

ORIGINAL

STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LEXINGTON COUNTY
The Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Trial Court Case No: 2011-CP-32-0402
Appellate Case No: 2013-002473

RECEIVED

JUN 13 2014

S.C. Supreme Court

TIMOTHY J. WILSON

RESPONDENT/PETITIONER,

v.

STATE OF SOUTH CAROLINA

PETITIONER/RESPONDENT.

Appendix Vol. 1 of 3
VOLUME 1 OF 2

TRICIA A. BLANCHETTE

P.O. Box 12725
Columbia, South Carolina 29211
(803) 988-0008

ATTORNEY FOR RESPONDENT-
PETITIONER

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
(803)734-3727

ATTORNEYS FOR PETITIONER-
RESPONDENT

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STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Lexington)

Timothy J. Wilson #329926)

Full name and prison number, if any, of applicant.)

v.)

State of South Carolina)

Name of Respondent)

APPLICATION FOR

POST-CONVICTION RELIEF

2011CP3200402

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Broad River Correctional Institution, 4450 Broad River Rd.,
Columbia, SC 29210

2. Name and location of Court which imposed sentence Lexington County Courthouse,
Lexington, SC 29072

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

(a) 08-GS-32-789 - 792 CSC with a minor 1st

(b) 08-GS-32-2203 Lewd Act

(c) _____

4. The date upon which sentence was imposed and the terms of the sentence:

(a) The combined sentences totaled forty five years, violent, and was

(b) imposed on Aug. 1 2003.

(c) _____

A TRUE COPY

2011CP3200402

5. Check whether a finding of guilty was made

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

XXX

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence? _____

Yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. Appeal dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. Oct. 28 2010

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. Unpublished opinion No. 2010-UP-472

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) N/A

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Applicant was denied effective assistance of counsel in violation of

☒ the South Carolina Constitution, Article 1, Subsection 3; and United

☒ States Constitution, 6th and 14th Amendments.

10. State concisely and in the same order the facts which support each of the grounds set out in (9)
(a) See opposite side of this page.

(b) _____

(c) _____

201 ICP 3200402

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

No

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any,
already specified in (7) No

(d) any other petitions, motions or applications in this or any other Court?

No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

201 FEB - 1 - 3 21

FILED

10. (a) Counsel was ineffective for failing to object to inadmissible hearsay. Dawkins v. State, 551 S.E. 2d 260 (2001); Jolly v. State, 443 S.E. 2d 566 (2004);
- (b) Counsel was ineffective for failing to subpoena expert witness. Martinez v. State, 403 S.E. 2d 113 (1991); Pauling v. State, 503 S.E. 2d 463 (1998);
- (c) Counsel was ineffective for failing to object to solicitors improper "pitting" of witnesses. State v. Sapps, 369 S.E. 2d 145 (1988).

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. 2011CP 3200402
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) These grounds were not cognizable until PCR
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
Yes

(e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Yes

2011CP3200402

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Casey Dale Cornwell, 206 East Main Street, Lexington, SC29072

ii. Wanda Carter, 1330 Lady Street, Suite 401, Columbia, SC 29201

iii. _____

(b) the proceedings at which each such attorney represented you:

i. Casey Cornwell Represented the Applicant at his arraignment,

~~**~~ trial and sentencing;

~~***~~ ii. Wanda Carter Represented the Applicant on his appeal.

18. State clearly the relief you seek in filing this application.

Vacate or Reverse and remand for a new trial.

19. Are you now under sentence from any other court that you have not challenged?

No

FILED

2011 FEB - 1 3:22

CLERK OF COURT
JANUARY 2011

2011CP3200402

STATE OF SOUTH CAROLINA)
COUNTY OF Lexington)

VERIFICATION

I, Timothy Jacob Wilson #329926, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Timothy J. Wilson

Sworn to and subscribed before me

This 25th day of January 2011

Susan H. Dye Es.

Notary Public for South Carolina

My Commission Expires

My Commission Expires March 5, 2018

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Timothy Jacob Wilson #329926, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Timothy J. Wilson
Applicant

Sworn to and subscribed before me

This 25th day of January 2011

Susan H. Dye Es.

Notary Public for South Carolina

My Commission Expires: March 5, 2018

FILED
2011 FEB - 1 2 3:22

Dear Clerk,

I've enclosed an envelope and a copy of my PCR application. Please clock stamp a copy and return it to me. Thank You for your time.

Respectfully,

Timothy J. Wilson

2011CF3200402

FILED

2011 FEB - 1 3 3:21

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Timothy J. Wilson, 329926,
☒ Plaintiff

v.

State Of South Carolina
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2011-CP-32-0402

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
Tricia A. Blanchette, Bar No. 74904
Address:
PO Box 12725
Columbia, SC 29211
phone: 803-988-0008 fax: 803-988-8070
e-mail: blanchettelaw@gmail.com other:

Defendant's Attorney:
John W. Whitmire, Bar No.
Address:
PO Box 11549
Columbia, SC 29211
phone: 803-734-3737 fax: 803-734-4113
e-mail: other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

December 20, 2012
Date submitted

SECTION III: Motion Fee

- ☐ PAID - AMOUNT:
☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
Timothy J. Wilson, #329926,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2011-CP-32-0402

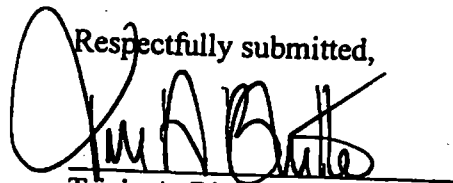
AMENDMENT TO APPLICATION
FOR POST CONVICTION RELIEF

Applicant, by and through his Attorney, Tricia A. Blanchette, Esquire, would amend his Application for Post Conviction Relief filed on February 1, 2011, by adding the following specific allegations to his original allegations of ineffective assistance of counsel:

1. Ineffective assistance of trial counsel for failure to properly prepare and investigate prior to trial. Specifically, but not limited to, failure to review the discovery with Applicant, failure to prepare defense witnesses for trial, failure to investigate the allegations and potential defenses.
2. Ineffective assistance of trial counsel regarding the failure to obtain and/or utilize expert witnesses and failure to make a timely request for a continuance to procure necessary experts.
3. Ineffective assistance of trial counsel for failure to raise an objection to the juror shortage. Transcript pp. 7, 50.
4. Ineffective assistance of trial counsel for agreeing to admit the video of the forensic interview of the victim.
5. Ineffective assistance of trial counsel for failure to protect Applicant's confrontation rights during the testimony of the victim.
6. Ineffective assistance of trial counsel for putting forth an unreasonable defense strategy.
7. Ineffective assistance of trial counsel for failing to fully cross-examine the State's witnesses, including but not limited to Dr. Robinson, Alicia Benedetto, Christalyn Thompson and Heather Smith.

8. Ineffective assistance of trial counsel for failure to object to hearsay and bolstering / vouching testimony of the State's experts. See Jolly v. State, 314 S.C. 17, 443 S.E.2d 566 (1994), State v. Dempsey, 340 S.C. 565, 532 S.E.2d 306 (Ct. App. 2000), State v. Dawkins, 346 S.C. 151, 551 S.E.2d 260 (2001), Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010), State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011), State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (2012).
9. Ineffective assistance of trial counsel for failure to address possible bias expressed by the trial court stemming from a prior case. Transcript pp. 209-10.
10. Ineffective assistance of trial counsel for failure to make a directed verdict argument on all charges.
11. Ineffective assistance of trial counsel for failure to object to pitting of witnesses by the State, as pointed out by the trial court.
12. Ineffective assistance of trial counsel for opening the door to testimony during the cross-examination of Jessica Wilson and the State's reply witnesses regarding a completely unrelated allegation of sexual abuse involving Jessica Wilson's father.
13. Ineffective assistance of trial counsel for failure to advise Applicant regarding "Jessica's Law" and the changes to the jury charge and applicable sentencing range.
14. Ineffective assistance of appellate counsel for failure to raise the motion for continuance on appeal.

Respectfully submitted,



Tricia A. Blanchette
Attorney for Applicant
PO Box 12725
Columbia, SC 29211

December 20, 2012

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
Timothy J. Wilson, #329926,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

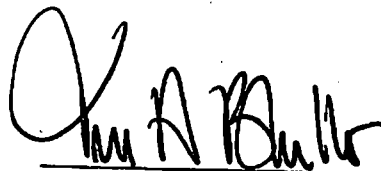
IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

2011-CP-32-0402

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Applicant, hereby certify that I placed
in the United States Mail on this 20th day of December 2012, a copy of an Amendment to
Application for Post Conviction Relief, with postage prepaid and the return address
clearly shown on said envelope to John W. Whitmire, with the Office of the Attorney
General at:

Office of the Attorney General
Att: John W. Whitmire, Ast. AG
P.O. Box 11549
Columbia, SC 29211



Tricia A. Blanchette
Attorney for Applicant
PO Box 12725
Columbia, SC 29211

December 20, 2012

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.

Timothy Wilson

AKA:

Race: W Sex: M Age: 29

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]
Lexington, SC 29073

DL#: [REDACTED] SID#: sc01144094

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-32-0789

A/W#: J052931

Date of Offense: 3/19/2005 - 10/20/2006

S.C. Code § : 16-03-0655(1)

CDR Code #: 0385

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: CRIMINAL SEXUAL CONDUCT WITH MINOR CHILD 1ST DEGREE

in violation of § 16-03-0655(1) of the S.C. Code of Laws, bearing CDR Code # 0385

☐ 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 initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

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 30 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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5

TOTAL \$ _____

Clerk of Court/ Deputy Clerk

Court Reporter: S. Sheppard

_____ 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 S. & P.C.

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 21 2 15 10Sentence Date: August 1, 2008

SCCA/217 (07/2008)

STATE OF SOUTH CAROLINA)

) IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON)

THE STATE,)

-vs-)

VERDICT FORM

TIMOTHY JACOB WILSON,)

Case Number: 2008-GS-32-00789

Defendant.)

AS TO THE CHARGE OF CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE
FIRST DEGREE ALLEGING THE DEFENDANT PERFORMED SEXUAL INTERCOURSE
WITH THE MINOR CHILD:

WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT [CHECK ONE]:

[] NOT GUILTY.

OR

[☒] GUILTY OF CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE
FIRST DEGREE, INCLUDING PROOF THAT THE DEFENDANT
PERFORMED SEXUAL INTERCOURSE BY INTRUSION, HOWEVER
SLIGHT, OF HIS PENIS INTO THE MINOR'S VAGINA.

Edward Patterson
Foreperson

Lexington, South Carolina

August 1, 2008

Judge: William P. Keesley
Ct. Reporter: S. Shppard

A TRUE COPY

Boch
Lex. Co. C.C.C.R. & F.W.C.

ARREST WARRANT

J-052931

STATE OF SOUTH CAROLINA
COUNTY OF LexingtonTHE STATE
against ORIGINAL

TIMOTHY JACOB WILSON

Address: [REDACTED]

LEXINGTON, SC 29073

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: W Height: 5-11 Weight: 142

DL State: SC DL#: [REDACTED]

DOB: [REDACTED] Agency ORI#: 3200

Prosecuting Agency: L. C. S. D.

Prosecuting Officer: MEFFORD, ROY

Offense: CSC WITH MINOR

Offense Code [REDACTED]

Code/Ordinance Sec.: 16-3-655

This warrant is CERTIFIED FOR SERVICE
in the [REDACTED] COUNTY/ [REDACTED] MUNICIPALITY OFThe accused is to be arrested and brought
before me to be dealt with according to
law.

(LS)

Signature of Judge

Date: [REDACTED]

RETURN

A copy of this arrest warrant was delivered
to defendant TIMOTHY JACOB WILSON

on 11/12/06

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO

GARY W. REINHART

[REDACTED]
LEXINGTON, SC 29072
951-2542

ORIGINAL COURT COPY

STATE OF SOUTH CAROLINA
COUNTY OF Lexington

AFFIDAVIT

Personally appeared before me the affiant ROY MEFFORD who
being duly sworn deposes and says that defendant TIMOTHY JACOB WILSON
did within this county and state on 03/19/2005 violate the criminal laws of the
State of South Carolina (or ordinance of [REDACTED])
in the following particulars:

DESCRIPTION OF OFFENSE: CSC WITH MINOR

I further state that there is probable cause to believe that the above did commit
the crime set forth and that probable cause is based on the following facts:BETWEEN 03-19-05 AND 102006 THE DEFENDANT, TIMOTHY WILSON, HAD SEXUAL INTERCOURSE WITH HIS
Victim WHO IS UNDER THE AGE OF ELEVEN. THIS OCCURRED AT THEIR RESIDENCE LOCATED AT
[REDACTED] WITHIN LEXINGTON COUNTY, SC. THE VICTIM DISCLOSED THE ABOVE IN A
RECORDED FORENSIC INTERVIEW ON 110206.

Signature of Affiant

A TRUE COPY

STATE OF SOUTH CAROLINA
COUNTY OF LexingtonAffiant's
Information

LCSO

ROY MEFFORD

[REDACTED] Ex. Co. C.C.C.P., G.S. & E.O. N
LEXINGTON, SC 29072
7852450

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that
on 03/19/2005 defendant TIMOTHY JACOB WILSON
did violate the criminal laws of the State of South Carolina (or ordinance of
[REDACTED]) as set forth below:

DESCRIPTION OF OFFENSE:

16-3-655 CSC WITH MINOR
CRIMINAL SEXUAL CONDUCT WITH MINORSHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest
the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this
Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is
practicable.Sworn to and subscribed before me
on 11/11/2006

Signature of issuing Judge

Judge code: 041 Issuing Court: Magistrate

Issuing Judge

GARY S. MORGAN
231 W. CHURCH STREET
BATESBURG, SC 29006
803-359-8330

ORIGINAL COURT COPY

ORIGINAL COURT COPY

06089951

set by

Judge _____

on 11-13-06 _____

Type and Amount: 100,000 \$ _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

RECEIVED
CLERK OF COURT
LEXINGTON, SC

2006 NOV 20 P 4:11

FILED

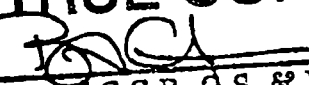
STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

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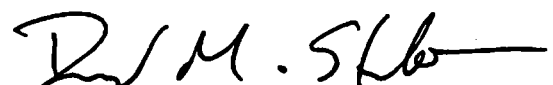
INDICTMENT FOR
Criminal Sexual Conduct with Minor Child 1st Degree
§16-3-655(A)(1)

At a Court of General Sessions, convened on MARCH, 2008, the Grand Jurors of Lexington County present upon their oath:

That Timothy Jacob Wilson did in Lexington County between March 19, 2005 and October 20, 2006, commit willfully and unlawfully commit the crime of Criminal Sexual Conduct With a Minor in the First Degree by engaging in a sexual battery upon and with the body of Victim [REDACTED] being a minor child less than eleven years of age , to wit: the defendant did have sexual intercourse with the victim, in violation of § 16-3-655(A)(1) of the Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

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


ASSISTANT SOLICITOR

WITNESSES

LCSO
Mefford, Roy

DOCKET NO. 2008 -GS-32- 789

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MARCH TERM 2008

THE STATE

vs.

Timothy Jacob Wilson

A-2006-32-02973

1/29/2007 10:55 AM

ARREST WARRANT NUMBER

J052931

ACTION OF GRAND JURY

TRUE BILL

Linda L. Schelling
Foreperson of Grand Jury

Date: 3/10/08

VERDICT

Guilty

Edward Patterson
Foreperson of Petit Jury

8-1-08
Date:

CDR# 0385

Indictment for

Criminal Sexual Conduct with Minor Child 1st
Degree

§16-3-655(A)(1)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF LexingtonSTATE VS.
Timothy Wilson

AKA: _____

Race: W Sex: M Age: 29DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]
Lexington, SC 29073DL#: [REDACTED] SID#: sc01144094

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-32-790A/W#: J052933Date of Offense: 3/19/2005 - 10/20/2006S.C. Code § : 16-03-0655(1)CDR Code #: 0385

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: CRIMINAL SEXUAL CONDUCT WITH MINOR CHILD 1ST DEGREEin violation of § 16-03-0655(1) of the S.C. Code of Laws, bearing CDR Code # 0385☐ 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 initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor[Signature]
Defendant_____
Attorney for Defendant_____
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2008-GS-32-789, 791, 792 & 2293☐ 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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5

TOTAL \$ _____

[Signature]
Clerk of Court/ Deputy ClerkCourt Reporter: [Signature]

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling C.C.C.P., C.S. & F.C.

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel \$35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE [Signature]Judge Code: 2101510Sentence Date: August 1, 2008

SCCA/217 (07/2008)

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

IN THE COURT OF GENERAL SESSIONS

THE STATE,)

-vs-)

VERDICT FORM

TIMOTHY JACOB WILSON,)

Case Number: 2008-GS-32-00790

Defendant.)

AS TO THE CHARGE OF CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE
FIRST DEGREE ALLEGING THE DEFENDANT MADE THE MINOR PERFORM
FELLATIO UPON THE DEFENDANT'S PENIS:

WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT [CHECK ONE]:

[] NOT GUILTY.

OR

[/] GUILTY OF CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE
FIRST DEGREE (FELLATIO).

Edward Patterson
Foreperson

Lexington, South Carolina

August 1, 2008

Judge: William P. Keesley
Ct. Reporter: S. Sheppard

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

ARREST WARRANT

J-052933

STATE OF SOUTH CAROLINA
COUNTY OF LexingtonTHE STATE OF SOUTH CAROLINA
against

TIMOTHY JACOB WILSON

Address: [REDACTED]

LEXINGTON, SC 29073

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: W Height: 5-11 Weight: 142

DL State: SC DL#: [REDACTED]

DOB: [REDACTED] Agency ORI#: 3200

Prosecuting Agency: L. C. S. D.

Prosecuting Officer: MEFFORD, ROY

Offense: CSC WITH MINOR

Offense Code

Code/Ordinance Sec.: 16-3-655

This warrant is CERTIFIED FOR SERVICE
in the COUNTY/ MUNICIPALITY OFThe accused is to be arrested and brought
before me to be dealt with according to
law.

(LS)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered
to defendant TIMOTHY JACOB WILSON
on 11/12/06

Signature of Constable/Law Enforcement Officer:

RETURN WARRANT TO

GARY W. REINHART
521 GIBSON RD.
LEXINGTON, SC 29072
951-2542

ORIGINAL COURT COPY

STATE OF SOUTH CAROLINA
COUNTY OF Lexington

AFFIDAVIT

Personally appeared before me the affiant ROY MEFFORD
being duly sworn deposes and says that defendant TIMOTHY JACOB WILSON
did within this county and state on 03/16/2005 violate the criminal laws of
State of South Carolina (or ordinance of)
in the following particulars:
DESCRIPTION OF OFFENSE: CSC WITH MINORI further state that there is probable cause to believe that the above did commit
the crime set forth and that probable cause is based on the following facts:BETWEEN 03-19-05 AND 102006 THE DEFENDANT, TIMOTHY WILSON, HAD HIS Victim WHO IS UNDER
THE AGE OF ELEVEN PERFORM ORAL SEX ON HIM. THIS OCCURRED AT THEIR RESIDENCE LOCATED AT
[REDACTED] WITHIN LEXINGTON COUNTY, SC. THE VICTIM DISCLOSED THE ABOVE IN A
RECORDED FORENSIC INTERVIEW ON 110206.

Signature of Affiant

STATE OF SOUTH CAROLINA
COUNTY OF LexingtonAffiant's
Information

LCSD

ROY MEFFORD

LEXINGTON, SC 29072x. Co. C.C.C.F. G.S. & F.C.
7852450

A TRUE COPY

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that
on 03/16/2005 defendant TIMOTHY JACOB WILSON
did violate the criminal laws of the State of South Carolina (or ordinance of
) as set forth below:DESCRIPTION OF OFFENSE:
16-3-655 CSC WITH MINOR
CRIMINAL SEXUAL CONDUCT WITH MINORSHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest
the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this
Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is
practicable.Sworn to and subscribed before me
on 11/11/2006Signature of issuing Judge (L.S.)
Judge code: 041 Issuing Court: Magistrate

Issuing Judge

GARY S. MORGAN
231 W. CHURCH STREET
BATESBURG, SC 29006
803-359-8330

ORIGINAL COURT COPY

ORIGINAL COURT COPY

n 6089951

set by

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

Type and Amount: _____

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

BOB O'RIIG
CLERK OF COURT
LEXINGTON, SC

2006 NOV 20 P 4:11

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Criminal Sexual Conduct with Minor Child 1st Degree

§16-3-655(A)(1)

At a Court of General Sessions, convened on MARCH, 2008, the Grand Jurors of Lexington County present upon their oath:

That Timothy Jacob Wilson did in Lexington County between March 19, 2005 and October 20, 2006, commit willfully and unlawfully commit the crime of Criminal Sexual Conduct With a Minor in the First Degree by engaging in a sexual battery upon and with the body of victim [REDACTED] being a minor child less than eleven years of age, to wit: the defendant had the victim to perform oral sex on him, in violation of § 16-3-655(A)(1) of the Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY
[Signature]
Lex. Co. C.C.C.P., G.S. & F.C.

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

[Signature]
ASSISTANT SOLICITOR

WITNESSES

LCSD
Mefford, Roy

DOCKET NO. ~~2008~~-GS-32- 790

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MARCH TERM 2008

THE STATE

vs.

Timothy Jacob Wilson

A-2006-32-02973

1/29/2007 10:58 AM

ARREST WARRANT NUMBER

J052933

ACTION OF GRAND JURY

TRUE BILL

Linda L. Schelling
Foreperson of Grand Jury
Date: 3/10/08

VERDICT

Guilty

Edmund Patterson
Foreperson of Petit Jury

8-1-08
Date:

CDR# 0385

Indictment for

Criminal Sexual Conduct with Minor Child 1st
Degree

§16-3-655(A)(1)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.

Timothy Wilson

AKA:

Race: W Sex: M Age: 29

DOB: SS#:

Address: Lexington, SC 29073

DL#: SID#: sc01144094

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-32-0791

A/W#: J052934

Date of Offense: 3/19/2005 - 10/20/2006

S.C. Code § : 16-03-0655(1)

CDR Code #: 0385

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: CRIMINAL SEXUAL CONDUCT WITH MINOR CHILD 1ST DEGREE

in violation of § 16-03-0655(1) of the S.C. Code of Laws, bearing CDR Code # 0385

☐ 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 initial)
The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Solicitor

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 30 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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.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
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$
§ 90.11 TP (SCCJA Surcharge)	\$5	\$ 5
TOTAL		\$

Clerk of Court/ Deputy Clerk

Court Reporter: Stacy Sheppard

A TRUE COPY

_____ days/hours Public Service Employment C.
Lex. Co. C.C.C.P., C.A.C.

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2101525

Sentence Date: August 1, 2008

SCCA1217 (07/20/08)

STATE OF SOUTH CAROLINA)

) IN THE COURT OF GENERAL SESSIONS

COUNTY OF LEXINGTON)

THE STATE,)

-vs-)

VERDICT FORM

TIMOTHY JACOB WILSON.)

Case Number: 2008-GS-32-00791

Defendant.)

AS TO THE CHARGE OF CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE
FIRST DEGREE ALLEGING THE DEFENDANT PERFORMED DIGITAL
PENETRATION OF THE VAGINA OF THE MINOR CHILD:

WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT [CHECK ONE]:

[] NOT GUILTY.

OR

[/] GUILTY OF CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE
FIRST DEGREE, INCLUDING PROOF THAT THE DEFENDANT
INSERTED HIS FINGER(S) INTO THE MINOR'S VAGINA.

Edward Patterson
Foreperson

Lexington, South Carolina

August 1, 2008

Judge: William P. Keesley
Ct. Reporter: S. Sheppard

A TRUE COPY
[Signature]
Lex. Co. C.C.C.P., G.S. & F.O.

ARREST WARRANT

J-052934

STATE OF SOUTH CAROLINA
COUNTY OF LexingtonTHE STATE
against

ORIGINAL

TIMOTHY JACOB WILSON

Address: [REDACTED]

LEXINGTON, SC 29073

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: W Height: 5-11 Weight: 142

DL State: SC DL#: [REDACTED]

DOB: [REDACTED] Agency ORI#: 3200

Prosecuting Agency: L. C. S. D.

Prosecuting Officer: MEFFORD, ROY

Offense: CSC WITH MINOR

Offense Code [REDACTED]

Code/Ordinance Sec.: 16-3-655

This warrant is CERTIFIED FOR SERVICE
in the [REDACTED] COUNTY/ [REDACTED] MUNICIPALITY OFThe accused is to be arrested and brought
before me to be dealt with according to
law.

(LS)

Signature of Judge

Date: [REDACTED]

RETURN

A copy of this arrest warrant was delivered
to defendant TIMOTHY JACOB WILSON

on 11/12/06

Signature of Constable/Law Enforcement Officer: [REDACTED]

RETURN WARRANT TO

GARY W. REINHART
521 GIBSON RD.
LEXINGTON, SC 29072
951-2542

ORIGINAL COURT COPY

STATE OF SOUTH CAROLINA
COUNTY OF Lexington

AFFIDAVIT

Personally appeared before me the affiant ROY MEFFORD who
being duly sworn deposes and says that defendant TIMOTHY JACOB WILSON
did within this county and state on 03/19/2005 violate the criminal laws of the
State of South Carolina (or ordinance of [REDACTED])
in the following particulars:
DESCRIPTION OF OFFENSE: CSC WITH MINORI further state that there is probable cause to believe that the above did commit
the crime set forth and that probable cause is based on the following facts:BETWEEN 03-19-05 AND 102006 THE DEFENDANT, TIMOTHY WILSON, DIGITALLY PENETRATED HIS
VICTIM [REDACTED] VAGINA WHO IS UNDER THE AGE OF ELEVEN. THIS OCCURRED AT THEIR RESIDENCE LOCATED
AT [REDACTED] WITHIN LEXINGTON COUNTY, SC. THE VICTIM DISCLOSED THE ABOVE IN A
RECORDED FORENSIC INTERVIEW ON 110206.

Signature of Affiant [REDACTED]

STATE OF SOUTH CAROLINA
COUNTY OF LexingtonAffiant's
Information

LCSD

ROY MEFFORD

[REDACTED] RD

LEXINGTON, SC 29073

7852450

A TRUE COPY

ARREST WARRANT

LEX. CO. C.C.C.P., G.S. & F.C.

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that
on 03/19/2005 defendant TIMOTHY JACOB WILSON
did violate the criminal laws of the State of South Carolina (or ordinance of
[REDACTED]) as set forth below:

DESCRIPTION OF OFFENSE:

16-3-655 CSC WITH MINOR
CRIMINAL SEXUAL CONDUCT WITH MINORSHaving found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest
the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this
Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is
practicable.Sworn to and subscribed before me
on 11/11/2006 [REDACTED]

(L.S.)

Signature of issuing Judge

Judge code: 041 Issuing Court: Magistrate

Issuing Judge

GARY S. MORGAN

231 W. CHURCH STREET

BATESBURG, SC 29006

803-359-8330

ORIGINAL COURT COPY

ORIGINAL COURT COPY

06089951 27

BAIL set by

Judge

on 11-13-06

Type and Amount: 100,000.00

Name of Surety:

PRELIMINARY HEARING held by

Judge

on

Defense Attorney:

Decision:

DISPOSITION before

Judge

on

by

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition:

Sentence:

JURORS

WITNESSES

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

Name:

Address:

Telephone:

CODEFENDANTS

BETTY L. CARLIG
CLERK OF COURT
LEXINGTON, SC

2006 NOV 20 P 4:11

FILED

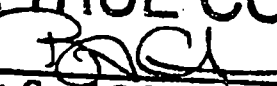
STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

INDICTMENT FOR
Criminal Sexual Conduct with Minor Child 1st Degree

§16-3-655(1)

At a Court of General Sessions, convened on MARCH, 2008, the Grand Jurors of Lexington County present upon their oath:

That Timothy Jacob Wilson did in Lexington County between March 19, 2005 and October 20, 2006, commit willfully and unlawfully commit the crime of Criminal Sexual Conduct With a Minor in the First Degree by engaging in a sexual battery upon and with the body of victim [REDACTED] being a minor child less than eleven, to wit: the defendant digitally penetrated the victim's vagina, in violation of § 16-3-655(1) of the Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

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


ASSISTANT SOLICITOR

WITNESSES

LCSD
Mefford, Roy

DOCKET NO. 2008 -GS-32- 791

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MARCH TERM 2008

THE STATE

vs.

Timothy Jacob Wilson

A-2006-32-02973

1/29/2007 10:46 AM

ARREST WARRANT NUMBER

J052934

ACTION OF GRAND JURY

TRUE BILL

Linda J. Schelling
Foreperson of Grand Jury
Date: 3/10/08

VERDICT

Guilty

Edward Patterson
Foreperson of Petit Jury

8-1-08
Date:

CDR# 0385

Indictment for

Criminal Sexual Conduct with Minor Child 1st
Degree

§16-3-655(1)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

STATE VS.
Timothy Wilson

AKA:

Race: W Sex: M Age: 29

DOB: SS#:

Address: Lexington, SC 29073

DL#: SID#: sc01144094

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-32-792

A/W#: J052932

Date of Offense: 3/19/2005 - 10/20/2006

S.C. Code § : 16-03-0655(1)

CDR Code #: 0385

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Criminal Sexual Conduct with a Minor, 1st Degree

in violation of § 16-03-0655(1) of the S.C. Code of Laws, bearing CDR Code # 0385

☐ 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 initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ 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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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 \$

§ 35.13 (Public Def/Prob) \$500 \$

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$

§ 90.11 TP (SCCJA Surcharge) \$5 \$5.00

TOTAL \$

Clerk of Court/ Deputy Clerk

Court Reporter: Stag Sheppard

PRESIDING JUDGE

Judge Code: 2101510

Sentence Date: August 1, 2008

SCCA/217 (07/2008)

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF GENERAL SESSIONS

THE STATE,)

-vs-)

TIMOTHY JACOB WILSON,)
Defendant.)

VERDICT FORM

Case Number: 2008-GS-32-00792

AS TO THE CHARGE OF CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE
FIRST DEGREE ALLEGING THE DEFENDANT PERFORMED CUNNILINGUS ON THE
MINOR CHILD:

WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT [CHECK ONE]:

[] NOT GUILTY.

OR

[/] GUILTY OF CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE
FIRST DEGREE (CUNNILINGUS).

Edward Patterson
Foreperson

Lexington, South Carolina

August 1, 2008

Judge: William P. Keesley
Ct. Reporter: S. Sheppard

A TRUE COPY
BCI
Lex. Co. C.C.C.P. G.S. & EQ.

ARREST WARRANT

J-052932

STATE OF SOUTH CAROLINA
COUNTY OF LexingtonTHE STATE
against

ORIGINAL

TIMOTHY JACOB WILSON

Address: [REDACTED]

LEXINGTON, SC 29073

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: W Height: 5-11 Weight: 142

DL State: SC DL#: [REDACTED]

DOB: [REDACTED] Agency ORI#: 3200

Prosecuting Agency: L. C. S. D.

Prosecuting Officer: MEFFORD, ROY

Offense: CSC WITH MINOR

Offense Code [REDACTED]

Code/Ordinance Sec.: 16-3-655

This warrant is CERTIFIED FOR SERVICE
in the [REDACTED] COUNTY/ [REDACTED] MUNICIPALITY OFThe accused is to be arrested and brought
before me to be dealt with according to
law.

(LS)

Signature of Judge

Date: [REDACTED]

RETURN

A copy of this arrest warrant was delivered
to defendant TIMOTHY JACOB WILSON
on [REDACTED] 11/12/06

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO

GARY W. REINHART
521 GIBSON RD.
LEXINGTON, SC 29072
951-2542

ORIGINAL COURT COPY

STATE OF SOUTH CAROLINA
COUNTY OF Lexington

AFFIDAVIT

Personally appeared before me the affiant ROY MEFFORD who
being duly sworn deposes and says that defendant TIMOTHY JACOB WILSON
did within this county and state on 09/19/2005 violate the criminal laws of the
State of South Carolina (or ordinance of [REDACTED])
in the following particulars:
DESCRIPTION OF OFFENSE: CSC WITH MINOR

I further state that there is probable cause to believe that the above did commit
the crime set forth and that probable cause is based on the following facts:

BETWEEN 03-19-05 AND 102006 THE DEFENDANT, TIMOTHY WILSON, PERFORMED ORAL SEX ON HIS
Victim WHO IS UNDER THE AGE OF ELEVEN. THIS OCCURRED AT THEIR RESIDENCE LOCATED AT
[REDACTED] WITHIN LEXINGTON COUNTY, SC. THE VICITM DISCLOSED THE ABOVE IN A
RECORDED FORENSIC INTERVIEW ON 110206.

