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THE STATE OF SOUTH CAROLINA

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In The Court of Appeals

APR 28 2014

APPEAL FROM CHARLESTON COUNTY  
Court of General Sessions

SC Court of Appeals

The Honorable Stephanie P. McDonald, Presiding Judge

Case No. 2011GS1002511  
Warrant Numbers: K638511  
Charges: Lewd Act on a Minor

STATE OF SOUTH CAROLINA, .....

RESPONDENT,

v.

KENNETH THOMAS GAHAGAN, .....

APPELLANT.

APPELLATE CASE NO. 2012-208388

RECORD ON APPEAL

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INDEX

INDEX.....i

TRIAL TRANSCRIPT DATED FEBRUARY 1-3, 2012 ..... 1

TESTIMONY

MINOR CHILD (IN CAMERA)

    Examination by the Court ..... 6

    Direct Examination by Ms. Gordon ..... 7

    Cross Examination by Ms. Ford ..... 9

MINOR CHILD

    Direct Examination by Ms. Gordon .....22

    Cross Examination by Ms. Ford .....30

PIERRE NELSON, SR.

    Direct Examination by Ms. Gordon .....41

    Cross Examination by Ms. Ford .....48

    Redirect Examination by Ms. Gordon .....53

    Recross Examination by Ms. Ford.....54

SANDRA “APRIL” BROWN

    Direct Examination by Ms. Gordon .....55

    Cross Examination by Ms. Ford .....60

BRANDI WHITE

    Direct Examination by Ms. Gordon .....63

    Cross Examination by Ms. Ford .....66

RITA AVILA

    Direct Examination by Ms. Gordon .....67

BROOKE CUMBEE

    Direct Examination by Ms. Gordon .....68

    Cross Examination by Ms. Ford .....75

    Redirect Examination by Ms. Gordon .....77

TRACY W. HALASZ

    Direct Examination by Ms. Gordon .....79

    Cross Examination by Ms. Ford .....88

DIRECTED VERDICT .....91

RENEWED DIRECTED VERDICT .....93

CHARGE ON THE LAW .....95

VERDICT ..... 106

COURT’S EXHIBIT #4 (Charge) ..... 110

DEFENDANT’S EXHIBIT #1 ..... 119  
DEFENDANT’S EXHIBIT #2 ..... 121  
SENTENCE SHEET ..... 126  
INDICTMENT 2011GS1002510 ..... 127  
INDICTMENT 2011GS1002511 ..... 129  
NOTICE OF APPEAL..... 131  
PROOF OF SERVICE OF NOTICE OF APPEAL ..... 132  
REQUEST FOR REPRESENTATION ON APPEAL ..... 133  
CERTIFICATE OF COUNSEL..... 135

**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:**

**STATE’S EXHIBIT #1 (DVD)**

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
 COUNTY OF CHARLESTON ) NINTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA, ) TRANSCRIPT OF RECORD  
 V. ) 2011-GS-10-02510  
 KENNETH THOMAS GAHAGAN ) 2011-GS-10-02511  
 DEFENDANT. )

FEBRUARY 1 - 3, 2012

CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE STEPHANIE MCDONALD, JUDGE; AND A JURY.

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

ELIZABETH GORDON, ASSISTANT SOLICITOR  
 ATTORNEY FOR THE STATE

MARY FORD, ASSISTANT PUBLIC DEFENDER  
 TED SMITH, ASSISTANT PUBLIC DEFENDER  
 ATTORNEYS FOR THE DEFENDANT

SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

I N D E X

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

WEDNESDAY, FEBRUARY 1, 2012

PRE-TRIAL MOTIONS..... 6

WITNESSES

(SW) **CHILD** (IC):

DIRECT EXAMINATION BY MS. GORDON.....10

CROSS-EXAMINATION BY MS. FORD.....12

INTRODUCTORY REMARKS BY THE COURT.....18

OPENING STATEMENT BY MS. GORDON.....26

OPENING STATEMENT BY MS. FORD.....29

(SW) **CHILD**

DIRECT EXAMINATION BY MS. GORDON.....35

CROSS-EXAMINATION BY MS. FORD.....43

(SW) PIERRE NELSON, SR.:

DIRECT EXAMINATION BY MS. GORDON.....54

CROSS-EXAMINATION BY MS. FORD.....61

REDIRECT EXAMINATION BY MS. GORDON.....66

RE-CROSS-EXAMINATION BY MS. FORD.....67

I N D E X

(SW) SANDRA "APRIL" BROWN:

DIRECT EXAMINATION BY MS. GORDON.....68

CROSS-EXAMINATION BY MS. FORD.....73

(SW) BRANDI WHITE:

DIRECT EXAMINATION BY MS. GORDON.....76

CROSS-EXAMINATION BY MS. FORD.....79

(SW) RITA AVILA:

DIRECT EXAMINATION BY MS. GORDON.....80

CROSS-EXAMINATION BY MS. FORD.....84

REDIRECT EXAMINATION BY MS. GORDON.....92

THURSDAY, FEBRUARY 2, 2012

(SW) LEANN GARDNER:

DIRECT EXAMINATION BY MS. GORDON.....101

CROSS-EXAMINATION BY MS. FORD.....116

REDIRECT EXAMINATION BY MS. GORDON.....148

RE-CROSS-EXAMINATION BY MS. FORD.....152

(SW) BROOKE CUMBEE:

DIRECT EXAMINATION BY MS. GORDON.....159

CROSS-EXAMINATION BY MS. FORD.....166

REDIRECT EXAMINATION BY MS. GORDON.....168

(SW) TRACY WILLIAMS HALASZ:

DIRECT EXAMINATION BY MS. GORDON.....170

CROSS-EXAMINATION BY MS. FORD.....179

STATE RESTS - MOTIONS.....181

I N D E X

(DW) DR. AMANDA SALAS:

DIRECT EXAMINATION BY MS. FORD.....187

CROSS-EXAMINATION BY MS. GORDON.....212

MOTIONS.....239

CLOSING ARGUMENT BY MS. FORD.....242

CLOSING ARGUMENT BY MS. GORDON.....261

JURY CHARGE.....279

SENTENCING.....299

CERTIFICATE OF REPORTER.....307

EXHIBITS

NO.	DESCRIPTION	ID.	EVD.
<u>FOR THE COURT:</u>			
1	- NOTE FROM JURY	293	
2	- NOTE FROM JURY	293	
3	- NOTE FROM JURY	306	
4	- JURY CHARGE	306	
<u>FOR THE STATE:</u>			
1	- DVD OF FORENSIC INTERVIEW		100
<u>FOR THE DEFENDANT:</u>			
1	- INCIDENT REPORT OF AVILA	86	
2	- INTERVIEW FORM/REPORT	127	

1 now when he comes in or before we even bring the jury in?

2 MS. GORDON: That's fine.

3 MS. FORD: That's fine, Your Honor.

4 THE COURT: I'd rather them just have their time  
5 back there instead of bringing them in and sending them  
6 back out.

7 MS. GORDON: Can I just let the child know that  
8 she's going to be called twice just so she knows what's  
9 going on?

10 THE COURT: Explain to her whatever you need to  
11 explain to her.

12 (WHEREUPON, a brief recess was taken.)

13 THE COURT: Hey, sweetie, come on forward, if you  
14 would. You want to sit in that chair for me?

15 Thank you.

16 MS. GORDON: Now remember how I told you there  
17 would be a judge up there.

18 THE COURT: I'm Judge McDonald.

19 MS. GORDON: And this is the court reporter, okay?

20 EXAMINATION

21 BY THE COURT:

22 Q. Sweetheart, we're going to ask you some questions,  
23 okay?

24 A. (Nodded).

25 Q. If you will answer in the microphone for me. This

**CHILD**

(IC) - DIRECT BY MS. GORDON 10

1 lady types down everything you say, and that I say, and  
2 that they say, okay? So do you understand?

3 A. (Nodded).

4 Q. Will you say yes or no for me out loud?

5 A. Yes.

6 Q. Thank you. That's perfect. And this lady is going  
7 to ask you some questions and I need for you to tell her  
8 the truth, okay, and she's going to ask you what you  
9 understand about that. You understand about telling the  
10 truth?

11 A. Yes, ma'am.

12 Q. Thank you, sweetheart. And you understand you need  
13 tell the truth today?

14 A. (Nodded).

15 Q. You going to do that for us?

16 A. (Nodded).

17 MS. GORDON: You have to say yes or no, okay? You  
18 have to talk out loud.

19 Q. Will you talk out loud for me?

20 A. Yes, ma'am.

21 Q. Thank you so much. You understand. And I'm going  
22 to let her ask you some questions.

23 DIRECT EXAMINATION

24 BY MS. GORDON:

25 Q. **CHILD** can you tell me how old you?

CHILD

(IC) - DIRECT BY MS. GORDON

11

1 A. Five.

2 Q. And where do you go to school?

3 A. Kindergarten.

4 Q. You are in kindergarten. CHILD if I said that I  
5 had on a pink shirt would I be telling the truth or would  
6 I be telling a lie?

7 A. A lie.

8 Q. And if I said I have blonde hair am I telling the  
9 truth or am I telling a lie?

10 A. The truth.

11 Q. Now, CHILD can you promise today to tell the truth  
12 to all the questions that you are asked?

13 A. (Nodded).

14 Q. Can you say yes or no?

15 A. Yes.

16 THE COURT: Anything further, Ms. Ford?

17 MS. FORD: One moment, Your Honor.

18 MS. GORDON: Your Honor, should I have the record  
19 reflect that I am not wearing a pink shirt and that I do,  
20 in fact, have blonde hair and the child was able to  
21 distinguish the difference between the two?

22 THE COURT: The record will so reflect that, that  
23 you told us the answers to that, okay? The record will  
24 reflect that.

25 On the blonde hair question I probably wouldn't

1 have asked, but for me not for you.

2 CROSS-EXAMINATION

3 BY MS. FORD:

4 Q. Hi **CHILD** My name is Mary Ford. I just have a few  
5 questions for you like Ms. Elizabeth did, okay? Can you  
6 help explain to us what it means to tell a lie.

7 A. Uh-huh. You're not supposed to tell a lie.

8 Q. Right. But what does it mean? If someone tells  
9 you, **CHILD** you better not lie to us, what does that  
10 mean?

11 A. That means you're lying to them.

12 Q. No. If they tell you you can't lie to us what do  
13 you think that means?

14 A. Pain.

15 Q. Pain? I'm sorry. What did you say sweetie, pain?

16 A. (Nodded).

17 THE COURT: Why don't you all come here for one  
18 second, if you would.

19 (WHEREUPON, the following bench conference was  
20 reported.)

21 THE COURT: I don't think the question is bad but I  
22 think that she means that if she said something that was  
23 a lie somebody would look at her and say, You better not  
24 lie to us but if you keep on it's going to be painful.

25 So I don't know of another way. I think you lean

1 her a little bit more than that because I get what the  
2 she means, okay?

3 MS. FORD: Okay.

4 THE COURT: Thank you.

5 (WHEREUPON, the bench conference was concluded.)

6 BY MS. FORD.

7 Q. And, CHILD I'm trying to think of the best way to  
8 say this, and if you don't understand something that I  
9 say you can tell me that, okay?

10 Let me ask you a few questions about if someone  
11 said CHILD is six years old. Is that a truth or a lie?

12 A. A lie.

13 THE COURT: Because how old are you, sweetie?

14 A. Five.

15 Q. And if someone told you that -- let's just say  
16 someone said you can lie, okay. They said we're playing  
17 a game and you can lie, all right. Would you be able to  
18 tell someone that you are seven years old?

19 A. (Shook head).

20 Q. No? Did you shake your head no?

21 A. No.

22 Q. Okay. And why wouldn't you be able to say you are  
23 seven years old?

24 A. Because I'm five.

25 Q. But if someone said that you could lie --

1 MS. GORDON: Your Honor, I'm going to object  
2 because --

3 THE COURT: Sustained.

4 MS. GORDON: -- I don't think this really goes to  
5 whether or not she can tell between the truth and a lie.

6 THE COURT: Sustained.

7 BY MR. FORD:

8 Q. If you promise to tell truth, okay, and you're  
9 telling us a story, all right, can you add things to the  
10 story?

11 A. (Shook head).

12 Q. Like things that didn't happen?

13 A. (Shook head).

14 Q. Are you shaking your head? No?

15 A. No.

16 MS. FORD: One moment, Your Honor.

17 THE COURT: Sure.

18 MS. FORD: I have no further questions, Your Honor.

19 THE COURT: Thank you.

20 Anything further?

21 MS. GORDON: No, Your Honor. The position of the  
22 State is that the witness is clearly able to distinguish  
23 the difference between a truth and a lie.

24 THE COURT: I agree. I do find that CHILD is  
25 competent because she knows how to tell the truth, and

1 she even knows how to tell the truth if somebody asks  
2 her to make up a story. And so she knows how to tell  
3 the truth.

4 And, sweetie, you know that's important when we  
5 come in here. When you come in again I'm going to ask  
6 you again in front of these ladies and gentlemen that are  
7 going to sit in that box over there, and I have to put  
8 this scary black robe on when they are in here.

9 I don't have to wear it when everybody else is here  
10 but they make me wear it -- really, they try to make me  
11 wear it all the time but I don't like to. But when they  
12 are in here I'll put it on. But you don't need to be  
13 scared and you just tell the truth like you told us, and  
14 we'll ask you about it one more time and then you'll  
15 answer the questions that both these ladies and this  
16 gentleman may be asking you, okay? Does that sound good?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: So I'm going to let you go back out  
19 there or go wherever you want to go and we will bring you  
20 in in minute.

21 I don't know whether she's going to sit where you  
22 want her to be.

23 MS. GORDON: For the openings?

24 THE COURT: Uh-huh.

25 MS. GORDON: We'll probably have the family in

1 here, if that's okay.

2 THE COURT: Okay.

3 So, sweetie, you'll get to sit over there with your  
4 family and then we'll get you to come right back and ask  
5 you some more questions, okay?

6 THE WITNESS: Okay.

7 THE COURT: Does that sound good?

8 THE WITNESS: Yes, ma'am.

9 THE COURT: And when you come back you do just like  
10 you're doing now and answer in that microphone for me,  
11 okay?

12 THE WITNESS: Okay.

13 THE COURT: Thank you, sweetheart.

14 We have a question from our other jury, and it's a  
15 very simple question but I need you to let the other  
16 lawyers know. I'm not sure where they are. We're  
17 calling them right now. I would like to go ahead and get  
18 started with you all. I don't know how long you want to  
19 take on opening or that kind of thing.

20 MS. GORDON: My opening is going to be 10 minutes  
21 or less.

22 THE COURT: All right. While we wait for the other  
23 guys to come back why don't we bring this jury in and  
24 I'll give them the little opening introductory charge  
25 about not being able to deliberate before they get

1 THE COURT: Thank you, sir. I appreciate it.

2 Ladies and gentlemen, thank you for your patience.

3 I'm Stephanie McDonald, and like Judge Dennis, who was  
4 kind enough to do the jury selection for me this morning,  
5 I'm a circuit judge based in Charleston County.

6 We have another trial that I was in this morning.  
7 The jury is out deliberating now but now that we have  
8 them in deliberations we're ready to begin the trial of  
9 this case. I'm going to try to limit any interruptions  
10 in this trial but the jury may come back with a question  
11 and we'll need to take a quick break if that does happen.  
12 But I thank you all for being here today and I thank  
13 Judge Dennis for taking care of that portion of the  
14 process this morning.

15 We are about to try the case of the State vs.  
16 Kenneth Thomas Gahagan. Before we begin the trial I need  
17 tell you, and he may have gone over some of this before,  
18 but this trial will be a little different probably than  
19 what you might expect.

20 Many people don't have a chance to attend actual  
21 court sessions and may think from watching TV, or movies,  
22 or reading that trials are always full of high drama and  
23 intense action. While that may be true in some cases in  
24 a real courtroom a trial is, as you know already, not for  
25 our entertainment. It's a fundamental part of our

1 democracy and a search for the truth in an effort to make  
2 sure that justice is done between the parties.

3 The defendant, Mr. Gahagan, is charged by two  
4 indictments filed in this Court. The first is indictment  
5 2011-2510 which charges him with criminal sexual conduct  
6 with a minor in the first degree. It is alleged that  
7 this occurred in Charleston County between March 1st of  
8 2010 and April 15th of 2010. He is also charged in  
9 indictment 2011-2511 with lewd act upon a minor.

10 The elements of these charges will be explained to  
11 you later after you have heard the evidence when we give  
12 you the charge on the law but as I'm sure you all were  
13 told this morning these indictments are simply the  
14 charges by which the case comes into this Court.

15 They are not in any sense evidence of the  
16 allegations contained therein, and the defendant has pled  
17 guilty to both indictments; therefore, the State bears  
18 the burden of proof as to each and every element in the  
19 indictments --

20 MS. FORD: When you said guilty. He's pled --

21 THE COURT: Pled not guilty.

22 MS. FORD: Yeah. I believe you said guilty.

23 THE COURT: Well, I apologize if I said guilty. He  
24 has pled not guilty. That's why we're here for a trial  
25 and the State bears the burden of proving each and every

1 element of each and every indictment and the crimes  
2 therein beyond a reasonable doubt.

3 This defendant is presumed innocent, just like any  
4 defendant, throughout the entire proceeding, even once  
5 the case is given to you for deliberation. Only if you,  
6 the jury, unanimously conclude that the State has met its  
7 burden of proof beyond a reasonable doubt are you able to  
8 even consider or discuss a verdict of guilty. He is  
9 innocent throughout the entire process up until then.

10 Your purpose as jurors is to find and determine the  
11 facts in the case. You are the sole judges of the facts,  
12 and if I make any comment regarding the facts you must  
13 disregard it. You are to determine the facts from the  
14 testimony you hear in court and from any other evidence  
15 that may come in by way of an exhibit that the lawyers  
16 will introduce. It's up to you also to determine any  
17 inferences from which you feel may be properly drawn from  
18 the evidence presented here in court.

19 On the other hand, the same law that makes you the  
20 judges of the facts makes me the judge of the law. The  
21 law as the Court gives it to you is the only law that you  
22 may consider and you must accept it and follow it even if  
23 you disagree with it.

24 If I give you the wrong law there's some folks in  
25 Columbia that will fix that. But you are to take the law

1 only as the Court gives it to you. Just like I can't  
2 tell you all what the facts are you cannot disagree with  
3 the Court as to what the law should be. Your job is to  
4 take the law as it is given to you and apply it to the  
5 facts as you find them from the testimony of the  
6 witnesses and any other evidence that is introduced.

7 After that, you will render your verdict and it  
8 will be a true and just verdict pursuant to the oath that  
9 you've taken as jurors. And if Judge Dennis did not  
10 swear you all this morning we will do that shortly, and  
11 we may do it again just out of an abundance of caution  
12 since I wasn't there.

13 Until I advise you to begin deliberating you may  
14 not discuss this case with anyone, including each other.  
15 When you go home tonight you can't talk about it with  
16 family members, or anyone; not in person, not by  
17 telephone, not by blog, not by e-mail, and you're also  
18 not allowed to do any research at all.

19 And I know it sounds foolish to tell you all this  
20 but the reason we tell you these things is probably it  
21 may have happened at some point. You're not allowed to  
22 go home and Google the names and find out any  
23 information.

24 And if for some reason there were to be news  
25 coverage you're not allowed to watch the news coverage or

1 read anything in the paper about the case. You are  
2 solely limited to the consideration of the testimony and  
3 evidence that is presented here in court. After the case  
4 is submitted to you for deliberation you must discuss it  
5 only in the jury room with your fellow jurors.

6 And an important point I bring up in every trial is  
7 the attorneys and the parties aren't allowed to talk with  
8 you either. So if you run into an attorney in the lobby  
9 or elevator and they run off in the other direction and  
10 don't speak they are not being rude. They are not  
11 allowed to talk with you all. They are ordered by the  
12 Court not to have any interaction with the jury.

13 It's important that you listen to all of the  
14 evidence in the case and not make any decision in your  
15 mind before you hear everything and the case is released  
16 to you for deliberation.

