

3 A. Slobber.

4 Q. Okay. And did he put anything in your
5 vagina?

6 A. His fingers.

7 Q. Anything else?

8 A. (No response)

9 Q. What about his penis?

10 A. No.

11 Q. Are you sure?

12 A. Yes.

13 Q. Okay. Did you just forget it, or why
14 did you say no?

15 A. Just forget it.

16 Q. And, MINOR 1, did he put his penis
17 anywhere else in your body?

18 A. In my mouth.

19 Q. In your mouth. What about anywhere
20 else?

21 A. Nope.

22 Q. What about on your bottom?

23 A. Yes.

24 Q. And what is that?

25 A. A butt.

MINOR 1 - DIRECT EXAM BY MS. HERRING-LASH

1 Q. And tell me about that. What happened
2 with that?

3 A. He put his -- I mean, his penis in my
4 butt hole.

5 Q. And how did that feel?

6 A. Bad.

7 Q. How did it make you feel?

8 A. Bad.

9 Q. And what did you do? What did you do
10 when all of this stuff was going on?

11 A. Said stop.

12 Q. And when you said stop, what happened?

13 A. Jeramy Dad just ignored me.

14 Q. He ignored you?

15 A. (Nodding)

16 Q. Did you ever scream or cry or anything
17 like that?

18 A. (Nodding)

19 Q. What happened when you would cry?

20 A. He was popping bumps on my butt.

21 Q. He popped bumps on your butt and that
22 made you cry?

23 A. (Nodding)

24 Q. Did him putting his penis in your
25 vagina, or your bottom, or your mouth ever make you

1 cry?

2 A. Yes.

3 Q. What would happen if you would cry?

4 Did he ever talk to you about that stuff?

5 A. Nope.

6 Q. Did he ever talk to you about telling

7 people about it?

8 A. Nope.

9 Q. And you said your mommy knew, right?

10 A. (Nodding)

11 Q. Did you ever tell anybody else?

12 A. Nope.

13 Q. What about -- do you remember when you
14 finally did get to talk about it who you told?

15 A. The judge.

16 Q. Okay. You're telling the judge today.

17 Did you tell -- did you end up telling some people?

18 A. Yes.

19 Q. Do you remember why you would -- why
20 you decided to tell people?

21 A. So they could know and punish him.

22 Q. Okay. And, MINOR 1, do you still see
23 all of your brothers?

24 A. No.

25 Q. Which ones do you not see at all?

MINOR 1 - DIRECT EXAM BY MS. HERRING-LASH

1 A. B. G., MINOR 2, D. G. .

2 Q. Who do you see?

3 A. J. P. .

4 Q. Little J. P. ?

5 A. (Nodding)

6 Q. And who else?

7 A. J. P. and L. P. .

8 Q. Okay. And do they live with you?

9 A. Yep.

10 Q. And do you live in a new house with a
11 new mommy and daddy now?

12 A. Yes.

13 Q. And how is that?

14 A. Much better.

15 Q. Much better.

16 MS. HERRING-LASH: Court's indulgence
17 for one moment.

18 BY MS. HERRING-LASH:

19 Q. MINOR 1, one other -- are you getting
20 some water?

21 THE CLERK: Yes.

22 BY MS. HERRING-LASH:

23 Q. MINOR 1, you said that Momma, Candace
24 knew what had happened -- I'll wait until you
25 drink. Okay. Are you done?

1 You said that Momma Candace knew what
2 happened?

3 A. Yes.

4 Q. Did Momma Candace ever clean anything
5 off of your body?

6 A. Nope.

7 Q. Okay. You don't remember that? It's
8 yes or no, if you don't remember.

9 A. No.

10 Q. And do you remember if anything ever
11 came out of Daddy Jeramy's penis?

12 A. Little white stuff.

13 Q. And where did that white stuff go?

14 A. On the shower floor.

15 Q. Is that when -- what were you doing
16 when that happened?

17 A. Taking a shower.

18 Q. What were you doing with your hands
19 when this happened?

20 A. (Indicating)

21 Q. And it went on the shower floor?

22 A. Uh-huh.

23 Q. Did it ever get on you?

24 A. Nope.

25 MS. HERRING-LASH: Okay. MINOR 1, now

MINOR 1 - DIRECT EXAM BY MS. HERRING-LASH

1 somebody else is going to ask you -- Mr. Schwacke
2 is going to ask you some questions now. So you
3 answer any of his questions. Okay?

4 THE WITNESS: Okay.

5 THE COURT: You may proceed when you're
6 ready.

7 MR. SCHWACKE: Your Honor, we do have a
8 matter based on earlier motions.

9 THE COURT: Approach.

10 (Bench conference)

11 MR. SCHWACKE: She disclosed that one
12 of her brothers also humped her --

13 THE COURT: Uh-huh.

14 MR. SCHWACKE: -- and -- in the video
15 that you watched and they're going to play.

16 THE COURT: Well, they want to play. I
17 haven't made a decision yet.

18 MR. SCHWACKE: Before I ask that
19 question --

20 THE COURT: You need to do it in camera
21 and create a proffer because I'm not sure that's
22 going to come in. Not based on what's in this
23 record now.

24 MR. SCHWACKE: That's why I approached.

25 THE COURT: I appreciate it. Thank

1 you.

2 (End of bench conference)

3 THE COURT: You may proceed.

4 MR. SCHWACKE: You want me to ask the
5 other questions?

6 THE COURT: Is that your first
7 question? You need to ask the other questions.
8 Save that one for last, or that line of
9 questioning.

10 You may proceed.

11 CROSS-EXAMINATION

12 BY MR. SCHWACKE:

13 Q. Hey, MINOR 1. How are you?

14 A. Good.

15 Q. My name is David. I'm going to ask you
16 some questions. Is that all right?

17 A. (Nodding)

18 Q. What did you have with you? What did
19 you bring up?

20 A. (Indicating)

21 Q. Is that a -- what is it? It's a bee?

22 A. (Indicating)

23 Q. You don't know? It's just something
24 for you.

25 Have you been up in this seat before?

MINOR 1 - CROSS EXAM BY MR. SCHWACKE

1 A. Yep.

2 Q. How many times?

3 A. Once.

4 Q. So is this the first time or the
5 second?

6 A. Second.

7 Q. Okay. And you've met with -- you call
8 them Miss Debbie and Miss Ann?

9 A. Miss Debbie and Ann.

10 Q. You've met with both of them before?

11 A. (Nodding)

12 Q. How many times have you talked with
13 them before?

14 A. (Indicating)

15 Q. Have you met them downstairs in their
16 office too?

17 A. Yep.

18 Q. So sometimes up here and sometimes down
19 there?

20 A. (Nodding)

21 Q. So we were talking about Mr. Mike's
22 house. Right now you live on Casey May Lane,
23 right?

24 A. Casey May.

25 Q. Casey May Lane. And is that because --

1 your name is May now, right?

2 A. (Nodding)

3 Q. Is that like a family member?

4 A. Uh-huh.

5 Q. Who is Casey?

6 A. My mom.

7 Q. Your mom? She has a road named after
8 her?

9 A. Yep.

10 Q. So before you lived at Casey May Lane,
11 you said you lived where?

12 A. A bunch of places.

13 Q. Okay. And one of them was Mr. Mike's?

14 A. (Nodding)

15 Q. Did you live there two different times?

16 A. (Shaking head)

17 Q. Do you remember where you lived before
18 Mr. Mike's?

19 A. (Shaking head)

20 Q. You don't? Do you know when you --
21 when you started living at Mr. Mike's house?

22 A. (Shaking head)

23 Q. Who all moved in there when you moved
24 there?

25 A. Jeramy Dad and Candace and B. G.,

MINOR 1 - CROSS EXAM BY MR. SCHWACKE

1 MINOR 2, D. G., me, and L. P., and J. P. .

2 Q. And you don't remember exactly when
3 that was?

4 A. (Shaking head)

5 Q. Do you ever remember living over in
6 Summerville?

7 A. Nope.

8 Q. At a different house?

9 So you're now how old?

10 A. Seven.

11 Q. And you're going to be eight in a
12 couple of months?

13 A. [REDACTED].

14 Q. Okay. Less than a month. Do you
15 remember when you moved away from Mr. Mike's?

16 A. No, sir.

17 Q. You don't. How many bedrooms were in
18 Mr. Mike's?

19 A. Two.

20 Q. Two. And there was one room where all
21 of the children had a bedroom?

22 A. (Nodding)

23 Q. And were there bunk beds?

24 A. Yep.

25 Q. Who had the bunk bed?

MINOR 1 - CROSS EXAM BY MR. SCHWACKE

1 A. B. G., MINOR 2, D. G., and J. P., and
2 L. P., and me.

3 Q. And did Candace and Jeramy -- Candace
4 Mom and Jeramy Dad, did they always sleep on the
5 couch or did they sleep in the room where Mr. Mike
6 --

7 A. They always sleep on the couch.

8 Q. Didn't sleep in Mr. Mike's room at all?

9 A. (Shaking head)

10 Q. There weren't two beds and a cradle in
11 that room?

12 A. (Shaking head)

13 Q. Do you remember a cradle or a baby bed?

14 A. (Shaking head)

15 Q. So tell me about your mom, what was she
16 -- what was she doing while these things were going
17 on?

18 A. She was just sitting there.

19 Q. Sitting there watching?

20 A. Uh-huh.

21 Q. And did you ever see your mom and
22 Jeramy having sex?

23 A. Yes.

24 Q. And where was that?

25 A. On the couch.

MINOR 1 - CROSS EXAM BY MR. SCHWACKE

1 Q. And that was them that was doing that?

2 A. Yes.

3 Q. And what were you doing?

4 A. Laying on the floor watching TV.

5 Q. While that was going on?

6 A. (Nodding)

7 Q. Did that happen more than once?

8 A. (Nodding)

9 Q. How many times would that happen?

10 A. Five.

11 Q. Is that a guess? You don't know?

12 A. It is a guess.

13 Q. So is it a high guess or a low guess?

14 A. Low guess.

15 Q. Okay. So maybe more than five times?

16 A. (Nodding)

17 Q. Okay. What about your brothers, did
18 you ever see anything happen with them?

19 A. (Shaking head)

20 Q. What about D. G.?

21 A. He humped me and he went in the shower
22 and B. G. snuck up on him.

23 Q. So one time he humped you, too?

24 A. (Nodding)

25 MS. HERRING-LASH: Your Honor, I think

1 this is out of the realm of the testimony --
2 objection.

3 THE COURT: Madame Forelady, ladies and
4 gentlemen, I have a brief matter of law to take up
5 with the attorneys. During this break, please
6 don't discuss the case and please leave your
7 notepads in your seats. We appreciate your
8 patience.

9 (Jury out, 4:47 p.m.)

10 THE COURT: The problem that we have is
11 she spontaneously uttered the comment which is
12 really not responsive to his question, and then he
13 asked a follow-up question, which he probably
14 should not have without taking it up in camera. I
15 can't fault him for instinctively doing that;
16 however, I thought about it some more. And,
17 Mr. Schwacke, unless you can establish that these
18 incidents with other siblings happened in advance
19 of what she alleged happened to her father, it
20 would not be relevant. Because the only purpose
21 that you would be introducing it is to say that she
22 had previous knowledge of sexual activity and,
23 therefore, she knew of this, and it was within her
24 mind and she had the ability because of her youth
25 to have sort of transposed or interchanged these

1 incidents and would have had previous knowledge.

2 If it happened after these allegations,
3 it doesn't matter if she learned about it after.

4 It would only matter if she learned about it before
5 because that's the only thing that could have
6 colored her interpretation of the event, but you're
7 going to have to establish by some relevance of
8 time when you allege these events to have happened;
9 otherwise, they're irrelevant.

10 MR. SCHWACKE: She says it in the
11 interview with the doctor. It establishes a time
12 frame.

13 THE COURT: Pardon me?

14 MR. SCHWACKE: It establishes a time
15 frame.

16 THE COURT: You have to establish it on
17 this record as to a time frame.

18 MR. SCHWACKE: Or through other
19 witnesses that can add additional information.

20 THE COURT: Other witnesses can't say
21 what happened between her and her brother unless
22 they saw it and they can tell me what day it was.

23 MR. SCHWACKE: I think they intend to
24 call one of the siblings.

25 THE COURT: Yeah, but I don't know and

1 I haven't heard that yet so that's all speculation.

2 MS. WILLIAMS: That sibling doesn't
3 know anything about --

4 THE COURT: I don't want you all
5 talking to each other. And I've been very clear;
6 for something to color your perception, it has to
7 have happened before what came. So, in other
8 words, the only way she could have had previous
9 knowledge of sexual activity is if you can
10 establish that these children did this to her
11 before she alleges her father did this to her;
12 otherwise, it's irrelevant. It really doesn't
13 matter.

14 If it happened after, it doesn't color
15 what she's alleged to have already happened. If it
16 happened before, that's a whole different
17 situation.

18 MR. SCHWACKE: She can't establish a
19 time even for the allegations she's talking about.

20 THE COURT: Well, that's the State's
21 problem. That's not -- I'm not dealing with that.
22 You didn't object to that. I would have dealt with
23 it if you had, but you didn't. Right now we have
24 an objection to your line of questioning and from
25 an evidentiary perspective, that's what you're

MINOR 1 - CROSS EXAM BY MR. SCHWACKE

1 going to have to establish for it to be relevant.

2 I just can't have you throwing stuff
3 out there about what may, would have, could have,
4 should have, maybe happened and when it may or
5 could not have happened.

6 MR. SCHWACKE: Well, Your Honor, I
7 think the other way it's established is she's
8 indicated that she will establish which house this
9 happened in. Again, that's another time that --
10 and that is essentially what the State has put
11 forth --

12 MS. HERRING-LASH: Your Honor, the
13 incident that she remembers occurred in Mr. Mike's
14 house, which was from August of 2012 to March of
15 2013.

16 THE COURT: You have to establish that
17 the incident that she's talking about happened
18 before August 15, 2012. That's when the State
19 alleges -- and that's the time frame that they've
20 established at this point and she alleges he
21 perpetrated these actions.

22 MS. HERRING-LASH: She had also
23 previously alleged in June of 2012, that he had
24 sexually assaulted her.

25 THE COURT: Was that in this county?

1 MS. HERRING-LASH: No, but that is why
2 they had to move here. I'm just going about the
3 time frame --

4 THE COURT: Yeah, but I doubt very
5 seriously that -- I mean, I would imagine those are
6 subject to public charges in some other state or if
7 it wasn't --

8 MS. HERRING-LASH: No. That's the
9 404(b) that the mother -- she can't testify about
10 that 404(b) because she doesn't remember, but the
11 mother observed the assaults in Dorchester County,
12 but we were going to take that up when the mother
13 testifies because that's a 404(b). But it does
14 establish that it occurred before she goes to Dr.
15 Elsey and tells him about D. G..

16 THE COURT: Well, I can't talk about
17 witnesses that haven't testified yet. I'm dealing
18 with this witness and what you can establish
19 through this witness in terms of the time frame.

20 MR. SCHWACKE: I don't believe I need
21 to ask her anymore questions about that in terms --
22 I don't know that I have anymore questions with her
23 about that --

24 THE COURT: Do you plan to ask
25 somebody else about it?

MINOR 1 - CROSS EXAM BY MR. SCHWACKE

1 MR. SCHWACKE: -- to establish the
2 time. The State's going to have to do it or I'm
3 going to have to do it in response to their
4 evidence.

5 THE COURT: You're saying now that you
6 do not have any questions for her about these other
7 allegations?

8 MR. SCHWACKE: I do have maybe one
9 additional question.

10 THE COURT: Go ahead and ask the
11 question.

12 BY MR. SCHWACKE:

13 Q. So, MINOR 1, we were talking about your
14 brother humping you. What do you mean by hump?

15 A. He laid on top of me and then he put
16 his penis in my vagina.

17 Q. And that's what your brother did. Do
18 you know when that happened?

19 A. I don't know.

20 Q. Do you remember which house you were
21 living in?

22 A. Mr. Mike's.

23 MR. SCHWACKE: That's all.

24 THE COURT: Why is that relevant?
25 Well, first I need to ask, does the

1 State have any exception to the question?

2 MS. HERRING-LASH: Yes, Your Honor. I
3 think --

4 THE COURT: What's the basis of the
5 objection?

6 MS. HERRING-LASH: I think it is in
7 violation of the Rape Shield and I think that what
8 the -- the reason for it coming in is Mr. Schwacke
9 alleged -- asked about before was under the State V
10 Grovenstein where it comes in for --

11 THE COURT: After he said Fonseco.

12 MS. HERRING-LASH: -- knowledge, but I
13 think Grovenstein was the first case that talked
14 about the knowledge. And I think that with her
15 saying that it happened at Mr. Mike's house with
16 her brother, now we are aware, as far as the time
17 frame, that she had already alleged these events
18 occurring before she ever moved to Mr. Mike's
19 house.

20 She does not remember that now, but
21 there are adult witnesses that remember her
22 alleging it. So as far as coming in for knowledge,
23 it doesn't meet the timing of that happening prior
24 to what Jeramy did to her. And other than that, I
25 don't know how it is relevant if it isn't under the

MINOR 1 - CROSS EXAM BY MR. SCHWACKE

1 Grovenstein line of cases to show knowledge.

2 MR. SCHWACKE: The problem is, we don't
3 know from her testimony when anything happened and
4 never will. She's not --

5 THE COURT: I'm sorry, I can't hear
6 you.

7 MR. SCHWACKE: We will never hear -- we
8 will never hear from the witness when things
9 happened because she has demonstrated that
10 inability since she was examined first by
11 Mr. Elsey. In his report he indicated --

12 THE COURT: I think that's taking a
13 lot of license. She said that it happened at a
14 particular residence; that isolates the time frame.
15 There are adults that are not good with dates.
16 There are adults that testify in cases that can't
17 remember when an accident happened, can't remember
18 when they were hurt, so that is not dispositive.

19 She has established by her testimony
20 that it happened when they lived in Mr. Mike's
21 house. So that establishes a time frame, because
22 most seven-year-olds are not going to know that we
23 moved on July 30th of whatever year to this
24 residence. I mean, it's just not going to be
25 within -- even if they remember, it's going to be

1 so short term they're not going to remember it for
2 an extension of time.

3 So I think a period of time has been
4 established by virtue of her testimony of where she
5 lived.

6 MR. SCHWACKE: I still have a problem
7 understanding, Your Honor. The issue, to me, with
8 the -- she's present now and she's testified in
9 front of this jury. The issue is her ability to
10 have a fount of knowledge and a source of where it
11 came from.

12 THE COURT: I'm sorry, say that one
13 more time.

14 MR. SCHWACKE: She has testified in
15 front of the jury about an incident.

16 THE COURT: She's testified about
17 several.

18 MR. SCHWACKE: She has. And my
19 position on this is that the issue should be, what
20 sources of information does she have that she would
21 have a fount of knowledge regarding sexual acts?
22 And it's the testimony today that matters, not the
23 original complaint because --

24 THE COURT: You're still losing me. I
25 don't understand exactly what the scope of the

1 argument is.

2 MR. SCHWACKE: The argument I'm making
3 is, if the sex never happened, and this witness has
4 been put up to this by other parties, including the
5 ex-wife and the aunts, in that case, we're saying
6 nothing ever happened. So how is this kid able to
7 testify to that? Well, she has a fount of
8 knowledge from that by watching them have sex in
9 front of her --

10 THE COURT: Well, you've already
11 elicited that.

12 MR. SCHWACKE: I have.

13 THE COURT: And I think that's
14 completely reasonable.

15 MR. SCHWACKE: But one other act would
16 be this one with the sibling.

17 THE COURT: Well, I've been very clear,
18 that that would only be relevant if you can
19 establish that it happened before it's alleged that
20 he had sex with her.

21 MR. SCHWACKE: I guess I'm trying to
22 understand --

23 THE COURT: That's the only one that
24 contributes to her fount of knowledge. If it
25 happened subsequently, that doesn't -- because what

1 you're basically saying is, it's fabricated and she
2 learned this from someone else. Well, she can't
3 fabricate something she says happened to her unless
4 she learned it before it is alleged to have
5 happened.

6 MR. SCHWACKE: Or that she was told by
7 someone --

8 THE COURT: Well, then, you need to
9 ask her that question.

10 MR. SCHWACKE: I believe I'm --

11 THE COURT: Somebody else having sex
12 with her brother does not support your argument or
13 your contention that her aunts and her mother put
14 her up to it.

15 MR. SCHWACKE: Not yet, but that's --
16 the trial is young, Your Honor.

17 THE COURT: Yeah, but, I mean, if
18 you're trying to establish that somebody told her
19 to say this, the most competent witness to answer
20 that question is the child. Children tend to be
21 bracingly honest because they haven't learned the
22 truth -- they haven't really -- you know, learning
23 how to be deceptive is a learned concept.

24 Children learn that as they get older,
25 and adults are far more adept at lying than

1 children. That's why children tend to tell on
2 themselves and they tend to be very blunt as well
3 about things that most people would try to soft
4 pedal, so to speak.

5 So, if in fact it's your contention
6 that somehow this is all contrived, that it's all
7 made up --

8 MR. SCHWACKE: That would be our
9 position.

10 THE COURT: -- then -- then her --
11 then an allegation that her brother did something
12 to her, I don't understand how that supports --

13 MR. SCHWACKE: It's one more source of
14 a fount of knowledge that --

15 THE COURT: Well, I still stand by my
16 original observation, which is you would -- for
17 that to be relevant, you would have to -- you would
18 have to establish in some realm of time frame, it
19 doesn't have to be an exact date, but it needs to
20 have occurred before it's alleged that he did this,
21 because that's the only way it could color her
22 perception.

23 In other words, if somebody did it to
24 her beforehand, then of course she knows what sex
25 is or knows what being violated is, and then that

1 makes it more or less probable that she would make
2 it up about him, because the cases support it has
3 to be within the child's knowledge. In other
4 words, somebody else did it to them and they
5 fabricated it against this other person. If it
6 happened subsequent, in my mind, that really
7 doesn't prove anything.

8 If it happened before, then that means
9 she had previously knowledge of it and that makes
10 it more or less probable that she could have
11 fabricated it.

12 MR. SCHWACKE: And there is an
13 allegation from 2009, that that's exactly what
14 happened --

15 THE COURT: But you need to establish
16 that with this witness.

17 MR. SCHWACKE: She's not going to
18 remember that.

19 THE COURT: Well, I don't know, you
20 haven't asked her, have you? There is a way you
21 question children. They don't remember dates, but
22 they remember places. They remember where they
23 lived. They remember what grade they were in.

24 So there's a way that you should be
25 able to establish that if that is the line of

1 questioning that you would like to pursue;
2 otherwise, it's just irrelevant. It's just
3 salacious details, and I think we all know that
4 this was a dysfunctional household at best, just
5 simply based on the fact that you told me they had
6 DSS intervention six times.

7 So it is likely, or unlikely, I don't
8 know, that these children could or could not have
9 been handled poorly by every adult in their life; I
10 don't know.

11 Really, there could be some support for
12 an allegation that your client did this to the
13 other children and that's why they were all acting
14 out; I don't know. But that's why it makes it even
15 more important that you establish a time frame as
16 to when you allege this happened in order to color
17 her perception of subsequent events in her bank of
18 knowledge.

19 MR. SCHWACKE: I just feel like the
20 Court is asking the defense to --

21 THE COURT: I am not asking you to do
22 anything except follow the evidentiary rules.
23 According to this tape where she gave this
24 statement, it was within a certain -- she was very
25 clear about when she says these things happened.

1 It's close in time to when these events allegedly
2 happened.

3 It's not like where you don't have a
4 tape or you don't have a contemporaneous report
5 that establishes a time frame and things have sort
6 of trucked along for like five years and a child
7 pops up and says, oh, by the way, my biological dad
8 molested me. Umm, I believe it was within this
9 five-year time frame, but then somewhere in that
10 time frame during their development period somebody
11 else molests them. That is more of a station where
12 you have a recent fabrication were events tend to
13 meld themselves and we don't know what happened, so
14 that's not factually this incident.

15 I think that you should be able to
16 establish to make this testimony relevant when, in
17 fact, this is alleged to have taken place. And I
18 don't think it's that difficult to do, but while
19 we're off the record, there has been -- there was
20 raised by the defense an objection to the
21 competency of this child being able to testify.

22 In response to voir dire questions, the
23 State was able to establish her competency and I
24 have found her to be competent to testify, and that
25 is based on my observations of the child and her

1 demeanor. It is clear to me that she does know the
2 difference between right and wrong, truth and a
3 lie, and it is also my observation that she is --
4 at second grade, especially in light of all the
5 things that our children are exposed to,
6 fortunately, or unfortunately, they are not -- I
7 would -- second grade is not that young.

8 A second grader is taught in school,
9 not only at home, the difference between the truth
10 and a lie, but she has clearly demonstrated the
11 ability to know the consequences between the truth
12 and a lie. And based on my own observations of
13 her, not just based -- I know I made reference to
14 the interview, but that is not the basis of my
15 decision regarding her competency.

16 She is inordinately mature, and that
17 might be too strong of a word, but that's the crux
18 of what I'm trying to convey for a child of her age
19 and has an inordinate ability to communicate
20 concepts, ideas and -- and she has responded, quite
21 frankly, better than some adults to questions. So
22 I have no questions regarding her competency to
23 testify and that objection is overruled, although I
24 did it at a side conference.

25 And so you all are aware, I don't have

1 off-the-record conferences and so all of our bench
2 conferences are recorded and are a part of the
3 record. So I find that hindsight can be 20/20 and
4 people's memories fail and people remember things
5 differently than they actually happened.

6 So if you want to, I guess -- I don't
7 know that voir dire really would be the right term,
8 that's not it, but if you want to pursue that line
9 of questioning out of the jury's presence, you are
10 welcome to do it.

11 BY MR. SCHWACKE:

12 Q. So, MINOR 1, I'm going to come up here
13 and hand you a picture that you looked at earlier.
14 It's State's Exhibit Number 3. And you said that
15 was what?

16 A. The bathroom.

17 Q. And the bathroom where?

18 A. In the hallway.

19 Q. And which house is that?

20 A. Mr. Mike's.

21 Q. Do you know an address where Mr. Mike
22 lived?

23 A. What?

24 Q. Do you know -- like you remember the
25 address for where you're living now.

1 THE COURT: Why don't you just ask
2 her, where was the trailer?

3 BY MR. SCHWACKE:

4 Q. So where was that trailer?

5 A. (Indicating)

6 Q. Do you know?

7 A. I don't know.

8 Q. Don't know. Do you know the difference
9 between Ladson and Summerville?

10 A. (Shaking head)

11 Q. No. Do you know -- you know your
12 address where you get mail sent to now?

13 A. Yes.

14 Q. And that was what?

15 A. (No response)

16 Q. Do you ever remember living on a road
17 called Woodduck?

18 A. Nope.

19 Q. You don't remember Woodduck as a road.
20 And what grade are you in now?

21 A. Second.

22 Q. So two years ago you would have been in
23 kindergarten. Did you ever go to kindergarten?

24 A. Yes, sir.

25 Q. Where did you go?

1 A. Beach Hill Elementary School.

2 Q. Okay. And what do you remember about
3 the house where your brother humped you?

4 A. Mr. Mike's house.

5 Q. Okay. And you don't remember how long
6 you had lived in Mr. Mike's house?

7 A. No, sir.

8 Q. Do you remember a dog or a cat or
9 anything?

10 A. Yes, a dog.

11 Q. What was the dog?

12 A. It was like --

13 Q. Do you know the dog's name?

14 A. (Shaking head)

15 Q. Was there a cat named Fireball?

16 A. Yes.

17 Q. Where was the cat named Fireball?

18 A. At Mr. Mike's house.

19 Q. Okay. So the cat lived in that same
20 house?

21 A. (Nodding)

22 Q. You don't remember the dog?

23 A. (No response)

24 Q. Did you live with some aunts?

25 A. Yes.

MINOR 1 - CROSS EXAM BY MR. SCHWACKE

1 Q. What aunts did you live with?

2 A. Sara and a Chihuahua named --

3 Q. Not a Chihuahua.

4 A. It was a Chihuahua.

5 Q. Like an uncle or aunt.

6 A. I do got an aunt and she has --

7 Q. You don't have any aunts?

8 A. I do got an aunt and she has a

9 Chihuahua named -- I don't know what her name is.

10 Q. Where does she live?

11 A. With Sara.

12 Q. And did you ever live in that house?

13 A. Yep.

14 Q. And who else lived in that house with
15 you?

16 A. All my brothers and all my sisters and
17 dad and mom.

18 Q. When you say dad and mom, what's dad
19 and mom?

20 A. (Indicating) Not dad and mom. Just me
21 J. P., L. P., B. G., MINOR 2, and D. G.

22 Q. And no adults?

23 A. Just Sara.

24 Q. Just aunt Sara?

25 A. And grand mom.

1 Q. And you don't remember where that house
2 was?

3 A. (Shaking head)

4 MR. SCHWACKE: One moment.

5 THE COURT: Uh-huh.

6 By MR. SCHWACKE:

7 Q. Are you getting tired of answering my
8 questions?

9 A. Yes.

10 Q. Let me see if I can shorten it down.
11 All right. So you talked about your brother
12 humping and you talked about your Dad Jeramy
13 humping you?

14 A. Yes.

15 Q. And do you remember which one was
16 first?

17 A. Mr. Mike's house.

18 Q. Okay. But who humped you first, your
19 brother or --

20 A. Jeramy Dad.

21 Q. And had you already talked to -- have
22 you seen yourself on TV?

23 A. Yes.

24 Q. You watched the video?

25 A. Yes.

MINOR 1 - CROSS EXAM BY MR. SCHWACKE

1 Q. How many times have you watched it?

2 A. Two.

3 Q. All right. And you're saying that
4 Daddy Jeramy humped you before your brother D. G.?

5 A. Yes, sir.

6 MR. SCHWACKE: Okay. Your Honor, I
7 think on that point I've hit the wall.

8 THE COURT: Did you file a written -- a
9 written proffer as required by the statute that you
10 were going to seek to introduce evidence of
11 specific sexual activity?

12 MR. SCHWACKE: Your Honor, because of
13 the exception provided by the statute -- I'm sorry,
14 by the exceptions provided by Groven -- Govenor, I
15 did not.

16 THE COURT: You're saying that
17 excludes your requirement to comply with the
18 statute?

19 MR. SCHWACKE: I believe it is. I
20 believe it does, Your Honor, because it's
21 technically a court-created exception to the
22 statute. So it would not be required for the
23 specifics of the statute to be filed. It's a
24 limited purpose introduction, and so based on that
25 I did not believe it would be necessary to do it

1 because we were not introducing specific --
2 specific evidence that would -- that would be
3 involved with the --

4 THE COURT: Does the State have any
5 exception to the line of questions?

6 MS. HERRING-LASH: Yes, Your Honor.

7 THE COURT: What's the basis of the
8 objection?

9 MS. HERRING-LASH: That it is in
10 violation of the Rape Shield Statute, it has no
11 relevance to it. The exception to the Rape Shield
12 Statute the defense anticipated getting it in under
13 was really the knowledge -- that if the victim has
14 prior knowledge, that it could come in to show that
15 knowledge, and I think we've established that the
16 assaults that occurred by her father were before,
17 during, and after the assaults from the brother so
18 that that would not be the basis of her knowledge.

19 And the -- I mean, her brother is just
20 one year older than her, so they were both very
21 little kids. And the prejudicial elements of that
22 line of questioning much outweighs anything
23 probative that the defense would try to be getting
24 out of her when it -- I mean, it is not -- not
25 probative of anything and it is directly in

1 violation of the Rape Shield.

2 MR. SCHWACKE: Your Honor, just to be
3 heard on --

4 THE COURT: Give me one moment and I
5 will let you be heard.

6 You may proceed.

7 MR. SCHWACKE: To make sure that I get
8 it on the record, our position again is that this
9 didn't happen and that the child was part of a
10 process used by others to fabricate an allegation.
11 With regard to the Rape Shield Statute, State v.
12 Fendley, 1989 case says our appellate courts have
13 carved out exceptions to the general prohibition of
14 evidence regarding the victim's sexual conduct
15 beyond those expressed and enumerated in the
16 statute.

17 State v. Lyon, 1991, says the Rape
18 Shield statute did not bar evidence of the victim's
19 sexual conduct if the evidence was offered for a
20 purpose other than to attack the victim's morality.
21 Obviously, we're not doing this, this is a child
22 victim. The only reason we're doing that is under
23 State v. Grovenstein, which held that evidence of
24 the child victim's prior sexual experience is
25 relevant to demonstrate that the Defendant is not

1 necessarily the source of the victim's ability to
2 testify about alleged sexual conduct.

3 With regard to that, the State's not
4 necessarily -- so that there's clear evidence that
5 we have based on the child's own statement, and
6 they've been made aware of this, Your Honor, for
7 some time because it serves the sole basis of us
8 even playing with the editing tool on the
9 statements provided by the child.

10 So, obviously, the State is not harmed
11 by this, they clearly were aware that this was
12 going to come up at some point.

13 So, Your Honor based, on Grovenstein,
14 again, what we're trying to establish is that the
15 child victim's prior sexual experience is relevant
16 only to demonstrate the defendant is not
17 necessarily the source of the victim's ability to
18 testify about alleged sexual conduct.

19 THE COURT: Anything further from the
20 State?

21 MS. HERRING-LASH: Your Honor, just
22 once again, I don't think the elements -- of what
23 we would need to use the Grovenstein case has not
24 been shown. She has testified about many other
25 types of sexual batteries committed upon her by her

1 father. She has only talked about one thing that
2 her brother did and that that was after her father
3 did it, that Daddy Jeramy did it first, and that it
4 was in the home that we know that she lived in
5 after she had already talked about Daddy Jeramy.
6 So the timing is his assaults occurred before, by
7 her own words.

8 THE COURT: I find that the line of
9 questioning is more prejudicial than probative. It
10 does not make a fact of consequence in this case
11 more or less probable, and I'm relying on the
12 Grovenstein precedent. It's very clear. The
13 reason it was admissible in Grovenstein, and I
14 agree with Grovenstein, is that the young boys that
15 were accusing Mr. Grovenstein had committed the
16 exact same acts that they claimed he had performed
17 on them. They had done them prior to two other --
18 or to another victim.

19 So it would have clearly gone to
20 basically really impugn their credibility of their
21 knowledge of these sexual acts because they had
22 performed them before it was ever alleged
23 Mr. Grovenstein had done this to them.

24 In addition to that, what was alleged
25 was almost exactly the same activity that they

1 alleged Mr. Grovenstein -- and that being the
2 sexual conduct that they described was almost
3 exactly the same sexual conduct as they had
4 perpetrated against someone previously.

5 The Court in Grovenstein was very
6 clear; that the evidence was admissible, it was
7 probative on credibility because it went to their
8 knowledge of the sexual actions. But as most of
9 these cases turn on the facts, it is very clear in
10 Grovenstein that these alleged actions happened
11 long before or prior to any allegations of abuse by
12 Mr. Grovenstein.

13 And I stand by my previous ruling,
14 which is you would have to establish that it
15 happened prior to any allegations of it having been
16 done by the defendant in this case because it would
17 clearly, if it happened before, color her knowledge
18 of sexual activity, thereby affecting the veracity
19 or the credibility of the statements, because she
20 would have had some basis of sexual knowledge that
21 was similar to what is alleged by the defendant,
22 thereby making it more likely that it would have
23 been fabricated, but that is not factually this
24 instance.

25 She clearly testified that the first

1 person to do this to her was Daddy Jeramy. So,
2 again, I stand by my previous ruling, which is,
3 unless you can establish that it was done prior to
4 any allegation of him doing it is not relevant or
5 probative, and any probative value it would have
6 would be outweighed by its prejudicial effect. It
7 tends to mislead the jury and confuse the issues,
8 but if it had happened prior to, I would agree that
9 it would be relevant because she could have had
10 prior sexual knowledge which she could then have
11 fabricated that he performed on her. So the
12 objection is sustained.

13 There are some other questions you
14 asked of her however that did not relate to this.
15 Did you want to ask those questions in the presence
16 of the jury?

17 MS. WILLIAMS: He did ask them.

18 THE COURT: There were other questions
19 that he asked that had nothing to do with her
20 brother, and I'm just asking if he wants to ask
21 them again in the jury's presence.

22 MS. WILLIAMS: What are those
23 questions?

24 THE COURT: I don't remember, but there
25 were several of them. I just made a mental note

1 that they had nothing to do with the child, and I
2 don't know whether they're relevant and whether
3 Mr. Schwacke wants to ask them in the jury's
4 presence. He certainly can if he wants to.

5 MR. SCHWACKE: The thing I was
6 concerned about is whether the jury was out here
7 when I asked about the parents in the front of the
8 children.

9 THE COURT: I don't remember.

10 MS. WILLIAMS: The jury was here.

11 THE COURT: Were they? My Court
12 Reporter is shaking her head. But the questions
13 you asked in camera, several of them did not apply.
14 So do you want to ask those in the presence of the
15 jury?

16 MR. SCHWACKE: That was attempting to
17 satisfy the Court on the other issue.

18 THE COURT: Okay. Well, I just wanted
19 to give you the opportunity. I didn't want you to
20 think that it was foreclosed to you if you wanted
21 to ask those questions. I didn't know whether they
22 were relevant to something else you were trying to
23 establish.

24 MR. SCHWACKE: I do have a few more
25 questions.

1 THE COURT: I would think if you all
2 could indulgence us, because I would imagine that
3 you don't want to take her out of school tomorrow.

4 MS. WILLIAMS: Well, she's usually in
5 bed by 6:00.

6 THE COURT: Well, it's your option. If
7 you want to take her out of school, I would think
8 that's very disruptive to her at this stage.

9 Are you-all going to have any redirect?

10 MS. HERRING-LASH: I don't at this
11 point, no. I can't predict --

12 THE COURT: I would like to finish if
13 we could because it's important for continuity that
14 she be in school tomorrow, because everything they
15 do builds on one another and I would not want her
16 to miss a day of instruction if that's possible.

17 MS. WILLIAMS: Your Honor, for planning
18 purposes, should we tell the other two witnesses to
19 leave?

20 THE COURT: Yes, because we're stopping
21 after this. I think the jury is tired. We'll
22 start back fresh in the morning at 9:30. I think
23 you-all are a little weary too, aren't you?

24 MS. HERRING-LASH: She is.

25 THE COURT: She's just asking like

MINOR 1 - CROSS EXAM BY MR. SCHWACKE

1 you're not. So on the inside we're doing exactly
2 what she's doing. I can't say I blame her.

3 You've been very patient with us. We
4 appreciate it. Can you do me a favor? When you
5 say yes or no, can you say yes or not for me,
6 instead of shaking your head? She has to be able
7 to take down everything that you say. Can you do
8 that for me?

9 THE WITNESS: Yes, ma'am.

10 THE COURT: Thank you. I really
11 appreciate it.

12 All right. You can bring in the jury.

13 Can you sit up straight for me? Have
14 some good posture. Excellent.

15 (Jury in, 5:28 P.M.)

16 THE COURT: We appreciate your
17 patience. We know we've gone beyond 5:00. We
18 would like to try to finish this witness today if
19 that's possible, and I anticipate it's only going
20 to be another five or ten minutes if you can
21 accommodate us. You may proceed.

22 MR. SCHWACKE: Thank you, Your Honor.

23 THE COURT: You're welcome.

24 BY MR. SCHWACKE:

25 Q. MINOR 1, how many times do you know

1 that you've talked with anybody, me or Miss Debbie
2 or Miss Ann about what happened at Mr. Mike's
3 trailer?

4 A. I don't know.

5 Q. How many videotapes did you watch?

6 A. One.

7 Q. So you've seen one videotape of you.

8 Do you know that there is another one?

9 A. (No response)

10 Q. Do you remember going to someplace
11 called Dorchester's Children's Center?

12 A. No.

13 Q. Okay. You don't remember your mom
14 offering you Gummies, a Happy Meal, or a milkshake
15 to talk to the nice lady?

16 A. I do remember.

17 Q. But you didn't talk to her?

18 A. Yeah.

19 Q. You did or you didn't?

20 A. I did.

21 Q. You did? So how many times has your
22 mommy promised you something to talk about this?

23 A. I don't know.

24 MR. SCHWACKE: Okay. That's all the
25 questions.

1 THE COURT: Any redirect of the
2 witness?

3 MS. HERRING-LASH: No, Your Honor.

4 THE COURT: Any objection to the
5 witness being excused? From the State?

6 MS. WILLIAMS: Not from the State.

7 THE COURT: From the defense?

8 MR. SCHWACKE: No, Your Honor.

9 THE COURT: Young lady, you're excused.
10 Have a good rest of the evening.

11 Madame Forelady, ladies and gentlemen,
12 we're going to take advantage of this break in
13 testimony to take our evening recess. During this
14 break, please do not discuss the case among
15 yourselves or with anyone else. Please do not
16 watch, read, or listen to any media accounts about
17 this case, if there are any.

18 As available as information is on the
19 internet, you are strictly instructed that you are
20 not to access any information regarding any topic
21 or subject matter in this case on the Internet.
22 You are bound by your oath to decide this case
23 according to the witnesses and the other evidence.

24 Also, and I know it sounds redundant,
25 but it comes from hard experience, please do not

1 make any comments regarding your service on any
2 social networking sites. You all have been so
3 patience with us today. We are used to this; we do
4 it everyday. I think I have jury trials almost
5 every week with the exception of when I have
6 non-jury and holidays. So I am used to this, the
7 lawyers are used to this. It's a schedule that we
8 are used to.

9 We are used to the bumps in the road,
10 the speed bumps we have to deal with during this
11 process, but we know it's very new to you and that
12 you all don't. So the fact that you have been very
13 gracious with us and really kind-hearted, we
14 appreciate it. And I know I say it over and over,
15 but it is sincere, that you are so very valuable
16 and we do not take your time for granted. So,
17 again, we appreciate your patience. I hope you
18 have a great evening.

19 We will resume in the morning at 9:30.
20 If you will leave your notepads in your seats,
21 we'll procure them during the break. You will
22 follow the same process; the bailiffs or deputies
23 will meet you downstairs in the morning and then
24 bring you upstairs.

25 Thank you so much. Have a great

1 evening.

2 (Jury out, 5:31 p.m.)

3 THE COURT: Anything further from the
4 State before we adjourn for the evening?

5 MS. WILLIAMS: Just one thing, Your
6 Honor, and I'm going to bring this up again
7 tomorrow, we believe that the next three witnesses
8 this child told consistently that her daddy
9 assaulted her. And Mr. Schwacke I think based on
10 State v. Jeffcoat has raised an inference of recent
11 fabrication. So ordinarily we would only elicit
12 testimony of when and where and --

13 THE COURT: I think until he brings
14 that into issue and opens that door, we can't cross
15 any bridges and I'm not ruling --

16 MS. WILLIAMS: Your Honor, he's asked
17 her how many times she practiced, how many times
18 she's met with us, how many times she watched the
19 tape, how many times she's been in the courtroom,
20 and that is a direct inference that she's made it
21 up because she's been practicing or she's been sort
22 of coached. And we would just ask the Court to --
23 I know you probably know Jeffcoat, but to look at
24 it.

25 It's pretty much what the defense

1 attorney does in that case, and we would just -- we
2 would just argue that then other hearsay would come
3 in besides 801(d)(1).

4 THE COURT: I may allow you to do it in
5 redirect to rehabilitate your witness if he opens
6 the door, but I'm not ruling on it in advance and
7 I'm well aware of the proposition of that case. I
8 think it is totally appropriate, and it happens in
9 other cases, for the defense counsel to ask a
10 witness how many times they've met with the State,
11 and that's more about credibility than recent
12 fabrication, and I'll have to see how the case
13 develops.

14 But I would suggest that you be very
15 careful, Mr. Schwacke.

16 MR. SCHWACKE: Thank you.

17 THE COURT: Once that door swings open,
18 you can't close it.

19 MR. SCHWACKE: You can't slam it.

20 THE COURT: Thank you. You-all have a
21 good morning. I mean, good evening. I've had to
22 take my allergy medicine and that can make my head
23 skip time sometime. I could not take it, so you
24 all bear with me. I apologize if I repeat myself.

25 Who is going to be the State's first

1 witnesses tomorrow?

2 MS. WILLIAMS: It would be Candace
3 Parks -- oh, no, I'm sorry.

4 MS. HERRING-LASH: It will be Mary
5 Arnold.

6 THE COURT: Uh-huh.

7 MS. WILLIAMS: And then Mr. Barlow.

8 THE COURT: Hold on one second. You
9 said Mary Arnold. What number is that? I don't
10 see her on my list. Oh, yeah, number 23. Uh-huh,
11 Mary Arnold. And who else?