Signature of Affiant

Affiant's
Information

LCSD
ROY MEFFORD
[REDACTED]
LEXINGTON, SC 29072
7852450

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

STATE OF SOUTH CAROLINA
COUNTY OF Lexington

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
It appearing from the above affidavit that there are reasonable grounds to believe that
on 09/19/2005 defendant TIMOTHY JACOB WILSON
did violate the criminal laws of the State of South Carolina (or ordinance of
[REDACTED]) as set forth below:

DESCRIPTION OF OFFENSE:
16-3-655 CSC WITH MINOR
CRIMINAL SEXUAL CONDUCT WITH MINORS

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest
the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this
Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is
practicable.

Sworn to and subscribed before me
on 11/11/2006

(L.S.)

Signature of issuing Judge
Judge code: 041 Issuing Court: Magistrate

Issuing Judge

GARY S. MORGAN
231 W. CHURCH STREET
BATESBURG, SC 29006
803-359-8330

ORIGINAL COURT COPY

ORIGINAL COURT COPY

06089933

~~BAIL~~ set by [Signature]

Judge _____

on 11-13-06

Type and Amount: 100,000 83

Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____

on _____

Defense Attorney: _____

Decision: _____

DISPOSITION before

Judge _____

on _____

by _____

(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

Name: _____

Address: _____

Telephone: _____

CODEFENDANTS

BEHN HARRIG
CLERK OF COURT
LEXINGTON, SC

2006 NOV 20 P 4: 11

FILED

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)

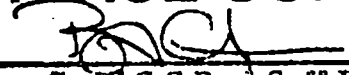
INDICTMENT FOR
Criminal Sexual Conduct with Minor Child 1st Degree

§16-3-655(1)

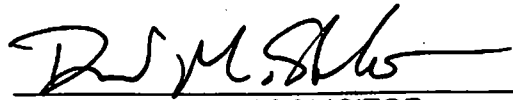
At a Court of General Sessions, convened on MARCH, 2008, the Grand Jurors of Lexington County present upon their oath:

That Timothy Jacob Wilson did in Lexington County between March 19, 2005 and October 20, 2006, commit willfully and unlawfully commit the crime of Criminal Sexual Conduct With a Minor in the First Degree by engaging in a sexual battery upon and with the body of **victim** being a minor child less than eleven years of age, to wit: the defendant did perform oral sex on the victim, in violation of § 16-3-655(A)(1) of the Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY


Lex. Co. C.C.C.P., U.S. & F.C.

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


ASSISTANT SOLICITOR

WITNESSES

LCSD
Mefford, Roy

DOCKET NO. 2008 -GS-32- 792

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MARCH TERM 2008

THE STATE

vs.

Timothy Jacob Wilson

A-2006-32-02973

1/29/2007 10:52 AM

ARREST WARRANT NUMBER

J052932

ACTION OF GRAND JURY

TRUE BILL

Linda L. Schelling
Foreperson of Grand Jury

Date: 3/10/08

VERDICT

Guilty

Edmund Patterson
Foreperson of Petit Jury

8-1-08
Date:

CDR# 0385

Indictment for

Criminal Sexual Conduct with Minor Child 1st
Degree

§16-3-655(1)

DONALD V. MYERS, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF LexingtonSTATE VS.
Timothy Wilson

AKA: _____

Race: W Sex: M 29DOB: SS#: Address:
Lexington, SC 29073DL#: SID#: sc01144094

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-32-2293

A/W#: 3052932 Direct IndictmentDate of Offense: 3/19/2005 - 10/20/2006S.C. Code § : 16-15-140CDR Code #: 2468

SENTENCE SHEET

Up to 15 yrs.

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Lewd Act on a Minorin violation of § 16-15-140 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 initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center;
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ 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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00

TOTAL \$ _____

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE William P. HaskinsJudge Code: 210 15 10Sentence Date: August 1, 2008

SCCA/217 (07/2008)

Court Reporter: S. Sheppard

Clerk of Court/Deputy Clerk

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF GENERAL SESSIONS

THE STATE,)

-vs-)

TIMOTHY JACOB WILSON,)

Defendant.)

VERDICT FORM

Case Number: 2008-GS-32-02293

AS TO THE CHARGE OF COMMITTING A LEWD ACT ON A MINOR:

WE, THE JURY, UNANIMOUSLY FIND THE DEFENDANT [CHECK ONE]:

[] NOT GUILTY.

OR

[☒] GUILTY OF COMMITTING A LEWD ACT ON A MINOR UNDER THE
AGE OF 16 YEARS.

Edward Patterson
Foreperson

Lexington, South Carolina

August 1, 2008

Judge: William P. Keesley
Ct. Reporter: S. Sheppard

A TRUE COPY
RC
Lex. Co. C.C.C.P., G.S. & F.O.

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
LEWD ACT ON A MINOR

§ 16-15-140

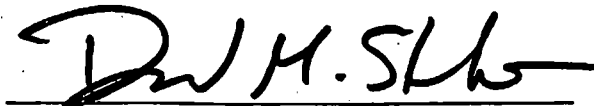
At a Court of General Sessions, convened on JULY 2008, the Grand Jurors of
Lexington County present upon their oath:

That **Timothy Jacob Wilson** date of birth [REDACTED], did in Lexington
County, South Carolina between the dates of March 19, 2005 and October 20, 2006, did
willfully and lewdly commit or attempt a lewd or lascivious act upon or with the body, or
its parts, of a child under the age of sixteen years, with the intent of arousing, appealing
to, or gratifying the lust or passions or sexual desires of the person or of the child, to wit:
the Defendant forced or coerced victim [REDACTED], date of birth [REDACTED] [REDACTED] [REDACTED], to
masturbate him with her hand to the point of ejaculation, in violation of Section 16-15-
140, Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

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


ASSISTANT SOLICITOR

WITNESSES

Lexington County Sheriffs Department

Roy Mefford

Law Enforcement Case #: 06089951

DMS

ARREST WARRANT NUMBER

Straight Indictment
08-STR-

ACTION OF GRAND JURY

TRUE BILL

Donald Leapart
Foreperson of Grand Jury

Date: 7-14-08

VERDICT

Guilty

Edward Patterson
Foreperson of Petit Jury

Date: 8-1-08

DOCKET NO. 2008-GS-32- 2293

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JULY TERM 2008

THE STATE

vs.

Timothy Jacob Wilson

CDR #: 2468

Indictment for

LEWD ACT ON A MINOR

§ 16-15-140

DONALD V. MYERS, SOLICITOR

CMT1330D

SCDC OFFENDER MANAGEMENT SYSTEM

02/24/1

OMCOMITA

RELEASE DATE SCREEN

C048593

SCDC# > 9329926

LOC: BROAD RIVER

WILSON, TIMOTHY -

SCDC CLASSIFICATION...: VIOLENT

OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE

SEXUAL REGISTRY...: Y

SEXUAL PREDATOR...: PENDING

DNA STATUS...: COMPLETED

GPS REQUIREMENT...: Y

PREA DECISION...:

CURRENT SENTENCE: 045-00-000

CONSECUTIVE SENTENCE...: Y

045-00-000

CURRENT SENT START DATE: 06/22/2008

PROJECTED COMPLETION DATES

MAXOUT DATE...: 06/11/2053

CURRENT EWC...: 3 F 5

YOA SIX YEAR DATE: / /

CURRENT EEC...: NOT CURRENTLY EARNING EEC

INITIAL PAROLE DATE: 00/00/0000

NEXT PAROLE HEARING DATE: 00/00/0000

TOTAL BT DAYS EARNED...: 000000

LABOR CREW/WORK PROG DATE: 99/99/9999

TOTAL EARNED WORK CREDITS...: 000229

LABOR CREW DISQ REASON:

TOTAL EDUCATION CREDITS...: 000000

CURRENT OR PRIOR SEX CONDUCT CONVICT

TOTAL EXTRA EARNED CREDITS...: 000

TOTAL SERVICE TIME EARNED...: 000962

PFKEYS:

5: HISTORY OF DATE CHANGES

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS
 RECORD SUMMARY REPORT DATED 02/24/11

C0485

WILSON, TIMOTHY - FBI # 828023NC5 SID# SC01725800 SCDC # 329926

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... BROAD RIVER CORR. INST.

SECURITY/CUST.: 3 MINIMUM IN

CURR INCARC SENT...: 45 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES

SOCIAL SECURITY #...: [REDACTED]

DORM.....: C0140A

RACE....:W SEX...:M

PROJ MAXOUT DATE: 06/11/2053

PROJ PAROLE DATE: 00/00/0000

ENC JOB...: BOTLER OPERATOR HELP

EDUC PGM.: NO CURR EDUC PROGRAM

ENC LEVEL: 3F5 EEC LEVEL:

ASSIGNMENT...: MAINTENANCE

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 32 DATE OF BIRTH...: [REDACTED]

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE			U/NU	CATEGORY
	YRS	MOS	DYS		START				
CRIM SEX COND.U/MINOR(15	15	0	0	LEXINGTON	6/22/20	8	U		5
LEWD ACT/CHILD UNDER 16	15	0	0	LEXINGTON	6/22/20	8	N		4
CRIM SEX COND.U/MINOR(15	15	0	0	LEXINGTON	6/22/20	8	U		5
CRIM SEX COND.U/MINOR(15	30	0	0	LEXINGTON	6/22/20	8	U		5

PRIOR COMMITMENTS OVER 90 DAYS:

MISSING PRIORS DATA

DETAINERS (HOLD,WANTED,NOTIFY):

CODE NOT IN TABLE

HOLD

IR0

CATEG: 5

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

NO NON-ASSAULTIVE DISCIPLINARY HISTORY

HISTORY OF MOVEMENTS:

DATE	LOCATION	STATUS	REASON
12/10/ 8	BROAD RIVER	INCARCERATED	RETURN FROM COURT
12/10/ 8	LEXINGTON CO	AUTH ABSENCE (AWL)	TO COURT
9/ 8/ 8	BROAD RIVER	INCARCERATED	ADMINISTRATIVE
8/ 6/ 8	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
BOTLER OPERATOR HELP	01/15/09	0/ 0/ 0		YF5
WARDKEEPER ASSISTANT	09/23/08	1/ 8/ 9	INMATE REQUEST	YF5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON

NO SCHOOL ASSIGNMENTS

***** END OF REPORT *****

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATEVS.
Timothy Wilson

AKA:

Race: W Sex: M Age: 29DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]
Lexington, SC 29073DL#: [REDACTED] SID#: sc01144094

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-32-790A/W#: J052933Date of Offense: 3/19/2005 - 10/20/2006S.C. Code §: 16-03-0655(1)CDR Code #: 0385

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: CRIMINAL SEXUAL CONDUCT WITH MINOR CHILD 1ST DEGREEin violation of § 16-03-0655(1) of the S.C. Code of Laws, bearing CDR Code # 0385☐ 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 initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]

Solicitor

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2008-GS-32-789, 791, 792 & 2293☐ 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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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 \$

§ 35.13 (Public Def/Prob) \$500 \$

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$25

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$

§ 90.11 TP (SCCJA Surcharge) \$5 \$5

TOTAL \$

[Signature]

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

[Signature]

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE

VS.

Timothy Wilson

AKA:

Race: W Sex: M Age: 29DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]
Lexington, SC 29073DL#: [REDACTED] SID#: sc01144094

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-32-2293

A/W#: 1052932 Direct IndictmentDate of Offense: 3/19/2005 - 10/20/2006S.C. Code § : 16-15-140CDR Code #: 2468

SENTENCE SHEET

Dup to 15

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Lewd Act on a Minorin violation of § 16-15-140 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 initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center;
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ 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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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	\$
§ 35.13 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$
§ 90.11 TP (SCCJA Surcharge)	\$5	\$ 5.00
TOTAL		\$

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

[Signature]Boeth A. Daniel

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE

VS.

Timothy WilsonINDICTMENT/CASE#: 2008-GS-32-792A/W#: J052932Date of Offense: 3/19/2005 - 10/20/2006S.C. Code § : 16-03-0655(1)CDR Code #: 0385

AKA:

Race: W Sex: M Age: 29DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]
Lexington, SC 29073DL#: [REDACTED] SID#: sc01144094

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Criminal Sexual Conduct with a Minor. 1st Degreein violation of § 16-03-0655(1) of the S.C. Code of Laws, bearing CDR Code # 0385☐ 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 initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ 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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPS _____

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 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00

TOTAL \$ _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel §35.13 TP

Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE [Signature] 45

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATEVS.
Timothy WilsonINDICTMENT/CASE#: 2008-GS-32-0791A/W#: J052934Date of Offense: 3/19/2005 - 10/20/2006S.C. Code § : 16-03-0655(1)CDR Code #: 0385

AKA:

Race: W Sex: M Age: 29DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]
Lexington, SC 29073DL#: [REDACTED] SID#: sc01144094

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: CRIMINAL SEXUAL CONDUCT WITH MINOR CHILD 1ST DEGREEin violation of § 16-03-0655(1) of the S.C. Code of Laws, bearing CDR Code # 0385☐ 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 initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

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 30 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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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	\$ <u>100</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 35.13 (Public Del/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ <u>25</u>
§ 33.7, 1B TP (Drug Court Surcharge)	\$100	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$
§ 90.11 TP (SCCJA Surcharge)	\$5	\$ <u>5</u>
TOTAL		\$

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel §35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE [Signature]

STATE OF SOUTH CAROLINA

COUNTY OF Lexington
STATE VS.Timothy Wilson

AKA: _____

Race: W Sex: M Age: 29DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]
Lexington, SC 29073DL#: [REDACTED] SID#: sc01144094

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008-GS-32-0789A/W#: J052931Date of Offense: 3/19/2005 - 10/20/2006S.C. Code § : 16-03-0655(1)CDR Code #: 0385

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: CRIMINAL SEXUAL CONDUCT WITH MINOR CHILD 1ST DEGREEin violation of § 16-03-0655(1) of the S.C. Code of Laws, bearing CDR Code # 0385☐ 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 initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: [Signature]

Solicitor

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 30 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.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5

TOTAL \$ _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel §35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE [Signature]

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on CSC 1st degree (2008-GS-32-790), with this sentence running consecutive to the other charges.

A timely notice of appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals dismissed the Applicant's appeal on October 28, 2010. State v. Wilson, Op. No. 2010-UP-472 (S.C. Ct. App. filed October 28, 2010). Remittitur was issued on November 17, 2010.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the records from Applicant's prior appeal proceeding. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a) failure to object to inadmissible hearsay
 - b) failure to subpoena expert witness
 - c) failure to object to solicitor's improper pitting of witnesses

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the State requests that a hearing be held.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Assistant Deputy Attorney General

KAELOE E. MAY
Assistant Attorney General

By: Kaeloe E. May
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

September 7, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

2011-CP-32-0402

TIMOTHY J. WILSON, #329926

Applicant.

vs

AFFIDAVIT OF SERVICE BY MAIL

STATE OF SOUTH CAROLINA.

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Nancy Todd Jordan, Esquire
P.O. Box 310
Lexington, SC 29071

DATED this 8th day of September, 2011

Lena Pelishenko

Lena Pelishenko, Legal Assistant
For Respondent

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY WILSON,

APPELLANT

RECORD ON APPEAL

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

Attorney for Appellant

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

Office of the Attorney General
PO Box 11549
Columbia, SC 29211

(803) 734-3727

DONALD V. MYERS
Solicitor, Eleventh Judicial Circuit
205 East Main Street

Lexington, SC 29072
(803) 785-8352

Attorneys for Respondent

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

STATE	)	
	)	
	)	TRANSCRIPT OF RECORD
V.	)	08-GS-32-789 - 792
	)	08-GS-32-2292, 2293
TIMOTHY JACOB WILSON	)	
	)	
<u>DEFENDANT.</u>	)	

JULY 29, 2008
LEXINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE WILLIAM P. KEESLEY, JUDGE; AND A
JURY.

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

DAVID M. STUMBO, ASSIST. SOLICITOR
OLA JOHNSON, ASSIST. SOLICITOR
ATTORNEYS FOR THE STATE

FULTON CASEY DALE CORNWELL, ASSIST. PUBLIC DEFENDER
BENNETT CASTO, ASSIST. PUBLIC DEFENDER
ATTORNEYS FOR THE DEFENDANT

STACY L. SHEPPARD
CIRCUIT COURT REPORTER

1

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WITNESSESDIRECTCROSSREDIRECTRECROSS

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Henry O. Dukes (In Camera)

By Mr. Johnson

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18

4

By Mr. Casto

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Timothy Jacob Wilson (In Camera)

By Mr. Casto

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By Mr. Johnson

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Alicia Benedetto (In Camera)

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By Mr. Cornwell

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Alicia Benedetto

By Mr. Johnson

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By Mr. Cornwell

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23

Roy Mefford

By Mr. Johnson

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24

By Mr. Casto

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4	By Mr. Cornwell		434		442
5	Heather Smith				
	By Mr. Stumbo	447		477	
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7	Timothy Jacob Wilson				
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8	By Mr. Johnson		510		
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10	By Mr. Johnson		532		534
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Date: 7-29-08

County: Lexington

08-2272, 2283

VOIR DIRE

Case No: 08-45-32-78972 Judge: Kosby

State _____ State Atty: David Stumbo

_____ Ola Johnson

Defendant: Timothy Wilson Defense Atty: Casey Cornwell

_____ Bennett Costo

Court Reporter: Stacy L. Sheppard

**** STRIKES ****

Juror No.	Name	Sex	Race	Court	State	Defense	Accept
232	Jerry Werries	M	W			X 1	
108	Leon Heying	M	W				1
33	Bonnie Byrd	F	W			X 2	
188	Joni Rose	F	B				2
215	Leslie Taylor	F	W			X 3	
197	Mamie Shumport	F	W				3
26	Judy Bridges	F	W			X 4	
103	Ann Helms	F	W			X 5	
196	Rebecca Shull	F	W				4
92	Christopher Thunwald	M	W				5
139	Christopher Matras	M	W			X 6	
170	Linda Page	F	W				6
145	Michael McGovern	M	W			X 7	
241	Esther Wilson	F	W				7
165	Jina Ormerod	F	W				8
95	Harry Hallman	M	B			X 8	
239	Franklin Williams	M	W			X 9	
54	Frances Day	F	W				9

County: Lexington

VOIR DIRE

Case No: 08-45-32-789-782 Judge: Hosley

State _____ State Atty: David Stumbo

Ola Johnson

Defendant: Timothy Wilson Defense Atty: Casey Cornwell

Bennett Costo

Court Reporter: Stacy L. Sheppard

*** STRIKES ***

[illegible]

1 (The following proceedings were held on July
2 29, 2008.)

3 **THE COURT:** This is in the matter of State
4 versus Timothy Jacob Wilson. We had instructed the
5 clerk to draw about 35 names and bring those jurors
6 in this morning at ten o'clock. I'm advised that we
7 have a problem concerning the message that the
8 jurors got. Apparently, we've got 24 or 25 over
9 there in the other courtroom waiting on us.

10 I looked on the Internet message. The Internet
11 message is clear, it lists the names of the jurors
12 who are to come in today at 10:00 and then there's a
13 separate list for jurors who were to come in for
14 Judge Newman's court at 1:30. Apparently, something
15 happened and the message that was on the phone
16 system was an old message from earlier in the month.
17 So the jurors who are over there waiting on us said
18 they would not have known to come in this morning
19 had they not looked on the Internet.

20 Now, I don't know if we've got 24 or 25. I was
21 trying to count through here and it looked like 35
22 to me, but I've been told 36, so I might have
23 miscounted. But in any event, the strikes are five
24 and ten, so I don't know if you all want to go ahead
25 and see if we can get a jury with this number

1 because I never know in a criminal case how many
2 people are going to be stricken. And, obviously, if
3 we've got 12, we've got enough to strike if no
4 strikes are exercised and nobody's set aside.

5 The only other thing we can do is we can have
6 the clerk start calling the people who are not here
7 and see when they can be here, go ahead and do
8 pretrial matters. The other thing we can do as an
9 option is either have Judge Newman try this case at
10 1:30 or me take his jury. I don't know what kind of
11 case he's got at 1:30 and whether the number that
12 they have would be sufficient for that case.

13 So between those three options, if you all want
14 to talk a minute, that's fine, but you can tell me
15 how you wish to proceed. If you think it would be
16 an exercise in futility to go ahead and start trying
17 to qualify the jury because you think you're going
18 to exercise more strikes than the people we have,
19 then we might as well stop right there. I,
20 obviously, would like to have alternates, if
21 possible, but if I don't, I don't.

22 I don't know if the lightening storm last night
23 had some effect on the system or not.

24 (Pause.)

25 MR. STUMBO: Your Honor, do you want me to go

1 on the record with this?

2 **THE COURT:** I want it all on the record.

3 **MR. STUMBO:** Okay. Your Honor, from the
4 State's perspective after discussing this with Mr.
5 Cornwell and Mr. Casto, because we have some rather
6 lengthy pretrial motions -- just to give Your Honor
7 a quick summary, we do have a Jackson v. Denno, we
8 have a motion to introduce the video of the forensic
9 interview of the child pursuant to the new provision
10 of Jessica's law. Part of that motion, Your Honor,
11 is that, obviously, we have to review the video to
12 make sure that it meets the standards under the
13 statute. It is, I think, about an hour and a half
14 video.

15 So with that being said, you know, our position
16 would be if the clerk's office could get on the
17 phone, maybe get nine or ten more jurors in here
18 where we would be safe with the strikes even if, I
19 think, we exercise all of the strikes in like ten
20 and five, if we have 35, 36 people, I think we'll
21 have enough. So we're okay with going ahead.
22 They've agreed to go ahead with some of these
23 pretrial matters while we're waiting on more jurors
24 to arrive.

25 **THE COURT:** If I got to watch an hour and a

1 half video, why didn't y'all tell me that yesterday
2 when I broke down court at lunchtime?

3 **MR. STUMBO:** I should have, Your Honor. We
4 could have taken up the -- one issue is this,
5 though, in order to lay the foundation for that
6 video even for pretrial, I needed a witness that was
7 not coming until this morning.

8 **THE COURT:** All right. Well, you answered my
9 question.

10 Bring those jurors in here.

11 (The jury panel enters the courtroom.)

12 **THE COURT:** Ladies and gentlemen, my name's
13 Billy Keesley. I live in Edgefield. I'm a resident
14 judge of our circuit. Our circuit is composed of
15 Lexington, McCormick, Saluda and Edgefield Counties.

16 And the plan for today is that we were going to
17 start a trial that required a jury. And we had
18 instructed the clerk's office to bring in 35 or 36
19 of you this morning at ten o'clock to draw a jury
20 for that case. And I'm told that there was some
21 problem with the notification and that I only have
22 about 24 or 25 people.

23 I've conferred with the attorneys and they've
24 told me that they have a number of pretrial issues
25 that I'm going to have to address outside the jury's

1 presence, so we're going to stay here and continue
2 to work. And the clerk is trying to call the people
3 who are not here to get them up here.

4 The reason I brought you in was to tell you
5 what's going on and let you know that I gave the
6 attorneys several different options. And the option
7 that has been chosen is that we try to get the
8 jurors up here who were supposed to be up here that
9 we apparently did not get proper notification to.

10 Those of you who are here means you've got to
11 wait, but I'm going to make that middle courtroom
12 available for you. You're welcome to stay in there.
13 I'm going to tell you to be back in there in about
14 an hour and we'll see where we are.

15 Now, folks, it's really important that you not
16 have any contact with anybody that's involved in
17 this case in any way. So if you know anybody who's
18 in this case, there will be a point in time where
19 you'll tell me about that, but you need to stay away
20 from anybody who may be involved in this case.

21 You're free to walk around. If you've got
22 something you can do in an hour, run an errand or
23 something and be back, that's fine, but I need y'all
24 in that courtroom, 3B, in an hour. If you want to
25 stay in there, that's fine, too, okay. And don't

1 talk about -- if you know anything about this case, ()
2 don't talk about this case in any way with anybody
3 including your fellow jurors.

4 As soon as I've got what I need, we'll get
5 started. And until then, we'll be working on things
6 that we would have had to work on anyway.

7 So, folks, if you're here for jury duty, you
8 know what I know right now. You can either wait on
9 us over there or you can walk around, just be back
10 in there in one hour. So be back in there please,
11 let's say, at 11:30, okay. Thank you.

12 (The jury panel leaves the courtroom.)

13 **THE COURT:** We're at ease a couple minutes. ()

14 (Brief Recess.)

15 **THE COURT:** What's the first motion?

16 **MR. STUMBO:** Thank you, Your Honor. Do you
17 want me to read the indictments or the indictment
18 numbers in for the record that we intend to call?

19 **THE COURT:** It's up to you, Solicitor.

20 **MR. STUMBO:** Okay. Thank you, Judge.

21 Your Honor, the State intends to call six
22 indictments all against Mr. Timothy Jacob Wilson
23 today in general sessions court. We have four
24 counts of criminal sexual conduct with a minor in
25 the first degree. Those are indictments ()

1 2008-GS-32-789, 790, 791 and 792. Your Honor, we
2 also have an indictment for lewd act on a minor,
3 that's 2008-GS-32-2293, and an indictment for
4 disseminating obscene material to a minor 12 years
5 or younger, that's 2008-GS-32-2292.

6 And if I may approach, Your Honor, I'll hand
7 these up.

8 **THE COURT:** Sure.

9 **MR. STUMBO:** Your Honor, the first item we
10 intend to -- motion is Jackson v. Denno hearing
11 involving a statement made by the defendant.

12 **THE COURT:** Call your witness.

13 **MR. STUMBO:** Yes, sir. And Mr. Johnson is
14 going to examine the witness and argue the motion
15 here.

16 **MR. JOHNSON:** Thank you, Your Honor. The State
17 calls Sergeant Dukes.

18 HENRY O. DUKES, JR.,
19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. JOHNSON:

22 **Q** Sergeant Dukes, can you state your full name?

23 **A** Henry O. Dukes, Jr.

24 **Q** Sergeant, where do you work?

25 **A** Lexington County Sheriff's Office and I am

1 assigned to the U.S. Marshal Service Fugitive Task
2 Force.

3 Q How long have you worked there?

4 A Ten years.

5 Q Did you come into contact with the defendant on
6 November 12th, 2006?

7 A Yes, I did.

8 Q Tell me about that.

9 A Can I refer to the incident report?

10 Q Yes, sir, if it'll refresh your memory.

11 A Yes, sir. Received the case from Detective
12 Mefford in reference to an individual that was
13 wanted on outstanding arrest warrants for our
14 department. Traveled to 11 Westwood on 11/12
15 of '06 to try to execute an arrest on the wanted
16 individual, Timothy Wilson. Upon arriving at the
17 618 Westwood, was met by the defendant's
18 mother who stated that he was working at the back of
19 the house on the roof.

20 Q Did you go back and make contact with the
21 defendant?

22 A Yes, we did. Myself and Deputy Day went to the
23 back of the house where the individual was up on the
24 ladder working on the house, called him down.

25 Q Okay. Did you identify yourself?

1 A Yes, sir, I did.

2 Q Did you tell him why you were there?

3 A I told him that we were there, we had some
4 outstanding arrest warrants for his arrest.

5 Q Did you ask him anything?

6 A The only thing I asked him was that if he knew
7 the reason -- he knew about the case.

8 Q And what did he say?

9 A He said he did. This is because of what I did
10 to my daughter.

11 Q Okay. And when he said that, did you have
12 handcuffs on him?

13 A No, sir, not yet.

14 Q Had you -- did you have a weapon drawn?

15 A No, sir.

16 Q Did the other officer have a weapon drawn?

17 A No, sir.

18 Q Who else was present?

19 A His mother and two other unidentified males. I
20 didn't have no idea who they were.

21 Q And the question that you asked, was that a
22 standard question you always ask when you place
23 somebody under arrest?

24 A Yes, sir, it was. I ask that question pretty
25 much all the time on every arrest warrant,

1 especially with somebody that's being compliant
2 because it make -- giving them a understanding that,
3 you know, why we're there, just don't want to reach
4 out and grab them and put handcuffs on them. It was
5 really just a yes or no answer was what I was
6 looking for.

7 MR. JOHNSON: No more questions.

8 THE COURT: Cross?

9 CROSS-EXAMINATION

10 BY MR. CASTO:

11 Q Just briefly, Officer. Now, you say that you
12 responded to Crestwood Drive?

13 A 616 Crestwood Arch.

14 Q And not Falcon Drive?

15 A I have on the -- to my best recollection, it is
16 the 616 Crestwood Arch.

17 Q And when you approached Mr. Wilson, you drove
18 there in a police or a sheriff's cruiser?

19 A Yes, sir.

20 Q And you were wearing your uniform?

21 A Yes, sir.

22 Q And you were with another officer?

23 A Yes, sir.

24 Q So there were two officers there or were there
25 more?

- 1 A Two officers, yes, sir.
- 2 Q And you approached Mr. Wilson?
- 3 A Yes, sir.
- 4 Q And you were there for the sole purpose of --
- 5 to serve the arrest warrant on Mr. Wilson?
- 6 A Yes, sir.
- 7 Q In other words, at that time, Mr. Wilson knew
- 8 full well that he was not allowed to leave?
- 9 A Yes, sir.
- 10 Q Your guns weren't drawn?
- 11 A No, sir.
- 12 Q He didn't seem intimidated?
- 13 A No, sir.
- 14 Q Did he put up -- he didn't put up a struggle?
- 15 A No, sir.
- 16 Q Didn't give you any problems?
- 17 A No, sir.
- 18 Q Was not ugly to you?
- 19 A No, sir.
- 20 MR. CASTO: Beg the Court's indulgence.
- 21 THE COURT: Yes.
- 22 (Pause.)
- 23 BY MR. CASTO:
- 24 Q I noticed also in your report that you said,
- 25 Mr. Wilson made a statement to the effect of; isn't

1 that correct?

2 **A** Yes, sir.

3 **Q** In essence, it wasn't a direct quote; is that
4 correct?

5 **A** It is a direct quote as in the incident report,
6 This is because of what I did to my daughter.

7 **Q** And so you found it necessary to include the
8 language to the effect of?

9 **A** I take and -- stated a quote that he made.

10 **MR. CASTO:** Nothing further.

11 **THE COURT:** Redirect?

12 REDIRECT EXAMINATION

13 BY MR. JOHNSON:

14 **Q** Do you always ask this question?

15 **A** Yes, sir.

16 **Q** And that's for officer safety?

17 **A** Yes, sir.

18 **MR. JOHNSON:** No more questions, Your Honor.

19 **THE COURT:** Recross?

20 **MR. CASTO:** No questions, Your Honor.

21 **THE COURT:** Thank you, sir. You may step down.
22 Call your next witness.

23 **MR. JOHNSON:** Your Honor, that's it for the
24 Denno.

25 **THE COURT:** Does the defense have any Denno

1 witnesses?

2 MR. CASTO: Your Honor, we call T.J. Wilson to
3 the stand at this time.

4 THE COURT: Come around, please.

5 TIMOTHY JACOB WILSON,
6 having been duly sworn, testified as follows:

7 THE CLERK: If you'll have a seat over there
8 and state your name for the record, please.

9 DEFENDANT WILSON: Timothy Jacob Wilson.

10 DIRECT EXAMINATION

11 BY MR. CASTO:

12 Q Mr. Wilson, do you remember the day in 2006
13 when the officer approached you in the backyard?

14 A Yes, sir.

15 Q And do you remember that day vividly?

16 A Yes, sir.

17 Q Do you remember the statement that you made?

18 A Yes, sir.

19 Q To the officer. And what was that statement?

20 A I said -- he asked me exactly -- this is what
21 he asked me, Do you know why we're here? And I was
22 climbing down off of a ladder and I said, Yeah, for
23 what's going on between me and my daughter.