17 It's your solemn responsibility to determine the  
18 guilt or the innocence of this defendant who is presumed  
19 innocent throughout the entire trial and your verdict  
20 must be based solely on the evidence as it is presented  
21 to you in the trial.

22 In a moment the solicitor who in some other states  
23 is called the district attorney or prosecutor is going to  
24 make what is called an opening statement and explain to  
25 you a roadmap of what she thinks the issues are in this

1 case. She'll have a chance to come back and argue to you  
2 later. But the opening statement, it's not really  
3 argument. It's not supposed to be argument. But it's  
4 just what they think you need to listen out for facts  
5 wise. Defense counsel may choose to present an opening  
6 statement if she wishes or she may defer that and choose  
7 not to do so.

8 Also during the trial you'll hear objections. An  
9 attorney may say, I object; or, Judge, we have a matter  
10 of law to take up with the Court.

11 Please don't hold that against them. They aren't  
12 trying to keep anything from you, but the rules of  
13 evidence require, just like you all are the judges of the  
14 facts, I am the judge of the law and I have to make  
15 certain rulings as they bring them up.

16 And at times, although we try to limit this, I'll  
17 send you all out of the courtroom if it sounds like we  
18 may have a more extensive matter of law to put on the  
19 record. So again, if the attorneys object they are just  
20 doing their job for the State and for their client and to  
21 protect their record in the event that another court were  
22 to have to consider this down the line.

23 The evidence will be presented to you by sworn  
24 witnesses from the jury box and it's up to you solely to  
25 determine who is believable, who is credible and what you

1 you find convincing in the case. I have no role at all  
2 in weighing the credibility of witnesses. That is solely  
3 your province.

4 And I'll tell you more about this at the end but  
5 you apply your good common sense to that and consider  
6 when you see a witness on the stand whether that witness  
7 might have a personal bias, whether that witnesses was in  
8 a position to be able to see, hear, or understand, or  
9 even experience what they are saying they saw, heard or  
10 understood.

11 You apply your good common sense to that and you  
12 have a right to consider anything that's in the record in  
13 the court to help you evaluate the testimony of the  
14 witnesses. That means it's your duty pay close attention  
15 to them to observe them and to watch how they answer a  
16 question because often how a witness responds is every  
17 bit as important as what the witness actually says.

18 To that end, I will allow you all to take notes.  
19 They have some note pads that they will pass out to you.  
20 These are solely for your reference, you're not trying to  
21 take down everything every witness says. And, in fact, I  
22 ask that you don't let the note taking interfere with  
23 your ability to observe the demeanor of the witness and  
24 how they come across to you because you're going to be  
25 the ones that have to evaluate their credibility later.

1           If anyone needs a break at any time, we usually go  
2 about an hour and a half before we take a break; however,  
3 sometimes we gauge that by what's going on in court, what  
4 the order of the witnesses is. I try not to break during  
5 a witness's testimony if possible but sometimes some  
6 witnesses are longer and we need a break.

7           If at any time you need a break, please raise your  
8 hand if it's not during our regular break. I don't want  
9 you all to be uncomfortable. We're not trying to torture  
10 you all. And quite honestly, if you are uncomfortable  
11 and need a break you can't give these parties your full  
12 attention. So don't be upset about that.

13           The same goes for everyone here. If somebody needs  
14 a break you just need to let us know.

15           With that -- and thank you for correcting me  
16 earlier. Are there any other objections to the opening  
17 comments as given to the jury?

18           MS. GORDON: None from the State, Your Honor.

19           THE COURT: Anything from the defense?

20           MS. FORD: No, Your Honor.

21           THE COURT: Thank you. Okay. Then I will call on  
22 Ms. Gordon to give the opening statement of the State.

23           I'm not sure if they got sworn earlier. Can we do  
24 that out of an abundance of caution.

25           (WHEREUPON, the jury was given their oath.)

CHILD

DIRECT BY MS. GORDON

35

1 a break.

2 MS. GORDON: May we approach?

3 THE COURT: You may.

4 (WHEREUPON, a bench conference was had.)

5 MS. GORDON: The State calls CHILD

6 THE COURT: Come on up, sweetheart. Have a seat in  
7 this chair and she's going to ask you some questions,  
8 okay?

9 CHILD after having been duly sworn,  
10 testified as follows:

11 THE COURT: CHILD remember what we talked about  
12 before about I want you to talk in the microphone for me  
13 so that I can hear you.

14 THE WITNESS: Yes.

15 THE COURT: Thank you. I appreciate that. She's  
16 typing down everything you say, okay?

17 THE WITNESS: Yes, ma'am.

18 THE COURT: Thank you.

19 DIRECT EXAMINATION

20 BY MS. GORDON:

21 Q. Good afternoon, CHILD CHILD can you tell us how  
22 old you are?

23 A. Five.

24 Q. CHILD where do you go to school?

25 A. Kindergarten.

CHILD

- DIRECT BY MS. GORDON

36

1 Q. You are in kindergarten? And what's your mom's  
2 name?

3 A. April.

4 Q. And what's your dad's name?

5 A. Pierre.

6 Q. Do you have any brothers or sisters?

7 A. I have two brothers. I have a stepbrother, and I  
8 have my oldest brother, and I have my stepbrother,  
9 Isaiah. And I'm having a baby sister in my mom's tummy  
10 and she's still born.

11 Q. She's not born yet?

12 A. Huh?

13 Q. Your baby sister is not born yet?

14 A. No, ma'am.

15 Q. Is she going to be here really soon?

16 A. Yes.

17 Q. Yes. You said that you have two brothers and one  
18 of them is a stepbrother, and then your older brother.

19 What is your brother's name?

20 A. Junior and Isaiah.

21 Q. Junior and Isaiah.

22 CHILD I'm going to ask you a few questions about  
23 the difference between a truth and a lie, okay?

24 A. (Nodded).

25 Q. CHILD if I said that I had on a red shirt would I

- 1 be telling the truth or a lie?
- 2 A. A lie.
- 3 Q. Because I have on a blue shirt?
- 4 A. No.
- 5 Q. Can you see the color of my shirt? You may not be  
6 able to see it.
- 7 A. Oh, yeah.
- 8 Q. If I said that I had blonde hair, am I telling the  
9 truth or a lie?
- 10 A. The truth.
- 11 Q. And I'm going to ask you to only tell the truth  
12 today. Can you do that for me?
- 13 A. Yes, ma'am.
- 14 Q. When you tell the truth is it okay to make up  
15 facts, to make up things to add to your story?
- 16 A. No.
- 17 Q. And will you promise not to make up anything today?
- 18 A. No.
- 19 Q. Can you promise not make up anything?
- 20 A. No.
- 21 Q. Let me ask it a different way because I'm bad at  
22 asking this. Will you promise only to tell what really  
23 happened?
- 24 A. Yes.
- 25 Q. Okay. I shouldn't use double negatives.

CHILD

- DIRECT BY MS. GORDON

38

1 CHILD I want to talk to you about Kenneth. Do you  
2 know who Kenneth is?

3 A. Yes.

4 Q. From where you are can you see Kenneth?

5 A. (Pointed).

6 MS. GORDON: May the record reflect that the victim  
7 has pointed out Kenneth Gahagan.

8 THE COURT: It so reflects.

9 BY MS. GORDON:

10 Q. CHILD did Kenneth used to live at your house or  
11 live with you and your mom?

12 A. Yes.

13 Q. Do you know why Kenneth stopped staying at your  
14 house?

15 A. Yes.

16 Q. Why did Kenneth stop staying at your house?

17 A. Because he put his private on my bottom.

18 Q. When Kenneth did that where were you?

19 A. In my mom's room.

20 Q. And was somebody else in the room with you?

21 A. My brother Junior.

22 Q. What was Junior doing?

23 A. He was sleeping.

24 Q. Okay. And were you sitting in the bed, or laying  
25 in the bed, or what were you doing?

- 1 A. I was laying in the bed.
- 2 Q. And how were you laying?
- 3 A. Laying on my tummy.
- 4 Q. Did you have clothes on?
- 5 A. Yes.
- 6 Q. What kind of clothes did you have on?
- 7 A. My bed clothes.
- 8 Q. What kind of things do you sleep in for your bed
- 9 clothes?
- 10 A. I have a tank top and drawers.
- 11 Q. Panties?
- 12 A. (Nodded).
- 13 Q. Did Kenneth touch any part of your clothes?
- 14 A. He pulled my panties down.
- 15 Q. Did any part of Kenneth's body touch any part of
- 16 your body?
- 17 A. My bottom.
- 18 Q. And what part of Kenneth's body touched your
- 19 bottom?
- 20 A. His pee pee.
- 21 Q. Now, CHILD I'm going to --
- 22 MS. GORDON: If the Court will allow, I'm going to
- 23 just give her a little doll for her to explain what
- 24 happened.
- 25 Q. CHILD I'm just going to give you this little doll.

1 and can you show me if any part of Kenneth's body moved  
2 when he touched your bottom?

3 A. (Indicated with doll).

4 Q. I don't know if you can -- **CHILD** I'm going to ask  
5 you to stand up for me, if you can. Can you come up over  
6 here so the jury can see.

7 (The witness stepped down from the witness stand.)

8 Q. Can you show me what Kenneth's body did when it  
9 touched your bottom?

10 A. (Indicated with doll).

11 Q. Is what you're pointing to, is that the part of his  
12 body that touched you?

13 A. (Nodded).

14 Q. Okay. And did his body move?

15 A. (Nodded).

16 Q. Can you show us how it moved.

17 A. (Indicated with doll).

18 Q. Okay. I'm going to let you sit back down, okay.

19 (The witness returned to the witness stand.)

20 Q. **CHILD** did you say anything to Kenneth when this  
21 happened?

22 A. Uh-uh.

23 Q. Why not?

24 A. (Made a noise).

25 Q. You don't know? What was Junior doing?

- 1 A. Sleeping.
- 2 Q. Did Junior wake up?
- 3 A. Uh-uh.
- 4 Q. Well, how do you know it was Kenneth?
- 5 A. I peek.
- 6 Q. When you peeked what do you mean you peeked? Can
- 7 you show me how you peeked?
- 8 A. (Indicated).
- 9 Q. What you are showing now, is that how you were
- 10 laying down?
- 11 A. With the doll baby?
- 12 Q. You can show me however it's easiest for you.
- 13 A. (Indicated with doll).
- 14 Q. So you were laying on your tummy?
- 15 A. Uh-huh.
- 16 Q. And you just kind of lifted your head up and
- 17 peeked?
- 18 A. (Nodded).
- 19 Q. Were your hands up like this?
- 20 A. Like this (indicated).
- 21 THE COURT: Let the record reflect that her hands
- 22 were flat down on the surface.
- 23 Q. Are you showing us now exactly how you did it? Can
- 24 you show me like right there?
- 25 A. (Indicated).

- 1 Q. Now show me how you peeked.
- 2 A. Like this (indicated).
- 3 Q. Are you peeking now?
- 4 A. (Nodded).
- 5 Q. Are you peeking? And you could see --
- 6 THE COURT: Could you see, sweetheart? Can you say
- 7 yes or no for me.
- 8 A. Yes.
- 9 THE COURT: Thank you, sweetie.
- 10 BY MS. GORDON:
- 11 Q. How did it feel when Kenneth put his pee pee on
- 12 your butt?
- 13 A. It hurt.
- 14 Q. When Kenneth stopped what did he do then?
- 15 A. He went in the back in the living room.
- 16 Q. Do you know where your mom was at that time?
- 17 A. At work.
- 18 Q. Did you tell your mom?
- 19 A. I told my dad.
- 20 Q. You told your dad. And after you told your dad did
- 21 you have to go talk to somebody and tell them again what
- 22 happened?
- 23 A. The doctor.
- 24 Q. The doctor. And did you see -- did you have to get
- 25 like a medical examine and get examined by a doctor, too?

1 A. (Nodded).

2 MS. GORDON: Court's indulgence.

3 (PAUSE)

4 MS. GORDON: No further questions at this time.

5 THE COURT: Thank you.

6 Ms. Ford?

7 MS. FORD: Thank you, Your Honor. May it please

8 the Court.

9 CROSS-EXAMINATION

10 BY MS. FORD:

11 Q. Hi, CHILD

12 A. Hi.

13 Q. As I mentioned before, my name is Ms. Mary, okay?

14 A. (Nodded).

15 Q. And I'm going to ask you questions, and if you

16 don't understand something I say then you can tell me

17 that, okay?

18 A. Okay.

19 Q. CHILD Kenneth, he was your mom's boyfriend?

20 A. Yes.

21 Q. Yes. They weren't together, they weren't a couple

22 very long though, right?

23 A. No.

24 Q. No. And your mom's had other boyfriends, too,

25 right?

- 1 A. Uh-uh.
- 2 Q. No? Does she have a boyfriend right now?
- 3 A. No.
- 4 Q. Okay.
- 5 A. She don't want one.
- 6 Q. You also, you're not the only person who lived in
- 7 the house with your mom, right?
- 8 A. Uh-uh. No.
- 9 Q. Your brother was there, too?
- 10 A. Yes.
- 11 Q. Pierre Junior?
- 12 A. Yes.
- 13 Q. And what about Brandi? Brandi lived there, too,
- 14 didn't she?
- 15 A. Yes.
- 16 Q. And then Brandi had some kids, too, right?
- 17 A. She had one girl.
- 18 Q. Okay. So sometimes you all were all there, right?
- 19 A. Uh-huh.
- 20 Q. And your mommy, I don't know what her job is right
- 21 now but back a couple of years ago sometimes she worked
- 22 at night, right?
- 23 A. Yes.
- 24 Q. And so when she was working at night you and Pierre
- 25 would sleep in her bed, right?

CHILD

CROSS BY MS. FORD

45

- 1 A. Yes.
- 2 Q. And that's where you were the night that this event  
3 supposedly happened, right?
- 4 A. Uh-huh.
- 5 Q. Okay. CHILD I want to go over some more about  
6 what you were telling us about when Kenneth put his pee  
7 pee on your butt, okay?
- 8 A. Okay.
- 9 Q. Do you remember -- you know Ms. Elizabeth asked you  
10 if you went and talked to people about this after you  
11 told your dad?
- 12 A. Yes.
- 13 Q. Do you remember talking to Ms. LeAnn Gardner?
- 14 A. Yes.
- 15 Q. Okay. And you told her about what happened, right?
- 16 A. Uh-huh.
- 17 Q. And she asked you all kinds of questions, right?
- 18 A. Yes.
- 19 Q. And she asked you about your age?
- 20 A. Yes.
- 21 Q. Who lived in your house?
- 22 A. Yes.
- 23 Q. And she also talked about touches, right?
- 24 A. Yes.
- 25 Q. Because sometimes touches are good, right?

1 A. Yes.

2 Q. Like hugs from your mom, that's a good touch,  
3 right?

4 A. (Nodded).

5 Q. And she also asked you to go over what you called  
6 body parts, right?

7 A. Yes.

8 Q. Do you remember she showed you a picture of a boy,  
9 and a girl?

10 A. Yes.

11 Q. Okay. And she asked you what you call your private  
12 parts, right?

13 A. Yes.

14 Q. And tu tu is what you called it, right?

15 A. (Nodded).

16 Q. And she asked you about if anybody had touched you  
17 in your private parts, right?

18 A. Yes.

19 Q. She asked about your tu tu, right?

20 A. Yes.

21 Q. And she asked about your butt? Do you remember  
22 that?

23 A. (Nodded).

24 Q. Okay. And do you remember how at first you told  
25 her no, that nobody had touched you there?

- 1 A. Uh-uh.
- 2 Q. You don't remember telling her that?
- 3 A. (Shook head).
- 4 Q. Do you remember telling her -- she asked you why
- 5 you were there, right?
- 6 A. Yes.
- 7 Q. And didn't you tell her you were there because your
- 8 mom said that Kenneth put his pee pee on your butt?
- 9 A. I didn't say that.
- 10 Q. You don't remember?
- 11 A. (Shook head).
- 12 Q. That's okay if you don't remember. You can tell
- 13 us, okay?
- 14 A. (Nodded).
- 15 Q. But you did end up telling her that Kenneth put his
- 16 pee pee on your butt, right?
- 17 A. Yes.
- 18 Q. Okay. And you told her that you were sleeping?
- 19 A. I was fake sleeping.
- 20 Q. You were sleeping?
- 21 A. I was fake.
- 22 Q. Okay. You were fake sleeping. Okay. But you
- 23 didn't tell her that you were fake sleeping, did you?
- 24 A. (Shook head).
- 25 Q. No?

1 A. I told her.

2 Q. You told Ms. Elizabeth, but when you spoke to  
3 Ms. LeAnn you just said you were sleeping, right?

4 A. (Nodded).

5 Q. Okay. And do you remember telling her that you  
6 never woke up?

7 A. (Shook head).

8 Q. You don't remember that? Okay.

9 CHILD you told us how you knew it was Kenneth  
10 because you peeked, right?

11 A. (Nodded).

12 Q. But do you remember how you didn't tell that to  
13 Ms. LeAnn?

14 A. (Shook head).

15 Q. You don't remember that?

16 THE COURT: Stop one second.

17 Sweetheart, will you talk out loud for me so I can  
18 hear you?

19 THE WITNESS: Yes.

20 THE COURT: Thank you, sweetie. I appreciate it.

21 Yes, ma'am.

22 BY MS. FORD:

23 Q. And you told Ms. LeAnn that you never actually saw  
24 Kenneth?

25 A. I waked up.

1 Q. Okay. But you didn't -- if you don't remember  
2 that's okay, but you told her you never woke up, right?

3 A. (Nodded).

4 Q. That's what you -- is that a yes, that's what you  
5 told her, sweetie, or --

6 A. Yes.

7 Q. Okay. And if I'm confusing you, remember I said if  
8 you don't understand something you can tell me. But if I  
9 am making things difficult for you to understand you can  
10 tell me that too, okay?

11 A. Okay.

12 Q. Okay. You told us today that Kenneth took your  
13 panties off?

14 A. Yes.

15 Q. Okay. Do you remember when you talked to Ms. LeAnn  
16 you told her that your panties were on the whole time?

17 A. Uh-huh, and he pull it down.

18 Q. Okay. But you didn't tell that to Ms. LeAnn  
19 though, right? Or you don't remember?

20 A. I don't remember.

21 Q. Okay. And you told us all today that it hurt,  
22 right?

23 A. Yes.

24 Q. Okay. And you told Ms. LeAnn that it hurt too,  
25 right?

- 1 A. Yes.
- 2 Q. But when she first asked you how did it feel you  
3 told her, I don't know. Right?
- 4 A. (Nodded).
- 5 Q. Yes?
- 6 A. (There was no response).
- 7 Q. But then she kept asking you the same questions  
8 over and over, didn't she?
- 9 A. Yes.
- 10 Q. Okay. CHILD when -- you know, you told us that  
11 Kenneth put his pee pee in your butt. You didn't cry,  
12 right?
- 13 A. No.
- 14 Q. No. Okay. And you didn't scream out?
- 15 A. No.
- 16 Q. And he never said anything to you, right?
- 17 A. Uh-uh.
- 18 Q. Okay. So he didn't tell you to be quiet or  
19 anything?
- 20 A. No. I didn't talk.
- 21 Q. Okay. I want to talk a little about when you went  
22 to speak to Ms. LeAnn, okay?
- 23 A. Yes.
- 24 Q. She told you that she was there to make sure that  
25 you are safe, right?

- 1 A. Yes.
- 2 Q. But before you talked to her, you know before you  
3 went to that place, you talked to several -- to more than  
4 one -- you talked to several people about what happened  
5 with Kenneth, right?
- 6 A. Yes.
- 7 Q. You talked to your dad?
- 8 A. Yes.
- 9 Q. And you talked to your mom, right?
- 10 A. Yes.
- 11 Q. And how about your grandma? Did you talk to your  
12 grandma, too?
- 13 A. No.
- 14 Q. No. Just your mom and dad?
- 15 A. Yes.
- 16 Q. And you knew that the police were called too,  
17 right?
- 18 A. Yes.
- 19 Q. Now, when you went and talked to Ms. LeAnn and  
20 remember you were in that room?
- 21 A. Yes.
- 22 Q. Do you remember how she showed you a camera?
- 23 A. Yes.
- 24 Q. You were pretty bored, weren't you?
- 25 A. Yes.