12 MS. LITTLEJOHN: I think they said
13 Barlow.

14 THE COURT: Barlow.

15 MS. WILLIAMS: Officer Barlow and
16 Tawnee Castanon.

17 THE COURT: You said Tawnee who?
18 We're still in session.

19 Tawnee -- what number is that on the
20 list? Oh, number 26. Uh-huh.

21 Are there any other witnesses that have
22 been eliminated that I need to be aware of?

23 MS. WILLIAMS: Not to this point, Your
24 Honor. There may be -- we'll know after Candace
25 Parks testifies. We should know.

1 Your Honor, we have Don Elsey's CV that
2 I meant to give to you, because I think it goes
3 directly to that motion regarding the tape
4 concerning his qualifications, and I would just ask
5 that --

6 THE COURT: I don't think Mr. Schwacke
7 is going to be contesting Mr. Elsey's
8 qualifications --

9 MS. LITTLEJOHN: Oh, yes, we will.

10 THE COURT: Oh, okay. I guess I'm
11 trying to figure out why you are seeking to
12 introduce the tape.

13 MS. LITTLEJOHN: That's a good
14 question, Your Honor.

15 MS. WILLIAMS: It's great evidence.

16 THE COURT: Yeah, but it's cumulative
17 and it's bolstering. I'm trying to figure out --
18 you had the witness here to testify. So what is it
19 that you're trying to elicit from the tape that she
20 hasn't already said?

21 MS. HERRING-LASH: Under the statute,
22 he has to be -- are you talking about Dr. Elsey?

23 THE COURT: No. I'm talking about the
24 tape of the child. She's testified. Why do you
25 need --

1 MS. WILLIAMS: Your Honor, this is
2 three years later. She goes into much more detail
3 in the tape, and I think it shows the way she was
4 then. She's silly, she's giggly, she's tired.
5 This gives the jury the best view of the way this
6 child described the sexual assault right after it
7 happened, because she had just been out of the home
8 four weeks before.

9 So it really gives the jury the best
10 view of how old she was, how she describes the
11 events. And you can see when she is describing
12 them to Don Elsey how she's thinking, she's in a
13 different setting, she's not in a courtroom. And I
14 think that's what the statute anticipates. That's
15 why the statute is there.

16 It specifically says it's not
17 bolstering. It's admissible if those -- if those
18 items of trustworthiness can be met. And we think
19 we can meet them.

20 THE COURT: Generally you don't have
21 both, though. Generally you have one or the other.

22 MS. HERRING-LASH: Your Honor, I have
23 the sites where the Court has found over and over
24 --

25 THE COURT: I know it's discretionary.

1 MS. HERRING-LASH: -- it's not improper
2 bolstering.

3 MS. WILLIAMS: In family court you can
4 put the tape in without the kid. We have to put
5 the child on in order to get the tape in, in
6 criminal court. So we couldn't have put it in
7 without the child. We have to put her up or the
8 tape is not admissible. If we could have just
9 played the tape, believe me, we would have.

10 The statute specifically requires us to
11 put the child on the stand before the tape can come
12 in.

13 MS. LITTLEJOHN: Which then is part and
14 parcel -- I think you get into some of the issues
15 of -- I think it was Anderson says you have to go
16 ahead and cross-examine the child on those issues
17 that are going to be there in the tape. That, you
18 know, you should have gone ahead and anticipated
19 it.

20 MS. HERRING-LASH: Your Honor, I have
21 the sites if you would like me to give them to you.

22 THE COURT: No, I'm good. I was just
23 curious to know why you were seeking to introduce
24 it.

25 MS. WILLIAMS: We think it's the best

1 evidence we have for them to see exactly what this
2 child was like right at the time and the best
3 description that she gives. And I think it's in
4 accordance with the statute and that we've met the
5 first requirement, which is to put the child on the
6 stand.

7 THE COURT: How long is -- well, I've
8 --

9 MS. WILLIAMS: It's 20 minutes.

10 THE COURT: I answered my own question.
11 I'm sorry. I thought through it in my own head and
12 answered my own question.

13 MS. HERRING-LASH: Your Honor, I think
14 there was a question about Dr. Elsey. We are not
15 offering him as an expert. The reason that we gave
16 you his CV is because in order to get the tape in,
17 we do have to show that he has been through the
18 week-long forensic interviewing class.

19 The way that we would ask him that
20 would be in camera so that's there no inference
21 even given to the jury that he's an expert about
22 that, but I think to reach the admission of the
23 tape, we have to show that he has that training.
24 And then the rest of the admission of the tape is
25 really Your Honor's feeling about whether it was

1 suggestive and internally consistent. That is why
2 we did hand up his resume and that's -- that
3 question about his -- will be in camera.

4 THE COURT: Do you all have any
5 objection to Mr. Schwacke's redacted version, which
6 I have not watched yet?

7 MS. WILLIAMS: No.

8 MR. SCHWACKE: We're calling that my
9 redacted version only because I am the one that did
10 it.

11 THE COURT: I just called it that out
12 of expediency. I think you have more than
13 preserved anything and I'm going to rule on
14 everything that's been raised contemporaneously.
15 There's not going to be any vague areas in this
16 record as to what comes in and what doesn't and
17 why.

18 MR. SCHWACKE: I don't want it to be
19 confusing later on when the reading of that says,
20 Mr. Schwacke's video --

21 THE COURT; I think it's been very clear
22 that -- well, frankly, if it comes in, I think that
23 you would rather have the redacted one, wouldn't
24 you?

25 MR. SCHWACKE: No.

1 THE COURT: You would rather have the
2 whole one?

3 MS. LITTLEJOHN: Best evidence.

4 THE COURT: Then why are you all giving
5 me a redacted one?

6 MS. WILLIAMS: Well, he changed his
7 mind.

8 THE COURT: Then you can have it back.
9 There's no need for me to watch it.

10 MS. WILLIAMS: We would like the
11 redacted one because that leaves out all of the
12 Rape Shield stuff which he talks about there.

13 MS. LITTLEJOHN: But it also leaves out
14 the MRSA stuff.

15 MS. WILLIAMS: And they don't want the
16 stuff in about the child having MRSA.

17 THE COURT: Well, why would you want
18 the stuff in about MRSA? I have severed that
19 indictment.

20 MR. SCHWACKE: I'm thinking that she
21 still -- because we've been going back and forth.

22 THE COURT: Why don't you all decide
23 and get on the same page over the evening and let
24 me know.

25 MS. WILLIAMS: We would like the

1 redacted one, but we're fine with the whole one.
2 We would argue that the redacted one honors your
3 ruling on rape shield because we do not think that
4 the child being molested by other people is
5 relevant. We think it's not admissible based on
6 Rape Shield so Mr. Schwacke was kind enough to
7 redact the parts out about the other sexual
8 assaults and then he also wanted the stuff out
9 about MRSA.

10 So we sort of came to this agreement,
11 it was the one thing we agreed on, but then in
12 court this morning, understandably, Mr. Schwacke
13 has a new strategy and he changed his mind. The
14 State would still like the redacted version in
15 understanding that you may rule that the whole tape
16 comes in.

17 MR. SCHWACKE: And understand, Your
18 Honor, they have a disk from me that actually has
19 six different files on it. So there are different
20 versions. It's not like, again, I picked that one
21 to give to you.

22 MS. WILLIAMS: It was the one we agreed
23 upon, but he's changed his mind. We would prefer
24 the redacted version, but, Your Honor, the whole
25 tape -- if the whole tape comes in the whole tape

1 comes in.

2 THE COURT: Okay. Thank you very much.
3 Have a good evening.

4 (These proceedings were recessed at
5 5:43 p.m., to be continued 9/15/2015 at 9:30 a.m.)

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1 (State v. Parks, 9/15/15, Berkeley
2 County Circuit Court, Moncks Corner, South
3 Carolina, 9:22 a.m.)

4 THE COURT: Okay. You may be seated.
5 Good morning, everyone. Ready to proceed?

6 MS. WILLIAMS: The State has one issue.
7 Do you want me to tell you now or wait until you
8 actually have a seat?

9 THE COURT: You can tell me now.

10 MS. WILLIAMS: We're just concerned;
11 **MINOR 2** is going to testify today, and he
12 also was sexually acting out. There's one
13 incident, after **MINOR 1** discloses that her father
14 sexually assaulted her, where he puts his penis in
15 her mouth. We would just ask, if Mr. Schwacke
16 thinks there's any circumstance that it's an
17 exception to the Rape Shield Act, that he not ask
18 **MINOR 2** about that, or any other witness, because
19 it's already going to be hard for us to unring the
20 **D. G.** bell. We have to somehow explain
21 that, and our belief is that it's in violation of
22 Rape Shield.

23 THE COURT: Yeah, but your client --
24 not your client, your victim uttered --
25 spontaneously uttered that. He didn't elicit that.

1 So, I mean, he has no control over --

2 MS. WILLIAMS: I understand that,

3 but --

4 THE COURT: And she's a child and, like
5 I said, they're just very honest.

6 MS. WILLIAMS: We're just asking that
7 he not ask MINOR 2 --

8 THE COURT: Well, I've already
9 instructed both of you, if there's anything that is
10 the subject of a motion in limine, that you make me
11 aware that it's a matter of law so I can hear it
12 outside the jury's presence and create a proffer
13 and make a contemporaneous ruling. I expect
14 everybody to abide by those instructions.

15 MS. WILLIAMS: Thank you.

16 THE COURT: Is there anything else we
17 need to take up before we proceed?

18 MS. WILLIAMS: Only we gave your clerk
19 an abbreviated witness list. We are expecting our
20 last witness to be Don Elsey at 3:30 this
21 afternoon. That may be overly optimistic --

22 THE COURT: I concur, with 17
23 witnesses, but we'll see.

24 Ms. Williams: Some of them are short,
25 but we're trying to give you an estimate.

1 THE COURT: Yeah, but you have to take
2 into consideration Mr. Schwacke's right to
3 cross-examination.

4 MS. WILLIAMS: We understand.

5 THE COURT: We will take it as it
6 comes, keep it moving.

7 Ready to proceed, Mr. Schwacke?

8 MR. SCHWACKE: We are, Your Honor.

9 THE COURT: Where are the jurors'
10 notebooks?

11 THE BAILIFF: They have them.

12 THE COURT: Never give the notebooks to
13 them before they come into the courtroom.

14 THE BAILIFF: Yes, ma'am.

15 THE COURT: You can go ahead and get
16 the jury.

17 (Jury in, 8:42 a.m.)

18 THE COURT: Morning, ladies and
19 gentlemen. I hope everyone had a pleasant evening.
20 We are now going to resume testimony.

21 The State may proceed.

22 MS. WILLIAMS: The State would call
23 Mary Arnold.

24 MARY ARNOLD,
25 being first duly sworn, testified as follows:

MARY ARNOLD - DIRECT EXAM BY MS. HERRING-LASH

1 THE CLERK: Have a seat. State your
2 full name for the record and spell your last name.

3 THE WITNESS: Okay. It's Mary Jane
4 Arnold, A-R-N-O-L-D.

5 THE COURT: You may proceed.

6 DIRECT EXAMINATION

7 BY MS. HERRING-LASH:

8 Q. Ms. Arnold, where do you live?

9 A. Summerville.

10 Q. And what is your occupation?

11 A. I'm a stay-at-home mother.

12 Q. And by that, are you a stay-at-home
13 foster mother?

14 A. Foster mother.

15 Q. How long have you been a foster mother?

16 A. 13 years.

17 Q. About how many children have you had in
18 your home?

19 A. About 110.

20 Q. And were you a foster parent in March
21 of 2013?

22 A. Yes, I was.

23 Q. And was MINOR 1 at that
24 time, a foster child in your home?

25 A. Yes, she was.

1 Q. Do you remember the date that she
2 actually came to your home?

3 A. It was March.

4 Q. Okay. And how long did she end up
5 staying with you?

6 A. About three and a half weeks.

7 Q. When she first got there, what was her
8 appearance?

9 A. She was very dirty and, you know,
10 didn't have clean clothes on and so she needed to
11 be bathed and fed; she was hungry.

12 Q. What was her demeanor like?

13 A. Excuse me?

14 Q. What was her demeanor like? Like did
15 she act sad? Happy?

16 A. Oh, she was sad and scared.

17 Q. And did -- and just for this question
18 you can just answer yes or no. Did she disclose
19 sexual abuse to you?

20 A. Yes.

21 Q. And did she tell you when it happened?

22 A. Yes.

23 Q. And when did she say?

24 A. At night.

25 Q. And did she tell you where it happened?

MARY ARNOLD - CROSS EXAM BY MR. SCHWACKE

1 A. She said in the bedroom, but all foster
2 children, even though it might not be in a bedroom,
3 they say, you know, a bedroom.

4 Q. Well, what -- did you take her
5 somewhere after that?

6 A. Yes, I did. I took her to Summerville
7 Medical Center.

8 Q. Was law enforcement called out?

9 A. Yes. Mr. Barlow was called out.

10 Q. And have you seen MINOR 1 since she
11 left your home in 2013?

12 A. No, I have not.

13 MS. HERRING-LASH: Court's indulgence.

14 That's all the questions I have, Ms.

15 Arnold. If you would, answer any that Mr. Schwacke
16 has.

17 THE COURT: You may proceed.

18 CROSS-EXAMINATION

19 BY MR. SCHWACKE:

20 Q. Morning. So how many children have you
21 had in your foster care?

22 A. About 110.

23 Q. How many -- did you get any other
24 children along with MINOR 1 at the same time or was
25 she the only child?

MARY ARNOLD - CROSS EXAM BY MR. SCHWACKE

1 A. No, I had -- I had other children, but
2 I don't remember how many I had, because that
3 was --

4 Q. Were they the siblings of --

5 A. Oh, no, huh-uh.

6 Q. So out of that family, you only
7 received **MINOR 1** in your care?

8 A. Yes.

9 Q. And you indicated that she was dirty
10 and you had to bathe her?

11 A. Uh-huh.

12 Q. Did you notice anything when you bathed
13 her?

14 A. That her bottom was very red and she
15 claimed that it hurt.

16 Q. Was it a rash or were you able to
17 determine what that was?

18 A. No.

19 Q. You did take her to the hospital?

20 A. Yes; I took her to the hospital.

21 Q. And she remained with you how many days
22 after that?

23 A. It was probably about three and a half
24 weeks.

25 Q. Were you given any medications to deal

1 with the rash?

2 A. She had a tube of cream to put on, you
3 know, but I don't recall what it was, you know.
4 But other than that, no.

5 MR. SCHWACKE: One moment, Your Honor.

6 THE COURT: Uh-huh.

7 BY MR. SCHWACKE:

8 Q. Where all did you go with MINOR 1 after
9 you received her at the house and noticed the rash?

10 A. Where did I go? We -- we went to
11 sleep, you know, because it was during the night,
12 and then in the morning I had called DSS and they
13 told me to bring her in. So I brought her in to
14 the Summerville Medical Center and they called
15 Mr. Barlow in.

16 Q. So the day you received her was one day
17 and the date that she went to Trident Medical was
18 the next day?

19 A. It was like in the middle -- like in
20 the middle of the night.

21 Q. Did you go to any other location with
22 her after that?

23 A. After Summerville Medical Center?

24 Q. Yes, ma'am.

25 A. I went and got her some clothes and

MARY ARNOLD - CROSS EXAM BY MR. SCHWACKE

1 then came home.

2 Q. You didn't take her to any other
3 locations or any doctors or hospitals after that?

4 A. No, I did not.

5 Q. Who was the doctor that treated her at
6 Summerville Medical?

7 A. I don't recall because that was a
8 couple of years ago. I don't recall who it was.

9 MR. SCHWACKE: I'm sorry, Your Honor,
10 one moment.

11 THE COURT: Uh-huh.

12 BY MR. SCHWACKE:

13 Q. Did you meet a Dr. Fritton? Was he the
14 doctor?

15 A. I don't recall his name. It was a
16 while ago.

17 Q. And as a result of the doctor's
18 evaluation at Trident --

19 A. No, Summerville Medical.

20 Q. -- Summerville Medical, no further
21 contact was made by you to any other physicians or
22 doctors or medical providers?

23 A. No.

24 Q. Where did MINOR 1 go after she was with
25 you? Do you know?

MARY ARNOLD - CROSS EXAM BY MR. SCHWACKE

1 A. No.

2 Q. Is that part of the process? Are you
3 there to assist in the turnover of a foster child?

4 A. No. I had other little ones, and so
5 they decided to move her somewhere that didn't have
6 little ones as little as I had.

7 Q. Okay.

8 A. But they don't tell you who it is.

9 Q. And they meaning DSS?

10 A. DSS.

11 Q. Do you remember specifically who at DSS
12 you were dealing with regarding MINOR 1 ?

13 A. You mean the worker?

14 Q. Yes, ma'am?

15 A. No, I don't.

16 MR. SCHWACKE: That's all the questions
17 I have.

18 THE COURT: Any redirect?

19 MS. HERRING-LASH: No, Your Honor.

20 THE COURT: Any objection to the
21 witness being excused? From the State.

22 MS. HERRING-LASH: No, Your Honor.

23 THE COURT: From the defense?

24 MR. SCHWACKE: No, Your Honor.

25 THE COURT: Ma'am, you're excused.

MATTHEW BARLOW - DIRECT EXAM BY MS. WILLIAMS

1 You may call the next witness.

2 MS. WILLIAMS: The State calls Officer
3 Barlow.

4 MATTHEW BARLOW,
5 being first duly sworn, testified as follows:

6 THE CLERK: State your full name and
7 spell the last name.

8 THE WITNESS: It is Bruce Matthew
9 Barlow. Last name is spelled B-A-R-L-O-W.

10 THE COURT: You may proceed.

11 DIRECT EXAMINATION

12 BY MS. WILLIAMS:

13 Q. Officer Barlow, where do you work now?

14 A. I work for Moncks Corner Police.

15 Q. And where were you working in March of
16 2013?

17 A. Summerville Police.

18 Q. And when you were working for the
19 Summerville Police Department, did you respond to a
20 call at the Summerville Medical Center on March 15,
21 2013?

22 A. Yes.

23 Q. And what was the nature of that call?

24 A. It was a sexual conduct with a minor.

25 Q. And when you arrived, who did you

1 encounter?

2 A. I encountered a foster mother and
3 child.

4 Q. And who was the child?

5 A. I don't recall her name.

6 Q. Do you remember what she looked like?

7 A. I do.

8 Q. Would it refresh your memory to look at
9 a picture and see if this is the child?

10 A. Yes, ma'am.

11 MS. WILLIAMS: Your Honor, I'm
12 approaching the witness with State's Exhibit 13.

13 Q. (By MS. WILLIAMS) Is this how that
14 child looked on the date that you saw her?

15 A. Yes, ma'am.

16 MS. WILLIAMS: At this time, we would
17 move State's 13 into evidence.

18 THE COURT: Any objection?

19 MR. SCHWACKE: No objection.

20 THE COURT: Marked and admitted without
21 objection.

22 (STATE EXH. 13, in evidence.)

23 By MS. WILLIAMS:

24 Q. If you could just turn around and look
25 and confirm that's the child you saw?

MATTHEW BARLOW - DIRECT EXAM BY MS. WILLIAMS

1 A. Yes, ma'am.

2 Q. And on that date, do you know how old
3 she was then?

4 A. I believe she was four years old.

5 Q. And you can't tell everything the child
6 said, but on that date, did the child tell you in
7 some way that she was sexually assaulted?

8 A. She pointed.

9 Q. What did she point to?

10 A. She pointed to her private areas, her
11 genitals.

12 Q. Like -- show us what she did.

13 A. She just kind of -- (Indicating)

14 Q. And was that in response to a question
15 that you had asked her?

16 A. Yes, ma'am, I did.

17 Q. And what was that question?

18 A. I said, did your father hurt you, based
19 on the testimony of what was given by the witness.

20 Q. And --

21 A. The foster mother.

22 Q. Did you wind up working this case?

23 A. No, ma'am.

24 Q. And why is that?

25 A. Because it was not in our jurisdiction.

MATTHEW BARLOW - DIRECT EXAM BY MS. WILLIAMS

1 Q. Whose jurisdiction was it?

2 A. In Berkeley County.

3 Q. And do you remember the address that
4 the child said she was sexually assaulted at?

5 A. I remember it was on College Park Road.

6 Q. Would it refresh your memory to look at
7 the incident report as to the address?

8 A. Yes, ma'am.

9 MS. WILLIAMS: May I approach?

10 THE COURT: You may.

11 MS. WILLIAMS: I'll mark this for
12 purposes of the -- of this as State's 16.

13 (STATE EXH. 16, Incident Report, was
14 marked for identification.)

15 BY MS. WILLIAMS:

16 Q. And what is this?

17 A. It's the incident report. That address
18 was [REDACTED] College Park Road, lot [REDACTED].

19 Q. And that's in Berkeley County?

20 A. Yes, ma'am.

21 Q. What did you do when you realized it
22 wasn't your jurisdiction?

23 A. I called Berkeley County dispatch.

24 Q. What did they do?

25 A. They dispatched a deputy by telephone.

MATTHEW BARLOW - CROSS EXAM BY MR. SCHWACKE

1 Q. After that point, do you know anything
2 else that they did?

3 A. No, ma'am.

4 MS. WILLIAMS: Thank you. No further
5 questions.

6 THE COURT: Any questions for the
7 witness?

8 CROSS-EXAMINATION

9 BY MR. SCHWACKE:

10 Q. Officer Barlow, you were working for
11 Summerville Police Department at the time?

12 A. Yes, sir.

13 Q. Did you do a report?

14 A. No, sir.

15 Q. Why not?

16 A. Didn't -- it did not occur in
17 our jurisdiction.

18 Q. Is it -- were you aware the family had
19 lived previously in Summerville?

20 A. No, sir.

21 Q. So you have no report to rely on today
22 to refresh your memory of any specifics?

23 A. No, sir.

24 Q. And you didn't remember the child until
25 the picture?

1 A. I didn't remember the name of the
2 child, sir. I remember responding there.

3 Q. What else do you specifically remember
4 about your contact with the child?

5 A. I just remember speaking with the
6 foster mother and I remember speaking with the
7 little girl. She wasn't really -- she wasn't
8 really talkative.

9 Q. And basically what she told you was
10 that her father touched her in her private area?

11 A. I asked her, did your father assault
12 you? Or did your father hurt you?

13 Q. And that's what you asked?

14 A. Yes, sir, I did. And she pointed, and
15 that was the extent of it.

16 Q. So the question was, did your father
17 hurt you?

18 A. Yes, sir.

19 Q. And why did you ask the father? Why
20 did you say, did your father hurt you?

21 A. Because I was going off of what the
22 foster mother said.

23 Q. Okay. So you didn't have any
24 independent knowledge of the incident at all?

25 A. No, sir.

MATTHEW BARLOW - CROSS EXAM BY MR. SCHWACKE

1 Q. And all you know is, is that you asked
2 the child, did your father hurt you?

3 A. Yes, sir.

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

6 THE COURT: Any redirect?

7 MS. WILLIAMS: No, Your Honor.

8 THE COURT: Any objection to this
9 witness being excused?

10 MS. WILLIAMS: None.

11 MR. SCHWACKE: No.

12 THE COURT: You may call your next
13 witness.

14 MS. WILLIAMS: The State calls Candace
15 Parks.

16 Your Honor, may we approach just for a
17 moment?

18 THE COURT: Yes.

19 (Bench conference.)

20 MS. WILLIAMS: What I've instructed her
21 is to only talk about what happened in Berkeley
22 County, and then I would say we have a matter of
23 law, at which point we would have an in camera
24 hearing.

25 THE COURT: If there's any prior bad

1 acts in Berkeley County, it needs to be taken up in
2 camera.

3 MS. WILLIAMS: Okay.

4 THE COURT: Because they made a motion
5 in limine. So do we need to hear some of this
6 first?

7 MS. WILLIAMS: I don't know of any
8 prior bad acts that wouldn't be covered by the
9 indictments.

10 THE COURT: Those are two separate
11 things.

12 MS. WILLIAMS: I've instructed her only
13 to testify -- only to answer questions about stuff
14 that happened in Berkeley County.

15 THE COURT: Okay.

16 MS. WILLIAMS: And then we would have
17 an in camera hearing.

18 THE COURT: Okay.

19 (End of bench conference)

20 CANDACE PARKS,

21 being first duly sworn, testified as follows:

22 THE CLERK: If you will, have a seat,
23 state your full name for the record, and spell the
24 last name.

25 THE WITNESS: Okay. Candace Nicole

CANDACE PARKS - DIRECT EXAM BY MS. WILLIAMS

1 Parks, P-A-R-K-S.

2 DIRECT EXAMINATION

3 BY MS. WILLIAMS:

4 Q. Thank you, Ms. Parks. You can pull
5 that microphone a little bit closer if you'd like.

6 Candace, where do you work?

7 A. At Burger King in Walterboro.

8 Q. And how long have you worked there?

9 A. A year and -- a year and three months.

10 Q. What is your position there?

11 A. I make the food in the back. It's
12 called food handler.

13 Q. And you said -- you didn't say. Where
14 do you live now?

15 A. With my father on [REDACTED] Scuffle Town
16 Road.

17 Q. Where is that?

18 A. It's on the Ruffin Route.

19 Q. Is that down by Walterboro?

20 A. It's right outside.

21 Q. And, Candace, how many children have
22 you had?

23 A. Seven.

24 Q. And what are their ages? Could you
25 name the children and their ages?

CANDACE PARKS - DIRECT EXAM BY MS. WILLIAMS

1 A. Yes, ma'am. B. G., who will be 15 in
2 November; MINOR 2 just turned 13; D. G. will be nine
3 next month; MINOR 1 will be eight; J. P. -- little
4 J. P. is six; and L. P. will be three this year;
5 and H. P. will be two.

6 Q. Okay. And how many of those children
7 do you have custody of now?

8 A. None.

9 Q. So all of those children have been
10 taken away from you?

11 A. Yes, ma'am; I signed my rights away.

12 Q. And who is the father of your older --
13 oldest three children?

14 A. Maxwell Gifford.

15 Q. And who is the father of the youngest
16 four children?

17 A. Jeramy Parks.

18 Q. When you say Jeramy Parks, do you see
19 him in the courtroom?

20 A. Right there. (Indicating)

21 Q. Okay. Where are you pointing?

22 A. Right there. (Indicating)

23 Q. Okay. And what's he wearing?

24 A. A suit.

25 Q. Okay. And when were your children

1 taken away from you?

2 A. March, in 2013.

3 Q. And at the time that your children were
4 taken away, how old was MINOR 1?

5 A. She was five.

6 Q. And how old was D. G.?

7 A. He was six.

8 Q. How old was MINOR 2?

9 A. Ten.

10 Q. Why were they taken away?

11 A. Because the safety plan was violated
12 that DSS had put in place because Jeramy was at the
13 house.

14 Q. So when you say, safety plan, what is
15 your understanding of what that means?

16 A. She -- when it was given to me by the
17 DSS worker, she just basically said to keep him
18 away from the kids.

19 Q. And when was the safety plan put in
20 place?

21 A. June of 2012.

22 Q. And why was part of the safety plan for
23 Jeramy Parks not to be around the kids?

24 A. Because he was sexually molesting our
25 daughter.

CANDACE PARKS - DIRECT EXAM BY MS. WILLIAMS

1 Q. And who do you mean, which daughter?

2 A. MINOR 1 .

3 Q. And when did she tell about that?

4 A. She told on -- Maxwell Gifford's
5 sisters in June about it, and then they came back
6 to the house and told me what she said.

7 Q. Okay. When you say June, is that 2012?

8 A. 2012, yes, ma'am.

9 Q. And so if the safety plan went in place
10 June of 2012, are you saying that you weren't
11 supposed to have him with you, until they were
12 taken away in March of 2013?

13 A. Ma'am?

14 Q. The whole time that the safety plan was
15 in place, until the kids were taken away, was he
16 supposed to be there?

17 A. No, ma'am.

18 Q. But was he there?

19 A. Yes, ma'am.

20 Q. And who let him back in?

21 A. I did.

22 Q. So you let him around your kids even
23 though DSS asked you not to --

24 A. Yes, ma'am.

25 Q. -- for their safety?

CANDACE PARKS - DIRECT EXAM BY MS. WILLIAMS

1 A. Yes, ma'am.

2 Q. And you're testifying today -- let me
3 back up. The kids were taken away in March. When
4 were -- when was Mr. Parks arrested for these
5 crimes?

6 A. May 30th of 2013.

7 Q. And who else was arrested?

8 A. I was.

9 Q. What were you arrested for?

10 A. Unlawful neglect of a child or helpless
11 person.

12 Q. What is your understanding of the basis
13 of your charge?

14 A. That I didn't protect my children.

15 Q. You didn't protect MINOR 1 ?

16 A. I didn't protect any of them, yes,
17 ma'am.

18 Q. And you're testifying here today under
19 what's called a proffer; is that true?

20 A. Yes, ma'am.

21 Q. And what have we promised you in
22 exchange for your testimony?

23 A. Only that whatever I said after I
24 signed that proffer cannot be used against me.
25 That's all.

CANDACE PARKS - DIRECT EXAM BY MS. WILLIAMS

1 Q. So you were charged with unlawful
2 conduct. What charge are you facing now?

3 A. Unlawful neglect of a child or helpless
4 person.

5 Q. And I haven't offered you anything,
6 have I?

7 A. No, ma'am.

8 Q. You're facing the full range of
9 punishment for that charge?

10 A. Yes, ma'am.

11 Q. The benefit you get is being able to
12 tell the Judge at the sentencing that you did this
13 to try to help your kids; is that correct?

14 A. Yes, ma'am.

15 Q. Do you remember when you signed that
16 agreement?

17 A. No.

18 Q. Would it refresh your memory to look at
19 your signature?

20 A. Yes, ma'am.

21 MS. WILLIAMS: Your Honor, I'm showing
22 Mr. Schwacke the proffer agreement.

23 If we could mark this, for purposes of
24 the record, State's 17.

25 (STATE EXH. 17, Copy of proffer

1 agreement, was marked for identification.)

2 BY MS. WILLIAMS:

3 Q. Turn to the back where your signature
4 is and tell us what date you signed that.

5 A. August 26, 2013.

6 Q. Okay. Now, how many times has DSS been
7 involved in your life?

8 A. Three times total.

9 Q. And what happened each of the times in
10 terms of whether the children were taken away?

11 A. The first time is when Jeramy spanked
12 **MINOR 2** and he went into the floor and skinned up
13 his chin.

14 Q. Okay. What I'm asking you is, did your
15 children get taken away each time?

16 A. Yes, ma'am.

17 Q. And each time, where did they go, if
18 you know? Did they go into foster care?

19 A. First time was DSS foster care. Second
20 time, foster care, but my aunt took the younger
21 three at the time, the last six months they were
22 gone, and this time, foster care.

23 Q. And who is your aunt that took them?

24 A. Pamela Chinnners.

25 Q. And does she presently have one of your

1 children?

2 A. She has H. P. . She adopted him.

3 Q. How old is H. P. ?

4 A. He'll be two in December.

5 Q. Were you pregnant with H. P. when you
6 were arrested?

7 A. Yes, ma'am.

8 Q. And this aunt, Pamela Chinnners, did you
9 -- when MINOR 1 was younger, did you try to give
10 MINOR 1 to her as well?

11 A. I thought that I wanted to.

12 Q. Why was that?

13 A. I don't know. I just -- I guess I
14 wanted her to have another daughter because she
15 hasn't been able to have any more kids.

16 Q. How many different houses have you
17 lived in with these children?

18 A. Five.

19 Q. Has Mr. Parks been there for all the
20 times when his children were born?

21 A. Yes, ma'am.

22 Q. When did you move into the residence in
23 Berkeley County where the -- where Mr. Parks was
24 found at the house in violation of the safety plan?

25 A. In August.

CANDACE PARKS - DIRECT EXAM BY MS. WILLIAMS

1 Q. And whose house was that?

2 A. James Mike Miller.

3 Q. How did you know him?

4 A. He worked with Jeramy.

5 Q. So he was Jeramy's friend?

6 A. Yes, ma'am.

7 Q. And did he know that Jeramy was not
8 supposed to be in the home?

9 A. Yes, ma'am.

10 Q. But he allowed that?

11 A. Yes, ma'am.

12 Q. During the period of time that you were
13 in that home, and Mr. Parks was in there in
14 violation of the safety plan, did DSS visit you?

15 A. Yes, ma'am.

16 Q. And did they visit the children at
17 school?

18 A. Yes, ma'am.

19 Q. And, to your knowledge, did the
20 children ever tell that Mr. Parks was in the house?

21 A. I don't know, because DSS never told me
22 any of the conversation they had.

23 Q. But he wasn't removed until --

24 A. We were -- the children were taken away
25 in March.

CANDACE PARKS - DIRECT EXAM BY MS. WILLIAMS

1 Q. And how did they finally figure out he
2 was in the house, to your knowledge?

3 MR. SCHWACKE: Objection, Your Honor.
4 That calls for speculation.

5 MS. WILLIAMS: To her knowledge.

6 THE COURT: I think you need to
7 rephrase the question.

8 BY MS. WILLIAMS:

9 Q. When he was removed from the house and
10 the children were removed from the house, tell us
11 what happened that led to that discovery. Only
12 what you know.

13 A. I was making breakfast for dinner for
14 the kids and there was a knock on the door. There
15 were two policemen, the DSS caseworker, the
16 guardian ad litem, and I think another DSS worker.

17 Q. And what did -- what did they want?

18 A. To know if Jeramy was there.

19 Q. What did you tell them?

20 A. I told them no.

21 Q. And then what happened?

22 A. They asked Mike to come to the door and
23 they asked him the same question. And he said,
24 yes, he was there.

25 Q. And all of the children were removed at

1 that time?

2 A. They waited and let them eat, and then
3 they took them, yes, ma'am. They were all taken.

4 Q. Now, you were aware of the reason why
5 DSS was involved with your family to begin with,
6 correct?

7 A. Yes.

8 Q. And during the time that you lived in
9 Berkeley County, there was one particularly
10 vulnerable child that was the subject of that; is
11 that not true?

12 A. Yes, ma'am, that's true.

13 Q. Who was that?

14 A. MINOR 1 .

15 Q. And did she continue to be abused in
16 the Berkeley County house?

17 A. Yes, ma'am.

18 Q. And did you know?

19 A. Yes, ma'am.

20 Q. How did you know?

21 A. I knew because I had caught him a few
22 times. I seen it.

23 Q. You saw him sexually abuse your child?

24 A. Yes, ma'am.

25 Q. And how old was she?

CANDACE PARKS - DIRECT EXAM BY MS. WILLIAMS

1 A. In Berkeley County, she was five and a
2 half.

3 Q. And what did you do about it?

4 A. Nothing.

5 Q. How many times did you watch him
6 sexually abuse your child?

7 A. More than four times.

8 Q. Now, how big was that house?

9 A. It was two bedrooms, one bathroom, a
10 kitchen/dining area, and the living room.

11 Q. And how many bedrooms were there, did
12 you say?

13 A. Two.

14 Q. Two?

15 A. Yes, ma'am.

16 Q. And who slept in one of the bedrooms?

17 A. In one of the bedrooms it was Mike, and
18 in the other bedroom all five children.

19 Q. All five of them slept -- what kind of
20 bed was it?

21 A. It was a bunkbed.

22 Q. Do you know who slept where?

23 A. MINOR 2 and B. G. on the top, D. G. and
24 MINOR 1 and little J. P. on the bottom.

25 Q. Did they have a mattress?

CANDACE PARKS - DIRECT EXAM BY MS. WILLIAMS

1 A. Yes, ma'am.

2 Q. Are you sure?

3 A. Yes, ma'am. Because the bottom one
4 hung over the bed.

5 Q. And you said that you watched him
6 sexually abuse your child. Did you ever tell him
7 to stop or ask him to stop?

8 A. Yes, ma'am.

9 Q. And what would he do when you would ask
10 him to stop?

11 A. It's his daughter; he can do what he
12 wants.

13 Q. Did he ever do anything physical to you
14 when you asked him to stop?

15 A. Yes, ma'am.

16 Q. And was there any child in the home
17 that tried to come to your aid when that happened?

18 MR. SCHWACKE: Your Honor, I've been
19 very generous.

20 THE COURT: No speaking objections. If
21 there's an objection, just state it without
22 editorializing.

23 MR. SCHWACKE: Objection to the
24 leading.

25 THE COURT: Sustained; leading.

CANDACE PARKS - DIRECT EXAM BY MS. WILLIAMS

1 BY MS. WILLIAMS:

2 Q. Tell us what would happen in the home
3 when you asked him to stop and what other people
4 would do.

5 A. He would yell, push me. There was an
6 incident where he pushed me against the door,
7 holding me by my arms against the door, and MINOR 2
8 heard me yelling and screaming, let go of me. He
9 came in and tried to pull Jeramy off of me and
10 Jeramy pushed him down.

11 Q. Was that unusual for him to push him
12 down?

13 A. No, ma'am.

14 Q. And what did you call MINOR 2 in that
15 home? Did you ever refer to him as anything?

16 A. Just as my protector. He was always
17 trying to protect me or the other kids. He would
18 always step in.

19 Q. And he was nine and ten --

20 A. He was --

21 Q. -- during that period of time?

22 A. -- about 11.

23 Q. When was he born?

24 A. [REDACTED]. He was almost 11.

25 Q. Okay. So he was ten?

CANDACE PARKS - DIRECT EXAM BY MS. WILLIAMS

1 A. He was ten.

2 Q. And he was your protector?

3 A. (Nodding)

4 Q. Tell us about some of the times that
5 Mr. Parks sexually abused your five-year-old and
6 you saw it. Tell us about one of those times.

7 A. I was in the living room, and I went to
8 go check on the kids. And he was in the bedroom
9 with one hand up on the bar, leaning down, holding
10 his penis with his other hand, rubbing it on
11 MINOR 1's mouth while she was laying there. I
12 don't know if she was sleeping, but she was laying
13 there.

14 Q. So you're talking about which room?

15 A. The child's room. If you go down the
16 -- it's the first room on the left.

17 Q. Where was MINOR 1?

18 A. On the bottom bunk, on this side facing
19 out.

20 Q. And explain to me what he was doing.
21 If you can just sort of -- you can get down and
22 show them what he was doing, please.

23 A. Not exactly sure how tall the bed was,
24 but he was pretty much holding on and like leaning
25 over and doing that number.

CANDACE PARKS - DIRECT EXAM BY MS. WILLIAMS

1 Q. On her mouth?

2 A. On her mouth.

3 Q. So he was holding onto the bed?

4 A. Yes, ma'am.

5 Q. While he was moving?

6 A. Yes, ma'am.

7 Q. And his penis was in her mouth?

8 A. Yes, ma'am.

9 Q. Tell us about -- were there other times
10 that you saw him sexually assaulting her?

11 A. Yes, ma'am.

12 Q. Tell us about another time.

13 A. I was outside smoking marijuana, and I
14 had -- thought I heard her holler but it didn't
15 sound loud, it sounded kind of muffled. So I went
16 to the -- there was a little crack in the window
17 where the curtain was moved. He had her laying
18 across his lap with her head -- if you looked in
19 the window, facing that way (Indicating). So her
20 head was on this side and he had his finger inside
21 her.

22 Q. What was she doing?

23 A. She was crying.

24 Q. What did you do?

25 A. Tried to run in the door, but it was

CANDACE PARKS - DIRECT EXAM BY MS. WILLIAMS

1 locked. So I started banging on it.

2 Q. And did you confront him that time?

3 A. Yes, ma'am.

4 Q. What happened?

5 A. A lot of yelling. I don't remember
6 what was said, just a bunch of yelling.

7 MS. WILLIAMS: Your Honor, I'm going to
8 show defense counsel what's previously been marked
9 as State's 6 and 7.

10 May I approach?

11 THE COURT: You may.

12 BY MS. WILLIAMS:

13 Q. Look at these pictures and see if you
14 can see the window that you're describing in these
15 pictures.

16 A. Right there and right there.

17 (Indicating)

18 Q. And is that where the window was the
19 day that this happened -- the evening it happened?

20 A. Yes, ma'am.

21 Q. Does that accurately depict where the
22 window was?

23 A. Yes, ma'am.

24 MS. WILLIAMS: Your Honor, at this
25 point we would move State's 6 and 7 into evidence.

CANDACE PARKS - DIRECT EXAM BY MS. WILLIAMS

1 THE COURT: Any objection?

2 MR. SCHWACKE: Without objection.

3 THE COURT: Marked and admitted without
4 objection.

5 (STATE EXH. 6 in evidence.)

6 (STATE EXH. 7 in evidence.)

7 BY MS. WILLIAMS:

8 Q. Can you show the jury where the window
9 was?

10 A. It was right there.

11 Q. This little red dot, I think they can
12 see it; just show them where it was.

13 A. Right there.

14 Q. Okay. And how could you look in the
15 window? It looks like kind of tall.

16 A. If you walk right up there, my head was
17 about right there, and I could see in there.

18 MS. WILLIAMS: And if you could put
19 State's 7 up.

20 Q. And where is it there?

21 A. Right there.

22 Q. This is a view from the inside.
23 Where was the couch?

24 A. It was right in front of there. You
25 can't really see it in that picture, but it was

1 right in front of the counter right there.

2 Q. Thank you.

3 Were there any other times that you
4 watched the father of this child sexually assault
5 her?

6 A. I can't remember any more in the
7 Berkeley home.

8 Q. Do you remember telling us about a time
9 when you saw him with her on his lap?

10 A. That was in Dorchester County.

11 Q. Okay.

12 THE COURT: Ladies and gentlemen, you
13 are to disregard the last question and the last
14 response. You are to give it absolutely no
15 consideration in your deliberations.

16 You may proceed.

17 BY MS. WILLIAMS:

18 Q. Those are the only times you remember
19 in Berkeley County?

20 A. That I can remember.

21 Q. Do you remember telling us about a time
22 that you had to wash her off?

23 A. That was in Berkeley.

24 Q. Berkeley. Tell us about that.

25 A. She had come up to me and said she had

CANDACE PARKS - DIRECT EXAM BY MS. WILLIAMS

1 something nasty on her, like right around here.
2 (Indicating) So I cleaned it off. I knew what it
3 was.

4 Q. What was it?

5 A. It was sperm, semen.

6 Q. What did she say when you were cleaning
7 her off, if anything? What did she do?

8 A. She asked me, why is he still here?

9 Q. What did you say?

10 A. Because I'm scared.

11 MS. WILLIAMS: Your Honor, at this
12 time, I think we have a matter of law that we would
13 like to take up with the Court.

14 THE COURT: Madame forelady, ladies and
15 gentlemen, we have a matter of law to take up.
16 During this break, please do not discuss the case
17 and please leave your notepads in your seat. We
18 appreciate your patience.

19 (Jury out, 10:23 p.m.)

20 MS. WILLIAMS: Your Honor, just for the
21 record, I have asked Mrs. Parks this question many
22 times about the child --

23 THE COURT: Wait until that door is
24 closed.

25 MS. WILLIAMS: -- about the child on

CANDACE PARKS - PROFFERED EXAM BY MS. WILLIAMS

1 her (sic) lap and she has always said Berkeley
2 County. I don't think she is purposely doing this,
3 but I want to make sure that the Court understands,
4 we did not elicit 404(B) evidence on purpose.

5 Her attorney is here in the courtroom.
6 She's been there for some of those preparatory
7 sessions, and that was not done to blatantly
8 disregard the Court's order. She had always said
9 Berkeley County before, otherwise I would not have
10 asked her.

11 Your Honor, at this time we would ask
12 that the Court allow us to get into --

13 THE COURT: You need to proffer your
14 questions and then I'll make a decision.

15 MS. WILLIAMS: Okay.

16 PROFFERED EXAMINATION

17 BY MS. WILLIAMS:

18 Q. Candace, when did the sexual assaults
19 of MINOR 1 begin, like how old was she?

20 A. It was in 2011. Right before she
21 turned four is when I knew.

22 Q. Where were you living then?

23 A. Woodduck Drive in Summerville.

24 Q. And did he continually sexually assault
25 her even after you moved?

CANDACE PARKS - PROFFERED EXAM BY MS. WILLIAMS

1 A. Yes, ma'am.

2 THE COURT: You need to watch the
3 leading.

4 MS. WILLIAMS: Okay.

5 BY MS. WILLIAMS:

6 Q. How many times would you say he
7 assaulted her at Woodduck, that you saw?

8 A. More than eight times.

9 THE COURT: I'm sorry, ma'am, I
10 couldn't hear your response.

11 THE WITNESS: More than eight times.

12 BY MS. WILLIAMS:

13 Q. And after you moved to Berkeley, did it
14 continue?

15 A. Yes, ma'am.

16 Q. And was it the same type of abuse?

17 A. Yes, ma'am.

18 Q. With the same child?

19 A. Yes, ma'am.

20 Q. Why did you not tell about this? There
21 were times when he was not in the home, correct?

22 A. Yes, ma'am.

23 Q. So why did you not run to the police
24 station or call DSS, or why did you not tell
25 anybody?

CANDACE PARKS - PROFFERED EXAM BY MS. WILLIAMS

1 A. Because I was scared of the
2 repercussion, that he would beat the crap out of me
3 if I did.

4 Q. And were you also afraid that your kids
5 --

6 MR. SCHWACKE: Your Honor, leading.

7 THE COURT: Sustained; leading.

8 BY MS. WILLIAMS:

9 Q. Was that the only thing that you were
10 afraid of?

11 A. I didn't want my children taken from
12 me, because I knew if they were taken again, they
13 would be gone for good.