24 MR. CASTO: No further questions.

25 THE COURT: Cross?

1 CROSS-EXAMINATION

2 BY MR. JOHNSON:

3 Q Mr. Wilson, could that be characterized as a
4 question calling for a yes or no answer as well?

5 A Could you rephrase that?

6 Q Could you have answered that question yes or
7 no?

8 A Yes.

9 Q Okay. And did you have any weapons pointing at
10 you at the time?

11 A No.

12 Q Were you in handcuffs?

13 A No.

14 Q Okay. And who were all of those people
15 standing around?

16 A I had my -- we were working on a roof. It was
17 me, my brother, my father-in-law and my mother and
18 my sister was out there, too.

19 MR. JOHNSON: Okay. No further questions, Your
20 Honor.

21 THE COURT: Redirect?

22 MR. CASTO: No questions, Your Honor.

23 THE COURT: Thank you, sir. You may step down.

24 DEFENDANT WILSON: Thank you, sir.

25 THE COURT: Any other witnesses on the Denno

1 hearing for the defense?

2 **MR. CASTO:** No, Your Honor.

3 **THE COURT:** Reply?

4 **MR. JOHNSON:** Nothing from the State, Your
5 Honor.

6 **THE COURT:** All right. Motions?

7 **MR. JOHNSON:** Your Honor, at this point, the
8 State would argue that basically this situation
9 involves an officer who's taken a defendant into
10 custody, but we clearly do not have interrogation.
11 I don't think Miranda was required.

12 The question asked by the officer was a
13 standard arrest question. He testified that he
14 always asks that question for officer safety. It's
15 one that calls for a yes or no answer.

16 He testified that when he's got somebody, he
17 wants them to comply. He wants -- he doesn't want
18 there to be any confusion, so he wants the person to
19 basically tell him if they know what's going on.
20 He's not looking for any other response. I don't
21 think under the standard, that a reasonable person
22 would look at that and say that it would elicit an
23 incriminating response.

24 Also, based on the facts and the detailed
25 situation where he had family members and friends

1 that were present, there were no weapons drawn, he
2 was not in a police car, he was not in handcuffs, I
3 don't think there's any issue here about this being
4 involuntary. Clearly, it was a voluntary statement
5 basically given by the defendant in response to a
6 question that would not amount to interrogation,
7 Your Honor.

8 **THE COURT:** Defense?

9 **MR. CASTO:** Your Honor, our position is
10 basically that a reasonable person when approached
11 by the officer knew he was not free to leave. This
12 is a situation where there were two officers on one
13 individual, even if the weapons weren't drawn, they
14 still had them in their possession, approached him
15 with uniforms and approached the house in a police
16 cruiser, Your Honor.

17 **THE COURT:** What's your motion?

18 **MR. CASTO:** At this time, we'd kindly ask the
19 Court to move that the statement be excluded.

20 **THE COURT:** All right. Bear with me.

21 (Pause.)

22 **THE COURT:** Let me see if I understood the
23 evidence as you all understood it. Did anybody
24 testify where this man was when that question was
25 asked?

1 **MR. JOHNSON:** He testified he was at his
2 mother's house.

3 **THE COURT:** I mean, on the ladder, on the
4 ground, on the roof?

5 **MR. JOHNSON:** He said when he got off the
6 ladder, I believe that's what the officer testified
7 to as well.

8 **THE COURT:** Is there a dispute as to where he
9 was?

10 **MR. CORNWELL:** One moment, Your Honor.

11 (Pause.)

12 **MR. CASTO:** Your Honor, he says that he was
13 coming down the ladder when they asked him.

14 **THE COURT:** All right. I thought that's what
15 he had said in his testimony.

16 All right. Is there any evidence in this
17 record as to whether the defendant had been told he
18 was under arrest?

19 **MR. JOHNSON:** I think the testimony was that he
20 told him he had warrants. The officer said he had
21 warrants for him.

22 **THE COURT:** When?

23 **MR. JOHNSON:** When he asked him -- I think,
24 when he called out to him, he made that statement to
25 the defendant, but I don't think he made the

1 statement, You're under arrest. He said that he put
2 him under arrest after he made the statement and he
3 had identified who he was.

4 **THE COURT:** Any dispute about that?

5 **MR. CASTO:** Your Honor, our position is that a
6 reasonable person would feel that they were under
7 arrest at that point they were presented with
8 warrants for their arrest, that they were not free
9 to leave.

10 **THE COURT:** How is asking, Do you know why
11 we're here, a matter of officer safety?

12 **MR. JOHNSON:** The officer testified that he
13 wanted to make sure that this person was not
14 confused by what was going on.

15 **THE COURT:** So why don't he just tell him, I
16 have warrants for your arrest for X, Y, Z?

17 **MR. JOHNSON:** I believe he did, Your Honor. I
18 believe he said he had warrants, but then he asked
19 him, do you know what this is about, I guess to be
20 more specific.

21 **THE COURT:** Why would he do that?

22 **MR. JOHNSON:** Well, Your Honor, he doesn't want
23 anyone to become combative if they're confused about
24 what's going on. And he testified that he always
25 asks that and the person always basically -- he

1 expects a response of yes or no because it sounds
2 like the type of question most people would consider
3 a yes or no answer to.

4 **MR. CASTO:** And in response, Your Honor, it's
5 our position that the officer asked that question
6 for the specific purpose of eliciting such a
7 statement. Wish to underscore the fact that there
8 were two officers versus just him, unarmed and
9 didn't pose a threat at all. We offer that just to
10 dispel the notion that there's an element of officer
11 safety involved here.

12 **MR. JOHNSON:** Well, there were several people
13 standing around, Your Honor, identified as family
14 members.

15 **THE COURT:** They had the officers outnumbered.
16 The question that was posed during the
17 testimony was, Did you do this for officer safety?
18 The answer is, Yes. And I'm sitting here trying to
19 figure out what this has to do with officer safety,
20 that question. I don't understand that.

21 **MR. JOHNSON:** Your Honor, at this point, would
22 you like us to recall the witness to clarify that?

23 **THE COURT:** No. I want to know what the
24 evidence is.

25 See, all of this, you know, it's very easy for

1 me when there are no uncertainties or as few
2 uncertainties as possible. When my inquiry, and I
3 realize that most people don't try to put themselves
4 in the judge's position of the inquiry the judge has
5 to do, but my inquiry relates very specifically to
6 exactly where he was when it was said, how it was
7 said, who was around, what were the circumstances.

8 It's a totality of the circumstances
9 evaluation, so it's important to me not out of idle
10 curiosity, but because of these lines of cases that
11 I've been reading up here to make sure that I had it
12 right in my head that I've got to know was he on the
13 ladder, had anybody said we've got warrants for you
14 or you're under arrest. Because once you place
15 somebody under arrest, you generally have to, in
16 almost every instance, give them Miranda warnings.

17 **MR. JOHNSON:** If there's an interrogation.

18 **THE COURT:** Or the functional equivalent.

19 **MR. JOHNSON:** Yes, sir.

20 **THE COURT:** And by your witness' own statement
21 in his testimony, he asked a person a question who
22 he was intending to place under arrest.

23 **MR. JOHNSON:** Yes, sir. I would just -- my
24 argument was that it was not interrogation simply
25 because it was requiring a yes or no answer.

1 **THE COURT:** I don't know that that -- that
2 seems an awfully naive position to me to say that
3 everybody I ask that question to is going to answer
4 it yes or no.

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

6 **THE COURT:** I mean, it's just so easy, bring
7 him down off the ladder, say you're under arrest,
8 read him his Miranda rights and then ask him
9 questions. So if you can explain to me how asking
10 that question changes the officer's safety dynamic,
11 I'd be delighted to hear it.

12 **MR. JOHNSON:** Well, I think he testified that
13 he was concerned that if you attempt to place
14 somebody in handcuffs and you haven't had that
15 question answered yes or no, then you're in a
16 situation where someone might be completely clueless
17 about why they're being arrested for these warrants.

18 **THE COURT:** If he never said, We have warrants
19 for your arrest, I think it's a fairly easy ruling
20 for me.

21 Now, I'm going to tell you, I've said this
22 before and it hasn't made any difference, had I been
23 sitting on the U.S. Supreme Court, I would have done
24 away with Miranda. I don't see any need to have to
25 give those warnings, but that's the law of this

1 nation and I've got to enforce it. So whether I
2 agree with it or disagree with it, just like many
3 rulings I make, whether I agree or disagree with the
4 law, I've got to follow it. Let me think about it.

5 (Brief Recess.)

6 **THE COURT:** I went back and looked at the notes
7 that the court reporter -- obviously, it's not an
8 official transcript, but the real time notes. What
9 it states in there is that the officers told the
10 defendant that they had arrest warrants for him. He
11 was asked -- the officer was asked whether the
12 officer asked any questions of the defendant. And
13 he, the officer, said the only thing that he asked
14 him was, Do you know about the, and it's sort of a
15 hesitation, Do you know about the case?

16 Y'all have to explain to me why that's --
17 Miranda warnings were not triggered before that
18 question could be answered -- asked, excuse me.

19 **MR. JOHNSON:** Your Honor, the argument I stated
20 before, that he was clearly there to place him under
21 arrest, but you have to have interrogation. And I
22 argue that this is a question that he asks all the
23 time --

24 **THE COURT:** The fact that he asks it all the
25 time and gets away with it a million times doesn't

1 change my inquiry.

2 MR. JOHNSON: Yes, sir.

3 THE COURT: If he's got routine practices that
4 are good, that's wonderful. If he's got routine
5 practices that are not good, that doesn't change my
6 inquiry.

7 MR. JOHNSON: Well, I would argue that it
8 doesn't -- it's something that's clearly not
9 intended to elicit this incriminating response.

10 THE COURT: What is it supposed to elicit, yes
11 or no?

12 MR. JOHNSON: My understanding is that it's for
13 the officer to have someone who is not combative.
14 If they say, yes, I know what this is about, that
15 changes it dramatically. If the person says no,
16 then he can go on to explain further and say, in
17 particular, here's why I'm here, this is why I'm
18 here, this is why I have warrants. And that's
19 basically so there won't be a fight and they won't
20 have to worry about subduing somebody that's going
21 to resist.

22 It's as for that purpose, I think, objectively
23 when you look at that, you could say that that's
24 something that could be a yes or no answer, not
25 necessarily an incriminating response.

1 **THE COURT:** I think it is highly likely to
2 elicit a response other than yes or no.

3 **MR. JOHNSON:** Yes, sir.

4 **THE COURT:** I think it is the functional
5 equivalent of questioning. And I've already
6 expressed to you all that I think this stuff is very
7 technical. I don't necessarily agree with it,
8 particularly in this day and age where everyone of
9 us has grown up hearing the Miranda warnings read on
10 television and T.V. shows all our lives. If there
11 is anybody out there that doesn't know they've got
12 the right to remain silent, I'd like to meet them.

13 Now, I don't think that it was a
14 confrontational situation. The officers acted
15 appropriately as far as -- I am convinced that the
16 officers did act appropriately. There were no
17 weapons drawn. There was no show of force. There
18 was no intimidation. None of those factors are in
19 any way involved in my dilemma.

20 My dilemma is they told somebody, the officer
21 told somebody, you're under arrest, basically, and
22 then proceeded to ask him, do you know what this is
23 about. That is an open-ended question. Open-ended
24 in the extreme. I have to grant the motion.

25 **MR. JOHNSON:** Yes, sir.

1 **THE COURT:** Now, if he opens the door in some
2 way, that's a different issue.

3 All right. What's the next motion -- do y'all
4 know what the status of the jury is?

5 **OFFICER:** We've got 32 jurors, Your Honor.

6 **THE COURT:** What do y'all want to do?

7 **MR. STUMBO:** We can go ahead and proceed with
8 our other witnesses for pretrial, Your Honor, if you
9 want to go ahead and get that on the record.

10 **MR. CORNWELL:** Your Honor, may me and Solicitor
11 Stumbo approach, please?

12 **THE COURT:** Sure.

13 (Whereupon, a bench conference was held off
14 the record.)

15 **THE COURT:** What's the next motion?

16 **MR. CORNWELL:** Your Honor, the defense would
17 like to make a motion for a continuance on this
18 trial, Your Honor.

19 **THE COURT:** Based on what?

20 **MR. CORNWELL:** Your Honor, there are a few
21 things, namely a recent Supreme Court -- South
22 Carolina Supreme Court opinion, which I'll provide
23 Your Honor with.

24 And, Your Honor, it states in relevant part --
25 well, just to give you a background on this case,

1 Your Honor, this case was assigned to the public
2 defender's office in mid to late April. I think it
3 was late April, Your Honor. At that time, it was --
4 it had been in the private bar, he had a private
5 attorney, Mr. Duncan, who got relieved, and there
6 was another private attorney appointed and that
7 private attorney got relieved about a week or two
8 later and it came to our office, Your Honor.

9 The same -- I guess, the next term of court,
10 which was I think about a week after we got the
11 case, it was on the trial list, Your Honor. I
12 talked to Mr. Stumbo. He consented to a continuance
13 at that point.

14 Another issue that was simultaneously going on
15 at that time was the fact that my client,
16 Mr. Wilson, was in the military and he had an
17 assignment. It wasn't a deployment, but it was an
18 assignment in California, Your Honor. He was there
19 until June 27th, I believe, Your Honor and that's
20 when he came in my office.

21 Well, the trial had been scheduled for July
22 14th, which gave me approximately two weeks to
23 prepare for trial. During that time, I wasn't able
24 to talk to my client. We hadn't -- I hadn't had the
25 time to sit down with him and talk to him with full

1 discovery, Your Honor, and kind of go over the case
2 with him until June 27th.

3 I spoke to -- me and Mr. Stumbo spoke to Judge
4 McMahon about continuing the case. And while I
5 would, you know, have liked more time, the
6 continuance was granted until this term or court,
7 Your Honor, which gave me approximately four weeks
8 to, you know, do everything I needed to do as far as
9 preparing for this case, Your Honor.

10 As you look through the Supreme Court case,
11 Your Honor, which is the main thrust of my argument
12 for a continuance, Your Honor, it specifically --
13 the court ruled that it would be ineffective
14 assistance of counsel to proceed in the case like
15 this without expert testimony, Your Honor, to
16 support our defense. Just to give you -- you're
17 reading through it, but just to go through the
18 history of it --

19 **THE COURT:** I've already read it, but go -- I
20 mean, I read it when it came out, but go ahead.

21 **MR. CORNWELL:** Okay, Your Honor. This case is
22 not dissimilar in that my client is looking at
23 effectively a life sentence, Your Honor. The State
24 is planning on producing two expert witnesses, Your
25 Honor. And in this situation, I have made efforts

1 to obtain an expert witness. And in my
2 communication with Mr. Stumbo, I informed him that I
3 was trying to do that and that may be an issue, if
4 there was an issue as far as continuance.

5 And at that time, I had not even, you know,
6 been fully briefed on that particular case, Your
7 Honor, but that case seemed to support my position
8 that in order to be effective in the representation
9 of my client, I'm going to have to have time to get
10 some expert witnesses, Your Honor.

11 I've spoken to at least four or five, of which,
12 because of the amount of time that, you know, the
13 time constraints and scheduling conflicts, could not
14 be here this term of court, Your Honor. As you
15 know, it's just -- I mean, that's a rush job trying
16 to get an expert in that amount of time. And, you
17 know, the ones that I spoke with also had scheduling
18 conflicts in combination with the time constraints,
19 Your Honor.

20 It's not a situation where we didn't make the
21 attempt, Your Honor, but, you know, it's just that
22 given the constraints of time, given the scheduling
23 conflicts, Your Honor, it's just that we were unable
24 to obtain them.

25 And per the Supreme Court of our state, Your

1 Honor, it would appear that -- well, I wouldn't say
2 it would appear, if we were to try this case as it
3 sits now, it will come back. It will come back in
4 PCR, it will be granted and this case will end up
5 being tried again. It will be a burden on the tax
6 payers, burden on the court system, burden on
7 everyone involved. And we'd have to bring everybody
8 back here and do this whole dance over again, Your
9 Honor.

10 Basically, just to kind of sum up, Your Honor,
11 this case since I got it, it's kind of like, I
12 mean -- it's kind of like the baby that the private
13 bar didn't want, the public defender's office ended
14 up with and we've got to take care of it. It's not
15 even that, it's worse than that. It's kind of like
16 the baby with serious health defects that we've been
17 asked to take care of with no insurance.

18 And we're in a situation now where we're trying
19 this case with our arm tied behind our back because
20 we weren't able to obtain experts. And the Supreme
21 Court has specifically ruled in that case that that
22 would represent ineffective assistance of counsel
23 and that is the last thing that we want, that is the
24 last thing that the Court needs, that's the last
25 thing my client needs. I think that if we take some

1 caution on the front end and continue this case,
2 then we can avoid a lot of hassle on the back end by
3 having to retry this thing once he's granted PCR,
4 because he will be. Thank you, Your Honor.

5 THE COURT: What experts does the State have?

6 MR. STUMBO: Your Honor, we have two experts
7 who are child sexual abuse assessment and treatment
8 experts. They'll be experts in that field. Your
9 Honor, one of which forensically interviewed the
10 child right after she disclosed, the other, who has
11 been in counseling with the child since that point,
12 which was -- it was referred for counseling after
13 she was forensically interviewed.

14 Judge, I don't think there's anything magical
15 about our expert testimony. I think it's
16 distinguishable from the McKnight case in that in
17 that case you have some highly technical medical
18 issues. I believe that was a case where it was
19 homicide by child abuse, if I'm not mistaken. I
20 just had a chance to briefly look through it a
21 second ago. I think this case is distinguishable
22 from that.

23 But, furthermore, Your Honor, we feel like it's
24 somewhat untimely at this point. I know it's -- and
25 I can appreciate the case load that the public

1 defender's office has because we have an extreme
2 case load ourselves that we have to handle in
3 getting cases ready for trial and so forth.
4 However, Your Honor, I do think if this was an issue
5 that needed to be resolved, that we should have
6 resolved it before the State went through the
7 process of getting this child, who had to be
8 prepared for court at least twice now and had
9 continuances again, and we've gone through the
10 expense of getting witnesses here and the -- that
11 situation as well, Your Honor. I believe it would
12 prejudice the State because of this, Your Honor, if
13 you were to grant the continuance.

14 I've met with the little girl in this case
15 who's the victim, is the daughter of
16 the defendant. ^{victim} Your Honor, has been
17 consistent the whole time this case has been going
18 on through the investigation stage to now. And this
19 is going to be part of our motion later in terms of
20 the trauma that she may experience in the courtroom
21 in the presence of the defendant that she has had a
22 lot of apprehension and gone through a lot of
23 emotional stress in this case.

24 I don't know, Your Honor, that if she gets --
25 she's gotten geared up for this thing yet again and

1 on the day of trial it gets continued, I think it
2 will have a serious prejudicial effect on our
3 ability to put up our case. And I honestly believe
4 that based on my meetings with ^{victim} my
5 discussions with the experts in this case who are
6 here in the courtroom today, my victim advocate
7 who's met with ^{victim} a number of times, Your Honor,
8 I do believe that it would prejudice our ability to
9 put up a case at this point.

10 You know, maybe if this continuance motion had
11 been heard a week and a half or a week ago even and
12 we were -- if it were to be continued, we were able
13 to tell her you're not coming to court next week,
14 it's going to be later, I think that may have helped
15 to an extent.

16 Your Honor, she's ready to get up here and
17 testify now. And I think it would prejudice us at
18 this point.

19 **THE COURT:** What are your expert witnesses'
20 opinions?

21 **MR. STUMBO:** Your Honor, their opinions are
22 going to be geared towards issues such as delayed
23 disclosure, the number of children they've met with
24 over the years, they're going to testify, that
25 that's a phenomenon, the fact that children don't

1 always disclose right away what's happened. I think
2 that's common in just about a very large percentage
3 of cases I've dealt with in this area.

4 I think the public defender's office had the
5 discovery in this case. We got it to them as soon
6 as we found out that they were appointed, Your
7 Honor, and that was late April, early May. So
8 they've had May, June and just about all of July
9 now. If they felt like that this was an issue,
10 which obviously just by reading the discovery, you
11 know it's an issue that there's going to be delayed
12 disclosure issues, that they had time to contact an
13 expert, get them in court.

14 **THE COURT:** What else are they going to testify
15 and give opinions on?

16 **MR. STUMBO:** Opinions as to the way the victim
17 in this case disclosed, Your Honor, it's consistent
18 with the way that children disclose sexual abuse,
19 that it starts with a little bit that may --

20 **THE COURT:** But it all relates to this delayed
21 disclosure?

22 **MR. STUMBO:** Delayed disclosure, and a separate
23 issue, Your Honor, is the process of disclosure, the
24 way children who have been exposed to sexual abuse,
25 the way that they disclose things. It's essentially

1 going to be corroborating testimony as to why victim
2 in this case testified the way she did and disclosed
3 the way she did from the very beginning.

4 She disclosed to a school guidance counselor
5 first, Your Honor, who we intend to call. She
6 disclosed to another psychologist who her mother
7 took her to. She then disclosed to DSS who was
8 called in first before law enforcement and then to
9 the forensic interviewer, Dr. Benedetto, and then to
10 her counselor. So all of this in conjunction with
11 her testimony this week on the stand and the expert
12 opinions as to how children disclose things that
13 have been exposed to this sort of thing, we think is
14 critical to our case.

15 And, Your Honor, I've never held anything back
16 from the public defender's office in this regard.
17 They've known what direction we're going with this
18 case the whole time. I believe we had discussions
19 off the record, nothing in writing, on who I
20 intended to call and the way I intended to present
21 my case. And I think Mr. Cornwell, I don't want to
22 put words in his mouth, but I think he would agree
23 that I've never been anything but open about the way
24 we intended to proceed in this case. I haven't hid
25 anything from him.

1 **MR. CORNWELL:** Your Honor, just to kind of --
2 Mr. Stumbo -- we're not alleging any misconduct or
3 anything like that. Mr. Stumbo has been more than
4 open with us.

5 It's just the fact that since the beginning of
6 this case, you know, it's kind of been push, push
7 and nudged to try to get this resolved and it was
8 kind of thrust upon us, you know. At the same time,
9 I mean it was a general nice pushing, but at the
10 same time, there was a push and a rush to get this
11 resolved, which I can understand from his standpoint
12 because the case is old. But if you want to talk
13 about prejudice, it's just that the fact that my
14 client's rights will be prejudiced through no,
15 really, fault of anybody serious, just the fact that
16 he's kind of been -- this case has kind of been
17 tossed around and now we're in a position to where
18 we're rushing.

19 Now, I would rather, and I'm sure, you know, if
20 we thought this out and thought through it, it would
21 be better to take some precautions on the front end
22 because if you want to talk about prejudice, the
23 State will be severely prejudiced when this comes
24 back to haunt us on a PCR. And according to that
25 opinion, from what I'm reading, it looks like there

1 will be a determination of ineffective assistance of
2 counsel, Your Honor, if we don't have experts to
3 support our defense, Your Honor. That was a
4 specific, you know, language in that Supreme Court
5 case, Your Honor.

6 I would point out that they did not -- the
7 issue of the nature of the testimony, that didn't
8 come into play from my reading of the case, Your
9 Honor. It was just the fact that there were no
10 experts at all to counter the experts of the State.

11 The fact -- but just to address that issue, the
12 experts that we were planning on -- that we were
13 trying to obtain, Your Honor, would be experts in
14 regards to delayed disclosure as Mr. Stumbo has his
15 expert. And we wanted to get in experts to look at
16 the forensic interviewing process itself, determine
17 if it was done properly, determine if it was proper,
18 you know, the nature of it and kind of explain why,
19 you know, a child's testimony cannot always be
20 believed and why it may not be, you know, why it
21 came out the way it came out.

22 Your Honor, basically, it boils down to -- the
23 simple fact of the matter is the Supreme Court has
24 said it's cases like these that it's ineffective
25 assistance of counsel to proceed without an expert

1 to support your defense. That is the situation we
2 have now, Your Honor.

3 I don't think that the State will be severely
4 prejudiced by this, Your Honor. Her story's been
5 remaining consistent, as you heard by the
6 prosecutor, Your Honor. I know this case has been
7 continued before, Your Honor, but it right -- it
8 wasn't all because of us, Your Honor. As I said
9 earlier, it's kind of the baby left on our doorstep
10 and we're trying our best to take care of it, Your
11 Honor.

12 I think the last thing that this Court wants,
13 the last thing that the Solicitor's office wants is
14 for us to go through this whole process only to have
15 to do it again.

16 **THE COURT:** The case that's been cited is
17 McKnight versus the State. It is a post-conviction
18 relief case. It was filed May 12, 2008. It's
19 opinion number 26484. It was a case where there was
20 expert witness testimony related to the cause of
21 death of a stillborn child.

22 **MR. CORNWELL:** And, Your Honor, I would even
23 point out that, in the case, she even had an expert
24 and they still said it wasn't enough because she
25 didn't have an expert that supported her defense,

1 Your Honor. The expert she had kind of undermined
2 her defense in a way, Your Honor. Here we are going
3 up against two experts with none versus none, Your
4 Honor.

5 **THE COURT:** Yeah, but the court --
6 post-conviction relief is a two prong analysis. You
7 have to find ineffective assistance of counsel and
8 then you have to find prejudice resulting to the
9 defendant and you all are asking me to make a leap
10 of faith.

11 And first of all, when this case was -- I did
12 not know who would try this case. I didn't know if
13 Judge Newman was going to try this case or I was
14 going to try this case.

15 The chief judge called me last week to ask me
16 if I would consider signing an order to expedite
17 obtaining of some records for the defense, which I
18 did. And neither one of us knew who would be trying
19 the case. He has told me twice he does not want
20 this case continued. Now, if I thought that the
21 case should be continued, I'd just have to make him
22 mad.

23 **MR. CORNWELL:** Your Honor, I understand that,
24 but --

25 **THE COURT:** But I don't see any reason to

1 continue the case.

2 **MR. CORNWELL:** Your Honor, based on that
3 Supreme Court opinion, all I would say is that this
4 case is almost the exact same situation.

5 **THE COURT:** No, because they've got the benefit
6 of knowing that even if a particular expert was not
7 available, according to what Justice Toal wrote,
8 Chief Justice Toal wrote, there was another witness
9 who was available to testify that cocaine did not
10 cause the stillbirth.

11 **MR. CORNWELL:** And, Your Honor, that's another
12 issue in that we have experts available who are
13 willing to testify. It was just that time
14 constraints and the situations like that, we
15 couldn't even, you know, schedule them because they
16 have schedule conflicts, Your Honor, to even get the
17 ball rolling on them to review the evidence and
18 review the materials we had and, you know, it's --
19 and that's where we're at in a nutshell, Your Honor.
20 I think in that regard that we kind of fall under
21 that ruling. And I understand that you don't want
22 to, you know, make Judge McMahon --

23 **THE COURT:** No, I just said the opposite. I
24 said I would rule even if it made him mad. The same
25 reason that I had to rule like I ruled a while ago,

1 I'll rule the other way if I have to. I've got to
2 do my job no matter what anybody thinks of it. If I
3 don't, the whole process falls apart. And if I'm
4 going to sit up here and worry about what somebody
5 else thinks, then I might as well turn in the robe.
6 I've got to do what the law requires.

7 Now, just -- I know that officer left a while
8 ago, I kind of wish he was in here, you know, if he
9 had never said, I got warrants for your arrest, I
10 would have had a completely different ruling. Once
11 he said that, he effectively said, you're under
12 arrest, and those Miranda warnings are triggered and
13 he can't question that witness. It's clear as a
14 bell.

15 And I'm sorry, I don't think he had any ill
16 motives. I'm convinced he didn't have any ill
17 motives. I'm convinced he was trying to be a nice
18 guy and was trying to be a good officer. I wish,
19 again, that I didn't have to deal with issues like
20 that.

21 But back to the point that's before me, you all
22 had the case, your client was out of town, this is
23 the kind of thing that comes up in every child abuse
24 or sexual molestation case of a child. The one
25 thing that starts waving a red flag as soon as you

1 get one of these files coming your way is you've got
2 a child witness, when did the child disclose, what's
3 the witness going to say, how is it going to be
4 said, has anybody had access to the child, who's had
5 access to the child, what did they say to the child,
6 how did the child respond, what words did the child
7 use at different points in that process, all of
8 those things may be very relevant.

9 MR. CORNWELL: And, Your Honor, not to
10 interrupt Your Honor, but we did try early on in the
11 process. We were looking for the type of expert we
12 needed to address these issues, Your Honor. And to
13 be honest with you, there were some issues in
14 regards to whether -- some of the ones we contacted,
15 most of them were out of state and they were
16 concerned about, you know, the effect of kind of
17 like the recent tide and whether it would be
18 considered practicing in this state if they came as
19 an expert witness. And we had to go look at that
20 issue.

21 Once we kind of found out that, you know, from
22 what we could tell that would not be an issue, we
23 got in contact with some more people and that's when
24 the scheduling and the time constraints got in the
25 way. And, Your Honor, it's not that somebody fell

1 asleep at the wheel here.

2 **THE COURT:** I don't think they did.

3 **MR. CORNWELL:** It's just the fact that we
4 effectively had this case for about, and this is a
5 generous estimate I guess, about 90 days -- yeah,
6 about 90 days, Your Honor. And this case has been
7 around, through no fault of our own, for a while.
8 The prosecution has had ample time to prepare
9 whatever they're going to do in this case, we have
10 not.

11 The prejudice is to our client in that we will
12 not have these experts to counter theirs, Your
13 Honor. The prejudice would be even to -- the
14 prejudice to the State would be once he's granted
15 PCR, we have to retry this thing again.

16 **THE COURT:** Again, y'all are asking me to make
17 a leap of faith that I'm not willing to make. I'm
18 not willing to concede that he, first of all, will
19 be convicted, or, secondly, that he's going to be
20 granted PCR if he is. I mean, I will tell you that
21 all things being considered, if I think that you've
22 got to try a case twice, that's a factor that I'll
23 take into account in granting a continuance or not.

24 The issue I have is that most experts, they
25 review these things on records before they ever see

1 anybody. A lot of times on a defense side, they
2 don't get the opportunity to see the people or talk
3 to them because that's one of the questions that,
4 typically, the prosecutor gets up and asks, well you
5 never even talked to the child, did you; you never
6 even talked to so and so, did you. And then on the
7 opposite side, you get the questions, well you never
8 even talked to the defendant, did you. So they do
9 it on records by and large.

10 You know, I'm beating a dead horse here. I
11 don't see any reason to continue it. You've made
12 your point very well. The motion to continue is
13 denied. Thank you.

14 **MR. CORNWELL:** Thank you, Your Honor.

15 **THE COURT:** What do y'all want to do with the
16 jury now? I'm now 30 minutes past when I told them
17 to be back. They said we had 32. I don't know if
18 we picked up any since then or not. I don't know
19 who the 32 are.

20 **MR. STUMBO:** We're fine with going ahead and
21 striking, Your Honor, from our perspective. If they
22 want to wait until we get to the 36 threshold --

23 **MR. CORNWELL:** Your Honor, out of an abundance
24 of caution, I would suggest we maybe wait until we
25 get the 34 or 36. I mean, I know that's only two

1 jurors, but we don't know what might happen during
2 voir dire.

3 **THE COURT:** Well, if I lose jurors, I lose
4 jurors. See how many are here, Madame Clerk. We're
5 at ease.

6 (Brief Recess.)

7 **THE COURT:** All right. As I understand it,
8 we're going to go with the 33 or if the other person
9 gets here, the 34. And that the ones who are
10 missing are on your list is number 10, number 22 and
11 number 31, that would be juror number 42, 239 and
12 65. Is that right for the State?

13 **MR. STUMBO:** Correct, Your Honor.

14 **THE COURT:** Defense?

15 **MR. CORNWELL:** That's correct, Your Honor.

16 (The jury panel enters the courtroom.)

17 **THE COURT:** All right. Ladies and gentlemen,
18 some of you have already been in court earlier this
19 morning. And for those of you who haven't, my
20 name's Billy Keesley. I live in Edgefield. I'm a
21 resident judge of our circuit. Our circuit has four
22 counties, Lexington, McCormick, Saluda and Edgefield
23 Counties. And I've been a resident judge of our
24 circuit now next month will be 17 years. I've been
25 assigned by the Chief Justice to preside over

1 general sessions court this week. General sessions
2 is commonly called criminal court.