- 1 Q. Yes? You were trying to draw on the board  
2 sometimes, right?
- 3 A. Yes.
- 4 Q. But sometimes she told you to stop drawing on the  
5 board, right?
- 6 A. Yes.
- 7 Q. Okay. You were also trying to do -- you like  
8 gymnastics, like rolling around and playing?
- 9 A. Yes.
- 10 Q. And you were trying to do gymnastics that day,  
11 weren't you?
- 12 A. I can't remember.
- 13 Q. Okay. That's fine. You also, when you were  
14 talking to Ms. LeAnn, you wanted to talk to your mommy,  
15 didn't you?
- 16 A. (Nodded).
- 17 Q. And didn't you ask Ms. LeAnn if you could talk to  
18 you mommy?
- 19 A. (Shook head).
- 20 Q. You didn't? You don't remember that?
- 21 A. (Shook head).
- 22 Q. Okay. And --
- 23 MS. FORD: Beg the Court's indulgence?
- 24 THE COURT: Certainly.
- 25 BY MS. FORD:

1 Q. CHILD I don't have any more questions for you,  
2 okay?

3 A. Okay.

4 THE COURT: Thank you.

5 Any redirect, Ms. Gordon?

6 MS. GORDON: No, Your Honor.

7 THE COURT: Thank you.

8 CHILD you may step down. Thank you.

9 Ladies and gentlemen, I have a brief matter of law  
10 to take up in my other case, but it will not take long.  
11 I just need to bring the attorneys in. But I think now  
12 is a good time for about a 10 minute break anyway. Let's  
13 take a 10 minute break and we'll see you back in just a  
14 minute.

15 (WHEREUPON, the jury leaves the courtroom at  
16 approximately 2:38 p.m., and a brief recess was taken.)

17 THE COURT: Yes, ma'am. If you'd bring the jury.  
18 Thank you.

19 (WHEREUPON, the jury enters the courtroom at  
20 approximately 3:15 p.m.)

21 Thank you, ladies and gentlemen. I appreciate your  
22 patience.

23 Ms. Gordon, if you'll call your next witness.

24 MS. GORDON: The State calls Pierre Nelson, Sr.

25 THE COURT: Sir, if you'll come forward and be

1 sworn, please.

2 PIERRE NELSON, SR., after having been duly  
3 sworn, testified as follows:

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

6 THE WITNESS: Pierre Nelson, N-e-l-s-o-n.

7 DIRECT EXAMINATION

8 BY MS. GORDON:

9 Q. Pierre, how old are you?

10 A. Twenty-seven.

11 Q. And where do you work?

12 A. At Pegasus Steel.

13 Q. What's that called again?

14 A. Pegasus Steel.

15 Q. Pegasus Steel. And did you work last night?

16 A. Yes.

17 Q. What time did you work last night?

18 A. From 10 o'clock until about 7:30 this morning.

19 Q. And have you been here all day?

20 A. Yes.

21 Q. Are you going back to work tonight?

22 A. Yes.

23 Q. Have you had any sleep yet?

24 A. No.

25 Q. We'll try to get you out of here as soon as we can.

- 1 I apologize.
- 2 I want to talk to you a little bit about your  
3 children. How many children do you have?
- 4 A. Three.
- 5 Q. What are their names?
- 6 A. **CHILD** Junior and Isaiah.
- 7 Q. And **CHILD** and Junior, are April Brandi -- I mean,  
8 Sandra April Brown is their mother?
- 9 A. Yes.
- 10 Q. And how long were you and April together?
- 11 A. Roughly about five years.
- 12 Q. And then Isaiah, is that your girlfriend Brooke's  
13 child?
- 14 A. Yes.
- 15 Q. And you're helping raise that child?
- 16 A. Yes.
- 17 Q. And how long have you and Brooke been together?
- 18 A. About four years.
- 19 Q. Since you and April split up have you guys shared  
20 parenting responsibilities of the two children?
- 21 A. Yes.
- 22 Q. Do you all get along for that purpose?
- 23 A. Yes.
- 24 Q. Did you all come here today together?
- 25 A. Yes.

1 Q. Do you remember when Sandra -- or April, you call  
2 her April?

3 A. Yes.

4 Q. Do you remember when April lived over on

HOME  
ADDRESS

5 HOME  
ADDRESS

6 A. Yes.

7 Q. Who lived with her there?

8 A. Brandi, Junior, CHILD and I believe Brandi's  
9 children. From my understanding Kenneth, also.

10 Q. Now, how often did the children stay at your house?

11 A. About two times -- about two weeks out of the  
12 month. It was about half and half.

13 Q. Had you ever met Kenneth Gahagan?

14 A. No.

15 Q. Had you heard of him?

16 A. Yes.

17 Q. How had you heard of him?

18 A. Through the children.

19 Q. So you knew that he was around?

20 A. Yes, ma'am.

21 Q. I want to turn your attention to the night back in  
22 April of 2010, April the 12th, the night that CHILD came  
23 to you and told you something happened. Do you remember  
24 that night?

25 A. Yes, ma'am.

- 1 Q. Tell me what you were doing.
- 2 A. Laying on the couch watching TV.
- 3 Q. And where was **CHILD**?
- 4 A. Laying with me.
- 5 Q. Do you remember where Junior was?
- 6 A. Inside the bedroom.
- 7 Q. Now, you cannot tell me exactly what **CHILD** said.
- 8 You are limited to where and when something occurred.
- 9 Did **CHILD** tell you that she had been sexually assaulted?
- 10 A. Yes, ma'am.
- 11 Q. Did she tell you where it had happened?
- 12 A. Yes, ma'am.
- 13 Q. Where did she say it happened?
- 14 A. At her mom's house.
- 15 Q. Did she tell you when it happened?
- 16 A. Yes, ma'am.
- 17 Q. When did she say it happened?
- 18 A. When her mom was at work.
- 19 Q. What was your reaction when **CHILD** told you that?
- 20 A. Couldn't believe it. I got up and walked to the
- 21 back, the back room.
- 22 Q. Into a back room?
- 23 A. Yes.
- 24 Q. Why did you walk into a back room?
- 25 A. I had to get away from her for a second, to clear

1 my mind, get my thoughts together and let off a little  
2 bit of emotions.

3 Q. What did you do in that back room?

4 A. I went and cried.

5 Q. And why didn't you want **CHILD** to see that?

6 A. I didn't want her to feel that she did something  
7 wrong or didn't want her to feel bad about what she told  
8 me.

9 Q. And was Brooke at home at that point?

10 A. No, ma'am.

11 Q. Where was Brooke?

12 A. Brooke was at work.

13 Q. She's a waitress?

14 A. Yes.

15 Q. And she works at the same place now that she did  
16 then?

17 A. Yes, ma'am.

18 Q. And she generally works the evening shift, dinner  
19 shift?

20 A. Yes, ma'am.

21 Q. Okay. Do you know about what time this was? Was  
22 it in the middle of the afternoon or in the evening?

23 A. It was in the evening.

24 Q. What did you do at that point?

25 A. After I came back out the back I got **CHILD** I held

1 her, and I asked her like 10 more times what did she say,  
2 what happened.

3 Q. And did she ever change her story?

4 A. No. She kept the story the same every time.

5 Q. When she said this to you had you -- was this  
6 prompted by you asking her something?

7 A. No.

8 Q. Had you asked her in the past?

9 A. Yes, just to, like -- I'll ask her if anyone hit  
10 her, touch her, like at the playground or at school or  
11 just wherever she goes at. Every now and then I ask her,  
12 and just to let her know that she can come talk to me  
13 about anything.

14 Q. And what did you tell her this night after she told  
15 you what Kenneth did?

16 A. I told her, Good job. I told her don't ever be  
17 afraid to talk to me no matter what it is, how you feel  
18 about it. You always come talk to me.

19 Q. Did you call the police that night?

20 A. No, ma'am.

21 Q. Why not?

22 A. I wanted to wait and talk to her mom, and it was  
23 just so -- just so crazy.

24 Q. Did you all go to the police the next morning?

25 A. Yes, ma'am.

1 Q. And did you see Brooke that night?

2 A. Yes, ma'am.

3 Q. What time did Brooke get home, or how did you get  
4 in touch with Brooke?

5 A. I picked her up from work.

6 Q. And did the children go with you?

7 A. Yes, ma'am.

8 Q. Tell me where the children were and how you all got  
9 there.

10 A. I took the kids out the room, put them in the car.  
11 We drove to go pick Brooke up from work, and she drove  
12 back home because by that point, by the time I had her I  
13 just -- my mind was just gone. So Brooke drove us back  
14 home.

15 Q. Could she tell something was wrong?

16 A. Yes, ma'am.

17 Q. After you reported this to the police did  
18 have to have a medical exam?

19 A. Yes, ma'am.

20 Q. And did you take her for that exam?

21 A. Yes, ma'am.

22 Q. And did you also take her for a forensic interview?

23 A. Yes, ma'am.

24 Q. And I forgot to ask about what time was it when you  
25 went to get Brooke?

1 A. About maybe 10:30, 11 o'clock, somewhere around  
2 there. Eleven, 11:30, somewhere around there.

3 MS. GORDON: Court's indulgence.

4 THE COURT: Yes.

5 MS. GORDON: No further questions at this time.

6 THE COURT: Thank you.

7 Yes, ma'am?

8 MS. FORD: May it please the Court.

9 CROSS-EXAMINATION

10 BY MS. FORD:

11 Q. Mr. Nelson, so you've told us that you and April  
12 shared custody of **CHILD** right?

13 A. Yes.

14 Q. And that was about half and half?

15 A. Yes, ma'am.

16 Q. So there was a lot of time when she was not under  
17 your care, correct?

18 A. Yes, ma'am.

19 Q. And you cannot control what went on in April's  
20 house during the time that April had custody of **CHILD**  
21 right?

22 A. No.

23 Q. And the kids -- you told us how the kids told you  
24 that Kenneth -- that April was dating Kenneth, correct?

25 A. Yes.

- 1 Q. But they hadn't been together very long, to your  
2 understanding, correct?
- 3 A. No, ma'am.
- 4 Q. And you were actually -- you were concerned about  
5 the people that April brought in her house, weren't you?
- 6 A. As far as people, I trust her as a mother. But, I  
7 mean, of course I'm concerned about any person any place  
8 my child was.
- 9 Q. But you were concerned about her bringing various  
10 men into the house, weren't you?
- 11 A. No, I wouldn't say that.
- 12 Q. You weren't concerned about that? Do you remember  
13 when -- you told us that you took April to -- I'm sorry.  
14 You took **CHILD** to the Lowcountry Children's Center,  
15 right?
- 16 A. Yes, ma'am.
- 17 Q. As part of that process they talked to you too,  
18 correct?
- 19 A. Yes, ma'am.
- 20 Q. And you gave them some information, and you told  
21 them that April has lot of men in and out of the house?
- 22 A. No. I never said that.
- 23 Q. You never told them that?
- 24 A. No.
- 25 Q. When --

- 1 A. I said she has relationships with a good bit of men,  
2 but not as far as inside her house. I only knew of two  
3 men that she had inside the house.
- 4 Q. And one was Kenneth?
- 5 A. Yes.
- 6 Q. Who she had only been with a short amount of time?
- 7 A. Yes, ma'am.
- 8 Q. So when **CHILD** would come to your house from her  
9 mom's you would ask her about her stay at her mom's,  
10 wouldn't you?
- 11 A. Yeah.
- 12 Q. And you would check her to see if there were any  
13 scrapes and bruises, so-to-speak?
- 14 A. Yeah.
- 15 Q. And part of your job as a dad, and she was only  
16 three years old, was to give her baths, right?
- 17 A. Yes.
- 18 Q. And during that time you all would talk during her  
19 baths, correct?
- 20 A. Yes.
- 21 Q. And at that time you would ask her about being  
22 touched, right?
- 23 A. Sometimes.
- 24 Q. Sometimes?
- 25 A. Not every time I wash her off I don't ask her if

1 she was touched.

2 Q. Would you say that you would regularly ask **CHILD**  
3 about being touched?

4 A. Not regularly.

5 Q. Do you remember taking to Detective Avila?

6 A. Yes.

7 Q. And you told her that you regularly asked **CHILD**  
8 about being touched?

9 A. Not regularly as every time I wash her off. I  
10 mean, every now and then, yeah, I ask her. I don't make  
11 it a -- you know.

12 Q. Okay. And you would also check -- you would  
13 physically examine her as well, correct?

14 A. Yes.

15 Q. You would check her vagina to see if anything  
16 looked out of the ordinary, wouldn't you?

17 A. Yes.

18 Q. And you would check her anus to see if anything  
19 looked out of the ordinary?

20 A. Yes.

21 Q. You told us how **CHILD** revealed to you that she was  
22 sexually assaulted?

23 A. Yes, ma'am.

24 Q. Is it fair to say that she did not say, Daddy, I  
25 was sexually assaulted?

1 A. Of course not. And, yes, but not in those exact  
2 words. She was three years old.

3 Q. Right. But she did not say sexually assaulted.  
4 That was your interpretation of what she said to you,  
5 right?

6 A. No. That's what she said to me but not in those  
7 exact words.

8 Q. Right. So saying that she was sexually assaulted,  
9 that was the interpretation you took from the words that  
10 she told you?

11 A. Yes.

12 Q. Okay. And you told us that you were watching TV?

13 A. Yes, ma'am.

14 Q. You don't remember what you were watching on TV  
15 now, right, do you?

16 A. No.

17 Q. And you didn't remember -- Detective Avila asked  
18 you that about that as well, didn't she?

19 A. Yes.

20 Q. And you didn't remember back then either?

21 A. No.

22 Q. You told us how you ended up telling -- or you  
23 ended up telling your family members about this  
24 disclosure, right?

25 A. I told my mom, yes.

1 Q. You told your mom. Your mom was upset, correct?

2 A. Yes.

3 Q. And she went to April's house to confront April?

4 A. Yes.

5 Q. And there was an altercation?

6 A. So I heard.

7 MS. FORD: Beg the Court's indulgence.

8 THE COURT: Certainly.

9 (PAUSE)

10 MS. FORD: No further questions, Your Honor.

11 THE COURT: Yes, ma'am, any redirect?

12 MS. GORDON: Sure.

13 REDIRECT EXAMINATION

14 BY MS. GORDON:

15 Q. Kenneth, what did **CHILD** tell you happened?

16 MS. FORD: Objection. Hearsay.

17 THE COURT: Sustained.

18 BY MS. GORDON:

19 Q. Kenneth -- Pierre. I'm sorry. I called you  
20 Kenneth. Pierre, was -- based on what **CHILD** told you  
21 that night was there any other conclusion to be drawn  
22 than what had happened to her was a sexual assault?

23 A. No, ma'am.

24 MS. GORDON: Thank you. I have nothing further.

25 MS. FORD: Your Honor, briefly?

1 THE COURT: Yes.

2 RECROSS-EXAMINATION

3 BY MS. FORD:

4 Q. When you went to the police to report this you had  
5 indicated to them that you did not know if there had been  
6 penetration, correct?

7 MS. GORDON: Objection, Your Honor. This is beyond  
8 the scope --

9 THE COURT: It is, under Rule 611. Thank you.

10 MS. FORD: Well --

11 THE COURT: You may approach, if you like.

12 (WHEREUPON, the following bench conference was  
13 reported.)

14 THE COURT: Just to protect you all I like  
15 everything on the record.

16 MS. FORD: She had asked if there was any doubt in  
17 his mind that there was a sexual assault.

18 THE COURT: Based on what she told him.

19 MS. FORD: Yes, and so that is going to sexual  
20 assault penetration.

21 THE COURT: Okay. It's close but I think that's  
22 beyond the scope under Rule 611.

23 MS. FORD: Okay.

24 THE COURT: So thank you.

25 (WHEREUPON, the bench conference was concluded.)

SANDRA "APRIL" BROWN - DIRECT BY MS. GORDON 68

1 THE COURT: Call your next witness, please.

2 MS. GORDON: The State calls Sandra Brown.

3 THE COURT: Oh, I'm sorry, sir. You may step down  
4 and you may be excused.

5 Come forward and be sworn, please.

6 SANDRA BROWN, after having been duly sworn,  
7 testified as follows:

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

10 THE WITNESS: My name is Sandra Brown. My last  
11 name is spelled B-r-o-w-n.

12 DIRECT EXAMINATION

13 BY MS. GORDON:

14 Q. Sandra, do you have a nickname?

15 A. April.

16 Q. And is that what most people call you?

17 A. Yes.

18 Q. April, where do you live now?

19 A. With my aunt on **HOME ADDRESS**

20 Q. And at one point did you used to live in North  
21 Charleston?

22 A. Yes.

23 Q. Okay. And you lived there with Brandi?

24 A. Yes.

25 Q. And that was somewhere off of **HOME ADDRESS** is

- 1 that correct?
- 2 A. Yes.
- 3 Q. And that exact address I believe was [REDACTED] HOME ADDRESS
- 4 [REDACTED] HOME ADDRESS
- 5 A. Yes.
- 6 Q. Is that in the County of Charleston?
- 7 A. Yes.
- 8 Q. Who else stayed at that apartment?
- 9 A. It was me; [REDACTED] CHILD Pierre, my son, [REDACTED] CHILD
- 10 Junior; Brandi and her daughter; and Kenneth.
- 11 Q. Kenneth Cahagan?
- 12 A. Yeah.
- 13 Q. Tell me how you met Kenneth.
- 14 A. Working at a gas -- at a Hess gas station.
- 15 Q. And who worked there first, you or him?
- 16 A. Me.
- 17 Q. And then at some point he came to work there?
- 18 A. Yes.
- 19 Q. And would this have been back in the early months
- 20 of 2010?
- 21 A. Yes.
- 22 Q. At some point did you and Kenneth establish a
- 23 romantic relationship?
- 24 A. Yes.
- 25 Q. Did Kenneth ever kind of move into your apartment?

SANDRA "APRIL" BROWN - DIRECT BY MS. GORDON 70

- 1 A. I mean, he stayed there from time to time but,  
2 yeah, I guess. Yes.
- 3 Q. Did he spend the night there?
- 4 A. Yes.
- 5 Q. Did he ever spend the night there when you weren't  
6 there?
- 7 A. Yes.
- 8 Q. What time did you usually work?
- 9 A. 11:00 p.m. to 7:00 a.m.
- 10 Q. And when you were at work was there occasions when  
11 Kenneth would have been left there with your children?
- 12 A. No. Brandi was there.
- 13 Q. Would Kenneth be there, too?
- 14 A. Yes.
- 15 Q. How long had you known Kenneth by the time you  
16 found out what happened with **CHILD**
- 17 A. A few months.
- 18 Q. Do you remember the night when you found out what  
19 **CHILD** said?
- 20 A. Yes.
- 21 Q. Tell me how you found out.
- 22 A. I believe it was like two, three o'clock in the  
23 morning. Brandi was there. Her daughter was there. The  
24 children were with Pierre, and Kenneth and I were in the  
25 room sleeping. And then I heard a knock on the window

1 and then I opened the door and went outside. It was  
2 Pierre's mom. She came in the house, and she said -- she  
3 just started screaming and saying how could I let Kenneth  
4 do that to **CHILD**. And I was shocked.

5 Q. What was your reaction?

6 A. I was shocked. I didn't know what was going on.  
7 Like, I didn't know what she was talking about.

8 Q. Is that something you want to think about happening  
9 to your child?

10 A. No.

11 Q. Did you ever talk to **CHILD** about what happened?

12 A. Yes.

13 Q. And, again, you're limited in what you can say.  
14 You can't say exactly what she told you but you can say  
15 whether or not what she described to you. Did she  
16 describe a sexual assault?