14 Q. Was there any other violence in the
15 home besides the violence that you just described
16 directed towards you?

17 A. That kind -- he would hit the boys in
18 the back of the head for no apparent reason.

19 Q. What about toward MINOR 2?

20 THE COURT: Now I'm confused, because
21 you're asking about the elements of an indictment
22 that's pending, and that's not Lyle. So I'm trying
23 to figure out what questions you would be asking
24 about previous incidents in Dorchester County, and
25 that's the purpose of this proffer.

CANDACE PARKS - PROFFERED EXAM BY MS. WILLIAMS

1 MS. WILLIAMS: I'm sorry, Your Honor.
2 I'm unclear as to the Court's ruling. Not just
3 about the 404(b), but as to what gets in under the
4 unlawful conduct for MINOR 2, so I have --

5 THE COURT: Any event that happened in
6 Berkeley County, but nothing that happened in
7 Dorchester County, and anything that would have
8 been a part of continuum of events that would fit
9 within the precedent of res gestae.

10 MS. WILLIAMS: Okay. Well --

11 THE COURT: No -- nothing sexual
12 basically, because if it was in another county,
13 then charges should have been brought against him
14 in that county. Prior bad acts cannot be the
15 subject of an unlawful conduct charge.

16 MS. WILLIAMS: Okay. I'm sorry, I had
17 moved on from the 404(b) involving the sexual
18 assaults of MINOR 1, and I'll finish up with that,
19 and then as far as the res gestae evidence for --

20 THE COURT: It is my understanding that
21 the basis of the unlawful conduct charge was that
22 when they were in a fight, what -- she confronted
23 him -- I'm paraphrasing this for brevity -- that
24 when she confronted him on one of these events,
25 that this minor child intervened, and that is the

CANDACE PARKS - PROFFERED EXAM BY MS. WILLIAMS

1 basis -- and that he hit him, and that was the
2 basis of the unlawful conduct charge.

3 MS. WILLIAMS: That and the fact that
4 he was then continually targeted with physical
5 abuse, so --

6 THE COURT: Then you would have to
7 specify a timeframe about that, not just in
8 general.

9 MS. WILLIAMS: Okay.

10 THE COURT: Because if it happened as
11 alleged, then there should be some specificity
12 about that, as to when it happened and under what
13 circumstances it happened. That's not a prior bad
14 act. That is an element of your -- what you've
15 charged him with.

16 MS. WILLIAMS: Right.

17 THE COURT: What I prohibited was any
18 reference to -- because there was a lot of -- a
19 whole string of things you all listed and if, in
20 fact, he perpetrated -- or it is alleged he
21 perpetrated any sexual acts against this child in
22 another county, that would not be admissible as
23 regards an unlawful conduct charge, because if he
24 did that, then he should have been charged in
25 another county with a sexual assault against this

1 child.

2 MS. WILLIAMS: I'm going to finish up
3 with the prior 404(b) sexual assault regarding
4 MINOR 1 .

5 THE COURT: That's why we're having
6 this proffer.

7 MS. WILLIAMS: Right. And then I
8 thought --

9 THE COURT: Because that's the purpose
10 of Mr. Schwacke's objection.

11 MS. WILLIAMS: Okay. Would we now have
12 to -- would we have to excuse the jury again in
13 terms of the scope of the evidence?

14 THE COURT: You should be able to know
15 what the scope is.

16 MS. WILLIAMS: For MINOR 2 .

17 THE COURT: Yeah. Unless he makes a
18 contemporaneous objection.

19 BY MS. WILLIAMS:

20 Q. Okay. So regarding MINOR 1 , when did
21 she tell as far as the sexual abuse that occurred
22 in Dorchester County?

23 A. June of 2012.

24 Q. And that's when you all were living at
25 Woodduck?

CANDACE PARKS - PROFFERED EXAM BY MS. WILLIAMS

1 A. Yes, ma'am.

2 Q. And who did she tell?

3 A. Tawnee Castanon and Aleshia Gifford
4 Moore, Maxwell Gifford's sisters.

5 Q. Were you there when that happened?

6 A. No, ma'am.

7 Q. After that disclosure by MINOR 1, and
8 the safety plan was put in place, did MINOR 1 go
9 for a forensic interview?

10 A. I took her, but she wouldn't leave my
11 side.

12 Q. How many times did you take her?

13 A. Twice.

14 Q. So she would never tell when you were
15 there?

16 A. Yes, ma'am, she would never tell.

17 Q. Did you ever once -- once Mr. Parks was
18 back in the home, did you ever say anything to the
19 kids about not telling?

20 A. Yes, I did.

21 Q. What did you say?

22 A. I said if they told DSS that he was
23 there, they would be taken again.

24 MS. WILLIAMS: Okay. Your Honor,
25 that's all the questions we have regarding the

1 prior 404(b).

2 THE COURT: Are you saying that in
3 Dorchester County she told them not to tell or are
4 you saying in Berkeley County?

5 MS. WILLIAMS: Once they moved to
6 Berkeley County, she told them --

7 THE COURT: It's admissible; the
8 testimony regarding her not telling them in
9 Berkeley County. I don't have a problem with that,
10 and I don't think Mr. Schwacke objected to that.
11 What he's objected to is any events that are
12 alleged to have occurred in Dorchester County.

13 MS. WILLIAMS: And I can proffer the
14 details of what she saw in Dorchester County.

15 THE COURT: I think you need to, to
16 create a complete proffer.

17 BY MS. WILLIAMS:

18 Q. Tell us in detail what you saw in
19 Dorchester County. Do you remember the first time?

20 A. I don't remember the first time, but
21 one time I was in the kitchen. I came out into the
22 living room, he had his arm around her and his hand
23 looked like it was down her pajama pants.

24 Q. Tell us about another time.

25 A. Another time, it was night and the kids

CANDACE PARKS - PROFFERED EXAM BY MS. WILLIAMS

1 were in bed. He was in J. P. and MINOR 1's room.
2 She had a white taller bed, and I could see his
3 hand between her legs, but I couldn't tell what he
4 was doing.

5 Q. And I had asked you a question before
6 the jury went out and you started to describe
7 something that happened on the couch. Can you
8 describe what you saw that time?

9 A. He had her in his lap facing outward
10 and moving her up and down.

11 Q. And what did you do after you saw that?

12 A. Jerked her out of his lap and told her
13 to go to her room and started yelling at him.

14 Q. What did you see when you jerked her
15 out of his lap?

16 A. His penis was out.

17 Q. And what was she doing when you saw
18 that?

19 A. When she saw me, she was looking at me
20 like -- she didn't say anything. She was just
21 staring.

22 Q. Can you remember any other times in
23 Dorchester County?

24 A. I had gone to the store. I come back,
25 saw the boys, didn't know where MINOR 1 was. I

CANDACE PARKS - PROFFERED EXAM BY MS. WILLIAMS

1 went to our bedroom. He was laying on the bed, had
2 her laying across him.

3 THE COURT: Ma'am, I can't hear you.

4 THE WITNESS: He was laying in the bed,
5 she was laying across him, like across this way,
6 and he had her hand on his penis and his hand on
7 her hand, jacking him off, masturbating.

8 Q. And who did MINOR 1 take showers with?

9 A. It was mainly me, but she had taken a
10 shower with him.

11 Q. In Dorchester or Berkeley, or both?

12 A. Both.

13 Q. And did you ever know about anything
14 that happened in the showers?

15 A. No, ma'am.

16 MS. WILLIAMS: Okay. I think that's
17 all the questions we have about Dorchester.

18 THE COURT: Would you like to
19 cross-examine the witness?

20 MR. SCHWACKE: No, Your Honor. I still
21 object --

22 THE COURT: I'm going to hear
23 objections, but my question is simple. For the
24 purpose of this proffer, do you wish to pose any
25 questions in cross-examination?

1 MR. SCHWACKE: Not at this time.

2 THE COURT: I will say in advance,
3 anything that relates to Berkeley County is
4 admissible, and some of that has been intertwined
5 in this proffer. So anything that relates to
6 Berkeley County can be elicited from the witness;
7 however, I would instruct the Solicitor to stop
8 making references to Berkeley County because it
9 implies that there's some other time that it
10 happened.

11 MS. WILLIAMS: Okay.

12 THE COURT: Now, I will be glad -- is
13 there any exception to the line of questioning
14 regarding alleged acts that occurred in Dorchester
15 County.

16 MR. SCHWACKE: Yes, Your Honor.

17 THE COURT: And what is the basis of
18 the objection?

19 MR. SCHWACKE: The basis would be
20 information that would be confusing to the triers
21 of the fact, the jury.

22 THE COURT: Why would it be confusing?

23 MR. SCHWACKE: It's going to involve
24 different types of the conduct.

25 THE COURT: It's exactly what the child

1 testified to, so how is it different? She's
2 testified to digital. She's testified to mastur --
3 and I'm not trying to be indelicate, but I don't
4 know any other term for it.

5 She has testified that he had her
6 perform acts of masturbation on him as well as
7 digital penetration, as well as fellatio. And
8 that's just basically what she testified to.

9 MR. SCHWACKE: Well, as Your Honor had
10 pointed out earlier, this could very well form the
11 basis of an indictment that was not indicted.

12 THE COURT: Well, I'm talking about
13 this other child. So, basically, I don't want the
14 State trying to try a CSC case under the guise of
15 an unlawful conduct. That's why I restricted it
16 regarding the younger male child.

17 MR. SCHWACKE: That's why I'm concerned
18 about the testimony confusing the jury, but --
19 obviously, it has a prejudicial effect on my
20 client, and I believe that the jury is served with
21 a cleaner case if the Dorchester matters are not
22 lumped into the evidence that the jury would have
23 to consider at the close of the case.

24 THE COURT: Would the State like to
25 respond?

1 MS. HERRING-LASH: Yes, Your Honor.
2 The Lyle evidence in this case, the 404(b) Lyle
3 evidence, we would submit should come in under the
4 common scheme part of the 404(b) Rule. And the
5 case law says, in determining whether the evidence
6 is admissible of common scheme or plan, the trial
7 Court must analyze the similarity and
8 dissimilarity. And I'm referring to State v.
9 Wallace, Your Honor.

10 And when looking at and comparing the
11 similarities and dissimilarities between the two
12 acts, the Court will -- should allow the 404(b) in
13 if the similarities outweigh the dissimilarities.
14 And in this case, it is classic common scheme and,
15 actually, Your Honor, really also a continuous
16 course of conduct, because it is the same two
17 parties, the same actions in both -- occurring in
18 the home in which they resided.

19 They resided with the same family
20 members in both homes, it happened in locations,
21 the couch, the bathroom, bedroom, in both homes,
22 and it continued.

23 The only difference and the only reason
24 this -- these activities could not be indicted is
25 just, from one timeframe to the other, they moved

1 to a different jurisdiction, which is the only
2 difference.

3 The testimony Your Honor can evaluate
4 and finding if it is clear and convincing -- and
5 the best argument I think and the most compelling
6 argument here is the similarities greatly outweigh
7 the dissimilarities and it is, in essence, a
8 continuous course of conduct.

9 THE COURT: Anything further from the
10 defense?

11 MR. SCHWACKE: No, Your Honor.

12 THE COURT: We're going to take a brief
13 recess.

14 Ma'am, during the break, please do not
15 discuss your testimony with anyone. We will be in
16 recess about ten minutes.

17 (A recess transpired.)

18 THE COURT: You may be seated.

19 I have considered the arguments of both
20 the parties regarding the admissibility of the
21 evidence of acts that were allegedly committed in
22 Dorchester County and perpetrated against the minor
23 child, **MINOR 1**. Our courts have been very clear
24 that in order to allow 404(b)evidence, which we
25 commonly refer to as prior -- uncharged prior bad

1 acts, there are only -- normally, it would be
2 considered evidence of someone's character, but our
3 rules and our case law have created certain
4 exceptions to that. One of them is common scheme
5 or plan.

6 And our courts, again, have been very
7 clear that for such evidence of that type to be
8 relevant -- that such evidence is relevant because
9 proof of one is strong proof of the other. Our
10 courts have also given us a barometer of how to
11 judge such testimony in determining its
12 admissibility.

13 And, again, the courts have been very
14 clear that the trial court must analyze the
15 similarities and dissimilarities between the crime
16 charged and the bad act evidence to determine
17 whether there is a close degree of similarity.
18 When the similarities outweigh the dissimilarities,
19 the bad act evidence is admissible under 404(b).

20 Also, the Court must look to whether
21 the close similarities of the charged offence and a
22 previous act enhances the probative value of the
23 evidence so as to outweigh the prejudicial effect,
24 and as the similarity becomes closer, the more
25 likely the evidence will be admissible. The acid

1 test of admissibility is the logical relevancy of
2 other crimes.

3 Also, when a criminal defendant's prior
4 bad acts are directed towards the same victim and
5 are very similar in nature, our courts have ruled
6 that those acts are admissible as common scheme or
7 plan. If the evidence is logically pertinent in
8 that it reasonably tends to prove a material fact
9 at issue, the evidence should not be rejected
10 merely because it incidentally proves the defendant
11 guilty of another crime.

12 Of course the Court must always look to
13 whether there is a dangerous tendency and whether
14 there is any misleading probative force in the
15 evidence, and the Court must look at it with rigid
16 scrutiny, and it has to be more than mere
17 similarity. In order to be admissible under common
18 scheme or plan, the evidence is required to be --
19 there must be a connection between the extraneous
20 crimes and the crime charged so that proof of the
21 former tends to prove the latter, and it must be
22 evidence -- the evidence must be relevant to prove
23 the alleged crime.

24 The State seeks to introduce evidence
25 regarding alleged prior acts against the minor in

1 Dorchester County. I find that the evidence is
2 admissible under the Lyle exception, common scheme
3 or plan. I find that the evidence has more
4 similarity than dissimilarity in that it is of the
5 exact same kind alleged in the current case; that
6 being the same type of location, the same type of
7 sexual interaction, that being digital penetration,
8 the touching of the child, as well as fellatio, and
9 it also is similar to that testimony -- the
10 testimony of the alleged acts as testified to by
11 the minor child.

12 I find a close degree of similarity
13 exists between the crimes charged and the bad act
14 evidence and that it requires the elements of --
15 and that it meets and satisfies the established
16 requirement of 404(b) of the common scheme or plan
17 exception. I find that the evidence is more
18 probative than prejudicial and that there is a
19 connection between the extraneous crime and the
20 crime charged and that the former proof tends to
21 prove the latter alleged offence.

22 I also find the probative value is
23 substantially outweighed by any unfair prejudice
24 argued against the defendant in this case. I also
25 find that it is more probative in light of where it

1 appears the theory of the case is headed, and I'm
2 anticipating how this will play out based on the
3 line of questioning and the arguments that have
4 been made so far -- that this child was coached,
5 that these allegations are recently fabricated or
6 that they are simply untrue -- and therefore that
7 makes the evidence more probative than prejudicial.

8 In addition to that, based on what the
9 Court has observed, I find so far the testimony in
10 the proffer of the witness to be credible. The
11 fact that she is testifying pursuant to a proffer
12 agreement, has received immunity for those items
13 that she has alleged happened after she signed the
14 proffer agreement, but even with that immunity, she
15 is still by virtue of her testimony admitting to
16 criminal acts on her part, and that being failing
17 to protect her children during the course of these
18 alleged activities, and I do find her to be
19 credible in that regard, as well as my own
20 observations of her demeanor as she has testified
21 regarding these acts.

22 It appears as she testifies it has been
23 quite unsettling to her, and her lack of ability or
24 lack of fortitude in protecting her children is
25 quite unsettling to her, I assume with the benefit

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1 of hindsight, in the light of the fact that her
2 rights have been terminated regarding all of her
3 children. As such the testimony is admissible.

4 Are we ready to proceed?

5 MS. WILLIAMS: We are.

6 THE COURT: Is the defense ready to
7 proceed?

8 MR. SCHWACKE: We are.

9 THE COURT: Please bring in the jury.

10 And also -- wait. Close that door for
11 me. Just close the door.

12 I also find that, as required by case
13 law, that the witness's eyewitness testimony is
14 clear and convincing as in regards to the testimony
15 of the prior bad acts.

16 (Jury in, 11:05 a.m.)

17 THE COURT: Ladies and gentlemen, we
18 appreciate your patience. We will now resume with
19 the testimony of the witness.

20 You may proceed, Ms. Williams.

21 MS. WILLIAMS: Thank you, Your Honor.

22 THE COURT: You're welcome.

23 BY MS. WILLIAMS:

24 Q. Candace, when did you actually move
25 into the address in Berkeley County?

CANDACE PARKS - CONTINUING DIRECT EXAM BY MS. WILLIAMS

1 A. August.

2 Q. Of what year?

3 A. 2012.

4 Q. And what home did you live in before
5 that?

6 A. I had stayed with Maxwell Gifford for I
7 think two months.

8 Q. And before you stayed with Maxwell
9 Gifford, where were you?

10 A. Woodduck Drive, Summerville.

11 Q. And at Woodduck, which children were
12 living there then?

13 A. B. G., MINOR 2, D. G., MINOR 1 and
14 J. P. .

15 Q. And were you pregnant then?

16 A. Not at that time.

17 Q. When was L. P. born?

18 A. .

19 Q. And how old was MINOR 1 in the Woodduck
20 address?

21 A. She was almost four.

22 Q. And did you ever see acts of sexual
23 abuse against MINOR 1 in that address?

24 A. Yes, ma'am.

25 Q. Do you remember any of those incidents

1 specifically?

2 A. Yes, ma'am.

3 Q. Can you tell us about one of them?

4 A. I was in the kitchen and I came out,
5 Jeramy and MINOR 1 were on the couch in the living
6 room. The boys I think were in their room playing;
7 they weren't in the living room. He had his arm
8 around her waist and his hand was down her pants.

9 Q. And how many bedrooms were in that
10 house?

11 A. Three.

12 Q. So who slept where?

13 A. B. G., MINOR 2, and D. G. slept in one
14 room, MINOR 1 and J. P. slept in the other room,
15 and me and older Jeramy slept in the master
16 bedroom.

17 Q. How old was little J. P. at that time?

18 A. Three. He was -- when they first got
19 back, he was two, but he had a birthday since they
20 had come back to Woodduck.

21 Q. Where were they?

22 A. DSS care.

23 Q. Okay. And before you moved into
24 Woodduck, how long were they in DSS care?

25 A. They were actually taken that time

1 while we were in Woodduck. We had just moved to
2 Woodduck like three months before.

3 Q. How old was MINOR 1 when they were
4 taken?

5 A. Three.

6 Q. And how old was J. P. ?

7 A. About one.

8 Q. Okay. So you just described one of the
9 incidents. And tell us what room of the house that
10 was in.

11 A. The living room.

12 Q. And do you remember any other
13 incidents?

14 A. Yes, ma'am.

15 Q. Okay. Tell us about some of those.

16 A. In J. P. and MINOR 1's room. She had
17 a plastic taller bed, and I -- I don't remember why
18 I was going in that direction, but I was going in
19 that direction and I saw him kneeling by her bed,
20 and with the light in the hallway I could see his
21 hand was again between her legs, but I couldn't see
22 if anything was in or not.

23 Q. What was she wearing?

24 A. Pajamas.

25 Q. And what time of day was it?

1 A. Nighttime.

2 Q. Was it -- tell me about the lighting.

3 How could you see this?

4 A. The hallway light was right across
5 their bedroom.

6 Q. Were there other times that you
7 observed at the Woodduck address?

8 A. Yes, ma'am.

9 Q. Can you tell us about any of those?

10 A. Again in the living room on the couch.
11 He had her moving up and down; as I got closer, I
12 realized his penis was hanging out.

13 Q. Tell us a little bit about that. What
14 was the position they were in on the couch?

15 A. They were both facing outward.

16 Q. And how old was she then? Almost four?

17 A. Almost four.

18 Q. And were they -- what were they
19 wearing? What could you see as you approached?

20 A. She was wearing her pajamas and as far
21 as I could see, he was wearing like a shirt and
22 boxers.

23 Q. And was anything covering them or could
24 you see what they were wearing?

25 A. There was a cover, a sheet.

1 Q. And when you got closer, did you see
2 anything?

3 A. Not until I jerked the cover off.

4 Q. What did you see when you jerked the
5 cover off?

6 A. His penis right there between her legs.

7 Q. Where were her clothes?

8 A. Pulled down a little, just a little
9 bit.

10 Q. Do you remember any other times at the
11 Woodduck address?

12 A. In our bedroom. I went to the store.
13 I had come back, saw the boys playing, wondered
14 where MINOR 1 was. I went to my bedroom. He was
15 lying on the bed, had her laying crossways, and her
16 hand was on his penis, his hand was on hers, and he
17 was making her masturbate him.

18 Q. Can you show us the motion you saw?

19 A. Like that. He had a hold of her hand,
20 doing that. (Indicating)

21 Q. And let the record reflect that she is
22 holding her hands in a fist and moving them up and
23 down.

24 Were there other times at the Woodduck
25 address?

1 A. There were, but I can't remember
2 specifics.

3 Q. How many times do you think there were?

4 A. More than eight.

5 Q. And what was your reaction, if you
6 remember, the first time you saw him doing this to
7 your three-year-old?

8 A. Terrified, angry.

9 Q. What did you do?

10 A. Jerked her off of his lap and told her
11 to go to her room.

12 Q. What was his response at the Woodduck
13 address?

14 A. He just -- the way he acted, like he
15 had a right to do it.

16 Q. What did he do specifically?

17 A. He had said that she was his daughter
18 and he could do what he wants.

19 Q. Well, did he take any action?

20 A. Besides pushing me against the door or
21 throwing chairs at me. Every time I would stop it,
22 he would yell at me, cuss at me, spit in my face.

23 Q. Did those types of activities continue
24 into the Berkeley address?

25 A. Yes, ma'am.

CANDACE PARKS - CONTINUING DIRECT EXAM BY MS. WILLIAMS

1 Q. Were there times when he was not in the
2 home?

3 A. When he went to work.

4 Q. And did you tell anyone when he was
5 gone?

6 A. No, ma'am.

7 Q. Why?

8 A. Too scared.

9 Q. Any other reasons?

10 A. I didn't want my kids taken again.

11 Q. Now, we talked a little bit about the
12 safety plan. Do you remember the day that -- or
13 the events that caused the safety plan to go into
14 effect?

15 A. When she told Tawnee and Aleshia about
16 what her father was doing.

17 Q. Can you tell us what happened that day?

18 A. She had rode with them to the gas
19 station, and when she came back, she went in her
20 room to play with her brothers. And they told me
21 what she had told them.

22 MR. SCHWACKE: And I object to whatever
23 that is, Your Honor.

24 THE COURT: She can't repeat what they
25 said.

1 MS. WILLIAMS: Thank you.

2 THE COURT: She can only say what she
3 did as a result of the conversation.

4 BY MS. WILLIAMS:

5 Q. When you found out what she had said,
6 how did you act?

7 A. Like I didn't know.

8 Q. But you did know?

9 A. But I did.

10 Q. Where did you go as a result of that?

11 A. We went to Trident in North Charleston.

12 Q. And whose idea was that?

13 A. Theirs.

14 Q. And where did you go after Trident?

15 A. MUSC.

16 Q. What was the purpose of that?

17 A. So they could do a thorough
18 examination.

19 Q. And did you tell anyone else what you
20 told this jury about what you knew what was going
21 on in these homes?

22 A. No, ma'am.

23 Q. Why?

24 A. I didn't want my kids taken.

25 Q. Were you worried that you would get in

1 trouble?

2 A. I knew I would.

3 Q. How far did you go in school, Candace?

4 A. I got a GED.

5 Q. After the safety plan was put in place,
6 tell us how many places you lived before you moved
7 to Berkeley County.

8 A. Just with Max and then into the home in
9 Berkeley.

10 Q. And whose idea was it for you to move
11 into the home in Berkeley?

12 A. Mine, because that apartment was just
13 too small.

14 Q. How did you find out that Jeramy's
15 friend's house was available?

16 A. I just asked him and he said, yeah.

17 Q. How much contact were you having with
18 Mr. Parks at that time?

19 A. He would come and bring food to the
20 apartment. The kids didn't see him, but he was
21 there at the apartment.

22 Q. And did the children know that he
23 wasn't supposed to be at the trailer in Berkeley
24 County?

25 A. Yes, ma'am.

CANDACE PARKS - CONTINUING DIRECT EXAM BY MS. WILLIAMS

1 Q. And why did they not tell anybody that
2 he was there?

3 MR. SCHWACKE: Objection.

4 THE COURT: Basis of the objection?

5 MR. SCHWACKE: Speculation.

6 THE COURT: Sustained.

7 BY MS. WILLIAMS:

8 Q. Did you say anything to them that would
9 make them not tell?

10 A. I had said that if they told DSS or
11 anybody that he was there, they would be taken
12 again.

13 Q. Besides you, do you know if anyone else
14 saw the sexual abuse?

15 A. Not to my knowledge.

16 Q. Where did you sleep in that home in
17 Berkeley County?

18 A. On the couch.

19 Q. Did you have sexual relations with
20 Mr. Parks on that couch?

21 A. Yes, ma'am.

22 Q. Were there any doors that would --

23 A. No, ma'am.

24 Q. -- block you from anybody seeing?

25 A. No, ma'am.

1 Q. Did you ever sleep anywhere else?

2 A. In the master bedroom.

3 Q. Is that Mr. Mike's?

4 A. Yes, ma'am.

5 Q. How often would you sleep in there?

6 A. I think it was -- it wasn't very long.

7 I was pregnant, but it wasn't that long.

8 Q. Did you sleep in there alone or with

9 Mr. Parks?

10 A. Mr. Parks was there.

11 Q. Whose bed did you sleep in?

12 A. The little one.

13 Q. How many beds were in the room?

14 A. Two.

15 Q. And where did MINOR 1 sleep?

16 A. In the little room on the bottom bunk.

17 That's where all the children were.

18 Q. All the time?

19 A. All the time.

20 Q. Did she ever sleep with you on the

21 couch?

22 A. Maybe one or two nights, but it wasn't

23 a regular thing.

24 Q. Where did he sexually assault her in

25 the Berkeley house?

1 A. The living room, bedroom and bathroom.

2 Q. Where in the living room?

3 A. On the couch.

4 Q. What time of day would it usually be?

5 A. Night.

6 Q. Now, how long after the children were
7 taken away the last time was it before you were
8 arrested?

9 A. They were taken March 14th. I was
10 arrested May 30th.

11 Q. Of the same year?

12 A. Yes, ma'am.

13 Q. What year?

14 A. 2013.

15 Q. And when is the last time you had any
16 conversation with MINOR 1 or saw her personally?

17 A. The night they were taken.

18 Q. So March 14, 2013?

19 A. Yes, ma'am.

20 Q. And when is the last time that you had
21 any conversation with MINOR 2?

22 A. April of 2013.

23 Q. Just to backtrack a little bit. After
24 MINOR 1 told and you went to MUSC, was there ever
25 any kind of interview scheduled for her to talk to

1 someone about what she had disclosed?

2 A. Yes, ma'am.

3 Q. And this would have been back in 2012?

4 A. Yes, ma'am.

5 Q. What type of interview was that?

6 A. It was at DCC for a forensic interview.

7 Q. What's your understanding of what --
8 what was supposed to happen at that interview?

9 A. That she was to tell what had happened
10 to her.

11 Q. Who took her?

12 A. I did.

13 Q. And how many times did you go?

14 A. Twice.

15 Q. Did she tell?

16 A. She wouldn't leave my side.

17 Q. And is this before or after you told
18 her that she would be taken away?

19 A. Before.

20 Q. Well, when did you -- do you think the
21 children had any -- did you ever tell them not to
22 tell anything about the sexual abuse at Woodduck?

23 A. Not at Woodduck, no.

24 Q. Were you surprised that MINOR 1 had
25 disclosed sexual abuse to the aunts?

1 A. Kind of, because she didn't see them
2 that often.

3 Q. Did MINOR 1 know that you knew she was
4 sexually assaulted?

5 A. Yes, ma'am.

6 Q. She knew you watched?

7 A. She knew I knew, yes.

8 Q. Did MINOR 1 ever disclose the sexual
9 abuse when you were there any of these times? Were
10 you ever present when she told?

11 A. When she told?

12 Q. Anybody.

13 A. No, ma'am.

14 Q. Now, in Berkeley County, you talked
15 about times when MINOR 2 would get involved and
16 intervene when you were yelling at him about
17 MINOR 1. Did you observe other times that MINOR 2
18 was beaten by the defendant?

19 A. He was slapped in the back of the head,
20 he had spanked MINOR 2 more than once in the shower
21 with a belt.

22 Q. While he was wet?

23 A. While he was showering.

24 Q. Do you remember any other times?

25 A. He would always be spanking them.

1 Q. And was he verbally abusive ever, that
2 you witnessed, to MINOR 2?

3 A. He yelled at him, but I can't remember
4 any specific name-calling.

5 Q. After the children were taken and you
6 -- and you were left in the trailer, who was left
7 in the trailer? Who lived there after that?

8 A. Me and Mr. Parks and Mike.

9 Q. The three of you?

10 A. Yes, ma'am.

11 Q. And did Mr. Parks ever say anything to
12 you about the sexual assaults or how he felt about
13 it or anything at all? Did he ever make statements
14 to you about it?

15 A. No, ma'am.

16 Q. Did he ever express remorse?

17 A. No, ma'am.

18 MR. SCHWACKE: Your Honor --

19 THE COURT: Sustained.

20 Ladies and gentlemen, you will
21 disregard the last question and response. You are
22 to give it absolutely no consideration in your
23 deliberations.

24 You may proceed.

25 BY MS. WILLIAMS:

CANDACE PARKS - CONTINUING DIRECT EXAM BY MS. WILLIAMS

1 Q. Was there ever a time before today that
2 Mr. Parks said anything to you about the sexual
3 assault?

4 A. No, ma'am.

5 Q. Do you remember talking about a time
6 when you were in the police van on the way to
7 court?

8 MR. SCHWACKE: Your Honor; leading.

9 THE COURT: Sustained; leading.

10 MS. WILLIAMS: Court's indulgence.

11 THE COURT: Uh-huh.

12 BY MS. WILLIAMS:

13 Q. Have you seen him before today, but
14 after the sexual assaults?

15 A. Yes, ma'am.

16 Q. Where?

17 A. In the transfers from Berkeley County
18 jail to Dorchester County Family Court.

19 Q. Did he say anything then?

20 A. That he loved me. He said nothing
21 about MINOR 1 .

22 Q. When DSS was involved in your lives,
23 did they provide services for you or the children?

24 A. Yes, ma'am.

25 Q. Did they try to provide services

1 regarding counselling?

2 A. They had us do assessments.

3 Q. What other services did they try to
4 provide?

5 A. They offered me food stamps.

6 Q. And did you take them up on that?

7 A. No, ma'am.

8 Q. Why?

9 A. Because all of my money was coming from
10 Mr. Parks.

11 Q. Why would that affect food stamps?

12 A. I thought he would get angry if he had
13 to pay child support, too.

14 Q. Did you work outside of the home?

15 A. Not at that time.

16 Q. What was your -- how did you get money?

17 A. By Mr. Parks giving it to me.

18 Q. Did you get a set amount?

19 A. No, ma'am, it wasn't one particular
20 amount. It was enough to buy food and whatever was
21 needed.

22 Q. And why were they offering you food
23 stamps?

24 A. They said there wasn't enough food in
25 the house.

CANDACE PARKS - CROSS EXAM BY MR. SCHWACKE

1 Q. Did you get appropriate medical care?

2 A. When I was pregnant.

3 MS. WILLIAMS: Court's indulgence. No
4 further questions. Please answer any questions
5 from Mr. Schwacke.

6 THE COURT: You may proceed.

7 CROSS-EXAMINATION

8 BY MR. SCHWACKE:

9 Q. If you could, I need you to walk me
10 through a couple of things, Mrs. Parks. At the
11 time of your arrest, you were living off of College
12 Park Road?

13 A. Yes, sir.

14 Q. At the Mr. Mike trailer?

15 A. Yes, sir.

16 Q. And prior to that, you were living?

17 A. With Maxwell Gifford in his apartment.

18 Q. And Maxwell Gifford is your ex-husband
19 and father of the three older boys?

20 A. We were never married, but, yes, sir,
21 he's the father of the oldest three.

22 Q. And how long did you live there?

23 A. For two months.

24 Q. And who all lived there with you?

25 A. Me --

CANDACE PARKS - CROSS EXAM BY MR. SCHWACKE

1 Q. Mr. Parks didn't live there?

2 A. No, sir.

3 Q. But you lived there. Who else?

4 A. All five of my kids, Maxwell Gifford,
5 his sister, Aleshia, and her son and her daughter.

6 Q. Aleshia is one of the aunts that we
7 were talking about --

8 A. Yes, sir.

9 Q. -- with regard to people saying MINOR 1
10 told them something?

11 A. Yes, sir.

12 Q. And what was -- Tawnee is the other
13 aunt?

14 A. Yes, sir.

15 Q. And those are sisters to Maxwell?

16 A. Yes, sir.

17 Q. And they have their own children?

18 A. Yes, sir.

19 Q. And you indicated Aleshia was living at
20 Mr. Maxwell's at the same time you were?

21 A. Yes, sir.

22 Q. After Mr. Maxwell's, going back in time
23 -- we started with Mr. Mike's trailer, we went to
24 Maxwell's trailer -- or we came from Maxwell's
25 trailer. Where did you come from before Maxwell's

1 trailer?

2 A. Woodduck Drive.

3 Q. And approximately when did you live
4 there?

5 A. We moved in October -- I believe it was
6 October or November of 2009.

7 Q. And how long did you all live at that
8 address? Until you moved to --

9 A. Until I moved out in 2012.

10 Q. And that was going to be part of the
11 treatment plan?

12 A. It wasn't part of it. It was just my
13 decision.

14 Q. Okay. Who all lived at Woodduck?

15 A. Me, Jeramy, and the kids.

16 Q. Where did you live before Woodduck?

17 A. Mr. Mike's trailer.

18 Q. Mr. Mike's trailer actually is a repeat
19 place that you lived?

20 A. Yes, sir.

21 Q. And when did you live there with
22 Mr. Mike that time?

23 A. In 2008.

24 Q. 2008 to 2009?

25 A. Yes, sir.

CANDACE PARKS - CROSS EXAM BY MR. SCHWACKE

1 Q. And so who all lived with you at
2 Mr. Mike's trailer from 2008 to 2009?

3 A. It was me, Jeramy, Mike, and the kids,
4 until the kids were taken in 2008.

5 Q. And which kids were there then?

6 A. B. G., MINOR 2, D. G., and MINOR 1.

7 Q. So with regard to MINOR 1, we know
8 MINOR 1 lived at Mr. Mike's trailer from 2008 to
9 2009. She lived at Woodduck from October or
10 November of 2009 to 2012. She lived at Maxwell's,
11 your -- the father of your sons, for two months,
12 and then you were most recently at Mr. Mike's
13 trailer before you got arrested?

14 A. Yes, sir.

15 Q. You indicated that your children did
16 not get over to Maxwell's at times or didn't see
17 the aunts often?

18 A. No, sir, they didn't.

19 Q. They didn't or --

20 A. They didn't see them often.

21 Q. Okay. And you testified you haven't
22 seen -- you haven't seen MINOR 1 since March 14th,
23 but you had a conversation with your son?

24 A. Yes, sir.

25 Q. In April?

CANDACE PARKS - CROSS EXAM BY MR. SCHWACKE

1 A. Yes, sir.

2 Q. Where was he staying at the point that
3 he made the call to you?

4 A. He didn't make a call. DSS was letting
5 me have visits with the other children.

6 Q. So did you have visits with all of the
7 other children or just --

8 A. All of them except MINOR 1.

9 Q. So when they asked you about your last
10 conversation with -- I believe they said D. G. or
11 it could have been MINOR 2 --

12 A. MINOR 2.

13 Q. -- it was actually everybody?

14 A. It was everybody.

15 Q. And that was by phone?

16 A. In person.

17 Q. In person. So it was -- and where was
18 that at?

19 A. McDonald's.

20 Q. And who was supervising that?

21 A. The lady from DSS. I can't remember
22 her name.

23 Q. So with regard to Maxwell, he owed you
24 a lot of child support; isn't that correct?

25 A. Yes.

CANDACE PARKS - CROSS EXAM BY MR. SCHWACKE

1 Q. How much?

2 A. Now it's about 40,000.

3 Q. And Jeramy didn't like him because of
4 that, did he?

5 A. I don't know why Jeramy didn't like
6 him.

7 Q. He didn't like the fact that he owed
8 you that money and didn't pay you, to the point
9 that you wrote an e-mail to your attorney about it?

10 A. What attorney?

11 Q. To Mr. Corbett Cummings -- Norbert
12 Cummings, correct?

13 A. Yes, sir.

14 Q. So not a problem, you just have a
15 problem answering my questions about that?

16 A. No, sir.

17 Q. You didn't remember it?

18 A. I just don't remember that.

19 Q. Not sure who your attorney was?

20 A. I know who my attorney was. It was Mr.
21 Schline.

22 Q. And he works in Mr. --

23 A. In Mr. Cummings' office, yes.

24 Q. And there was a time when you weren't
25 represented by an attorney, correct?

CANDACE PARKS - CROSS EXAM BY MR. SCHWACKE

1 A. Yes, sir.

2 Q. And Norb -- Mr. Schline agreed to be
3 your attorney --

4 A. Yes, sir.

5 Q. -- on the DSS matters? And you
6 executed a form saying that none of what was being
7 alleged against you and your husband was true?

8 A. I don't remember that.

9 Q. You don't remember a form doing that?

10 A. No, I do not.

11 Q. Do you remember them having you sign
12 some documents at the time you first met them?

13 A. All I remember signing is an agreement
14 to pay them.

15 Q. So the State asked you about times when
16 the kids would have seen you and Jeramy engaging in
17 sexual relations in the living room on the sofa to
18 the full view of everybody in the house; is that
19 correct?

20 A. Yes, sir.

21 Q. About how many times are we talking
22 about?

23 A. At least seven.

24 Q. And he wasn't the only one that the
25 kids saw you having sexual relationships with in

1 that house?

2 A. Yes, he is.

3 Q. There wasn't an incident where Jeramy
4 came home and threw someone out of the house, as
5 told by your children?

6 A. No, there wasn't.

7 Q. So that would not be true if one of
8 them --

9 A. I never had sex with anyone else in
10 Berkeley County.

11 Q. While you were married?

12 A. While I was living there. I was
13 married both of the times I was in Berkeley County.

14 Q. Well, you just made it specific to
15 Berkeley County and you lived in Dorchester County.

16 A. But my --

17 Q. Do you want to explain your answer?

18 A. My children never witnessed me having
19 sex with anyone else.

20 Q. And not only were you aware of --
21 claimed to be aware of alleged sex occurring
22 between your husband and your daughter, but
23 according to -- but -- it was more than just
24 watching, correct?

25 A. I wasn't watching.

CANDACE PARKS - CROSS EXAM BY MR. SCHWACKE

1 Q. You weren't stopping it?

2 A. I did stop it.

3 Q. And there was a time according to --

4 have you reviewed the videos in these cases?

5 A. I haven't seen any of those.

6 Q. Not even the first two that you were

7 present for?

8 A. I haven't seen any videos.

9 Q. She was pitching a fit the first two
10 times, wasn't she?

11 A. Yes, she was.

12 Q. She didn't want to be there. And you
13 were promising her Gummies, a Happy Meal,
14 milkshakes or whatever else you want, for her to
15 talk to them?

16 A. To get her off of my leg, yes.

17 Q. So you would deny that MINOR 1 was ever
18 sucking your ninnies?

19 A. I wasn't aware if she was. I might
20 have been drunk and passed out.

21 Q. So your involvement may be greater than
22 just being somebody observing it and not trying to
23 stop it?

24 A. It may, because I drank a lot.

25 Q. And you've only been arrested for

1 unlawful conduct?

2 A. Yes, sir.

3 Q. And your attorney is here today
4 watching. She's right on the front row watching
5 your testimony, and based on the proffer letter
6 that was signed by you and Ms. Williams and by your
7 attorney, you are here testifying today, correct?

8 A. Yes, sir.

9 Q. And they say they haven't promised you
10 anything, but you've had discussion about probation
11 or a lesser sentence, haven't you?

12 A. No, I have not.

13 Q. And you believe that by coming in here
14 and testifying, that you're going to get a better
15 sentence?

16 A. No, I do not.

17 Q. So why haven't you gone ahead and pled
18 guilty?

19 A. I haven't been to court to plead.

20 Q. Because you're expecting something from
21 this appearance here today?

22 A. I'm not expecting anything but to
23 protect my children.

24 Q. And those aren't questions that you
25 have rehearsed with either the State prosecutors or

1 your attorney?

2 A. I haven't practiced any questions.

3 Q. There were times when members of your
4 household were being treated for MRSA?

5 A. Yes, sir.

6 Q. You were one of them?

7 A. Yes, sir.

8 Q. Jeramy was one of them?

9 A. Yes, sir.

10 Q. And --

11 A. MINOR 1 .

12 Q. MINOR 1 was one of them. Anybody else?

13 A. And L. P. .

14 Q. And L. P. . What I would understand
15 about MRSA is that you end up having little pop-up
16 boils that needed to be popped and treated with a
17 topical?

18 A. Yes, sir.

19 Q. And that's -- there was a number of
20 times that you went yourself, or Jeramy went, or
21 MINOR 1 went either to a private physician or to
22 Nason Medical Center for treatment for those
23 things?

24 A. Yes, sir.

25 Q. Where was the MRSA infection on you?

CANDACE PARKS - CROSS EXAM BY MR. SCHWACKE

- 1 A. On my buttocks; right above my butt.
- 2 Q. Where was it on MINOR 1?
- 3 A. On her butt.
- 4 Q. On her what?
- 5 A. On her butt.
- 6 Q. Where was it on L. P.?
- 7 A. On her inner thigh.
- 8 Q. Where was it on Jeramy?
- 9 A. His thigh and his leg.
- 10 Q. And you-all would take care of each
- 11 other?
- 12 A. Yes, sir.
- 13 Q. If there was a boil on you, they would
- 14 pop it?
- 15 A. Yes, sir.
- 16 Q. It was a painful process?
- 17 A. Yes, sir.
- 18 Q. And it would hurt?
- 19 A. Yes, sir.
- 20 Q. And you didn't work?
- 21 A. Sir?
- 22 Q. You went -- you don't work?
- 23 A. I do now.
- 24 Q. You do now, but at the time that you
- 25 were with Jeramy, you never worked?

CANDACE PARKS - CROSS EXAM BY MR. SCHWACKE

1 A. I did.

2 Q. Where did you work?

3 A. Papa John's, Domino's.

4 Q. Did some deliveries?

5 A. Yes, sir.

6 Q. And when was that? How long ago?

7 A. It's been a while.

8 Q. How about --

9 A. 2010.

10 Q. 2010. So you would have been living at
11 the Woodduck Drive residence?

12 A. Yes.

13 Q. And that's the last time you worked?

14 A. Yes, sir.

15 Q. And he would provide food?

16 A. Yes, sir.

17 Q. He provided a space to live?

18 A. Yes.

19 Q. And he provided furniture?

20 A. Yes, sir.

21 Q. And your kids went to school?

22 A. Yes, sir.

23 Q. Where did they go to school?

24 A. In Summerville, they went to

25 Summerville Elementary.

CANDACE PARKS - CROSS EXAM BY MR. SCHWACKE

1 Q. And all of them went to the same
2 school?

3 A. B. G. and MINOR 2 were school age at
4 that time.

5 Q. When is the first time that MINOR 1 was
6 school age?

7 A. When she was taken by DSS this last
8 time, they put her in school.

9 Q. So all the other times, she was at
10 home?

11 A. Yes, sir.

12 Q. And I would imagine that would have
13 included even the younger child, J. P. ?

14 A. Yes, sir.

15 Q. So who all was leaving the house to go
16 to school?

17 A. MINOR 2 and B. G. .

18 Q. And did there -- MINOR 2 was on an
19 education plan?

20 A. They both were.

21 Q. Sorry?

22 A. They both were. For an IEP for their
23 ADHD.

24 Q. Which both?

25 A. Both of them.

CANDACE PARKS - CROSS EXAM BY MR. SCHWACKE

1 Q. Both names?

2 A. B. G. and MINOR 2.

3 Q. Were they on medicine for those things?

4 A. They were on -- it was before they were
5 put on Adderall. I don't remember which one it was
6 before that.

7 Q. And that wasn't -- that was provided
8 for them, too?

9 A. By Medicaid.

10 Q. And it was given -- either you gave it
11 or whoever in the house gave it?

12 A. I gave it to them.

13 Q. Now, Mr. Mike -- Mr. Mike we were
14 talking about, he's a registered preacher?

15 A. He's an ordained minister.

16 Q. And he's the one that married you all?

17 A. Yes, sir.

18 Q. And that was his house -- he's the one
19 pictured in what's been marked for identification
20 as number 1. I show that to you. Are you familiar
21 with that?