3 And I want to begin by explaining to you that I
4 understand there was a glitch in the notification
5 system for you and to apologize to you on behalf of
6 the system for that. As I just told you, I've been
7 around here for almost 17 years and I can only
8 remember one other time that something like this
9 happened. You may not feel any better about it, but
10 I can tell you it's not a common place thing.

11 It apparently was properly posted on the
12 Internet, but the phone message, we don't know what
13 happened. I do know that, and I don't think this is
14 what happened, but I do know that apparently with
15 the storms that we had yesterday, it knocked out
16 some stuff here at the courthouse, it's knocked out
17 the sound system in this courtroom and I don't know
18 why we had a problem getting the message on the
19 telephone answering machine correctly, but we didn't
20 and so some of you got fairly urgent calls to come
21 in and some of you were here at ten o'clock.

22 You've been brought into this courtroom to
23 potentially serve as jurors on several indictments,
24 all of which will be tried together for purposes of
25 convenience. The Solicitor will call the cases in

1 just a minute. And before we do that, I'm going to
2 take just a few moments to explain some things to
3 you. If you've already heard this from another
4 judge, I'm sorry. I wasn't privy to what you were
5 told. I was doing guilty pleas yesterday and was
6 not around when you all were qualified.

7 What's going to happen is that I'm going to be
8 asking you a series of questions. And these
9 questions are designed to give us information that
10 might reveal any possible bias, prejudice, interest
11 or connection you may have with the cases or any of
12 the people in them or the type of cases that are
13 involved in this trial. The goal of all this is for
14 us to have a jury serving that is fair and
15 impartial. And I think if you keep that goal in
16 mind, these questions will make more sense to you.

17 So, for example, if you know some of the people
18 involved in the case, if you work in the same field,
19 if somebody in your family or you has ever been
20 through a similar experience on either side, those
21 are the kinds of things that we're going to be
22 wanting you to tell us about.

23 You may wonder why, for example, yesterday you
24 were asked information about your spouse's
25 employment. Well, you know, you can tell what I do

1 for a living. My spouse was a beautician. If there
2 was ever a lawsuit involving somebody's hair getting
3 turned green that didn't want it turned green, the
4 lawyers would want to know that my spouse was a
5 beautician, okay. In the same way that in a defense
6 case, if you work in a certain field, say, if you
7 own a restaurant but your spouse is an FBI agent,
8 there's a pretty good chance they're going to want
9 to know that. So that's why we ask you all these
10 questions and we're going to ask you some more.

11 It's really important that you understand that
12 you have an obligation to be completely truthful and
13 honest with me. So if you have any doubt about
14 whether any of these questions apply to you, you
15 need to discuss it with me and let me resolve the
16 doubt.

17 If I ever ask you anything that you prefer to
18 discuss more privately, let me know you want to come
19 down front and we'll talk about it over here on the
20 side.

21 You do need to understand that this is a court
22 of record. Now, what this means is Ms. Sheppard
23 down there is taking everything we say down on that
24 steno type machine and it's going into that
25 computer. So what's going to happen is if you stand

1 up to talk, the first thing I'm going to do is to
2 identify who is speaking, so I'm going to ask you
3 who you are and your juror number. If you don't
4 know your juror number, don't worry about it, we can
5 find it, but try to remember it, it will go a little
6 bit quicker if you remember your juror number. We
7 actually have a different numbering system when it
8 gets to this stage, so you've got to give us a
9 chance to find you on our list.

10 Did they place y'all under oath yesterday?

11 (Jurors indicate an affirmative response.)

12 **THE COURT:** All right. You're all under an
13 oath to tell me the truth all right.

14 Folks, the courtrooms, as you can tell, these
15 are much smaller than the courtroom upstairs. In
16 all the courtrooms, they design them so that the
17 benches go all the way to the wall. So if you have
18 to cross over people, I'm sorry, but that's just the
19 way the room is built. If you need to come down
20 front, I want you to come down front and talk to me.

21 All right. Solicitor, call your cases.

22 **MR. STUMBO:** Thank you, Your Honor. If it
23 please the Court.

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

25 **MR. STUMBO:** The State would call indictment

1 number 2008-GS-32-789, it's a true billed indictment
2 for criminal sexual conduct with a minor in the
3 first degree. Indictment is the State versus
4 Timothy Jacob Wilson.

5 The second indictment is 2008-GS-32-790, again,
6 State versus Timothy Jacob Wilson. It's a true
7 billed indictment for criminal sexual conduct with a
8 child in the first degree.

9 2008-GS-32-791, the State versus Timothy Jacob
10 Wilson, it's a true billed indictment for criminal
11 sexual conduct with a minor in the first degree.

12 2008-GS-32-792, the State versus Timothy Jacob
13 Wilson, it's a true billed indictment for criminal
14 sexual conduct with a minor in the first degree.

15 Indictment 2008-GS-32-2292, State versus
16 Timothy Jacob Wilson, it's a true billed indictment
17 for disseminating obscene material to a minor 12
18 years or younger.

19 And, lastly, 2008-GS-32-2293, the State versus
20 Timothy Jacob Wilson, it's a true billed indictment
21 for lewd act on a minor.

22 Your Honor, I believe you have the originals up
23 on the bench.

24 **THE COURT:** All right. Thank you.

25 All right. Ladies and gentlemen of the jury,

1 you're about to -- we're about to draw a jury that
2 will hear cases involving six separate and distinct
3 indictments. These indictments each have to be
4 evaluated on their own merit or lack of merit. They
5 are merely being tried together for purposes of
6 convenience. Each of these indictments is captioned
7 the State versus Timothy Jacob Wilson and I'm going
8 to read these indictments to you.

9 In one indictment, Mr. Wilson is charged with
10 disseminating obscene material to a minor 12 years
11 of age or younger. That indictment alleges that
12 Timothy Jacob Wilson, who's date of birth is
13 , did in Lexington County,
14 South Carolina, between March 19, 2005 and October
15 20, 2006, knowingly disseminate to a minor, 12 years
16 of age or younger, material which he knew or
17 reasonably knew -- reasonably should have known was
18 obscene within the meaning of section 16-15-305.
19 Specifically, it's alleged that Mr. Wilson made
20 available pornographic movies on a television set in
21 his residence at Lexington
22 County, South Carolina, and caused his daughter,
23 ~~Victim~~ who's date of birth is ,
24 to watch said movies with him on more than one
25 occasion. This is alleged to be in violation of

code section 16-15-355 of the South Carolina Code.

Another indictment charges Mr. Wilson with committing a lewd act upon a minor. This indictment alleges that Timothy Jacob Wilson, date of birth

did in Lexington County, South Carolina, between the dates of March 19, 2005 and October 20, 2006, willfully and lewdly commit or attempt a lewd or lascivious act upon or with the body or the parts of the body of a child under the age of 16 years with the intent of arousing, appealing to or gratifying the lust, passions or sexual desires of the person or the child. It's alleged that

Mr. Wilson forced or coerced ^{Victim} date of birth [^] to masturbate him with her hand to the point of ejaculation, which is alleged to be in violation of code section 16-15-140, which is for committing or attempting to commit a lewd act upon a minor.

Another indictment charges Mr. Wilson with criminal sexual conduct with a minor in the first degree. That indictment alleges that Timothy Jacob Wilson did in Lexington County, between March 19, 2005 and October 20, 2006, commit, willfully and lewdly, the crime of criminal sexual conduct with a minor in the first degree by engaging in a sexual

1 battery upon and with the body of Breann Wilson, a
2 minor less than 11 years of age. It's alleged that
3 Mr. Wilson performed oral sex on the child, which is
4 alleged to be in violation of section 16-3-655
5 subsection (A) (1) of the South Carolina Code.

6 Another indictment charges Mr. Wilson with
7 criminal sexual conduct with a minor in the first
8 degree. That indictment alleges that Timothy Jacob
9 Wilson did in Lexington County, between March 19,
10 2005 and October 20, 2006, commit, willfully and
11 unlawfully, the crime of criminal sexual conduct
12 with a minor in the first degree by engaging in
13 sexual battery upon and with the body of Breann
14 Wilson, date of birth March 19, 1999, a minor less
15 than 11 years of age. Specifically, it's alleged
16 that Mr. Wilson digitally penetrated the child's
17 vagina in violation of code section 16-3-655
18 subsection (1).

19 The next indictment charges Mr. Wilson with
20 criminal sexual conduct with a minor in the first
21 degree. That indictment alleges that in Lexington
22 County, between March 19, 2005 and October 20, 2006,
23 Mr. Wilson committed, willfully and unlawfully, the
24 crime of criminal sexual conduct with a minor in the
25 first degree by engaging in sexual battery upon and

1 with the body of Breann Wilson, date of birth March
2 19, 1999, a minor less than 11 years of age. It's
3 alleged that Mr. Wilson had the victim perform oral
4 sex on him in violation of section 16-3-655
5 subsection (A)(1).

6 And, finally, I have an indictment that alleges
7 that Mr. Wilson committed criminal sexual conduct
8 with a minor in the first degree in that between
9 March 19, 2005 and October 20, 2006, in Lexington
10 County, he willfully and unlawfully committed
11 criminal sexual conduct with a minor in the first
12 degree by engaging in sexual battery upon and with
13 the body with Breann Wilson, date of birth March 19,
14 1999, a minor less than 11 years of age. It is
15 alleged in this indictment that the defendant had
16 sexual intercourse with the child in violation of
17 section 16-3-655 subsection (A)(1).

18 Now, ladies and gentlemen, these indictments
19 are not evidence. An indictment is a charging
20 paper. It is nothing more than the formal means by
21 which someone is charged and brought to trial. An
22 indictment has no evidentiary value and you may not
23 accord it any.

24 Upon his arraignment on these charges,
25 Mr. Wilson has entered pleas of not guilty. He is

1 presumed to be innocent. It is incumbent upon the
2 State of South Carolina, having brought these
3 charges against Mr. Wilson, to prove every essential
4 element of each offense beyond a reasonable doubt.
5 A defendant has no obligation to prove anything at
6 all.

7 Now, I'll be asking you a series of questions.
8 If any of these questions apply to you or if you
9 have any doubt about whether they apply to you,
10 please stand and follow the procedure that I
11 outlined for you earlier.

12 Is Timothy Jacob Wilson in the courtroom?
13 Mr. Wilson, I need for you to stand please, sir,
14 turn so the jury can see you. Face over to my left
15 a little bit, please, so that side can see you, too.
16 Thank you very much, sir. Have a seat.

17 Is there any member of the jury panel who is
18 related by blood or marriage or connected by
19 employment with the defendant in these cases,
20 Timothy Jacob Wilson; if so, please stand?

21 (There was no response.)

22 **THE COURT:** Mr. Wilson will be represented by
23 Mr. Casey Cornwell and Mr. Bennett Casto. Did I say
24 your name correctly?

25 **MR. CASTO:** Yes, you did, Your Honor.

1 **THE COURT:** Y'all stand and let the jury see
2 you, please. Thank you, gentlemen. You may be
3 seated.

4 Do any of you know anything at all about this
5 matter? Has anybody talked to you about it? Do you
6 have any independent knowledge of it? Have you read
7 anything in the newspaper, seen anything or heard
8 anything in any type of media? If you have any
9 knowledge whatsoever about this situation or about
10 this matter, if so, please stand.

11 (Juror stands.)

12 **JUROR:** Your Honor, I --

13 **THE COURT:** Folks, don't stand up and start
14 talking, just do what I tell you, okay. You need to
15 come down front, sir.

16 The lawyers may join me on the side.
17 Mr. Wilson may if you like.

18 (The following bench conference was held on
19 the record.)

20 **JUROR:** My name is Harry Hallman.

21 **THE COURT:** 21 on our list.

22 Yes, sir, what's your situation?

23 **JUROR:** I have read in the paper, if I'm not
24 mistaken, about something being reported. And I
25 also have worked as -- in the department of

1 corrections as a correction officer. And often time
2 I did have to go work with defendants like that, so
3 I would like that to be known.

4 **THE COURT:** You read something in the paper
5 about this case?

6 **JUROR:** I mean, it may be just when it came up,
7 I'm not sure.

8 **THE COURT:** Do you know whether it related to
9 this case or not?

10 **JUROR:** I'm not sure.

11 **THE COURT:** Is there anything at all about what
12 you may have read in the media or heard through the
13 media or seen or about your employment that would
14 affect your ability -- or prior employment that
15 would affect your ability to be fair and impartial
16 as a juror?

17 **JUROR:** No, I would try to be fair.

18 **THE COURT:** Do you have any doubt at all about
19 your ability to be fair and impartial in this case?

20 **JUROR:** No. I am a person that will try to be
21 honest.

22 **THE COURT:** So you have no doubt?

23 **JUROR:** I have no doubt.

24 **THE COURT:** Thank you, sir.

25 All right. Mr. Hallman is juror number 95, 21

1 on our list. He's eligible to serve.

2 (The bench conference was concluded.)

3 **THE COURT:** Ladies and gentlemen, I'm going to
4 read to you a list of the names of potential
5 witnesses for the state. Some of these people may
6 be here now, some may not be here. That's not
7 unusual for the witnesses not to be here during jury
8 qualification.

9 If any of them are present or if they're right
10 outside, if the lawyers will let me know, we'll
11 bring them in and let the jurors see them.

12 The minor child is ^{victim} Rosemary
13 Behrens; Christalyn Thompson Howard; Gregory H.
14 Robinson; Doctor Alicia Benedetto, would you stand
15 and face so the jury can see you, thank you, Doctor;
16 Investigator Roy Mefford of the Lexington County
17 Sheriff's Department, thank you, sir; Sergeant Henry
18 Dukes of the Lexington County Sheriff's Department;
19 Doctor Susan Luberoff; and Heather Smith, who is
20 with the Assessment Resource Center, would you stand
21 and do likewise, thank you, ma'am.

22 Are any of you related by blood or marriage or
23 connected by employment with any of the potential
24 witnesses for the State; if so, please stand?

25 (There was no response.)

1 **THE COURT:** Are any of you in any way involved
2 with or have any relationship, current or former,
3 with any of the entities including the Lexington
4 County Sheriff's Department, or the Assessment
5 Resource Center or with the prosecutor's office, the
6 Solicitor's office of the Eleventh Judicial Circuit,
7 if so, please stand?

8 (Juror stands.)

9 **JUROR:** Your Honor, could you please repeat the
10 question?

11 **THE COURT:** Do you have any connection, current
12 or former, with any of the potential witnesses, any
13 of the entities including the Assessment Resource
14 Center, the Lexington County Sheriff's Department or
15 Eleventh Circuit Solicitor's Office?

16 **JUROR:** I would like to approach the bench,
17 Your Honor.

18 **THE COURT:** Sure, come on down.

19 (The following bench conference was held on
20 the record.)

21 **THE COURT:** What's your name, sir?

22 **JUROR:** Jerry Werries, W-E-R-R-I-E-S.

23 **MR. STUMBO:** 232.

24 **THE COURT:** What's your situation?

25 **JUROR:** My employment causes me to work very

1 closely with the Lexington County Sheriff's Office,
2 but I do not know any of the investigators involved
3 in this case.

4 **THE COURT:** What do you do?

5 **JUROR:** I'm a fraud investigator with First
6 Citizens Bank, white collar crimes.

7 **THE COURT:** Is there anything at all about your
8 relationship with the Lexington County sheriff's
9 office that would affect your ability to be fair and
10 impartial in this case?

11 **JUROR:** No, sir.

12 **THE COURT:** Can you decide the case without
13 regard to what that entity, that agency may think of
14 your decision?

15 **JUROR:** Yes, sir.

16 **THE COURT:** Do you have any doubt at all about
17 your able to be fair and impartial?

18 **JUROR:** No, sir.

19 **THE COURT:** Thanks very much.

20 Mr. Werries is 232, he's eligible to serve.

21 **BAILIFF:** Your Honor, I have two more ladies,
22 Your Honor.

23 **THE COURT:** What's your name?

24 **JUROR:** Bonnie Byrd, number 33.

25 **THE COURT:** Ms. Byrd is juror number 33.

1 What's your situation?

2 **JUROR:** My daughter's boyfriend is joining the
3 Lexington County Sheriff's Department. He's not a
4 full-fledged deputy yet.

5 **THE COURT:** Is there anything at all about that
6 relationship that affects your ability to be a fair
7 and impartial juror in the case?

8 **JUROR:** No, sir.

9 **THE COURT:** Can you decide the case without
10 regard to what he or the agency may think of your
11 decision?

12 **JUROR:** I can.

13 **THE COURT:** Any doubt in your mind about any of
14 that?

15 **JUROR:** Not at all.

16 **THE COURT:** Thank you. Have a seat back there,
17 please.

18 Ms. Byrd, juror number 33, is eligible to
19 serve.

20 Yes, ma'am, your name, please.

21 **JUROR:** Sally McLeod, number 149.

22 **THE COURT:** 27 on our list. Okay, Ms. McLeod,
23 what's your situation?

24 **JUROR:** A member of my family has been accused
25 of molestation and it's pending in Lexington County.

1 **THE COURT:** Are you going to be a witness in
2 that case?

3 **JUROR:** I don't know at this point. I possibly
4 could be.

5 **THE COURT:** Do you know if you'll be a witness
6 for the State or for the defense?

7 **JUROR:** For the defense.

8 **THE COURT:** Who is defending your relative?

9 **JUROR:** I'm so nervous. Robin...

10 **THE COURT:** Alley.

11 **JUROR:** Yes. Thank you.

12 **THE COURT:** And what agency made the charge?
13 Is it the sheriff's office or town?

14 **JUROR:** DSS I think.

15 **THE COURT:** DSS couldn't have arrested him. Do
16 you know who -- does he live out in the county -- is
17 it a he?

18 **JUROR:** Yes. I guess the sheriff's department.

19 **THE COURT:** Is there anything about that
20 situation that affects your ability to be fair and
21 impartial as a juror in this case?

22 **JUROR:** I don't think so.

23 **THE COURT:** Is the fact that the prosecutor's
24 office may be the same prosecutor's office, would
25 that affect your ability to be fair and impartial in

1 the case?

2 JUROR: Well, no.

3 THE COURT: Okay. If the Lexington County
4 Sheriff's Department is the prosecuting agency in
5 both cases, would that affect your ability to be
6 fair and impartial?

7 JUROR: No. I mean, I would just try to listen
8 to the evidence.

9 THE COURT: Okay. Is there any doubt about
10 your ability to be a fair and impartial juror in
11 this case?

12 JUROR: No.

13 THE COURT: Thank you very much.
14 Ms. McLeod is 149. She's eligible to serve.

15 (The bench conferences were concluded.)

16 (Juror stands.)

17 THE COURT: Yes, ma'am.

18 JUROR: Juror 36, Lorice Chalmers.

19 THE COURT: Let me find you on my list --

20 JUROR: My son-in-law just started with the
21 sheriff's department yesterday. I didn't know
22 whether that would be a factor.

23 THE COURT: What does he do?

24 JUROR: He's a deputy.

25 THE COURT: I'm going to set you aside, Ms.

1 Chalmers. Just check the phone message and the
2 Internet, okay.

3 **JUROR:** Okay. Thank you.

4 **THE COURT:** You're free to go.

5 **JUROR:** Thank you.

6 **THE COURT:** 36 is set aside. She has a
7 relative who works for the prosecuting agency.

8 Okay. The State will be represented by members
9 of the Eleventh Judicial Circuit Solicitor's Office,
10 Mr. David Stumbo and Mr. Ola Johnson. Thank you,
11 gentlemen. You may be seated.

12 Now, ladies and gentlemen, to the best of my
13 knowledge, I've now introduced to you the people
14 involved in the case, the entities involved in the
15 case. And what I need for you to do now is this, if
16 you've got any connection of any kind with any of
17 these people, any of these entities that you have
18 not previously disclosed to us, you need to let us
19 know. That includes if you're a neighbor, if you're
20 a friend, if you attend the same church or civic
21 clubs, if you've ever been represented by one of
22 these attorneys or anyone with whom they're
23 affiliated, if you've ever been on the opposite side
24 of the case represented by one of these attorneys or
25 anyone with whom they're affiliated, any connection

1 at all, you need to let us know about it, please
2 stand.

3 (Jurors stand.)

4 **THE COURT:** Your name, sir?

5 **JUROR:** Mike McGovern.

6 **THE COURT:** He's juror number 145 and 17 on our
7 list.

8 What's your situation, Mr. McGovern?

9 **JUROR:** Just one of my business partners
10 volunteers with the county.

11 **THE COURT:** One of your business partners
12 volunteers with the sheriff's office?

13 **JUROR:** Yeah. I don't know if that's too much
14 stretch.

15 **THE COURT:** All right. One of your business
16 partners volunteers for the sheriff's office. Is
17 there anything at all about that relationship that
18 affects your ability to be fair and impartial as a
19 juror in the case?

20 **JUROR:** No.

21 **THE COURT:** Can you decide this case without
22 regard to what he may think of your decision?

23 **JUROR:** Yes.

24 **THE COURT:** Can you decide the case without
25 regard to what the sheriff's department may think of

1 your decision?

2 JUROR: Yes, sir.

3 THE COURT: Do you have any doubt whatsoever
4 about your ability to be fair and impartial as a
5 juror?

6 JUROR: No.

7 THE COURT: Thank you. Juror number 145 is
8 qualified.

9 Yes, sir, your name?

10 JUROR: Yes, sir. I don't know if it's totally
11 unrelated --

12 THE COURT: I need your name first.

13 JUROR: Mike Beeler, juror number 15.

14 THE COURT: Let me find you. Mr. Beeler is
15 juror number 15. He's 36 on our list.

16 Go ahead, Mr. Beeler.

17 JUROR: The lady just mentioned her son was
18 with the sheriff's department. My son is a crime
19 scene investigator, but he's Richland County. I
20 just wanted to note that.

21 THE COURT: Is there anything at all about your
22 relationship with your son or his employment that
23 affects your ability in any way to be a fair and
24 impartial juror in this case?

25 JUROR: No, sir.

1 **THE COURT:** Have any doubt in your mind?

2 **JUROR:** No, sir.

3 **THE COURT:** Thank you, sir. Mr. Beeler's juror
4 number 15, eligible to serve.

5 Yes, ma'am, your name?

6 **JUROR:** Tina Ormerod, juror number 165.

7 **THE COURT:** Ms. Ormerod is juror number 165, 20
8 on our list.

9 What's your situation, ma'am?

10 **JUROR:** I don't know that it matters, but I was
11 part of Leadership Lexington. And I talked with a
12 number of the sheriff's department. We went there
13 on a tour, so I've talked with some people at the
14 sheriff's department.

15 **THE COURT:** Anything at all about that
16 experience or your relationship with them that
17 affects your ability to be a fair and impartial
18 juror in the case?

19 **JUROR:** No, sir.

20 **THE COURT:** Any doubt in your mind?

21 **JUROR:** No, sir.

22 **THE COURT:** Thanks very much. Ms. Ormerod is
23 juror number 165, she's eligible to serve.

24 Anybody else?

25 (Juror stands.)

1 **THE COURT:** Your name?

2 **JUROR:** Carol Paquet, 171.

3 **THE COURT:** She's 25 on our list.

4 All right. Ms. Paquet, what's your situation?

5 **JUROR:** My daughter was a recent victim of a
6 sexual crime.

7 **THE COURT:** Come down front, please.

8 (The following bench conference was held on
9 the record.)

10 **THE COURT:** What's the situation with your
11 daughter?

12 **JUROR:** She was attacked by another USC student
13 when she was getting off the bus after class.

14 **THE COURT:** So that happened in Columbia?

15 **JUROR:** Yes.

16 **THE COURT:** What's the status of the case?
17 Have they arrested anybody?

18 **JUROR:** Yeah, they arrested him.

19 **THE COURT:** Has it gone to trial or pled or
20 anything?

21 **JUROR:** The last we heard from the police
22 department was they called my daughter and asked her
23 if she wanted him to go through some kind of
24 pretrial system or go to court.

25 **THE COURT:** Is there anything about your

1 relationship with your daughter or that experience
2 that y'all are going through that in any way will
3 affect your ability to be a fair and impartial juror
4 in this case?

5 JUROR: Well, the mental she suffered.

6 THE COURT: You have some doubt?

7 JUROR: It's just the mental --

8 THE COURT: You don't have to explain it to me.
9 You have some doubt?

10 JUROR: Yes, I do.

11 THE COURT: That's understandable. Just
12 contact that telephone number or that -- the web
13 site, check on that, okay. Do you want to go out
14 this way?

15 JUROR: No. I left my purse back there.

16 THE COURT: I can let you go back here and you
17 can compose yourself.

18 JUROR: I'll be okay, if I can just hold my
19 lip.

20 THE COURT: We can stand up here and pretend to
21 talk a while if you need to do that.

22 JUROR: Thank you.

23 THE COURT: You just tell me when you're all
24 right.

25 JUROR: I'm all right. Thank you.

1 **THE COURT:** Thank you, ma'am.

2 Juror number 171 is set aside on this case.

3 **BAILIFF:** We have one more, Your Honor.

4 **THE COURT:** What's your name?

5 **JUROR:** Denise Seawell.

6 **THE COURT:** Is 193, 29 on our list. What's
7 your situation?

8 **JUROR:** I am a domestic -- a child survivor of
9 domestic assault.

10 **THE COURT:** Okay. Before I ask you a whole
11 bunch of questions, let me just ask you the last
12 one. Would that affect your ability to be fair and
13 impartial in this case?

14 **JUROR:** I think so.

15 **THE COURT:** Okay. I'll set you aside. You
16 just need to check the Internet and our phone
17 machine, okay.

18 **JUROR:** Okay.

19 **THE COURT:** Thank you.

20 Ms. Seawell is number 193, 29 on our list.
21 She's set aside on this trial.

22 (The bench conferences were concluded.)

23 **THE COURT:** Do any of you have any specialized
24 training in the field of law, psychology, counseling
25 or medicine; if so, please stand?

1 (Jurors stand.)

2 **THE COURT:** What's your name, please?

3 **JUROR:** Sally McLeod.

4 **THE COURT:** She's 149, 27 on our list. Ms.
5 McLeod, you have to forgive me, I wasn't upstairs
6 when you were qualified yesterday. What is it you
7 do?

8 **JUROR:** I'm a legal secretary.

9 **THE COURT:** And who do you work with?

10 **JUROR:** Turner, Padgett, Graham and Laney.

11 **THE COURT:** Do the attorneys you work with do
12 any criminal work?

13 **JUROR:** No, sir.

14 **THE COURT:** Thank you, ma'am.

15 **JUROR:** I'm Franklin Williams.

16 **THE COURT:** Mr. Williams is 239, 22 on our
17 list. And what do you do?

18 **JUROR:** I'm a physician at Palmetto Baptist.

19 **THE COURT:** Do you have any specialty?

20 **JUROR:** I'm an anesthesiologist.

21 **THE COURT:** Doctor Williams, I realize you
22 don't know anything about this case at this point,
23 but is there anything that you can think of related
24 to your background and training that would affect
25 your ability to be fair and impartial as a juror in

1 the case?

2 **JUROR:** No, sir, I don't think so.

3 **THE COURT:** Thank you, sir.

4 Doctor Williams is juror number 239. He's
5 eligible to serve.

6 Yes, sir, your name, in the striped shirt?

7 **JUROR:** Mike Beeler, juror number 15.

8 **THE COURT:** Okay. Mr. Beeler, go ahead.

9 **JUROR:** I'm a part-time courier for a law firm
10 in Columbia, the Finkel Law Firm.

11 **THE COURT:** All right. Mr. Beeler 36 on our
12 list, 15 is his juror number. Can you think of any
13 reason that that would affect your ability to be a
14 fair and impartial juror in this case?

15 **JUROR:** No, sir.

16 **THE COURT:** Thank you, sir.

17 And beside him, yes, sir?

18 **JUROR:** Jerry Werries, juror number 232.

19 **THE COURT:** Number one on our list. And what's
20 your situation, Mr. Werries?

21 **JUROR:** Before moving to South Carolina three
22 years ago, I was a police officer for 13 years
23 before that in Georgia.

24 **THE COURT:** Were you assigned to any particular
25 department?

1 **JUROR:** I worked with three different agencies,
2 but my last job was as a detective in the white
3 collar crime unit for Conyers Police Department
4 outside Atlanta.

5 **THE COURT:** Do you ever do any kind of work
6 with sex abuse victims?

7 **JUROR:** No, sir. I've never actually worked
8 any sex related crimes, mostly general offenses and
9 white collar crimes.

10 **THE COURT:** Anything about your situation that
11 affects your ability to be fair and impartial as a
12 juror in this case?

13 **JUROR:** No, sir.

14 **THE COURT:** Any doubt in your mind?

15 **JUROR:** No, sir.

16 **THE COURT:** Thank you very much.

17 Mr. Werries is 232. He's eligible to serve.

18 Yes, ma'am?

19 **JUROR:** Juror number 165, Tina Ormerod.

20 **THE COURT:** Okay. Ms. Ormerod, what's your
21 situation?

22 She's 20 on our list.

23 **JUROR:** I was a registered nurse prior to going
24 into real estate. I retired from nursing five years
25 ago.

1 **THE COURT:** Did you ever do any of those sex --
2 they call them rape protocol kits or something?

3 **JUROR:** No, sir.

4 **THE COURT:** You never did those. Is there
5 anything at all about your training that you know
6 about that would affect your ability, or your
7 experience that would affect your ability to be fair
8 and impartial as a juror in this case?

9 **JUROR:** No, sir.

10 **THE COURT:** Any doubt in your mind?

11 **JUROR:** No, sir.

12 **THE COURT:** Thank you.

13 Ms. Ormerod is juror number 165. She's
14 eligible to serve.

15 Over here on my far left, your name, please?

16 **JUROR:** Sandra Ashley, juror number four. I
17 work for Belser and Belser, a law firm in Columbia.

18 **THE COURT:** What do you do for them?

19 **JUROR:** I'm the office manager.

20 **THE COURT:** Do they do any criminal work?

21 **JUROR:** No.

22 **THE COURT:** Anything at all about that
23 situation that affects your ability to be fair and
24 impartial as a juror in the case?

25 **JUROR:** No.

1 **THE COURT:** Thank you, ma'am.

2 In the black.

3 **JUROR:** Ann Helms, 103.

4 **THE COURT:** Nine on our list..

5 Go ahead, Ms. Helms.

6 **JUROR:** I'm employed at the National Advocacy
7 Center, work with the Executive Office for United
8 States Attorneys. I'm a media tech. We record,
9 edit and archive programming for the EOUSA. And
10 last week we just finished taking a course on
11 project safe childhood, the advanced -- advanced
12 child exploitation prosecutions.

13 **THE COURT:** Anything about that -- your
14 experiences in that job or your employment that
15 affects your ability to be a fair and impartial
16 juror in this case?

17 **JUROR:** No, sir.

18 **THE COURT:** Any doubt in your mind?

19 **JUROR:** No, sir.

20 **THE COURT:** Thank you.

21 Ms. Helms is juror number 103. She's eligible
22 to serve.

23 Yes, ma'am?

24 **JUROR:** Doris Phillips, 175.

25 **THE COURT:** 19 on our list.

1 What's your situation, Ms. Phillips?

2 **JUROR:** I work for McWhirter, Bellinger and
3 Associates as a paralegal.

4 **THE COURT:** I know Mr. McWhirter was a public
5 defender years ago before I had all of this gray
6 hair, but do they do criminal work now?

7 **JUROR:** They still do a limited amount. I
8 think it's mostly appointments.

9 **THE COURT:** Is there anything at all about your
10 relationship with that firm or your experiences that
11 would affect your ability to be a fair and impartial
12 juror in the case?

13 **JUROR:** To be honest, I'm not sure.

14 **THE COURT:** You have some doubt?

15 **JUROR:** I do.

16 **THE COURT:** Thank you. I'll set you aside.
17 You just need to stay in contact through that
18 information that they gave you, okay.

19 **JUROR:** All right. Thank you.

20 **THE COURT:** You're free to go.