17 A. Yes.

18 Q. And did she tell you where it happened?

19 A. Yes.

20 Q. Where did she say it happened?

21 A. In the room. In my room.

22 Q. And did she say when it happened?

23 A. Yes.

24 Q. When did she say it happened?

25 A. When I was at work.

SANDRA "APRIL" BROWN - DIRECT BY MS. GORDON 72

- 1 Q. Now, she says in your room. How many bedrooms were  
2 there in that apartment?
- 3 A. Two.
- 4 Q. And what kind of bed was in your room?
- 5 A. A queen size bed.
- 6 Q. And was it uncommon for the children, **CHILD** and  
7 Junior, Pierre Junior, for them to sleep in your bed  
8 while you were at work?
- 9 A. You say was it common?
- 10 Q. Yes. Was that common?
- 11 A. Yes.
- 12 Q. And Brandi and her daughter, Peggy, where did they  
13 sleep?
- 14 A. They slept in my children's room.
- 15 Q. And where would Kenneth sleep if you were at work?
- 16 A. On the couch.
- 17 Q. Is that couch in the living room?
- 18 A. Yes.
- 19 Q. What time did the children usually go to bed?
- 20 A. Nine. Eight, nine.
- 21 Q. Has **CHILD** ever said anybody else touched her that  
22 way?
- 23 A. No.
- 24 MS. GORDON: Thank you. I have no further  
25 questions.

1 THE COURT: Thank you.

2 Yes, ma'am?

3 MS. FORD: Thank you. Yes, Your Honor. May it  
4 please the Court.

5 CROSS-EXAMINATION

6 BY MS. FORD:

7 Q. Hi, Ms. Brown.

8 A. Hi.

9 Q. When this all came about -- or came out, you had  
10 not been dating Kenneth very long, correct?

11 A. Correct.

12 Q. This was in the middle of April?

13 A. March, April, correct.

14 Q. And you all had been dating since March?

15 A. Correct.

16 Q. So you told us that the kids would often stay in  
17 your bedroom together, when you were working?

18 A. Right.

19 Q. Where would they stay when you were not at work?

20 A. They would sometimes sleep in their room or if  
21 Brandi wasn't there they would sleep in their room, and  
22 then there were two couches in the living room. They  
23 would sleep in the living room.

24 Q. You told us you first found out about this when  
25 Pierre's mom came over to your house, correct?

- 1 A. Right.
- 2 Q. Is it fair to say that she was pretty upset?
- 3 A. Correct.
- 4 Q. And you actually called a police officer out there,
- 5 didn't you?
- 6 A. Correct.
- 7 Q. Because Pierre's mom actually attacked you?
- 8 A. Correct.
- 9 Q. And she tried to strangle you?
- 10 A. Correct.
- 11 Q. And she threw a chair at you?
- 12 A. Correct.
- 13 Q. Ms. Brown, it was your understanding -- or was it
- 14 your understanding that when **CHILD** would go to Pierre's
- 15 house he would physically examine her?
- 16 A. Correct.
- 17 Q. And he would check her anus?
- 18 A. Yes.
- 19 Q. And vagina?
- 20 A. Yes.
- 21 Q. And you thought this was strange?
- 22 A. No.
- 23 Q. No? Do you remember taking to Ms. Gardner at the
- 24 Lowcountry Children's Center?
- 25 A. Yes.

1 Q. And you told her about this, that he checks her?

2 A. Yes.

3 Q. And you told her that you thought it was strange?

4 A. I don't remember.

5 Q. Okay. Ms. Brown, DSS was called because of this  
6 incident, is that correct?

7 A. No.

8 Q. Detective Avila never mentioned DSS to you?

9 A. No.

10 Q. When this came out Pierre was not happy with you,  
11 correct?

12 A. Correct.

13 Q. Because you didn't actually believe **CHILD** at first?

14 A. No, I didn't want to believe that it happened, but  
15 I always believed that what she said was true.

16 Q. And again, you're saying Detective Avila never  
17 mentioned DSS to you?

18 A. Nothing, no.

19 MS. FORD: Beg the Court's indulgence.

20 THE COURT: Yes.

21 (PAUSE)

22 MS. FORD: No further questions at this time, Your  
23 Honor.

24 THE COURT: Thank you, ma'am.

25 Yes, ma'am?

## BRANDI WHITE - DIRECT BY MS. GORDON

76

1 MS. GORDON: We ask that this witness be excused.

2 THE COURT: Thank you.

3 Ma'am, you may step down and be excused. Thank  
4 you.

5 MS. GORDON: The State calls Brandi White.

6 THE COURT: Ma'am, if you'd come forward and be  
7 sworn, please. Thank you.

8 BRANDI WHITE, after having been duly sworn,  
9 testified as follows:

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

12 THE WITNESS: Brandi White, W-h-i-t-e.

13 DIRECT EXAMINATION

14 BY MS. GORDON:

15 Q. Brandi, I hope that we'll be fairly short here  
16 today. Just a few questions for you. Did you previously  
17 live with April Brown at an apartment on **HOME ADDRESS**

18 in **HOME ADDRESS**

19 A. Yes.

20 Q. And during that time did she at some point begin a  
21 relationship with Kenneth Gahagan?

22 A. Yes.

23 Q. Did you ever know Kenneth to spend the night at the  
24 house?

25 A. Yes.

- 1 Q. And how often after they started seeing each other  
2 did he spent the night?
- 3 A. Often.
- 4 Q. Was he there even when she wasn't there?
- 5 A. Yes.
- 6 Q. When did April work?
- 7 A. 11:00 p.m. to 7:00 a.m., generally.
- 8 Q. And were there ever times when he would stay there  
9 and the children be there but April not be there at  
10 night?
- 11 A. Yeah, sometimes.
- 12 Q. Where would he sleep if April was at work and the  
13 children were there?
- 14 A. It depends. The couch or sometimes the bedroom, or  
15 just depends on where everybody else was sleeping.
- 16 Q. Where did the children usually sleep when April was  
17 at work?
- 18 A. In her bed.
- 19 Q. And what was the room that you slept in?
- 20 A. The kids' room.
- 21 Q. And so when you moved in that kind of became your  
22 room?
- 23 A. Yes.
- 24 Q. Were you there the night that Pierre's mom and  
25 Brooke came over?

- 1 A. Yes.
- 2 Q. What kind of night was that?
- 3 A. Crazy.
- 4 Q. What time of night was it?
- 5 A. I think it was like after midnight. One o'clock,  
6 two o'clock in the morning. It was late.
- 7 Q. And were Pierre's mom and Brooke, were they very  
8 upset?
- 9 A. Yes. Yes.
- 10 Q. Did Pierre's mom, like, try to choke --
- 11 A. Yes.
- 12 Q. -- April?
- 13 A. Yes.
- 14 Q. What did you think?
- 15 A. At first I didn't understand what was going on.  
16 You know, she wasn't very clear at first but...
- 17 Q. Were they kind of hysterical at that point?
- 18 A. Yeah. Yeah.
- 19 Q. Did you ever talk to **CHILD** about what happened?
- 20 A. No.
- 21 Q. Had **CHILD** ever said anything like this before?
- 22 A. No.
- 23 Q. Has she ever said anything to you like that since?
- 24 A. No. I didn't have any contact with her.
- 25 MS. GORDON: I have no further questions, Your

1 Honor.

2 THE COURT: Thank you.

3 Ms. Ford?

4 MS. FORD: Thank you, Your Honor. May it please  
5 the Court.

6 CROSS-EXAMINATION

7 BY MS. FORD:

8 Q. Ms. White, if you -- when April was at work if you  
9 were at home, her kids were there at the same time, if  
10 you had heard **CHILD** scream out in pain would you have  
11 gone to see what was the matter?

12 A. Yes.

13 Q. Was there ever a time that you heard her screaming  
14 out for help --

15 A. No.

16 Q. -- or in pain?

17 MS. FORD: No further questions.

18 THE COURT: Thank you.

19 Any redirect?

20 MS. GORDON: No, Your Honor. We ask that this  
21 witness be excused.

22 THE COURT: Thank you, ma'am. You may step down  
23 and be excused.

24 MS. GORDON: Your Honor, may I have, like, not even  
25 five minutes, like two minutes?

1 THE COURT: You may.

2 Anybody need a break? You all okay?

3 (There was no response.)

4 MS. GORDON: The State's ready, Your Honor.

5 THE COURT: Yes, ma'am.

6 MS. GORDON: The State calls Rita Avila.

7 THE COURT: Ms. Avila, if you would come forward  
8 and be sworn, please. Thank you.

9 RITA AVILA, after having been duly sworn,  
10 testified as follows:

11 THE CLERK: State your full name and spell your  
12 last name.

13 THE WITNESS: Rita Avila, A-v-i-l-a.

14 DIRECT EXAMINATION

15 BY MS. GORDON:

16 Q. It's Sergeant Avila now; is that correct?

17 A. Correct.

18 Q. Sergeant Avila, how long have you been with the  
19 Charleston County Sheriff's Office?

20 A. Just under nine years.

21 Q. And what is your position there now?

22 A. Currently I'm the sergeant or supervisor of our  
23 special victims unit which investigates law crimes  
24 against children, all sexual assault and physical or  
25 sexual abuse against the vulnerable adults.

1 MS. FORD: Yes, ma'am.

2 THE COURT: Thanks.

3 (WHEREUPON, the jury enters the courtroom at  
4 approximately 2:10 p.m.)

5 THE BAILIFF: All seated, Your Honor.

6 THE COURT: Thank you, sir.

7 Thank you, ladies and gentlemen. I hope you all  
8 had a nice lunch. We are ready to continue with the  
9 trial.

10 Ms. Gordon, call your next witness, please.

11 MS. GORDON: Thank you, Your Honor. The State  
12 calls Brooke Cumbee.

13 THE COURT: Thank you, ma'am. If you would come  
14 forward and please be sworn.

15 BROOKE CUMBEE, after having been duly sworn,  
16 testified as follows:

17 THE CLERK: State your full name and spell you last  
18 name.

19 THE WITNESS: My name is Brooke Cumbee. My last  
20 name is C-u-m-b-e-e.

21 DIRECT EXAMINATION

22 BY MS. GORDON:

23 Q. Brooke, how are you doing?

24 A. Good. Thank you.

25 Q. Brooke, where do you live?

1 A. Summerville.

2 THE COURT: Hang on one second, ma'am. I'm going  
3 to ask you to pull that microphone just a little bit  
4 closer. Thank you. She has to type everything. Thank  
5 you.

6 BY MS. GORDON:

7 Q. Brooke, I know you are pretty soft spoken, so if  
8 you can just make sure everybody can hear you.

9 A. Okay.

10 Q. I know it's hard. You're not used to talking in a  
11 courtroom to a group of people.

12 You said you live in Summerville?

13 A. Yes.

14 Q. And are you in a relationship with Pierre Nelson?

15 A. Yes.

16 Q. How long have you two been together?

17 A. About four years.

18 Q. And you all live together?

19 A. Correct.

20 Q. Do his children -- does **CHILD** does she live with  
21 you most of the time?

22 A. Yes.

23 Q. And then does she also spends time with her -- at  
24 her mom's house?

25 A. Every weekend.

- 1 Q. How is the relationship between April, **CHILD**'s mom,  
2 and Pierre? Do they get along?
- 3 A. Pretty much, yes. They have disagreements but they  
4 get along pretty much.
- 5 Q. And did you all come to court together yesterday?
- 6 A. Yes.
- 7 Q. And when it comes to **CHILD** are they able to work  
8 custody and visitation?
- 9 A. Yes.
- 10 Q. And do they talk to each other?
- 11 A. Yes.
- 12 Q. I want to turn your attention back to April of 2010  
13 when everything came out about what happened to **CHILD**  
14 Where were you, to your knowledge, when Pierre found out?
- 15 A. I was at work.
- 16 Q. And how did you find out?
- 17 A. I was on my break and I called him and he told me  
18 what **CHILD** --
- 19 Q. What **CHILD** had told him?
- 20 A. Told him.
- 21 Q. What time did you get off that night, if you  
22 remember?
- 23 A. 10:30, because I closed.
- 24 Q. And did Pierre come and pick you up from work that  
25 night?

- 1 A. Yes.
- 2 Q. Who was with him?
- 3 A. My son, Isaiah, CHILD and Junior, Pierre.
- 4 Q. And were they in the backseat of the car?
- 5 A. Correct.
- 6 Q. How was Pierre when he got to the restaurant to
- 7 pick you up from work?
- 8 A. Distraught. He was a little upset.
- 9 Q. Did that change anything about the way you all got
- 10 home?
- 11 A. No.
- 12 Q. Who drove home?
- 13 A. I drove home.
- 14 Q. Why did you drive?
- 15 A. Because I could see that he was upset about it or
- 16 disturbed about it.
- 17 Q. When you got home what did you guys do?
- 18 A. We put the kids in the bed and we sat at the
- 19 kitchen table and talked about what CHILD said to him
- 20 and --
- 21 Q. Did he try to leave the house?
- 22 A. He did so. He went and was talking to his mother
- 23 on the phone in the bathroom and I took the keys and
- 24 left.
- 25 Q. Why didn't you want him to leave?

- 1 A. Because I know he was very upset.
- 2 Q. But you said so when he went into the bathroom you  
3 took the keys then you left. Where were you going?
- 4 A. I got on the phone with his mother. His mother  
5 said she was on the way over to April's house. So I was  
6 going over there to make sure that nothing, you know --
- 7 Q. You all were going to confront confront April and  
8 Kenneth?
- 9 A. Correct.
- 10 Q. So what time was it when you all arrived to April's  
11 house?
- 12 A. I'm not sure of the exact time but I know it was  
13 pretty late, maybe 11:30, 12:00.
- 14 Q. Middle of the night?
- 15 A. Middle of the night, correct.
- 16 Q. When you all got there was there a confrontation?
- 17 A. There was.
- 18 Q. Were you all upset?
- 19 A. Yes.
- 20 Q. Would April have been totally caught off guard by  
21 you coming into her house in the middle of the night?
- 22 A. Yes, she would.
- 23 Q. Despite that confrontation and what went on that  
24 night, and the reaction from April and Kenneth in the  
25 house did April go with you to the police?

- 1 A. No, she didn't.
- 2 Q. Did she -- once you all had gone to -- and when did  
3 you all go to the police?
- 4 A. The next day. The next day.
- 5 Q. So you and -- or at least Pierre talked to the  
6 police the next day?
- 7 A. Correct.
- 8 Q. April didn't talk to the police that day?
- 9 A. No.
- 10 Q. At some point after you talked to the police they  
11 set up an interview, a forensic interview for **CHILD**
- 12 A. Correct.
- 13 Q. And a medical exam?
- 14 A. Correct.
- 15 Q. By that time was April more understanding of the  
16 situation?
- 17 A. Yes.
- 18 Q. Did she go with you all to the medical exam?
- 19 A. Yes.
- 20 Q. Who all went to that? Who all showed up to the  
21 appointment?
- 22 A. April, me and Pierre.
- 23 Q. And **CHILD**
- 24 A. And **CHILD**
- 25 Q. And was that the same place that you had the

1 forensic interview?

2 A. Yes.

3 Q. How did this affect Pierre?

4 MS. FORD: Objection, relevance.

5 MS. GORDON: May we approach, Your Honor?

6 THE COURT: You may.

7 (WHEREUPON, the following bench conference was  
8 reported.)

9 MS. GORDON: Your Honor, the relevance is that they  
10 have suggested that Pierre -- this is what Pierre wanted  
11 and that Pierre has put this in the child's mind. So his  
12 reaction and how it affected him is relevant to whether  
13 or not this was something he was wanting to happen.

14 THE COURT: I'm not sure about that but --

15 MS. FORD: Yeah, I didn't suggest it was what he  
16 wanted. I suggested that it was what he had been  
17 expecting because he constantly asked about it.

18 THE COURT: I'm going to sustain the objection.  
19 You can rephrase it.

20 MS. GORDON: Okay.

21 THE COURT: And try to go elsewhere with it. Thank  
22 you.

23 (WHEREUPON, the bench conference was concluded.)

24 THE COURT: Objection is sustained.

25 BY MS. GORDON:

1 Q. Do you recall how long [CHILD] had been at your --  
2 how long it had been since [CHILD] had been to April's  
3 house when this disclosure came out?

4 A. Repeat it again.

5 Q. How many days -- like, I understand it's kind of a  
6 loose custody arrangement. They work that out?

7 A. She wasn't there for about maybe a day or two.

8 Q. So she had been there a couple of days or so?

9 A. Yeah.

10 Q. Did you know Kenneth?

11 A. I've seen him there but I've never met Kenneth.

12 Like picking up the kids I've seen him outside the house  
13 or whatnot. We've never spoken to each other.

14 MS. GORDON: Okay. Nothing further.

15 THE COURT: Thank you. Cross-examination?

16 MS. FORD: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. FORD:

19 Q. Hi, Ms. Cumbee. You told us that you went over to  
20 April's house the night you found out about everything?

21 A. Yes.

22 Q. And Pierre's mom was there?

23 A. Correct.

24 Q. And there was a confrontation between them?

25 A. Correct.

- 1 Q. Kenneth was there too that evening, right?
- 2 A. Yes.
- 3 Q. But Pierre's mom, she attacked April, didn't she?
- 4 A. No. She confronted her.
- 5 Q. So she didn't try to choke her?
- 6 A. No. She never put her hands on her.
- 7 Q. Okay. She never threw a chair at her?
- 8 A. No.
- 9 Q. But she was mad at April, wasn't she?
- 10 A. She was.
- 11 Q. And Pierre was mad at April too when this all came
- 12 out, right?
- 13 A. We were all upset about the situation, yes.
- 14 Q. But he was actually mad at April though, right?
- 15 A. This happened at her house. So we were upset that
- 16 the this happened at her house.
- 17 Q. Right, but did he kind of blame April?
- 18 MS. GORDON: Objection, Your Honor, speculation.
- 19 THE COURT: Sustained.
- 20 BY MS. FORD:
- 21 Q. Are you saying he was not mad at April over this?
- 22 A. He was upset that it happened around her
- 23 supervision at her house.
- 24 Q. You mentioned today that -- just to clarify. I'm
- 25 not sure if I heard this right. Does **CHILD** live with you

1 all during the week and her mom during the weekend?

2 A. Prior to -- yes. Now she lives with us during the

3 week and she goes to her mother's house on the weekend.

4 Before that she wasn't in school so we had a loose

5 arrangement because she went to daycare so, you know --

6 but she lives with us and is going to school now.

7 Q. So the time this happened it was more like 50, 50?

8 Is that fair to say?

9 A. Yes.

10 Q. So when did it start when you all got her

11 primarily, most of the time?

12 A. K-4. So a year or so ago.

13 MS. FORD: Beg the Court's indulgence.

14 (PAUSE)

15 MS. FORD: No further questions, Your Honor.

16 THE COURT: Thank you.

17 Yes, ma'am?

18 MS. GORDON: Just a few.

19 REDIRECT EXAMINATION

20 BY MS. GORDON:

21 Q. Can you tell me why the custody arrangement

22 changed? Or not the custody arrangement but why **CHILD**

23 stays all week with you now versus when you all used to

24 switch off like a week at a time?

25 A. Pierre just wanted his daughter with him.

- 1 Q. Was it when she started going to school?
- 2 A. It's school too, yes.
- 3 Q. Where does she go to school?
- 4 A. Sangre Elementary.
- 5 Q. Is that close to where you live?
- 6 A. Correct.
- 7 Q. And who takes her to school each morning?
- 8 A. Between me and -- Pierre mostly takes her to
- 9 school.
- 10 Q. Is that very close to where her mother lives, where
- 11 April lives?
- 12 A. No.
- 13 Q. Would that be a long drive from where April lives?
- 14 A. Yes.
- 15 Q. April still sees her almost every weekend?
- 16 A. Every weekend.
- 17 Q. And does she get to talk to her?
- 18 A. Yes. She calls and they talk to each other.
- 19 Q. Was Pierre upset at Kenneth?
- 20 A. Yes.
- 21 MS. GORDON: Nothing further.
- 22 THE COURT: Thank you. Ma'am, you may step down
- 23 and be excused, if there's no objection.
- 24 MS. GORDON: No objection from the State, Your
- 25 Honor.

TRACY W. HALASZ - DIRECT BY MS. GORDON 170

1 THE COURT: Thank you.

2 MS. GORDON: The State calls Tracy Williams Halasz.

3 THE COURT: Thank you, ma'am. If you'd come

4 forward and be sworn, please.