22 A. Uh-huh.

23 Q. Who is in that picture?

24 A. Mike.

25 Q. So I'm going to go to the day his aunts

1 were -- they contacted you; is that right?

2 A. The aunts?

3 Q. The day the aunts say that MINOR 1 told
4 them that her bumps were being popped?

5 A. Okay. They came back to the apartment
6 where I was.

7 Q. Where you were. So you were over --

8 A. At Maxwell's. We were living there at
9 the time. We weren't over there visiting, we were
10 staying there.

11 Q. And so who all -- they had driven off
12 somewhere?

13 A. They had went to the gas station to get
14 something to drink, or a snack, I don't remember
15 what. They were riding to the gas station and she
16 asked to go.

17 Q. Was she the only child that went?

18 A. Yes, I believe so.

19 Q. So they come back, you go to the first
20 doctor?

21 A. Yes, sir.

22 Q. And this is all in 2012 --

23 A. Yes, sir.

24 Q. -- right? Let's kind of get the dates
25 in. On June 23rd of 2012?

CANDACE PARKS - CROSS EXAM BY MR. SCHWACKE

1 A. Yes, sir.

2 Q. And so she's -- she is -- MINOR 1 is
3 seen, and as a result of that there's some
4 examinations by a doctor -- by people who are
5 trained to record videos of children?

6 A. As far as I know, it was the doctor and
7 nurse and they had someone from the Summerville
8 Police Department come in and talk to her. And I
9 think she took pictures.

10 Q. So the doctors at MUSC, you're with her
11 when the second exam is done?

12 A. Yes, sir.

13 Q. Pardon?

14 A. That was done by a lady who was -- who
15 was licensed or qualified to do that.

16 Q. Dr. Able?

17 A. Yes.

18 Q. You met with Dr. Able?

19 A. She came into the room, yes.

20 Q. And there were people taking
21 information down from various people, including
22 yourself?

23 A. Yes, sir.

24 Q. Family history information, incident
25 information?

CANDACE PARKS - CROSS EXAM BY MR. SCHWACKE

1 A. Yes, sir.

2 Q. And at that point when they were asking
3 you about the incident, you're telling them, I left
4 them alone for about an hour when I went shopping?

5 A. Yes, sir.

6 Q. And you knew already from the get-go,
7 that part of it is not true?

8 A. There was a time I had gone to the
9 store.

10 Q. Yeah, but it's not covering all the
11 times that you testified in here today?

12 A. Not all the times.

13 Q. So you were looking for a way to cover
14 your tracks?

15 A. No, I was not.

16 Q. You didn't tell them the truth?

17 A. No, I did not tell the truth.

18 MR. SCHWACKE: One moment, Your Honor.

19 THE COURT: Uh-huh.

20 BY MR. SCHWACKE:

21 Q. Because of your sons' ADD issues and
22 them having an individual education plan, did you
23 have often -- many times that you would have to go
24 to the schools and meet with their teachers?

25 A. Not very often, no.

CANDACE PARKS - CROSS EXAM BY MR. SCHWACKE

1 Q. Were you ever asked by the school to
2 come about your kids for any behaviors?

3 A. I got phone calls about MINOR 2's
4 behavior, but never asked to come to the school
5 just to talk to him about his behavior.

6 Q. And that behavior was dealt with?

7 A. I didn't deal with it like I should
8 have been. I didn't know how.

9 Q. Sexual behaviors?

10 A. Sexual behaviors.

11 MS. WILLIAMS: Objection.

12 THE COURT: Sustained.

13 BY MR. SCHWACKE:

14 Q. You're on Facebook, correct?

15 A. Yes, sir.

16 Q. And so you have a camera?

17 A. Yes, sir.

18 Q. Take pictures and load them up to
19 Facebook?

20 A. I don't really do that that much.

21 Q. You posted a picture with your sons on
22 December -- December of 2013. So after they were
23 removed from you?

24 A. Yes. Those were pictures I had on my
25 phone.

1 Q. Okay. So that wasn't a visit?

2 A. No.

3 Q. And you don't have any pictures of them
4 with any kind of marks or bruises or welts or black
5 eyes or bloody noses?

6 A. No, I do not.

7 Q. None of that exists?

8 A. Not in my possession.

9 Q. And in terms of medicines, your kids
10 received their medicines?

11 A. Yes, sir.

12 Q. And in terms of food, your kids
13 received their food?

14 A. Yes, sir.

15 Q. And in terms of electricity, it stayed
16 on?

17 A. In Berkeley County, only because James
18 was paying the bill. Or Mike.

19 Q. You had water?

20 A. Yes, sir.

21 Q. And you testified earlier you don't
22 recall -- you told your attorney you don't recall
23 him ever calling the kids any kind of names?

24 A. I can't remember if he did.

25 Q. So the -- Maxwell's sisters, again, the

CANDACE PARKS - REDIRECT EXAM BY MS. WILLIAMS

1 aunts of the kids, they were the ones with her when
2 she said something about, I don't like Daddy,
3 because he pops my bumps?

4 A. I don't know what she said to them, but
5 they were the only ones she was with.

6 MR. SCHWACKE: One moment, Your Honor.
7 That's all the questions I have.

8 THE COURT: Redirect?

9 MS. WILLIAMS: Briefly.

10 REDIRECT EXAMINATION

11 BY MS. WILLIAMS:

12 Q. Mr. Schwacke asked you about the
13 previous times you lived at the Berkeley County
14 address and you said that one other time that you
15 lived there. Do you remember what you told him
16 when that was?

17 A. 2008.

18 Q. And how old was MINOR 1 then?

19 A. A little over a year old.

20 Q. And he asked you about MINOR 1 telling
21 Tawnee about popping the bumps. Didn't she tell
22 her a little more than that?

23 A. Like I said, I wasn't in the car, so I
24 don't know exactly what was said.

25 Q. Why would she need to go to the doctor

CANDACE PARKS - REDIRECT EXAM BY MS. WILLIAMS

1 for a sexual assault exam? What was your
2 understanding of what she disclosed?

3 A. That he was touching her.

4 Q. How touching her?

5 A. That she -- they had told me that she
6 said -- because like I said, I wasn't there. They
7 had told me that she said that he put his thingy in
8 her hole.

9 Q. That's a little more than touching
10 bumps?

11 A. Yes, ma'am.

12 MS. WILLIAMS: Nothing further.

13 THE COURT: Any objection to the
14 witness being excused? From the State?

15 MS. WILLIAMS: Not from the State.

16 THE COURT: From the defense?

17 MR. SCHWACKE: No, Your Honor.

18 THE COURT: Ma'am, you're excused.
19 You may call your next witness.

20 MS. WILLIAMS: The State calls Tawnee
21 Castanon.

22 THE COURT: Tawnee Castanon.

23 TAWNEE CASTANON

24 being first duly sworn, testified as follows:

25 THE CLERK: Have a seat. State your

TAWNEE CASTANON - DIRECT EXAM BY MS. WILLIAMS

1 full name for the record and spell your last.

2 THE WITNESS: My name is Tawnee
3 Castanon, and it's spelled C-A-S-T-A-N-O-N.

4 DIRECT EXAMINATION

5 BY MS. WILLIAMS:

6 Q. Ms. Castanon, do you know Candace
7 Parks?

8 A. Yes, I do.

9 Q. How long have you known her?

10 A. Since I was about 14.

11 Q. And how do you know her?

12 A. I met her through my ex-husband.

13 Q. And do you know Jeramy Parks?

14 A. I do.

15 Q. And did you know him -- when did you
16 meet him?

17 A. I met him through a friend of mine and
18 actually introduced him to Candace.

19 Q. So did you know him before you knew
20 Candace?

21 A. I knew Candace first.

22 Q. You introduced them?

23 A. Uh-huh.

24 Q. Do you remember when that was?

25 A. Honestly, no. It's been a long time.

1 Q. Roughly?

2 A. I would say about ten years.

3 Q. And did you know Candace when MINOR 1
4 was born?

5 A. Yes.

6 Q. Do you have any knowledge of her trying
7 to give Candace -- or MINOR 1 away?

8 A. Yes.

9 Q. Who was she trying to give her away to?

10 A. When MINOR 1 was three months, I
11 actually took care of her for like three months and
12 then she said she was going to give her to her
13 aunt.

14 Q. And does her aunt have any of the other
15 children that Candace had?

16 A. I'm not sure.

17 Q. Okay. And did you see Candace and
18 MINOR 1 in June of 2012?

19 A. Yes, ma'am, I did.

20 Q. Who were you with?

21 A. I was at my sister's house.

22 Q. And what is your sister's name?

23 A. Aleshia Gifford Moore.

24 Q. And what happened that day?

25 A. I asked my sister if she wanted to go

1 to the store to get some sodas, and MINOR 1 asked
2 me if she could go with us. And on the way to the
3 store, MINOR 1 said that she didn't like her dad.
4 And when we asked her why, she said that he would
5 pop her bumps on her butt. And then we asked her a
6 little bit more, and then she said that her dad
7 hurt her and that he would put his thing in her
8 hole.

9 Q. And what did you do as a result of that
10 information?

11 A. I went home and I told Candace, if she
12 didn't do something about this, that I would.

13 Q. And what was Candace's reaction?

14 A. To me, like she was ashamed. Like she
15 can't believe that MINOR 1 said anything; because
16 for me, as a mother, I would have grabbed my
17 daughter and -- but she didn't do any of that.

18 Q. And what did you do next?

19 A. We went to Trident, and after that, we
20 went to MUSC so MINOR 1 could get checked out and
21 everything.

22 Q. While you were at Trident, did you
23 encounter the police at all?

24 A. I know somebody showed up there, but
25 it's been a long time. I'm not sure who.

1 Q. Okay. And, to your knowledge, did DSS
2 get involved?

3 A. Oh, yes, ma'am, they did.

4 Q. And do you know what they put in place?
5 Do you have personal knowledge of what was supposed
6 to happen?

7 A. Not exactly. I know that they got
8 taken away, and she did get them back one time,
9 and they got taken away again.

10 Q. Do you know what happened as a result
11 of MINOR 1 disclosing the sexual abuse that day?

12 A. That day? They just -- she stayed with
13 Candace and then she moved in with us.

14 Q. Why did she move in with you?

15 A. To get away from Jeramy.

16 Q. Was that one of the rules, that she was
17 supposed to be --

18 A. She was supposed to be away from him,
19 yes, ma'am.

20 Q. And did you see Jeramy during this
21 period of time that all the moving was going on?

22 A. I did. I actually took Candace
23 personally to get her stuff from the trailer they
24 lived at in Summerville.

25 Q. And did you see Jeramy that day?

TAWNEE CASTANON - CROSS EXAM BY MR. SCHWACKE

1 A. I did. And he asked her a lot of
2 questions and she didn't really talk to him, but I
3 know, as we were leaving, he told Candace, if I'm
4 going down, you're going down with me.

5 MS. WILLIAMS: Thank you. No further
6 questions.

7 THE COURT: Any questions for the
8 witness?

9 CROSS-EXAMINATION

10 BY MR. SCHWACKE:

11 Q. So whose vehicle were you in going to
12 the store?

13 A. Mine.

14 Q. And you were driving?

15 A. Yes.

16 Q. What is -- it's your sister?

17 A. It's my sister.

18 Q. Tawnee?

19 A. No, that's me.

20 Q. Sorry.

21 A. My sister is Aleshia.

22 Q. And where was MINOR 1 ?

23 A. She was at the house until we decided
24 we wanted to leave, and she asked if -- she wanted
25 to go with us.

1 Q. She was the only child --

2 A. The only child that went with us, yes,
3 sir.

4 Q. And where is Maxwell's house?

5 A. They lived in Austin. That was in
6 Charleston, but they don't live there no more.

7 Q. At the time, where was he living?

8 A. Where was Max living?

9 Q. Isn't that where --

10 A. Yes. It was in Austin Arms in North
11 Charleston.

12 Q. What store did you go to?

13 A. We went to -- I believe it was the Hess
14 at the end of Stall Road.

15 Q. About how far was that away?

16 A. Maybe five minutes.

17 Q. So the conversation started how?

18 A. We were just talking and MINOR 1 said
19 she didn't like her dad. And we proceeded to ask
20 her why. And that's whenever everything was said.

21 Q. Were you talking about him at the time
22 that she volunteered --

23 A. No, sir, we was not.

24 Q. Were you talking about Candace?

25 A. We wasn't talking about anything. She

1 just started talking about it herself.

2 Q. And specifically what questions --
3 well, let me rephrase this. Do you have children?

4 A. I do. I have five sons.

5 Q. And were you surprised by what she
6 said?

7 A. Yes, sir. I was driving down the road
8 crying, so I didn't -- I didn't know what to say.
9 So, yeah, I was very surprised.

10 Q. And who kind of did the questioning
11 after the initial blurt?

12 A. It wasn't really a lot of questioning.
13 It was more of an asking her why she didn't like
14 her dad. And after she come out with it, we didn't
15 ask her anything. I've been through this and I
16 know you're not supposed to ask questions.

17 Q. What do you mean, you've been through
18 this?

19 A. I was molested as a child.

20 Q. And you knew Candace before you knew
21 Jeramy?

22 A. Yes, sir.

23 Q. But you introduced Candace and Jeramy?

24 A. Yes, I did.

25 Q. So how did you first meet Jeramy?

1 A. I was talking to a guy named Khalid and
2 it was Jeramy's friend. And he was introduced that
3 way.

4 Q. And he's the Palestinian guy?

5 A. I guess. I don't know where he's from.

6 Q. And so they met. Did you like Jeramy?
7 I don't mean now; then.

8 A. I had no problems with him as far as
9 dating him.

10 Q. What about your brother?

11 A. My brother never really liked Jeramy
12 because he come between him and Candace, so...

13 MR. SCHWACKE: Okay. Thank you. Your
14 Honor, that's all I have.

15 THE COURT: Any redirect?

16 MS. WILLIAMS: Nothing further, Your
17 Honor.

18 THE COURT: Any objection to the
19 witness being excused? From the State?

20 MS. WILLIAMS: Not from the State.

21 THE COURT: From the defense?

22 MR. SCHWACKE: No, Your Honor.

23 THE COURT: Ma'am, you're excused.

24 THE WITNESS: Thank you.

25 THE COURT: Madame Forelady, ladies and

1 gentlemen, we're going to take advantage of this
2 break in testimony to take a brief rest room break.
3 Please do not discuss the case and please leave
4 your notepads in your seats.

5 (Jury out, 12:06 P.M.)

6 THE COURT: All right. For purposes of
7 the record before we break, when I ruled on the
8 Lyle matter on Mrs. Candace Parks' testimony -- and
9 I didn't want to stop in between the previous
10 witness -- I neglected to list the cases that I
11 relied on in making that ruling, as well as the
12 similarity and closeness in time of the events.
13 And those cases are Wallace -- State v. Wallace,
14 State v. Atich, State v. Classy, and State v.
15 Martucci.

16 Anything before -- oh, actually, I
17 wanted to ask, who is the State's next witness?

18 MS. WILLIAMS: Your Honor, the State's
19 next witness is Officer Katie Yates.

20 THE COURT: How long is her testimony?

21 MS. WILLIAMS: I would anticipate --

22 THE COURT: Just an estimate.

23 MS. WILLIAMS: Five minutes.

24 THE COURT: And who is after her?

25 MS. WILLIAMS: Laura Morgan, and I

1 expect her to be about two minutes on direct. No,
2 that's ridiculous; five minutes.

3 THE COURT: And then who is after her?

4 MS. WILLIAMS: Probably Diane Wilson,
5 and she would be about maybe 10 or 15 minutes.

6 THE COURT: And then who is after that?

7 MS. WILLIAMS: Susan Tindall, from the
8 Department of Social Services.

9 THE COURT: Is she short as well?

10 MS. WILLIAMS: She is short.

11 THE COURT: Well, let's see how many we
12 can get through until about 1:00 and then we'll
13 break for lunch.

14 MS. WILLIAMS: Okay. Thank you.

15 THE COURT: We'll take a brief rest
16 room break.

17 (A recess transpired.)

18 THE COURT: Are there any requests for
19 instructions? Do you have any requests for
20 instructions?

21 MS. WILLIAMS: For jury instructions?

22 THE COURT: Uh-huh.

23 MS. WILLIAMS: Not yet, Your Honor.
24 Can we work on it over the lunch period?

25 THE COURT: Yeah. Did you have any?

KATIE YATES - DIRECT EXAM BY MS. WILLIAMS

1 MR. SCHWACKE: I don't. At this time
2 we don't, Your Honor.

3 THE COURT: Okay. Perfect.

4 (Jury in, 12:17 p.m.)

5 THE COURT: State may proceed.

6 MS. WILLIAMS: Thank you. The State
7 calls Officer -- just Katie Yates.

8 KATIE YATES,
9 being first duly sworn, testified as follows:

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10         THE CLERK:  After you have a seat,
11 state your full name for the record and spell your
12 last name.
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13 THE WITNESS: My name is Katie
14 Elizabeth Yates, Y-A-T-E-S.

15 THE COURT: You may proceed.

16 MS. WILLIAMS: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 DIRECT EXAMINATION

19 BY MS. WILLIAMS:

20 Q. Where do you work, Ms. Yates?

21 A. I work for Zales Diamond Store.

22 Q. And how long have you been there?

23 A. I've been there off and on since I was
24 18 years old.

25 q. And where were you working in June of

KATIE YATES - DIRECT EXAM BY MS. WILLIAMS

1 2012?

2 A. Summerville Police Department.

3 Q. And what was your position there? Were
4 you a --

5 A. I was a police officer, sorry.

6 Q. And did you respond to a call at
7 Trident Hospital June 23rd, 2012?

8 A. Yes, ma'am, I did.

9 Q. What type of call was that?

10 A. I was informed it was a criminal sexual
11 conduct case against a child.

12 Q. Okay. And when you arrived, who did
13 you see?

14 A. I met in room ten at Trident Hospital
15 with the mother, Candace, and the aunt, Tawnee, and
16 saw the child, MINOR 1, sitting on the
17 examination table.

18 Q. What did you do when you got there?

19 A. When I got there, I tried to gain the
20 child's attention. Even though I was a female
21 police officer, having all that gear on, she was
22 very timid and shy. I blew up a latex balloon
23 glove to begin playing with her to gain her
24 attention and trust.

25 Q. Do you know how old she was at the

1 time?

2 A. Yes, ma'am, four.

3 Q. What was the demeanor of the child?

4 A. She was very quiet, she was very timid.

5 It took me a few minutes to get her to interact

6 with me.

7 Q. What was the demeanor of the mother?

8 A. The mother was very standoffish. She
9 was away from the child to the left of the room
10 with the aunt, Tawnee. She was very timid, quiet
11 as well.

12 Q. Okay. And did the child disclose a
13 sexual assault to you?

14 A. Yes, ma'am, she did.

15 Q. And how did she tell you?

16 A. She was very quiet, very timid. Again,
17 she whispered what had taken place.

18 Q. And at some point did you remove the
19 child from the mother?

20 A. Yes, ma'am, I did. I asked the mother
21 if it was okay to let the child walk outside with
22 me. As I began to gain her trust, she grabbed my
23 hand and we walked right outside the examination
24 room.

25 Q. Do not tell us what she told you, but

1 did she give you more details once she was away
2 from the mother?

3 A. Yes, ma'am, very much.

4 Q. What was the appearance of the child?

5 A. The child was very dirty. I
6 specifically remember that. She had dirt
7 underneath her fingernails, her toenails, some
8 bruises, some scratches. She smelled as if she had
9 not had a bath in a few days, like most normal
10 children do. Her clothes were dirty. The shoes
11 she had on did not fit her. They appeared to be
12 maybe her mother's or a sister older than she was.

13 Q. And did you do any reports or take any
14 pictures as a result of this call?

15 A. Yes, ma'am. Due to protocol for
16 Summerville Police Department, I took photographs
17 of the child with the mother's permission at the
18 end of that. They were transferred onto a CD and
19 then put into an evidence locker for safekeeping,
20 which is the policy of Summerville Police
21 Department.

22 Q. Where are they now?

23 A. From my understanding and knowledge,
24 when I called to find out about the case, they had
25 been destroyed.

KATIE YATES - DIRECT EXAM BY MS. WILLIAMS

1 Q. So those pictures were never given to
2 the Solicitor's office?

3 A. No, ma'am, they were not.

4 Q. Do you know what date they were
5 destroyed?

6 A. No, ma'am. Policy -- I went back to
7 find out -- is five years of being held onto them;
8 however, no one at the police department at this
9 time could give me an exact date of when they were
10 destroyed.

11 Q. Okay. And after speaking with the
12 child and gathering this information, what did you
13 do next?

14 A. I went back inside the room with her.
15 That's when I began to photograph her, asking her
16 the same questions to see if she would give me the
17 same answers, again, being very timid and shy. She
18 was then referred with the doctor's permission to
19 be taken to MUSC for a SANE evaluation.

20 Q. And was she referred anywhere else, to
21 your knowledge?

22 A. No, ma'am.

23 Q. Did you ever attend or find out about a
24 forensic interview scheduled for the child?

25 A. Yes, ma'am. At that point, my case had

1 been turned over to a detective. Being involved in
2 the case, I wanted to know what was going on with
3 MINOR 1. I went to the first -- initial forensic
4 interview with MINOR 1, where at that moment she
5 did not speak to anyone, to my knowledge.

6 Q. Okay. And what happened with the case
7 in Dorchester?

8 A. At that point, I believe she was taken
9 for a second forensic interview. Again, she did
10 not speak, and at that point, Summerville Police
11 Department did not follow up with it any further,
12 to my knowledge.

13 Q. So they dropped the case because she
14 would not talk?

15 A. Yes, ma'am.

16 MS. WILLIAMS: Court's indulgence.

17 Q. To your knowledge, do you know if
18 Candace Parks was with her during those interviews?

19 A. Yes, ma'am; she was with her at both
20 times. Candace seemed as if to not really know
21 what was going on. She was very left -- far out
22 there in what we would call left field, as if she
23 didn't know what was going on, nor did she give any
24 kind of motherly love to the child like any mother
25 would.

LAURA MORGAN - DIRECT EXAM BY MS. WILLIAMS

1 MS. WILLIAMS: Okay. Thank you.

2 THE COURT: Any questions for the
3 witness?

4 MR. SCHWACKE: None, Your Honor.

5 THE COURT: Any objection to the
6 witness being excused?

7 MS. WILLIAMS: Not from the State.

8 THE COURT: From the defense?

9 MR. SCHWACKE: No.

10 THE COURT: Ma'am, you're excused.

11 THE WITNESS: Thank you.

12 THE COURT: You may proceed.

13 MS. WILLIAMS: Laura Morgan.

14 LAURA MORGAN,

15 being first duly sworn, testified as follows:

16 THE CLERK: Have a seat and state your
17 full name for the record and spell your last name.

18 THE WITNESS: Okay. My name is Laura
19 Shrier Morgan, M-O-R-G-A-N.

20 THE COURT: You may proceed.

21 DIRECT EXAMINATION

22 BY MS. WILLIAMS:

23 Q. Ms. Morgan, what do you do?

24 A. Right now I'm a stay-at-home mom and I
25 own a small wedding event company.

1 Q. And where were you working in July of
2 2012?

3 A. Dorchester Children's Center.

4 Q. And what is that?

5 A. Dorchester Children's Center is a child
6 advocacy center.

7 Q. Do they do forensic interviews?

8 A. Yes.

9 Q. What is that just generally, briefly?

10 A. A forensic interview is a fact-finding
11 interview done with children and adolescents when
12 there has been an allegation -- or there is any
13 type of -- if any type of abuse or neglect has been
14 suspected.

15 Q. And were you scheduled to interview
16 MINOR 1 then?

17 A. I was.

18 Q. On which dates?

19 A. July 2, 2012, and July 9th, 2012.

20 Q. Did you interview --

21 THE COURT: I'm sorry, could you please
22 repeat your answer?

23 THE WITNESS: July 2nd, 2012, and
24 July 9th, 2012.

25 THE COURT: You may continue.

1 BY MS. WILLIAMS:

2 Q. Did you interview her?

3 A. I did not.

4 Q. And why not?

5 A. She was unable to complete the forensic
6 interviews due to her inability to separate from
7 the natural mother.

8 Q. So her mother was with her and she
9 wouldn't leave?

10 A. The mother was with her in the waiting
11 room and she would not separate from the mom.

12 Q. Did you know that the mom had witnessed
13 the abuse?

14 A. That was -- we did not know that, no.

15 Q. Had you known that, would the mother
16 have been at the interview?

17 A. She would not.

18 MS. WILLIAMS: Nothing further.

19 THE COURT: Any questions for the
20 witness?

21 CROSS-EXAMINATION

22 BY MR. SCHWACKE:

23 Q. Ms. Morgan, how many forensic
24 interviews have you done?

25 A. In my time at Dorchester Children's

1 Center, I completed approximately 300 forensic
2 interviews.

3 Q. And that's completed?

4 A. Uh-huh.

5 Q. I'm sure you've had others that have
6 broken down --

7 A. Yes, exactly. Attempted.

8 Q. About how many of those would you
9 guess?

10 A. It's very difficult to say, to
11 approximate that.

12 Q. Did you interact with Candace Parks at
13 these interviews?

14 A. Prior to the interview, we do meet with
15 the caregivers to obtain some information about the
16 child's developmental level and anything that may
17 impact the forensic interview itself.

18 Q. Where does that part of the process
19 take place?

20 A. It takes place at Dorchester Children's
21 Center, separate from the child.

22 Q. The interview rooms are typically kind
23 of a cubical with a big chair and a dry erase board
24 in there. So the interview rooms are separate
25 from where you would sit down with the parent to

1 get the family history?

2 A. Yes, the interview rooms are separate.

3 Q. And when you were meeting with
4 Mrs. Parks, Candace Parks, that was in a different
5 room other than the interview room?

6 A. Yes.

7 Q. And that's not recorded in any way?

8 A. That is not.

9 Q. Did the behavior where she was unable
10 to separate from Mom begin in that process or as
11 you went -- entered the interview room?

12 A. I don't recall the specifics of the
13 interaction with Mom prior to attempting to get her
14 to come to the forensic interview itself. I do not
15 recall what -- what happened prior to that.

16 Q. And in addition to the recording, there
17 are people who are observing I guess the process
18 while it's ongoing?

19 A. There can be.

20 Q. And that would have been the case with
21 this?

22 A. There are other agencies that are able
23 to observe the forensic interview itself. Without
24 having my notes in front of me, I can't tell you if
25 someone did or did not observe my -- any attempts,

LAURA MORGAN - CROSS EXAM BY MR. SCHWACKE

1 but since the forensic interview wasn't completed,
2 there would have been no interview to observe.

3 Q. There was a recording made though?

4 A. Correct.

5 Q. Have you reviewed those recordings?

6 A. I did.

7 Q. And do you recall Candace telling that
8 if she talks to the nice lady, she will get
9 Gummies, Happy Meal, milkshakes, whatever else she
10 wants?

11 A. Yes.

12 Q. Did you do interviews with any other
13 members of the family?

14 A. I would have to review my records to
15 see whether or not I had seen any of the other
16 children.

17 MR. SCHWACKE: One moment, Your Honor.

18 THE COURT: Uh-huh.

19 MR. SCHWACKE: That's all, Your Honor.

20 THE COURT: Any redirect?

21 MS. WILLIAMS: No, Your Honor.

22 THE COURT: Any objection to the
23 witness being excused? From the State?

24 MS. WILLIAMS: Not the State.

25 THE COURT: From the defense?

DIANE WILSON - DIRECT EXAM BY MS. WILLIAMS

1 MR. SCHWACKE: None.

2 THE COURT: Ma'am, you're excused.

3 THE WITNESS: Thank you.

4 THE COURT: You're welcome.

5 State may call your next witness.

6 MS. WILLIAMS: State calls Diane

7 Wilson.

8 DIANE WILSON,

9 being first duly sworn, testified as follows:

10 THE CLERK: State your full name for
11 the record and spell the last name.

12 THE WITNESS: Okay. My name is Diane
13 Jean Wilson, W-I-L-S-O-N.

14 THE COURT: You may proceed.

15 DIRECT EXAMINATION

16 BY MS. WILLIAMS:

17 Q. Ms. Wilson, where do you work?

18 A. I work at St. George's Episcopal Church
19 in Summerville.

20 Q. And do you do any volunteer work?

21 A. I do. I'm a guardian ad litem.

22 Q. And what is your background? What did
23 you do before this?

24 A. I worked for -- I'm retired from AT&T,
25 35 years.

DIANE WILSON - DIRECT EXAM BY MS. WILLIAMS

1 Q. How long have you been a guardian ad
2 litem?

3 A. I was a guardian ad litem for two years
4 until 2013, when I left to go back to school, and I
5 have just recently started back up.

6 Q. And what does a guardian ad litem do?

7 A. The guardian is a volunteer who is
8 assigned cases by the Court to advocate for
9 children who have been placed in the system due to
10 allegations of neglect or abuse. And so we do an
11 independent interview, an independent investigation
12 on the case.

13 Q. Okay. And did you ever work with the
14 Parks family?

15 A. I did.

16 Q. And when?

17 A. I was assigned that case in October of
18 2012.

19 Q. And at that time how many kids were in
20 the family?

21 A. There were five children in the family,
22 and Candace was pregnant with the sixth child at
23 that time.

24 Q. And do you remember about what their
25 ages were?

DIANE WILSON - DIRECT EXAM BY MS. WILLIAMS

1 A. It was 11, 10, 6, 5, and 4 I believe.

2 Q. Where were the children placed when you
3 were involved in the investigation?

4 A. When I became involved in the
5 investigation, they were with Candace, with the
6 mother.

7 Q. And where were they living?

8 A. It was a trailer in Summer Creek Mobile
9 Home Park off of College Park Road.

10 Q. Is that Berkeley County?

11 A. Yes.

12 Q. And how often would you see the
13 children?

14 A. I visited them regularly once a month,
15 and in this case I did visit them more often at
16 times.

17 Q. And was Candace Parks the main
18 caregiver?

19 A. She was.

20 Q. Did you have concerns during the
21 investigation about the children?

22 A. I did. The -- the home -- it was a
23 single-wide trailer, and there were the five
24 children, there were two adults, and cats and dogs,
25 and it wasn't the best of living situations. Four

1 of the boys were sharing a room, Candace and
2 MINOR 1 were sleeping on the sofa, the dogs were --
3 there was -- the smell was bad from the animals.
4 It wasn't -- it's hard to keep a space that small
5 clean and tidy.

6 Q. When you say two adults, which two
7 adults did you think were living in the home?

8 A. The home was owned by a person by the
9 name of Mike Miller who, from my understanding, is
10 not related to Candace, and Candace was the other
11 adult that was in the home.

12 Q. Did you find out later that more than
13 two adults were living in the home?

14 A. We did.

15 Q. Okay. And who was not supposed to be
16 there?

17 A. Jeramy Parks, due to the safety plan,
18 was not supposed to be -- have any contact with the
19 children.

20 Q. Why was that?

21 A. The allegations of abuse.

22 Q. And did you do anything to -- did you
23 ever -- did you ever become suspicious that he was
24 in the home?

25 A. We did. We -- we -- one of the DSS

DIANE WILSON - DIRECT EXAM BY MS. WILLIAMS

1 caseworkers and myself, Susan Tindall, had spoken
2 with the next-door neighbor. We went to visit and
3 we spoke with the neighbor, and the neighbor told
4 us that --

5 MR. SCHWACKE: Objection.

6 THE COURT: Sustained; hearsay.

7 BY MS. WILLIAMS:

8 Q. So based on this conversation with the
9 neighbor, did you do anything in terms of an
10 investigation to see if Mr. Parks was in the home?

11 A. We did. I got a photograph of
12 Mr. Parks and I went back to the neighbor's home
13 with my supervisor, Tina Dukes, from the Guardian
14 ad Litem Office and --

15 Q. Don't say what she said.

16 A. Okay.

17 Q. Based on that, did you confirm that he
18 was --

19 A. We did, yes.

20 MS. WILLIAMS: I'm going to show
21 defense counsel what was previously marked as
22 State's 8.

23 MR. SCHWACKE: Your Honor, we have an
24 objection.

25 THE COURT: Please approach.

1 (Bench conference.)

2 THE COURT: What's the basis of the
3 objection?

4 MR. SCHWACKE: Your Honor, basically we
5 object to foundation as to the identification of
6 the picture --

7 THE COURT: Is this them? Do you have
8 a good-faith basis -- pictures are self
9 authenticating.

10 MR. SCHWACKE: That's not the way it
11 works.

12 THE COURT: This is the way it works.
13 Photos are self authenticating unless you have some
14 good faith basis to tell me it's not. You don't
15 have a burden, but when it comes to the objection,
16 you need to have some basis for it.

17 MR. SCHWACKE: The next step is they're
18 going to have her testify that she showed this to
19 somebody who is not present in the courtroom.

20 THE COURT: She can testify to what she
21 did. She just can't say what they said to her.

22 MS. WILLIAMS: Thank you.

23 (End of bench conference)

24 THE COURT: Objection is overruled.
25 You may proceed; however, that does not eliminate

DIANE WILSON - DIRECT EXAM BY MS. WILLIAMS

1 your responsibility to establish the foundation.

2 MS. WILLIAMS: May I approach the
3 witness?

4 THE COURT: You may.

5 BY MS. WILLIAMS:

6 Q. Is this the picture that you were just
7 telling us about?

8 A. Yes.

9 Q. And that's the picture you showed the
10 neighbor?

11 A. Yes.

12 Q. And without telling us what the
13 neighbor said, what did you do after that?

14 A. Well, we -- it -- we attempted to move
15 forward with determining that was the case, that
16 that happened, but it ended up that we -- Damien
17 Massey and myself -- he called me one evening and
18 we went to the home to make an evening visit to
19 determine for ourselves if -- if, in fact, Jeramy
20 was in the home.

21 Q. Based on what the neighbor told you,
22 did you let anyone else know that -- anything about
23 whether or not he was in the home? Did you contact
24 a supervisor? Did you do anything?

25 A. Oh, yeah. There was -- my supervisor

DIANE WILSON - DIRECT EXAM BY MS. WILLIAMS

1 was involved, DSS was involved, there was -- yes.

2 MS. WILLIAMS: At this time, Your
3 Honor, we would move State's 8 into evidence.

4 THE COURT: Marked and admitted,
5 subject to -- well, you still haven't established
6 the foundation of who took that picture, where it
7 came from.

8 BY MS. WILLIAMS:

9 Q. How did you come into possession of
10 this picture?

11 A. That was off of the public Facebook
12 account.

13 Q. And did you recognize it as Jeramy
14 Parks?

15 A. No, I did not know. It was my
16 supervisor, Tina Dukes, who had gotten the picture
17 for me and we did not know for sure that it was.

18 MR. SCHWACKE: Your Honor, we renew our
19 objection.

20 BY THE COURT: Well, she hasn't
21 finished the questioning and she hasn't moved it
22 in.

23 BY MS. WILLIAMS:

24 Q. Based on what the neighbor told you,
25 did you confirm it was Jeramy Parks?

DIANE WILSON - DIRECT EXAM BY MS. WILLIAMS

1 A. Yes.

2 THE COURT: It would be marked for ID
3 only at this time.

4 (STATE EXH. 3, Copy of photograph, was
5 marked for identification.)

6 BY MS. WILLIAMS:

7 Q. After that, tell us what happened. You
8 began to tell us something about Damien Massey from
9 DSS. Who is he?

10 A. Damien Massey is the DSS caseworker
11 that I worked with on this case. He contacted me
12 one evening, and we were at the point where we felt
13 like we needed to confirm for ourselves that Jeramy
14 Parks was in the home. And so we were going to
15 make an evening visit at the home. And as we
16 approached the house, we heard a male voice
17 yelling, and so we went back to the car and decided
18 that in case he was there -- we just decided we
19 would call the police and have the police go in
20 with us.

21 And so we -- the police came, and we
22 went up to the door, knocked on the door and -- and
23 I asked Candace -- she came to the door and I asked
24 Candace if Jeramy was in the home. And she said,
25 no; she was adamant he was not. And the police

DIANE WILSON - DIRECT EXAM BY MS. WILLIAMS

1 asked to speak to Mr. Miller, the homeowner, who
2 came out and immediately said that Jeramy was in
3 the home. And the police removed him.

4 Q. So he was caught in the home?

5 A. He was.

6 Q. And you said, when you approached the
7 house, you had heard a male voice yelling. Was
8 that -- what address? What home are you talking
9 about?

10 A. I don't remember the exact address. It
11 was the mobile home in Summer Creek Mobile Home
12 Park.

13 Q. The one you just described?

14 A. Yes. Yes.

15 Q. And after he was found in the home,
16 what was done?

17 A. After he was found in the home, the
18 police removed him. I was able to obtain some
19 information from him, name, his address, where he
20 was supposed to be living and that sort of thing.
21 And then we -- the children -- it was then decided
22 that the children needed to be removed because they
23 were not being protected.

24 Q. And what date was that?

25 A. That was -- it was in March.

DIANE WILSON - CROSS EXAM BY MR. SCHWACKE

1 Q. What year?

2 A. 2013.

3 Q. Okay. And so what did you and Damien
4 do with the kids at that point?

5 A. All of the children were taken to
6 various foster homes. It was -- it was -- we had
7 to have -- as the guardian ad litem, I can't remove
8 -- you know, I can't drive the children. So
9 different people from DSS had to come in and take
10 the children to foster homes.

11 The boys went to -- the older three
12 boys went to the Boys Home, and L. P. and J. P.
13 were taken to a home, and then MINOR 1 was taken to
14 a separate home.

15 MS. WILLIAMS: Court's indulgence.

16 No further questions.

17 THE COURT: Any questions for the
18 witness?

19 MR. SCHWACKE: One moment, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. SCHWACKE:

22 Q. You do regular reports in your role as
23 a guardian ad litem; is that correct?

24 A. Yes. Yes.

25 Q. And they are filed with the court every

DIANE WILSON - CROSS EXAM BY MR. SCHWACKE

1 time there is a Family Court hearing on a DSS
2 matter?

3 A. The regular reports that I do? Yes.
4 Yes.

5 Q. And no doubt you were present the night
6 that the police were contacted and came to that
7 location and people were removed?

8 A. Yes.

9 Q. Just to make sure I understand, the
10 first request at the knock of the door went to
11 Mrs. Candace Parks?

12 A. Yes.

13 Q. And she said, he's not here?

14 A. Right.

15 Q. Which was not true?

16 A. Correct.

17 Q. Mr. Mike, when he came to the door, he
18 said, yes, he's here. And that's how this whole
19 thing went down?

20 A. Yes.

21 MR. SCHWACKE: Okay. Thank you.
22 That's all the questions I have.

23 THE COURT: Any redirect?

24 MS. WILLIAMS: No, Your Honor.

25 THE COURT: Any objection to the

CORY ARRINGTON - DIRECT EXAM BY MS. HERRING-LASH

1 witness being excused? From the State?

2 MS. WILLIAMS: No.

3 THE COURT: From the defense?

4 MR. SCHWACKE: No.

5 THE COURT: Ma'am, you're excused.

6 You may proceed to call your next

7 witness.

8 MS. HERRING-LASH: The State would call

9 Cory Arrington.

10 CORY ARRINGTON,

11 being first duly sworn, testified as follows:

12 THE CLERK: Have a seat, state your

13 full name for the record, and spell your last.

14 THE WITNESS: Cory Arrington,

15 A-R-R-I-N-G-T-O-N.

16 THE COURT: You may proceed.

17 DIRECT EXAMINATION

18 BY MS. HERRING-LASH:

19 Q. Deputy Arrington, where are you

20 employed now?

21 A. Charleston County Sheriff's Office.

22 Q. And back in March of 2013, where were

23 you employed?

24 A. Berkeley County Sheriff's Office.

25 Q. How long have you been at the Berkeley

1 County Sheriff's Office?

2 A. At that time, almost eight years.

3 Q. What were your duties in March of 2013?

4 A. Patrol deputy.

5 Q. And on March 14th of 2013, did you get
6 a call to go to College Park Road?

7 A. Yes, ma'am. It was [REDACTED] -- [REDACTED] College
8 Park Road, Summer Creek Trailer Park.

9 Q. Who had called for law enforcement?

10 A. Dorchester County DSS.

11 Q. And what kind of call was it?

12 A. If I remember correctly, it was
13 originally a welfare check to see if there was a
14 subject there that wasn't supposed to be there per
15 the safety plan they had in place.

16 Q. What did you do when you got there?

17 A. I went to the residence, verified that
18 the subject was indeed there, and placed I believe
19 it was five children into emergency protective
20 custody and turned them over to DSS.

21 Q. What about the subject? What did you
22 do with him that evening?

23 A. Nothing on my behalf.

24 Q. Did you leave him at the home or did he
25 leave?

CORY ARRINGTON - DIRECT EXAM BY MS. HERRING-LASH

1 A. I don't recall.

2 Q. At that point, you were there to do an

3 EPC?

4 A. Yes, ma'am.

5 Q. And what is that?

6 A. Taking the kids out of a situation
7 where they could be harmed or there's an order in
8 place, in this case, it was a safety plan. Safety
9 plan prevented the kids from being around a certain
10 individual, and due to that safety plan being
11 violated, I felt that they needed to be removed.

12 Q. And you remove children when you feel
13 they're in imminent danger?

14 A. Yes.

15 Q. Did you have to wait there for awhile
16 that evening?

17 A. Yes, ma'am. We had to wait for I think
18 the guardian ad litem to have extra car seats
19 brought so they could transport them to the foster
20 house, or whatever.

21 Q. So you had to have car seats?

22 A. Yes, ma'am.

23 MS. HERRING-LASH: Court's indulgence?

24 THE COURT: Uh-huh.

25 MS. HERRING-LASH: That's all the

1 questions I have, Deputy Arrington.

2 THE COURT: Any questions for the
3 witness?

4 MR. SCHWACKE: No questions, Your
5 Honor.

6 THE COURT: Any objection to the
7 witness being excused?

8 MS. WILLIAMS: Not from the State.

9 THE COURT: From the defense?

10 MR. SCHWACKE: None, Your Honor.

11 THE COURT: Sir, you're excused.

12 THE WITNESS: Thank you, ma'am.

13 THE COURT: You're welcome.

14 Madame Forelady, ladies and gentlemen,
15 we are going to take advantage of the break in
16 testimony to take our lunch recess. During this
17 break, please do not discuss the case among
18 yourselves or with anyone else. Please leave your
19 notepads in your seats, and when you return to the
20 courthouse, please don't have any contact with
21 anyone in or about the courthouse that you do not
22 recognize to be a fellow juror.

23 We will resume -- that clock is a
24 little fast. I have 12:48 which is basically about
25 ten of one. We will resume at 2:15. Hope you have

1 a good lunch and return directly, as you did in the
2 morning, and the bailiff will bring you upstairs.

3 (Jury out, 12:48 p.m.)

4 THE COURT: Anything before we break
5 for lunch from the State?

6 MS. HERRING-LASH: Your Honor, I did
7 think of a jury instruction or jury charge we would
8 -- I think we would need.

9 THE COURT: I will need something in
10 writing. I'm going to have a charge conference.

11 MS. HERRING-LASH: Okay.

12 THE COURT: I just wanted to see if
13 there was anything that I needed to look at or look
14 up, any cases, prior to, but I will have a charge
15 conference.

16 Okay. Anything from the defense before
17 we break for lunch?

18 MR. SCHWACKE: No.

19 THE COURT: Have a good lunch. See you
20 at 2:15.

21 (A luncheon recess transpired.)

22 THE COURT: State ready to proceed?

23 MS. WILLIAMS: Yes, Your Honor.

24 THE COURT: Defense ready to proceed?

25 MR. SCHWACKE: Yes, Your Honor.

DAMIEN MASSEY - DIRECT EXAM BY MS. WILLIAMS

1 THE COURT: Please bring in the jury.

2 (Jury in, 2:27 p.m.)