21 Ms. Phillip is juror number 175, 19 on our
22 list. She's set aside.

23 Have any of you ever been employed in any
24 capacity in the field of law enforcement with any
25 agency, federal, state, local, military, or has

1 anybody in your immediate family ever been so
2 employed and you haven't told us about it already?
3 If you already told us, you don't have to tell us
4 again.

5 (Jurors stand.)

6 **THE COURT:** Your name, please?

7 **JUROR:** Jamelle Whitney, juror number 237.

8 **THE COURT:** 34 on our list.

9 What's your situation, Ms. Whitney?

10 **JUROR:** I have two uncles that were in the
11 police department in New York City.

12 **THE COURT:** Anything at all about your
13 relationship or experience that affects your ability
14 to be a fair and impartial juror in this case?

15 **JUROR:** No, sir.

16 **THE COURT:** Any doubt in your mind?

17 **JUROR:** No, sir.

18 **THE COURT:** Ms. Whitney's juror number 232,
19 eligible to serve.

20 Yes, sir?

21 **JUROR:** Chris Matras, 139.

22 **THE COURT:** 15 on our list.

23 All right, Mr. Matras, go ahead.

24 **JUROR:** I used to work for the Federal
25 Bankruptcy Court and my wife currently works for the

1 United States District Court.

2 **THE COURT:** What did you do with the bankruptcy
3 court?

4 **JUROR:** I was the automation manager.

5 **THE COURT:** What does your wife do with the
6 U.S. District Court?

7 **JUROR:** She's the automation manager.

8 **THE COURT:** Anything at all about that
9 experience or those relationships that affect your
10 ability to be fair and impartial as a juror in this
11 case?

12 **JUROR:** No, sir.

13 **THE COURT:** Any doubt in your mind?

14 **JUROR:** No, sir.

15 **THE COURT:** All right. Mr. Matras is eligible
16 to serve.

17 Are any of you or any of your immediate family
18 members employed in any capacity in any prosecutor's
19 office or public defender's office, that would
20 include attorney generals, solicitors, any public
21 defenders, federal, state, local, any type of
22 military prosecutor or defendant; if so, please
23 stand?

24 (There was no response.)

25 **THE COURT:** Are any of you members of or

1 contributors to any organization which has as one of
2 its primary purposes the promotion of law
3 enforcement or victim's rights, that would include
4 Mother's Against Drunk Driving, Students Against
5 Drunk Driving, Citizens Against Violent Crime, South
6 Carolina Law Enforcement Officers Association, or if
7 you work or contribute to any type of shelter for
8 abused individuals; if so, please stand?

9 (Juror stands.)

10 **THE COURT:** Your name, please?

11 **JUROR:** Bonnie Byrd.

12 **THE COURT:** Okay. Ms. Byrd is juror number 33,
13 four on our list.

14 And what's your situation?

15 **JUROR:** I've contributed to a number of those
16 organizations.

17 **THE COURT:** Is there anything at all about
18 those experiences -- anything at all about your
19 relationship with those organizations or their
20 philosophies that affect your ability in any way to
21 be a fair and impartial juror in this case?

22 **JUROR:** No, sir.

23 **THE COURT:** Any doubt in your mind?

24 **JUROR:** No, sir.

25 **THE COURT:** Thank you.

1 Ms. Byrd is juror number 33. She's eligible to
2 serve.

3 All right. Ladies and gentlemen, if you're a
4 member of this jury, you will be placed under an
5 oath whereby you'll be promising us that you will
6 decide these cases based on the evidence presented
7 in the court and the law. Is there anything at all
8 about the nature of the allegations that are lodged
9 against Mr. Wilson that would affect in any way your
10 ability to follow that oath and be a fair and
11 impartial juror in the case; if so, please stand?

12 (Juror stands.)

13 **THE COURT:** What's your name, sir?

14 **JUROR:** Robert Vargas.

15 **THE COURT:** Mr. Vargas is juror number 226,
16 number three on our list.

17 You're excused, sir. Just stay in touch with
18 the contact information.

19 **JUROR:** Your Honor, can I approach?

20 **THE COURT:** Sure.

21 (The following bench conference was held on
22 the record.)

23 **JUROR:** Mike McGovern, 145.

24 **THE COURT:** Go ahead, sir.

25 **JUROR:** I just wanted -- also that my brother

1 did have an allegation by a neighbor when he was
2 young. I don't know that that affects anything here
3 or not, but --

4 **THE COURT:** Your brother had an allegation of
5 what?

6 **JUROR:** Not an allegation, but my brother told
7 me that one of our neighbors had sexually abused
8 him, but not penetration.

9 **THE COURT:** Is there anything at all about that
10 relationship or experience that affects your ability
11 to be fair and impartial?

12 **JUROR:** No, sir.

13 **THE COURT:** Any doubt in your mind?

14 **JUROR:** No, sir.

15 **THE COURT:** Thank you, sir.

16 Mr. McGovern is 145. He's eligible to serve.

17 (The bench conference was concluded.)

18 **THE COURT:** I'm going to pose a question, it
19 has multiple parts, intentionally. What I'm trying
20 to do is to broach this subject from many different
21 angles, so listen to all of the different parts of
22 it.

23 If any of you, any of your immediate family
24 members, any of your close, personal friends, to the
25 best of your knowledge, have ever been the victim of

1 any type of child molestation or accused of any type
2 of child molestation, or if any of you, any of your
3 immediate family members, any of your close,
4 personal friends, to the best of your knowledge,
5 have ever sought the assistance of or been employed
6 by or performed volunteer work at any center that
7 has as its primary purpose the treatment of victims
8 of sexual assault regardless of whether that's child
9 sexual assault or adult sexual assault? We're going
10 to talk about all that down front, but if any of
11 that applies to you or you have doubt about whether
12 it applies to you, you need to let me know.

13 So I'm trying to approach it from both sides,
14 whether you've ever -- you or anybody close to you
15 has ever been the victim of these types of things,
16 accused of these types of things, whether it was
17 actually a formal charge or not is irrelevant, or if
18 you've ever been involved or anybody close to you
19 has ever been involved in providing assistance for
20 people who are involved in these types of incidents,
21 y'all need to talk to me. Does that apply to
22 anybody?

23 (Jurors stand.)

24 **THE COURT:** Come down front, please.

25 (The following bench conferences were held

1 on the record.)

2 **THE COURT:** Tell me your name again.

3 **JUROR:** Bonnie Byrd.

4 **THE COURT:** Okay. Ms. Byrd, 33, four on our
5 list.

6 Go ahead, Ms. Byrd.

7 **JUROR:** The son of one of my friends was abused
8 by another child, an older child.

9 **THE COURT:** All right. Was anyone ever
10 arrested on that?

11 **JUROR:** No, sir.

12 **THE COURT:** And is there anything about that
13 experience that affects your ability to be fair and
14 impartial as a juror in this case?

15 **JUROR:** No.

16 **THE COURT:** Any doubt in your mind?

17 **JUROR:** No.

18 **THE COURT:** Thanks very much.

19 Ms. Byrd is juror number 33. She's eligible to
20 serve.

21 Yes, ma'am. Tell me your name again.

22 **JUROR:** Jamelle Whitney, juror number 237.

23 **THE COURT:** 34 on our list.

24 **JUROR:** My father pled guilty to second degree
25 rape.

1 **THE COURT:** What happened to him?

2 **JUROR:** He did two years in jail.

3 **THE COURT:** Was it a -- who was the purported
4 victim of it? Was it a stranger situation?

5 **JUROR:** No, it was a known victim.

6 **THE COURT:** Family member or not?

7 **JUROR:** No.

8 **THE COURT:** Adult or minor?

9 **JUROR:** Adult.

10 **THE COURT:** Was that here in Lexington County?

11 **JUROR:** No, it was in New York.

12 **THE COURT:** Anything about that experience or
13 your relationship with your father that affects your
14 ability to be fair and impartial as a juror in this
15 case?

16 **JUROR:** No, sir.

17 **THE COURT:** Any doubt in your mind?

18 **JUROR:** No, sir.

19 **THE COURT:** Thanks very much.

20 Ms. Whitney's juror number 237. She's eligible
21 to serve.

22 Your name please, ma'am?

23 **JUROR:** Diane Clark, 40.

24 **THE COURT:** Ms. Clark is juror number 12 on our
25 list.

1 What's your situation, Ms. Clark?

2 **JUROR:** I -- my brother did things to me. I
3 know I couldn't be fair.

4 **THE COURT:** Okay. I'll set you aside. You
5 just need to stay in touch with us through that
6 telephone call in.

7 **JUROR:** So I can leave now?

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

9 Ms. Clark's juror number 40, 12 on our list.
10 She's excused from the trial of this case.

11 Yes, sir?

12 **JUROR:** I don't know if it's relevant or not..
13 My wife --

14 **THE COURT:** I need your name.

15 **JUROR:** Richard Heath, juror 101.

16 **THE COURT:** He's 35 on our list.

17 Go ahead, Mr. Heath.

18 **JUROR:** Several years back, my wife, I guess it
19 was her sister-in-law was a foster parent and she
20 would take care of three little girls and the
21 husband in the household had molested all three of
22 the children.

23 **THE COURT:** Was that in Lexington County?

24 **JUROR:** Yes, sir.

25 **THE COURT:** Was he charged?

1 JUROR: Yes, sir.

2 THE COURT: What happened to him?

3 JUROR: He went to prison.

4 THE COURT: I'm sorry?

5 JUROR: He went to prison.

6 THE COURT: Oh, he's in prison.

7 JUROR: Yeah. I think he was recently

8 released. They were neighbors of ours. I don't
9 feel that would affect my judgment.

10 THE COURT: Is there anything at all about that
11 relationship or that experience that affects your
12 ability to be fair and impartial?

13 JUROR: I don't believe so.

14 THE COURT: Do you have any doubt?

15 JUROR: It's one of those cases, you know, but
16 I really don't -- it's a totally different case, so
17 I don't really feel it would affect me.

18 THE COURT: So do you have some doubt or you do
19 not have any doubt?

20 JUROR: Maybe just a tiny.

21 THE COURT: I have to set you aside, Mr. Heath.
22 Just call in or check with the web site.

23 JUROR: This evening?

24 THE COURT: Yes, after 6:00.

25 Mr. Heath is juror number 101. He's set aside

1 on the trial of this case.

2 Yes, sir?

3 JUROR: Cary Amick, two.

4 THE COURT: Mr. Amick's juror number two. He's
5 14 on our list.

6 What's your situation, please?

7 JUROR: My daughter was sexually assaulted.

8 THE COURT: At what age?

9 JUROR: At 18.

10 THE COURT: Did they charge anybody?

11 JUROR: No, sir.

12 THE COURT: Is there anything at all about that
13 experience or your relationship with your daughter
14 that affects your ability to be fair and impartial
15 in this case?

16 JUROR: It may.

17 THE COURT: Okay. Thank you, sir. Just stay
18 in touch after 6:00 with that contact --

19 JUROR: Okay.

20 THE COURT: Mr. Amick's juror number two. He's
21 set aside from the trial of this case.

22 Your name?

23 JUROR: April Hinkle, juror number 110.

24 THE COURT: Ms. Hinkle is juror number 110, 26
25 on our list.

1 Go ahead, ma'am.

2 JUROR: My father was accused back in 2000 for
3 lewd act on a minor in Richland County.

4 THE COURT: What happened on the case?

5 JUROR: He only served two years of probation,
6 that was it.

7 THE COURT: Do you remember how old the person
8 was he was accused --

9 JUROR: She was 16.

10 THE COURT: Was he an adult at the time?

11 JUROR: Uh-huh.

12 THE COURT: Is there anything at all about that
13 experience or your relationship with your father
14 that affects your ability to be fair and impartial
15 in this case?

16 JUROR: No.

17 THE COURT: Any doubt in your mind?

18 JUROR: No doubt.

19 THE COURT: Thank you very much.

20 Ms. Hinkle is juror number 110. She's eligible
21 to serve.

22 Yes, sir.

23 JUROR: Harry Hallman, number 95.

24 THE COURT: 21 on our list.

25 Go ahead, Mr. Hallman.

1 **JUROR:** My niece has a 14-year-old daughter
2 that had a relationship with an older young man.
3 She was underage. I don't remember the outcome of
4 the case because I wasn't home at the time of the --
5 of the state, but she currently has a 14-year-old
6 daughter. It was consensual through her, but not
7 the court. But I have no --

8 **THE COURT:** Did they charge the boy, the young
9 man?

10 **JUROR:** I believe they did, but I don't know
11 that.

12 **THE COURT:** Is there anything at all about that
13 experience that affects your ability to be fair and
14 impartial as a juror in this case?

15 **JUROR:** No, Your Honor.

16 **THE COURT:** Nothing about the relationship that
17 affects your ability to be fair and impartial?

18 **JUROR:** No, Your Honor.

19 **THE COURT:** Any doubt about any of that?

20 **JUROR:** No, Your Honor.

21 **THE COURT:** Thank you, sir.

22 Mr. Hallman is juror number 95. He's eligible
23 to serve.

24 Yes, sir.

25 **JUROR:** Brian Loquist, juror number 132.

1 **THE COURT:** 33 on our list.

2 Okay. Mr. Loquist, go ahead.

3 **JUROR:** My next door neighbor was raped in her
4 room. She was seven.

5 **THE COURT:** Your next door neighbor is --

6 **JUROR:** Christy Palmer (ph).

7 **THE COURT:** Age seven?

8 **JUROR:** Uh-huh.

9 **THE COURT:** Did they arrest anybody?

10 **JUROR:** Uh-huh.

11 **THE COURT:** Do you know what happened to the
12 defendant?

13 **JUROR:** I think he's serving -- I think it was
14 a fourth count, so he's serving 20 to 25 years or
15 something.

16 **THE COURT:** Was that in Lexington County?

17 **JUROR:** Richland.

18 **THE COURT:** Is there anything about that
19 experience that affects your ability to be fair and
20 impartial as a juror in the case?

21 **JUROR:** Yeah.

22 **THE COURT:** It does, okay. Just contact that
23 information tonight after 6:00. It will tell you
24 what you need to do. Okay?

25 **JUROR:** Okay.

1 **THE COURT:** Mr. Loquist is 132. He's juror
2 number 33 on our list. He's set aside.

3 Yes.

4 **JUROR:** Franklin Williams.

5 **THE COURT:** Go ahead, Doctor.

6 **JUROR:** There's some discussion in the family,
7 which is vague to me, in the past, extended family.
8 I never knew the details of what came of it. I have
9 some knowledge of that.

10 **THE COURT:** Some family member was a victim of
11 a case?

12 **JUROR:** It was supposedly a victim, eight to
13 12. It's an extended family, but that's the extent
14 of what my knowledge of it. I know an intervention
15 was taken. I don't know of any charges or anything
16 of that nature.

17 **THE COURT:** Anything about any of those rumors
18 or that experience or relationship that affects your
19 ability to be fair and impartial?

20 **JUROR:** I don't think so.

21 **THE COURT:** Any doubt in your mind?

22 **JUROR:** No.

23 **THE COURT:** Thank you.

24 Doctor Williams is juror number 239. He's
25 eligible to serve.

1 (The bench conferences were concluded.)

2 **THE COURT:** Ladies and gentlemen, we usually
3 break for lunch at 1:00, but rather than make all of
4 you come back after lunch, I'm almost through, so
5 I'm going to keep going. If any of you need a
6 break, you can let me know, but I seriously ought to
7 be through in about five minutes with my part of it.

8 Have any of you formed or expressed any
9 opinions about these cases; if so, please stand?

10 (There was no response.)

11 **THE COURT:** Are any of you aware of any
12 interest, bias or prejudice that you might have for
13 or against the State, for or against the defendant,
14 Mr. Wilson, for or against anyone, any entity in
15 this case; if so, please stand?

16 (There was no response.)

17 **THE COURT:** Can each of you give both the State
18 of South Carolina and the defendant, Timothy Jacob
19 Wilson, a fair and impartial trial? If you know of
20 any reason why you cannot, please stand now.

21 (There was no response.)

22 **THE COURT:** Further questions from the State?

23 **MR. STUMBO:** Nothing further, Your Honor.

24 **THE COURT:** Further questions from the defense?

25 **MR. CORNWELL:** Nothing further, Your Honor.

1 **THE COURT:** Thank you very much.

2 The jury panel is qualified. How many did I
3 set aside?

4 **MR. CORNWELL:** By my count, I think nine.

5 **THE COURT:** All right. I'm fixing to count, so
6 y'all be patient.

7 (Pause.)

8 **THE COURT:** I've got 25; is that right?

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

10 **THE COURT:** We'll see how it goes. There are
11 15 strikes available in this case, five for the
12 State, ten for the defense. We'll see if we can get
13 a jury.

14 Madame Clerk.

15 (During the jury selection process, the
16 jurors were called forward and peremptory strikes
17 were exercised as reflected by the attached voir
18 dire sheet made a part of this record at page 5.)

19 **MR. STUMBO:** Just for the record, Your Honor,
20 is the defense out of -- no further strikes? I just
21 want to clarify.

22 **THE COURT:** They're out, but they exercised
23 ten.

24 **MR. STUMBO:** Okay.

25 **THE COURT:** We've got 12 jurors. All right,

1 we're going to try to see if we can get an
2 alternate. Strikes are one for the state, two for
3 the defense.

4 Madame Clerk.

5 (Whereupon, the jury selection process was
6 completed.)

7 **THE COURT:** All right. Any matters to take up
8 including composition of the panel prior to the jury
9 being sworn from the State?

10 **MR. STUMBO:** Nothing from the State, Your
11 Honor.

12 **THE COURT:** From the defense?

13 **MR. CORNWELL:** Nothing from the defense, Your
14 Honor.

15 **THE COURT:** Thank you. Ladies and gentlemen, I
16 need to confer with the attorneys briefly before I
17 tell you how we're going to proceed with you folks.
18 If I had to guess right now, my guess is that I'm
19 probably going to send you home for the afternoon,
20 continue to work on pretrial matters and bring you
21 back to start in the morning, but I don't know that
22 until I talk to them because I don't know anything
23 about this case, I'll be hearing it like you for the
24 first time.

25 Don't discuss this case in any way among

1 yourselves, don't talk about the type of case it's
2 alleged to be, the people in it, don't talk about
3 the case in any way at all. I'll get you back out
4 here as quickly as I can.

5 When you do come back out, Mr. Beeler, you're
6 the alternate, you'll stay in that seat throughout
7 the trial unless you become one of the 12 jurors if
8 I lose one of the 12.

9 Mr. Patterson, you're going to be the foreman.
10 You'll be seated in the seat to your right, so you
11 need to be one of the last ones out.

12 The rest of you folks, please come in, file all
13 the way down. If you're like every other jury I've
14 ever had and you have a favorite chair, some of you,
15 step to the side out here, please don't make people
16 walk across you in that jury box. We had a
17 situation in the old courthouse where a lady broke
18 her ankle. I don't want that happening to any of
19 you. Follow the bailiff, please.

20 (The jury retires to the jury room.)

21 **THE COURT:** Ladies and gentlemen, if you were
22 not selected on this jury, you need to call or check
23 with the web site or both tonight after 6:00 and
24 follow the instructions. If you have access to
25 both, it might be a good idea to check both.

1 I apologize for keeping you so long. Like I
2 said, this is a very rare occurrence. I apologize
3 to all of you who got calls telling you to get up
4 here. And I apologize to all of you who got up here
5 at 10:00 and had to wait. But if you're engaged in
6 any enterprise, sooner or later you're going to have
7 something go a little haywire on you and that's what
8 happened today. Just rest assured the last time I
9 remember this happening was years ago and it doesn't
10 happen very often.

11 If I don't see you again, thank you very much
12 for your service. Call tonight after 6:00. Thank
13 you.

14 (The remaining jury panel was excused.)

15 **THE COURT:** How long is this case expected to
16 take?

17 **MR. STUMBO:** Your Honor, I think we'll go into
18 Thursday. As far as our case in chief, we can get
19 -- as Your Honor mentioned, if we had to do
20 pretrials the rest of the day, we can start with
21 openings first thing in the morning, I think we can
22 get our case put up tomorrow and rest, but I don't
23 know what they have. We have eight witnesses now.
24 The longest part of that is going to be publishing
25 the video of the forensic to the jury, which we

1 still have yet to take up obviously, but I don't
2 foresee witnesses being extremely long other than
3 that.

4 **THE COURT:** Do y'all have any input on the
5 length that's expected of the trial?

6 **MR. CORNWELL:** If Mr. Stumbo thinks they can
7 have their case done by Thursday, I think he said,
8 we only have four witnesses and I don't think it
9 will be the only -- only two of those will take a
10 lot of time and they -- by a lot, I mean more than
11 about 15, 20 minutes. I don't think it will be -- I
12 think we may be able to finish it up Thursday.

13 **THE COURT:** Bring the jury back.

14 (The jury returns to the courtroom.)

15 **THE COURT:** Ladies and gentlemen, it is going
16 to take the rest of the day for me to do the
17 pretrial matters that I have to do. So we'll stay
18 here and work until I finish those. And I need you
19 here in the morning at 9:30. Now, you don't need to
20 call that number. You don't need to check the
21 Internet, just be here at 9:30.

22 Now, I've got to give you some instructions
23 before I let you go. So I know how late it is and I
24 know you may be very hungry, but this stuff is real
25 porch.

1 You are not to discuss this case in any way at
2 all with anybody until this case is completely over
3 and you've been seated on any jury you might be
4 seated on. So you can tell a friend or a spouse
5 that you're on a jury, but you cannot tell them
6 anything about what the case is alleged to be about
7 or who's in it or anything at all relating to the
8 case. Don't discuss the case among yourselves until
9 I tell you at the very end of the trial that you can
10 begin your deliberations. So don't discuss it among
11 yourselves, don't discuss it with anybody else.

12 If anybody attempts to contact you and discuss
13 the case with you, report that to me so that I can
14 deal with it.

15 I don't know that there will be any media
16 coverage of this trial, I'm not aware of any request
17 by the media to cover it, but if there is any media
18 coverage, get away from it. Don't let yourselves be
19 exposed to it any further and then report to me what
20 you may have seen, heard or read through the media.

21 Do not do any independent investigation on this
22 case. When you take your oath tomorrow, you'll be
23 promising us that you'll decide the case based on
24 the evidence and the law. I tell you what the law
25 is, that's my job. The evidence will come to you

1 from the witnesses, exhibits that might be entered
2 in the record, the stuff that will come to you in
3 this courtroom.

4 Now, I'm not telling you to leave your common
5 sense at home. I'm going to tell you to use your
6 common sense, but don't go on the Internet and look
7 up law, don't go on the Internet and try to do any
8 kind of search related to anything that might come
9 up in this case, don't, once you find out where this
10 is alleged to have occurred, don't go out there and
11 look around, don't do any kind of independent
12 investigation. You'll be perfectly qualified to do
13 the job that you'll be tasked to do. Just don't do
14 any independent investigation.

15 Now, when you do come back tomorrow, you're
16 going to be reporting to one of these jury rooms
17 back here. Now, again, every building has some
18 design things about it that if we had to do over
19 again, maybe we'd done a little differently. This
20 is the only courthouse I know of that has two jury
21 rooms that share a bathroom.

22 So what I'm going to tell you is this. I can
23 either trek you upstairs and downstairs and put you
24 in the grand jury room or I can have you back here
25 with an instruction that those doors where the

1 bathroom areas are will be closed off. If you need
2 to use the restroom, that's fine, but if you open
3 that first door and you see somebody in that area
4 coming from the other jury room, shut the door and
5 wait till they left, okay, because you can't have
6 contact with that other jury. Judge Newman is
7 supposed to be pulling a jury at 1:30. I don't know
8 how that's working out, but there could be another
9 jury in that other jury room, all right.

10 If you have some true emergency that arises
11 that prevents you from being here, and make sure
12 it's a true emergency, please let somebody know
13 what's going on because we can't start until we know
14 what's going on. And if you're not here, I will
15 have people looking for you. So please make sure
16 somebody let's us know if you have a problem that
17 prevents you from being here.

18 Now, I always try to tell the jury what I think
19 I know about the length of a trial. You understood
20 how I said that, didn't you, What I think I know? I
21 think this case will go into Thursday. It possibly
22 could go into Friday, but I can't envision it going
23 beyond Friday morning. I've got a doctor's
24 appointment Friday afternoon and I'm not cancelling
25 it right now anyway, all right. So -- yes, ma'am.

1 **JUROR:** We don't have a number for emergencies,
2 at least I don't. If there is an emergency, I don't
3 have a number where I can get in touch with someone.

4 **THE COURT:** You call the Clerk of Court's
5 office.

6 Myra, give them a number before they go.

7 **THE CLERK:** You can just call my direct line.

8 **JUROR:** I don't know that number.

9 **THE COURT:** She'll give it to you before you
10 go, okay.

11 Any of y'all that need that number, Myra will
12 meet you out in the hallway, she'll give it to you,
13 all right. You're free to go. Thank you.

14 Everybody else stay seated.

15 (The jury was excused for the day.)

16 **THE COURT:** Mr. Wilson, you're out on bond?

17 **DEFENDANT WILSON:** Yes, Your Honor.

18 **THE COURT:** When did they arrest you?

19 **DEFENDANT WILSON:** I believe it was October
20 '06.

21 **THE COURT:** And when did you make bond,
22 roughly?

23 **DEFENDANT WILSON:** December of '06.

24 **THE COURT:** Anybody move in the meantime to
25 have your bond revoked? Has anybody ever tried to

1 get your bond revoked?

2 **DEFENDANT WILSON:** No, Your Honor.

3 **THE COURT:** All right. Have a seat.

4 Mr. Wilson, throughout this trial and every trial, I
5 have to make decisions about whether I take people
6 into custody or not. You need to be prepared that I
7 may or may not do that.

8 **DEFENDANT WILSON:** Yes, Your Honor.

9 **THE COURT:** Now, it is extremely rare that I
10 take anybody into custody before the jury's sworn,
11 and we haven't sworn the jury yet. So I'm going to
12 let you stay out over this lunch break, but I'm
13 going to explain this to you, and please don't be
14 insulted by it, I feel better if I say it and I feel
15 like a judge should say this. You need to
16 understand that we've drawn a jury and this trial is
17 going to go forward whether you're here or not. Do
18 you understand that?

19 **DEFENDANT WILSON:** Yes, Your Honor.

20 **THE COURT:** So you make absolutely certain that
21 you are here no later than the time that I say for
22 you to be here. And if your lawyers tell you to be
23 here sooner, you be here whenever they tell you to
24 be here if it's sooner, okay?

25 **DEFENDANT WILSON:** Yes, Your Honor.

1 **THE COURT:** All right. Now, to everybody,
2 folks, y'all need to be really -- again, this is
3 something I say in every case or try to. You need
4 to be really careful as you leave that you not have
5 any contact with a juror. The jurors may well just
6 be in the common areas out there. You may think
7 that they've long since left and gone, but they go
8 out this secured area, but they come back around and
9 filter into the common area. So they could be in an
10 elevator, they could be in that open area out there,
11 they may go to a restaurant that you may choose to
12 go to to eat.

13 So just be really careful as you leave in that
14 you don't have any contact with a juror and that you
15 don't say anything that in any way relates to the
16 case or anybody in it that a juror could overhear.
17 So just be careful as you leave.

18 We'll take an hour for lunch. I need y'all
19 back here at ten minutes till 3:00. Thank you.

20 (Whereupon, there was a luncheon recess.)

21 **THE COURT:** All right. What's the next motion?

22 **MR. STUMBO:** Your Honor, we have two that we're
23 going to do together, but if we could, we have two
24 witnesses that will both be testifying as to
25 evidence that will relate to both motions. So, Your

1 Honor, if it pleases the Court, we would just go
2 ahead and put the testimony up of both the witnesses
3 and then argue the motions after that.

4 THE COURT: That's fine.

5 MR. JOHNSON: The State calls Doctor Benedetto.

6 ALICIA BENEDETTO,

7 having been duly sworn, testified as follows:

8 THE CLERK: If you'll have a seat and state
9 your name, spelling your last for the record,
10 please.

11 THE WITNESS: My name is Alicia Benedetto.
12 It's B-E-N-E-D-E-T-T-O.

13 DIRECT EXAMINATION

14 BY MR. JOHNSON:

15 Q Dr. Benedetto, where do you work?

16 A At the Assessment and Resource Center in
17 Columbia.

18 Q What do you there?

19 A The Assessment and Resource Center is known as
20 the ARC. It's a children advocacy center. We
21 conduct forensic evaluations and perform physical
22 examinations, provide therapy and training to child
23 abuse professionals.

24 Q What type of training have you had to do that?

25 A Starting with undergraduate training, is that

1 -- I went to New York University for my bachelors
2 degree in psychology and then to Saint Johns
3 University for my masters degree and my doctorate in
4 clinical psychology, then completed a clinical
5 internship at the William S. Hall Psychiatric
6 Institute, that was a year long program. And
7 following that, I was the coordinator of treatment
8 services at the South Carolina Department of Mental
9 Health for the child and adolescent services. After
10 which time, I became employed at the ARC, which is a
11 division of the department of mental health.

12 Q And during all of that training and your job at
13 the ARC, how many times have you interviewed
14 children?

15 A I've been at the ARC since -- full-time since
16 2001 and I estimate that I've interviewed over a
17 thousand children.

18 Q Specifically, how many times have you
19 interviewed children in a forensic interview for a
20 sexual assault?

21 A Those are all forensic interviews, that's what
22 I do there.

23 MR. JOHNSON: Your Honor, at this time, I'd ask
24 the Court to recognize Dr. Benedetto as an expert in
25 forensic evaluation, child sexual abuse.

1 **THE COURT:** Voir dire?

2 **MR. CORNWELL:** Please the Court, Your Honor.

3 **EXAMINATION**

4 **BY MR. CORNWELL:**

5 **Q** In your education and your training, did you
6 have training specific to the forensic interviewing
7 of children?

8 **A** Yes.

9 **Q** In the course of your undergraduate education?

10 **A** Not in the course of undergraduate education,
11 but as a part of my internship and as a part of my
12 position at the ARC, I underwent training at the
13 National Children's Advocacy Center, their advanced
14 training, as well as the CornerHouse forensic
15 interview training, both the basic and the advanced
16 courses.

17 **Q** And this training that you received is that
18 what you're relying on to form your expert opinions?

19 **A** My education, training and experience, yes.

20 **Q** And you mentioned that as part of that
21 training, you received some training at the
22 CornerHouse, what was that now?

23 **A** It's the CornerHouse Interagency Children's
24 Advocacy Center in Minneapolis.

25 **Q** And is that -- I'm sorry.

1 **A** They are part of the group that initiated the
2 finding words program that teaches states throughout
3 the United States the protocol for -- one protocol
4 for interviewing children. And I'm now on the
5 faculty for that program teaching child abuse
6 professionals.

7 **MR. CORNWELL:** Beg the Court's indulgence.

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

9 (Pause.)

10 **BY MR. CORNWELL:**

11 **Q** Now, this training that you received at
12 CornerHouse, was it at CornerHouse or was it --

13 **A** Yes. I received the basic training in South
14 Carolina and the advanced training at CornerHouse in
15 Minneapolis.

16 **Q** And the basic training course was that -- that
17 was the three day program?

18 **A** No, it's a five day course.

19 **Q** And what kind of things did they go over in
20 that training?

21 **A** It's a comprehensive interview course. Like I
22 said, I now teach the course, but it involves
23 courses on child development, dynamics of child
24 sexual abuse and interviewing protocol for child
25 sexual abuse victims, the use of anatomical dolls,

1 how to address various blocks and problems in
2 interviews. Those are kind of the basic areas --
3 medical and legal information about child abuse
4 testimony.

5 **Q** And what I was trying to get at is was that --
6 the training you went through, was that considered
7 the onsite training or was that the training at
8 CornerHouse?

9 **A** The five day course is sponsored by CornerHouse
10 and taught in South Carolina. So they had to
11 accredit the individuals that I took the course
12 from, but it took place in South Carolina. And then
13 the following year, I went to Minneapolis and
14 attended their advanced course there, as well as the
15 advanced course in Huntsville, Alabama.

16 **Q** And the course that you took in South Carolina,
17 did that include all of the topics that they usually
18 teach at the regular course?

19 **A** Yes.

20 **MR. CORNWELL:** No further questions.

21 **THE COURT:** All right. Is there any objection
22 to qualifying --

23 **MR. CORNWELL:** No, Your Honor, no objection.