5 TRACY WILLIAMS Halasz, after having been  
6 duly sworn, testified as follows:

7 THE CLERK: State your full name and spell your  
8 last.

9 THE WITNESS: Tracy Williams Halasz, H-a-l-a-s-z.

10 DIRECT EXAMINATION

11 BY MS. GORDON:

12 Q. Good morning, Ms. Halasz. How are you?

13 A. I'm fine. How are you?

14 Q. Where do you work?

15 A. I work for the Medical University of South Carolina  
16 in the Department of Pediatrics with their Violence  
17 Intervention and Prevention Division.

18 Q. And what is your position in that department?

19 A. I'm a pediatric nurse practitioner.

20 Q. How long have you been a nurse practitioner?

21 A. Since 2007.

22 Q. And have you always been a nurse practitioner at

23 M. U. S. C.?

24 A. No. I also worked as a registered nurse, since

25 2003.

1 Q. So prior to being a nurse practitioner you were an  
2 R. N.?

3 A. Correct.

4 Q. And since you've been a nurse practitioner has your  
5 entire career as nurse practitioner been at the Medical  
6 University?

7 A. Yes.

8 Q. As part of your duties at M. U. S. C. do you  
9 perform the forensic medical examines on children who  
10 have a suspected sexual abuse?

11 A. Yes. I perform forensic medical exams on children  
12 of all suspicions of abuse, whether it be physical abuse,  
13 sexual abuse, physical neglect, medical neglect.

14 Q. And approximately how many exams have you performed  
15 on children?

16 A. Probably close to a thousand.

17 Q. Have you ever testified in a court in the area of  
18 child abuse pediatrics?

19 A. I have.

20 Q. How many times have you testified?

21 A. I believe four times.

22 MS. GORDON: Your Honor, at this time we would  
23 offer Ms. Halasz as an expert in the area of child abuse  
24 pediatrics.

25 MS. FORD: No objection, Your Honor.

1 THE COURT: The witness is so qualified.

2 BY MS. GORDON:

3 Q. Ms. Halasz, as part of your duties did you have an  
4 occasion to perform an exam on **CHILD**

5 A. I did.

6 Q. When did you perform that exam?

7 A. I believe it was April 23rd, 2010.

8 Q. And as part of your exam do you need a history of  
9 kind of what happened?

10 A. Yes. Often I obtain a history together to kind of  
11 determine how to proceed with my medical exam.

12 Q. Did you obtain that history from the child in this  
13 case?

14 A. I did not.

15 Q. Why not?

16 A. It's not unusual for me not to obtain a history  
17 from a child. Often most kids I see typically will have  
18 what's called a forensic interview prior to medical,  
19 their exam. One of the goals at one of the nonprofit  
20 children's centers that I do medical exams is to not keep  
21 questioning a child over and over regarding an alleged  
22 incident, not to have to have them to keep repeating  
23 their story.

24 So **CHILD** had had a medical -- a forensic interview  
25 prior to the medical exam so I didn't obtain any history

1 from her. And often I gather information from the  
2 caregiver that is there with the child as well as any  
3 information from the referral source.

4 Q. As part of the history do you determine whether  
5 this exam will be acute versus nonacute?

6 A. Yes.

7 Q. What does that mean?

8 A. In particular for sexual abuse exams there are two  
9 types of exams we do. One is called an acute and the  
10 other is nonacute. Acute exam is an exam that we are  
11 seeing the patient within 72 hours of the alleged  
12 incident. With that exam we do a full head to toe check  
13 of the body, a physical exam. We look in their eyes,  
14 ears, nose, mouth, listen to heart and lungs, as well as  
15 we also assess the body for any type of injury as well as  
16 any infection, but specifically with this type of exam  
17 we're looking for any kind of forensic evidence.

18 By that I mean like any D. N. A., any saliva, any  
19 semen. We swab their mouth. We swab their genital area,  
20 often their anal area, anywhere on their body where there  
21 would be concern of any D. N. A. evidence.

22 Q. And if been if it's been more than 72 hours do you  
23 still do all of that?

24 A. No. That's a nonacute exam.

25 Q. And why don't you still do it for a nonacute exam?

1 A. Typically after 72 hours most kids have bathed,  
2 they've washed, they've gone to the bathroom, they've  
3 changed clothes; so the likelihood that there's any  
4 D. N. A. evidence, and semen, and saliva, anything like  
5 that is very low. So typically after 72 hours we don't  
6 swab for those things.

7 Q. Were you able to determine in this case if it had  
8 been longer than 72 hours since the last contact with the  
9 alleged offender?

10 A. Yes. Given the history that I had taken from the  
11 caregiver there with the child the alleged incident would  
12 have occurred prior to April 16th and I was seeing her on  
13 the 23rd. So close to -- I think that's like five or  
14 seven days afterwards I was seeing her.

15 Q. Would a nonacute exam also affect whether or not  
16 you would expect to see injuries to a child?

17 A. Yes. Yes, it would affect that.

18 Q. And how would that affect your exam?

19 A. Tissue -- when we're looking specifically for  
20 injury in your genital area or anal area tissue there is  
21 kind of like inside of your mouth. You can bite the  
22 inside of your cheek and not cause an injury or you can  
23 bite the inside of your cheek and you can cause one.

24 If you think about like if you eat a hot piece of  
25 pizza or a hot piece of food, typically you bite into it

1 and you burn the roof of your mouth and usually about a  
2 day or two it's healed. That's what the tissue is kind  
3 of like in your genital area. So usually after a few  
4 days if there was an injury you typically won't be able  
5 to see it.

6 Q. What were the results of **CHILD**'s exam?

7 A. She had a normal anal, genital exam and normal  
8 general physical exam.

9 Q. And is it possible to have a normal exam and this  
10 child have been sexually abused more than 72 hours ago?

11 A. Yes, it is.

12 Q. Is it possible to have a normal exam and the child  
13 been sexually abused less than 72 hours?

14 A. Yes, it would as well.

15 Q. How is that possible?

16 A. Again, just like as far as the tissue you can have  
17 an injury and it can be healed as if -- you know, if I'm  
18 seeing her after 72 hours, it's been after a couple days  
19 you wouldn't necessarily expect to see an injury. But  
20 also one of common misconceptions just with your anatomy  
21 of your genitalia or your anal area -- can I draw this  
22 out?

23 MS. GORDON: Your Honor, may she use the board for  
24 drawing?

25 THE COURT: Yes, she may.

1 A. Is that okay?

2 THE COURT: That's fine. Sure.

3 BY MS. GORDON:

4 Q. You were explaining the misconceptions about the  
5 genitalia area.

6 A. And I'd like to draw a picture. I'm not an artist  
7 so I'm just going to disclose that.

8 So on the female, this is kind of the way I'm  
9 explaining. So if this is legs here this would be her  
10 buttocks here with the butthole right here (indicated).  
11 This is your urethra where you pee from, basically, and  
12 then right here would be your vaginal opening  
13 (indicated). And this is not drawn to scale either.

14 So one of the common misconceptions with female  
15 genitalia and often we get parents that, you know, they  
16 bring children in and they want us to examine their child  
17 and see if they've been sexually active. You can't  
18 actually look at someone and tell that.

19 One of the common misconceptions is that your  
20 hymen, that is the tissue that covers this whole area  
21 right here, the vaginal opening, and it actually doesn't.  
22 I'm going to draw it here. This is this right here  
23 (indicated). It actually, your hymen, is tissue that  
24 just surrounds the edges right here, okay (indicated).  
25 And there's different shapes. Hers was, I think

1 specifically annular, or we can have another shape that's  
2 like --

3 Q. What does annular mean?

4 A. Kind of like a circle. And then you can have  
5 crescentic that kind of looks like a crescent moon here  
6 (indicated). But the tissue here is the tissue that  
7 surrounds here so when I'm examining I'm looking at all  
8 this stuff, but specifically the tissue, the hymen tissue  
9 here (indicated).

10 And when we look is we look for, like, what we call  
11 interruptions or tears, and that's the area around all  
12 this area right here is kind of like what I described  
13 what the inside of your cheek is (indicated). It can  
14 heal, you know, within a day or two. So we look for  
15 these areas here.

16 So just this tissue right here and what I usually  
17 tell parents and when I'm talking to caregivers is that  
18 it's very elastic (indicated). It's meant for  
19 vaginal-penile penetration. It's meant to create that  
20 way. There's like a give. There's a little bit of --  
21 it's very forgiving kind of tissue right there.

22 Just like that area, your butthole right here, if I  
23 draw here, this is the center of your butthole  
24 (indicated). You also have kind of have like little  
25 folds right here, and we look at all these tiny little

1 folds (indicated). There's tiny little creases there.

2 And we check all those areas there.

3 And just like big poops can come out, things can go  
4 in your butt as well and not cause an injury. Often even  
5 sometimes you can have stools or poops that are bigger  
6 than the size of an actual penis.

7 Q. Is it possible to tell if someone has had sex  
8 before?

9 A. No. Not necessarily, no. I've examined pregnant  
10 teenagers that I know that they've had sex because they  
11 are pregnant. By looking at their genitalia and looking  
12 at their hymenal tissues you can't tell that they've had  
13 sex.

14 Q. So the popped cherry --

15 A. It's a myth.

16 Q. That's a myth?

17 A. Yes.

18 Q. And is it possible to have had penetration to the  
19 anus and have no injury?

20 A. Yes. Just like I said, just like you can have  
21 large stools that go in you can also have a penis go in  
22 and not cause injury.

23 Q. Was her -- **CHILD**'s exam consistent with the history  
24 given, which was penile penetration to some part of her  
25 genitalia and the buttocks area, anus or vagina with more

1 than 72 hours prior to the --

2 A. Yes. She had a normal exam, and that does exclude  
3 any abuse in the past, given the reasons that I talked  
4 about, just like the skin as far as the quick healing  
5 that you have and the elasticity that can allow for that  
6 and not cause an injury.

7 MS. GORDON: Thank you. I have nothing further.

8 THE COURT: Thank you.

9 Yes, ma'am?

10

CROSS-EXAMINATION

11 BY MS. FORD:

12 Q. You told us that your exam was consistent with --  
13 or could be consistent with the allegation that you knew  
14 you were seeing **CHILD** for, correct?

15 A. Correct.

16 Q. But it's also consistent with nothing having  
17 happened, correct?

18 A. Can you repeat the question?

19 Q. Sure. Your exam, you could not tell -- you cannot  
20 rule out that something happened, correct?

21 A. I couldn't rule out that -- I don't understand your  
22 question. I'm sorry.

23 Q. I'm sorry. You told us that just because you found  
24 nothing that does not mean that something did not happen?

25 A. That doesn't exclude any sexual abuse.

1 Q. Correct.

2 A. Yes.

3 Q. And you said -- Ms. Gordon asked you if that was  
4 consistent with the allegation that something happened  
5 more than 72 hours?

6 A. A normal exam could be consistent with, yes, the  
7 allegations. Yes.

8 Q. But the exam could also be consistent with -- if  
9 nothing had happened. It would be consistent with that  
10 as well?

11 A. A normal exam can exclude sexual abuse as well but  
12 the history wasn't given that there wasn't any allegation  
13 that it happened. I'm confused. I'm not understanding  
14 your question.

15 Q. Basically you can't tell anything?

16 A. I can tell that she had a normal exam and a normal  
17 exam can be consistent with a history of sexual abuse.

18 Q. Right, but you can't tell --

19 A. It's often common to not have any signs of any  
20 injury following a sexual abuse, especially after 72  
21 hours.

22 Q. Right, but you cannot tell us that she was abused?

23 A. By looking just at her exam alone, no, but I don't  
24 look at just her exam alone. I take in all the other  
25 parts of the history when making a medical decision.

1 THE COURT: Let me ask this, since there seems to  
2 be some confusion.

3 THE WITNESS: Okay.

4 THE COURT: The exam itself was, as you said, not  
5 inconsistent with sexual abuse having happened --

6 THE WITNESS: Correct.

7 THE COURT: -- to the child? But it was also not  
8 inconsistent with a finding of no sexual abuse having  
9 happened, correct?

10 THE WITNESS: Correct.

11 THE COURT: And you understand that question?

12 THE WITNESS: Yes.

13 THE COURT: Thank you.

14 MS. FORD: No further questions.

15 MS. GORDON: Nothing further, Your Honor.

16 THE COURT: Thank you.

17 MS. GORDON: We ask that this witness be excused.

18 THE COURT: You may.

19 Call your next witness, please.

20 MS. GORDON: Your Honor, the State rests.

21 THE COURT: Thank you. Do we need to take up  
22 anything or are you ready to proceed with your case?

23 MS. FORD: Your Honor, I do need to take up a  
24 matter.

25 THE COURT: Okay.

1 MS. FORD: Yes, Your Honor.

2 THE COURT: Okay. You want me to send the jury out  
3 to take up a matter of law?

4 MS. FORD: Yes, Your Honor.

5 THE COURT: Ladies and gentlemen, generally at the  
6 end of each party's case we have matters of law that we  
7 need to address, and we will do this at the end of the  
8 defense case as well. So if you will return to your jury  
9 room. Please remember you have not heard all the  
10 evidence in the case yet, do not discuss the case yet.  
11 Thank you.

12 (WHEREUPON, the jury leaves the courtroom at  
13 approximately 2:40 p.m.)

14 THE COURT: Okay. Yes, ma'am?

15 MS. FORD: Your Honor, just at this point I would  
16 have to ask for a directed verdict. That's why I had to  
17 ask the jury to leave. We do not believe there's been  
18 enough evidence that there was in particular any anal  
19 penetration in this case which is what the indictment is  
20 alleging, and so we would ask for a dismissal on the  
21 charges, Your Honor, or a directed verdict.

22 THE COURT: Okay. Ms. Gordon?

23 MS. GORDON: Your Honor, taking the evidence in the  
24 light most favorable to the State the child not only  
25 indicated that it went in her butt but she also

1 demonstrated with the doll, that the defendant moved back  
2 and forth. She also indicated it hurt, all would be  
3 indications that there actually was some amount of  
4 penetration. Your Honor, we would ask to deny the  
5 motion.

6 THE COURT: Okay. Anything further on that?

7 MS. FORD: No, Your Honor.

8 THE COURT: Well, as you all both know, and you all  
9 both have done a great job, I have to be concerned at  
10 this point with the existence or nonexistence of any  
11 evidence not with its weight, and the State has produced  
12 some evidence, some, that will get it past the directed  
13 verdict stage. So I'm going to respectfully deny your  
14 motion on both indictments at this time.

15 MS. GORDON: Thank you, Your Honor.

16 MS. FORD: Yes, ma'am.

17 THE COURT: Despite the last witness's  
18 unwillingness to answer a question that she was clearly  
19 qualified to answer.

20 MS. FORD: Your Honor, my witness is here to  
21 testify. I didn't know if you wanted to go ahead and  
22 question Mr. Gahagan about his testimony. He does not  
23 wish to testify but we thought maybe this would be a good  
24 time.

25 THE COURT: I'm happy to do that.

1 THE COURT: Thank you.

2 Anything further, Ms. Gordon?

3 MS. GORDON: Nothing further from the State, Your  
4 Honor.

5 THE COURT: Ladies and gentlemen, the State and the  
6 defense have rested and at this time we need take up  
7 additional matters of law and also I will work with the  
8 attorneys to get the charge on the law finished. We  
9 almost have that ready for you.

10 So I'm going to excuse you for the day and ask you  
11 to be back at 9:30 in the morning. You'll hear the  
12 closing arguments of the attorneys and the charge on the  
13 law, then the case will be given to you for deliberation.  
14 Again, please do not discuss the case since it has not  
15 been given to you yet, you've not heard closing arguments  
16 and the charge on the law. Thank you. Have a nice  
17 evening.

18 (WHEREUPON, the jury leaves the courtroom at  
19 approximately 4:30 p.m.)

20 THE COURT: Okay. Anything from either side?

21 MS. GORDON: Nothing from the State, Your Honor.

22 MS. FORD: Your Honor, just at this point I would  
23 renew my motion from earlier.

24 THE COURT: Thank you. I appreciate that. And for  
25 the same reasons expressed earlier I will deny that. But

1 I appreciate your argument. Thank you.

2 MS. FORD: Thank you.

3 THE COURT: Okay. If you all want to send me any  
4 other jury charges you want we can come in in the morning  
5 and do that or you all can tell me anything you object to  
6 or want added and I can have that ready for you when you  
7 get here, however you all want to do it.

8 MS. GORDON: Your Honor, to me looking at this this  
9 looks complete. I'll just double check. But I don't  
10 anticipate having any novel law, like nothing that's not  
11 in the bench book.

12 THE COURT: Well, then that's where most of that  
13 came from.

14 Anything?

15 MS. FORD: I can't think of anything.

16 THE COURT: Well, if you all do my e-mail is  
17 smcdonaldj@sccourts.org. And if you'd also copy  
18 smcdonaldlc@sccourts.org. And I'll be here -- the jury  
19 is coming back at 9:30. I'll be back a little before  
20 then. So if you all do e-mail me if you have anything we  
21 need to take up we can do that first thing in the  
22 morning. But you all will be around, I know. Good job  
23 everybody. Thank you all. It was interesting.

24 (WHEREUPON, the trial of this case was recessed for  
25 the day.)

1 on a minor. Thank you.

2 THE COURT: Thank you so much.

3 Ladies and gentlemen of the jury, you've heard the  
4 testimony and evidence, and arguments of the State and  
5 the defendant. I will now explain to you the law that  
6 applies to this case.

7 Under the Constitution and laws of South Carolina,  
8 you are the finders of fact in this case. I do not have  
9 the right to pass upon the facts or even to express any  
10 opinion I might have as to them. This is a matter solely  
11 for you, the jury, to determine. As jurors then it is  
12 your duty to determine the effect, the value, the weight  
13 and the truth of the evidence presented during the trial.

14 As the trial judge it is my responsibility to  
15 preside over the trial of this case and to rule upon or  
16 pass upon the admissibility of the evidence offered  
17 during this trial. You are to consider only the  
18 testimony which has been presented from this witness  
19 stand together with any exhibits which have been made a  
20 part of the record.

21 I have the additional duty to charge you on the law  
22 applicable to this case and as the presiding judge I am  
23 the sole judges of the law of this case. It is your duty  
24 as jurors to accept and apply the law as I now state it  
25 to you and then reach your verdict.

1           Finally, I charge you in this regard that you  
2 should not be concerned with what you think the law ought  
3 to be but with what I charge you that the law is.

4           You are also the judges, the sole judges of the  
5 credibility; that is the believability of the witnesses  
6 who have testified and the evidence in this case.

7           In passing upon the credibility you may take into  
8 consideration many things, such as the demeanor or manner  
9 of testifying, whether or not the witness had reason to  
10 be bias or prejudiced, whether a witness's testimony was  
11 contradicted on the one hand or supported and  
12 corroborated on the other hand.

13           You may believe a small portion of a witness's  
14 testimony and disregard the larger or vice versa. You  
15 may believe one witness against many or many against one.  
16 All of these things you are to consider bearing in mind  
17 you should give the defendant the benefit of any  
18 reasonable doubt. It becomes your duty as jurors to  
19 analyze and evaluate the evidence and determine that  
20 evidence which convinces you of its truth.

21           The rules of evidence ordinarily do not permit  
22 witnesses to testify to opinions or conclusions. An  
23 exception to this rule exists for witnesses we call  
24 expert witnesses. A witness who by education and  
25 experience has become expert in some art, science,

1 profession or calling may state an opinion as to relevant  
2 and material matters in the areas in which that witness  
3 has been qualified as an expert. And such, a witness may  
4 also state any reasons for any such opinions.

5 You should consider an expert opinion received in  
6 evidence in this case and like any other evidence give it  
7 the weight you think it deserves. If you decide that the  
8 opinion of an expert witness is not based on sufficient  
9 education and experience or if you conclude that the  
10 reasons given in support of the opinion are not sound, or  
11 that the opinion is outweighed by other evidence you may  
12 disregard the opinion entirely.

13 An expert witness's testimony is to be given no  
14 greater weight than that of other witnesses simply  
15 because the witness is an expert. Further, you are not  
16 required to accept an expert's opinion even though it is  
17 not contradicted.