3 THE COURT: Ladies and gentlemen, I
4 hope you all had a pleasant lunch. We will now
5 resume testimony.

6 The State may proceed.

7 MS. WILLIAMS: Thank you. The State
8 calls Damien Massey.

9 DAMIEN MASSEY,

10 being first duly sworn, testified as follows:

11 THE CLERK: Have a seat, state your
12 full name, and spell your last name.

13 THE WITNESS: My name is Damien Massey,
14 M-A-S-S-E-Y.

15 THE COURT: You may proceed.

16 MS. WILLIAMS: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 DIRECT EXAMINATION

19 BY MS. WILLIAMS:

20 Q. Mr. Massey, where do you work?

21 A. Dorchester Department of Social
22 Services.

23 Q. And how long have you worked there?

24 A. Eight years.

25 Q. And what is your position there?

DAMIEN MASSEY - DIRECT EXAM BY MS. WILLIAMS

1 A. Human specialists two.

2 Q. And so what do you do in that position?

3 A. I'm a case manager. I work for -- in
4 the treatment department.

5 Q. And so in the life of a case, at what
6 portion do you get it?

7 A. I get it normally after the
8 investigations, and I manage the case until the
9 end.

10 Q. And were you ever involved with the
11 Parks family?

12 A. Yes.

13 Q. When was that?

14 A. November of 2012.

15 Q. And why was the case opened up with
16 DSS?

17 A. There was a disclosure by MINOR 1 of
18 sexual abuse by Jeramy.

19 Q. And how many kids were in the family at
20 that time?

21 A. Six.

22 Q. And where were they placed?

23 A. In the home with Candace.

24 Q. And who was supposed to be around the
25 kids?

1 A. Family members and friends.

2 Q. Who could not be around the kids?

3 A. Jeramy Parks.

4 Q. And we have heard a lot about a safety
5 plan. Briefly, what is a safety plan?

6 A. A safety plan is an agreement that we
7 normally make with the caregiver or the parents to
8 ensure the safety of the child that we follow.

9 Q. Okay. And who signs it?

10 A. The parents, the caregiver, and DSS.

11 Q. And is it explained to them by someone
12 at DSS?

13 A. Yes.

14 Q. And how often would you visit the home
15 where the Parks children were living?

16 A. I'd see them once a month. At times I
17 saw them more.

18 Q. Were there other places that you
19 visited the children?

20 A. I saw them at the homes. I also saw
21 them at school.

22 Q. And was MINOR 1 in school at the time
23 that you had the case?

24 A. No, she wasn't.

25 Q. Who else was present when you

1 interviewed her?

2 A. Candace would be present.

3 Q. And during the time that you were
4 working this case, did you ever have concerns about
5 the situation that these children were living in?

6 A. Yes, I did.

7 Q. What were the concerns?

8 A. I had concerns of the home condition,
9 it was a very small space, a lot of clutter. Some
10 -- it was a safety issue with an electrical cord
11 hanging from out of one of the sockets. At times
12 there was a concern with the food supply being low.

13 Q. What about pets, did they have pets?

14 A. Yes, they had several cats. I can give
15 you at least over eight or nine cats in the home
16 and they had a dog outside fenced in the yard as
17 well.

18 Q. And did you ever become concerned about
19 Mr. Parks being in the home?

20 A. Yes. I had concerns that he could have
21 possibly been around the kids as well.

22 Q. Did you learn anything from the boys
23 that ever gave you concern?

24 A. No. I would ask them if he was in the
25 home and they would always tell me that he wasn't

1 there.

2 Q. And did you ever become concerned that
3 they were being influenced by their mother?

4 A. Yes, I had that concern.

5 Q. And what from your investigative duties
6 made you have that concern?

7 A. Just by me talking to them and the way
8 they -- you know, the way they looked at me. And
9 certain things they said, I could tell they were
10 being standoffish with what they were actually
11 telling me, that it may not be actually what was
12 going on.

13 Q. Did they ever voice -- without saying
14 exactly what they said, besides just observing
15 their actions, did they ever voice concerns that
16 their mother would find out they were talking?

17 A. Yes.

18 Q. Now, you got the case on what date --

19 A. The case?

20 Q. Around? This case, the Parks case,
21 generally?

22 A. Around November 2012.

23 Q. Okay. And if you remember, what date
24 was Mr. Parks finally removed from the home?

25 A. Can you repeat that?

1 Q. If you remember, what date was it that
2 Mr. Parks was finally removed from the home and the
3 children were removed from the home?

4 A. That was March 13th, March -- March 13,
5 2013.

6 Q. Okay. And did you ever try to address
7 these concerns before March of 2013?

8 A. Yes, I did. I did file an ex parte due
9 to the concerns I was having within the home to try
10 to have the kids removed.

11 Q. Did that go anywhere?

12 A. No. I wasn't able to get the ex parte
13 completed.

14 Q. Why did that not go anywhere?

15 A. It was filed and at that time the
16 attorney that was working for DSS didn't feel like
17 I had enough in order to have the kids removed from
18 out of the home.

19 Q. So did you take further steps to get
20 enough?

21 A. Yes. I also became concerned, and at
22 that time I talked to the guardian ad litem about
23 my concerns, and we decided to go out to the home
24 after regular work hours to see if he would be
25 present at the home.

1 Q. And what time of day did you go out
2 there?

3 A. It had to have been about 6:00,
4 somewhere around that time.

5 Q. And what -- were you in a vehicle?
6 Standing? Tell us what you did.

7 A. We were in a State car and we were
8 parked by the house and we kind of sat there a
9 little while to see if we would see his presence
10 enter the home. Eventually -- we stayed out there
11 about 45 minutes to an hour, but we never did see
12 him come into the home. So at that time me and her
13 decided to go talk to Candace. And at that time,
14 as we were walking up, we heard a male's voice in
15 the house.

16 Q. Describe how the male's voice was.

17 A. It was an angry tone. Sounded like he
18 was arguing with the kids in the house. I don't
19 know exactly at that time who it was, but we became
20 concerned that maybe we shouldn't go in the house.
21 At this point in time, maybe we should get law
22 enforcement involved.

23 Q. Did you hear the kids?

24 A. Yes. I could hear the voices well in
25 the house.

1 Q. What were their voices like?

2 A. They were like -- it was like they were
3 screaming. It was like screaming back and forth,
4 yelling. They were like -- sounded like they were
5 kind of like in desperation.

6 Q. So who called the police?

7 A. Well, I walked back to the van and at
8 that time I called law enforcement to see if they
9 would come out there and help back us up.

10 Q. And, eventually, did you see what they
11 did? Were you present when law enforcement --

12 A. Yes, I was present. When they came --
13 when they finally came, I pretty much explained the
14 situation why we were there. And at that time they
15 walked up to the house and we were right behind
16 them, so we were able to hear the conversation they
17 had with the adults in the home.

18 Q. And what did you -- tell us what you
19 observed.

20 A. I observed all three adults in the
21 home. It was Candace, Jeramy, and the owner of the
22 house. I believe his name was Mike. They all came
23 out and spoke to law enforcement. One of the big
24 things I do remember about that situation was when
25 the officer was talking to Candace Parks about if

1 Jeramy was in the house, she had at first didn't
2 admit that he was in the house, and --

3 Q. You can't tell us anything that she
4 said, but, eventually, Mr. Parks did --

5 A. He did come out of the house, yes.

6 Q. And what did you do, if anything, with
7 the children once all of this played out?

8 A. Well, when everything actually played
9 out, we still had concerns about Jeramy Parks
10 returning back to the house. So at that time, I
11 called my supervisor and she -- we talked to law
12 enforcement. At that time they felt it was still a
13 safety issue and they decided to do an EPC.

14 Q. And did you get all the children placed
15 somewhere that evening?

16 A. Yeah. That night -- I had to wait for
17 some additional help because there were so many --
18 there were six kids and I was the only worker out
19 there. So it took awhile, but another worker came
20 and we got the kids situated. They were very
21 upset, yelling, and we did eventually get them to
22 other foster houses.

23 Q. To your knowledge, they didn't all go
24 to the same home?

25 A. No.

DAMIEN MASSEY - CROSS EXAM BY MR. SCHWACKE

1 Q. And after that, were you involved with
2 the case after the children were placed in foster
3 care?

4 A. I did have the case for a little while.
5 Some of the kids did go to Maxwell Gifford, the
6 biological father, and I did monitor some of their
7 interactions, but that was about it. The case was
8 turned back over to foster care after that.

9 MS. WILLIAMS: Thank you, Mr. Massey.

10 THE WITNESS: Thank you.

11 THE COURT: Any questions for the
12 witness?

13 CROSS-EXAMINATION

14 BY MR. SCHWACKE:

15 Q. How many times do you figure you went
16 out to that trailer?

17 A. In general, or all together?

18 Q. Do you document --

19 A. Yeah, I document every time I go.

20 Q. Is there a form that DSS requires you
21 to do that or --

22 A. It's not a form. We actually put all
23 of our visits and conversations into a computer
24 system, but there were -- I can say there was some
25 months I went once; there were some months I went

1 two or three times. But exactly what month --

2 Q. You were aware that a safety plan was
3 in place but you weren't involved in that process?

4 A. Correct.

5 Q. Who was in charge of that process?

6 A. The safety plan was put in place by the
7 investigative worker.

8 Q. And do you have any of your file or
9 materials with you on that?

10 A. No. I don't have the actual
11 documentation for the safety plan.

12 Q. Have you seen that form before?

13 A. The safety plan, yes.

14 Q. And it's just a little card? I'm
15 sorry. So it's a little card?

16 A. No. It's a form. It says, safety
17 plan, and it's a form that's filled out.

18 Q. I'm going to show you I guess what
19 we'll mark for identification as Defendant's
20 Exhibit 1.

21 (DFT. EXH. 1, Copy of Safety Plan, was
22 marked for identification.)

23 BY MR. SCHWACKE:

24 Q. I'm going to ask you if you are
25 familiar with this.

1 A. It looks like the hard or the back
2 piece of it, but it's not the entire form.

3 Q. Okay. And that bears a signature on
4 it?

5 A. Yes.

6 Q. And that would be Candace Parker (sic)?

7 A. Yes, Candace Parks.

8 Q. Parks, I'm sorry. And this name here
9 (Indicating), are you familiar with that person?

10 A. Yes.

11 Q. Who is that?

12 A. Pauline Travis.

13 Q. And she also works at DSS?

14 A. She was a former employee.

15 Q. She worked there at the time?

16 A. I believe so, yes.

17 Q. So what -- you indicated that -- it has
18 -- the person who was going to provide the
19 protection has to sign this?

20 A. Correct.

21 Q. Are they told somehow something
22 specific as to what -- other than the sort of
23 boilerplate language, that they agree to be
24 responsible for the safety of the children, is
25 there any additional items that might be placed on

1 here?

2 A. Well, yeah. It actually has the reason
3 why. It tells you what contact that is supposed to
4 be had. I mean, there's an actual form that
5 explains exactly what the safety plan is referring
6 to that we're agreeing to.

7 Q. And, again, you don't have your
8 records?

9 A. No, I don't have the file --

10 Q. Okay.

11 A. -- with that safety plan.

12 Q. Is there a place for the non -- if
13 there's a -- another parent, is there a place for
14 the non-protecting parent to sign?

15 A. There is a place for both parents to
16 sign. There is a place for the protector who -- in
17 case sometimes the child is placed out of the
18 parents' care -- to sign, but there's another --
19 there is another place for both parents to sign the
20 form.

21 Q. And what I have shown you does not have
22 the signature for Mr. Jeramy Parks?

23 A. Correct.

24 Q. Did you have conversations with him
25 about the conditions of the protection?

DAMIEN MASSEY - CROSS EXAM BY MR. SCHWACKE

1 A. No, I didn't.

2 Q. You never spoke with Mr. Parks?

3 A. No.

4 Q. So as far as you know, if Candace
5 didn't tell him, no one from DSS might have told
6 him about this?

7 A. Well, it could have been the
8 investigative worker who would have made the
9 initial contact with everyone. I can't really say
10 what she has done. She also makes contact with the
11 family as well.

12 MR. SCHWACKE: One moment, Your Honor.

13 THE COURT: Uh-huh.

14 BY MR. SCHWACKE:

15 Q. So you saw -- you are a referral source
16 for almost everyone having an exam, which is known
17 as a forensic exam; is that right?

18 A. Can you repeat that again?

19 Q. You're the referring source from DSS
20 for a number of exams, what they call a forensic
21 interview?

22 A. Yes. We can make referrals for a
23 forensic interview.

24 Q. And you indicated that you had contact
25 with the kids both at the house and on occasion

1 went to their school?

2 A. Correct.

3 Q. At that time, did you ever see any
4 evidence that would indicate excessive corporal
5 punishment?

6 A. No.

7 Q. Did they look well fed?

8 A. Yes.

9 Q. And the times you went to the house, it
10 would have had power?

11 A. Yes.

12 Q. Water?

13 A. Yes.

14 Q. And it had a number of pets, but do you
15 know if they belonged to Candace or her family, or
16 Mr. Mike, as they called him?

17 A. I know the -- I don't know the pets --
18 the cats -- who the owners were, but I do know the
19 cats, you know, were at that house. The kids even
20 told me that one of the kids' cats had a litter of
21 kittens. The cat was not a neighbor's, from my
22 knowledge. It belonged to the house.

23 Q. And that night, the one who was turning
24 you away from the door, saying Jeramy wasn't in
25 there, was Candace?

DAMIEN MASSEY - CROSS EXAM BY MR. SCHWACKE

1 A. Correct.

2 Q. Were you involved at any time where
3 there was an opportunity for people to take items
4 out of the house to move out? Were you a part of
5 that process at all?

6 A. Are you talking about the time when the
7 kids were leaving the home?

8 Q. Correct.

9 A. Yes. I was there when Candace was
10 packing their bags and getting them ready to be
11 transported to foster care.

12 Q. And the safety plan is a promise?

13 A. No, it's an agreement.

14 Q. They promise to keep someone separate?

15 A. Yes.

16 MR. SCHWACKE: Thank you. That's all
17 the questions I have.

18 THE COURT: Any redirect.

19 MS. WILLIAMS: No, Your Honor.

20 THE COURT: Any objection to the
21 witness being excused? From the State.

22 MS. WILLIAMS: No, Your Honor.

23 THE COURT: From the defense?

24 MR. SCHWACKE: No, Your Honor.

25 THE COURT: Sir, you're excused.

MARKITA JOHNSON - DIRECT EXAM BY MS. HERRING-LASH

1 The State may proceed.

2 MS. HERRING-LASH: The State would call
3 Markita Qualls Johnson.

4 MARKITA QUALLS JOHNSON,
5 being first duly sworn, testified as follows:

6 THE CLERK: Have a seat, state your
7 full name, and spell the last name.

8 THE WITNESS: My name is Markita Qualls
9 Johnson. My last name is Johnson, J-O-H-N-S-O-N.

10 THE COURT: You may proceed.

11 DIRECT EXAMINATION

12 BY MS. HERRING-LASH:

13 Q. Ms. Johnson, where are you employed?

14 A. At the Medical University of South
15 Carolina.

16 Q. And how long have you been there?

17 A. I have been there for eight years.

18 Q. And what are your duties now?

19 A. I am a registered nurse in the
20 department of -- for children with blood disorders
21 and cancer.

22 Q. And what is your educational
23 background?

24 A. I have a four-year degree in science of
25 nursing.

1 Q. And have you also had training in doing
2 sexual assault exams?

3 A. Yes, ma'am. I was a pediatric sexual
4 assault nurse examiner.

5 Q. What kind of training do you have to go
6 through to be able to perform those?

7 A. I had 40 hours of classroom training in
8 pediatrics and adolescents. I spent eight hours in
9 a women's clinic with ten vaginal exams. I had
10 criminal court proceeding observation, observation
11 of juvenile court proceeding, I had to go to the
12 South Carolina Criminal Laboratory, and I had to
13 have eight hours of well child visits, nine hours
14 of adolescent visits and sexual assault exams
15 before I could be on my own.

16 Q. So the sexual assaults, you performed
17 them with guidance before you'd do them on your
18 own?

19 A. Yes, ma'am.

20 Q. And did you -- how many sexual assault
21 exams do you think you performed?

22 A. I had 58 acute and 55 non-acute.

23 Q. Can you explain to the jury what the
24 difference is between acute and non-acute?

25 A. Acute is when the assault happens

1 within 72 hours and non-acute is when it's after
2 the 72-hour period.

3 Q. And what is the difference in that exam
4 that you actually do, depending on whether it's
5 acute or non-acute?

6 A. If it's acute, we see them in the
7 emergency department and we examine the person from
8 head to toe with a genital and physical exam.

9 Q. What additional swabs, or whatever, do
10 you do if it's acute?

11 A. If it's acute, we try to collect swabs
12 or evidence from the body.

13 Q. What part of the body would you be
14 swabbing?

15 A. Most of the times, it's the genital
16 area, but if there's any history of any assault or
17 sexual -- anything that could be on the body that
18 came from the assault.

19 Q. And you said that you do that kind of
20 exam if it's been within 72 hours?

21 A. Yes, ma'am.

22 Q. Now, in that capacity as the SANE
23 nurse, did you see MINOR 1 ?

24 A. Yes, ma'am.

25 Q. When did you see her?

MARKITA JOHNSON - DIRECT EXAM BY MS. HERRING-LASH

1 A. I saw her June 23rd.

2 Q. And where did you see her?

3 A. In the pediatric emergency department
4 at MUSC.

5 Q. And so this is in June of 20 --

6 A. '12.

7 Q. '12?

8 A. Yes, ma'am.

9 Q. And where had she been prior to coming
10 to you?

11 A. From my understanding, she was at the
12 Summerville emergency department and then
13 transferred to me.

14 Q. And when a patient first gets there for
15 a sexual assault exam, do you try to determine
16 right off the time period in order to know what
17 kind of exam to do?

18 A. Yes, ma'am.

19 Q. Now, were you able to get a history
20 from MINOR 1 as far as the timing?

21 A. No, ma'am. The history was taken from
22 her mother.

23 Q. So the mother was the only person to
24 give you a history?

25 A. Yes.

1 Q. And based on that history, what kind of
2 exam did you perform?

3 A. Based on the history the mom gave, I
4 performed a non-acute exam, which included just
5 photographs, because she was there in the ER with
6 me.

7 Q. And so because of that history, you did
8 no swabbing?

9 A. Correct.

10 Q. Now, did you perform a -- well, first
11 of all, did you get a history from the child?

12 A. No, ma'am. It was from the mom.

13 Q. And why not?

14 A. She would not get -- she would not give
15 me the history. So when they don't give a history,
16 we take things from other people.

17 Q. And after that, did you first perform a
18 physical exam?

19 A. Yes, ma'am.

20 Q. What were the results of your physical
21 exam?

22 A. Is it okay if I grab my --

23 Q. Yes, ma'am.

24 A. -- notes? So the physical exam is from
25 head to toe, and I noted that under her right eye

1 she had a small abrasion. On her left arm, she had
2 a small bruise, as well as to her left and her
3 right knees, and her right leg as well.

4 Q. And after the physical exam, did you
5 also perform a genital exam?

6 A. Yes, ma'am.

7 Q. Were you able to perform an entire
8 genital exam?

9 A. No, ma'am.

10 Q. What couldn't you do?

11 A. She would not allow me to examine her
12 bottom, her anus.

13 Q. And did you question her about pain?

14 A. Yes, ma'am. When I asked her about
15 pain, she pointed to her vaginal area, which is
16 what I would call the labia majora.

17 Q. But she didn't speak?

18 A. No, ma'am.

19 Q. And what were the results of -- or were
20 you -- did you photo document this exam?

21 A. Yes, ma'am.

22 Q. And why do you do that?

23 A. We photo document the exam so that our
24 team can review the photos and it goes under peer
25 review.

MARKITA JOHNSON - DIRECT EXAM BY MS. HERRING-LASH

1 Q. And did you photo document this exam?

2 A. Yes, ma'am.

3 Q. And is it -- would it be fair to say
4 that often the pictures of the exam come out
5 clearer than what you can see with the naked eye?

6 A. Yes, ma'am.

7 Q. Why would that be?

8 A. On a young child -- because when we're
9 there, most children don't sit still for it and so
10 we just try to take as many pictures as we can.
11 And so they're moving around, so you just snap,
12 snap, snap, as much as you possibly can.

13 Q. And that evening, what were the results
14 of your physical exam of her genitalia?

15 A. Of my exam I said that she had a
16 small --

17 MR. SCHWACKE: Your Honor, I'm sorry,
18 may we approach?

19 THE COURT: Uh-huh.

20 (Bench conference.)

21 MR. SCHWACKE: Judge, we would object.
22 She hasn't been qualified as an expert --

23 THE COURT: She doesn't have to be an
24 expert to testify as to what she rationally
25 perceived during the course of her exam.

MARKITA JOHNSON - DIRECT EXAM BY MS. HERRING-LASH

1 (End of bench conference.)

2 THE COURT: You may proceed.

3 MR. SCHWACKE: Thank you.

4 BY MS. HERRING-LASH:

5 Q. What did you document from the physical
6 exam of her genitalia that evening?

7 A. I documented that she had a small cleft
8 in her hymen at 6:00 that appears to be well
9 healed.

10 Q. And now, was this exam also peer
11 reviewed?

12 A. Yes, ma'am.

13 Q. Were there any amendments made by a
14 doctor?

15 A. Yes, ma'am. My attending physician
16 said that, after review of the findings, there was
17 a minimum narrowing of the hymen at 5:00, versus
18 the mound from 6 to 9, and it required a follow-up
19 at VIP clinic.

20 Q. Were there any other amendments made?

21 A. She amended the anal picture and said
22 that the anus was dilated with no stool in the
23 vault.

24 Q. Did you do lab work?

25 A. I only collected urine on her.

1 Q. And who was MINOR 1 released to that
2 evening?

3 A. She was released to her mother, Candace
4 Parks.

5 Q. And do you know if you or someone else
6 at the hospital notified the Department of Social
7 Services?

8 A. Yes, ma'am, I did.

9 Q. And was there a follow-up appointment
10 set for MINOR 1?

11 A. There was a follow-up appointment to be
12 scheduled for her the week of June 29th at our
13 Dorchester Children's Center.

14 Q. Before that, who was she released to
15 that night? I'm not sure I asked you that.

16 A. She was released to her mother.

17 Q. And do you know if she made that
18 follow-up appointment?

19 A. Yes, ma'am.

20 Q. Was she examined at the follow-up
21 appointment?

22 A. According to our records, no, ma'am.

23 Q. And why not?

24 A. Their note said she showed up, but
25 MINOR 1 refused the exam.

MARKITA JOHNSON - CROSS EXAM BY MR. SCHWACKE

1 Q. Does the note refer to who took her to
2 that exam?

3 A. I do not know who took her to the exam.

4 Q. But she was in the custody of her
5 mother?

6 A. Yes, ma'am.

7 MS. HERRING-LASH: Court's indulgence?

8 THE COURT: Uh-huh.

9 By MS. HERRING-LASH:

10 Q. So you were able to take pictures of
11 her bottom, she just wouldn't let you examine the
12 inside?

13 A. Yes.

14 MS. HERRING-LASH: Those are all the
15 questions I have.

16 THE COURT: You may proceed.

17 CROSS-EXAMINATION

18 By MR. SCHWACKE:

19 Q. Afternoon. Is non-acute the same as
20 what had previously been called chronic?

21 A. No, sir. I'm not -- I'm not sure what
22 you mean by that.

23 Q. In terms of how you classify an injury
24 as to whether it is acute or non-acute?

25 A. Well, I would only see the acute kids

1 if it happened within the 72-hour period, versus if
2 it was after the 72-hour period, we would refer
3 them. And we would refer to chronic as if it was
4 constant.

5 Q. Now, the child had been seen at another
6 facility earlier that same day that you saw Candace
7 (sic)?

8 A. Yes, sir.

9 Q. And in their paperwork they referred to
10 it as an acute injury. Were you provided that
11 before you made your determination as to whether it
12 was acute or not acute?

13 A. No, sir, I didn't have their paperwork.

14 Q. So in that regard, with the
15 determination of, at least from your standpoint
16 during the examination, it was non-acute, that
17 meant no swabbing, no other type of shaking out, or
18 combing, or any of those types of things that would
19 be involved in a general rape kit exam that's
20 provided by SLED?

21 A. I'm sorry, can you say that one more
22 time?

23 Q. Are you familiar with the State Law
24 Enforcement Division?

25 A. Yes, sir.

1 Q. And they have established a protocol
2 for examinations?

3 A. Yes, sir.

4 Q. And that includes a child examination?

5 A. Yes, sir.

6 Q. And so in that regard, if you were
7 doing that kit, there are a number of other things
8 that you do, including the swabbing you mentioned?

9 A. Yes.

10 Q. What else would there be?

11 A. It depends on the age of the person.

12 If it's a teenager with pubic hair, that would
13 require the comb that you spoke about. For
14 pre-puberty kids, we don't generally comb. There
15 is really nothing to comb.

16 Q. And the areas that you would swab would
17 be?

18 A. We would -- if there was areas on the
19 body -- in the history, if there was contact with a
20 body, we would swab those areas. Are you asking
21 about specific areas or -- I'm not really sure what
22 you're asking.

23 Q. I mean, I guess I'm asking -- because
24 there were things that you didn't do and that would
25 have been those things.

MARKITA JOHNSON - CROSS EXAM BY MR. SCHWACKE

1 A. I did not collect swabs on her, yes.

2 Q. And that would have included mouth?

3 A. I did collect a mouth swab on her, a
4 buccal swab, yes.

5 Q. And that was done -- what was done with
6 that?

7 A. It goes in the kit.

8 Q. That's the rape kit?

9 A. Yes, sir.

10 Q. SLED rape kit?

11 A. Yes, sir.

12 Q. And so one was performed in this case?

13 A. There was -- it was a modified kit.

14 There was no vaginal swabs to go in the kit, nor
15 were there any pubic hair combs to go in the kit,
16 or body swabs. So it was just a buccal swab.

17 Q. And that was because you had determined
18 to use the non --

19 A. I had determined not to swab her
20 because the history was that the assault had been
21 greater than two weeks -- it was approximately two
22 weeks ago, according to the mom.

23 Q. According to the mom?

24 A. Yes.

25 Q. And you, of course, have to accept what

1 she says in telling you that?

2 A. Yes, if I'm collecting the history from
3 her.

4 Q. And at that time you have no way of
5 knowing her own involvement in this case?

6 A. No, sir.

7 MR. SCHWACKE: One moment, Your Honor.

8 BY MR. SCHWACKE:

9 Q. Did you list on your report unresolved
10 MRSA?

11 A. No, sir.

12 Q. Did you see any evidence of that on
13 MINOR 1?

14 A. No, sir. I don't have any list of
15 unresolved MRSA. No, sir.

16 Q. Just one second.

17 A. Okay.

18 Q. On the SLED rape kit, who would you
19 have then provided that to?

20 A. It's picked up by our public safety,
21 and the police department that requested it will
22 pick it up from our public safety office.

23 Q. And as far as you know, that was picked
24 up?

25 A. From my -- it was signed by our public

MARKITA JOHNSON - REDIRECT EXAM BY MS. HERRING-LASH

1 safety. I can only speak that I gave it to the
2 public safety.

3 MR. SCHWACKE: Thank you. No further
4 questions.

5 THE COURT: Any redirect?

6 REDIRECT EXAMINATION

7 BY MS. HERRING-LASH:

8 Q. Mrs. Johnson, because it got a little
9 confusing, you said that you only do acute exams?

10 A. Correct.

11 Q. But on this evening, you did a
12 non-acute exam. And why was that?

13 A. Because there was no -- it was after
14 the 72-hour period.

15 Q. And that's based on what the mother
16 told you?

17 A. Yes.

18 Q. What is a buccal swab?

19 A. A buccal swab is just a Q-tip swab in
20 the mouth that determines the patient's DNA.

21 Q. So the buccal swab is done for DNA
22 purposes?

23 A. Yes.

24 Q. Is the buccal swab the same swab you
25 would use if you were swabbing the mouth to put in

1 an evidence collection envelope?

2 A. It's two -- it's two separate swabs,
3 two separate envelopes. One would be just for the
4 patient's DNA, and if there was a history to swab
5 her mouth for anything, it would be a different
6 Q-tip in a different envelope.

7 Q. So if it were an acute exam and you
8 were swabbing, you would have used a different swab
9 to collect evidence?

10 A. Yes, ma'am.

11 MS. HERRING-LASH: Those are all the
12 questions I have.

13 THE COURT: Any objection to the
14 witness being excused? From the State?

15 MS. WILLIAMS: No, Your Honor.

16 THE COURT: From the defense?

17 MR. SCHWACKE: None, Your Honor.

18 THE COURT: Ma'am, you're excused.
19 You may proceed.

20 MS. HERRING-LASH: The State would call
21 Allison Foster.

22 MR. SCHWACKE: May we approach?

23 THE COURT: Sure.

24 (Bench conference.)

25 THE COURT: Yes, ma'am.

1 MS. LITTLEJOHN: Judge, we're going to
2 object to her testifying as an expert in the area
3 of child abuse and the --

4 THE COURT: As long as they color in
5 the lines, they're allowed to, but I don't know
6 what they're going to ask her until they establish
7 her qualifications.

8 MS. LITTLEJOHN: We're going to be
9 objecting to that even --

10 THE COURT: You need to make a
11 contemporaneous objection. I don't know what
12 they're going to ask her.

13 MS. LITTLEJOHN: We'd like to -- we're
14 going to challenge her expertise --

15 THE COURT: As we go along, we'll
16 follow the procedure, and I'll ask if you have any
17 questions or objections, and we'll go from there.

18 (End of bench conference.)

19 THE COURT: You may proceed.

20 ALLISON FOSTER,
21 being first duly sworn, testified as follows:

22 THE CLERK: Have a seat, state your
23 full name, and spell the last name.

24 THE WITNESS: My name is Allison Marie
25 Foster and my last name is spelled F-O-S-T-E-R.

ALLISON FOSTER - DIRECT EXAM BY MS. HERRING-LASH

1 THE COURT: Ma'am, if you could pull
2 the microphone towards you so we can hear you and
3 if you could repeat what you just said.

4 THE WITNESS: Sure. Allison Marie
5 Foster, F-O-S-T-E-R.

6 THE COURT: You may proceed.

7 DIRECT EXAMINATION

8 BY MS. HERRING-LASH:

9 Q. And, Dr. Foster, where do you work?

10 A. I work two places. I work at the
11 Children's Advocacy Center in Columbia, known as
12 the Assessment and Resource Center. I'm chief
13 psychologist there, now in a part-time capacity,
14 and then I also have a private practice where I do
15 other court-related forensic evaluations of
16 children, sometimes divorce custody cases or -- or
17 other kinds of evaluations of children.

18 Q. How long have you been working at each
19 place?

20 A. I have been at the ARC since 1994 as an
21 intern, and then as the program director from 1995
22 to 2012. So all told I would say now 21 years at
23 the ARC, and then in private practice for
24 approximately 16 years.

25 Q. And what is your educational

1 background?

2 A. I went to college at Emory University
3 in Atlanta and then worked for a year in a
4 residential treatment facility for adolescents,
5 after which I moved to Columbia to attend the PhD
6 program in clinical psychology. So from 1989 to
7 1996, I was in graduate school at USC and I
8 obtained my PhD in clinical psychology.

9 Q. And have you done any specialized
10 training in the area of the dynamics of child
11 sexual abuse and assault?

12 A. Yes.

13 Q. Quite a bit?

14 A. Sure. Not so much from my -- my
15 psychology training was general, but I knew by the
16 time I finished my doctoral internship, that's what
17 I wanted to specialize in, was the forensic
18 evaluation of suspected child sexual abuse. So my
19 internship year from 1994 to 1995, I was an intern
20 at the ARC, and that certainly started my training
21 in understanding the dynamics of child sexual abuse
22 and interviewing children and various issues
23 related to that.

24 And then every year since then, from
25 1995 until the present time, I attend national,

1 regional, and statewide conferences, and I both
2 attend lectures and also provide lectures on that
3 sort of subject matter.

4 Q. And so you also teach professionals
5 regarding that; is that right?

6 A. Yes, I do.

7 Q. What are some of the national
8 presentations that you have done?

9 A. Dynamics of Child Sexual Abuse,
10 Effective Interviewing, the Effects of Trauma on
11 Children, Child Development and Developmental
12 Impacts of Trauma and Abuse on Children, Memory
13 Suggestibility -- trying to think of some other
14 areas.

15 Sometimes I've done trainings on other
16 issues that are related to allegations of other
17 kinds of abuse or interviewing witnesses of a
18 violent crime.

19 Q. What kind of national organizations
20 have you presented for?

21 A. The American Professional Society on
22 the Abuse of Children, the National District
23 Attorneys Association, the Gunderson National Child
24 Protection Training Center, and the National
25 Children's Advocacy Center in Huntsville. Those

1 are probably the biggest ones.

2 Q. Do you have any professional
3 certificates and affiliations?

4 A. I do. So in order to conduct child
5 forensic interviews, which is something I do, it's
6 standard to obtain a 5-day, 40-hour training
7 course, and I have obtained -- I've attended two or
8 three of the national schools for their basic
9 courses and then at least three of the national
10 schools for their advanced certifications in
11 advanced child forensic interviewing. Of course,
12 I'm licensed as a clinical psychologist in the
13 State of South Carolina.

14 Q. And have you published in this area?

15 A. I have. I have a manuscript in
16 progress right now that has to do with particular
17 techniques in child forensic interviewing, and I
18 just had a chapter come out in a book, but it's
19 really about the assessment of mental disorders in
20 parents. It's not really about child sexual abuse.

21 Q. And do you supervise other
22 professionals in this area?

23 A. I do. From 1995 until 2012, as the
24 director of the ARC, I hired, trained, and
25 supervised the other mental health employees who

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1 provided forensic interviews and therapy for child
2 victims of abuse. And then on to the present day,
3 I'm involved in what is called peer review. So we
4 have a state-wide system for all professionals who
5 are involved in interviewing children to share
6 their work with other professionals and obtain peer
7 -- peer-to-peer feedback to enhance our skills.

8 Q. Have you testified as an expert in the
9 area of the dynamics of child abuse?

10 A. Yes.

11 Q. Do you know how many times?

12 A. I don't. I testify several times a
13 year and I've been testifying for about 20 years.

14 Q. And have you testified for both the
15 prosecution and the defense?

16 A. Yes, I have.

17 MS. HERRING-LASH: At this time, Your
18 Honor, I would offer Dr. Foster as an expert in the
19 area of the dynamics of child abuse.

20 THE COURT: Any questions or
21 objections?

22 MR. SCHWACKE: With regard to --

23 THE COURT: No speaking objection. If
24 you have an objection --

25 MR. SCHWACKE: I do, Your Honor.

1 THE COURT: -- I need to know the basis
2 of the objection.

3 MR. SCHWACKE: Your Honor, just the
4 area of expertise.

5 THE COURT: Please approach.

6 (Bench conference.)

7 MR. SCHWACKE: We would object just to
8 the broadness of the category --

9 THE COURT: Well, she has broad
10 training.

11 MR. SCHWACKE: I understand that. But
12 I think in terms of what they're planning to put
13 her up for, she should be restricted to that --

14 THE COURT: All she has to do is be
15 recognized as a licensed clinical psychologist,
16 frankly, and that will cover it.

17 MS. LITTLEJOHN: Judge, we want to know
18 how she organizes her data, what she uses to
19 collect her data --

20 THE COURT: I asked if you had any
21 questions.

22 MS. LITTLEJOHN: That's what we would
23 like to --

24 THE COURT: Then you need to ask them.
25 (End of bench conference.)

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1 THE COURT: Proceed.

2 MS. HERRING-LASH:

3 Q. Dr. Foster, in your area of expertise,
4 is there a term that's referred to as delay in
5 reporting?

6 THE COURT: No. No. He said he had
7 questions, so if you have questions, you need to
8 ask them. And I haven't qualified her as an expert
9 yet so you can't elicit any opinions.

10 (Bench conference.)

11 THE COURT: Did you withdraw your
12 objection?

13 MR. SCHWACKE: Yes, Your Honor. I'll
14 be covering her questions during the --

15 THE COURT: So are you now stipulating
16 to her being admitted as an expert?

17 MR. SCHWACKE: We will allow the Court
18 to make that determination.

19 THE COURT: Well, either you have an
20 objection or you don't.

21 MR. SCHWACKE: We have an objection.

22 THE COURT: Well, then you need to
23 articulate what that objection is so that I can
24 rule on it.

25 MR. SCHWACKE: And, again, that would

1 be just the general overly broad --

2 THE COURT: That's not a basis for the
3 objection.

4 MR. SCHWACKE: -- hasn't been
5 recognized as a specialized --

6 THE COURT: That's not a basis for an
7 objection. You have to have an objection based on
8 her expertise, which is her ability to render an
9 opinion. So if you have some objection to her
10 education, training and experience, I need to hear
11 it.

12 Do you have an objection or do you not?

13 MR. SCHWACKE: We had an objection, but
14 Your Honor --

15 (End of bench conference.)

16 THE COURT: Madame Forelady, ladies and
17 gentlemen, I have a brief matter I need to take up
18 outside of your presence. During the break, please
19 do not discuss the case, and please leave your
20 notepads in your seats. We appreciate your
21 patience.

22 (Jury out, 3:15 p.m.)

23 THE COURT: In what area are you
24 offering the witness as an expert?

25 MS. HERRING-LASH: Your Honor, I'm

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1 offering her as an expert in the dynamics of child
2 abuse. And I can refer the Court to a recent
3 opinion.

4 THE COURT: Uh-huh.

5 MS. HERRING-LASH: State V Damien
6 Brown, 411 SC 332.

7 THE COURT: Bear with me.

8 MS. HERRING-LASH: May I read --

9 THE COURT: Bear with me one second,
10 please.

11 What is the basis of the defense's
12 objection? Well, I guess I need to ask
13 preliminarily, does the defense object?

14 MR. SCHWACKE: Yes.

15 THE COURT: What is the basis of the
16 objection?

17 MR. SCHWACKE: Your Honor, the basis
18 would be that the subject matter that the witness
19 is going to be testifying to is not beyond the
20 ordinary knowledge of the jury, that it would not
21 -- will not require any type of assistance to the
22 jury. The jury would be able to make a
23 determination based upon the matter without the
24 need of an expert, and that this is an area that
25 has not been recognized yet under Frye or whatever

1 that progeny you wish to follow.

2 And so we would ask for -- ask for the
3 testimony not to be allowed, as it essentially does
4 then go into bolstering of the evidence the State's
5 already presented, including the testimony and
6 expected videotape.

7 THE COURT: Would you like to respond,
8 Ms. Herring-Lash?

9 MS. HERRING-LASH: Yes, Your Honor.
10 May I quote from the State v Brown?

11 THE COURT: Yes, ma'am, you may
12 proceed.

13 MS. HERRING-LASH: Expert testimony
14 concerning common behavioral characteristics of
15 sexual assault victims and the range of responses
16 to sexual assaults encountered by experts is
17 admissible. Such testimony is relevant and helpful
18 in explaining to the jury the typical pattern of
19 adolescent victims of sexual assaults if it assists
20 the jury in understanding some of the aspects of
21 the behaviors of victims and provides insight into
22 abused child's often strange demeanor.

23 The Supreme Court has stated expert
24 testimony may be more crucial when the victims are
25 children because their inexperience and

1 impresmentability often renders them unable to
2 effectively articulate incidents of criminal sexual
3 abuse.

4 This case was specifically beginning
5 their evaluation, because the same objection was
6 made, that this kind of behavior was in the typical
7 knowledge of lay jurors, and the case found that it
8 was not, and that expert testimony would assist the
9 jury in that often the behaviors would be outside
10 of the common knowledge of the layperson.

11 And the -- another part of the case,
12 the expert testimony assisted the jury in
13 understanding why sexual abuse victims are
14 secretive and frightened, why they may act out and
15 become problems, why they would not give dates and
16 times, that the nature of child abuse places lay
17 jurors at a disadvantage and expert witness
18 testimony regarding the fact that delayed and
19 incomplete disclosure is not unusual in child
20 abuse; thus, from a psychological point of view,
21 expert testimony about delay, inconsistencies, and
22 recantation is not controversial.

23 THE COURT: Anything further?

24 MS. HERRING-LASH: No, Your Honor.

25 THE COURT: Anything further from the

1 defense?

2 MR. SCHWACKE: No, Your Honor.

3 THE COURT: Okay. Now you've mixed
4 apples and oranges, and I need to know exactly what
5 the crux of your objection is, because there are
6 two separate things. There's one objection would
7 be based on a lack of education, training and
8 experience, and then there's a separate part which
9 would be dealing with subject matter that she would
10 be rendering an opinion.

11 So I need to know if you have an
12 objection to her education, training, and
13 experience, which is a separate matter than her
14 rendering an opinion. You sort of morphed two
15 things together that are separate.

16 MR. SCHWACKE: Yes, Your Honor. And
17 the short answer is, obviously, we're trying to
18 maintain the representations of that only one voice
19 is speaking -- one party at a time. In terms of
20 that, we -- I'm registering an objection to the
21 qualifications. Obviously, the Court has the
22 ability to overrule my objection and find her an
23 expert.

24 With regard to the other prong, what we
25 expect the testimony to be in this type of matter

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1 is often inconsistent in terms of what conditions
2 may indicate an event's impacting upon a child.
3 And sometimes you will hear the testimony come
4 that, well, they could be cold or they could be
5 hot. I mean, whatever -- whatever the specifics
6 that the witness is testifying to, they're
7 oftentimes inconsistent with each other --

8 THE COURT: I'm sorry, you lost me.
9 When you're referring to witnesses, who are you
10 referring to.

11 MR. SCHWACKE: I'm talking about two
12 juvenile victims, minor victims. That they might
13 be doing well in school, they might be doing bad in
14 school. I mean, oftentimes --

15 THE COURT: She can't comment about a
16 particular child.

17 MR. SCHWACKE: That's correct. In
18 general, she is going to have to say, these are
19 factors which help me explain to the jury why this
20 child is delaying in reporting.

21 THE COURT: That's not usually how it's
22 presented.

23 MR. SCHWACKE: I understand. I'm
24 really simplifying this just for my benefit, so
25 that when a -- an expert takes the stand and

1 testifies of those things, they're often telling
2 the jury, well, this kid showed these signs -- a
3 child can show these signs or a child can also show
4 these signs, and they can be polar opposites of
5 each other; so that in the end, it sort of feeds
6 the argument that it really isn't helpful to the
7 jury because it's got inconsistencies built in
8 within it.

9 So, Your Honor, that's why we're
10 objecting, that it is really not of benefit to
11 assist the jury.

12 THE COURT: Ma'am, this question was
13 not asked of you and I need it to supplement the
14 record. You indicated that you've testified
15 several times a year for over 20 years. I need to
16 know what courts you've testified in and I also
17 need to know if you've ever been qualified as an
18 expert to testify in other courts and what courts
19 those were in.

20 THE WITNESS: Certainly. Every time
21 I've been offered as an expert, which is virtually
22 every time -- I'm trying to think if I've been
23 involved yet as a fact witness as a forensic
24 interviewer, in light of our most recent case law,
25 and I don't believe that's happened yet. So I

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1 believe it's correct to say that 100 percent of the
2 times that I've testified, I was qualified as an
3 expert.

4 I've been qualified in Richland County,
5 here in Berkeley County, Charleston County,
6 Fairfield, Kershaw. In the Upstate, Greenville,
7 Spartanburg, Cherokee, and probably elsewhere in
8 the state.

9 I've also been qualified and served as
10 an expert witness in US courts-martial for the
11 Navy, the Army, and the Air Force, and then I've
12 testified in two US District Courts, one in Chicago
13 and then one here in -- well, excuse me, Columbia
14 at the -- I can't remember the name of the
15 courthouse at the moment, and then in the state of
16 Iowa, the city of Tamatoledo, Iowa -- that was a
17 child sex abuse prosecution -- Fort Collins,
18 Colorado, and perhaps that's it.

19 THE COURT: Any questions as a result
20 of the Court's question from the State?

21 MS. HERRING-LASH: No, Your Honor.

22 THE COURT: From the defense?

23 MR. SCHWACKE: No.

24 THE COURT: And also the record should
25 be clear, that I gave the defense the opportunity

1 to question or voir dire the witness regarding her
2 qualifications and you all passed on that
3 opportunity; is that accurate?

4 MR. SCHWACKE: Yes, ma'am.

5 THE COURT: Okay. The motion to
6 exclude the testimony is denied. As I've already
7 indicated, it appears to have been a two-pronged
8 argument; one based on a lack of expertise -- or
9 lack of education, training, and experience on the
10 part of the expert. The Court finds that argument
11 to be without merit.