24 **THE COURT:** All right. She's so recognized.

25 You may continue.

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

2 **BY MR. JOHNSON:**

3 **Q** Dr. Benedetto, did you interview
4 in relation to a forensic interview?

5 **A** Yes, I did.

6 **Q** Was that on November 1st, 2006?

7 **A** Yes, that's correct.

8 **Q** Was that interview recorded?

9 **A** Yes, it was recorded on DVD.

10 **Q** Audio and video?

11 **A** Yes.

12 **Q** And where did that take place?

13 **A** The interview took place at the ARC.

14 **Q** What was her age at the time?

15 **A** *victim*
 was : years old at the time.

16 **Q** Okay. Who was present in the room when you
17 interviewed her?

18 **A** Always only present are the child and the
19 interviewer during our interviews.

20 **Q** What are some of the techniques or protocols
21 used specifically for this interview of this child?

22 **A** *victim*
 was interviewed using a semistructured
23 interview protocol, the protocol that we teach.
24 It's known as the RATAC protocol.

25 **THE COURT:** Spell that.

1 **THE WITNESS:** Sure. R-A-T-A-C, RATAAC. Each
2 letter it's an acronym for a stage in the
3 semistructured protocol. Beginning with a rapport
4 building stage that helps to establish the child's
5 comfort in the room, get a sense of their competence
6 and their ability to communicate; followed by
7 anatomy identification that allows the interviewer
8 to establish a common language for body parts of the
9 child; proceeding then to what we call the touch
10 inquiry stage that just inquires about a range of
11 different kinds of positive and negative touches,
12 not necessarily abuse related touches, various kinds
13 of things like hugs and kisses; and then inquiring
14 as to any abuse related touches and if any are
15 disclosed, then getting details about that, that's
16 called the abuse scenario, that's the second A in
17 RATAAC. And C is just a closing with the child where
18 we provide a safety message and identify individuals
19 that the child could talk to if something like that
20 ever happens again.

21 BY MR. JOHNSON:

22 Q What is finding words?

23 A Finding words is the name of the course, again
24 initiated by CornerHouse and American Prosecutors
25 Research Institute, called that because it -- it's a

1 developmentally appropriate legally defensible
2 strategy for interviewing children in cases like
3 this helping them to tell what they know in a,
4 again, in a developmentally appropriate way.

5 Q Did you use that in this interview?

6 A I did.

7 Q And is that because of a limited vocabulary on
8 the part of a child? They have problem
9 communicating -- do they have problems communicating
10 with the same words that adults use?

11 A We take into consideration the age of the
12 child, we take into consideration their emotional
13 status, all kinds of factors that might have an
14 impact on what a child can tell and what we might
15 expect them to be able to tell and we use our
16 clinical experience to get a sense from the child in
17 the room on that particular day as to what they're
18 able to speak to.

19 Q Do you use a nonleading question?

20 A Yes. It's absolutely based on nonleading
21 questions or the core component of it.

22 Q And what's the purpose of nonleading questions?

23 A To protect the rights of anyone. Children come
24 to us because somebody has alleged something and our
25 job is to try to help discover whether or not

1 something has happened. So we're as interested in
2 protecting the rights of the alleged perpetrator as
3 we are in helping the child to explain what may have
4 happened.

5 Q Okay. And you used those with victim

6 A Yes.

7 Q And what types of tools did you use to help
8 victim

9 A We use, in addition to just the questioning
10 techniques, we have some visual media in the room.
11 We have large flip chart paper that we use to,
12 initially, just to build rapport with the child by
13 drawing a face and then getting some information
14 about who the child lives with, family members and
15 anatomical drawings, again, to help get a sense of
16 the child's language for body parts and sometimes we
17 use anatomical dolls.

18 Q Okay. And when you talked to victim before you
19 started using these tools, did you stress or did you
20 review truth versus lie with her?

21 A Yes. Part of the protocol for four to
22 seven-year-old children is to use -- it's a
23 truth/lie assessment that's been normed on children
24 in that age group. And it's -- it helps us to get a
25 sense of whether the child understands the

1 difference between truth and lie, as well as whether
2 they appreciate the moral imperative, the importance
3 of telling the truth in the room that gives us a
4 sense of whether the child appreciates those
5 concepts. And that's followed by a statement by the
6 interviewer to the effect that you showed me that
7 you know the difference between truth and lie and
8 it's very important in this room today that we only
9 talk about things that are real and true, things
10 that really happened.

11 Q Okay. Did you also use a book to display or to
12 test her regarding truth versus lie?

13 A Yeah. This is the book that I was referring
14 to. And it has four questions that help identify
15 whether the child understands the difference between
16 truth and lie and four questions that gauge whether
17 she understands the importance, the moral imperative
18 to tell the truth.

19 Q Okay. And did you do all of that before you
20 asked her these specific questions and before you
21 used the tools before the interview started with all
22 that?

23 A The truth/lie book generally falls after we've
24 done a face drawing and gotten some information
25 about who the child lives with. So at that point,

1 we'll bring out the truth/lie book.

2 Q Okay. So following the truth versus lie, the
3 use of that, tell me about the use of the anatomical
4 drawings and the chart. What did ^{Virtum} disclose to
5 you with that?

6 A ^{Virtum} was able to name parts on both the male
7 and female drawings and I noted her language for
8 those parts. We generate a report from the
9 interview that is part of the record. So she named
10 body parts and then I asked her about a range of
11 different kinds of touches.

12 Q And did she disclose anything to you about
13 inappropriate touching?

14 A Yes. Can I quote from the report?

15 Q You can use it to refresh your memory.

16 A Okay. It appears that she paused and nodded
17 her head and I asked her to tell me about that. And
18 she said that she didn't want to tell anybody. I
19 explained that she had already told two people. I
20 asked her a little bit about that, who the two
21 people were that she had told. And I explained to
22 her that in my job I wasn't allowed to get
23 information from other sources, that I needed to get
24 it directly from the person that it might have
25 happened to. And then she agreed to answer some

1 questions about it and went on to describe in great
2 detail actually.

3 Q What did she disclose?

4 A She said that she'd been touched more than one
5 time. She named her father as the person who had
6 touched her, described that she was nervous about
7 talking about it because she was afraid that her
8 father would be mad at her. And when I asked her
9 why he would be mad, she said because he was the
10 person who touched.

11 Q Did she use the drawings to communicate to you
12 where he touched her?

13 A Yes. She showed on the pictures where she'd
14 been touched and gradually, throughout the
15 interview, actually drew on the flip chart paper,
16 drew various drawings. When it became hard for her
17 to verbalize something, which isn't unusual with a
18 child her age, she would sometimes draw it or write
19 out her response on the paper.

20 Q Okay. Specifically, what were those responses
21 that she wrote down?

22 A She wrote that -- she drew a picture of a hand
23 and a penis and something coming out of the penis
24 and labeled all of it herself. She wrote -- I asked
25 her whose hand is it, and she wrote, Me. And whose

1 private? And she said her dad's. And then I asked
2 her what this part was and she said it was pee.

3 Q Okay. And did she -- using the anatomical
4 drawings, did she point out what parts of her body
5 had been touched by the defendant?

6 A Yes. She said that her private had been
7 touched and that was the vaginal area is what she'd
8 indicated as the private, and that her -- she said,
9 my daddy touched the private. And then she talked
10 about seeing him -- well, she initially described it
11 as jumping on a pillow. And I wasn't quite sure
12 what she meant by that and she later was able to
13 explain that it was self-stimulating behavior that
14 he was engaging in on a pillow in the room in front
15 of her while there was pornography on the
16 television.

17 Q While you're asking these questions, do you do
18 anything or say anything to detect coaching or to
19 look for consistency?

20 A Sure. We always are considering what we call
21 alternative hypotheses, other ways that a child
22 might have learned information or other potential
23 influences that might come into play.

24 Q Okay. And did you, in particular, use the
25 chart to sort of ask about any alternative people

1 that might have touched or other people that could
2 have been involved?

3 A Yes. She had named a number of people by that
4 point in the interview, both family members and
5 some -- her father's younger siblings as well. And
6 so we went through the entire list and clarified who
7 of the people on the list had ever been involved in
8 any kind of touching of her or what she perhaps knew
9 about any of them ever having been touched on
10 private parts.

11 Q Okay. Did she also draw stars on the chart?

12 A Yes. She identified with stars the people that
13 she had been -- that she knew about having been
14 engaged in sexual contact.

15 Q Okay. Did she draw stars next to the
16 defendant, the defendant's name?

17 A Yes.

18 Q Okay. And who else?

19 A She explained that she had told her, let's see,
20 is that her -- I guess her aunt and her uncle -- her
21 father's younger siblings who ranged in age, I
22 think, from maybe ten, seven and something, young.
23 And she explained that she had told them about what
24 her daddy did to her and that they had started
25 touching each other and she explained about what

1 they did.

2 Q Okay. Did she put two stars next to the
3 defendant's name?

4 A I'd have to look at the -- I don't recall two
5 stars in particular. I know that she was very clear
6 throughout when I asked her questions, she would --
7 she wanted to be very sure and would correct me if I
8 got something wrong or I wasn't understanding
9 correctly, she was very clear about saying no and
10 showing who exactly did what.

11 Q Was she clear that the defendant was the only
12 adult to touch her?

13 A That was very clear. I asked her that
14 specifically because she had talked about these
15 younger peers that she had engaged in activity with.
16 And she was clear both about the fact that she told
17 them about it and that's where they got the idea to
18 do it and that he was the only adult. And I even
19 asked about any other adults or teenagers and went
20 through all of the names on the flip chart paper
21 including grandparents and anybody who was up there
22 just male, female, everybody just to be on the safe
23 side.

24 Q Everybody that lived in the households?

25 A Everybody that lived in the household and

1 everybody in, I guess, perhaps the grandmother's
2 household as well.

3 Q And, also, you asked her and she -- did she
4 verify that the defendant was the only adult that
5 she had touched?

6 A Yes.

7 Q Okay. Or been forced to touch?

8 A Yes.

9 Q Now, you mentioned behavior with the children
10 who were technically her aunts. And along with --
11 did she also disclose that her younger brother was
12 involved?

13 A Yes.

14 Q Now, what is the term sexualized behavior, what
15 is that?

16 A That refers to the fact that it's not uncommon
17 in children who have been exposed to either sexual
18 abuse or sexual material to engage in imitative
19 behavior, kind of reenacting what they have
20 experienced and often times doing it with other
21 children. It's kind of -- an analogy is like if you
22 take a child to the doctor and they get a shot, they
23 come home and they want to give everybody pretend
24 shots because they're doing what happened to them,
25 so.

1 Q Okay. And, basically, all of this behavior,
2 what would that indicate to you?

3 A It's consistent with sexual abuse. It's
4 certainly not diagnostic per se, but it's consistent
5 with.

6 Q Okay. After that, did she also use nonverbal
7 disclosure with sign language with her hands?

8 A Yes.

9 Q Tell me about that.

10 A Yes. She signed her father's name at one point
11 when I asked her, I'll have to find exactly where it
12 is, but -- asked her the question about who had done
13 something, and this is a rather long report, it's 11
14 pages, so excuse me while I find exactly that
15 sentence.

16 I don't know exactly where it is in here. But
17 she signed his name and she also signed things like
18 if I asked her where were you when that happened,
19 she signed, bed, and would -- and then would tell me
20 because I don't know sign language, so I asked her
21 what she was signing and she told me.

22 Q When she disclosed she was sexually assaulted
23 by her father, was she consistent about the
24 location?

25 A Yes. She was describing chronic sexual abuse

1 that was more than one occasion. She said -- she
2 was clear that it happened when she was seven and
3 when she was six, wasn't sure if it happened when
4 she was five. So it sounded as though it had
5 happened in more than one location in the home.

6 Q Okay. Where did she identify all of the
7 allegations she made when she was six and seven,
8 what part of the home?

9 A She talked about being in her parents' bedroom.

10 Q Okay. Tell me about internal coherence.

11 A One of the things that we look for in an
12 interview is whether at the end of it we can look at
13 the final product and have a sense of whether the
14 child gave a compelling disclosure. Children often
15 can make disclosures, but they're problematic, there
16 are concerns about it, it doesn't necessarily hold
17 together because the child changes what they're
18 saying or doesn't -- inserts kind of implausible
19 elements or seems to have been told what to say or
20 anything of that sort. So we look for those factors
21 and try to determine whether the end interview has
22 internal coherence and whether we can honestly call
23 it compelling for abuse.

24 Q Did she make what you would consider a
25 compelling disclosure of abuse?

1 A Yes.

2 Q And did it have the term coherence as you
3 described?

4 A Yes.

5 Q Talk about the tools, specifically, the dolls.
6 What happened when you used the anatomically correct
7 dolls?

8 A The dolls were brought out post-disclosure. So
9 after she had made disclosures about sexual contact
10 with her father, I brought out the dolls so that I
11 could better understand exactly what she was saying
12 and how the incident we were talking about had
13 happened. And she showed not only that incident,
14 but then went on to use the dolls to show various
15 other forms of sexual contact. She showed that he
16 performed oral sex on her, she on him, that he
17 licked her breast area, that he penetrated her
18 vaginally and described positions, more than one
19 position that they were in.

20 Q So in addition to just touching, did she
21 communicate to you there was penetration?

22 A Yes. Since she had not initially disclosed
23 that part, since that was not part of what she had
24 said earlier in the interview, I was careful to
25 check with her repeatedly as to whether that was

1 something that really happened. And I use that
2 language, Is that something that really happened,
3 just to make sure that what she was showing me with
4 the dolls was indeed something that had taken place
5 as opposed to something she had seen and asked her
6 to identify. So who was this and who was this and
7 she was very consistent in saying, this is me and
8 this is daddy.

9 Q So you reaffirm the truth versus lying and the
10 need to tell the truth throughout the interview?

11 A I reaffirmed with her at several points what it
12 is she was saying. So I checked with her when she
13 showed something that was -- in addition to what she
14 had already disclosed, I wanted to be sure that what
15 she was showing me, there was not just something
16 that she had learned through some other means. And
17 so I checked with her about whether that was
18 something that really happened and asked her to
19 clarify who she was showing me at that moment.

20 Q Was there something about a pinky promise?

21 A Yes.

22 Q What is -- what do you refer to that type of
23 detail as?

24 A One of the things that we look for when we try
25 to determine if a child's disclosure is compelling

1 is whether they're able to provide some sort of
2 idiosyncratic details is what we call it, details
3 that would not -- that would be specific to a
4 particular situation and that had that ring of truth
5 that sounded like they came from the child as
6 opposed to something that they may have been told or
7 heard elsewhere. ^{V.2tm} talked about how, just

8 spontaneously, I hadn't asked her about that, but
9 spontaneously talked about how she had gotten her
10 father to make a pinky promise with her that he
11 would stop doing that stuff, but that he did not.

12 Q All right. Dr. Benedetto, considering the way
13 that **victim** acted, was she fearful during this
14 interview, was she fearful of disclosing this about
15 her father? Did she show that she was afraid of her
16 father and afraid of disclosing this?

17 A She was very hesitant initially to even
18 disclose that anything had happened. She would say
19 that it happened but didn't want to tell me who.
20 And when I asked her what would happen, she said she
21 was afraid and her language was, I'm afraid my daddy
22 will be maddy. And she said that -- and I asked
23 her, well why would -- what is your worry about
24 that. She said because he's the person who touched.
25 She went on to say that she was afraid that she was

1 going to get a whooping from him. She told me
2 earlier about the fact that she would get spankings
3 from him and that she was fearful that if he knew
4 that she had told, she would get a spanking. Later
5 on in the interview after she disclosed with the
6 dolls, she said that she was feeling kind of shaky
7 and scared for having told.

8 Q In your opinion, would the victim be
9 traumatized if she had to testify in front of the
10 defendant at trial?

11 A And my opinion would be based on my interview
12 with her, which was some time ago, but based on what
13 she said there, yes, she was very fearful of him
14 knowing that she had told and seemed very
15 apprehensive about disclosing at all even knowing
16 that he wasn't there.

17 Q Would fear of the defendant cause her to sort
18 of shut down and not testify at trial?

19 A I think that likely both fear and love and
20 affection, I think, would enter into it as well. I
21 think that it would be very, very difficult for her.

22 MR. JOHNSON: No more questions, Your Honor.

23 THE COURT: Cross?

24 MR. CORNWELL: Please the Court, Your Honor.

25 *****

CROSS-EXAMINATION

BY MR. CORNWELL:

Q You just testified that you felt that ^{v. 24 min} would be afraid of her father. I know you don't have the video in front of you and it may have been a while since you've seen it, but I think everybody's kind of reviewed the video. Wasn't there a point in the video where you asked her if she was worried about talking or telling about what happened or worried about daddy coming home, do you remember what she said?

A Yes. Let me find it, or perhaps you know exactly where it is.

Q It's about one hour 29 minutes 46 seconds into the video.

A You don't have the report. I don't want to misquote her.

I'm not sure if this is exactly the part, but she had talked about -- I asked her if anybody else had touched her, she said, Just dad. And I asked her if it was okay to tell about what happened. She said it was. And I had reminded her that she said earlier that she was worried that he would be angry, that's when she said she -- she said, I'm getting kind of nervous, I'm like shaking. And I asked her

1 what was making her nervous. And she said, About
2 telling people about this stuff, I'm feeling kind of
3 shaky about this stuff.

4 What part makes you shaky?

5 Doing this stuff with the dolls, I might get in
6 trouble.

7 With who?

8 Daddy.

9 Q Now, could it be that the reason she thought
10 she was going to get in trouble with her daddy is
11 because she was lying?

12 A That's certainly a hypotheses that I
13 considered, certainly.

14 Q And not because she was actually afraid of him,
15 but afraid of the consequences of what might happen?

16 A Right. We always look at that alternative
17 because that's always a possibility that you have to
18 look at as to what it is that the child is afraid
19 of.

20 Q Now, that's not exactly the part I was
21 referring to. There was a point in the interview
22 where she was specifically asked about her concerns
23 about dad's reactions and her concern about dad
24 coming home. And I'm not seeing it in this summary
25 because this is a summary, basically. It's not a

1 verbatim transcription?

2 **A** That's correct.

3 **Q** I don't want to put words in your mouth or
4 anything, you know, but there was a point in the
5 interview, do you recall, when that question I just
6 said came up and that **victim** responded, no, she's
7 not worried about daddy coming home?

8 **A** Yes. And I believe that she followed it up
9 that she talked about the fact that her grandmother
10 had told him that he was not going to do that stuff
11 anymore because if he did, he would have to leave
12 the house and so she wasn't worried that he would do
13 it anymore. And, also, that her mommy and daddy
14 love each other and want to stay together and want
15 to have -- she wanted them to have two more babies
16 and she talked about all of that. So she -- that is
17 true that she said that she was not worried it would
18 happen anymore and she had some reasons for that.

19 **Q** Now, I think, you know, that part about grandma
20 may have happened before that. I don't know if that
21 was in response to that question.

22 **A** Yeah, I'm not -- and we'll hopefully get to see
23 the entire DVD in order, but you are correct that
24 she did at one point say that she wasn't worried
25 about him coming home and talked about -- I know the

1 part about her parents.

2 Q Wasn't there also a part of the video where she
3 said that daddy told her it was okay to tell that
4 somebody touched her?

5 A I'd have to say that -- I noted that -- asked
6 if it was okay to tell about what happened with dad,
7 she said it was and that's when she started saying
8 but that she was getting kind of nervous and shaky.

9 MR. CORNWELL: Beg the Court's indulgence.

10 THE COURT: Yes, sir.

11 (Pause.)

12 BY MR. CORNWELL:

13 Q Now, you said something about spanking. Now,
14 this whole conversation about spanking, that wasn't
15 exactly in response to her being afraid of daddy,
16 was it, that was actually in response to different
17 type of touches?

18 A Right. Early on in the interview when I asked
19 her about a range of touches, I asked her about hugs
20 and kisses and tickles and then we sort of move on
21 to touches that kids might perceive as more negative
22 and I asked her about spankings or getting hit or
23 sometimes I say pinched or kicked or just any kind
24 of negative touch and then she talked about getting
25 smacked with a belt by her dad. But at one point in

1 the interview when I asked her what she was worried
2 about, she did say that she was afraid that her
3 daddy would whoop her for telling.

4 Q And once again, as you'd stated earlier, that
5 could be because she was afraid -- or it could be a
6 fear of getting a reprisal for fibbing?

7 A That would be one possible thing and certainly
8 one that I looked at, yes.

9 Q Have you had an opportunity to review other
10 interviews with ^{victim} besides your interview with
11 her or look at any other --

12 A Other interviews --

13 Q Or other interviews she's had with other
14 counselors or other people at the ARC or anything
15 like that?

16 A I referred her for therapy with Heather Smith
17 at the ARC, so I'm aware that she attends therapy
18 there. I don't review her records there regularly.

19 Q And have you had any conversations with mom
20 since this happened or any members of the family
21 or...

22 A I met with Mrs. Wilson following the interview
23 the day that I conducted it and I can think of one
24 other occasion when I met with her as well, but not
25 on any regular basis.

1 Q Now, have you talked to ^{victim} since this
2 interview or did a follow up or anything like that?

3 A No, just to say hello sometimes if I see her at
4 the ARC.

5 Q So you've had no discussions with her about how
6 she feels as far as she's afraid of her father or
7 anything like that since this happened?

8 A No. No. And it's -- it's not my general
9 impression that her only feeling about him is that
10 she was afraid, that wasn't my impression during the
11 interview that that was her feeling about him.

12 MR. CORNWELL: And -- beg the Court's
13 indulgence here.

14 (Pause.)

15 Q Did you get the general impression that, I
16 mean, she loved her father?

17 A That she loved her father, yes, I did.

18 Q And did you get the general impression that,
19 you know, overall that she wasn't afraid of this
20 man?

21 A I would say overall probably not. In reference
22 to the fact that she would get spankings, yes, that
23 was something that was upsetting or scary to her.

24 Q Now, would you -- and, you know, I'm a country
25 boy, so you might have to pardon me and I have my

1 layman's knowledge of child psychology, but wouldn't
2 you consider that normal for a child to be afraid of
3 getting a whooping?

4 A Sure. Absolutely. Yes.

5 MR. CORNWELL: No further questions.

6 THE COURT: Redirect?

7 MR. JOHNSON: Thank you, Your Honor.

8 (State's Exhibit Number 1, DVD, was marked
9 for identification purposes.)

10 REDIRECT EXAMINATION

11 BY MR. JOHNSON:

12 Q Dr. Benedetto, I'm going to show you what's
13 been marked as State's Exhibit 1 for I.D. purposes.
14 Do you recognize that?

15 A Yes.

16 Q What is that?

17 A That's a copy of the DVD that was made at the
18 ARC on the day of the interview with ^{victim}

19 Q Okay. Is that a fair and accurate
20 representation of the interview that you had with
21 ^{victim}

22 A Yes.

23 Q Okay. And you've watched it, you've seen it?

24 A Yes.

25 MR. JOHNSON: Your Honor, at this time, I move

1 State's Exhibit Number 1 marked for I.D. purposes,
2 I'd like to move that into evidence -- or move that
3 into the record as part of this hearing.

4 THE COURT: All right. Go ahead and show it.
5 Are you going to show it or not?

6 MR. JOHNSON: Your Honor, I was going to move
7 it in. I assumed you were going to watch it after
8 we were finished.

9 MR. CORNWELL: Your Honor, and, you know, I may
10 be mistaken, but I think it's a situation where you
11 may have to review it before it's actually entered
12 into evidence.

13 MR. STUMBO: I don't think for the purposes of
14 this hearing, Your Honor, but logistically --

15 THE COURT: It's not coming into evidence.
16 He's marking it for I.D. as I understand it.

17 MR. STUMBO: Correct for purposes of this
18 hearing.

19 MR. CORNWELL: All right.

20 MR. JOHNSON: Yes, sir.

21 THE COURT: Go ahead.

22 BY MR. JOHNSON:

23 Q Dr. Benedetto, did you ask the victim,
24 about how comfortable she would feel about daddy
25 coming home?

1 A Yes. And that, I believe, is where she talked
2 about that he was going to come home because he
3 loves mommy and they're going to have two more
4 babies and that's what she wanted, she was hoping
5 for a sister.

6 Q But did you ask specifically about how
7 comfortable she would be about him coming home or
8 how secure she would feel?

9 A I just would have to actually -- I don't know
10 that I used that language about whether she would
11 feel secure. I think I asked her if she had any
12 worries about it.

13 Q Okay. The recording that was made of the
14 interview, is that an accurate, complete recording
15 of the forensic interview with ^{system}

16 A Yes.

17 Q Okay. And is that a reliable source to show a
18 fair and total accurate representation of the
19 interview?

20 A Yes, it's the entire interview.

21 Q What type of equipment do you guys have that
22 records this interview?

23 A We record onto our hard drive and then make a
24 copy onto a DVD that we keep locked in a cabinet.

25 Q Is that where you had the original?

1 **A** Yes. The child is interviewed in a room with a
2 small kind of unobtrusive camera and microphone
3 which we tell the child about so that they're aware
4 that they're being recorded as well.

5 **Q** And was she clear about the fact that she was
6 nervous and scared about her father and disclosing
7 this information about her father?

8 **A** Yes. She was very apprehensive and said that
9 she was scared.

10 **Q** Okay. And overall when she said she was scared
11 and you were looking for -- you were checking for
12 your alternate theories or hypotheses of what could
13 happen, what had actually happened, you were
14 convinced that she was telling the truth about the
15 sexual assault?

16 **A** Truth is a matter for His Honor -- credibility
17 would be for His Honor.

18 **Q** It was compelling disclosure?

19 **A** Right. The language that we use is either that
20 an interview is compelling or problematic. So it
21 can be compelling for some form of abuse, sexual
22 abuse, physical abuse, neglect, or it can be
23 compelling for no abuse. Alternatively, it can be
24 problematic for any of those forms of abuse. So it
25 could be problematic for sexual abuse. The majority

1 of the interviews at the ARC are ruled problematic
2 actually. Smaller percentage are ruled compelling.
3 This one was ruled compelling for sexual abuse.

4 Q So that was your finding that it was compelling
5 for sexual abuse?

6 A Yes.

7 MR. JOHNSON: No more questions, Your Honor.

8 THE COURT: Recross?

9 MR. CORNWELL: Nothing at this time, Your
10 Honor.

11 THE COURT: Thank you, Doctor. You may step
12 down. Call your next witness.

13 MR. STUMBO: Thank you, Your Honor. The State
14 would call Heather Smith to the stand.

15 HEATHER SMITH,
16 having been duly sworn, testified as follows:

17 THE CLERK: If you'll have a seat over there.
18 State your name and spell your last for the record,
19 please.

20 THE WITNESS: My name is Heather Marie Smith.

21 DIRECT EXAMINATION

22 BY MR. STUMBO:

23 Q Good afternoon, Ms. Smith. How are you doing?

24 A Good.

25 Q Where are you currently employed?

1 **A** I currently work at the Assessment and Resource
2 Center, which is a specialty clinic through the
3 South Carolina Department of Mental Health.

4 **Q** Okay. What's your role there or title?

5 **A** I am the treatment service coordinator and also
6 a forensic evaluator.

7 **Q** Could you give the Court just a summary of your
8 educational background?

9 **A** Sure. I have a bachelors degree in psychology
10 from the University of South Carolina. I have a
11 masters degree in rehabilitation counseling through
12 the University of South Carolina School of Medicine
13 with a graduate certificate in psychiatric
14 rehabilitation that allows me to treat and assess
15 serious mental illness. And I'm also a licensed
16 professional counselor in the State of South
17 Carolina.

18 **Q** And do you have any specialized training in
19 regards to child sexual abuse?

20 **A** I do. I've been trained in a intensive
21 training for forensic interviewing of children who
22 have been suspected of child maltreatment, it's not
23 just sexual abuse. I also have, you know, undergone
24 numerous training in childhood trauma, specifically
25 childhood trauma as it relates to sexual abuse,

1 complex trauma in children. And I stay updated on,
2 you know, by going to trainings every year so I can
3 stay on top of the research, the new research that
4 comes out.

5 Q Now, you said earlier you were the treatment
6 coordinator of the ARC. Do you do anything else for
7 the ARC other than handle the treatment end of
8 things?

9 A I coordinate all treatment services, so that
10 means any time we have a referral to treatment, it
11 comes through me first, but then I also have a small
12 case load of clients that I see, typically clients
13 that are -- either have more severe symptomology or
14 may have just really complex cases that need someone
15 with more experience to take on. So those are the
16 types of cases that I see for treatment. I also
17 provide forensic evaluations for the forensic
18 interview portion with some clients. So I do both,
19 but I never do the same service for the same child,
20 if that makes sense.

21 Q Okay. So there's some of those at the ARC who
22 do forensic interviews, there's some who do
23 counseling. You do both?

24 A Actually, most all of us do both, we just would
25 never do it with the same child. The forensic

1 evaluator is someone who is only in the role of a
2 fact finder so they're the ones that are going to be
3 working as part of an investigation. And then the
4 counselor, the therapist, is the one that provides
5 the treatment and you don't want to overlap those.

6 Q And why is that?

7 A The forensic evaluator needs to stay objective,
8 needs to be as, like I said, as part of the
9 investigation, so that's really before treatment,
10 you know, it should be before treatment happens.
11 And then the therapist is going to be working more
12 with the family, is going to be handling more of the
13 emotional and mental and cognitive problems or
14 functioning of the child.

15 Q What does the term forensically sensitive in
16 training mean?

17 A That means that as -- because the cases that we
18 work with at the ARC are typically going to go to
19 court, are going to have some type of, you know,
20 court -- either family court or criminal court,
21 later you want to make sure that you're staying
22 objective and yet still do mental health therapy.
23 And so we are trained to do forensically sensitive
24 therapy with our cases that we know are going to be
25 headed to court and the child may need to testify

1 because you want to make sure that you're not
2 influencing the child before court happens.

3 Q Okay. And about how many children have you
4 forensically interviewed in your time at the ARC and
5 Dicker -- are you also --

6 A I'm also -- I'm also employed at the Dickerson
7 Center as a contract forensic evaluator there and
8 that's the Lexington County Child Advocacy Center.

9 Q And the ARC is Richland County?

10 A Is Richland County. And the ARC sees Richland
11 County cases -- I mean, I'm sorry, Lexington County
12 cases because of just the size of the county.

13 Q About how many children have you interviewed
14 forensically in your career?

15 A I'd say between 500, between five and 700. I
16 don't know the exact number of children.

17 Q And just an estimate about how many children
18 have you seen for treatment after a forensic
19 interview has been done or conducted?

20 A Well, I've had, prior to my six years at the
21 Assessment and Resource Center, I've worked with
22 children that had been abused and neglected for
23 approximately 12 years. So in seeing children for
24 treatment for abuse and neglect, it's, you know, the
25 number is close to probably 500 as well. I mean,

1 it's been a long -- I've had a lot of experience
2 with those types of children.

3 Q Okay. And how many times -- have you ever been
4 qualified as an expert in the courts of this state?

5 A Yes, I have, both family and criminal court.

6 Q And that's in regards to child sexual abuse
7 that you'd been qualified as an expert?

8 A Yes.

9 Q You said ten to 15? About how many times have
10 you --

11 A Yeah, about ten to 15.

12 MR. STUMBO: Your Honor, at this time, the
13 State would offer Heather Smith as an expert in the
14 field of child sexual abuse assessment and
15 treatment.

16 THE COURT: Voir dire?

17 EXAMINATION

18 BY MR. CORNWELL:

19 Q Just to kind of refresh my memory, what kind of
20 -- you said you had some graduate training in
21 regards to child and treatment, what was that again?

22 A It's a certificate of graduate study in
23 psychiatric rehabilitation through -- and it's under
24 my masters program. And it -- what it is is it's a
25 specialist graduate certificate degree. It's extra

1 training past the masters level that gives -- it
2 teaches you diagnostic and treatment of severe
3 mental illness, so clients, you know,
4 psychopathology and the treatment of severe mental
5 disorders.

6 Q Now, that's to do with mental illness and
7 mental disorders you said. Is that necessarily also
8 relevant to the treatment of traumas?

9 A It's not. Since I've graduated with my masters
10 degree, I've undergone numerous training
11 specifically for trauma in children.