18 There are two types of evidence which are generally  
19 presented during a trial; direct evidence and  
20 circumstantial evidence. Direct evidence is the  
21 testimony of a person who claims to have actual knowledge  
22 of a fact, such as an eyewitness. It is evidence which  
23 immediately establishes the main fact to be proved.

24 Circumstantial evidence is proof of a chain of  
25 facts and circumstances including the existence of a

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

5 The fact that the defendant was arrested, charged  
6 and indicted is not evidence in this case and cannot be  
7 considered by you as evidence of guilt in this case, nor  
8 does it create any presumption or inference of guilt.  
9 These indictments are simply the formal written  
10 instruments which contain the charges against the  
11 defendant. An indictment is the formal document by which  
12 this case is brought into court.

13 The indictments in this case allege one count of  
14 criminal sexual conduct with a minor in the first degree  
15 and one count of lewd act upon a minor. Each indictment  
16 charges a separate and distinct offense. You must decide  
17 each indictment separately on the evidence and the law  
18 applicable to it, uninfluenced by your decision as to any  
19 other indictment. The defendant may be convicted or  
20 acquitted on either or both of the offenses charged. You  
21 will be asked to write a separate verdict of guilty or  
22 not guilty for each indictment.

23 The defendant has pled not guilty to the charges in  
24 these indictments and that plea puts the burden on the  
25 State to prove the defendant guilty. A person charged

1 with committing a criminal offense in South Carolina is  
2 never required to prove himself innocent.

3 I charge you that it is an important rule of the  
4 law that the defendant in a criminal trial no matter what  
5 the seriousness of the charge will always be presumed to  
6 be not guilty of the crime for which the indictment was  
7 issued unless guilt has been proven by evidence  
8 satisfying you of that guilt beyond a reasonable doubt.

9 The presumption of innocence does not end when you  
10 begin your deliberations but it accompanies the defendant  
11 throughout the trial until you reach a verdict of guilt  
12 based on evidence satisfying you of that guilt beyond a  
13 reasonable doubt.

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

19 The presumption of innocence is not a mere legal  
20 theory. It is not just a legal phrase. It is a  
21 substantial right to the which every defendant is  
22 entitled unless you, the jury, are satisfied from the  
23 evidence of the defendant's guilty beyond a reasonable  
24 doubt.

25 The State must prove the defendant guilty beyond a

1 reasonable doubt. So what is a reasonable doubt in the  
2 law? A reasonable doubt is a doubt which makes an  
3 honest, sincere, conscientious juror in search of the  
4 truth hesitate to act.

5 Proof beyond a reasonable doubt must therefore be  
6 proof of such a convincing character that a reasonable  
7 person would not hesitate to rely and act upon it in the  
8 most important of his or her own affairs.

9 Proof beyond a reasonable doubt can also be  
10 described as proof that leaves you firmly convinced of  
11 the defendant's guilty. Now, there are very few things  
12 in this world we know with absolute certainty and in  
13 criminal cases the law does not require proof that  
14 overcomes every possible doubt.

15 If based on your consideration of the evidence you  
16 are firmly convinced that the defendant is guilty of the  
17 crimes charged you must find him guilty. If on the other  
18 hand you think there is a real possibility that he is not  
19 guilty you must give him the benefit of the doubt and  
20 find him not guilty.

21 I instruct you and emphasize that the fact that the  
22 defendant did not testify is not a factor to be  
23 considered by you in any way in your deliberations and in  
24 your consideration of the question of the guilt or  
25 innocence of the defendant. It must not be considered by

1 you in any manner whatsoever.

2 A defendant has the constitutional right to remain  
3 silent and the assertion of this right must not be  
4 considered by you in your deliberations. I repeat: under  
5 your oath you are to draw no conclusion whatsoever from  
6 the fact that the defendant in this case did not testify.  
7 The fact that the defendant did not testify should not  
8 even be discussed in the jury room.

9 The burden of proof, as I have stated to you, is on  
10 the State. The defendant is not required to prove his  
11 innocence. The burden of proof remains on the State to  
12 prove guilt beyond a reasonable doubt.

13 The defendant is charged with first degree criminal  
14 sexual conduct with a minor. The State must prove beyond  
15 a reasonable doubt that the defendant engaged in a sexual  
16 battery with the victim.

17 A sexual battery is sexual intercourse,  
18 cunnilingus, fellatio, anal intercourse or any intrusion,  
19 however slight, of any part of a person's body or of an  
20 object into the genital or anal openings of another  
21 person's body except when the intrusion is accomplished  
22 for medically recognized treatment or diagnostic  
23 purposes.

24 The State must then prove beyond a reasonable doubt  
25 that the victim was less than 11 years old at the time of

1 the sexual battery. Consistent, willingness,  
2 indifference or ignorance on the part of the minor, if  
3 any, as to what was taking place does not in any way  
4 affect the charge of criminal sexual conduct with a minor  
5 because an unmarried woman under the age of 14 cannot  
6 legally consent to sexual intercourse.

7 The defendant is charged with committing a lewd act  
8 on a minor. A minor is a person under the age of 18.  
9 The State must first prove beyond a reasonable doubt that  
10 the defendant was over the age of 14.

11 Next, the State must prove that the defendant  
12 willfully and lewdly committed or attempted a lewd or  
13 lascivious act on or with the body parts of a child under  
14 the age of 16 years with the intent to arouse, appeal to  
15 or gratify the lust, passions or sexual desires of the  
16 defendant or the child.

17 Willfully means voluntarily and intentionally with  
18 the specific intent to do something the law forbids.  
19 Lewd means obscene, lustful, indecent or lecherous.  
20 Lascivious means tending to incite lust, lewd, indecent,  
21 obscene or intending to deprave the morals in respect to  
22 sexual relations.

23 You have been selected by both the State and the  
24 defendant to be fair and impartial jurors. It is your  
25 duty then in your joint deliberation to determine the

1 truth in this case giving the defendant the benefit of  
2 every reasonable doubt on each and every issue. And from  
3 the facts which you determine to be true you take and  
4 apply the law which I have just given you and thus arrive  
5 at a verdict which speaks the truth of this case.

6 I will give you a copy of these instructions in  
7 written form. During your deliberations you may refer to  
8 the instructions to guide your decision making. You must  
9 consider the instructions as a whole and not follow some  
10 and ignore others. Please return the instructions to the  
11 Court at the time your verdict is presented.

12 You have heard the evidence and now you have heard  
13 the law. Whatever your verdict your foreperson will  
14 indicate it by checking guilty or not guilty as to each  
15 charge on the verdict form. You will then sign and date  
16 the verdict form. The foreperson will sign and date the  
17 verdict form.

18 Remember that although the foreperson is the only  
19 juror who writes the verdict it is not hers alone. The  
20 verdict has to be a unanimous verdict. Your foreperson  
21 is not authorized to write the verdict until all of you  
22 have agreed as to what the verdict should be.

23 Now, ladies and gentlemen, I am going to send you  
24 to your jury room but do not begin to discuss the case  
25 until you have received a copy of this jury charge, the

1 verdict form and the exhibits. Once you have received  
2 these things that will be your signal to begin your  
3 deliberations.

4       Once you begin your deliberations you will  
5 deliberate until you have reached a verdict, at which  
6 time you will knock on the door, advise the bailiff and  
7 we will bring you out to receive your verdict.

8       We are going to adjourn in just a minute. I will  
9 be sending you the charge, the exhibits and the verdict  
10 form. There is an additional finding that needs to be  
11 made on the verdict form with respect to one of the  
12 indictments. That question will be set forth for you on  
13 the verdict form as well.

14       I believe you selected your foreperson yesterday  
15 but if that's incorrect please make sure to do that  
16 shortly when you adjourn.

17       We're also going to order lunch for you all today,  
18 and I think the order forms will be back there or someone  
19 will bring them to you when you adjourn. Again, please  
20 don't discuss the case until we send this to you and give  
21 you go ahead to deliberate.

22       And if I could get the alternate to stay with me.

23       And I will release the rest of you to the jury  
24 room. I thank you for your kind attention and I know  
25 that all these folks do as well. Thank you.

1 (WHEREUPON, the jury leaves the courtroom at  
2 approximately 10:58 a.m.)

3 THE COURT: Thank you so much.

4 Thank you so much for your attention. You all have  
5 been a wonderful jury. Everyone has paid attention. I  
6 think it has been obvious to everybody. But I am  
7 required by law now to release you, and you are not  
8 permitted to be part of the deliberations.

9 Often we do have to bring in an alternate. We've  
10 been lucky this week that everybody was able to stay in  
11 both of our cases we tried. So I truly thank you for  
12 your time, and have a nice weekend. Thank you.

13 (WHEREUPON, the alternates leave the courtroom.)

14 THE COURT: Okay. Are there any objections to the  
15 instructions as given to the jury?

16 MS. GORDON: None from --

17 THE COURT: Or anything else?

18 MS. GORDON: Nothing from the State, Your Honor.

19 THE COURT: Anything?

20 MS. FORD: No, Your Honor.

21 THE COURT: And we need to -- I had asked you all  
22 yesterday about the specific designation under 16-3-655  
23 that we need to have the jury make because the statute  
24 says, If indicates that a person convicted at trial.

25 I've got the verdict form already set up with the

1 THE COURT: Any objections to the explanation?

2 MS. GORDON: No, Your Honor.

3 MS. FORD: No, Your Honor.

4 THE COURT: And, you know, I don't know if you all  
5 want to try to talk about anything. I don't know if that  
6 tips their hand about what they are looking at here but  
7 I'm in my office in anybody needs me before they come  
8 back with their next question or information to us.  
9 Okay?

10 MS. GORDON: Thank you, Your Honor.

11 (WHEREUPON, the trial was recessed while awaiting a  
12 verdict from the jury.)

13 THE COURT: Ladies and gentlemen, I am told we have  
14 a verdict. Is everybody ready for the jury?

15 MS. GORDON: The State is ready, Your Honor.

16 (WHEREUPON, the jury enters the courtroom at  
17 approximately 4:00 p.m.)

18 THE COURT: Ladies and gentlemen, it's my  
19 understanding that you have reached a verdict. Is that  
20 correct?

21 THE FOREPERSON: Yes, Your Honor.

22 THE COURT: Thank you so much. Yes, sir.

23 THE CLERK: State of South Carolina vs. Kenneth  
24 Thomas Gahagan, on the charge of criminal sexual conduct  
25 with a minor first degree we, the jury, unanimously find

1 the defendant, Kenneth Thomas Gahagan, not guilty.

2 On the charge of a lewd act upon a minor we, the  
3 jury, unanimously find the defendant, Kenneth Thomas  
4 Gahagan, guilty. Signed by the foreperson.

5 Madam forelady, ladies and gentlemen of the jury,  
6 if this is your verdict please raise your right hand.

7 (All hands are raised.)

8 THE COURT: Okay. Anything from the defense?

9 MS. FORD: I would ask that the jury be polled,  
10 Your Honor.

11 THE COURT: Okay. We will poll the jury.

12 (WHEREUPON, the jury was polled, all answering in  
13 the affirmative.)

14 THE CLERK: The jury has been polled and the  
15 verdict stands.

16 THE COURT: Thank you.

17 Anything further at this time?

18 MS. FORD: No, Your Honor.

19 THE COURT: All right. Anything from the State?

20 MS. GORDON: Would you like to hear from the State  
21 on sentencing at this point?

22 THE COURT: I think I'll probably let the jury go  
23 ahead and go, unless you all would like to stay for the  
24 sentencing portion. You all want to stay?

25 Okay. I'm happy to hear from you all on

1 what he wanted me to get across is that, you know, his  
2 wife was present and he just maintains that that was not  
3 sexual. Again, he did not plead to a sexual charge.

4 THE COURT: I understand. Is she here? Does she  
5 wish to speak?

6 MS. FORD: She's in Nevada, Your Honor. They are  
7 no longer -- they're separated.

8 THE COURT: Appreciate that. Anything further?

9 MS. GORDON: Nothing further from the State, Your  
10 Honor. Thank you.

11 THE COURT: Okay. You all obviously put a lot of  
12 care and effort into this case, which I appreciate  
13 because this is a very important case, just like all of  
14 them are, but this one particular involving a child.

15 Your lawyer did an incredible job for you. She did  
16 a very good job. These are difficult cases to even talk  
17 about much less work on. That being said, you have  
18 appellate rights, PCR rights, but the jury has spoken now  
19 and the Court did everything it could to make sure that  
20 you got a fair trial.

21 You were certainly zealously represented, but I do  
22 take this kind of charge very, very seriously. And  
23 sentence is that you be sentenced to a term of 12 years  
24 at the Department of Corrections.

25 I will give you credit for the time served, and

1 that will be the order of the Court. Obviously, you will  
2 have to register as a sex offender pursuant to the  
3 conviction.

4 THE COURT: Anything further?

5 MS. GORDON: Nothing from the State, Your Honor.

6 (WHEREUPON, Court's Exhibit Numbers 3 and 4 were  
7 marked and made a part of the record.)

8 (WHEREUPON, the trial of the case was concluded.)

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STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )  
STATE OF SOUTH CAROLINA )  
vs. )  
KENNETH THOMAS )  
GAHAGAN, )

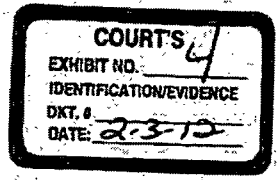
IN THE COURT OF GENERAL SESSIONS  
INDICTMENT NO.: 2011-GS-10-2510  
2011-GS-10-2511

**CHARGE**

LADIES AND GENTLEMEN OF THE JURY, YOU HAVE HEARD THE TESTIMONY, EVIDENCE AND ARGUMENTS OF THE STATE AND THE DEFENDANT. I WILL NOW EXPLAIN TO YOU THE LAW THAT APPLIES TO THIS CASE.

UNDER THE CONSTITUTION AND LAWS OF SOUTH CAROLINA, YOU ARE THE FINDERS OF FACT IN THIS CASE. I DO NOT HAVE THE RIGHT TO PASS UPON THE FACTS OR EVEN TO EXPRESS ANY OPINION I MIGHT HAVE AS TO THEM. THIS IS A MATTER SOLELY FOR YOU, THE JURY, TO DETERMINE. AS JURORS, THEN, IT IS YOUR DUTY TO DETERMINE THE EFFECT, THE VALUE, THE WEIGHT, AND THE TRUTH OF THE EVIDENCE PRESENTED DURING THIS TRIAL.

AS THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE, AND TO RULE UPON OR PASS UPON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THIS TRIAL. YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND, TOGETHER WITH ANY EXHIBITS WHICH HAVE BEEN MADE A PART OF THE RECORD.



I HAVE THE ADDITIONAL DUTY TO CHARGE YOU ON THE LAW APPLICABLE TO THIS CASE, AND AS THE PRESIDING JUDGE, I AM THE SOLE JUDGE OF THE LAW OF THIS CASE. IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO YOU, AND THEN REACH YOUR VERDICT. FINALLY, I CHARGE YOU IN THIS REGARD THAT YOU SHOULD NOT BE CONCERNED WITH WHAT YOU THINK THE LAW OUGHT TO BE, BUT WHAT I CHARGE YOU THE LAW IS.

YOU ARE ALSO THE JUDGES, THE SOLE JUDGES, OF THE CREDIBILITY, THAT IS THE BELIEVABILITY, OF THE WITNESSES WHO HAVE TESTIFIED AND THE EVIDENCE IN THIS CASE. IN PASSING UPON THE CREDIBILITY, YOU MAY TAKE INTO CONSIDERATION MANY THINGS, SUCH AS:

- (1) THE Demeanor, OR MANNER OF TESTIFYING;
- (2) WHETHER THE WITNESS HAD REASON TO BE BIASED OR PREJUDICED;
- (3) WHETHER A WITNESS' TESTIMONY WAS CONTRADICTED, ON THE ONE HAND, OR SUPPORTED AND CORROBORATED, ON THE OTHER HAND.

YOU MAY BELIEVE A SMALL PORTION OF A WITNESS' TESTIMONY AND DISREGARD THE LARGER - OR VICE VERSA. YOU MAY BELIEVE ONE WITNESS AGAINST MANY, OR MANY AGAINST ONE. ALL OF THESE THINGS YOU WILL CONSIDER, BEARING IN MIND THAT YOU SHOULD GIVE THE DEFENDANT THE BENEFIT OF ANY REASONABLE DOUBT. IT BECOMES YOUR DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE EVIDENCE AND DETERMINE THAT EVIDENCE WHICH CONVINCES YOU OF ITS TRUTH.

THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT WITNESSES TO TESTIFY TO OPINIONS OR CONCLUSIONS. AN EXCEPTION TO THIS RULE EXISTS:

FOR WITNESSES WE CALL "EXPERT WITNESSES". A WITNESS WHO, BY EDUCATION AND EXPERIENCE, HAS BECOME EXPERT IN SOME ART, SCIENCE, PROFESSION, OR CALLING MAY STATE AN OPINION AS TO RELEVANT AND MATERIAL MATTERS IN THE AREAS IN WHICH THE WITNESS HAS BEEN QUALIFIED AS AN EXPERT, AND SUCH A WITNESS MAY ALSO STATE THE REASONS FOR ANY SUCH OPINIONS.

YOU SHOULD CONSIDER ANY EXPERT OPINION RECEIVED IN EVIDENCE IN THIS CASE AND, LIKE ANY OTHER EVIDENCE, GIVE IT THE WEIGHT YOU THINK IT DESERVES. IF YOU DECIDE THAT THE OPINION OF AN EXPERT WITNESS IS NOT BASED ON SUFFICIENT EDUCATION AND EXPERIENCE, OR IF YOU CONCLUDE THAT THE REASONS GIVEN IN SUPPORT OF THE OPINION ARE NOT SOUND, OR THAT THE OPINION IS OUTWEIGHED BY OTHER EVIDENCE, YOU MAY DISREGARD THE OPINION ENTIRELY.

AN EXPERT WITNESS'S TESTIMONY IS TO BE GIVEN NO GREATER WEIGHT THAN THAT OF OTHER WITNESSES SIMPLY BECAUSE THE WITNESS IS AN EXPERT. FURTHER, YOU ARE NOT REQUIRED TO ACCEPT AN EXPERT'S OPINION, EVEN THOUGH IT IS NOT CONTRADICTED.

THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL - DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT TO BE PROVED.

CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND

CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL FACTS FROM WHICH THE MAIN FACT MAY BE INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT ON PERSONAL KNOWLEDGE OR OBSERVATION.

THE FACT THAT THE DEFENDANT WAS ARRESTED, CHARGED AND INDICTED IS NOT EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT IN THIS CASE, NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT. THESE INDICTMENTS ARE SIMPLY THE FORMAL WRITTEN INSTRUMENTS WHICH CONTAIN THE CHARGES MADE AGAINST THE DEFENDANT. AN INDICTMENT IS THE FORMAL DOCUMENT BY WHICH THIS CASE IS BROUGHT INTO THIS COURT.

THE INDICTMENTS IN THIS CASE ALLEGE ONE COUNT OF CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE FIRST DEGREE AND ONE COUNT OF LEWD ACT UPON A MINOR.

EACH INDICTMENT CHARGES A SEPARATE AND DISTINCT OFFENSE. YOU MUST DECIDE EACH INDICTMENT SEPARATELY ON THE EVIDENCE AND THE LAW APPLICABLE TO IT, UNINFLUENCED BY YOUR DECISION AS TO ANY OTHER INDICTMENT. THE DEFENDANT MAY BE CONVICTED OR ACQUITTED ON EITHER OR BOTH OF THE OFFENSES CHARGED. YOU WILL BE ASKED TO WRITE A SEPARATE VERDICT OF "GUILTY" OR "NOT GUILTY" FOR EACH INDICTMENT.

THE DEFENDANT HAS PLED NOT GUILTY TO THE CHARGES IN THESE INDICTMENTS, AND THAT PLEA PUTS THE BURDEN ON THE STATE TO PROVE THE DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF INNOCENT.