12 Clearly, the witness possesses the
13 requisite education, training, and experience that
14 would be required of an expert in her field. She
15 possesses a PhD in clinical counseling -- clinical
16 psychology, I apologize, and she possesses a
17 license in clinical psychology for the State of
18 South Carolina. There is no requirement that
19 someone be a published author in order to be
20 qualified as an expert. Although she has indicated
21 that she has a manuscript in progress and has
22 published a chapter in a book, although it is not
23 in this subject matter.

24 She has testified extensively regarding
25 the areas of her education, the conferences she has

1 attended as well as has presented as a lecturer, as
2 well as participating in the required peer review
3 processes that are required by the State of South
4 Carolina. She has testified and been qualified as
5 an expert in a multiplicity of jurisdictions,
6 including across the counties in the State of South
7 Carolina, and she is clearly qualified as an expert
8 pursuant to Rules of Evidence 732.

9 As regards to the scope of her
10 testimony, likewise, the Court does not find any
11 support for that argument in case law or in the
12 Rules. The Rules are very clear that once an
13 expert is qualified in that area, the Court must
14 look to a two-prong test. One: Will the
15 particular information aid the jury? Is it outside
16 of the jury's rational perception? Is it outside
17 of their -- of a subject matter that would be
18 within the ambit of their common knowledge.

19 And quite clearly, the -- for lack of a
20 better term, the dynamics of child abuse would be
21 well outside the scope of a layperson's knowledge,
22 such that expert testimony would be helpful and
23 beneficial. Contrary to the defense's argument, it
24 would not be misleading to the jury. The jury
25 weighs an expert opinion the same way it weighs any

1 other testimony; it gives it the weight it thinks
2 it should receive and it is not entitled to any
3 greater deference than that of a lay witness.

4 I think the witness is quite clear,
5 based on her training and experience, that she
6 would not be able to speak specifically about this
7 child, as that would be bolstering, and I -- I
8 guess I've just heard this type testimony so many
9 times, it follows the same script. And I don't
10 mean to say that in a pejorative sense, but it
11 does, because I think everybody knows what the
12 scope of the testimony or the confines of that
13 testimony must be.

14 And so I think the expert would be very
15 clear, based on her previous appearances in court,
16 as to the scope of that testimony, and since it is
17 generalized, she would not be commenting
18 specifically as to this child, but only as to the
19 common criteria as well as other characteristics
20 that children manifest under a certain host of
21 circumstances.

22 The motion -- or the objection is
23 overruled and that is based on State v. Damon T.
24 Brown. And there was another case I was looking
25 at, I apologize. It was out of Pickens. I

1 apologize, maybe that one will come back to me.

2 My computer -- I guess I waited too
3 long to look back at what I was reading, but there
4 was another case that was either out of Pickens or
5 Laurens and I can't remember. It was likewise
6 decided -- heard in 2014 and decided in 2015.

7 Either way, the Court articulates the very same
8 criteria, that such testimony is admissible, that
9 it is probative, that it is more probative than
10 prejudicial and that it is not improper bolstering
11 of the victim.

12 Again, having tried many of these
13 cases, I don't want to speak out of turn or get
14 outside of my area of expertise, but it's my
15 understanding it would be unethical for a clinical
16 psychologist to vouch for somebody's credibility or
17 speak specifically about a child that they have not
18 interviewed. But even if they had, they still
19 would not be able to bolster, or to say they
20 believe the person is credible or that they have
21 veracity or lack veracity, or that they believe or
22 don't believe what not only a child, but what an
23 adult has said.

24 (These proceedings were interrupted.)

25 THE COURT: State ready to proceed?

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1 MS. WILLIAMS: Yes, Your Honor.

2 THE COURT: Defense ready to proceed?

3 MR. SCHWACKE: Yes, Your Honor.

4 THE COURT: Please bring in the jury.

5 (Jury in, 3:49 p.m.)

6 THE COURT: You may proceed.

7 Ladies and gentlemen, if you would give
8 the attorneys your attention.

9 BY MS. HERRING-LASH:

10 Q. Dr. Foster, have you met the child
11 involved in this case?

12 A. No, I have not.

13 Q. Have you ever read any of the reports
14 involved in this case?

15 A. No, I have not.

16 Q. Have you spoken to any witness or
17 person involved in this case?

18 A. No, I have not.

19 Q. Have you reviewed any documents about
20 this case?

21 A. No.

22 Q. I would like to ask you, in your
23 profession, is there a term referred to as delay in
24 reporting?

25 A. Yes.

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1 Q. What does that mean?

2 A. In our profession, we -- we understand,
3 read articles, and receive training on what
4 sometimes is referred to as the process of
5 disclosure, and part of understanding that is
6 understanding that it's common for child victims of
7 sexual abuse to delay in telling anyone, and that
8 delay can be a matter of months or years.

9 Q. And what are some of the reasons for --
10 just why don't kids tell?

11 A. A lot of reasons. It can almost -- the
12 question can almost be flipped and one could ask,
13 why would a child tell? Because pretty often, in
14 the cases that I'm involved in, the offender is a
15 family member or someone who is known to the
16 family, loved and trusted, held in regard. Often
17 it's somebody that the child has a level of
18 dependence on or -- either directly or knows that
19 other people are dependent upon that person. So if
20 it's a father, stepfather, uncle, brother,
21 grandfather, that sort of thing.

22 So a child -- it depends on the age of
23 the child, but certainly younger children are
24 particularly concrete thinker. So if an offender
25 tells a child not to tell, if the offender tells

1 the child that there would be negative consequences
2 for telling, younger children really believe that.
3 Sometimes, in fact, when they get older, that's
4 when they start to question whether or not those
5 threats are really going to come true and that
6 might be the reason they tell. But they -- so they
7 can be silenced by threats, they can be silenced by
8 loyalty, they can be silenced by the fear of being
9 in trouble.

10 Because certainly children have a level
11 of understanding, that grows as they grow up, that
12 what they're involved in is wrong. And as that
13 level of awareness that something is wrong grows,
14 unfortunately, they often feel that they are
15 equally to blame, that they are equally
16 responsible, so they fear trouble.

17 I'm probably leaving out some reasons,
18 but those are some fundamental ones.

19 Q. If they have previously been involved
20 in the DSS system, could that be another reason
21 that would cause them not to want to tell?

22 A. Yes, indeed. Sometimes offenders will
23 use that threat. They'll say, if you tell, they
24 will take you away. And if a child has been taken
25 away in the past, they understand what that really

1 means. They certainly might be very reluctant to
2 -- to disclose again and go through that same
3 process.

4 Q. One of the things that you mentioned in
5 your explanation was that sometimes it's out of
6 loyalty. Are you inferring that a child could
7 still care about or be loyal to a person doing that
8 to them?

9 A. Yes, very much so. I'll take the
10 example of a parent who is abusive. That's a very
11 complicated relationship that -- that relationship
12 involves lots of things. It probably involves
13 times that are good, times that are fun, times
14 where the child feels like they're receiving
15 benefits from the relationship. Not to mention the
16 fact that we are wired biologically to bond to our
17 parents, to have a healthy level of fear and
18 respect for our parents, to follow the rules of our
19 parents, and to accommodate things about our
20 parents that sometimes are ugly, whether it's that
21 they are abusive, whether they have an alcohol or
22 drug abuse problem. So we might dislike or be
23 upset about some component of our parent's behavior
24 toward us, or toward our mom, or toward our
25 siblings, but our feelings will be complicated.

1 We'll still have feelings of love, loyalty,
2 ambivalent feelings, mixed feelings.

3 Q. If there is a parent in the home that
4 is the non-abusing parent, but they're being
5 non-protective, for example, if they know about the
6 abuse and are non-protective, could that impact a
7 child's telling?

8 A. Yes. In part, that -- there is a
9 concept called observational learning. So let's
10 say a child finds out that an adult knows about the
11 situation, or maybe the child tells an adult about
12 the situation, and that adult doesn't do anything
13 to stop the problem; the child is observing that
14 there is an adult who is not capable of
15 intervening.

16 So it sends a message of, oh, okay,
17 this problem is so large, or so dangerous, or so
18 overwhelming, that not even that other parent is
19 able to do anything about it. So if my other
20 parent can't do it or some other adult can't help
21 me, how on earth, do I as a child think that I can
22 otherwise get out of this situation. So it's that
23 learning that tells a child that they are -- it
24 kind of reinforces the sense of helplessness that a
25 child is going to feel.

1 Q. Is that like learned helplessness?

2 A. Yes, that's exactly what it is. It's
3 learned helplessness.

4 Q. If a child does tell authorities and
5 nothing is done and they're back in the situation,
6 can that also impact their hesitancy and their
7 belief and everything about the situation?

8 A. Yes. When I teach child development
9 and the impact of trauma, it is exactly that,
10 because it can impact their beliefs about the
11 world. Is this a safe world? Do people help me?
12 Am I helpless? Is it a dog-eat-dog world? Who --
13 and, in fact, a child in that kind of circumstance
14 may very much align with the more powerful
15 offender, because that person appears to be the one
16 in charge. If nobody else is assertive enough or
17 morally strong enough to stand up and do what's
18 right, we often see children actually kind of
19 surrender and they align with the perpetrator. And
20 they may in fact go to some length to protect the
21 perpetrator.

22 Q. If the person who is non-protective of
23 the child, is the one that accompanies them to like
24 when they're supposed to be interviewed, would that
25 impact the ability of that interviewer to get

1 information?

2 A. Yes, it could, because, again with
3 communication, there is both what is said and what
4 we know as nonverbal communication. The behavior
5 of that parent, the non-protective parent, that's
6 someone who already has heard what the child had to
7 say about -- saying accusation of abuse, has done
8 nothing, there is an implicit communication there.

9 The implicit communication is, either
10 keep this in the family, I don't believe you, it
11 doesn't matter; but there is -- you know, there is
12 nothing about that caregiver's behavior that
13 provides support for that child to think that he
14 should then go on and tell another person.

15 Q. And I'm not sure if I'm going to word
16 this correctly, but could -- could that implicit
17 behavior override the maybe conversations that that
18 parent may be giving to other authorities?

19 A. Sure. I mean, if a non-protective
20 parent might be giving a different statement to
21 authorities, if the child is not hearing that
22 statement then it's worthless, I mean, for the
23 perception of the child, if the child hasn't
24 experienced it themselves; but even if the child
25 hears it, it -- again, it's language, behavior, and

1 emotions.

2 It depends on whether or not the words
3 match the behavior and whether or not the child
4 sort of reads into it, well, she's saying one thing
5 but she does another. Sometimes at our center, and
6 other centers in the state, we've gone so far as to
7 have parents come in the room in front of us and
8 tell the child that they have permission to talk to
9 us. And even then, sometimes we experience parents
10 who -- we're not convinced that they're really
11 directly telling the child they have permission to
12 tell. So we know the communication happens both
13 verbally and nonverbally.

14 Q. So even if the parent is standing there
15 saying to the child, I want you to tell, the
16 child's perception of what they know the behavior
17 has been historically, could impact what the child
18 really knows that that parent is saying?

19 A. That's exactly right.

20 Q. Now, looking at conditions that may
21 prompt a child to tell, would being in a safe
22 situation or away from the abuse, can that be one
23 of the things that prompts the child to tell?

24 A. Yes.

25 Q. Are there other things that may prompt

1 a child to tell?

2 A. Yes. Certainly removal from the threat
3 is a big one. So sometimes, you know, we talk
4 about the fact that children, if they're being
5 abused in their home, they're living in their crime
6 scene. So they're never really away for any length
7 of time from the scene of the crime. It tends to
8 be continuous, it's an ongoing sort of business.

9 So getting them separated from that
10 environment, especially if they have some sense of
11 assurance that they're not going back, that they're
12 really separated from that environment, that's
13 going to free children oftentimes to feel that they
14 can tell things that they have been suppressing.

15 Other things that can impact a child
16 telling is maturation, growing up. Just getting
17 older, finding internal motivation as well as maybe
18 external resources. So, for example, realizing --
19 a child realizing that she's old enough and verbal
20 enough and smart enough to understand that she's
21 going to have to tell somebody if she's ever going
22 to make it stop and maybe she trusts the
23 schoolteacher. So that would be an example of
24 having internal motive and an external resource.

25 And other things that will make

1 children tell is to protect a sibling. That could
2 be something that would inspire a child to tell.
3 Or if the abuse intensifies. So if something moves
4 from being less intrusive, or sort of a pattern of
5 behavior the child has learned to accommodate, and
6 then it becomes more intrusive, for example, to be
7 specific, maybe moving from fondling to fuller
8 sexual contacts with penetration. That might be
9 the thing that compels the child to disrupt the
10 abuse by telling.

11 Q. Do children develop coping mechanisms
12 to -- to seemingly have a normal existence during
13 this kind of situation?

14 A. Yes. Yes. And we know from what's
15 called retrospective research in our country over
16 the last 30 years, we know that when we look at
17 substantiated bona fide cases of sexual abuse,
18 about two-thirds of American victims don't come to
19 anyone's attention until adulthood. That means
20 that children certainly develop coping mechanisms
21 and skills to suppress telling and to get on with
22 the business of life, even throughout perhaps their
23 entire childhood. So they've just learn to
24 accommodate. We use the word accommodation.

25 Q. And you may have touched on this a

1 moment ago when you talked about ongoing. If the
2 abuse is chronic, does sorting out dates and
3 details and such as that become more and more
4 difficult?

5 A. Yes.

6 Q. Why is that?

7 A. Yes. So there's at least two reasons.
8 First of all, for all of us humans, if there's
9 something we're involved in in any kind of
10 repetitive way, our brains economize by making what
11 we call a script; so script memory. If somebody
12 asks me to explain how I go to work every day, I
13 would have sort of a script memory I would rely
14 upon to describe how I go to work every day.

15 But if you ask me, how did I go to work
16 this morning, that would be what we call episodic
17 memory, a discrete episode, and then I can retrieve
18 maybe that particular episode.

19 So for all people, our brains like to
20 find patterns and then if -- so if something is
21 happening repetitively, our brain will sort of
22 economize its use of resources by making a script
23 memory. So that's one aspect. Two other aspects,
24 one is child -- children being children. Being
25 young -- it depends on the age of the child, but

1 younger children are -- have less language and they
2 are more egocentric and concrete. So they just
3 know and -- and they haven't had a lot of life
4 experience to understand everything, so they may
5 not code as much of each experience and, certainly,
6 they're not going to anchor in terms of what day of
7 the week it was or what month, or I dare say even
8 what year, because that has to do with a lot of
9 association and attending to -- to features that
10 little kids don't even pay attention to. They
11 don't pay attention to the calendar or the clock,
12 so there's that. And then trauma is the third
13 prong.

14 So there's development; there's just
15 the way our brains consolidate chronic memories;
16 and then there's the issue of trauma, which means
17 that if something is upsetting and when we
18 experience it, we're experiencing it with anxious
19 arousal and fear and discomfort, our brains process
20 those kinds of experiences differently. And then
21 if we never want to talk about it and we're
22 suppressing the memory, our brains code those
23 memories differently.

24 So literally, we haven't assembled
25 those memories with as many words and we haven't

1 moved those memories from the more primitive part
2 of our brain to the more cerebral part of our
3 brain. So it can literally -- if anybody has ever
4 asked you to recall an upsetting event, it's
5 difficult to be anxious and aroused and also
6 recall, you know, organize with words and put in
7 perfect chronological order an event. So emotions
8 disrupt the recall.

9 Q. Kind of along that line, is there any
10 common presentation among children who are abused,
11 or does it vary?

12 A. It varies. I mean, I will say, when
13 I'm interviewing children, which is when I
14 typically see them, they are not typically crying,
15 or they're not showing -- sometimes adolescents
16 are, but more often than not, if they're being
17 asked to tell about details of these past events,
18 they may be anywhere from what we call flat, sort
19 of not a lot of emotion, to sometimes silly and
20 trying to change the subject, off task, but not
21 especially wanting to connect their emotions to the
22 memories.

23 Q. And speaking of anxiousness, does
24 anxiousness present itself a little differently in
25 children than in adults?

ALLISON FOSTER - DIRECT EXAM BY MS. HERRING-LASH

1 A. Yes.

2 Q. How is that?

3 A. They can look silly and children can
4 look hyper or distractible, changing the subject.
5 Just looking -- if -- if -- when I see signs like
6 that, I might ask the child do they feel nervous
7 about being with me. Then they might say, yes.
8 But they're not likely to just state that they feel
9 nervous, and so they can almost have a kind of
10 playful or happy look about them that comes from
11 being squirmy.

12 Q. And would you anticipate that being in
13 a setting like a courtroom and having to discuss
14 this could create anxiousness in a child?

15 A. Yes.

16 Q. And cause them to be silly?

17 A. Yes.

18 MS. HERRING-LASH: Court's indulgence.

19 THE COURT: Uh-huh.

20 MS. HERRING-LASH: I think those are
21 all the questions I have, Dr. Foster. If you would
22 answer any that the defense has.

23 THE COURT: You may proceed when you're
24 ready.

25 CROSS-EXAMINATION

1 BY MR. SCHWACKE:

2 Q. How are you doing?

3 A. Good. How are you?

4 Q. My brain is not keeping up with you
5 this afternoon. What I wanted to talk with you
6 about, you had indicated earlier that the areas of
7 practice that you have sort of been dabbling in,
8 you have your private practice and you have the ARC
9 program?

10 A. Right.

11 Q. And the ARC program is a state-funded
12 or --

13 A. Yes. The -- well, yes. The ARC is
14 mostly funded by the South Carolina Department of
15 Mental Health, with partnership from the University
16 of South Carolina School of Medicine and the
17 Palmetto Health Children's Hospital.

18 Q. And then you have your private
19 practice?

20 A. Correct.

21 Q. And I thought you listed, and I may
22 have not have been writing fast enough, some of the
23 areas that you do in your private practice?

24 A. It all -- well, it began by out-shoots
25 of things related to the ARC. So, for example,

1 allegations of abuse in the context of custody
2 fights, where law enforcement and DSS were no
3 longer involved, but yet it was still coming up in
4 family court, so those kinds of cases actually
5 started my private practice.

6 And then as I've continued to grow that
7 practice, other kinds of court-ordered evaluations
8 of children to suss out concerns of another kind of
9 child abuse called parental alienation or exposure
10 to other problematic situations, a lot of things
11 that kind of play out in divorce custody work. I
12 also do criminal consultations, so I might review
13 forensic interviews from other communities in South
14 Carolina or elsewhere in the state to provide
15 consultation to, for example, a criminal defense
16 attorney.

17 And then -- now, I also do what's
18 called full custody evaluations, so psychological
19 evaluations of parents and children and assisting
20 the family court in figuring out custody and
21 visitation arrangements.

22 Q. So a lot of that sounds like family
23 court work that you're doing --

24 A. Yes.

25 Q. -- in terms of your private practice?

1 In terms of divorce and custody issues, about how
2 many have you sort of interacted with now on your
3 private practice side?

4 A. Well, in -- are you asking me about
5 full custody evaluations or accommodation?

6 Q. If you want to try to break it down for
7 me, that would be fine.

8 A. Okay. Well, first of all, I was
9 full-time at the ARC until 2012. So my private
10 practice was sort of what I did in the evenings and
11 weekends, but the demand of it was sufficient
12 enough to finally lead me to decide to go into a
13 50/50 split of my time beginning in January of
14 2013.

15 But I would say over the last 15 years,
16 I've probably conducted, oh, fewer than 20 full
17 child custody evaluations and then probably another
18 dozen parenting evaluations.

19 Q. So in doing that, are you -- you're
20 hired by one of the divorcing parties; is that --

21 A. Not usually. If I'm doing a parenting
22 evaluation or custody evaluation, it's by order of
23 the Court. So they've either agreed to meet me or
24 the Judge has ordered me.

25 Q. And I'm guessing, divorce cases could

1 sometimes get kind of grimy for you?

2 A. Yes.

3 Q. And grimy just sounds like dirty, but
4 it's different in terms of that. You see parents
5 acting differently to each other in a way that is
6 counter to the interest of the child or --

7 A. Yes. Yes, I see parents --

8 Q. Do you see that happening on one side
9 sometimes only, and then other times both parties
10 equally trying to impact or influence the child?

11 A. Yes. More often than not, there tends
12 to be one parent that's more of the good-faith
13 gatekeeper or the good-faith guardian, but
14 sometimes there are complicated problems on both
15 sides.

16 Q. And sometimes I imagine the adults are
17 more childlike than the actual children?

18 A. Yes.

19 Q. And to kind of pursue that a little bit
20 more, it's not -- you will -- you have seen just in
21 the divorce aspect, where parties attempt to
22 influence the children?

23 A. I've seen that both in my private
24 practice and in my public practice at the ARC.

25 Q. Even to the point where a parent might

1 be sort of trying to sabotage another by talking
2 with the child over and over again about something
3 that may be about the other spouse?

4 A. That's right.

5 Q. And you talked about delay in
6 reporting. There are also other areas I imagine
7 that come up within your practice, and some of
8 those could be false memory?

9 A. Yes.

10 Q. Could you explain to the jury what a
11 false memory is?

12 A. Yes. Putting it really simply,
13 believing that something happened that didn't
14 really happen or believing that something happened,
15 but your memory has become significantly distorted
16 about the facts and how it really happened.

17 Q. And in terms of that, what type of
18 distortions have you seen in your -- either your
19 private practice or at the ARC?

20 A. Well, people believing -- okay. So
21 preschoolers, for example, three- and four-year-old
22 children are particularly vulnerable to suggestion.
23 So it's something that I teach about in training
24 folks in terms of mindfulness that we have to have
25 about how we ask preschoolers questions, because if

1 you just give a preschooler information, they take
2 it as fact. And they don't pay attention to how
3 they know what they know, they're just absorbing
4 information.

5 So they can be particularly susceptible
6 to hearing one parent or another or somebody tell
7 them something and they just come to believe it as
8 so. And, also, they have difficulty separating
9 fantasy from reality and tracking rules about --
10 about what they're saying. So they can incorporate
11 a little bit of imagination or fantasy into -- into
12 a description of something.

13 Q. And if they were to have in real life
14 experienced, say, an abuse and it's not to them and
15 it's not by someone in their family, but because of
16 the involvement, say, of another parent repeating
17 that information over and over to the child, that
18 could also happen?

19 A. If I'm -- if I'm following your
20 scenario, you're saying if nothing happened to the
21 child and -- but -- and it didn't have to do with a
22 family member, but if another parent repeats
23 information to that child, I mean, that child could
24 come to believe -- depending on if that child is
25 not discriminate, depending on the child's age and

1 their belief about what that parent is saying, if
2 they just take it as whole cloth, they could come
3 to believe whatever that parent is saying is true,
4 they could come to accept it as being true.

5 Q. Or in the case of a child with a
6 parent, but then some outside relative, aunt,
7 uncle, that could also happen?

8 A. Yes. I would like more details in your
9 hypothetical to really feel like I could respond,
10 but --

11 Q. It's not always a parent -- in the
12 cases that you're doing in family court in divorce
13 -- with divorces, it may not always be a parent
14 exercising that influence over the child, it could
15 be a non-parent or relatives?

16 A. Right. Grandparent, stepparent, an
17 aunt, yes, it could be.

18 MR. SCHWACKE: One moment, Your Honor.

19 THE COURT: Uh-huh.

20 MR. SCHWACKE: Thank you. That's all
21 the questions I have.

22 THE WITNESS: Thank you.

23 THE COURT: Any redirect?

24 MS. HERRING-LASH: Just a bit, Your
25 Honor.

1 THE COURT: You may proceed.

2 REDIRECT EXAMINATION

3 BY MS. HERRING-LASH:

4 Q. If you were seeing a child at the
5 center and there are -- what are some of the
6 concerns that would cause you to think that the
7 child is giving you details that have been told to
8 them by someone else?

9 A. It is the language they use, the
10 phrasing. Sometimes they will use expressions that
11 are sort of not -- you hear them and you know that
12 they are expressions of adults or concerns of
13 adults. Like, bringing up issues that children
14 just generally don't worry about, but that a parent
15 might be concerned about, maybe a financial issue,
16 or a scheduling issue, or something that -- so if
17 it's developmentally -- seems like it's
18 developmentally outside of the pale.

19 Also, in asking follow-up questions,
20 you know, the issue is, can the child provide
21 elaboration? Can the child provide sensory
22 information, sort of what they saw, heard, felt,
23 that it helps us with first sense impressions
24 versus something that somebody told them.

25 Q. I think that kind of goes into my next

1 question. If a child has come to accept something
2 that they've been told, would they be able to, at
3 the time and then years later, be able to give
4 specifics and sensory details about it?

5 A. Not ordinarily. There are studies that
6 have demonstrated that if somebody puts in -- and
7 these are laboratory studies. If somebody visits a
8 child 11 times and goes through suggestive lines of
9 questioning, where they basically are informing a
10 child that certain things happened to them, that
11 their parents remembered this happened to them, and
12 they have the child -- there's a famous study,
13 sometimes referred to as the Picture in the Head
14 Study, that they have the children literally
15 visualize -- even if they say they don't remember
16 this event, because it didn't really happen, they
17 get the child to visualize what it would look like
18 if it happened, and they have demonstrated that if
19 you put this kind of concerted effort in with very
20 young children in a laboratory study, you can
21 produce a shift in a subset of children, not all
22 children, but in a subset of children, who will
23 then begin to adopt the memory as being real.

24 So -- so -- and then it can have
25 sensory detail, in fact. So this is in part why we

1 take a multidisciplinary approach to our
2 evaluations and seek training and consider a range
3 of hypotheses.

4 Q. Like you were speaking about when an
5 interviewer repeatedly interviews the child, giving
6 them details over and over again; if we're talking
7 about, say, a relative who has one contact with the
8 child in an interview, would you expect most
9 children to be able to pick up on a lot of
10 specifics from that interview?

11 A. No. No. And the research that's been
12 done is all -- I mean, it's all about the infusion
13 of multiple contacts, repetitive questioning, use
14 of coercion, suggestion. It's just the -- you have
15 to have a cocktail of -- of influences to shape the
16 kind of distortion I was referring to.

17 Q. So if a child has been out of the
18 family for a couple of years, and the parent or a
19 relative that say somebody is trying to accuse of
20 putting in the details hasn't had any contact with
21 them, would you expect them to be able to give
22 implicit details?

23 A. No, I would not.

24 MS. HERRING-LASH: Those are all the
25 questions I have.

1 THE COURT: Any objection to the
2 witness being excused? From the State?

3 MS. HERRING-LASH: No, Your Honor.

4 THE COURT: From the defense?

5 MR. SCHWACKE: No, Your Honor.

6 THE COURT: You're excused.

7 THE WITNESS: Thank you.

8 THE COURT: Counsel approach for me,
9 please.

10 (Bench conference.)

11 THE COURT: Who is your next witness?

12 MS. HERRING-LASH: Don Elsey.

13 THE COURT: Is that your last witness?

14 MS. WILLIAMS: We have another witness
15 who is shorter.

16 THE COURT: Who is that?

17 MS. WILLIAMS: That's Casey May.

18 THE COURT: You might want to call her
19 because that video is over 30 minutes and we're not
20 going to get through the video this afternoon.

21 MS. WILLIAMS: Okay.

22 (End of bench conference.)

23 THE COURT: Proceed.

24 MS. WILLIAMS: State calls Casey May.

25 CASEY JACKSON MAY,

CASEY MAY - DIRECT EXAM BY MS. WILLIAMS

1 being first duly sworn, testified as follows:

2 THE CLERK: Be seated, state your full
3 name, and spell your last name.

4 THE WITNESS: My name is Casey Jackson
5 May, M-A-Y.

6 THE COURT: You may proceed.

7 MS. WILLIAMS: Thank you, Your Honor.

8 THE COURT: You're welcome.

9 DIRECT EXAMINATION

10 BY MS. WILLIAMS:

11 Q. Mrs. May, how do you know MINOR 1
12 [REDACTED]?

13 A. She is my daughter.

14 Q. And did you adopt her?

15 A. I did.

16 Q. And when did you adopt her?

17 A. June 5, 2015.

18 Q. And did you adopt any other children at
19 that time?

20 A. I adopted two of her biological
21 siblings.

22 Q. And who are they?

23 A. J. P. and L. P..

24 Q. And how old was MINOR 1 when you
25 adopted her?

CASEY MAY - DIRECT EXAM BY MS. WILLIAMS

- 1 A. Seven.
- 2 Q. And how about J. P.?
- 3 A. Six.
- 4 Q. And L. P.?
- 5 A. Two.
- 6 Q. And --
- 7 A. J. P. was five.
- 8 Q. Sorry?
- 9 A. I think J. P. was five.
- 10 Q. Okay. And how old --
- 11 A. No, he was six.
- 12 Q. How long had you had them before the
- 13 adoption?
- 14 A. They came to live with me in November
- 15 2013.
- 16 Q. So had MINOR 1 just turned seven?
- 17 A. She had just turned -- oh, my goodness.
- 18 She was born in 2007. She came to me right after
- 19 her birthday in 2013. So, yes, she had just turned
- 20 six.
- 21 Q. Okay.
- 22 A. Kindergarten. I'm sorry, I'm a math
- 23 teacher.
- 24 Q. Did MINOR 1 disclose sexual abuse to
- 25 you?

CASEY MAY - DIRECT EXAM BY MS. WILLIAMS

1 A. Yes.

2 Q. Did she tell you where it happened?

3 A. Couch.

4 Q. Did she tell you when it happened?

5 A. Mike's house.

6 Q. And when was the first time that you
7 brought MINOR 1 to see us at the Solicitor's
8 office?

9 A. It was in the first couple of months
10 that she lived with me, so I guess -- I think it
11 was wintertime.

12 Q. Of what year?

13 A. Late 2013 or very early 2014. I
14 believe it was December of 2013, but it was that
15 timeframe.

16 Q. And was that a -- how long was that
17 visit?

18 A. Well, I met her brothers that day, and
19 you interviewed each one of the children. And I
20 just sat in the room with all the kids, and it was
21 my first experience with all the kids, so it was a
22 couple of hours. Two -- maybe two hours here, but
23 then we went to a park and -- so the children could
24 play together afterwards.

25 Q. So we interviewed all the kids that

CASEY MAY - DIRECT EXAM BY MS. WILLIAMS

1 day?

2 A. B. G., MINOR 2, D. G., MINOR 1, and
3 J. P. .

4 Q. And then after that one visit, how long
5 was it before we saw MINOR 1 again?

6 A. It was a very long time. Just recently
7 did we return. Maybe a month before the trial was
8 scheduled last time.

9 Q. So we hadn't seen her in two years?

10 A. Right.

11 MS. WILLIAMS: Court's indulgence.

12 No further questions. Thank you,

13 Casey.

14 THE COURT: Any questions for the
15 witness?

16 MR. SCHWACKE: No questions.

17 THE COURT: Ma'am, you may step down.

18 Madame Forelady, ladies and gentlemen,
19 we're going to take advantage of this break in
20 testimony to take our evening recess. The next
21 witness would take us well beyond 5:00, so I'm not
22 going to do that because I know that you all have
23 other obligations for the evening. So we will
24 resume in the morning at 9:30.

25 During this break, please do not

1 discuss the case among yourselves or with anyone
2 else. Please don't watch, read, or listen to any
3 media accounts about this case or do any research
4 on the Internet of any type.

5 When you return to the courthouse,
6 please do not interact with anyone about the
7 courthouse. If you would leave your notepads in
8 your seats, we will secure them during the break.
9 Have a good evening.

10 (Jury out, 4:28 p.m.)

11 THE COURT: Is the State calling
12 Maxwell Gifford, number 5, on your list?

13 MS. WILLIAMS: No, Your Honor.

14 THE COURT: You're calling Don Elsey.
15 Sarah Schuh?

16 MS. WILLIAMS: Don Elsey would be the
17 last witness, Your Honor.

18 THE COURT: And does the defense
19 anticipate calling any witnesses?

20 MR. SCHWACKE: Not at this time, Your
21 Honor.

22 THE COURT: Okay. So then that list
23 you gave me, I can eliminate Maxwell Gifford, James
24 Mill?

25 MS. WILLIAMS: Yes.

1 THE COURT: Okay. I assume there is
2 still an objection to the video?

3 MR. SCHWACKE: I have no objection to
4 the original video.

5 THE COURT: Hold on a second for me. I
6 need to make sure that nobody is in the hallway.
7 Go ahead. I'm sorry.

8 MR SCHWACKE: I don't have any
9 objection to the original video going in.

10 THE COURT: What's the State's
11 position?

12 MS. HERRING-LASH: That's fine, Your
13 Honor.

14 THE COURT: So you have no objection to
15 the entirety of the video?

16 MS. HERRING-LASH: We have no objection
17 to the entirety.

18 THE COURT: Oh, well, I wish I had
19 known that before. Well, it still would have took
20 us -- because the video is lengthy. We would have
21 stopped and started and I don't think that would
22 have made a whole lot of sense. Well, that
23 resolves the issue. I was prepared to have
24 argument.

25 MR. SCHWACKE: We may have one little

1 bit of an argument. They had prepared a
2 transcript --

3 THE COURT: Let me ask another
4 question. Is this like your only copy of the
5 video, the one you gave me?

6 MS. WILLIAMS: No, Your Honor. We have
7 one that's marked that the witnesses looked at.
8 That's the one that we're going to introduce.

9 THE COURT: Okay. I was about to give
10 this one back to you if you needed it.

11 Go ahead, Mr. Schwacke.

12 MR. SCHWACKE: I don't know if the
13 State is intending to provide the jury a copy of
14 the transcript or not as the video plays. We would
15 object to the transcript.

16 THE COURT: Did you all plan to do
17 that? I wouldn't have allowed it. It speaks for
18 itself.

19 MS. HERRING-LASH: I think the only
20 reason that we would attempt to do that, Your
21 Honor, is if they have some issues that, we do not
22 understand or we cannot hear.

23 THE COURT: That's why it's evidence
24 and that's why it goes back with them for them to
25 watch it as many times as they want. Which brings

1 up another issue: You-all might want to make sure
2 you have a clean laptop so they can do that,
3 because they should not have to come back in here
4 and watch the video. And I think we've had this
5 discussion before.

6 MS. HERRING-LASH: I don't know, Your
7 Honor.

8 MS. WILLIAMS: We'll make sure.

9 THE COURT: Thank you.

10 MS. HERRING-LASH: We will need to do
11 an in camera hearing, and I think --

12 THE COURT: For what purpose do we need
13 an in camera hearing if you all have agreed on it?

14 MS. HERRING-LASH: We need -- we need
15 to put on the record, out of the presence of the
16 jury, that Dr. Elsey has been trained as a forensic
17 interviewer.

18 THE COURT: There is no objection.
19 They basically have stipulated to compliance with
20 the statute.

21 MS. HERRING-LASH: Then we will just
22 put that on the record, that they have stipulated
23 that Dr. Elsey --

24 THE COURT: The only time there's a
25 problem is if there's an objection. If somebody

1 consents to something coming into the record, then
2 by virtue of that, they have said there's been
3 compliance with the statute.

4 The only time you have to meet the
5 proof of that statute is when they -- well, the
6 statute could be read two ways.

7 MS. HERRING-LASH: The statute requires
8 an admission --

9 THE COURT: Let me look at it right
10 quick before I speak.

11 MS. WILLIAMS: He's here, Your Honor.
12 We didn't want to send him back; he doesn't work
13 for LCC any longer.

14 THE COURT: I think, for foundational
15 purposes, you're still going to have to have him
16 testify in the presence of the jury.

17 MS. HERRING-LASH: Right. Right.

18 MS. WILLIAMS: We didn't know if you
19 wanted to keep him here so you could do a hearing
20 and then have him come back and just do the
21 testimony right before the tape or whether we
22 should send him off now.

23 THE COURT: Bear with me one second.
24 Let's see what the statute says; 17-23-175.

25 MS. HERRING-LASH: Yes, Your Honor, I

1 have a copy.

2 THE COURT: I have it right here.

3 Okay. What I need to know is, by virtue of you-all
4 consenting or stipulating to the admission of the
5 interview, are you-all also stipulating that there
6 has been compliance with 17-23-175? That the
7 requirements of 17-23-175 have been met?

8 MR. SCHWACKE: I believe they have,
9 Your Honor. Ms. Littlejohn objects to the word,
10 forensic, in connection with the interview.

11 MS. LITTLEJOHN: Based on the latest
12 case law --

13 THE COURT: Well, you-all need to get
14 on the same page, decide what your position is, and
15 then get back with me.

16 MS. LITTLEJOHN: -- State v. Anderson.

17 THE COURT: You-all talk right quick --

18 MR. SCHWACKE: She just objects to the
19 word, forensic --

20 THE COURT: No, it's not she objects.
21 You-all are one voice, so you need to figure out
22 what that voice is saying to me and then I'll
23 address it.

24 MR. SCHWACKE: Well, the word forensic
25 doesn't appear --

1 THE COURT: If I need to have a
2 hearing, then I'm going to have a hearing. And if
3 I'm not going to have a hearing, then -- there's no
4 need to have an exercise in futility. I have a
5 hearing to make certain determinations and,
6 generally, guidelines are provided in the statute
7 when an objection is interposed, and that's to make
8 sure that certain standards are met, but if you-all
9 have stipulated to the admission of this video, by
10 virtue of that -- or this interview, by virtue of
11 that, you're basically saying the requirements of
12 the statute have been met.

13 If you're saying that it hasn't, then I
14 need to have a hearing. If you are saying that it
15 has not -- that it has, then I don't need to,
16 because then, basically, you would have stipulated
17 to it and I can take judicial notice of that
18 stipulation.

19 MR. SCHWACKE: I think we have agreed
20 that the State is not going to refer to the
21 interview as a forensic interview, and we agree
22 that they've met --

23 THE COURT: The requirements of
24 17-23-175?

25 MS. HERRING-LASH: And, Your Honor, the

1 only thing I would ask, we gave you a copy of Dr.
2 Elsey's resume.

3 THE COURT: I have his CV. Do you need
4 to make it a Court's Exhibit?

5 MS. HERRING-LASH: If that could be an
6 exhibit, yes, Your Honor.

7 THE COURT: Do you want to make it a
8 joint exhibit? They probably want to preserve last
9 argument, so I guess they don't want to make it a
10 joint exhibit.

11 MR. SCHWACKE: That's correct; we don't
12 want to make it a joint exhibit.

13 MS. HERRING-LASH: I would like to make
14 it an exhibit for the purposes of it being on the
15 record.

16 (Whereupon, Court's Exhibit No. 1, CV,
17 was marked for identification.)

18 THE COURT: I don't know that I would
19 need to hear from Dr. Elsey to make that
20 determination. I've watched the video, and you-all
21 have stipulated to the requirements of 17-23-175,
22 which is that the statement was given in response
23 to questioning conducted in an investigative
24 interview of the child, an audio and visual
25 recording of the statement is preserved and has

1 been preserved by videotape, that's subsection 2;
2 3, the child testifies at the proceeding and is
3 subject to cross-examination on the elements of the
4 offence and the making of the out-of-court
5 statement, which has taken place.

6 The Court finds in a hearing conducted
7 outside of the presence of the jury -- which we're
8 doing now; it does not specify what the scope of
9 that hearing has to be -- that the totality of the
10 circumstances surrounding the making of the
11 statement provides particularized guarantees of
12 trustworthiness.

13 Subsection b, in determining whether a
14 statement possesses particularized guarantees of
15 trustworthiness, the Court may consider, but is not
16 limited to, the following factors: Whether the
17 statement was elicited by leading questions? I've
18 watched the statement and there were not leading
19 questions. Whether the interviewer has been
20 trained in conducting investigative interviews of
21 the children? My recollection of the CD is that he
22 has. Whether the statement represents a detailed
23 account of the alleged offence? It does. Whether
24 the statement has internal coherence? It does.
25 Sworn testimony of any participant which may be

1 determined as necessary by the Court.

2 MS. HERRING-LASH: If you determined --

3 THE COURT: The statute is clear. It
4 says that you can consider these things, but you
5 don't have to. And based on the way this is
6 worded, it seems to indicate that if the Court
7 feels that sworn testimony of the participant is
8 necessary, and based on the fact that you-all have
9 stipulated to it and -- I guess I'm a little -- I'm
10 situated a little differently than most circuit
11 judges, because I spent five and a half years on
12 the family court, and I'm very familiar with Dr.
13 Elsey, and heard more from him in DSS abuse and
14 neglect cases than I probably could count, and I'm
15 very well familiar with his qualifications, as well
16 as how he conducts himself.

17 So I don't know that I need him, unless
18 something has changed in the last ten years, that I
19 would necessarily -- and, again, I have watched the
20 video like three times. So I've watched how he
21 conducted himself in that interview.

22 For purposes of this section, a child
23 or person under the age of 12, which she is at the
24 time the statement was made, which that component
25 is met; functions cognitively, adaptively, or

1 developmentally under the age of 12, which would be
2 inapplicable; a person who is the alleged victim of
3 a witness to a criminal act for which the defendant
4 upon conviction would be required to register, that
5 is met.

6 For purposes of this section, an
7 investigative interview is the questioning of a
8 child by a law enforcement officer, which is
9 inapplicable, a Department of Social Services
10 caseworker, which is inapplicable, or other
11 professional interviewing the child on behalf of
12 one of these agencies, which is applicable; or in
13 response to a suspected case of child abuse, which
14 I guess liberally read could also apply. The
15 contents of a statement offered pursuant to this
16 section are subject to discovery, which you were
17 provided it.

18 And then the rest of the statute I
19 think is inapplicable to our inquiry, which deals
20 with if it wasn't recorded, and that's not
21 factually our circumstance. So I believe, and if
22 you-all challenge this, you can tell me, that the
23 requirements to hold an out of -- an in camera
24 hearing has been met, because the statute doesn't
25 specify the Court has to take testimony. It really

1 could consist of argument. And where you have a
2 stipulation and where the requirements I think are
3 clearly met, I don't think that you need more than
4 that.

5 MS. HERRING-LASH: I agree, Your Honor,
6 based on section B(5) where it says, the sworn
7 testimony of any participant which may be deemed
8 necessary by the Court, and you put on the record
9 clearly why you don't deem it necessary.

10 THE COURT: I think it would really be
11 cumulative at this point.

12 Is there any exception, Mr. Schwacke?

13 MR. SCHWACKE: No, Your Honor.

14 THE COURT: I'm going to give you back
15 these in the event that you need them. I might
16 keep my copy and give you back the edited one.

17 MS. WILLIAMS: Thank you, Your Honor.

18 THE COURT: You're welcome.

19 Do you feel the need to make that
20 edited copy a Court's Exhibit for appellate
21 purposes, or do you feel that the stipulation has
22 resolved that issue in its entirety?

23 MR. SCHWACKE: I do not believe we need
24 to put that in.

25 THE COURT: Okay. Is there anything

1 else we need to take up before we break for the
2 evening? From the State?

3 MS. WILLIAMS: No, Your Honor.

4 THE COURT: From the defense?

5 MR. SCHWACKE: Other than if Your Honor
6 wishes to address my client about his potential --

7 THE COURT: I will do that once the
8 State rests.

9 MR. SCHWACKE: Thank you.

10 THE COURT: All right. Is there
11 anything else we need to take up?

12 MS. WILLIAMS: No, Your Honor.

13 MR. SCHWACKE: No.

14 THE COURT: So once Dr. Elsey
15 testifies, is it safe to say we'll be at closing
16 argument and instruction?

17 MR. SCHWACKE: I believe that's where
18 we will be.

19 THE COURT: Okay. I'll see you in the
20 morning. Have a good evening.

21 Please make sure that the court
22 reporter has all of the exhibits.

23 (These proceedings were recessed at
24 4:45 p.m., to be continued at a later date and
25 time.)

1 (State v. Parks, 9/16/15, Berkeley
2 County Circuit Court, Moncks Corner, South
3 Carolina, 10:00 a.m.)

4 THE COURT: Is the State ready to
5 proceed?

6 MS. HERRING-LASH: Yes.

7 THE COURT: Defense ready to proceed?

8 MR. SCHWACKE: Yes, Your Honor.

9 THE COURT: Who is the State's next
10 witness going to be?

11 MS. HERRING-LASH: Detective Brian
12 Fenton, it will be a very short witness, Your
13 Honor, and then we have the tape.

14 THE COURT: Is he on the witness list?
15 Yes, he is, right here.

16 MS. HERRING-LASH: And he was
17 introduced to the jury, too, Your Honor. There is
18 a juror issue that Mr. Schwacke just became aware
19 of.