12 Q So you received that training through seminars
13 or things like the finding words maybe, programs
14 like that --

15 A Exactly finding words, conferences,
16 international conferences, national conferences and
17 seminars.

18 Q You don't necessarily have a formal educational
19 background or -- in that area?

20 A Well, my masters degree is a masters in
21 counseling and that's, you know, with the added --
22 it basically is a program that is for a licensed
23 professional counselor track, so it's for, you know,
24 to work towards your licensure.

25 Q Like a general track and then you specialize

1 from there or something?

2 A Yeah. Some people don't get the added
3 certificate, I wanted to assess and treat those with
4 severe mental illness not just, you know, counseling
5 is, you know, school counselors, there's lots of
6 different types of counselors. My track was for
7 those that are in inpatient psychiatric hospitals,
8 you know, those that needed higher levels of care.

9 Q So when we talk about -- when the Solicitor
10 talks about qualifying you as an expert in the area
11 of child treatment and counseling, he's relying on
12 your educational experiences from the seminars and
13 the classes, not necessarily from the graduate
14 certificate?

15 A I think that is combined with my training in
16 seminars and conferences and work experience for 12
17 years working with abused and neglected children. I
18 think that's --

19 Q And in the course of that training and
20 everything, were there -- you relied on materials
21 and these seminars to form -- you're going to be
22 relying on things you received or things you've
23 learned from those seminars to form your expert
24 opinion?

25 A There's certain research out there that, you

1 know, helps to direct my knowledge and also my work
2 experience, being supervised by, you know, for two
3 years in order to get a license by a licensed
4 professional counselor supervisor who's also trained
5 in children -- children's issues, trauma being one
6 of them and abuse and neglect, and then also being
7 supervised by a licensed psychologist where I work,
8 the director, the mental health director, for the
9 last six years. So I guess there's -- and even more
10 than that, there's a lot of places where I get my
11 education, training and then my opinion.

12 MR. CORNWELL: All right. Thank you. No
13 further questions, Your Honor.

14 THE COURT: Any objection?

15 MR. CORNWELL: No, we don't object, Your Honor.

16 THE COURT: She is so recognized. You may
17 continue.

18 MR. STUMBO: Thank you, Your Honor.

19 BY MR. STUMBO:

20 Q Now, Ms. Smith, of the 500 children or so
21 children that you were able to counsel at the ARC
22 and Dickerson and other places, was one of those

23 victim ?

24 A Yes, it was.

25 Q And she's the victim in this case?

1 **A** Yes, she is.

2 **Q** Did this come after she was forensically
3 interviewed?

4 **A** It did. The referral came following her
5 forensic interview from Alicia, Doctor Alicia
6 Benedetto who ^{victim's} did the forensic evaluation. And I
7 had met with ^{victim's} mother the day of the
8 interview and arranged an appointment at that time.

9 **Q** Tell us a little bit about ^{victim} the first
10 time you met with her in counseling, just your
11 general observations.

12 **A** That's been two years ago, so I may need to
13 refer back to refresh my memory a little bit.

14 **Q** That's fine. Take your time.

15 **A** She's very -- she was a very outgoing child.
16 She seemed to be -- she seemed happy. She seemed
17 like a happy child. She seemed very attached to her
18 mother. She was very -- I do recall back when she
19 first was meeting with me a little bit of maybe some
20 anxiety about just separating from her mom, which is
21 not uncommon in children because back then she was
22 years old.

23 She seems very sad to me. In one of the first
24 sessions that we had together, she broke down and
25 cried and told me that she was very sad about

1 this -- the situation that her dad could not live
2 with them, with the family and he couldn't see her
3 brother at the time.

4 Q Let me just back you up a little bit. You said
5 you felt like she was a happy child, but then when
6 you met with her, there was a sadness that you
7 picked up on. Was the sadness, when did that come
8 out? Was that after you talked to her about certain
9 things?

10 A Typically, you know, the first two sessions or
11 so are just for rapport building, so you're not
12 really going to be talking about with the child
13 anything about, you know, the circumstances of why
14 she would need therapy or counseling with me.
15 Probably -- it was probably close to the third
16 session, third or fourth session, where, as part of
17 my orientation to help her understand why she was
18 even getting therapy or needing therapy, when I
19 asked her why she thought she was here to see me for
20 therapy that she talked to me about it was about
21 what happened with her dad and that she was sad.
22 And she started crying and said she missed him and
23 wished that he could, you know, be at home with the
24 family.

25 Q Okay. At the beginning, did she appear

1 apprehensive at all about talking about these
2 incidences with dad?

3 A She's very apprehensive. That really -- it has
4 lessened over two years, but she's still very, very
5 apprehensive to talk about anything to do with what
6 happened with her dad and she doesn't like to talk
7 about it. She didn't then. She would be fine if
8 she was talking about school or if she was talking
9 about something she had done over the weekend with
10 her brother and her mother, but any time, you know,
11 it came around to the subject matter of why she was
12 in therapy and what we needed to discuss in terms of
13 just her functioning and her, you know, mental
14 health concerning, you know, the situation, it was
15 noticed that she had increased anxiety, she avoided
16 the topic, would sometimes cry about missing her
17 father and what was happening.

18 Q Based on your training and experience, is this
19 normal?

20 A It is normal. It's normal for children who
21 have undergone -- there's lots of different levels
22 for her. One is, you know, just having to go
23 through the process of telling and telling what
24 happened and then having that split the family up is
25 another level of anxiety and a level of worries that

1 she had and sadness; then also worrying about other
2 family members, she was very worried about her
3 mother and, you know, and verbalized that in therapy
4 often; concerns that she may have to go into foster
5 care, she voiced that with me. And it's normal so
6 that -- because children do understand that when
7 they tell, then things start happening. Often times
8 those things are the negative things, you know,
9 someone has to leave the home or people get
10 separated, so it is normal.

11 Q And about how often have you met with *victim*
12 over the past, like -- since you started meeting
13 with her, about how often, just the frequency of
14 that?

15 A We would meet typically once a week with
16 periodic breaks for waiting for different court
17 dates and then periodic breaks when she was away for
18 the summer.

19 Q Okay. Have you met with her with more
20 frequency in the last couple of months?

21 A I have.

22 Q And why is that?

23 A Because I was helping her get prepared to
24 testify in this trial.

25 Q Why do you go through that process as part of

1 counseling? Why is that necessary?

2 **A** Any time a child is asked to testify, typically
3 the mental health therapist is who will assess the
4 child to see if she's, what we call, available to
5 testify and then -- which we're looking at how she's
6 doing emotionally, how the child would be doing
7 cognitively, you know, is the child cognitively
8 able. So we do a process of assessment to see if
9 the child can testify in our mental health opinion.
10 And then we're also doing a piece that's education,
11 we want to prepare the child so that they understand
12 the court process, what the courtroom looks like,
13 what is expected of them.

14 **Q** And has part of that been discussions that she
15 may have to face her dad and talk about this?

16 **A** Most definitely, that's something you would
17 always assess with a child who was going to have to
18 testify in court.

19 **Q** And have you been able to gauge her anxiety
20 level as to that particular -- particularly asked of
21 her dad being in the same room with her?

22 **A** For **victim** that is the biggest fear for her in
23 terms of doing this whole process of testimony. It
24 is a stressor for every child, you know, no child
25 wants to testify in front of the defendant, but

1 particularly when it's a trusted family member that
2 they love and haven't seen in some time such as it
3 is for ^{Victim} And then also it's a visual cue so
4 that often times when -- with ^{Victim} one of her
5 fears is that when she sees him, he'll look at her
6 and be mad at her is what she's voiced to me. She's
7 afraid that, you know, she hasn't seen him in, I
8 want to say, close to two years and it could trigger
9 her just having that, what we call, stimulus
10 recognition is when you see, you know, it brings
11 back more of the memories. So I think that's one of
12 the reasons that she does have some anxiety.

13 Q About how many times, and I don't think you
14 mentioned this before, you said you've been with her
15 to prepare for court, about how many times has that
16 occurred?

17 A That's a hard question to answer because she
18 has been prepared, this will be the fourth time that
19 she's been prepared and ready to testify as at the
20 courtroom, ready to go any moment for her testimony.
21 So, typically, before a court hearing is scheduled,
22 I would see her two months before that and then,
23 with closer frequency, right before the court date.
24 So I've done that with her, really it's only been
25 within the last -- since April of 2008, late

1 February of 2008. I've seen her just for court
2 preparation -- it's hard for me to answer that
3 question.

4 Q Based on the times that you have met with her
5 for those purposes and based on your training, as
6 well as your experience with children, do you have
7 an opinion as to whether -- how she would react
8 having to testify in the same room with her father
9 as the perpetrator?

10 A Well, you know, I have prepared lots of
11 children for court in order to testify, sometimes in
12 front of a family member. Some children are
13 empowered by it. Some children want to be able to
14 speak out in front of someone that they're alleging
15 did something to them. And so with her, she has
16 consistently, since February, January, since we
17 started with court preparation, stated to me that
18 she does not want -- she's afraid to talk and say
19 what happened to her.

20 Her anxiety level as we've -- one of the
21 stressors is for delays to happen in court. So with
22 victim being prepared now for the fourth time, her
23 anxiety level has increased with every preparation
24 in almost a testimony time. So in the last few
25 weeks, her anxiety, she's been very emotional. She

1 cries often in sessions. She's refused to
2 participate sometimes in the preparation tasks that
3 we needed to do. And when I ask her, you know, why
4 you're feeling this emotion, it's mainly having to
5 face and see her father and also testify.

6 Q What is your opinion, though, on a reasonable
7 degree of clinical certainty here, based on your
8 training and experience, what is your opinion as to
9 the effect that testifying in the same room as her
10 father would have on her?

11 A I think, first of all, she would -- it's
12 possible that she will not be able to talk at all.
13 Up until this point, she's able to manage her
14 symptoms of anxiety that are normal in this type of
15 a setting, they're normal for any child. And one of
16 the things that we provide in court preparation is
17 anxiety reduction strategies so that the child can
18 manage them when she's up on the witness stand. I
19 mean, it's stressful for everyone to have to
20 testify, especially for children, they're not used
21 to this type of environment.

22 And I think that she would probably not -- it
23 would be difficult for her to speak, you know, she
24 would not be able to talk as much as she could if
25 she did not have to see him in the courtroom. I

1 think her anxiety levels would increase even
2 further. This could cause functioning problems at
3 home. It could cause -- she's not in school. I
4 think that's -- if she were in school, we would
5 probably see some decline in functioning there. We
6 call it regression, when kids have a traumatic
7 experience so severe that they tend to lose what
8 functioning they gained. So she's -- right now her
9 level of functioning is fairly high. She's able to
10 manage stress really well. She's able to appear
11 happy when she's around other kids her age and play,
12 but I think that this experience would cause that to
13 be -- to change. I think she may become withdrawn,
14 she may have some increased depression.

15 Q Is it your opinion then, based on what you just
16 told me, that would she be retraumatized by having
17 to testify specifically as to her father being in
18 the same room with her?

19 A It is my opinion that she would be
20 retraumatized from that.

21 Q How traumatized?

22 A Based on her level of anxiety right now that
23 I'm seeing with a lot of emotion, crying, just sad,
24 depressive symptoms from her, that is not typical of
25 her behavior. I think that it would go from -- it

1 would probably become even worse if she has to
2 testify in front of her father.

3 Q Significant trauma?

4 A Significant.

5 Q Do you think she would -- and I think you
6 testified to this, but do you think she would have a
7 difficult time to communicating facts to the Court?

8 A I think she would. I think if she sees her
9 father, it's going to retrigger her ability --
10 retrigger her back to the experience and that is a
11 part of trauma symptoms. She may -- this could
12 cause her to have difficulty sleeping. It's
13 actually very common to have changes in sleeping,
14 eating habits. And ^{victim} has reported having upset
15 stomachs, because anxiety can cause children to have
16 somatic complaints, she's reported having upset
17 stomachs, headaches. These would only increase if
18 she has to testify in front of her father.

19 Q And is it based strictly on fear of her father
20 or is it fear in combination with other emotions?

21 A She's more afraid that he's going to be angry
22 at her. And she's afraid of the outcome of the
23 trial itself. She's verbalized that she's afraid
24 he's going to go to jail, so she does know that.

25 Q She still has strong emotional feelings towards

1 her father?

2 A She loves her father. She misses her father
3 and is sad that she can't see him.

4 Q Does this factor into the possibility of
5 retraumatizing her?

6 A Most definitely. Especially if she's going to
7 be having to talk about what happened with her
8 father and is able to see him, it could definitely
9 cause increased traumatic symptoms for her.

10 Q And I believe you testified earlier that it may
11 have also an effect on her current treatment and
12 future treatment; is that correct?

13 A Most definitely.

14 Q I think you mentioned sleep problems?

15 A Sleep problems with increased nightmares. Any
16 time you have a retriggering of an event, of a
17 traumatic event that happened, it can cause -- it
18 typically causes changes in sleeping habits,
19 increased nightmares, eating habits, not wanting to
20 eat or maybe overeating for comfort, somatic
21 complaints, which are, you know, increased
22 stomachaches, headaches where the child actually
23 does feel the pain. I mean, you do feel pain when
24 you have somatic complaints and anxiety can cause
25 that as well. So, you know, it could cause

1 depression, which could cause withdrawal. And
2 ^{in time} has already demonstrated that with me in
3 therapy. So I think seeing her father will
4 retrigger her and will cause increased depression
5 and anxiety, which will then be -- it will affect
6 her body systems and sleeping and eating and that
7 type of thing.

8 Q Can you explain to the Court, in your own
9 words, what a compelling disclosure would be versus
10 a problematic disclosure using the language of
11 treatment providers?

12 A A compelling disclosure is a disclosure that
13 has certain characteristics that lend it
14 consistency, which is a child making the same
15 statement over a period of time that does not
16 change. It has detailed -- it has details that are
17 unlikely for a child to have any knowledge of unless
18 she had experienced it herself or seen it.

19 And then a problematic disclosure is one where
20 it doesn't have that, it might not have the detail
21 at all. So you're, you know, a child might make a
22 statement, but then can't follow it up with any
23 sensory detail to demonstrate that it happened to
24 them, or they may say one statement and then, over a
25 course of time, change it into many different

1 statements that aren't, you know, holding together
2 or don't make sense.

3 Q Of course, in you're forensic interviews that
4 you've done, have you ever found a child's
5 disclosure to be problematic?

6 A Certainly.

7 Q Have you ever found a child to be making
8 something up?

9 A I have -- I have found a child to be making
10 something up and it later on came out in another
11 interview that they had fabricated a statement.

12 MR. STUMBO: If I may approach the witness,
13 Your Honor?

14 THE COURT: Yes.

15 BY MR. STUMBO:

16 Q Showing you what's been marked for I.D.
17 purposes as State's Exhibit Number 1. Can you
18 identify that for the Court?

19 A This is a video copy of the forensic interview
20 of ^{Victim} on November the 1st, 2006.

21 Q And that was the interview conducted by Dr.
22 Benedetto?

23 A Yes, it was.

24 Q Have you had a chance to review this video?

25 A I have. I have not reviewed it recently.

1 Q Okay. Have you reviewed it in the course of
2 the time that this investigation has been going on?

3 A Yes, I have.

4 Q How many times?

5 A Approximately -- completely and all the way
6 through, only once, and then half way reviewed
7 another time.

8 Q Okay. Does it -- I withdraw that question.
9 Based on your training and experience forensically
10 interviewing children, is it your opinion that her
11 disclosures to Dr. Benedetto were compelling?

12 A You know, I am not the forensic interviewer, so
13 in the sense of the evaluation, I wasn't in the room
14 with the child when the interview was done. Having
15 read the interview and watched it, I have found her
16 statements compelling.

17 Q And have you had a chance to talk about the
18 abuse scenario since she's been forensically
19 interviewed?

20 A I have as part of the treatment model that I'm
21 using with her.

22 Q Have you found her disclosures to you to be
23 compelling?

24 A Yes, I have.

25 Q Have you ever used leading questions with her

1 to get her to talk about what happened to her?

2 **A** On the contrary. Because of the knowledge that
3 this case was going to court, I have been using very
4 forensically sensitive therapy with her in the sense
5 that I don't even give her -- I don't even give her
6 an idea or ask her to -- I don't ask her questions
7 in therapy, I let her tell me. My focus with her
8 has mainly been on coping skills and allowing her to
9 express the experience how she sees fit.

10 **Q** You let her tell the story?

11 **A** Exactly.

12 **Q** Last question, in your opinion, how closely did
13 Dr. Benedetto follow the RATAc protocol in her
14 forensic interview with *Victim*

15 **A** She followed it, if my memory holds correctly
16 because I haven't reviewed it in a while, but I
17 think all the elements of the RATAc are there.

18 **MR. STUMBO:** That's all of the questions I have
19 at this time, Your Honor.

20 **THE COURT:** We'll take a ten minute break. You
21 can step down, but you can't discuss your testimony
22 with anyone during the break, okay?

23 **THE WITNESS:** Okay.

24 **THE COURT:** We're at ease for ten minutes.

25 (Brief recess.)

1 **THE COURT:** . Cross-examination.

2 **MR. CORNWELL:** Please the Court.

3 CROSS-EXAMINATION

4 **BY MR. CORNWELL:**

5 **Q** In talking about her reactions in regards to
6 her father in your interviews, you mention that she
7 was sad; is that correct? As far as -- and more
8 specifically, she was sad about being separated from
9 dad and the family not being together; is that
10 correct?

11 **A** That's correct.

12 **Q** Okay. And I notice that, you know, you kind of
13 repeatedly said that her behavior is typical of
14 children who are put in this situation; is that
15 correct?

16 **A** Her behaviors are typical for children that
17 have undergone what she's gone through, but recently
18 in the last, I'd say, in the last two months since
19 we've been preparing for this trial for her to
20 testify, her behaviors are increasingly becoming
21 more, you know, they're stronger than they have been
22 in the two years that I've worked with her and I'm
23 noticing symptoms of depression and anxiety that
24 I've never seen before with *victim* And when I ask
25 her to explain to me, you know, why -- what is the

1 one thing that is making you feel that way, you
2 know, or what are some of the things that are making
3 you feel that way, she repeatedly tells me that she
4 does not want to see her father when she testifies.

5 My work with her right now is very focused on
6 her testimony and her being at court and trying to
7 help her reduce those feelings. In other children
8 that I've prepared for court and prepared, you know,
9 to have them ready to testify, I haven't seen quite
10 that level.

11 Q And this not wanting to testify in front of her
12 father is kind of like -- it's bundled in with a
13 number of things that create anxiety, is that safe
14 to say?

15 A I'd say that is the top one. Other ones are
16 just being afraid to speak in this arena. It's a
17 very formal arena for children and so they do have
18 fears. She's able to manage those fears, though. I
19 mean, we have done some practice with her of being
20 in the courtroom so she's not so anxious about it
21 and I've noticed that actually decreasing, but
22 whenever we discuss possibilities of where people
23 will be sitting in the courtroom, and we do that
24 with all children for courtroom orientation, it's
25 having her father in the room that bothers her.

1 Q And would you say that it's unusual for, you
2 know, in this type of scenario for a child to be
3 apprehensive about testifying in front of, you know,
4 the alleged perpetrator?

5 A No, it is one of the court stressors that all
6 children have to undergo. There are varying
7 degrees. It really depends on, you know, you're
8 looking at more than one factor, you know. And so
9 for *V.2tm* in particular, having it be her
10 biological father as opposed to, let's say, a
11 boyfriend of her mother or a stranger, makes a
12 difference.

13 The other thing that really factors in for
14 *V.2tm* and causes increased anxiety is mother, her
15 mother does not believe the allegations, so *V.2tm*
16 is not allowed to talk to her mother and get support
17 from her mother. And lack of maternal support is
18 one of the biggest factors of anxiety in children
19 that are testifying and getting them ready to
20 testify and *V.2tm* does not have her mother's
21 support.

22 Q And one other question --

23 MR. CORNWELL: Beg the Court's indulgence.

24 THE COURT: Yes.

25 (Pause.)

1 BY MR. CORNWELL:

2 Q In Mr. Stumbo's direct, you mentioned something
3 that I thought was kind of important. You said one
4 source of her anxiety about testifying in front of
5 her father was the unsurety about what was going to
6 happen to him; is that correct?

7 A She said that she's afraid of him having to go
8 to jail afterwards, yes.

9 Q So, I guess, it would be safe to say a source
10 of that anxiety is that she's afraid that her
11 testimony will send him to jail?

12 A She's afraid that if she tells what happened in
13 court, and this is in her words, If I tell what
14 happens in court, then my daddy will have to go to
15 jail.

16 Q So you wouldn't classify this fear as a fear of
17 some kind of -- she's afraid her dad's going to
18 attack her or something like that? It's not terror?

19 A This is not a fear that her dad is going to in
20 some way hurt her physically and cause bodily harm.
21 She's more afraid that he'll be mad -- it's an
22 emotional fear of him being angry at her of what she
23 tells that happened is going to cause him to be gone
24 forever. She loves her father very much and she
25 misses him and would like him to be back in the

1 family, but she's been told, you know, her -- she
2 knows that -- she knows that what she is talking
3 about in her testimony is going to implicate her
4 father.

5 Q And I know we've been throwing around the word
6 fear a lot, but would it be fair to characterize
7 this more as stress?

8 A I would call it severe anxiety.

9 Q Anxiety?

10 A Yeah, and fear is part of that. You know,
11 anxiety is a cluster, it's not just one thing, fear
12 sadness, worries about other people. I mean, it's a
13 cluster. It's not just one emotion.

14 MR. CORNWELL: No further questions, Your
15 Honor.

16 THE COURT: Redirect?

17 MR. STUMBO: Just briefly, Your Honor.

18 REDIRECT EXAMINATION

19 BY MR. STUMBO:

20 Q Ms. Smith, is fear the only thing that -- or
21 the only emotion that would cause trauma?

22 A No, fear is not the only emotion.

23 Q In the case of ^{U. S. v. Smith} would -- you said severe
24 anxiety. What level of trauma would she have if she
25 had to testify in the same room as her father?

1 **A** It's a severe enough anxiety response that will
2 impact her ability to function normally even
3 compared to other children who I've prepared for
4 testifying in front of a defendant.

5 **Q** Okay. And this is based on a variety of
6 factors?

7 **A** It's a variety of factors that you look at.

8 **Q** Not just fear of her father?

9 **A** No.

10 **Q** Could it be based on actually love and strong
11 feelings for her father?

12 **A** Right, that she's very -- and does. She's
13 reported to me that she has anxiety that her father
14 will be so mad at her that he doesn't love her
15 anymore, that he won't ever be able to come back to
16 the home, the family home, he'll have to go to jail.
17 So it's more of a fear for her that she'll never see
18 him again and he'll be mad at her.

19 **Q** So is there a combination of emotions that feed
20 into the trauma that she may experience?

21 **A** Yes.

22 **Q** In your opinion, she would indeed experience
23 that kind of trauma?

24 **A** I think she would.

25 **MR. STUMBO:** No more questions from the State,

1 Your Honor.

2 THE COURT: Recross?

3 MR. CORNWELL: Your Honor, briefly.

4 RECROSS-EXAMINATION

5 BY MR. CORNWELL:

6 Q I'm just going to throw this out here, Ms.
7 Smith. Is it safe to say that she's going to suffer
8 trauma regardless of father's presence in the
9 courtroom anyway?

10 A She's definitely going to have, what I would
11 call, stress from having to testify in the trial.
12 We know that, that's a part of preparing any child
13 for court is how to manage that stress. ^{V.2+my}, she
14 is not able to manage, in therapy with me, the
15 stress of having to testify in front of her father.
16 She repeatedly brings it up. It's a source for her
17 of intense feelings. And I -- in my opinion,
18 noticing her behavior patterns over the last two
19 months degrading as to where she was before two
20 months ago, I think that would impact her even
21 greater and cause more of a problem.

22 Q And to add to that, you also said that with
23 each time they prepare for trial, her anxiety is
24 greater with each time, each subsequent preparation.
25 Now, this anxiety increase has nothing to do with

1 the father. Does it have more to do with just
2 getting ready for trial and having to testify?

3 A No. Actually, the fear of having to testify
4 and the anxiety and the stress of having -- it's all
5 of those. Having to testify in front of her father
6 has always been the top stressor for her throughout
7 all of these, for preparations in getting her ready
8 to go, it's always been the top one, but that is
9 another stressor that we -- that I, as her court
10 preparer, have been trying to help her manage and
11 she's able to manage that. It is -- it is one of
12 the stressors, but it's not merely as anxiety
13 provoking as having to testify in front of her
14 father.

15 Q In your professional opinion, is it possible
16 that she'll also suffer severe trauma as a result of
17 testifying even if the father's not in the
18 courtroom?

19 A Will she suffer severe trauma? I'm sorry --

20 Q You described, you know, the possibility of
21 severe trauma if she testified with the father in
22 the courtroom. Is it possible she'd still suffer
23 severe trauma if the father wasn't in the courtroom
24 when she testified?

25 A No, she won't suffer severe trauma if father's

1 not in the courtroom.

2 Q And that's something you can say with 100
3 percent professional certainty?

4 A It's my professional opinion in preparing other
5 children and having other children have to testify
6 just like this even in front of their father. For
7 victim and the factors that she's operating in,
8 which is lack of maternal support being the biggest
9 one and the thought of having to testify in front of
10 her father, for her, she is going to have increased
11 severe trauma if she has to testify in front of her
12 father, that's my opinion.

13 Q Increased trauma?

14 A Severe, uh-huh.

15 MR. CORNWELL: Thank you.

16 THE COURT: Anything further of the witness?

17 MR. STUMBO: Nothing further from this witness
18 at this time, Your Honor.

19 THE COURT: Thank you. You may step down.

20 Call your next witness.

21 MR. STUMBO: Your Honor, that's all we have for
22 the following two motions we're going to make.

23 THE COURT: What are your motions?

24 MR. STUMBO: Judge, if I may pass up certified
25 copies of the motions that we pre-filed in writing.

1 I know the originals are probably in the clerk file,
2 but I've got a couple extra copies here.

3 Your Honor, I'll take up the one page motion
4 that I just passed up to you first. We filed that
5 on Friday of last week, let Mr. Cornwell know about
6 it and I actually gave him a copy of it this morning
7 before we started. Your Honor, the two cases that
8 are what I feel like are the seminal cases in the
9 area of alternatives to a child victim having to
10 testify in open court, there's one case the U.S.
11 Supreme Court decided in 1990, it's Maryland versus
12 Craig. Your Honor, I believe I passed a copy of
13 that up to your law clerk a few minutes ago. And I
14 can give you the cite on that, Judge, if you need
15 it, but Maryland v. Craig is 497 U.S. 836.

16 Judge, the Craig case upheld a situation -- and
17 most of the cases that I'm going to be referring to
18 today have used a method called video taping, that's
19 been the traditional method used where a child
20 witness who has been found would be retraumatized
21 from having to testify in court in front of the
22 defendant, they would do like a closed circuit T.V.
23 procedure essentially where it's outside the
24 courtroom and the defendant's actually in the
25 courtroom at the time some time before the trial and

1 then later the video tape is shown to the jury.
2 During the video taping, there's full
3 cross-examination opportunity by defense counsel,
4 there's a judge, court reporter, so forth in the
5 room.

6 Your Honor, what we propose in our motion, our
7 written motion, is using the media rooms that we
8 have in all of the courtrooms in this courthouse to
9 accomplish really the same purpose, Judge, that was
10 accomplished on all of these cases. The only
11 concern we have is the trauma that the possible
12 retraumatization and probable retraumatization,
13 based on the expert testimony that you've just heard
14 from Ms. Heather Smith and as well from Dr.
15 Benedetto about the fears that ^{victim} has expressed,
16 that it would likely retraumatize her significantly
17 or severely in their words, particularly in Ms.
18 Smith's words, if she has to come in here and
19 testify on the stand with the defendant actually
20 being in the room with her and that's specific to
21 him.

22 And as Ms. Smith just elaborated on, there's
23 always a general stress and anxiety about coming in
24 the courtroom and having to get on the stand in
25 front of all these people for a child, but

1 specifically her opinion in this case is as to the
2 father and part of the fact is that he is her
3 father, the defendant is ^{victim's} father.

4 Judge, I think the situation in Maryland v.
5 Craig, what you had was a six-year-old victim of
6 child sexual abuse in that case, the facts of that
7 case. The U.S. Supreme Court upheld the use of a
8 closed circuit T.V. procedure in that case in which
9 the defendant was convicted of sexual abuse.

10 Judge, out of the Maryland v. Craig decision,
11 the same year our court passed down a decision
12 called State v. Murrell, that's M-U-R-R-E-L-L, case
13 cite on that is 393 S.E.2d 919, that was a 1990
14 decision by our State Supreme Court written by
15 Justice Harwell. Your Honor, in this case, I
16 believe -- it appears to be the seminal case in our
17 state courts as to the same procedure that Maryland
18 was upheld in Maryland v. Craig.

19 Your Honor, it's based on a state statute that
20 we have that was cited in the Murrell case 16-3-1550
21 subsection (E). And, Your Honor, that statute
22 essentially -- appears to be the purpose of that
23 statute is to allow the court -- give the court
24 discretion to protect particularly vulnerable
25 victims, chief in which, you know, in our opinion,

1 Your Honor, would be young children that have to
2 take the stand in these cases and that there is some
3 latitude to have alternative methods by which to put
4 that testimony up in front of a jury.

5 Your Honor, the method used in both Maryland v.
6 Craig and State v. Murrell, like I said, was a video
7 tape. We believe that the proposed solution in this
8 case or alternative which is using the media room
9 where ^{Victim} is actually put on the stand in live
10 court in front of the jury, which is one of the
11 factors cited in the Murrell case that the child
12 actually needs to be put in as close -- as close to
13 a courtroom setting as possible. Here she actually
14 would be in the courtroom.

15 The defendant could have one of his attorneys
16 actually in the room with him. He could see and
17 hear presumably, presumably, Your Honor, we'll get
18 the sound system fixed or be in a courtroom that has
19 proper facilities for that, will be able to see
20 **Victim** testify, will be able to hear her testimony
21 in full and we can take a break between direct and
22 cross and have plenty -- full time for defense
23 counsel to consult with Mr. Wilson, come back and
24 conduct cross-examination and then follow that up
25 with further cross.

1 **THE COURT:** Well, hold on a second. I have
2 never heard of a procedure where it was allowed
3 where there wasn't communication between the lawyers
4 and the defendant in the courtroom -- I'm sorry --
5 the lawyer in the courtroom and the lawyer and
6 defendant outside the courtroom being able to
7 communicate simultaneously. I've never heard of
8 that before.

9 **MR. STUMBO:** And, Your Honor, I was going to
10 address this as well. Judge McMahon in a trial two
11 weeks ago we had on the fourth floor granted a
12 motion almost identical to this. We had child
13 witnesses. It was testified by experts that they
14 would be retraumatized. They used the media room
15 upstairs and he utilized that procedure, Judge
16 McMahon did. And I know that has no precedential
17 value on you what Judge McMahon did in a trial two
18 weeks ago, but I would say there is some -- it
19 certainly has been done. In our view, Your Honor --

20 **THE COURT:** That's the first time I've ever
21 heard of that, period.

22 **MR. STUMBO:** Well, Your Honor, in my view, that
23 would be less intrusive than doing a video tape
24 because in that situation, there's not even any live
25 testimony in front of the jury. You know, here we

1 at least have the jury hearing it straight from her
2 on the witness stand and Mr. Wilson's representative
3 sitting here able to take in all of that, as well as
4 Mr. Wilson's actually right behind the glass.

5 **THE COURT:** I think you're missing my point. I
6 apologize for not communicating it. Every time I've
7 ever heard of a procedure utilized, there is a means
8 of communication instantaneously between the
9 defendant who is outside of the courtroom, or
10 outside the presence of the witness, and the lawyer
11 who is inside the courtroom in the presence of the
12 witness. I have never, ever heard of any scenario
13 where there wasn't an instant means of
14 communication.

15 **MR. STUMBO:** Yes, sir. And I think that would
16 be awkward if we did this as live testimony in front
17 of a jury if you had communication going on between
18 whoever the attorney is and the room. Does that
19 make sense, Your Honor?