I CHARGE YOU THAT IT IS AN IMPORTANT RULE OF THE LAW THAT THE DEFENDANT IN A CRIMINAL TRIAL, NO MATTER WHAT THE SERIOUSNESS OF THE CHARGE MAY BE, WILL ALWAYS BE PRESUMED TO BE NOT GUILTY OF THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED UNLESS GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT. THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES THE DEFENDANT THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT OF GUILT BASED ON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE DEFENDANT WHICH REMAINS WITH THE DEFENDANT UNTIL IT HAS BEEN STRIPPED FROM THE DEFENDANT BY EVIDENCE SATISFYING YOU OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS NOT MERE LEGAL THEORY. IT IS NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU, THE JURY, ARE SATISFIED FROM THE EVIDENCE OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

THE STATE MUST PROVE THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. SO, WHAT IS A REASONABLE DOUBT IN THE LAW? A REASONABLE DOUBT IS A DOUBT WHICH MAKES AN HONEST, SINCERE, CONSCIENTIOUS JUROR IN SEARCH OF THE TRUTH IN THE CASE HESITATE TO ACT. PROOF BEYOND A REASONABLE DOUBT MUST THEREFORE BE PROOF OF SUCH A CONVINCING CHARACTER THAT A REASONABLE PERSON WOULD NOT HESITATE

TO RELY AND ACT UPON IT IN THE MOST IMPORTANT OF HIS OR HER OWN AFFAIRS.

PROOF BEYOND A REASONABLE DOUBT CAN ALSO BE DESCRIBED AS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. NOW, THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIMES CHARGED, YOU MUST FIND HIM GUILTY. IF ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT HE IS NOT GUILTY, YOU MUST GIVE HIM THE BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

I INSTRUCT YOU AND EMPHASIZE THAT THE FACT THE DEFENDANT DID NOT TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATION AND IN YOUR CONSIDERATION ON THE QUESTION OF THE GUILT OR THE INNOCENCE OF THE DEFENDANT. IT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER. A DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO REMAIN SILENT, AND THE ASSERTION OF THIS RIGHT MUST NOT BE CONSIDERED BY YOU IN YOUR DELIBERATIONS. I REPEAT, UNDER YOUR OATH, YOU ARE TO DRAW NO CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN THIS CASE DID NOT TESTIFY. THE FACT THAT THIS DEFENDANT DID NOT TESTIFY SHOULD NOT EVEN BE DISCUSSED IN THE JURY ROOM. THE BURDEN OF PROOF, AS I HAVE STATED TO YOU, IS ON THE STATE. THE DEFENDANT IS NOT REQUIRED TO PROVE HIS INNOCENCE. THE

BURDEN OF PROOF REMAINS ON THE STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT.

THE DEFENDANT IS CHARGED WITH FIRST DEGREE CRIMINAL SEXUAL CONDUCT WITH A MINOR. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT ENGAGED IN A SEXUAL BATTERY WITH THE VICTIM.

A SEXUAL BATTERY IS SEXUAL INTERCOURSE, CUNNILINGUS, FELLATIO, ANAL INTERCOURSE, OR ANY INTRUSION, HOWEVER SLIGHT, OF ANY PART OF A PERSON'S BODY OR OF ANY OBJECT INTO THE GENITAL OR ANAL OPENINGS OF ANOTHER PERSON'S BODY, EXCEPT WHEN THE INTRUSION IS ACCOMPLISHED FOR MEDICALLY RECOGNIZED TREATMENT OR DIAGNOSTIC PURPOSES.

THE STATE MUST THEN PROVE BEYOND A REASONABLE DOUBT THAT THE VICTIM WAS LESS THAN ELEVEN YEARS OLD AT THE TIME OF THE SEXUAL BATTERY.

CONSENT, WILLINGNESS, INDIFFERENCE, OR IGNORANCE ON THE PART OF THE MINOR, IF ANY, AS TO WHAT WAS TAKING PLACE, DOES NOT IN ANY WAY AFFECT THE CHARGE OF CRIMINAL SEXUAL CONDUCT WITH A MINOR BECAUSE AN UNMARRIED WOMAN UNDER THE AGE OF FOURTEEN CANNOT LEGALLY CONSENT TO SEXUAL INTERCOURSE.

THE DEFENDANT IS CHARGED WITH COMMITTING A LEWD ACT ON A MINOR. A MINOR IS A PERSON UNDER THE AGE OF EIGHTEEN.

THE STATE MUST FIRST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT WAS OVER THE AGE OF FOURTEEN.

NEXT, THE STATE MUST PROVE THAT THE DEFENDANT WILLFULLY AND LEWDLY COMMITTED OR ATTEMPTED A LEWD OR LASCIVIOUS ACT ON, OR WITH THE BODY OR ITS PARTS OF, A CHILD UNDER THE AGE OF SIXTEEN YEARS, WITH THE INTENT TO AROUSE, APPEAL TO, OR GRATIFY THE LUST, PASSIONS, OR SEXUAL DESIRES OF THE DEFENDANT OR THE CHILD. "WILLFULLY" MEANS VOLUNTARILY AND INTENTIONALLY WITH THE SPECIFIC INTENT TO DO SOMETHING THE LAW FORBIDS.

LEWD MEANS OBSCENE, LUSTFUL, INDECENT, OR LECHEROUS. LASCIVIOUS MEANS TENDING TO INCITE LUST, LEWD, INDECENT, OBSCENE, OR TENDING TO DEPRAVE THE MORALS IN RESPECT TO SEXUAL RELATIONS.

#### CONCLUSION

YOU HAVE BEEN SELECTED BY BOTH THE STATE AND THE DEFENDANT TO BE FAIR AND IMPARTIAL JURORS. IT IS YOUR DUTY THEN IN YOUR JOINT DELIBERATIONS TO DETERMINE THE TRUTH IN THIS CASE, GIVING THE DEFENDANT THE BENEFIT OF EVERY REASONABLE DOUBT ON EACH AND EVERY ISSUE. AND FROM THE FACTS WHICH YOU DETERMINE TO BE TRUE, YOU TAKE AND APPLY THE LAW WHICH I HAVE JUST GIVEN YOU AND THUS ARRIVE AT A VERDICT WHICH SPEAKS THE TRUTH OF THIS CASE.

I WILL GIVE YOU A COPY OF THESE INSTRUCTIONS IN WRITTEN FORM. DURING YOUR DELIBERATIONS, YOU MAY REFER TO THE INSTRUCTIONS TO GUIDE YOUR DECISION-MAKING. YOU MUST CONSIDER THE INSTRUCTIONS AS A WHOLE AND NOT FOLLOW SOME AND IGNORE OTHERS. PLEASE RETURN THE INSTRUCTIONS TO THE COURT AT THE TIME YOUR VERDICT IS RENDERED.

YOU HAVE HEARD THE EVIDENCE, AND NOW YOU HAVE HEARD THE LAW. WHATEVER YOUR VERDICT YOUR FOREPERSON WILL INDICATE IT BY CHECKING "GUILTY" OR "NOT GUILTY" AS TO EACH CHARGE ON THE VERDICT FORM. YOU WILL THEN SIGN AND DATE THE VERDICT FORM.

REMEMBER THAT ALTHOUGH THE FOREPERSON IS THE ONLY JUROR WHO WRITES THE VERDICT, IT IS NOT HERS ALONE. THE VERDICT HAS TO BE A UNANIMOUS VERDICT. YOUR FOREPERSON IS NOT AUTHORIZED TO WRITE THE VERDICT UNTIL ALL OF YOU HAVE AGREED AS TO WHAT THE VERDICT SHOULD BE.

NOW LADIES AND GENTLEMEN, I AM GOING TO SEND YOU TO YOUR JURY ROOM, BUT DO NOT BEGIN TO DISCUSS THE CASE UNTIL YOU HAVE RECEIVED A COPY OF THIS JURY CHARGE, THE VERDICT FORM, AND THE EXHIBITS. ONCE YOU RECEIVE THESE THINGS, THAT WILL BE YOUR SIGNAL TO BEGIN YOUR DELIBERATIONS.

ONCE YOU BEGIN YOUR DELIBERATIONS, YOU WILL DELIBERATE UNTIL YOU HAVE REACHED A VERDICT, AT WHICH TIME YOU WILL KNOCK ON THE DOOR, ADVISE THE BAILIFF AND WE WILL BRING YOU OUT TO RECEIVE YOUR VERDICT.

INCIDENT SUPPLEMENT **CHARLESTON COUNTY SHERIFF'S OFFICE**  
 8506 PINEHAVEN DRIVE, CHARLESTON HEIGHTS, S.C. 29403-3799 • (843) 202-1700 J. Al Cannon, Jr. Sheriff

SC0100000 DISPATCH NUMBER N/A ORIGINAL CASE NUMBER 2010-006080-B PAGE 1 OF 4 PAGES

ORIGINAL REPORT  SUPPLEMENTAL REPORT  ADDITIONAL VICTIMS  ADDITIONAL WITNESSES  ADDITIONAL STOLEN PROPERTY

MODIFIES ORIGINAL  CASE STATUS CHANGE  ADDITIONAL OFFENSES  ADDITIONAL SUBJECTS  ADDITIONAL RECOVERED PROPERTY

INCIDENT TYPE: Possible CSC w/Minor

Incident Location: [REDACTED] HOME ADDRESS

Incident Date:

DEFENDANT'S EXHIBIT NO. 1 FD 2-17-12

NARRATIVE

On April 16, 2010, Pierre Nelson reported that his three year old daughter, **CHILD** told him that Kenneth Gahagan (her mother's boyfriend) had put his "pee-pee" on her butt. The child victim then told the same account to her mother, Sandra "April" Brown.

On April 19, I interviewed Pierre and he gave me a written statement of **CHILD** disclosure to him. He advised that he regularly ask **CHILD** about being touched when he bathes her after returning from April's home. He said he does this because April regularly has different people in her house. However, a few days after she returned to his residence, while lying on the couch with him, **CHILD** told him, unsolicited, that Kenneth had put his pee-pee on her butt. He advised that **CHILD** has never said anything like this before.

On April 20, 2010, **CHILD** was interviewed at the Dee Norton Lowcountry Children's Center by a trained forensic interviewer. In the interview, **CHILD** disclosed while she and her brother, Jr, were asleep on the bed, Kenneth came in the room and put his "pee pee on" her "butt". **CHILD** stated that it "hurt". She stated that her mom was at work when this happened. **CHILD** stated that Kenneth came back into the room two times to "do it". When asked what, she said "put his pee pee back on my butt". She advised that Kenneth "stick his pee pee out his pants" but that she did not see it. She stated that she knew it was his pee pee because she felt it. **CHILD** stated that her clothes were on. When asked if Kenneth went "inside, outside or something else" on her butt, she stated "inside my butt".

On April 22, 2010, I met with April. She gave me a written statement about how **CHILD** told her about the incident. She stated that after she was notified of the accusations, she made Kenneth leave the house. She stated that he "swore" he had not done anything to **CHILD**. She stated that **CHILD** had told her that Kenneth put his pee pee on her butt and that he pulled his pee pee out of his pants. **CHILD** stated this happened while April was at work and that Brandy (April's roommate) was in her room sleeping.

On April 23, 2010, **CHILD** was given a forensic medical exam which was unremarkable. I met with Brandy at my office. She advised that she did not know anything about the incident and felt bad that she didn't know about it. She advised that she sleeps in another room from

ADMINISTRATIVE	PROPERTY EST.						JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY	
	TYPE (GROUP)	N/A				TOTAL VALUE		
	STOLEN	0	0	0	0	0		0
	DAMAGED	0	0	0	0	0		0
	BURNED	0	0	0	0	0		0
RECOVERED	0	0	0	0	0	0		
SEIZED	0	0	0	0	0	0		
SUBJECT IDENTIFIED		SUBJECT LOCATED		ACTIVE	ADM. CLOSED	ARREST UNDER 18		
<input checked="" type="checkbox"/> YES		<input checked="" type="checkbox"/> YES		<input type="checkbox"/> UNFOUNDED	<input type="checkbox"/>	<input checked="" type="checkbox"/> ARREST 18 AND OVER		
REASON FOR EXCEPTIONAL CLEARANCE		OFFENDER DEATH	NO PROSECUTION	EXTRADITION DENIED	VICTIM DECLINES COOPERATION		JUVENILE NO CUSTODY	
REPORTING OFFICER(S)		DATE	BADGE NUMBER	APPROVING OFFICER		DATE	BADGE NUMBER	
Det. Rita R. Avila		7/18/2010	9727	Sgt. C. Terrence		7/19/10	9378	
				FOLLOW UP INVESTIGATION		YES	NO	

INCIDENT SUPPLEMENT

CHARLESTON COUNTY SHERIFF'S OFFICE  
3505 PINEHAVEN DRIVE CHARLESTON HEIGHTS, S.C. 29405-7789 • (843) 202-1700

J. Al Cannon, Jr.  
Sheriff

SC0100000	DISPATCH NUMBER N/A	ORIGINAL CASE NUMBER 2010-006080-B	PAGE 2 OF 4 PAGES	NCIC ENTRY	INVT
<input type="checkbox"/> ORIGINAL REPORT	<input checked="" type="checkbox"/> SUPPLEMENTAL REPORT	<input type="checkbox"/> ADDITIONAL VICTIMS	<input type="checkbox"/> ADDITIONAL WITNESSES	<input type="checkbox"/> ADDITIONAL STOLEN PROPERTY	<input type="checkbox"/> ADDITIONAL RECOVERED PROPERTY
<input type="checkbox"/> MODIFIES ORIGINAL	<input checked="" type="checkbox"/> CASE STATUS CHANGE	<input type="checkbox"/> ADDITIONAL OFFENDERS	<input type="checkbox"/> ADDITIONAL SUBJECTS		

NARRATIVE

April and the kids. Brandy was not able to give me a written statement because she had to leave to get to an appointment. I offered her the opportunity to have her child interviewed at DNLCC to rule out sexual abuse. She advised that she did not feel it necessary because Kenneth was not around her child at all without her. I advised that if she changed her mind, I would assist her with making an appointment.

I contacted Kenneth and asked him to meet with me at my office. He agreed. He advised he knew what the allegations were and could not understand why **CHILD** would make up such accusations. When he arrived, Kenneth waived his Miranda rights and agreed to talk with me. I asked Kenneth to write down anything that he felt would be helpful. He wrote a short statement advising that he loved and cared for the children and was hurt that "this happened". The three sentence statement took a while for Kenneth to write. When he was finished, I attempted to ask him questions, however, on my second question, "have you ever been at the house with **CHILD** while April was at work?", he asked me to change the question because it made him uncomfortable. I then rephrased the question and asked if he had ever been at the house with "the kids" while April was at work. He refused to answer and said that I was just setting him up like the last time. He then advised that he did not want to speak anymore without a lawyer. I immediately ended the conversation and left the interview room. Upon my return, I told Kenneth to stand up and put his phone down. He grasped on to his phone tightly and locked his arms and became uncooperative. Det. Smith and I, together, placed him in handcuffs. I advised him that he was being placed under arrest for Criminal Sexual Conduct with a minor, 1st degree and Lewd Act on a Minor. He was transported by Det. Lawrence and lodged at CCDC.

At the Bond Hearing, Kenneth was denied bond due to the CSC with Minor 1st charge.

ADMINISTRATIVE PROPERTY EST.

TYPE (GROUP)	N/A					TOTAL VALUE	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY
STOLEN	0	0	0	0	0	0	
DAMAGED	0	0	0	0	0	0	
BURNED	0	0	0	0	0	0	JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY
RECOVERED	0	0	0	0	0	0	
SEIZED	0	0	0	0	0	0	
SUBJECT IDENTIFIED	<input checked="" type="checkbox"/> YES	NO	SUBJECT LOCATED	<input checked="" type="checkbox"/> YES	NO	ACTIVE UNFOUNDED	ADM CLOSED
REASON FOR EXCEPTIONAL CLEARANCE		OFFENDER DEATH	NO PROSECUTION	EXTRAJURISDICTION DENIED	VICTIM DECLINES COOPERATION	UNVERILE NO CUSTODY	
REPORTING OFFICER(S)	Det. Rita R. Avila	DATE	7/8/2010	BADGE NUMBER	9727	APPROVING OFFICER	DATE
						Sgt. C. Zimmer	7/9/10
							BADGE NUMBER
							9378
						FOLLOW UP INVESTIGATION	YES NO OFFICER

ARGUS + 2002

CONFIDENTIAL INFORMATION

INTAKE NO.: 7778

THE DEE NORTON LOWCOUNTRY CHILDREN'S CENTER, INC.  
CHILD AND FAMILY TRAUMA ASSESSMENT (CAFTA 2002)  
FACE TO FACE INTERVIEW (INFORMATION ELICITED FROM INFORMANT)

VICTIM'S NAME: **CHILD** CLIENT FILE NO.: M10-7773 SEX: Female  
 DATE OF BIRTH: **DOB** AGE: 3 RACE: African American COUNTY: Charleston  
 SCHOOL: TONI'S DAYCARE GRADE: N/A PLACEMENT: N/A

REFERRAL SOURCE: DET AVILA  
 AGENCY: CHARLESTON CO. SHERIFF PHONE: (843) 554-2475

INFORMANT: NELSON, PIERRE AND BROWN, S REL TO CHILD: NP  
 ADDRESS: HOME ADDRESS CITY: HOME ADDRESS  
 STATE: HOME ADDRESS ZIP CODE: HOME ADDRESS  
 TELEPHONE (HOME): PHONE NO. (WORK):

CHILD'S LEGAL GUARDIAN: Natural Parents Name: NELSON, PIERRE AND BROWN, SA  
 WHAT IS THE CHILD'S CURRENT LIVING SITUATION? IN PARENTS' OR PRIMARY CAREGIVERS' HOM  
 Other: (please specify)  
 CHILD'S PRESENT LOCATION: WITH NF

CURRENT CAREGIVER: Natural Father  
 CURRENT CAREGIVER NAME: NELSON, PIERRE TELEPHONE: (843) 609-1237  
 ADDRESS: HOME ADDRESS CITY: HOME ADDRESS  
 STATE: HOME ADDRESS ZIP CODE: HOME ADDRESS

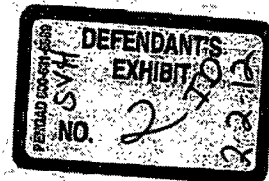
ASSESSMENT OBSERVERS: GARTEN, JOANNA (INTERN) AND DET. AVILA, RITA, CCSSO  
 THERAPIST: GARDNER, LEANN, LMSW APPOINTMENT DATE: 4/20/2010  
 TAPED: Yes  
 RELEASES SIGNED:  TX Consent  Taped  
 MOA  Other

Family of Origin/Genogram: (\*Identify who was in home at time of allegations/significant other adults/child's names for individuals/significant relationships)

PER NF:  
 IN NF'S HOME: **CHILD**  
 INDEX CHILD: **CHILD** 3  
 NF: PIERRE NELSON  
 NF'S PARAMOUR: BROOKE CUMBEF  
 NF'S PARMOUR'S SON: **CHILD**  
 HALF-BROTHER: **CHILD**, AGE 5

PER NM:  
 IN NM'S HOME:  
 INDEX CHILD: **CHILD**  
 NM: SANDRA BROWN  
 NM'S ROOMMATE: BRANDY WHITE  
 HALF-BROTHER: **CHILD**  
 NM'S PARAMOUR: KENNETH GAHAGAN (MOVED OUT AFTER ALLEGATIONS)

\*\*\* PRIVILEGED AND CONFIDENTIAL \*\*\*  
 Information provided by The Dee Norton Lowcountry Children's Center, Inc. on  
 4-21-2010 and is only for use by CCSSO  
 Dissemination, distribution or copying of this information in whole or part is strictly prohibited.



Apr. 21. 2010 1:02PM DNLC 843-720-7106

No. 1713

ARGUS + 2002

CONFIDENTIAL INFORMATION

OTHER SIGNIFICANT PEOPLE:  
PGM: TERESA TOOLEY

Clinical History of Current Concern

What happened that resulted in a request for a trauma assessment? (narrative from caretaker to include problems across individual, family, school, peer and neighborhood domains if applicable):

FAMILY WAS REFERRED TO DNLC BY DET. AVILA TO RULE OUT SEXUAL ABUSE BY NM'S PARAMOUR.