20 THE COURT: Okay.

21 MS. HERRING-LASH: May not be an issue
22 at all, but we wanted to address it.

23 THE COURT: Yes, sir.

24 MR. SCHWACKE: Your Honor, my client's
25 mother has been here throughout the trial. She has

1 someone who has been driving her to court to be
2 here --

3 THE COURT: Driving what now?

4 MR. SCHWACKE: Has been driving her,
5 her driver, to get to court to attend; she doesn't
6 drive.

7 THE COURT: Someone has driven her?

8 MR. SCHWACKE: Yes, ma'am.

9 THE COURT: I got you.

10 MR. SCHWACKE: And he indicated to me
11 that during the break, he was using the restroom --
12 when would that have been? Was that today?

13 He indicates that he knows juror 159.

14 THE COURT: He's not on the witness
15 list.

16 MR. SCHWACKE: Correct. I was just
17 bringing that to the Court's attention, and I did
18 advise the Solicitor of that as well.

19 THE COURT: I don't think that's an
20 issue then.

21 MS. HERRING-LASH: Your Honor, may we
22 approach on another issue?

23 THE COURT: Uh-huh.

24 (Bench conference.)

25 THE COURT: All right. Is there any

1 issue with -- I think -- since he was not a witness
2 and he's not related to any of the parties, I don't
3 think that it's an issue. Does anyone disagree?

4 MS. HERRING-LASH: No, I think it's
5 fine.

6 MR. SCHWACKE: Just out of an
7 overabundance of caution.

8 THE COURT: Absolutely. Better safe
9 than sorry, I agree.

10 Anything further before we continue?
11 From the State?

12 MS. HERRING-LASH: Not from the State.

13 THE COURT: From the defense?

14 MR. SCHWACKE: None from the defense.

15 THE COURT: Please bring in the jury.

16 (Jury in, 10:04 a.m.)

17 THE COURT: Morning, ladies and
18 gentlemen. I hope everyone had a pleasant restful
19 evening. I appreciate your patience this morning.
20 I had to have a conference call on a case unrelated
21 to this case, so it delayed our beginning. So I
22 appreciate your patience in accommodating the
23 Court.

24 We will now resume with testimony. The
25 State may proceed.

BRIAN FENTON - DIRECT EXAM BY MS. HERRING-LASH

1 MS. HERRING-LASH: The State would call
2 Detective Brian Fenton.

3 THE COURT: Sir, if you would come
4 forward to be sworn.

5 BRIAN FENTON,
6 being first duly sworn, testified as follows:

7 THE CLERK: Have a seat, state your
8 full name and spell your last.

9 THE WITNESS: My name is Brian Lawrence
10 Fenton, F-E-N-T-O-N.

11 THE COURT: You may proceed.

12 DIRECT EXAMINATION

13 BY MS. HERRING-LASH:

14 Q. Detective Fenton, where are you
15 employed?

16 A. I'm employed with the Berkeley County
17 Sheriff's Office.

18 Q. How long have you been there?

19 A. Almost ten years now.

20 Q. And back in March of 2013, what were
21 your duties at the Berkeley County Sheriff's
22 Department?

23 A. At that time, I was assigned to the
24 criminal investigations division. We investigate a
25 multitude of crimes, from burglaries and assaults

1 to murders and kidnappings. My primary role was to
2 investigate sex crimes, crimes against vulnerable
3 adults and crimes against children.

4 Q. In that capacity, were you assigned to
5 this case?

6 A. I was.

7 Q. And what information came to you as
8 part of your assignment?

9 A. I would have received the initial
10 report and the juvenile victim would have been
11 scheduled to have an interview done at a local
12 child advocacy center, and as a part of that
13 interview, they would send me a report indicating
14 what the child said.

15 Q. And did you talk with any other
16 individuals as part of your investigation?

17 A. I did. I spoke with DSS. I spoke with
18 management at the mobile home park that the -- the
19 incident would have happened at, and I spoke with
20 the other individual that was living in the home
21 with the Parks family.

22 Q. And did you find out that he lived in
23 the home full-time?

24 A. He indicated that was his residence --

25 MR. SCHWACKE: Objection, Your Honor;

BRIAN FENTON - DIRECT EXAM BY MS. HERRING-LASH

1 hearsay.

2 THE COURT: I don't think that it's
3 really being offered for its truth, and it also
4 forms the basis of his investigation. So under
5 precedent, that type of hearsay would be allowed;
6 overruled.

7 You may answer the question.

8 BY MS. HERRING-LASH:

9 Q. Did you find out if he lived there
10 full-time?

11 A. He indicated he would spend many nights
12 a week away from the home.

13 Q. Did you serve warrants in this case?

14 A. We did.

15 Q. And what was -- what is the date of
16 birth of Mr. Parks?

17 A. Mr. Parks' date of birth is [REDACTED],
18 1981.

19 Q. And have you had any further
20 involvement in this case after talking with Mr.
21 Miller?

22 A. That was pretty much it.

23 Q. And when you said the other individual,
24 you were talking about Mike Miller?

25 A. Yes, ma'am.

BRIAN FENTON - CROSS EXAM BY MR. SCHWACKE

1 MS. HERRING-LASH: Those are all the
2 questions I have.

3 THE COURT: Any questions for the
4 witness?

5 CROSS-EXAMINATION

6 BY MR. SCHWACKE:

7 Q. And Mr. Miller was fully cooperative
8 with you in your investigation?

9 A. He appeared to be cooperative with me,
10 yes, sir.

11 MR. SCHWACKE: That's all I have.
12 Thank you.

13 THE COURT: Any redirect?

14 MS. HERRING-LASH: No, Your Honor.

15 THE COURT: Sir, you may step down.

16 THE WITNESS: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 The Sate may proceed.

19 MS. HERRING-LASH: Your Honor, at this
20 time the State would offer in the tape of the young
21 child.

22 THE COURT: Would you all approach for
23 me, please?

24 (Bench conference.)

25 THE COURT: Did you all consent -- are

1 you not requiring the testimony of Dr. Elsey?

2 MR. SCHWACKE: No, Judge.

3 THE COURT: We'll put that on the
4 record then.

5 (End of bench conference.)

6 THE COURT: I assume then there is a
7 stipulation to the admission of the tape and
8 playing of the tape; is that correct? From the
9 State?

10 MS. HERRING-LASH: Yes.

11 THE COURT: From the defense?

12 MR. SCHWACKE: That's correct.

13 THE COURT: Okay. You may proceed.

14 (Videotape was played in open court.)

15 THE COURT: State may proceed.

16 MS. HERRING-LASH: At this time, the
17 State would rest.

18 THE COURT: Madame Forelady, ladies and
19 gentlemen, the State has rested their case. There
20 are some brief matters of law that I need to take
21 up with the attorneys. During the break, please
22 leave your notepads in the seat and please do not
23 discuss the case. We appreciate your patience.

24 (Jury out, 10:41 a.m.)

25 MR. SCHWACKE: First, I guess with

1 regard to the unlawful conduct --

2 THE COURT: I need you to speak up,
3 please.

4 MR. SCHWACKE: First, with regards to
5 the unlawful conduct towards the child, the one
6 that is still viable, I would move for a directed
7 verdict of acquittal on that, as the State has put
8 forth --

9 THE COURT: Can you hear him?

10 THE COURT REPORTER: Yes, ma'am.

11 THE COURT: I'm sorry, my ears are a
12 little stopped up. So, I'm going to need you to
13 really project your voice.

14 MR. SCHWACKE: I'm dealing with the
15 same thing, Your Honor. I -- I'm loud to me, but I
16 must not be to anybody else.

17 With regard to the unlawful conduct to
18 a child charge, which is the one that remains
19 viable, we would move for a directed verdict of
20 acquittal on that, based on lack of evidence
21 arising -- lack of evidence as to the offence
22 itself.

23 THE COURT: Would the State like to
24 respond?

25 MS. WILLIAMS: Yes, Your Honor. The

1 elements of unlawful conduct towards a child, the
2 State would have to prove that it's unlawful for a
3 person who has charge or custody of the child;
4 there is evidence in the record that Mr. Parks was
5 the stepfather and they lived in the home that he
6 provided for the family, and that he placed the
7 child at unreasonable risk of harm, affecting the
8 child's life, physical or mental health or safety,
9 or do, or cause to be done unlawfully or
10 maliciously, any bodily harm to the child, so that
11 the life or health of the child is in danger, or
12 likely to be endangered.

13 Candace Parks testified that MINOR 2 was
14 often a target for the defendant both physically
15 and also verbally. She said that MINOR 2 would
16 intervene when he would see domestic violence
17 between the parents. It was often about him
18 fighting about MINOR 1, that he would hit him at
19 that time and push him away. She also testified
20 about a time when MINOR 2 was in the shower and he
21 got a belt and whipped him when he was wet.

22 MINOR 2 was also subject to neglect
23 because there was -- DSS testified that there
24 wasn't adequate food in the home and they tried to
25 get them to go on food stamps. I think that in

1 terms of placing the child at unreasonable risk of
2 harm affecting this child -- his physical,
3 mentality -- I'm sorry, physical and mental health,
4 I think it would be emotionally damaging to the
5 child to watch what was happening in their home.

6 And she gave a great description of it;
7 it was a very small home, they were having sex
8 right in the living room, they were fighting all
9 the time. He was -- as a ten-year-old felt
10 compelled to go and intervene in the physical
11 altercations of his mother.

12 So I would submit to the Court that
13 that would be emotional endangering or likely to be
14 endangered emotionally. And also inflicting bodily
15 harm on the child, and that it would be likely that
16 it would affect his health. Whipping a child while
17 he is in the shower with a wet belt would certainly
18 cause some harm. He was also the frequent target
19 of hitting him. Also the emotional damage
20 inflicted upon him with the verbal abuse.

21 So we would submit to the Court, that
22 although **MINOR 2** himself didn't testify, there is
23 adequate evidence in the record from Candace of
24 unlawful conduct towards a child, because the State
25 is not required to -- the Court is not concerned

1 with the weight of the evidence, just that any
2 evidence is in the record. And we would submit
3 that there is enough to submit to the jury.

4 THE COURT: Anything further from the
5 defense?

6 MR. SCHWACKE: No.

7 THE COURT: Considering the applicable
8 standard, which is the existence or nonexistence of
9 evidence and not its weight, and whether that
10 evidence reasonably tends to prove the guilt of the
11 accused, which does not have to be proven to the
12 exclusion of any other reasonable hypothesis, there
13 is direct as well as substantial circumstantial
14 evidence in the record reasonably tending to prove
15 the defendant's guilt on that charge.

16 The child does not have to testify.
17 The mother testified that she witnessed, which is
18 direct evidence, that on at least one occasion,
19 when she confronted Mr. Parks regarding certain
20 behavior, that he assaulted the minor and that
21 after that -- my words, not hers -- he became a
22 target of undue or excessive discipline, by
23 slapping him in the head constantly, and then the
24 incident in the shower with the beating.

25 And so the elements of unlawful

1 conduct, which is 20-7-50, require that the State
2 prove beyond a reasonable doubt that a person
3 responsible for a child's welfare, and that
4 includes the person -- the child's parent,
5 guardian, or foster parent -- that's the first
6 element that must be proven, that that is the
7 person that is the subject of the charge.

8 And then the State must prove beyond a
9 reasonable doubt that that person placed the child
10 at unreasonable risk of harm, affecting the child's
11 life, physical or mental health or safety; or that
12 that person unlawfully or maliciously did, or
13 caused to be done, any bodily harm to the child, so
14 that the life or health of the child was in danger,
15 or likely to be in danger.

16 The last portion of that statute is
17 inapplicable because it deals with abandonment, and
18 I think there is certainly direct evidence in the
19 record reasonably tending to prove his guilt on
20 that charge, and, therefore, the motion is denied.

21 MR. SCHWACKE: Thank you.

22 THE COURT: You're welcome. Is there
23 anything further before we proceed regarding the
24 defense of the case? Any further motions from the
25 defense?

JERAMY PARKS - EXAM BY THE COURT

1 MR. SCHWACKE: No, Your Honor.

2 THE COURT: Sir, stand for me, please,
3 and raise your right hand to be sworn.

4 JERAMY PARKS,
5 being first duly sworn, testified as follows:

6 THE DEFENDANT: Yes, ma'am.

7 EXAMINATION

8 BY THE COURT:

9 Q. You can put your right hand down.
10 Please state your full name for the
11 record.

12 A. Jeramy Dale Parks.

13 Q. And, sir, at this time I'm going to
14 explain certain of your rights. We have reached
15 the stage of the trial where you may present your
16 own defense. If there is something you do not
17 understand that I have asked, please let me know;
18 or if you need me to repeat something that you did
19 not hear or did not understand, please let me know.
20 Do you understand?

21 A. Yes, Your Honor.

22 Q. Sir, we have now reached the stage of
23 the trial where you may present your defense. Our
24 Constitution, meaning the South Carolina
25 Constitution as well as the United States

JERAMY PARKS - EXAM BY THE COURT

1 Constitution, provides you with certain rights
2 pursuant to the Fifth Amendment.

3 And that amendment reads in part that,
4 no person shall be compelled in any criminal case
5 to be a witness against himself. This means that
6 you cannot be required to testify in this case.

7 You have the right to testify, but
8 that's a personal right and only you can make that
9 decision. No one can make you testify. If you
10 decide to testify, however, you will be subject to
11 the same rules that govern other witnesses; in
12 other words, you may be examined and cross-examined
13 on any relevant issue in this case. If you have
14 any convictions involving dishonesty or false
15 statements that are punishable by imprisonment for
16 more than one year, and this Court determines that
17 the probative value of that evidence is outweighed
18 by any prejudicial effect to you, then the
19 Solicitor will be able to introduce your record to
20 attack your credibility.

21 If you decide to testify, this decision
22 on your part must be made freely and voluntarily
23 and intelligently, with knowledge of the
24 protections given to you by the Fifth Amendment to
25 the Constitution, again, of this State and the

JERAMY PARKS - EXAM BY THE COURT

1 United States, and the consequences of your
2 decision to testify.

3 If you decide not to testify, I will
4 instruct the jury that they cannot give this fact
5 any consideration whatsoever, that you are not to
6 suffer any prejudice from it, that they are not to
7 draw any inference from it. In fact, I will
8 instruct them that it cannot be discussed in any
9 manner whatsoever in the jury room.

10 I will instruct them that the State has
11 the burden of proof, that you do not have any
12 burden of proof, and that your silence cannot be
13 used against you.

14 Sir, whether you decide to testify is
15 left entirely up to you. You can speak to your
16 family members, your friends, or others, but
17 ultimately, the decision is left up to you.

18 Is there any record the State would be
19 seeking to impeach his credibility?

20 MS. WILLIAMS: Yes, Your Honor; the
21 ABHAN conviction --

22 THE COURT: ABHAN is not generally
23 something that would be considered impeachable. It
24 does not bear on his truthfulness or veracity, does
25 it?

JERAMY PARKS - EXAM BY THE COURT

1 MS. WILLIAMS: I guess it would have to
2 be him opening the door, then, because it is a
3 crime that was similar to the crimes that --

4 THE COURT: Which makes it even more
5 prejudicial.

6 MS. WILLIAMS: I understand that. He
7 would have to open the door, Your Honor.

8 THE COURT: I was looking for my sheet
9 where I wrote down his record when we first started
10 talking.

11 MS. WILLIAMS: I think I misspoke in
12 the beginning and told you A & B second, but it was
13 back before those assaults --

14 THE COURT: The ABHAN?

15 MS. WILLIAMS: Yes, Your Honor.

16 THE COURT: Because it was pled down
17 from a lewd act, right?

18 MS. WILLIAMS: Yes, Your Honor.

19 THE COURT: And it was counts involving
20 two neighbors' children in Charleston County,
21 correct?

22 MS. WILLIAMS: Yes, Your Honor.

23 THE COURT: And that was in 2007?

24 MS. WILLIAMS: Yes, Your Honor.

25 THE COURT: And he was placed on the

JERAMY PARKS - EXAM BY THE COURT

1 central registry, but not the sexual offender
2 registry.

3 MS. WILLIAMS: Correct, and he served
4 -- I think the sentence was five years followed by
5 five years probation.

6 THE COURT: He had active time?

7 MS. WILLIAMS: Yes, Your Honor.

8 THE COURT: I assume, then, he
9 completed his probation?

10 MS. WILLIAMS: Yes, Your Honor.

11 THE COURT: And that's his only record?

12 MS. WILLIAMS: He had an arrest for --

13 THE COURT: In Georgia, but that was --
14 you said you could not determine if that was
15 adjudicated or dismissed.

16 MS. WILLIAMS: And I asked Mr. Schwacke
17 to check and he is saying that was not a
18 conviction.

19 MR. SCHWACKE: That was dismissed, Your
20 Honor.

21 THE COURT: Okay. Sir, you have two
22 convictions for ABHAN in Charleston County in 2007.
23 I have advised the Solicitor, based on the Rules,
24 and that is Rule 609, our courts have not indicated
25 that is a conviction that will be probative of

JERAMY PARKS - EXAM BY THE COURT

1 truthfulness. In addition, it is not a felony.

2 Under the previous law, an ABHAN in South Carolina
3 was still a misdemeanor, as I understand it.

4 So even though it would carry more than
5 one year, it would not be admissible on the issue
6 of your credibility.

7 Again, sir, you may discuss with your
8 family members, friends, or others whether you
9 should or should not testify, but that decision is
10 left entirely up to you. Have you understood your
11 rights as I've explained them to you?

12 A. Yes, Your Honor.

13 Q. Do you need to ask me about any of your
14 rights as I've explained them to you?

15 A. No, Your Honor, but I have something to
16 add.

17 Q. Give me one second.

18 Have you discussed with your lawyer
19 whether you should or should not testify?

20 A. I need more time.

21 Q. That was my next question. Do you feel
22 you need more time to discuss that?

23 A. Yes, ma'am. Can I have my mother
24 there, too? She's behind me.

25 THE COURT: That is Security's

JERAMY PARKS - EXAM BY THE COURT

1 decision; I don't generally get involved with
2 Security's --

3 THE DEPUTY: No, ma'am.

4 THE COURT: All right. Thank you, sir.
5 We'll be at ease for you to talk to your client,
6 and you may want to talk to his mother and see if
7 there's anything she wants to convey to him.

8 All right. We'll be at ease. How much
9 time do you think you'll need?

10 MR. SCHWACKE: We're going to go to the
11 back and discuss this, Your Honor. If I'm going to
12 have to go back and forth with messages --

13 THE COURT: Just give me an estimate.

14 MR. SCHWACKE: 20 minutes.

15 THE COURT: We'll be at ease for a few
16 moments.

17 (A recess transpired.)

18 THE COURT: Is the State going to open
19 and close?

20 MS. WILLIAMS: Yes, Your Honor.

21 THE COURT: How long do you think your
22 argument will be?

23 MR. SCHWACKE: It will just be the
24 opening.

25 MS. WILLIAMS: Yeah, it will just be an

JERAMY PARKS - EXAM BY THE COURT

1 opening. I anticipate mine to be about, I would
2 say, 20 minutes at the most.

3 THE COURT: Okay. And how long do you
4 think yours will be, Mr. Schwacke?

5 I'm just trying to estimate. How long
6 do you think your closing argument will be?

7 MR. SCHWACKE: 20 minutes.

8 THE COURT: Okay. While you were out,
9 I had an inkling, a hunch, and I'm glad I did; the
10 CD can be played on the TV that the Court has. We
11 don't need the laptop anymore. That can just go
12 back into the jury room.

13 Okay. State ready to proceed?

14 MS. WILLIAMS: The State is ready, Your
15 Honor.

16 THE COURT: Is the defense ready to
17 proceed?

18 MR. SCHWACKE: We are, Your Honor.

19 EXAMINATION

20 BY THE COURT:

21 Q. Sir, if you will stand for me. I will
22 remind you, you are still under oath. You asked
23 for an additional break to speak with your attorney
24 and it's been approximately 37 minutes. During the
25 break, have you had ample opportunity to discuss

JERAMY PARKS - EXAM BY THE COURT

1 with your lawyer whether you should or should not
2 testify?

3 A. Yes, Your Honor.

4 Q. Do you need to speak with him any
5 further at this time?

6 A. No.

7 Q. Do you wish to testify?

8 A. No, Your Honor.

9 THE COURT: Okay. You may be seated.

10 THE DEFENDANT: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 I will give a general instruction
13 regarding the jury's responsibility and my
14 responsibility, how they are to judge witness
15 credibility and believability. I will give them a
16 general instruction on the testimony of children.
17 I will give them a general instruction on expert
18 witness testimony.

19 I will give them a general instruction
20 regarding Lyle testimony, which is not that he was
21 convicted of a crime, but he committed a bad act
22 which is not the subject of a crime, and that it is
23 only to be considered on the issue of common scheme
24 or plan, and for no other reason, and that it is
25 not proof of guilt of the crime he is charged with

1 today.

2 I will give a general instruction on
3 direct and circumstantial evidence, as well as a
4 general instruction on the charge, the arrest, and
5 the indictment not being evidence, as well as on
6 the presumption of innocence. I will instruct
7 Victor v. Nebraska on reasonable doubt, and I will
8 also give an instruction regarding the Defendant
9 not testifying.

10 I will then instruct on the elements of
11 first degree criminal sexual conduct with a minor,
12 which in this instance would include the fact that
13 the victim was under 11 at the time of the battery.

14 I will instruct on the elements of
15 criminal sexual conduct of a minor in the third
16 degree, which is 16-36-55(c), which is the previous
17 lewd act.

18 I'll then instruct Code Section
19 16-36-51, which is that the testimony of a victim
20 need not be corroborated, and defining victim as a
21 person who is alleging to have been subjected to a
22 criminal sexual conduct. I will then give a
23 general instruction that where there are multiple
24 charges of criminal sexual conduct, that when two
25 or more acts are alleged to have occurred at the

1 same time, each alleged act is a separate act.

2 I will instruct 20-7-50, which is
3 unlawful conduct towards a child. I will not
4 charge subsection 3, because abandonment is not an
5 issue in this case. I will instruct on multiple
6 charges, which is that there are several
7 indictments -- that there are multiple indictments.
8 Each one of them charges a separate offence, each
9 one of them has to be proven beyond a reasonable
10 doubt, and that he may be acquitted or convicted on
11 any or all, and that each indictment will require a
12 separate verdict. Which reminds me -- and then I
13 will instruct on the form of each verdict.

14 The State during the break handed up a
15 copy of 16-36-57, which deals with corroboration.
16 I will have that marked as a Court's Exhibit, but I
17 will use my standard instruction.

18 (STATE EXH. 2, Jury Charge, was marked
19 for identification.)

20 THE COURT: Are there any exceptions to
21 the charges proposed, from the State?

22 MS. HERRING-LASH: Your Honor, the only
23 -- the unlawful conduct is now 63-5-7.

24 THE COURT: It is. I have both numbers
25 written on my instruction. I just usually still

1 refer to the -- even though it's -- 7. 16-63-5-70
2 subsection a(1)(2), is the new number.

3 Any exceptions from the State?

4 MS. HERRING-LASH: No, Your Honor.

5 THE COURT: Any exceptions from the
6 defense?

7 MR. SCHWACKE: Your Honor, we would
8 object to the instruction of corroboration of a
9 victim. In this case there were actually -- at
10 least in view of the evidence presented by the
11 State most favorable to them, there actually is
12 evidence of corroboration based upon the testimony
13 of Candace.

14 THE COURT: Even though there is,
15 there's no requirement that there be. And
16 sometimes the jury looks for corroboration in the
17 nature of DNA and other things, and it's just not
18 required. It is appropriate under the case law to
19 convey that a person's word really is all the
20 corroboration that's needed and it doesn't have to
21 be corroborated, even though there are other
22 witnesses.

23 MR. SCHWACKE: We're just concerned,
24 Your Honor, based on the evidence, that it could
25 become confusing and we would ask that it not be

1 charged.

2 THE COURT: They can have a smoke break
3 when it's time to break for lunch, but not right
4 now.

5 Would the State like to respond?

6 MS. HERRING-LASH: Your Honor, the case
7 law, in particular I think State v. Rayfield, has
8 approved that that is an appropriate charge for the
9 jury.

10 THE COURT: Anything further from the
11 defense?

12 MR. SCHWACKE: Other than the fact that
13 there are -- there are other instructions that are
14 fine for the jury to be charged, but not all of
15 them need to be. And, Your Honor, again, because
16 of the existence of factual corroboration based on
17 the testimony, even in the light most favorable to
18 them, that it is an unnecessary charge.

19 THE COURT: The Court is required -- in
20 jury trials, one wonderful benefit that the Court
21 has, it doesn't have anybody to reward or punish,
22 it doesn't have a side and it's not an advocate.
23 The Court's only requirement is to make sure that
24 the jury is equipped to do what they are supposed
25 to do, which is to make findings of facts in their

1 province as the fact-finder, and then apply the law
2 to those facts.

3 The Court is required to charge the
4 applicable law to make sure there is not any
5 confusion as to how the jury is to apply the facts.
6 And under -- whether the testimony is corroborated
7 or uncorroborated, and where generally, as most
8 cases of these type are, they are credibility
9 contests that comes down to one person's word
10 against another, the law is very clear and
11 therefore reason based on legislative intent that
12 the word of a victim need not be corroborated.

13 It's an accurate statement of the law
14 and the statute. It is very bland in the way that
15 it's stated, as I only read the statute, and it is
16 appropriate in this -- in this instance and,
17 frankly, in any other CSC case and it will be
18 instructed and there is case law to support that
19 instruction.

20 I will note your exception for the
21 record and it's denied.

22 Anything further from the defense?

23 MR. SCHWACKE: No.

24 THE COURT: Anything further from the
25 State?

1 MS. HERRING-LASH: No, Your Honor.

2 THE COURT: Give me just a minute to
3 print the verdict forms so that you can look at
4 them and we will proceed to closing arguments and
5 instruction.

6 If you can make sure that all of the
7 evidence is in place and that she has all of the
8 evidence.

9 Counsel, please approach and review the
10 verdict form.

11 Any exception to the verdict form?
12 From the State?

13 MS. WILLIAMS: None from the State.

14 THE COURT: From the defense?

15 MR. SCHWACKE: None, Your Honor.

16 THE COURT: All right. I fixed that
17 scrivener's error.

18 State ready to proceed?

19 MS. WILLIAMS: State is ready, Your
20 Honor.

21 THE COURT: Defense ready?

22 MR. SCHWACKE: Yes, Your Honor.

23 THE COURT: Please bring in the jury.
24 (Jury in, 11:43 a.m.)

25 THE COURT: The defense may proceed.

CLOSING ARGUMENT - BY MS. WILLIAMS

1 MR. SCHWACKE: Your Honor, the defense
2 rests.

3 THE COURT: Thank you. Madame
4 Forelady, ladies and gentlemen, both the State and
5 defense have rested their cases. We have now
6 reached the stage of the trial where we will have
7 closing arguments and Court's instructions.

8 I have had the clerk's office order
9 your lunch, so once we're done with closing
10 arguments and instruction, your lunch should have
11 arrived, or at least it should arrive in short
12 order, and at that time you would be allowed to
13 take a smoke break for those who need to do that.
14 I would ask that you give the attorneys your
15 undivided attention.

16 State may proceed.

17 MS. WILLIAMS: Thank you, Your Honor.
18 May it please the Court?

19 THE COURT: Yes, ma'am.

20 MS. WILLIAMS: If I go down, you're
21 going down with me. That's what Jeramy Parks told
22 his wife when he realized that his daughter had
23 told the first time. If I go down, you're going
24 down with me. That sums this case up, you-all.
25 These people are so dysfunctional, all they're

CLOSING ARGUMENT - BY MS. WILLIAMS

1 worried about are themselves. He's worried about
2 satisfying his own perverse sexual needs, and
3 Candace is worried about getting drunk and getting
4 somebody to pay her bills. Neither of them gave a
5 darn about that child. Nobody was protecting that
6 child.

7 Candace Parks is going to have her day
8 in court. It's not today. She is going to get
9 everything she deserves. Maybe not enough. She
10 will have her day in court, but today is Jeramy
11 Parks' day in court. And you have to evaluate
12 Candace Parks as a witness. She is a disgusting,
13 despicable person, but you have to evaluate her
14 value as a witness. The Judge is going to tell you
15 that you can disregard all of her testimony; you
16 can believe all of her testimony; you can believe
17 some of her testimony and disregard others. What I
18 would ask you to do is use the most valuable
19 commodity that you bring to this process, and
20 that's common sense. If Candace Parks was going to
21 coach her child to say things that hurt him, would
22 she not be smart enough to coach her to not
23 incriminate her? The child says things that are
24 very damaging about Candace Parks. If she was
25 going to tell her what to say to get him in

CLOSING ARGUMENT - BY MS. WILLIAMS

1 trouble, maybe she should have left out the part
2 that Momma watched, Momma participated. There was
3 a particularly disturbing episode when Mr. Schwacke
4 asked her, well, you participated, didn't you? How
5 horrible to think about it. Did she deny it?
6 Huh-uh. She said, sometimes I get really drunk;
7 could be. That's unimaginable to the average
8 person. Take that into consideration when you
9 evaluate what she said, take into consideration
10 what other people said. This child never tells
11 when Candace is there. Why? Because, first of
12 all, Candace is sending her messages not to tell
13 and she knows that Mom is watching this and Mom is
14 not doing anything about it. There is not one
15 individual that this kid tells when Mom is there.

16 Think about the evaluations and
17 observations that people make about Candace. You
18 heard from Officer Yates. She said Candace was
19 standoffish, timid. The child tells her by
20 whispering in her ear after she gets her away from
21 Candace. Think about Tawnee Castanon, the aunt.
22 She says when she comes back, Candace, if you don't
23 do something about this, we are. She said she
24 seemed ashamed.

25 Now, use your common sense, use your

CLOSING ARGUMENT - BY MS. WILLIAMS

1 common experience, your life experience. If
2 someone comes back and says your four-year-old just
3 said that she had been sexually assaulted, you
4 would be horrified. The average person would be
5 horrified, frightened, let's get her to the
6 hospital. Huh-uh. She's ashamed. I'm surprised
7 that she has the moral ability to be ashamed after
8 what she did to this family. Evaluate her as a
9 witness with all the other evidence that you've
10 had. Now you-all have heard some very disturbing
11 evidence and we have had to use some language we
12 don't like to use, we've had to talk about things
13 we don't like to talk about, and I apologize for
14 that, and I appreciate the fact that you've had to
15 hear some difficult things.

16 I want to go through some of the things
17 that we've learned this week and some of the
18 evidence that you've heard, very briefly, just to
19 kind of go through it, because sometimes at the end
20 of the trial, you can't remember everything that
21 happened in the beginning. So let's go through it.
22 Let's see what we learned.

23 Okay. First of all, the Judge is going
24 to give you instructions about the law. The Judge
25 is the authority on the law. You are the deciders

CLOSING ARGUMENT - BY MS. WILLIAMS

1 of fact, but the Judge, and Judge alone, is the
2 authority on the law. If I tell you anything or
3 Mr. Schwacke tells you anything that is different
4 from what she tells you, by all means, defer to the
5 Judge. I want to go through the law very, very
6 briefly and let you know what -- how we have met
7 the burden, because we do have the burden and we
8 accept that burden.

9 Unlawful conduct towards a child. This
10 has to do the with MINOR 2 -- I'm sorry,
11 MINOR 2. And you heard Candace Parks talk
12 about the way that MINOR 2 was treated in that home,
13 because in that home, that house of horrors, the
14 protector is ten years old, because the parents are
15 not protectors. He was beaten in the shower, he
16 was targeted with physical abuse, because he
17 protected his mother during whatever few times she
18 said, stop, when Jeramy was assaulting her
19 daughter; He got in between them. He was verbally
20 abused. And you also heard about some of the
21 neglect that went on in that home. The DSS agent
22 told you that she encouraged her to get on food
23 stamps because there was not enough food. Do you
24 remember why she wouldn't get on food stamps? She
25 didn't want Jeramy to have to pay. It's always

CLOSING ARGUMENT - BY MS. WILLIAMS

1 about Jeramy. The defense would have you believe
2 that somehow Candace has an agenda, that she's
3 going to coach this kid and -- for whatever reason.
4 Let me tell you something, Candace Parks protected
5 Jeramy Parks until the bitter end, until the police
6 came to the house and asked her, is he in the
7 house? Huh-uh. It's Mike Miller that comes out
8 and admits he's in the house. So she doesn't want
9 to get adequate food in the home for MINOR 2, for
10 MINOR 1 or the other kids, because she doesn't want
11 Jeramy to have to pay child support. So in
12 addition to the physical abuse, the verbal abuse,
13 the emotional abuse of having to get between your
14 parents when the dad is beating the mom, there's
15 also neglect going on in this home. And I would
16 submit to you, ladies and gentlemen, that all of
17 that goes to the elements of unlawful conduct
18 towards a child, and you will have that law when
19 the Judge reads it to you.

20 Let's go through some of the sexual
21 offences. Okay. There is one count of criminal
22 sexual conduct with a minor in the third degree,
23 and that's defined as the defendant who is over the
24 age of 14, and you heard Detective Fenton give his
25 birth date, and he has to willfully and lewdly

CLOSING ARGUMENT - BY MS. WILLIAMS

1 commit, or attempt any lewd or lascivious act upon
2 a child. He has to be -- the child has to be under
3 16, and it has to be with the intent of arousing
4 the child or himself. You have heard numerous acts
5 where this man touched this child repeatedly.
6 Obviously, it was for his own sexual desire.

7 Criminal sexual conduct with a minor in
8 the first degree. There are five counts of this
9 and there is a count for every type of sexual
10 battery that he perpetrated against this child.
11 The actor, who is Mr. Parks, has to engage in a
12 sexual battery, and the victim has to be less than
13 11 years old. When she finally got out of that
14 house, she was five. So clearly she was under the
15 age of 11.

16 What is a sexual battery? And Ms.
17 Herring-Lash went through this a little bit in the
18 beginning. A sexual battery as defined by the law
19 is sexual intercourse, and you are going to hear
20 the Judge say that it's an intrusion, however
21 slight. So sexual intercourse doesn't necessarily
22 mean what we think of sexual intercourse as two
23 adults. If even the tip of his penis goes in --
24 she was saying, he put his thing in my thing, that
25 doesn't always mean the way that we think of sexual

CLOSING ARGUMENT - BY MS. WILLIAMS

1 intercourse. She is five years old. She doesn't
2 have a frame of reference for that. If you believe
3 that any part of his penis touched any part of
4 going into her private area, as she says on the
5 tape, then that's enough.

6 Cunnilingus, which is his mouth on her
7 vagina, and she refers to that as slobbering.
8 Fellatio, which is his penis in her mouth, and she
9 talks about that, she talked about that on the
10 tape. And anal intercourse, where she talked about
11 him putting his thing in her bottom. And I'll tell
12 you something very telling, when she says on the
13 tape that it made her feel like she had to poop.
14 And as horrible as that is to think about, that's
15 what happens when somebody puts something in
16 somebody else's anal cavity. She doesn't
17 understand that, but that's what she tells Don
18 Elsey.

19 And then it says, or any object into
20 the genital or anal openings of another person's
21 body, except when such intrusion is accomplished
22 for medically-recognized treatment or diagnostic
23 purposes. So the first part of that is just
24 anything into her vagina, his finger. When you see
25 on an indictment, digital penetration, that's what

CLOSING ARGUMENT - BY MS. WILLIAMS

1 that's talking about, his finger into her vagina.
2 The last part is just saying, we can't charge a
3 gynecologist or somebody that's examining someone
4 for a medical reason with this charge. It's kind
5 of silly, but that's just part of the statute.

6 Reasonable doubt. Lawyers love to get
7 in front of a jury and tell you what reasonable
8 doubt is. I don't know if Mr. Schwacke his own
9 definition. I would love to define it, but it's
10 defined by the law. Reasonable doubt is not all
11 doubt. Firmly convinced, means you are firmly
12 convinced that he is guilty. I think the Judge
13 will say in her instruction that there are very few
14 things in life we know beyond all doubt, and that's
15 not what's required of us. We have to prove this
16 charge beyond a reasonable doubt. And I would
17 submit to you that if you've been sitting here and
18 listening to all this testimony, and you know that
19 he did this, then we have proven it to you,
20 because, obviously, after hearing the testimony,
21 you think he did it. So why do you think he did
22 it? Because you heard the evidence and we've
23 proven it.

24 Let's go through some of the witnesses.

25 MINOR 1: I don't know if -- it's difficult to

CLOSING ARGUMENT - BY MS. WILLIAMS

1 watch a child have to go through a court
2 proceeding, but a seven-year-old is obviously going
3 to recount things very differently than an adult,
4 especially a seven-year-old that has been subjected
5 to sexual abuse for heaven knows how long and then
6 having been away from it for two and a half years.
7 So she did the best job she could to remember what
8 she could.

9 I think it was very telling that she's
10 able to discern different positions. She talks
11 about when humping her, he's laying on top of her.
12 Then when she talks about having to put her mouth
13 on his penis, he's sitting and she's laying. So
14 think about that, the way that she describes
15 things. She doesn't just say it, she describes and
16 tries to remember how it was going on.

17 Mr. Schwacke got out of her on the
18 stand that D. G. also humped her, and she also
19 talks about that in the videotape. D. G. is a year
20 older than her, and she says that -- he probably
21 was doing some type of child, whatever he was
22 doing, humping. Heaven knows what was going on in
23 that house. She says that in the courtroom, she
24 also said it two and a half years ago on the tape,
25 but she is very clear that her dad did it. She

CLOSING ARGUMENT - BY MS. WILLIAMS

1 goes into great detail.

2 Let's think about the tape. She talks

3 about popping the bumps. Mr. Schwacke asked

4 Candace Parks a lot of questions about MRSA.

5 There's people in this house that have MRSA, which

6 is a staph infection that causes, and Candace

7 described it, bumps and blisters, and they had to

8 get cream for it, and they had to abscess them.

9 It's a horrible infection, and L. P. had it, Candace

10 had it, and MINOR 1 had it. Mr. Parks had it

11 between his legs and on his legs, and then all the

12 girls had it right here. (Indicating)

13 She talks on the tape about the shower,

14 and that tape is going to go back with you with a

15 television. It's right here. If you have any

16 questions about what you saw on the tape and you

17 want to watch it again, all of it, part of it,

18 please do. I think this tape shows how a child

19 remembers sexual assaults. Just remember, she was

20 removed from the home March 2013. This tape was a

21 month later, after she's safe in a foster home,

22 away from these people. And she does a good job of

23 telling Don, in the way a five-year-old would

24 explain things, what happened to her. She corrects

25 him several times, and she tries to explain things.

CLOSING ARGUMENT - BY MS. WILLIAMS

1 She talks in a very disturbing way about the white
2 yucky stuff, when he asked her if anything came out
3 of his penis. She doesn't talk about fellatio on
4 the tape, but she does talk about it in the
5 courtroom. She talked about slobbering, and I
6 think that's important. If you think back on what
7 the expert said, she said sometimes -- there's a
8 study where some scientists went in and did this
9 study with some subjects and tried to give them
10 false memories. And one of the signs that that was
11 happening is that they used adult language instead
12 of childlike language. This kid is saying, private
13 area. And she's saying, he slobbered on me.
14 That's not something that an adult would say when
15 describing a sexual act. That's just a child's way
16 of understanding that. I think it's very telling
17 that it's coming from her head and not some false
18 memory.

19 As I said, she does remember more on
20 the tape, but that was two and a half years ago.
21 If you notice, she is using more grownup language
22 in the courtroom. I think she knows now it's
23 called a vagina and penis and -- but back then, she
24 just knows it's called a private area. She's just
25 older when she gets to you in the courtroom.

CLOSING ARGUMENT - BY MS. WILLIAMS

1 Candace, as I said before, she is
2 despicable, but you have to evaluate her as a
3 witness based on your common life experiences.
4 What was her demeanor like? How did she answer the
5 questions? Was she truthful? Did she answer
6 questions that made her look bad and made her look
7 good? Was she minimizing her involvement?
8 Probably. But there are a lot of things that
9 Candace Parks said that are corroborated by other
10 things in this case, and that's what you need to
11 think about it. She gives a lot of the same
12 details that MINOR 1 does. She says he used to
13 shower with her. She says that one time that she
14 had -- he had her between his legs and his penis
15 was between the child's legs and she went over and
16 saw it.

17 Another disturbing thing is the episode
18 where MINOR 1 describes the white yucky stuff on
19 her belly and in between her legs. Candace said
20 the same thing, that she washed her off. Candace
21 has not seen MINOR 1 in two and a half years, not
22 seen her or talked to her at all. Candace has not
23 seen the tape. So they are both saying exactly the
24 same thing, and that's kind of an unusual thing to
25 talk about. It's an unusual thing to know and they

CLOSING ARGUMENT - BY MS. WILLIAMS

1 both know it, and the reason they both know it is
2 because it happened. Are there differences? Yeah,
3 there are differences. Candace is probably
4 minimizing and Candace may remember more than
5 MINOR 1. MINOR 1 may have been subjected to more
6 sexual assaults than Candace saw. Sometimes she
7 was at the store, sometimes she was getting drunk
8 and doing other things. So they may not know all
9 the same things. It would be very rare for two
10 people to know exactly everything that went on in
11 the house. Even if they were living in the same
12 house, they're not there at the same time all the
13 time. She doesn't want the kids to tell because
14 the only person that has more to lose than Jeramy
15 Parks is Candace Parks. She is keeping this a
16 secret because she knows what is going on is wrong;
17 she just doesn't care. So she makes sure that the
18 kids don't tell. She even makes sure that the boys
19 don't tell that he's back in the house. If you
20 remember, the DSS caseworker said that, after he
21 talked to the guidance counselor, that the boys
22 were worried all the time that their mother would
23 find out that they were talking to DSS.

24 What message does Candace send MINOR 1 ?
25 She may say when she takes her for the interview,

CLOSING ARGUMENT - BY MS. WILLIAMS

1 oh, if you talk to this lady, you're going to get
2 Gummie Bears and Happy Meals and milkshakes, but
3 MINOR 1 is smart enough to figure out that the
4 words don't match up with the action. And the
5 expert talked about that. It's very confusing for
6 children because she knows that Mom has been
7 watching this and she knows Mom doesn't want her to
8 tell, so whatever she says in front of people, none
9 of the people that encountered Candace Parks when
10 MINOR 1 first told knew that she had watched it.
11 The nurse testified that she didn't know. In fact,
12 they get a history from Candace Parks. The nurse
13 asked her, well, how long has it been since Jeramy
14 Parks has been around her. First of all, why would
15 that matter? Or that he was alone with her. He
16 doesn't have to be alone with her. He just does it
17 in front of people. Nobody does anything about it.
18 Plus, we don't know if Candace Parks was even
19 telling the truth. Unfortunately, because the
20 nurse believes Candace Parks, she doesn't even do
21 an acute exam. Otherwise, we might have had
22 evidence in this case. They don't collect semen or
23 other DNA evidence after it's been 72 hours, and
24 old Candace says that he hasn't been alone with her
25 in 72 hours. So she is constantly protecting

CLOSING ARGUMENT - BY MS. WILLIAMS

1 herself and protecting Jeramy. As I said before,
2 keep in mind that Candace has not talked to the
3 child in -- since 2013. He hasn't talked to any of
4 the kids since April 2013. She had a supervised
5 visit at McDonald's April of 2013. She has no
6 information about the case except what she
7 remembers. She's had no time to look at stuff,
8 watch videos, or talk to MINOR 1.

9 And, again, this is something I
10 mentioned in the beginning. Why in the world would
11 Candace Parks tell MINOR 1 what to say and then
12 also tell her to tell that she saw it? All that
13 does is incriminate her. We talked about the
14 popping of the bumps.

15 One of the things about this case that
16 has been very confusing is the time line.
17 Partially because this family moved so much and the
18 kids were in DSS custody all the time, in and out
19 of the home. I just wanted to clarify that for
20 you. Mr. Schwacke had asked Candace Parks, did you
21 live in Berkeley County before? And they did, they
22 were moving in and out of all these houses. So
23 just to be clear, what the testimony showed and
24 what the truth is, is that they lived in the
25 Berkeley County house, Mr. Mike's house, when

CLOSING ARGUMENT - BY MS. WILLIAMS

1 MINOR 1 was one to two years old, and that was
2 September of 2008 through June of 2009. Then they
3 moved to the Dorchester County house, August of
4 2009 to June of 2012. And MINOR 1 would have been
5 from two to four years old, and that sounds like
6 when the abuse may have started, but it's probably
7 as far back as MINOR 1 can remember.

8 Then MINOR 1 tells, she blows the top
9 off of everything and DSS steps in, and thinking
10 that the mother is protective, because that's what
11 the average person would assume, they let her keep
12 the kids as long as she keeps Jeramy away from
13 them. She promises to do that, she spends a couple
14 of months in Maxwell Gifford's house with the
15 aunts, and then she moves back in with Mr. Mike,
16 and then promptly Jeramy Parks is back, and that's
17 when MINOR 1 is four and five years old. So
18 MINOR 1 tells first in June of 2012 and then she
19 tells again in March of 2013.