PER NF:

LAST THURSDAY, CHILD TOLD NF "KENNETH LIKES TO PUT HIS PEE PEE ON MY BUTT." CHILD TOLD NF NM WAS AT WORK AND NM'S ROOMMATE, BRANDY, WAS IN HER ROOM WHEN THIS HAPPENED. PER NF, CHILD TOLD NF THAT SHE AND JR. WERE SLEEPING ON NM'S BED AND KENNETH CAME INTO THE ROOM. CHILD TOLD NF THAT KENNETH PULLED HER PANTS AND PANTIES DOWN AND PUT HIS PEE PEE ON HER BUTT. CHILD TOLD NF KENNETH WALKED OUT OF THE ROOM AND CAME BACK IN AND PUT HIS PEE ON HER BUTT A SECOND TIME. WHEN NF HEARD THIS, HE ATTEMPTED TO CALL NM. SHE DID NOT ANSWER HER PHONE. NF THEN WENT TO THE POLICE DEPARTMENT AND MADE A REPORT.

WHEN PGM FOUND OUT ABOUT THE ALLEGATIONS, SHE WENT OVER TO NM'S HOUSE IN THE MIDDLE OF THE NIGHT. THERE WAS AN ARGUMENT BETWEEN THE TWO.

NF REPORTS NM HAS A LOT OF MEN IN AND OUT OF THE HOUSE AND ASKS CHILD OFTEN IF ANYONE HAS TOUCHED HER IN HER PRIVATE AREAS.

PER NM:

LAST WEDNESDAY NIGHT, NM WENT TO JAIL FOR AVOIDING ARREST AND SHE RECEIVED A RECKLESS DRIVING TICKET. SHE GOT OUT THURSDAY, THE FOLLOWING NIGHT, PGM CAME TO NM'S HOUSE AND ASKED HER ABOUT ALLEGATIONS. PER NM, PGM CHOKED NM AND THREW A CHAIR. KENNETH WAS THERE AND NM ASKED KENNETH IF THE ALLEGATIONS WERE TRUE. HE DENIED THEM.

NM PICKED UP CHILD ON FRIDAY AFTER ALLEGATIONS WERE MADE. CHILD TOLD NM KENNETH PULLED PEE OUT OF HIS PANTS, BUT DID NOT TAKE HIS PANTS ALL THE WAY OFF. CHILD TOLD NM KENNETH PUT HIS "PEE PEE ON MY BUTT." NM REPORTED SHE ASKED CHILD ABOUT THE INCIDENT AGAIN AND "HER STORY DIDN'T CHANGE." NM ASKED CHILD IF IT COULD HAVE BEEN JR'S FOOT. CHILD SAID NO. NM REPORTED BRANDY WATCHES KIDS WHILE NM GOES TO WORK AND NM AND KENNETH ONLY SLEEP TOGETHER IN THE BED WHEN THE KIDS ARE WITH NF. PER NM, WHEN KIDS ARE THERE, HE SLEEPS ON THE COUCH. PER NM, BRANDY HAS ALWAYS BEEN THERE WHEN KENNETH IS THERE.

PER NM, SHE HAS BEEN WITH KENNETH SINCE THE BEGINNING OF MARCH. KENNETH LEFT THE HOME THE NIGHT ALLEGATIONS WERE MADE. NM TOLD HIM HE HAD TO GO.

NM STATED NF TOLD HER HE CHECKS CHILD'S VAGINA AND ANUS EVERY TIME SHE COMES HOME FROM NM'S. NM STATED SHE THOUGHT THAT WAS STRANGE.

NM AND NF WERE TOGETHER FROM 2003-2007  
NF WITH HAS BEEN WITH BROOKE CUMBEE SINCE END OF 2007

NF AND NM SHARE CUSTODY OF CHILD AND JR. AND PRIOR TO THIS INCIDENT HAVE GOTTEN ALONG WELL.

Is the informant knowledgeable about the index child and family? (If no, move to outcome expectations section of CAFTA)

YES

**SUMMARY OF INFORMATION ELICITED FROM THE INDEX CHILD**

(Please provide the basis for your opinion for each question that follows)

7773

Did the child present as an accurate reporter regarding verifiable information?  Yes

Was the child able to respond to trauma specific questions?  Yes

Please describe:

CHILD WAS ABLE TO RESPOND TO SOME TRAUMA FOCUSED QUESTIONS.

Were there internal limitations to the child's ability to respond?  Yes

Please check all that apply

- Age
- Developmental delay
- Psychiatric Disorder
- Cognitive limitations
- Emotional
- Disability
- Other

Please describe:

CHILD IS THREE. HER AGE MAY HAVE AFFECTED HER ABILITY TO RESPOND TO QUESTIONS.

Did the child present as being impacted by external factors?  Yes

Please check all that apply

- Coaching
- Injunctions not to tell
- System response
- Family response
- Multiple interviews
- Other

Please Describe:

CHILD HAS BEEN EXPOSED TO SEVERAL INTERVIEWS, INCLUDING BEING QUESTIONED BY HER NM AND NF. CHILD IS AWARE OF LE INVOLVEMENT. SHE ALSO KNOWS THAT KENNETH HAS BEEN ASKED TO LEAVE.

Did the child present as suggestible?  U

Please describe:

DUE TO HER AGE, IT IS UNSURE IF CHILD WAS SUGGESTIBLE.

Was the child free to correct interviewer?  No

Please describe:

CHILD WAS NOT GIVEN PERMISSION TO CORRECT INTERVIEWER.

Did the child present as being able to understand rules of interview and to follow behavioral directives?  U

Please describe:

DUE TO HER AGE, IT IS UNSURE IF CHILD WAS ABLE TO UNDERSTAND RULES AND DIRECTIVES.

Did the child present as being able to order events sequentially?  U

Please describe:

DUE TO HER AGE, IT IS UNSURE IF CHILD COULD ORDER EVENTS SEQUENTIALLY.

Did the child present as being able to differentiate between truth and lie?  No

Please describe:

CHILD WAS UNABLE TO DIFFERENTIATE BETWEEN TRUTH AND LIE.

If the child made a disclosure, was the disclosure consistent with developmental level? (Language, time, or space)  Yes

Please describe:

ARGUS + 2002

CONFIDENTIAL INFORMATION

CHILD DISCLOSURE WAS DEVELOPMENTALLY APPROPRIATE.

If the child made a disclosure, did the child demonstrate the alleged abuse with: (Please check all that apply)  Yes

Dolls  Drawing  Own body  Other

Please describe:

CHILD MADE A VERBAL DISCLOSURE.

SUMMARY OF OBSERVATIONS/IMPRESSIONS FROM TRAUMA ASSESSMENT

7773

1)

Child's Name (Last Name, First Name, MI) CHILD

Alleged Offender's Name : GAHAGEN, KENNETH

Alleged Offender Relationship to Victim: Mother's Paramour

Typology of Maltreatment: Sexual Abuse

Professional Opinion Regarding Information elicited from Assessment? Disclosure of abuse

Basis of professional opinion:

CHILD WAS ABLE TO REPORT CAREGIVING AND THE MEMBERS OF HER FAMILY. CHILD STATED KENNETH MOVED OUT OF THE HOME. INTERVIEWER ASKED CHILD IF IT WAS OKAY TO TALK ABOUT KENNETH AND SHE STATED SHE DIDN'T KNOW. CHILD WAS ASKED WHY KENNETH MOVED OUT OF THE HOME. CHILD THEN DISCLOSED THAT "MY MOM SAID HE PUT HIS PEE PEE ON MY BUTT." INTERVIEWER ASKED CHILD IF THAT HAPPENED AND SHE SAID IT DID. CHILD STATED THAT WHILE SHE AND HER BROTHER JR. WERE ON THE BED, KENNETH CAME IN THE ROOM AND PUT HIS "PEE PEE ON MY BUTT." CHILD STATED NM WAS AT WORK WHEN THIS HAPPENED. CHILD STATED HER CLOTHES WERE ON. CHILD ASKED INTERVIEWER WHEN INTERVIEWER LEFT ROOM IF INTERVIEWER WAS GOING TO TELL HER MOM AND DAD. WHEN ASKED HOW IT FELT WHEN KENNETH PUT HIS PEE PEE ON HER BUTT, CHILD REPLIED, "IT HURT."

2) Impressions of Adult Caregivers (consider response to disclosure, focus, functioning and ability to protect)  
MR. NELSON PRESENTED AS CONCERNED AND CHILD FOCUSED. MS. BROWN PRESENTED AS AMBIVALENT ABOUT CHILD DISCLOSURE.

3) Impressions of child/children: (Consider emotional and behavioral reactions; i.e. anxious, relieved, sexually reactive, etc.)

CHILD PRESENTED AS AN ACTIVE 3 YEAR OLD.

4) Barriers to Child Safety/Protection (i.e. contact with non-believing/non-protective individuals)

LACK OF SUPERVISION COULD POSE AS A BARRIER TO CHILD SAFETY.

5) Family/Community Resources:

EXTENDED FAMILY, LE, DNLC.

6) Recommendations regarding safety for child/family (To include placement/visitation):

NO CONTACT WITH KENNETH GAHAGEN AND JR. TO PARTICIPATE IN A FORENSIC INTERVIEW.

7) Recommendations for treatment/client/family needs:

CHILD TO RECEIVE PSYCHOEDUCATION REGARDING BODY SAFETY.

8) Other Observations/Actions taken (i.e. coordination):

Apr. 21. 2010 1:03PM DNLCC 843-720-7106

No. 1513 P. 5

ARGUS + 2002

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COORDINATED WITH DET. AVILA FROM CCSO, WILL DISTRIBUTE CAFTA TO APPROPRIATE AGENCIES, WILL STAFF AT MDT.

9) Diagnostic Impression and Criteria: (Use DSM codes)

CHILD DEFERRED

10) Referrals based on LCC assessment:

CHILD TO B-SAFE GROUP AT DNLCC, DNLCC FOR FORENSIC INTERVIEW FOR PIERRE, JR., ADDITIONAL TREATMENT REFERRALS PENDING MDT STAFFING.

*M. Leann Gardner, LMSW*

Date: 4/21/2010 Title: GARDNER, LEANN, LMSW

STATE OF SOUTH CAROLINA )  
 COUNTY OF Charleston )  
 STATE VS. )  
Kenneth Thomas Gahagan )  
 AKA: )  
 Race: BLACK Sex: M Age: 26 )  
 DOB: DOB SS#: SSN )  
 Address: HOME ADDRESS )  
 City, State, Zip: HOME ADDRESS )  
 DL#: PERSONAL IDENTIFIER SID#: PERSONAL IDENTIFIER )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS1002511  
 A/W#: K638511  
 Date of Offense: 4/22/2010  
 S.C. Code §: 16-15-0140  
 CDR Code #: 2468

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
 In disposition of the said indictment comes now the Defendant who was  
 TO: COMMITTING LEWD ACT ON A MINOR

CONVICTED OF or  PLEADS

in violation of § 16-15-0140 of the S.C. Code of Laws, bearing CDR Code # 2468  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC  §17-25-45  
 w/minor 1st or Lewd Act)

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)  
 The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: Elizabeth A. And 16952  
Gordon, Elizabeth SC Bar#                      Defendant                      Attorney for Defendant SC Bar#                     

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
 for a determinate term of 12 days/months/years or  under the Youthful Offender Act not to exceed                      years  
 and/or to pay a fine of \$                     ; provided that upon the service of                      days/months/years and/or payment  
 of \$                     ; plus costs and assessments as applicable\*; the balance is suspended with probation for                     

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services' standard conditions of  
 probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on:  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
 by the State Department of Corrections. 650 days served  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal  
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered PTUP                       
 Total: \$                      plus 20% fee: \$                       
 Payment Terms:                       
 Set by SCDPPPS                     

Recipient:                     

*Fine	\$	\$
§ 14-1-206 (Assessments 107.5%)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(f) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$ 133.70

                     days/hours Public Service Employment  
 Obtain GED   
 Attend Voc. Rehab or Job Corp.                       
 May serve W/E beginning                       
 Substance Abuse Counseling   
 Random Drug/Alcohol testing   
 Fine may be pd. in equal, consecutive weekly/monthly  
 pmts. of \$                      beginning                       
 \$                      paid to Public Defender Fund

Other: \*Set offender Registry\*  
Required

Appointed PD or appointed other counsel,  
 § 47.12 requires \$500 be paid to Clerk  
 during probation.

Clerk of Court/ Deputy Clerk Whitney Lockman  
 Court Reporter: Sharon Wood Harris  
 SCCA/217 (03/2011)

Presiding Judge Thomas P. McDonald  
 Judge Code: 2463  
 Sentence Date: February 23, 2012

APR-24-2014 15:57 From:CLERK OF COURT

843 958 5020

To:843 722 8700

P.1/2

ES020100402185

WITNESSES

Rita R. Avila

Charleston County Sheriff

AGENCY CASE NUMBER

2010006080B

ARREST WARRANT NUMBER

K638510

DATE OF ARREST

April 22, 2010

ACTION OF GRAND JURY

TRUE BILL

For person of Grand Jury Date APR 04 2010

VERDICT

For person of Petit Jury Date

INDICT

DOCKET NO. 2011CS1002510

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2011

THE STATE

vs.

KENNETH THOMAS GAHAGAN

DOB: 1985-06-29

B/M

Indictment for

Criminal Sexual Conduct with a Minor, 1st Degree

FILED

4/15/2011 3:37:29 PM  
JULIE J ARMSTRONG  
CLERK OF COURT



RSG20100402185

WITNESSES

Rita R. Avila  
Charleston County Sheriff

AGENCY CASE NUMBER

2010006080B

ARREST WARRANT NUMBER

K638511

DATE OF ARREST

April 22, 2010

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

APR 24 2011

VERDICT

Guilty

Kristen L. Barr 5/3/2012

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2011GS1002511

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

April Term 2011

THE STATE

vs.

KENNETH THOMAS GAHAGAN

DOB: 1985-06-29

B/M

Indictment for

Lewd Act Upon a Minor

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )

## INDICTMENT

At a Court of General Sessions, convened on April 4, 2011, the Grand Jurors of Charleston County present upon their oath:

Lewd Act Upon a Minor

That in Charleston County, South Carolina, between March 1, 2010 and April 15, 2010, the Defendant, KENNETH THOMAS GAHAGAN, a person over fourteen years of age, willfully and lewdly did commit or attempt to commit a lewd or lascivious act upon the body, or any part or member thereof, of a child under the age of sixteen (16) years, to wit: **CHILD** with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of himself or of said child, in violation of Section 16-15-140 of the South Carolina Code of Laws (1976) as amended.

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

  
 ELIZABETH GORDON  
 ASSISTANT SOLICITOR

**THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

**APPEAL FROM CHARLESTON COUNTY  
Court of General Sessions**

**The Honorable Stephanie P. McDonald, Presiding Judge**

**CASE NO.: 2011GS1002511**

**Warrant Numbers: K638511**

**Charges: Lewd Act on a Minor**

**STATE OF SOUTH CAROLINA, RESPONDENT**

**VS.**

**KENNETH THOMAS GAHAGAN, APPELLANT**

**NOTICE OF APPEAL**

Defendant appeals the guilty verdict of the Honorable Stephanie P. McDonald, Judge, Ninth Judicial Circuit, dated February 3, 2012.

*Mary Ford*

Mary A. Ford  
Attorney for Appellant  
Charleston County Public Defender  
O. T. Wallace County Office Building  
101 Meeting Street, 5<sup>th</sup> Floor  
Charleston, SC 29401  
(843) 958-1850

Other counsel of record are:  
Elizabeth Gordon, Assistant Solicitor  
Office of the Solicitor, Ninth Judicial Circuit  
O.T. Wallace County Office Building  
101 Meeting Street  
Charleston, SC 29401  
(843) 958-1900

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P., G.S. & FC

By *Maureen Han*  
DEPUTY CLERK

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY  
Court of General Sessions

The Honorable Stephanie P. McDonald, Presiding Judge

CASE NO.: 2011GS1002511  
Warrant Numbers: K638511  
Charges: Lewd Act on a Minor

STATE OF SOUTH CAROLINA, RESPONDENT

VS.

KENNETH THOMAS GAHAGAN, APPELLANT


PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Elizabeth Gordon, Assistant Solicitor for Charleston County, by hand delivering a copy of it to the Charleston County Solicitor's Office at 101 Meeting Street, Charleston, South Carolina 29401, on February 10, 2012.



Mary A. Ford  
Attorney for Appellant  
Charleston County Public Defender  
O. T. Wallace County Office Building  
101 Meeting Street  
Charleston, SC 29401  
(843) 958-1850

Dated: 2/10/12

ATTEST: A TRUE COPY  
JULIE J. ARMSTRONG (SEAL)  
CLERK, C.P., G.S. & F.C.  
By   
DEPUTY CLERK

STATE OF SOUTH CAROLINA ) IN THE SOUTH CAROLINA COURT OF APPEALS  
 )  
 COUNTY OF CHARLESTON ) Case No(s): 2011GS1002511  
 ) Warrant No(s): K638511  
 ) Charge(s): Lewd Act on a Minor

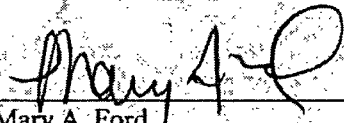
STATE OF SOUTH CAROLINA )  
 )  
 vs. )  
 )  
 KENNETH THOMAS GAHAGAN )  
 )  
 Defendant )

**REQUEST FOR REPRESENTATION  
 ON APPEAL**

On behalf of the request of the above-named Defendant, to be represented by the South Carolina Commission of Appellate Defense, the undersigned attorney would show unto this Honorable Court that:

1. She is the attorney for the defendant-appellant in the above captioned case. The defendant-appellant was placed in custody immediately following the denial of Defendant's motion for a directed verdict and was not available to personally sign this Request.
2. The defendant-appellant was represented by the Charleston County Public Defender's Office as an indigent, pursuant to the Defense of Indigent Act.
3. The defendant-appellant has been informed that he may request assistance from the South Carolina Commission of Appellate Defense in perfecting his appeal.
4. A timely Notice of Intention to Appeal has been filed on the defendant's-appellant behalf.
5. The defendant-appellant has been informed that nothing requires that office to pursue this appeal unless that office's Chief Attorney is satisfied that there is arguable merit to this appeal and that he cannot afford to hire an attorney.

At this time, the defendant-appellant requests the aid of the South Carolina Commission of Appellate Defense in perfecting his appeal to the South Carolina Court of Appeals.

  
 \_\_\_\_\_  
 Mary A. Ford  
 Public Defender for Charleston County

Charleston, South Carolina


Dated: 2/10, 2012.



## CERTIFICATE OF COUNSEL FOR APPELLANT

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

April 28<sup>th</sup>, 2014

By: 

Patrick C. Wooten  
Nelson Mullins Riley & Scarborough, LLP  
151 Meeting Street / Sixth Floor  
Post Office Box 1806 (29402-1806)  
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ATTORNEYS FOR APPELLANT

ORIGINAL

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

RECEIVED

APPEAL FROM CHARLESTON COUNTY  
Court of General Sessions

APR 28 2014

The Honorable Stephanie P. McDonald, Presiding Judge

SC Court of Appeals

Case No. 2011GS1002511  
Warrant Numbers: K638511  
Charges: Lewd Act on a Minor

STATE OF SOUTH CAROLINA,.....

RESPONDENT,

v.

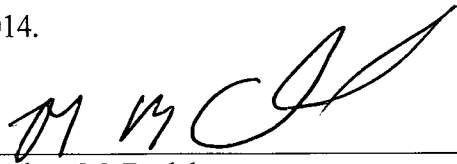
KENNETH THOMAS GAHAGAN,.....

APPELLANT.

APPELLATE CASE NO. 2012-208388

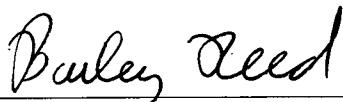
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Alan Wilson, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 28th day of April, 2014.



Robert M. Dudek

SUBSCRIBED AND SWORN TO before me  
this 28<sup>th</sup> day of April, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 24, 2021.