20 She tells so many people. This kid
21 keeps trying to let people know what has happened
22 to her. She tells her aunts -- and you, again,
23 evaluate the credibility of these witnesses. You
24 saw Tawnee Castanon testify. She knew Mr. Parks
25 long before any of this happened. She had no axe

CLOSING ARGUMENT - BY MS. WILLIAMS

1 to grind with him. She talked very
2 matter-of-factly about it, and she was honest about
3 Candace's reaction and her looking ashamed. She
4 was the one that made sure that that kid got an
5 exam. Thank goodness.

6 Unfortunately, for MINOR 1, she tells,
7 and then what's the message? Doesn't matter, he's
8 coming right back in the house. She tells Aunt
9 Aleshia who is also in the car. Again, who is not
10 in the car when she tells? Candace Parks.

11 She tells Officer Barlow when he gets
12 to the hospital. She points, that's where Daddy
13 hurt me. She tells Officer Yates. She tells Mary
14 Arnold, the foster mother. She tells Don Elsey.
15 She tells her now-adoptive mother, Casey May. She
16 told you. She just doesn't tell when Candace is
17 around. She keeps trying to get out of that home.

18 What did the SANE nurse tell you? We
19 just discussed this, that she doesn't actually try
20 to collect evidence because she makes a big
21 mistake, that a lot of people make, in thinking
22 that Candace Parks wouldn't watch her husband have
23 sex with her four-year-old. She believes her and
24 doesn't do the acute exam.

25 But what does she observe? She

CLOSING ARGUMENT - BY MS. WILLIAMS

1 observes the notch in the hymen, then the doctor
2 talks about the thinning of the hymen, and then the
3 doctor talks about the dilated anus with no stool
4 in the vault. So she makes those notes on her
5 report. She also clarified that a buccal swab is
6 not for evidentiary purposes. It's just to collect
7 DNA, just in case they were to find some DNA
8 somewhere else at the house, or if they had
9 processed the house.

10 Notice the child doesn't want her to
11 touch her bottom. She doesn't want her to do an
12 examination of her anus, and it's not because the
13 bumps are there. She noticed that the MRSA has
14 resolved for that visit. She just doesn't want
15 anybody touching back there. I don't know whether
16 she was in pain, whether she was remembering what
17 had happened to her, but she definitely doesn't
18 want her to touch that.

19 Think about the witnesses for the night
20 of March 13th. This is the night that finally the
21 child gets out of this home because Damien Massey
22 cared enough to go stake out that house. They're
23 getting clues the whole time that maybe this guy is
24 back in the house. It's tragic that it took five
25 months because that's five more months that this

CLOSING ARGUMENT - BY MS. WILLIAMS

1 kid was sexually abused.

2 He's starting to get an idea that he's
3 in the house; the boys are very hesitant in the way
4 that they communicate. He's suspicious of Candace,
5 he goes to the lawyer for DSS, and she goes, nope,
6 you don't have enough, you have to prove that he's
7 at the house.

8 So he gets Diane Wilson, the guardian
9 ad litem, who had gone around to the neighbors with
10 a picture, and they said, yeah, that's the guy
11 that's in the house, but for some reason, it wasn't
12 enough. So they sit outside of that trailer and
13 wait. Thank goodness. When they get to the front
14 door of the trailer, what do they hear? Angry
15 yelling from a man and kids screaming. I suspect
16 that was an ordinary house -- an ordinary day in
17 the Parks' house, just another night.

18 What did Diane Wilson tell you? She
19 said that she did confirm that MINOR 1 and Candace
20 slept on the couch. This is before she realized
21 that Jeramy was back in the house. And it's a
22 small fact, but it's just one more layer of
23 corroboration for what MINOR 1 said and what
24 Candace said.

25 Officer Cory Arrington was also there

CLOSING ARGUMENT - BY MS. WILLIAMS

1 and he testified that Candace comes out -- Candace,
2 the one that we're supposed to believe is coaching
3 MINOR 1 to get Jeramy Parks. She comes out, nope,
4 he's not in there. She's still protecting him.
5 Finally, Mike Miller comes out and they get him out
6 of the house. They don't even arrest him that day.
7 Two more months. Two more months, and she stays
8 with him for two more months. But, thankfully, the
9 children are finally out of the home.

10 MINOR 2 is so -- the story of this child
11 is so sad. The fact, as I said before, that he has
12 to be a protector at the age of ten and 11. It's
13 just -- it's just so sad. He's beaten in the
14 shower with a wet belt. He's knocked down when he
15 tries to protect his mother and he watches her get
16 beaten.

17 Casey May. This child is finally safe.
18 As far as we know, she is physically safe, she's
19 not being sexually abused anymore. That might be
20 one of the few good things that we heard this week.
21 Remember when Mr. Schwacke was asking her, how many
22 times did you go to the Solicitor's office? Well,
23 if we don't sit with our witnesses a couple of
24 times, we're not doing a very good job for the
25 State, are we? We met with her once a couple of

CLOSING ARGUMENT - BY MS. WILLIAMS

1 years ago and then right before trial.

2 The expert -- by then I think you guys
3 were probably getting full of testimony -- she did
4 have a lot of interesting things to say, and you
5 heard her qualifications. This is what she does.
6 I think it's very interesting that she's never met
7 MINOR 1, she's never read any portion of this
8 file, she's never watched the tape. Think about
9 some of the things she said and how it applies to
10 the case.

11 Delayed disclosure, that's what usually
12 happens for lots and lots of reasons, but you don't
13 need an expert to tell you why this kid delayed her
14 disclosure. How could she tell? The one person
15 you would ordinarily tell was watching the sexual
16 abuse. So that's just common sense. I think
17 MINOR 1 probably learned pretty quickly that
18 telling Mom didn't do a whole lot.

19 I think when Candace was telling you
20 about washing the semen off the child, I asked her,
21 what did MINOR 1 say. And she said, why is he
22 still here? You know, what message does that send
23 MINOR 1? Telling Mom doesn't do a darned bit of
24 good.

25 And that's one of the things she talked

CLOSING ARGUMENT - BY MS. WILLIAMS

1 about. She talked about when actions and words
2 don't match, and I just mentioned that too. But
3 Mr. Schwacke said, you know, didn't you get
4 promised Gummie Bears and Happy Meals? She may say
5 that in front of other people; go talk to the nice
6 people, I'll get you a Happy Meal, but MINOR 1
7 figured out a long time ago that Momma doesn't want
8 her to talk, or that she can't say anything in
9 front of Mommy.

10 She talked about how anxiety looks in a
11 little girl. If an adult sits in the stand, they
12 might be kind of wringing their hands, some adults
13 get giggly when they get anxious, but for children,
14 a lot of times it's restlessness, giggling. It had
15 to have been a very scary thing for that little kid
16 to come up here and tell you what she told you.

17 The false memory study, I think that
18 that's interesting. In this case, I just can't see
19 it applying. You'd have to believe, A, that
20 Candace Parks is smart and organized enough to
21 plant memories in her child, like they did in that
22 therapeutic study. And then, again, what defies
23 logic is why she would then implant memories that
24 would hurt her and get her arrested.

25 If she was smart enough to plant

CLOSING ARGUMENT - BY MS. WILLIAMS

1 memories, why wouldn't she leave out the ones that
2 hurt her? So that doesn't make any sense. She
3 didn't plant any memories in that kid. The kid is
4 telling you what happened to her.

5 What are some of the defenses that
6 could be floated in this, that the child was
7 coached? We talked a little bit about that. I
8 don't know how many of you have experience with
9 children, probably all of you in some way, whether
10 they're your children, your nieces, nephews, but if
11 anybody thinks that you could get a five-year-old
12 to memorize a story, keep the story, and then two
13 and a half years later tell a similar story, that
14 just doesn't happen.

15 Kids are not that good at memorizing
16 things. If you were lying, it's going to come out.
17 Not to say that everything you say is consistent,
18 but for the most part, you're going to tell the
19 same general story over and over again. And this
20 kid did this continuously to many witnesses, so
21 that's not reasonable.

22 Another thing that was kind of
23 mentioned was, well, maybe this child observed sex
24 and then watched and then made up her own story.
25 Again, she's five years old. Plenty of kids walk

CLOSING ARGUMENT - BY MS. WILLIAMS

1 in on their parents having sex or watched it. In
2 this case, they probably saw a lot more than the
3 average kid, but she would have to take those
4 events, put them to herself, tell how she felt
5 about them, act them out -- like even the shower
6 story, where she's showing what happened, you would
7 have to believe that she was able to do all of that
8 and keep it up, tell all of those other people, and
9 then two and a half years later be able to tell it
10 again. That is not reasonable.

11 I put conspiracy theory here because I
12 thought about this and for us to believe that this
13 child was coached, you would have to believe that
14 Candace Parks, Mary Arnold, the foster person,
15 Casey May, her now-parent, me, Ms. Herring-Lash,
16 the aunts, that we all somehow conspired to coach
17 this kid, because she told all of us the same
18 thing, and you. None of these people know each
19 other at the same time.

20 She tells in 2012 the aunts. She tells
21 Mary Arnold in 2013. She's still telling Casey
22 May, her now-adoptive mother. She told you. It
23 doesn't make any sense, none of these people have
24 any connection with each other and yet she keeps
25 telling the same thing. Daddy hurt me, he puts his

CLOSING ARGUMENT - BY MS. WILLIAMS

1 thing in here. That's not reasonable.

2 Maybe we could believe it wasn't Jeramy
3 Parks. Maybe someone else did something to this
4 child. The reason that that doesn't make sense is
5 because someone else did do something to this
6 child. I don't know what six-year-old D. G. did to
7 her. Maybe it was just sort of imitating what he
8 saw, maybe he did more, I don't know, but it's not
9 like she's not telling on one person and telling on
10 another. She's telling on both.

11 She said, D. G. did something to me.
12 She's not trying to protect D. G.. But she is also
13 saying Daddy Jeramy did something to me, and she's
14 telling that in great detail. That's not
15 reasonable either.

16 I don't know if Mr. Schwacke will
17 suggest that somehow Candace wanted to get rid of
18 Jeramy and that's why she's out to get him. I
19 don't know if she has another guy or she just wants
20 to get rid of him and so she got this child to make
21 up the story, that's the one that makes no sense.
22 She did nothing but try to keep him. She protected
23 him to the end. That's not reasonable either.

24 And, as I said before, one of the best
25 pieces of evidence we have in this case are

CLOSING ARGUMENT - BY MS. WILLIAMS

1 Mr. Parks' own words: If I go down, Candace,
2 you're going down with me. And that says
3 everything.

4 Who protected MINOR 1? Who protected
5 this child? Nobody. This is State's 13. Look at
6 this picture. This is an innocent four-year-old,
7 look at her expression. This is innocence taken.
8 She's there for another physical exam after telling
9 again. She doesn't believe that anything is going
10 to be done. Look at her face. This is not the
11 expression that an innocent four-year-old has.
12 This is the expression of a person that has been
13 assaulted over and over again and keeps trying to
14 tell people and no one does a darned thing. Nobody
15 protects this child. Look at this picture when you
16 go back there. You look at her expression.

17 We all have jobs to do. You have the
18 most important job to do. You are the conscience
19 of this system. You tell the truth. You speak the
20 truth. And I am asking you to have the courage of
21 your convictions. If you think he did this, you go
22 back there and you stick to your guns and you hold
23 him accountable. Hold him accountable and find him
24 guilty. She's my daughter, I can do what I want
25 with her. Is that true? Is that the truth?

1 THE COURT: Madame Forelady, ladies and
2 gentlemen, we are going to take a very brief rest
3 room break. Please do not discuss the case and
4 please leave your notepads in your seats.

5 (Jury out, 12:18 p.m.)

6 THE COURT: We will be at ease for a
7 moment for a rest room break.

8 MR. SCHWACKE: Your Honor, at some
9 point I need to put on the record that we need to
10 renew our motions at the close of our -- we closed
11 in front of the jury, so I didn't have a chance to
12 put it on the record.

13 THE COURT: Do it now.

14 MR. SCHWACKE: I think I just did. I
15 would just ask that -- renew the motions that we
16 made at the close of the State's evidence regarding
17 the -- on the directed verdict for dismissal of the
18 unlawful conduct charge.

19 THE COURT: State wish to respond?

20 MS. WILLIAMS: Just that we would stand
21 by our earlier arguments, Your Honor.

22 THE COURT: The Court will stand by its
23 previous ruling and incorporate that ruling into
24 this portion of the record and deny the motion.

25 MR. SCHWACKE: Thank you.

CLOSING ARGUMENT - BY MR. SCHWACKE

1 THE COURT: You're welcome. We'll be
2 at ease for a few moments.

3 (A recess transpired.)

4 THE COURT: You may be seated. State
5 ready to proceed?

6 MS. WILLIAMS: State is ready, Your
7 Honor.

8 THE COURT: Defense ready to proceed?

9 MR. SCHWACKE: Yes, Your Honor.

10 THE COURT: Please bring in the jury.
11 (Jury in, 12:30 p.m.)

12 THE COURT: Ladies and gentlemen, we
13 will now resume arguments.

14 Mr. Schwacke, you may proceed when
15 you're ready.

16 MR. SCHWACKE: Thank you, Your Honor.

17 THE COURT: You're welcome.

18 MR. SCHWACKE: Good afternoon. When we
19 began on Monday we knew how difficult this case
20 would be. We knew the type of evidence that would
21 be coming in and we knew the effect that could have
22 on people. And, fortunately, for us, you-all
23 agreed that you could be fair and impartial and
24 that you could listen to the evidence as it comes
25 from the witness stand, that you would be able to

CLOSING ARGUMENT - BY MR. SCHWACKE

1 return a fair and just verdict based on the
2 evidence and following the instructions of the
3 Judge.

4 Now, I don't have some fancy equipment
5 so I'm just going to stand here a little bit and
6 talk to you about some things. In this case, it
7 begins with a germ, a bacteria that finds a pore,
8 infects it, it swells up, it festers, and then you
9 do what the doctor tells you to do to treat it; you
10 pop it. And then the next thing you hear is that,
11 I don't like Daddy because he hurts me when he pops
12 my bumps.

13 Pops my bumps, what does that mean?
14 You heard that before you had an explanation of it,
15 and when you first hear it, it sound like it's
16 something nasty, something sexual. It's really
17 something just sort of hygienic. So if you were
18 unaware of the skin condition, you would question
19 about that. That would be the same of anything.
20 What is that? What does that mean? What did he
21 do? Did he use his fingers? Did he touch you?

22 Because, you know, the first adults
23 that are going to question the child after some
24 type of statement like that are not the ones that
25 are trained in how to ask the questions to get to

CLOSING ARGUMENT - BY MR. SCHWACKE

1 the bottom of it to know what is going on, and
2 their prodding begins a process in which the entire
3 groundwork for the other recollections by that
4 child then become very complicated.

5 Dr. Foster sort of covered that with
6 you. That's the State's expert. And what she --
7 and basically covered one point, that children like
8 to please their adults. They will take their cues
9 from them. If the adults are upset, then they'll
10 want to know why and want to know how and want to
11 know whether or not it's something that they did or
12 something that they were responsible for. And so
13 in the course of that, because they see people are
14 upset, they're going to give the answers that they
15 feel like will get the adults less upset.

16 On June 23, 2012, MINOR 1 first makes
17 statements concerning what's going on. And one of
18 those is, yes, to Officer Barlow's questions, if he
19 said -- in his response to his question, did Daddy
20 hurt you? And the answer is, yes, but the
21 specifics weren't there.

22 The other one was, I don't like Daddy
23 because he pops my bumps. That was made to the
24 aunts, plus some other medical witnesses. And then
25 one of the third statements that's attributed to

CLOSING ARGUMENT - BY MR. SCHWACKE

1 her on that day -- that's the first time that she's
2 had any involvement with law enforcement or doctors
3 concerning these allegations -- Again, on
4 June 23rd, was, he stuck his thing in my hole,
5 which is heard only by the two aunts that have had
6 limited contact with MINOR 1 and with whom Jeramy
7 has had a longstanding disagreement with their
8 brother, Maxwell, the former boyfriend of Candace.

9 Then it's not again until March of
10 2013, that there are any statements attributed to
11 MINOR 1 about this incident. And that's 263 days
12 later that anything like this is heard again.
13 263 days in which Candace has been in constant
14 contact with MINOR 1. And what is MINOR 1 heard to
15 say 263 days later after the first time? The same
16 thing, the exact same thing. My daddy pops my
17 bumps, I don't like Daddy because he pops my bumps.

18 The videotape this morning that you
19 watched was made April 26th, so an additional
20 44 days even after that. She was with people who
21 were trained to do forensic exams 44 days before
22 and did not report anything along the lines that
23 she then did in April. So, again, Candace had
24 263 days to make sure that DSS didn't take her kids
25 away this time, because she wouldn't be getting

CLOSING ARGUMENT - BY MR. SCHWACKE

1 them back. That's what she told her kids.

2 Nowhere did Jeramy, my client, ever
3 tell the kids anything about losing them to DSS.
4 Instead Candace is the one that is promising
5 milkshakes and candy, whatever, to get them to
6 talk. So any conversation about this case
7 obviously has to cover a lot of Candace.

8 She is addicted to -- she admitted
9 under oath that she used marijuana, that she drank
10 alcohol to the point where she would pass out. And
11 this would be during the time in which -- because
12 she gave you the dates -- during the time that she
13 was pregnant with L. P..

14 So you have reason to question Candace.
15 You don't have to look any further than the proffer
16 that was executed by the State. Everything that
17 Candace testified about is tainted by her own
18 desire to minimize her involvement and maximize the
19 attention on Jeramy, all while playing on your
20 emotions, trying to portray herself as a victim
21 from that witness stand.

22 She's not the victim in this case under
23 any circumstance, yet she is the one who is
24 motivated by special and favorable treatment and is
25 looking to possibly get anything from a dismissal

CLOSING ARGUMENT - BY MR. SCHWACKE

1 of those charges, because that would be included as
2 part of the proffer, or probation.

3 What else about Candace? Candace
4 testifies about an agreement she had signed for her
5 family court attorneys, that nothing happened. So
6 that was for purposes of that proceeding. Number
7 two, she admitted to lying and giving false
8 information to MUSC, which had the effect of the
9 evidence not being collected at the rape protocol
10 exam that could have been.

11 She admitted to lying to law
12 enforcement and DSS when they came to her home.
13 He's not here. It's a good thing the ordained
14 minister Mr. Mike was there to tell the truth.
15 Mr. Mike lives there. As a minister he's obligated
16 to report any child abuse. The State didn't call
17 him. Here's somebody living in that house,
18 witnessing what is going on, and they didn't call
19 him, a person -- a minister of the cloth.

20 With regard to other testimony in which
21 I submit to you that you could find reasonable
22 doubt, during the qualification of the jury on
23 Monday, a list of names was called out by the Judge
24 provided by the State, and one of those names was
25 Dr. Sarah Schuh. She did not testify in this

CLOSING ARGUMENT - BY MR. SCHWACKE

1 proceeding. She was on the witness list for the
2 State, but for whatever reason, they did not call
3 her. And as a result of that, there is no
4 testimony from any State witness of physical
5 findings or from any examination as to whether or
6 not they were abnormal or not normal. Because of
7 that, the jury is not provided with information
8 concerning exactly how normal those findings that
9 were mentioned by the SANE nurse examiner are.

10 Other factors for you to consider
11 include that -- with regard to the -- that there's
12 obviously bad blood revolving around Maxwell, the
13 father, and a member of -- the father of -- and the
14 -- MINOR 1's brothers, older brothers, and that
15 Candace testified about \$40,000 in child support
16 that were owing from Maxwell to her.

17 So with regard to the complaint when
18 MINOR 1 first made it to them, it was odd that it
19 was his sisters first to claim that there was
20 actually any type of sexual assault.

21 With regard to other witnesses that
22 testified, DSS and the guardian ad litem have been
23 involved in this case and they testified about
24 their involvement. They testified about going to
25 the home and testified about going to the schools.

CLOSING ARGUMENT - BY MR. SCHWACKE

1 And in every circumstance, there was no information
2 provided to them, obtained by them, seen by them,
3 in terms of any bruises, marks, black eyes.

4 At every stage of this, they performed
5 their jobs and went about it as if nothing had
6 happened, until we get to the -- to the pickup.

7 And, again, with regard to Candace being the one
8 lying to DSS, as opposed to Mr. Mike letting them
9 know that, in fact, Jeramy was in the house.

10 When we first began talking about the
11 case and when I began my closing argument to you
12 today, we were talking about things that are very
13 small and sort of on an infinite level, something
14 on the level of a germ. Something very tiny
15 obviously has the ability to become something very
16 large, talking about the mustard seed and the plant
17 that grows from it, but sometimes it's not a good
18 thing that results in growing from a tiny thing
19 into something much bigger. It could be a
20 statement that then becomes a misunderstanding that
21 becomes an exaggeration, that becomes a lie.

22 Jeramy has been accused of the worst
23 possible type of crime and we talked about that in
24 my first statement to you at the beginning of the
25 case. It's a horribly disgusting offence to be

CLOSING ARGUMENT - BY MR. SCHWACKE

1 charged with and takes great effort to not allow
2 that to overwhelm you in terms of the obligation
3 that you are undertaking here.

4 One of the things about it is, a case
5 like this, the impossibility for an alibi is -- is
6 -- it just radiates from this case because there is
7 -- there is no way anyone can account for every
8 minute of their life over a span of nine months,
9 which is the timeframe listed in the indictment.
10 Because you can't do that, the only defense is to
11 put the State to its proof and show why you should
12 have a reasonable doubt, because the defense is
13 never ever required to put forth evidence and
14 witnesses. That's because our law recognizes the
15 impossibility of someone proving themselves
16 innocent.

17 So what are the items that you should
18 consider in determining whether or not there is any
19 reasonable doubt. First, you have the Summerville
20 Police Department, which over the course of their
21 involvement in the case have destroyed photographs.
22 They also did not have the rape kit exam sent to
23 SLED for examination or comparison.

24 It might be that the lack of evidence
25 of physical injuries that would constitute or arise

JURY CHARGE

1 from the sexual assault that would say, this is why
2 this didn't happen, this is why Candace made the
3 effort over the course of the nine months she had
4 solo with her daughter to go ahead and plant the
5 seeds for this testimony that's been going on
6 during the course of the trial.

7 There was no testing of the rape kit.
8 You have a \$40,000 child support motivation for the
9 aunts and sisters of Candace's ex. You have the
10 failure of the State to call the other adult living
11 in the home, Mr. Mike, the licensed minister;
12 probable cause might come from Candace and her lies
13 to MUSC and to law enforcement.

14 So, ladies and gentlemen, when you go
15 back to your jury room, again, remember that the
16 State must prove my client guilty beyond a
17 reasonable doubt, a doubt for which you can give a
18 reason, and if it's one of those that we just
19 covered or it's one that you thought of yourself as
20 you listened to the testimony, then I encourage you
21 to hold to that and find my client not guilty.
22 Thank you.

23 THE COURT: During this trial, ladies
24 and gentlemen, you and I have certain duties to
25 perform. As the trial Judge, it is my

JURY CHARGE

1 responsibility to preside over the trial of this
2 case. I also have the duty to rule upon or pass
3 upon the admissibility of evidence offered during
4 this trial.

5 You are to consider only the competent
6 evidence that is before you and you are to
7 disregard and disabuse from your mind any testimony
8 which has been ordered stricken from the record in
9 this case during the progress of the trial, if
10 there has been any. You are to consider only the
11 testimony which has been presented from the witness
12 stand, together with any exhibits which have been
13 made part of the record in this case.

14 I have the additional duty to charge or
15 instruct you on the law applicable to this case.
16 As the presiding Judge, I'm the sole judge of the law
17 of this case and it is your duty as jurors to
18 accept and apply the law as I now state it to you.
19 If you have a preconceived idea as to what the law
20 is or what the law ought to be in a case, or in
21 this case, and it should not agree with what I now
22 tell you the law is, you are obligated under your
23 oath to abandon this preconception on your part,
24 because you are sworn to accept the law and apply
25 the law precisely as I now state it to you.

JURY CHARGE

1 In every case in this Court tried
2 before a jury, the jury becomes the sole and
3 exclusive judges of the facts. You, the jury, are
4 the judges of the facts in this case. This Court
5 is the judge of the law. The Constitution of our
6 State has declared that a trial Judge shall not
7 intimate, state, comment upon, or make any
8 statements to a trial jury about the facts in a
9 case. Since you, the jury, are the sole judges of
10 the facts of this case, you are not to infer
11 anything from what I have said during the progress
12 of this trial in ruling upon the admissibility of
13 evidence or otherwise, or anything that I say now
14 to you during the course of this instruction, that
15 I have any opinion about the facts. The law does
16 not allow me to have an opinion about the facts.
17 This is a matter solely for you the jury to
18 determine. As jurors, then, it is your duty, as I
19 have instructed, to determine the effect, the
20 value, the weight, and the truth of the evidence
21 presented during this trial.

22 Necessarily, you must assess the
23 credibility of witnesses who have testified in this
24 case. Credibility is simply a legalistic term
25 meaning believability. It becomes your duty as

JURY CHARGE

1 jurors to analyze and to evaluate the evidence and
2 determine that evidence which convinces you of its
3 truth.

4 Some of the things you may consider as
5 you decide whether or not to believe a witness's
6 testimony about a particular matter include, what
7 was the manner and appearance of the witness who
8 testified? Was he or she straightforward or
9 hesitant in answering? Was the testimony of a
10 witness consistent or inconsistent? How did the
11 witness come to know the facts that he or she
12 testified to or what was his or her ability to know
13 these facts? Is there some reason a witness would
14 want to give testimony that would help or hurt one
15 side or the other; in other words, was the witness
16 biased or prejudiced? And was the testimony of a
17 witness strengthened or weakened by other testimony
18 or evidence.

19 I further instruct you that in
20 determining the question of credibility or
21 believability of witnesses who have testified, you
22 may believe one witness as against several
23 witnesses, or several witnesses as against one
24 witness. You may believe a part of the testimony
25 of a witness and reject the remaining part of the

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1 testimony of that same witness. If you have a good
2 and sound reason, you may believe the testimony of
3 a witness in its entirety or reject the testimony
4 of a witness in its entirety. You may consider the
5 demeanor of a witness, that is the manner and
6 appearance of the witness from the witness stand.

7 As I have instructed, ladies and
8 gentlemen, you can believe as much or as little of
9 each witness's testimony as you think proper.
10 Throughout this process, ladies and gentlemen, you
11 have but one objective, to seek the truth
12 regardless of its source.

13 During this trial you have heard the
14 testimony from a child. Where a witness is a
15 child, you must determine, as with any other
16 witness, whether that testimony is believable. In
17 deciding believability, you may consider not only
18 matters that I have already discussed with you, but
19 you may consider the age of the child, the child's
20 ability to observe and remember facts, the child's
21 ability to understand and answer questions.

22 Because young children may not fully
23 understand what is happening, it's up to you to
24 decide whether the child understood the seriousness
25 of appearing as a witness at this criminal trial,

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1 whether the child understood the questions, whether
2 the child has a good memory and whether the child
3 understands the difference between lying and
4 telling the truth.

5 In addition, young children may be
6 influenced by the way that questions are asked.
7 Again, ladies and gentlemen, it is up to you decide
8 whether the child understood the questions asked
9 and it is solely within your fact-finding province
10 as with any other witness to give that testimony
11 the weight, value and effect you decide it should
12 receive.

13 Our Rules of Evidence ordinarily do not
14 permit witnesses to testify to opinions or
15 conclusions. An exception to the rule exists for
16 witnesses we call experts. A witness who by their
17 education, training and experience has become an
18 expert in some art, science, or profession or
19 calling may state an opinion as to relevant and
20 material matters in which the witness claims to be
21 an expert and may also state the reasons for that
22 opinion.

23 You should consider any expert opinion
24 received in evidence in this case like any other
25 evidence. Give it the weight you think it

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1 deserves. If you decide that the opinion of an
2 expert witness is not based on sufficient
3 education, training or experience or if you
4 conclude that the reasons given in support of the
5 reason are not sound or that the opinion is
6 outweighed by other evidence, you may disregard the
7 opinion entirely.

8 An expert witness's testimony is to be
9 given no greater weight than that of other
10 witnesses simply because the witness is an expert.
11 Further, you are not required to accept an expert's
12 opinion even though it's not contradicted.

13 Ladies and gentlemen, you have heard
14 evidence that the Defendant committed a bad act,
15 not the subject of a conviction, other than the
16 ones for which the Defendant is now on trial. This
17 testimony, ladies and gentlemen, if you can
18 conclude it is true, may only be considered by you
19 on the question of common scheme or plan and for no
20 other reason or/and for no other purpose. You may
21 give this evidence the weight, value and effect, if
22 any, which you find it should have on the sole
23 issue of common scheme or plan. You must not
24 consider evidence of the commission of another bad
25 act, not the subject of a conviction, as proof of

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1 the Defendant's guilt of the charges we are trying
2 today.

3 There are two types of evidence, ladies
4 and gentlemen, which are generally presented during
5 a trial, direct evidence and circumstantial
6 evidence. Direct evidence is the testimony of a
7 person who asserts or claims to have actual
8 knowledge of a fact, such as an eyewitness.
9 Circumstantial evidence is proof of a chain of
10 facts and circumstances indicating the existence of
11 a fact.

12 The law makes absolutely no distinction
13 between the weight or value to be given to either
14 direct or circumstantial evidence, nor is a greater
15 degree of certainty required of circumstantial
16 evidence than of direct evidence. You should weigh
17 all of the evidence in this case.

18 As I have already explained, there are
19 two types of evidence which are generally
20 presented, both direct and circumstantial evidence.
21 Crimes may be proven by circumstantial evidence
22 and, again, the law makes no distinction between
23 the weight or value to be given to either direct or
24 circumstantial evidence; however, to the extent the
25 State relies on circumstantial evidence, all of the

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1 circumstances must be consistent with each other,
2 and when taken together point conclusively to the
3 guilt of the accused beyond a reasonable doubt.

4 If these circumstances merely portray
5 the Defendant's behavior as suspicious, the proof
6 has failed. The State has the burden of proving
7 the Defendant guilty beyond a reasonable doubt and
8 this burden rests with the State, regardless of
9 whether the State relies on direct evidence,
10 circumstantial evidence, or some combination of the
11 two.

12 Again, ladies and gentlemen, you should
13 weigh all the evidence in this case. After
14 weighing all the evidence, if you are not convinced
15 of the guilt of the Defendant beyond a reasonable
16 doubt, you must find the Defendant not guilty.
17 Conversely, if you are convinced of the guilt of
18 the Defendant beyond a reasonable doubt, then you
19 must find him guilty.

20 I instruct you that the fact that the
21 Defendant was arrested, charged, and indicted is
22 not evidence in this case and cannot be considered
23 by you as evidence of guilt in this case, nor does
24 it create any presumption or inference of guilt.
25 This documentation, ladies and gentlemen, is simply

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1 -- are simply the formal written instruments that
2 contain the charge or charges made against the
3 Defendant. They simply serve as the formal
4 documentation by which the case is processed or
5 brought into the Court.

6 The Defendant has pled not guilty to
7 the indictments and that plea casts the burden on
8 the State to prove the Defendant guilty, because a
9 person charged with committing a criminal offence
10 in South Carolina is never required to prove
11 himself innocent.

12 I charge you, Madame Forelady, ladies
13 and gentlemen, that this is a cardinal and
14 important rule of the law of evidence, that the
15 Defendant in a criminal trial, no matter what the
16 seriousness of the charge or charges made against
17 him may be, will always be presumed to be innocent
18 of the crime for which he's indicted unless his
19 guilt has been proven by evidence satisfying you of
20 that guilt beyond a reasonable doubt.

21 This presumption of innocence does not
22 cease when you retire to deliberate, but it
23 accompanies the Defendant from the time of his
24 appearance throughout the trial until you reach a
25 verdict in this case. Our Supreme Court has said

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1 that the presumption of innocence is like a robe of
2 righteousness placed about the shoulders of the
3 Defendant and it remains with him and assigns him
4 to that class, the innocent, until that presumptive
5 robe of righteousness has been struck from his
6 person by evidence satisfying you of that guilt
7 beyond a reasonable doubt.

8 Madame Forelady, ladies and gentlemen,
9 the presumption of innocence is not mere legal
10 theory. It is not just a legal phrase. It is a
11 substantial right to which every Defendant is
12 entitled unless you, the jury, are satisfied from
13 the evidence of his guilt beyond a reasonable
14 doubt.

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

22 In criminal cases, the State's proof
23 must be more powerful than that. It must be beyond
24 a reasonable doubt. Proof beyond a reasonable
25 doubt is proof that leaves you firmly convinced of

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1 the Defendant's guilt. There are very few things
2 in this world that we know with absolute certainty,
3 and in criminal cases the law does not require
4 proof that overcomes every possible doubt.

5 If based on your consideration of the
6 evidence you are firmly convinced that the
7 Defendant is guilty of the crimes charged, you must
8 find the Defendant guilty. If on the other hand
9 you think there is a real possibility that the
10 Defendant is not guilty, you must give him the
11 benefit of that doubt and find him not guilty.

12 I instruct you and emphasize that the
13 fact that the Defendant did not testify is not a
14 factor to be considered by you in any manner
15 whatsoever in your deliberation and in your
16 consideration on the question of the guilt or
17 innocence of the Defendant. It must not be
18 considered by you in any manner whatsoever. A
19 Defendant has the Constitutional right to remain
20 silent and the assertion of this right must not be
21 considered by you in your deliberations. I repeat,
22 ladies and gentlemen, under your oath, you are to
23 draw no conclusion whatsoever from the fact that
24 the Defendant in this case did not testify. The
25 fact that this Defendant did not testify is not to

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1 be discussed in the jury room in any manner
2 whatsoever.

3 The burden of proof, as I've explained
4 to you, is on the State. The Defendant is not
5 required to prove his innocence. The burden of
6 proof remains on the State to prove guilt beyond a
7 reasonable doubt. The Defendant is charged with
8 criminal sexual conduct with a minor in the first
9 degree.

10 The State must prove beyond a
11 reasonable doubt that the Defendant engaged in a
12 sexual battery with the victim. A sexual battery
13 is sexual intercourse, cunnilingus, fellatio, anal
14 intercourse or any intrusions, however slight, of
15 any part of a person's body or of any object into
16 the genital or anal openings of another person's
17 body, except when the intrusion is accomplished for
18 medically-recognized treatment or diagnostic
19 purposes.

20 The State must then prove beyond a
21 reasonable doubt that the victim was less than 11
22 years old at the time of the sexual battery.
23 Consent, willingness, indifference or ignorance on
24 the part of the minor, if any, as to what was
25 taking place does not in any way affect the charge

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1 of criminal conduct with a minor, because an
2 unmarried woman under the age of 14 cannot legally
3 consent to sexual intercourse.

4 The Defendant is charged with third
5 degree criminal sexual conduct with a minor. The
6 State must first prove beyond a reasonable doubt
7 that the Defendant was over the age of 14. Next,
8 the State must prove that the Defendant willfully
9 and lewdly committed or attempted to commit a lewd
10 or lascivious act upon or with the body, or its
11 parts, of a child under the age of 16 years, with
12 the intent to arouse, appeal to or gratify the
13 lust, passion, or sexual desires of the Defendant
14 or the child.

15 Willfully means voluntarily and
16 intentionally, with the specific intent to do
17 something the law forbids. Lewd means obscene,
18 lustful, indecent, or lecherous. Lascivious means
19 tending to incite lust, lewd, indecent, obscene or
20 tending to deprave the morals in respect of sexual
21 relations.

22 Ladies and gentlemen, I instruct you
23 that the Code of Laws of the State of South
24 Carolina provide that the testimony of a victim
25 need not be corroborated and the law further

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1 defines that a victim means the person alleging to
2 have been subjected to criminal sexual conduct.

3 The Defendant is charged with five
4 counts of criminal sexual conduct with a minor
5 first degree, one count of third degree criminal
6 sexual conduct with -- one count of criminal sexual
7 conduct with a minor third degree. When two or
8 more acts of sexual conduct are alleged to have
9 occurred at or about the same time, each act
10 alleged is a separate crime rather than one
11 continuous crime.

12 Ladies and gentlemen, the Defendant is
13 charged with unlawful conduct toward a child. The
14 State must first prove beyond a reasonable doubt
15 that the Defendant had charge or custody of the
16 child, was the parent or guardian of the child, or
17 was responsible for the care and support of the
18 child.

19 A person responsible for a child's
20 welfare includes the child's parent, guardian or
21 foster parent, an operator, employee or care giver
22 of a public or private residential home,
23 institution, agency or child daycare facility, or
24 an adult who has assumed the role or responsibility
25 of a parent or guardian for the child, but does not

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1 necessarily have legal custody of the child. This
2 does not include a person whose only role is as a
3 caregiver and whose contact is only incidental with
4 the child, such as a babysitter.

5 The State must also prove beyond a
6 reasonable doubt that the Defendant placed the
7 child at unreasonable risk of harm, affecting the
8 child's life, physical or mental health, or safety,
9 or unlawfully or maliciously did or cause to be
10 done any bodily harm to the child so that the life
11 or health of the child is endangered or likely to
12 be endangered. Child means a person under the age
13 of 18.

14 Ladies and gentlemen, there are
15 multiple indictments in this case and they are as
16 follows. Indictment 2014-GS-08-259, 260, 261, 262,
17 and 2015-GS-08-1478, criminal sexual conduct with a
18 minor first degree; 2014-GS-08-263, criminal sexual
19 conduct with a minor third degree; and
20 2014-GS-08-264, unlawful conduct toward a child.
21 Each indictment charges a separate and distinct
22 offence.

23 You must decide each indictment
24 separately on the evidence and the law applicable
25 to it, uninfluenced by your decision as to any

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1 other indictment. The Defendant may be convicted
2 or acquitted on any or all of the offences charged.
3 You will be asked to write a separate verdict of
4 guilty or not guilty for each indictment.

5 Ladies and gentlemen, there are several
6 possible verdicts for each of these indictments,
7 and I will go over this with you so you don't have
8 to try to write it down, and also the verdict forms
9 go into the jury room with you. There is no
10 significance whatsoever to the order in which I
11 state these potential verdicts. It is just simply
12 that one must be stated first.

13 Each indictment as to criminal sexual
14 conduct with a minor first degree reads as follows:
15 We, the jury, by unanimous consent find the
16 Defendant guilty of criminal sexual conduct with a
17 minor first degree, or not guilty. And as to
18 criminal sexual conduct third, that reads as
19 follows: We, the jury, by unanimous consent find
20 the Defendant guilty of criminal sexual conduct
21 with a minor third degree, or not guilty. And as
22 to unlawful conduct, We, the jury, by unanimous
23 consent find the Defendant guilty of unlawful
24 conduct towards a child, or not guilty.

25 Again, ladies and gentlemen, there is

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1 no significance whatsoever to the order in which I
2 state these potential verdicts. It is simply that
3 one must be stated first.

4 Ladies and gentlemen, your verdict must
5 be a unanimous one, which means that all 12 of you
6 must agree in order to reach an indictment on --
7 reach a verdict on each indictment. And, again,
8 each indictment is to be considered separately and
9 a unanimous verdict must be reached as to each
10 indictment.

11 Madame Forelady, once the jury has
12 reached a unanimous verdict, it's your
13 responsibility to fill out the verdict forms and to
14 also sign and date the forms. It is also your
15 responsibility to knock on the door and advise the
16 bailiff that the jury has reached a unanimous
17 verdict.

18 Also, if the jury has any questions
19 during deliberations, it is your responsibility to
20 write out those questions and, again, follow the
21 same procedure by knocking on the door and advising
22 -- and signing and dating the note as well, and
23 advise the bailiff that the jury has a question.
24 Any questions that are provided, should not provide
25 any numerical break-down, as jury deliberations are

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1 secret and they should not be divulged to anyone.

2 Ladies and gentlemen, if you have any
3 questions during deliberations, please know that
4 there will be a delay in our response because there
5 is a procedure that we have to follow in answering
6 your question. Please note, if you have a
7 question, there will be a delay, because we are
8 following that procedure.

9 Again ladies and gentlemen, your
10 verdict must be unanimous, which means that all 12
11 of you must agree.

12 I'm going to ask that you return to
13 your jury room, but do not yet begin your
14 deliberations. I have a brief matter of law to
15 take up with the attorneys that may require further
16 instruction or clarification of an instruction. If
17 there is no further instruction, we will send in
18 your notebooks, the evidence, and the verdict
19 forms, and at that time we will excuse the
20 alternates, and you will be allowed to continue
21 your deliberations.

22 Your lunch would -- they went to pick
23 it up and I think it's here already, so it should
24 be in the jury room. And also, so that you know in
25 advance, once I release you to begin your

1 deliberations, at that time I will allow anyone
2 that needs to go outside and get air or take a
3 smoke break, you will be allowed to do that.
4 Please know that during any of those breaks, the
5 jury cannot deliberate.

6 If you would go with the bailiff and
7 leave your notepads in your seats.

8 (Jury out, 1:11 p.m.)

9 THE COURT: Please close the door for
10 me. Other than what has been stated for the record
11 and preserved during charge conference, are there
12 any additional exceptions to the instructions from
13 the State?

14 MS. WILLIAMS: No, Your Honor.

15 THE COURT: From the defense?

16 MR. SCHWACKE: No additional.

17 THE COURT: And you have all of the
18 evidence, Madame Court Reporter?

19 THE COURT REPORTER: Yes, ma'am.

20 THE COURT: And, also, so that you
21 know, I've made a correction in one of the verdict
22 forms. I had a scrivener's error. I had, verdict
23 form, two times on there and I needed to remove
24 that, and then on -- I fixed the scrivener's error
25 on unlawful conduct to a child. I wanted you to

1 know that was done before these were sent back.

2 Bring out the alternates for me,
3 please.

4 (Alternates in, 1:14 p.m.)

5 THE COURT: Ladies, we want to thank
6 you for your time and attention to this case. We
7 know that being an alternate is thankless, but you
8 serve such a necessary function in the event that
9 one or the other jurors is unable to continue with
10 the process. I hope that it's been educational for
11 you and I hope you know how very valuable your time
12 has been to us.

13 If you need a work excuse -- we have
14 your work excuses, and your checks will be mailed
15 to you along with the rest of the panel. You are
16 welcome to discuss the case if you would like. I
17 would ask that you not do it until the jury has
18 completed their deliberations and until we excuse
19 the entire panel for the week, which will be after
20 Friday.

21 If someone should persist in speaking
22 with you and exceed your comfort level, please let
23 us know so that we can take the appropriate actions
24 to protect your privacy. I would ask that you stay
25 with us. We're going to put you in a comfortable

1 place. They went to pick up lunch and it should be
2 here shortly. If you wish to remain and eat,
3 you're welcome to.

4 If you would like to stay and wait and
5 see how jury deliberations turn out, you're welcome
6 to do that as well; just let the bailiffs know. We
7 have found a comfortable place for you to remain
8 with us. You are excused with the Court's profound
9 thanks. Have a great day.

10 (Alternates out, 1:17 p.m.)

11 THE COURT: The record should reflect
12 that the jury began its deliberation at 1:13 and
13 the alternates were excused at the same time. Is
14 there anything else before we are at ease?

15 MS. WILLIAMS: Not from the State.

16 THE COURT: From the defense?

17 MR. SCHWACKE: None, Your Honor.

18 THE COURT: Okay. The bailiffs have
19 already gone to get their lunch so it should be
20 here shortly. Once I know they have their lunch in
21 the jury room, I will let you all go get some lunch
22 as well. And please make sure that the deputy
23 clerk has your cell phone numbers.

24 (A recess transpired.)

25 THE COURT: We have two notes from the

1 jury and they came out at the same time, so when I
2 refer to them as one and two, that does not mean
3 that one came before the other.

4 Well, actually they have the times on
5 them, so I guess I can. Okay. Did both parents
6 sign -- did both parents sign the safety plan?

7 My response would be, Madame Forelady,
8 and ladies and gentlemen of the jury, all of the
9 evidence in this case has been presented to you.
10 The Court cannot answer factual questions. You
11 must only consider the testimony in evidence that
12 has been submitted into the record for the purposes
13 of your deliberations. You cannot conduct your own
14 independent investigation or fact-finding outside
15 of the evidence and testimony presented to you
16 during the course of this trial. You are not to
17 speculate or draw any inferences or conclusions
18 from this response to your inquiry during your
19 deliberations.

20 If you desire to have the testimony of
21 any witness replayed or rehear any portions of the
22 law, please advise the bailiff and we will
23 accommodate your request immediately.

24 Any exception from the State?

25 MS. HERRING-LASH: No, Your Honor.