20 **THE COURT:** It makes sense, but I think it's
21 illegal. It's -- now, all you've got to do is call
22 SLED and they'll be over here with the equipment.
23 I've done it before where I've had witnesses -- I
24 mean, excuse me, defendants who've said, if you try
25 me, I'm going to show my behind, I'm going to show

1 out in the courtroom, you're going to have to lock
2 me up and chain me to the chair. And I said fine.
3 And I called SLED and said have the stuff over there
4 in case I have to put this person in another room.

5 So let me just stop you right there because if
6 y'all haven't established a means for them to have
7 instant communication back and forth, we're going to
8 have a problem.

9 **MR. STUMBO:** We can provide that via
10 telephones, Your Honor, if we need to do that. I
11 just don't know if we need to get headphones or, I
12 mean -- I just know two weeks ago it worked
13 successfully in a trial with Judge McMahon and he --

14 **THE COURT:** Did anybody raise it?

15 **MR. STUMBO:** Your Honor, it's my understanding
16 that they did have communication. They actually
17 took a break, Mr. Williams, Theo Williams --

18 **MR. WILLIAMS:** Who just happens to be in the
19 courtroom at this time and will be glad to talk to
20 the Court about the procedure and how it worked, if
21 you would like to know about it. And it was
22 objected to.

23 **THE COURT:** I'm just going to tell y'all, just
24 to shortcut this, I'm not trying to be difficult,
25 I'm just telling you I've been a lawyer 30 years,

1 this is nothing new, but in none of those 30 years
2 from my experience has there ever been a trial where
3 there wasn't an instant means of communication
4 between the person -- the defendant outside the
5 courtroom and the person who was representing him in
6 the presence of the witness. And y'all are going to
7 have to really convince me that that can be done,
8 because if it wasn't required, I don't think we
9 would have done it in 1978, '79 and '80 where we
10 didn't have nearly the technology that you've got
11 today.

12 **MR. STUMBO:** We can certainly arrange for that,
13 Your Honor. And like I said, it was my
14 understanding the way they did it with Judge McMahon
15 two weeks ago, and like I said, Mr. Williams can
16 shed more light on this --

17 **THE COURT:** I'm sure he's got a different
18 opinion of how it went than you do.

19 **MR. STUMBO:** I'm sure he does, Your Honor. I'd
20 actually love to hear it, Your Honor.

21 **THE COURT:** I guarantee you he would be
22 cheering me on right now probably, but I'm not
23 trying to gain favor from anybody. I'm just telling
24 you, if y'all haven't made those arrangements, we've
25 got problems. Go ahead with your argument.

1 The other question I've got, if I find all of
2 these things about the child being traumatized
3 because being in the presence of the defendant,
4 okay, you put up an expert, very eloquently stated,
5 very specifically stated all of the reasons why I
6 should exclude the defendant from the presence of
7 the witness when she testifies, my prior
8 experiences, which were mainly with Judge Baggett
9 now, so that's been a while back, was there was
10 always video tape. And I never thought about it
11 until I got called and said go sit in here and
12 preside over this trial, but what do I tell the jury
13 when throughout all of the trial, the defendant's in
14 here, but when that child comes up here, I make him
15 leave?

16 **MR. STUMBO:** I do know this part of it, Your
17 Honor, I do know that they asked Judge McMahon to
18 give a curative instruction that they were to make
19 no inference from that, that he was there or was not
20 there either way. I don't know the exact wording he
21 used, Your Honor, but I do know that he gave a
22 curative instruction to that effect.

23 **THE COURT:** Okay. I interrupted your argument.
24 Go ahead.

25 **MR. STUMBO:** Your Honor, I think -- and this is

1 somewhat new ground for me. This is the first time
2 I've ever filed such a motion. I did it because of
3 the severe trauma that this little girl is going to
4 have to face.

5 We're willing to do whatever we have to do to
6 make it work logistically as to not to offend his
7 confrontation clause rights and I understand that
8 that's really the primary issue here is that
9 whatever we do, we don't want to offend his Sixth
10 Amendment right to confrontation because this case
11 is going to come back and we're going to have to do
12 it all over again. I don't want that either, Your
13 Honor. Whatever we fashion, though, I do know in
14 this courtroom right now, we've got issues with the
15 media room and the sound system in this room.

16 If it wasn't that important to me, Your Honor,
17 I wouldn't be proposing it to you as far as our
18 case. I think it's that important to us being able
19 to put up a case in front of this jury.

20 **THE COURT:** Listen, these cases are the most
21 important cases I'll ever try. Every case is a very
22 important case, but when you're talking about a
23 father accused of having sexually molested his
24 child, they don't get anymore important than that.

25 You don't have to argue to me for another

1 second that this case is as important as any case
2 that I'll ever see in my entire career, death
3 penalty included, because if I were in a situation
4 of a child being molested or if I were in a
5 situation of being the father who was wrongfully
6 accused of molesting my child, I can't think of two
7 worse situations to be in in my life, so we don't
8 have to talk about that anymore. It's important.

9 MR. STUMBO: Yes, sir. As far as the detail of
10 that, I have no -- obviously, Your Honor, to have
11 live communication between the two with cell phone
12 communication today that shouldn't be a problem.

13 THE COURT: I don't know that I'm going to make
14 him sit there with a cell phone to his head. I
15 think that is disruptive.

16 It's three minutes till, see if you can get
17 somebody at SLED right now, if y'all hadn't done
18 that before. I mean, I was assuming that all of
19 that had been taken care of and that y'all talking
20 about the media room was just for the purpose of it
21 going from the witness stand there. I wasn't
22 thinking that y'all didn't think that they had to
23 communicate back into here. I mean, we were in
24 Bamberg, they don't have any media room in Bamberg.

25 See if you can get somebody at SLED before five

1 o'clock. It's two minutes till. We'll be at ease.

2 (Brief Recess.)

3 **THE COURT:** Okay. Mr. Stumbo, I interrupted
4 your argument.

5 **MR. STUMBO:** That's perfectly okay, Your Honor.
6 Hopefully, we've come up with an alternative that
7 may serve everyone's purposes here.

8 I've talked with Detective Jimmy Gleaton at the
9 sheriff's department. He's one of their top tech
10 guys on the narcotics enforcement team. Obviously,
11 they've done a lot of undercover drug investigations
12 and have a lot of fairly high tech equipment at this
13 point I would say on par with SLED and some of the
14 federal agencies.

15 What he's told me is he can bring up here at
16 8:30 in the morning, to give us time to do some kind
17 of trial run on this, basically a two-way radio that
18 involves very small ear pieces. Essentially, what
19 you would have is if there was an attorney with
20 Mr. Wilson in the media room, they can both speak
21 into a radio which would come into Mr. Cornwell's or
22 Mr. Casto, however they wish to do it, into their
23 ear piece here in the courtroom and also they could
24 have a small radio actually sitting on the table
25 here as well, Your Honor.

1 And I, you know, as far as him talking live
2 back during the testimony, I don't know how
3 disruptive that would be, but if there is a point
4 where they feel like they need to stop and go back
5 and consult during the direct, you know, as long as
6 it takes us, we're willing to do it, Your Honor.

7 So whether he speaks actually in the courtroom
8 -- at minimum, what we would have is the defendant
9 able to see and hear the victim while she's on the
10 stand, you'd have an attorney there with him
11 consulting with him actually in that room and them
12 being able to communicate anything they need to
13 communicate to the attorney in the courtroom at that
14 time. Your Honor, I would envision as well that we
15 could have as many breaks as we need to for them to
16 talk.

17 **THE COURT:** Hold on a second.

18 (Pause.)

19 **THE COURT:** I'm sorry, Mr. Stumbo. Go ahead.

20 **MR. STUMBO:** Thank you, Your Honor. I don't
21 think we can come up with a better communication
22 procedure for that.

23 **THE COURT:** That's fine. I don't have a
24 problem with that.

25 **MR. STUMBO:** And I think that would safeguard

1 Mr. Wilson's confrontation clause rights. I think
2 it would serve our purposes under section
3 16-3-1550(E) and there again, based on the testimony
4 of try -- as a public policy matter here to come up
5 with an alternative solution for presenting this
6 testimony to the jury without her being severely
7 traumatized.

8 **THE COURT:** I'm not ruling, but I'm telling you
9 that that means of communication is fine with me, if
10 I order the witness to be in the courtroom and the
11 defendant be out of the courtroom, that's fine. I
12 just think you have to have simultaneous
13 communication because there are things like
14 objections and other issues that could arise that
15 he'd be deprived of being able to do without running
16 out of there or beating on a window. I just never
17 heard of it being different and I made that point
18 and I'll shut up.

19 All right. What's the rest of your motion?

20 **MR. STUMBO:** That, essentially, is the State's
21 motion based on Maryland v. Craig and based on State
22 v. Murrell and it's progeny, State v. Bray, was
23 another case. I believe I gave several of the case
24 cites to your law clerk, State v. Cooper, State v.
25 Rogers and State v. Lewis.

1 All of those cases dealt with the same issue
2 with a child victim who would possibly be subject to
3 further trauma. Some were upheld, Your Honor, some
4 were reversed.

5 And, typically, what seems to be the common
6 theme of those cases is it was an abuse of
7 discretion standard on appeal. And, essentially,
8 the higher courts, if they found that there was a
9 specific finding as to that case in an evidentiary
10 basis, that they upheld it in those situations. The
11 times where those cases were reversed on the basis
12 of this were that the trial judge didn't make some
13 finding on the record that was specific to that
14 case, it may have been general trauma for the child
15 or stress, such as Ms. Smith talked about, the
16 distinction between those two.

17 So, Your Honor, based on those two cases, based
18 on the remedy, which I think we fashioned here, I
19 feel like it's a little bit better in terms of
20 protecting his confrontation clause rights than even
21 the video tape because we've got a victim who's
22 sitting on the stand live in front of a jury. I
23 think the video tape procedure takes the child out
24 of that environment and, obviously, that's also been
25 a concern for the court that particularly was cited

1 in State v. Murrell, Judge.

2 So based on those two cases and their progeny,
3 Your Honor, we would move to have the defendant put
4 in the media room with communication with his
5 attorney in the media room and with the attorney out
6 here in court during ^{U.S. v. Smith} testimony and only for
7 her testimony, Your Honor. And we would concede any
8 curative instruction that you could give, that you
9 would need to give the jury that Your Honor raised
10 earlier.

11 **THE COURT:** All right. What's the defense's
12 position?

13 **MR. CORNWELL:** Your Honor, as you can surely
14 anticipate, we disagree with this wholeheartedly.
15 We would actually refer to Murrell and cases of its
16 ilk, Your Honor. I think the difference here is
17 that, you know, and I can appreciate, you know, what
18 they've done over there on the other side, but
19 they've kind of crafted this perfect argument. It's
20 she's afraid of what might happen to daddy because
21 she loves daddy. And, you know, it's circular in a
22 way, Your Honor, but at the same time, I'm not
23 convinced that having her testify in front of her
24 dad and, you know, what Ms. Smith said as far as,
25 you know, a possibility of some severe trauma, Your

1 Honor, I'm not sure that that is as a result of any
2 fear of her father.

3 And these cases they specifically said that,
4 you know, the child was afraid, you know, was afraid
5 of the person, they were afraid of that person, Your
6 Honor, and that was the source, you know, that was
7 part of the reasoning that the court, you know, they
8 took that into consideration when giving the opinion
9 and allowing those, you know, testimonies to proceed
10 the way they proceeded, Your Honor.

11 I think the real fear here is that the child's
12 going to get on the stand and recant. I mean,
13 that's the real fear here.

14 And to be blunt, Your Honor, I mean, the
15 confrontation clause is the confrontation clause.
16 It's not, you know, you have the right to sit in the
17 same room as the guy that's, you know, accusing you
18 of the crime, it's confrontation for a reason. It
19 makes it more difficult for a person to look you in
20 the eye and not tell the truth, that's the purpose
21 of it.

22 And, Your Honor, I think this case was decided
23 in 1990, there was a more recent case, but if you
24 pay attention, the United States Supreme Court
25 jurisprudence over the last couple of years, Your

1 Honor, there has been a definite leaning towards
2 putting Sixth Amendment rights over others. I can
3 talk about Crawford. I can talk about the Davis
4 case. A recent case is Giles v. California, Your
5 Honor, where the Supreme Court actually said that
6 this guy had a right to confront a witness against
7 him even if he was responsible for the witness not
8 being there. I think that says a lot as to how
9 important the confrontation clause is, Your Honor.
10 And I think that this is just an egregious violation
11 of that clause, Your Honor. It's terrible.

12 And even in these cases, Your Honor, this could
13 be setting up what could be a slippery slope, Your
14 Honor. These were designed for very specific
15 instances, Your Honor. What we're going to see now
16 is that every time you have a CSC with a minor case,
17 they're going to bring this motion up for every
18 case, every time it's happened, every time they're
19 going to haul Ms. Smith in here or whatever expert
20 they can get to say that the child will be
21 traumatized, which they'll say because that's what
22 they do, and, Your Honor, I just don't think it's
23 appropriate in this case.

24 I do not think that this is the situation that
25 they contemplated when they made these rulings and

1 they invented these procedures. I don't think that
2 this is the type of case where the child will be
3 severely traumatized from seeing a father that she
4 admittedly missed and wants to be back together with
5 the family.

6 I think the real fear on the side of the
7 Solicitor's office is that she's going to get up on
8 that stand and recant. And that might be me just
9 being a country boy and not knowing how to finesse
10 the argument, Your Honor, but that's our opinion.

11 **THE COURT:** Okay. Thank you.

12 **MR. STUMBO:** Well, Your Honor, just briefly in
13 reply, I can certainly relate to being a country boy
14 that can't articulate things very well, but, Judge,
15 I feel like this is the situation that's right on
16 point with these cases that have been decided.
17 Certainly confrontation clause rights are very --
18 are held to a very high standard in all of the case
19 law we read, but if you read the Maryland v. Craig
20 case and the Supreme Court's dialogue about that,
21 Your Honor, if you give me a moment to find it, I
22 believe there's a -- where they quote that
23 confrontation clause rights are not -- there are
24 certain situations where public policy dictates some
25 alternatives to the traditional in court,

1 face-to-face testimony and this, in particular, when
2 you have a child victim that's so susceptible to
3 retraumatization is the exact situation that's
4 envisioned when they talk about having alternatives
5 to that situation under the confrontation clause.

6 Every case that we've cited today deals with
7 child victims of sexual assault as far as I can
8 tell, Your Honor, and that's exactly what we have
9 here. I believe that Ms. Smith articulated exactly
10 why this is specifically geared towards this case.

11 And I disagree with Mr. Cornwell's assertion
12 that every CSC case we have, we're going to bring
13 this motion. Your Honor, I've tried a lot of CSC
14 cases, this is the first time I've ever raised this
15 motion and it's because of the dynamics between
16 **victim** and her father and the information that I've
17 gotten from Ms. Smith and other people that have met
18 with **victim** I've met with ^{victim} several times in
19 preparing this case for trial and I've sensed the
20 same thing, Your Honor, and I would concur with Ms.
21 Smith's testimony.

22 So, Your Honor, as far as that goes, our
23 argument would be primarily based on Ms. Smith's
24 testimony that it's specifically related to her as a
25 victim of the trauma she would be facing if she had

1 to come in here and tell this story in front of the
2 man who did it to her who's her own father and all
3 of the emotions involved with that is what would
4 cause that significant trauma. Just to quote Ms.
5 Smith, she said it several ways, she said
6 significant trauma, she said severe trauma twice and
7 she talked about very intense feelings here that
8 would cause that kind of trauma. So not just
9 feelings of fear, but feelings of love and feelings
10 of sadness, all of those things mixed together, Your
11 Honor, would cause the trauma in a severe way.

12 And I would also comment to Mr. Cornwell's
13 argument about us fearing that she would recant.
14 Your Honor, I don't think that's the point. If she
15 gets up on the stand and facing her father she's not
16 able to speak because she's so emotional, that would
17 be the fear, Your Honor. I think the Maryland v.
18 Craig case speaks to that fear as well. There's
19 language in there, and I can, again, find that for
20 the Court, but it talks about the fact that she may
21 not be able to adequately testify to the fact finder
22 is a major consideration for the Court when making
23 these findings.

24 So we would say based on the totality of the
25 circumstances that we have here, based on the expert

1 testimony from Ms. Smith, we believe that it's an
2 appropriate solution here to have the defendant in
3 the media room with communication with counsel.
4 Thank you, Judge.

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

6 **MR. CORNWELL:** Your Honor, just to point out in
7 the South Carolina Supreme Court case, some other
8 considerations they said you should take into
9 account, because I think they presented an expert
10 witness, they've done that, but they also said you
11 should take into account the parents, other
12 relatives, other concerned and relevant parties and
13 the child. They also mentioned in a footnote, they
14 said that in the future, we suggest that the trial
15 judge personally interview the child in addition to
16 receiving expert testimony, Your Honor.

17 Now, what we've had in this case is not, I
18 don't think, sufficient to guarantee the protections
19 that they were even trying to build into this in
20 regards to Sixth Amendment rights, Your Honor. I
21 don't think they've presented enough for you to
22 grant their motion, Your Honor.

23 Now, I would say all of these cases predate the
24 United States Supreme Court recent return to the
25 Sixth Amendment, recent reevaluation of the Sixth

1 Amendment. If you look in the United States Supreme
2 Court case, the Maryland case, Maryland v. Craig,
3 for example, they've made reference to Ohio v.
4 Roberts in that case, Your Honor. The Crawford
5 cases, the David cases and the United States Supreme
6 Court, you know, they kind of express -- they pushed
7 Ohio v. Roberts to the side and said, no, no, no,
8 the Sixth Amendment is very important. We -- and
9 bring it back to prominence, Your Honor. And I
10 think that is very important in this.

11 These cases were decided, they're more recent,
12 they're more on point with where the United States
13 Supreme Court is now, Your Honor. And I believe
14 that in this case, his Sixth Amendment rights would
15 be severely abrogated, Your Honor. It's just --
16 it's kind of like you told me this morning when I
17 was making that motion where you said you didn't
18 want to make that leap of faith, I don't think we
19 can make that leap of faith here, Your Honor,
20 because all of this is hypothetical at this point.

21 I mean, I understand it's her professional
22 opinion, but she's talking about trauma that may
23 happen after a trial. I don't even know if she -- I
24 can't recall if she really spoke on point as to
25 whether or not she would break down on the stand and

1 not testify. I understand that that's a fear, Your
2 Honor, but that's a fear with any person that's
3 brought to court.

4 As many trials as I've seen, as many trials as
5 you've seen in your lifetime, it happens regardless
6 of who they're facing, but this is the system we
7 have, this is his right to confront his accuser,
8 Your Honor, and I don't think they've -- this isn't
9 enough, Your Honor, it's just not enough.

10 I mean, they admit by their own experts, they
11 admit -- the Solicitor admits that she's not afraid
12 of him. If you look at these cases, fear of the
13 accused, Your Honor, was an integral part of not
14 just the trauma, it was the fear of the accused.
15 That's all I have to say, Your Honor, right now.

16 **THE COURT:** Thank you.

17 **MR. STUMBO:** Your Honor, if I may, there's one
18 other thing that I failed to mention. I know some
19 of these cases contemplated an in camera review with
20 the child herself and that was done in some of these
21 cases. It's talked about in some of the opinions
22 that we cited earlier. We'll be glad to make ^{Victim}
23 available for an in camera review for you to
24 determine competency in regards to this issue or
25 anything else, Your Honor, you may need her for.

1 (Pause.)

2 **THE COURT:** All right. I want to begin by
3 going through what I've read in this case of
4 Maryland versus Craig. Maryland is a state which
5 had enacted a specific statute and the precise issue
6 before the U.S. Supreme Court dealt with the
7 Maryland statute. Now, it did -- the court did
8 engage in a very enlightening discussion about how
9 the law has evolved related to the confrontation
10 clause, particularly in the context of a child
11 witness.

12 Now, what that statute, which the Maryland
13 legislature has enacted, provided is that if the
14 child will suffer serious emotional distress that
15 rendered the child unable to reasonably communicate
16 if the child were in the presence of the defendant,
17 then the defendant could be required to participate
18 in the trial when that witness is testifying through
19 the use of a one-way television link.

20 Now, this is a five/four decision. Now, what
21 the majority does is it sends the case back to the
22 lower court because it gets into an analysis that
23 the Maryland Court of Appeals, and made a
24 determination that interpreted the decision of Coy,
25 C-O-Y, to have two statutory requirements. First,

1 the court held that the code section normally could
2 not be invoked unless the child witness initially is
3 questioned either inside or outside the courtroom in
4 the defendant's presence. And then, second, that
5 before using the television procedure, the trial
6 judge had to determine whether the child would
7 suffer severe emotional distress if he or she was to
8 testify by, here it says, the two-way closed circuit
9 television.

10 And so what the case did was to say, well we've
11 never said that the child's behavior has to be
12 evaluated in the presence of the defendant, that the
13 court needed to look at less restrictive ways and so
14 long as the trial court makes the case specific
15 finding of necessity, the confrontation clause does
16 not prohibit the state from using closed circuit
17 television procedure for the receipt of testimony by
18 a child witness in a child abuse case. And because
19 the Court of Appeals held that the trial court had
20 not made the requisite finding of necessity under
21 the high interpretation that they placed on -- or
22 the high threshold required by Coy, they could not
23 determine, the U.S. Supreme Court could not
24 determine whether the Court of appeals would reach
25 the same conclusion. And so they vacated the

1 judgment of the Court of Appeals and remanded the
2 case for further proceedings.

3 Then you've got a four justice dissent written
4 by Justice Scalia which begins by saying some rather
5 scathing words, this is, quote, Seldom has this
6 court failed so conspicuously to sustain a
7 categorical guarantee of the Constitution against
8 the tide of prevailing current opinion. The Sixth
9 Amendment provides with unmistakable clarity that,
10 quote, In all criminal prosecutions, the accused
11 shall enjoy the right to be confronted with the
12 witnesses against him, closed quote. The purpose of
13 enshrining this protection in the Constitution was
14 to assure that none of the many policy interests
15 from time to time pursued by statutory law could
16 overcome a defendant's right to face his or her
17 accusers in court.

18 The Court, however, says, We conclude today
19 that a State's interest in the physical and
20 psychological well-being of child abuse victims may
21 be sufficiently important to outweigh, at least, in
22 some cases a defendant's right to face his or her
23 accusers in court. That a significant majority of
24 the states have enacted statutes to protect child
25 witnesses from the trauma of giving testimony in

1 child abuse cases attests to the widespread belief
2 in the importance of such a public policy.

3 Now, it goes on from there. But, basically,
4 Justice Scalia doesn't think very much of the
5 majority's decision. And he's joined by three other
6 members of the U.S. Supreme Court, so, again, it's a
7 five/four decision in which the dissent is saying
8 this scenario, this is the scenario that they put in
9 the opinion, A father whose young daughter has been
10 given over to the exclusive custody of his estranged
11 wife, or a mother whose young son has been taken
12 into custody by the state's child welfare
13 department, is sentenced to prison for sexual abuse
14 on the basis of testimony by a child the parent has
15 not seen or spoken to for many months; and the
16 guilty verdict is rendered without giving the parent
17 so much as the opportunity to sit in the presence of
18 the child and to ask, personally or through counsel,
19 is it really not true -- I'm sorry -- it is really
20 not true, is it, that I, your father whom you see
21 before you, did these terrible things?

22 And then the court, this is Scalia's language
23 not mine, Perhaps that is a procedure today's
24 society desires, though I doubt it -- I'm sorry --
25 perhaps, though I doubt it, it is even a fair

1 procedure, but it is assuredly not a procedure
2 permitted by the Constitution.

3 Because the text of the Sixth Amendment is
4 clear and because the Constitution is meant to
5 protect against rather than conform to wide spread
6 belief, I respectfully dissent.

7 This is a very difficult decision because what
8 I'm asked to do is to rely upon an expert's opinion,
9 and again I've already said she stated her testimony
10 very eloquently, both did, very eloquently and very
11 much to the point, but I'm asked to rely upon an
12 expert witness' opinion that if this child comes
13 into court and testifies and if her father is in
14 here, that she will suffer substantial trauma.

15 And the way this courtroom is laid out, if she
16 comes in that back door over there and she walks to
17 that witness stand, she'll never see her daddy. She
18 may know her daddy's in here, she can look around
19 the corner and see him, but she definitely won't be
20 sitting there where she's face-to-face with him.

21 Now, the thought or the concept of coming into
22 the courtroom with her father there to see and hear
23 what she says, I understand the concept many times
24 of doing something is worse than the actual doing of
25 the thing.

1 Now, that gets me to the point that was raised
2 by the Court of Appeals in Maryland. How do you
3 make that evaluation when you're dealing with a
4 fundamental constitutional right without at least
5 trying to have the child testify? The child's got
6 to basically be unable to communicate because she's
7 so traumatized. So then that puts me in the
8 terrible position of saying, okay, bring the child
9 in and if it turns out the witness -- excuse me --
10 the expert is correct and the child is traumatized,
11 then I put myself in a position of requiring the
12 child to go through trauma.

13 But there's another side on that scale.
14 There's another side on that scale that has a person
15 accused of a crime who is presumed to be innocent,
16 who I think everybody in this courtroom will agree
17 is one of the most heinous crimes any person could
18 be accused of, that person is sitting over there,
19 and as Justice Scalia went through his expression of
20 consternation of what a courtroom proceeding could
21 be made to be, he's saying that person doesn't even
22 get to sit in the courtroom while that child who has
23 been around other people for two years comes in and
24 gives her testimony.

25 I'm not accusing anybody -- I mean, I'm very

1 impressed with the testimony of the experts. I know
2 that they have put their life's work towards
3 protecting children and there is no more worthy
4 life's work than that.

5 My ruling at this point is, and I don't like
6 making the ruling one way or the other, but I've got
7 to rule, my ruling at this point is that the motion
8 is denied.

9 What you can do is before the jury's brought
10 in, you can bring the witness in, I'm told she's the
11 first witness out of the shoot, so you can bring the
12 witness in and if it appears then that the witness
13 is unable to testify, unable to communicate because
14 she's in such severe trauma, then I can make an
15 evaluation. If that's done before the jury is
16 sworn, then you've got some alternatives that you
17 don't have after the jury's sworn. At that point, I
18 may then require the implementation of the system.

19 Though, I will tell you all that while the U.S.
20 Supreme Court in this Craig case seems to think
21 Maryland's come up with a great way of dealing with
22 this, at least the majority thinks that, I really
23 think video taping eliminates that issue that I
24 raised earlier, which is my strong concern that I
25 have a situation where the jury sits there and they

1 watch an entire trial and the defendant's in here
2 for every witness who testifies except the child and
3 it concerns me deeply that the jury could then
4 construe that as meaning that at least somebody in
5 this courtroom feels like, and perhaps me, the
6 Judge, feels like that defendant can't be in the
7 same room with that child. And there's only one
8 reason to think that a person would have come to
9 that conclusion and that is that that defendant has
10 abused that child. And I'm deeply concerned about
11 that.

12 I'm not saying I won't do it. If I do, I think
13 there would have to be some sort of limiting
14 instruction and then you always worry with limiting
15 instructions that you're calling attention to the
16 very thing.

17 I think the child is going to have to try to do
18 it.

19 **MR. STUMBO:** Thank you, Your Honor. The State
20 understands your position.

21 **THE COURT:** Well, it's an awful position. And
22 I've gone back and forth on it to be honest with
23 you. I've stated it about as well as I can state
24 it. I understand that other people can strongly
25 disagree with it because you've got nine members on

1 the U.S. Supreme Court and they're split about as
2 closely as you can split on it.

3 All right. What's the next motion?

4 **MR. JOHNSON:** Your Honor, the next motion is
5 for the admission of the out-of-court statement by
6 the victim, victim the video tape interview, the
7 forensic interview that took place at ARC. Dr.
8 Benedetto testified that the child was seven years
9 old at the time of the interview. The interview was
10 recorded. Audio video recording was maintained by
11 the ARC center. The testimony regarding Dr.
12 Benedetto's qualifications went into her extensive
13 training qualifications, the fact that she was
14 experienced to give forensic interviews. The child,
15 the victim, is expected to testify under the
16 statute's requirements, Your Honor, and also the
17 charge in question requires registration.

18 The interview itself was detailed. Dr.
19 Benedetto went into very detailed testimony about
20 all of the ways that she ensured that the child was
21 telling the truth. We also point out that she used
22 different tools, different methods, the RATAC method
23 and the different dolls and different anatomical
24 drawings to confirm that they can understand and
25 communicate with the child, the child could disclose

1 accurately and consistently what happened to her.

2 Basically, based on all of that and the fact
3 that the interviewer did not use leading questions
4 and all of the details and the account allowed for
5 what was referred to as the internal coherence, it's
6 actually listed in the statute, Your Honor, and Dr.
7 Benedetto testified to, based on all of that, we'd
8 argue, considering the totality of the circumstances
9 under the statute, the question 17-23-175, they do
10 have the particularized guarantees of
11 trustworthiness that are required under the statute
12 for admission of this video and we'd move to have
13 this video admitted.

14 **THE COURT:** What's the defense's position?

15 **MR. CORNWELL:** Your Honor, in kind of
16 considering and going over it, Your Honor, we won't
17 object to the admission of the video.

18 **THE COURT:** You do not object to the admission
19 of the video?

20 **MR. CORNWELL:** No, Your Honor, not at this
21 point. I've spoken to my client about it. I've
22 spoken with co-counsel, Your Honor. There are some,
23 actually, some things on the video that we would
24 like to come out in trial that we feel are
25 beneficial to our case, Your Honor.

1 **THE COURT:** Then I don't have anything to rule
2 on. What's the next motion?

3 **MR. STUMBO:** That's all we've got, Your Honor.

4 **THE COURT:** What's the defense's motion?

5 **MR. CORNWELL:** Your Honor, we did have a
6 motion, but we won't be presenting that.

7 **THE COURT:** So I don't have to look at this
8 video tape?

9 **MR. STUMBO:** Not if they're stipulating that it
10 can come in, Judge, I don't think you have to. We
11 did both confer on things that are in the video. We
12 don't feel like there's anything that's
13 objectionable under 404(b) or any other extraneous
14 stuff, Your Honor. I know we did this in one case
15 back in the fall where we had to redact some
16 information out that related to prior bad acts, but
17 in my conversation with them and from our view of
18 it, there's nothing that's going to raise those
19 issues, Your Honor.

20 **THE COURT:** Can y'all meet me in the morning at
21 nine o'clock and be prepared to do an out of court
22 attempt to see about the child, qualify the child,
23 ask the standard question -- I know a witness is
24 presumed to be competent now. We've got a change in
25 the rule from back in the stone age when I was

1 practicing law, but they're presumed to be
2 competent, but I think in most cases, they still go
3 through the questions about do you understand the
4 difference between right and wrong and truth and a
5 lie and all of that.

6 Let's put her on the stand, let me evaluate how
7 she does and then I'll revisit, possibly, your issue
8 that you raised. So you need to be prepared to have
9 all of that electronic equipment here just in case,
10 all right.

11 **MR. STUMBO:** Yes, sir. We'll have that here.
12 I think they're going to come at 8:30. And I will
13 have -- basically, if I understand Your Honor, I'll
14 go through a colloquy with the victim out of court
15 in regards to truth versus lie and those sorts of
16 questions.

17 **THE COURT:** We'll just get started into it. If
18 the child is -- I'll just have to play it by ear and
19 do like the courts, all these opinions have said,
20 they're all case by case.

21 I had a case many years ago that I think Judge
22 McMahon was the prosecutor on and a four-year-old
23 child victim, and the guy reminds me a lot of
24 Mr. Wilson. He was a police officer. I denied the
25 motion to have the child testify outside the

1 presence of the jury with the defendant present.

2 Back then, like I said, normally, we would just
3 set up over there in the old courthouse in the
4 family court and put the child and everybody else in
5 one family court courtroom and we'd put the
6 defendant and his lawyer in another one and they'd
7 just run wires under the door back in the old days
8 before all this wireless stuff. But anyway, I
9 denied all that and the four year old testified and
10 that guy got convicted and I sent him away for a
11 long, long time.

12 But that little four year old, you know, if you
13 would have asked me before I saw her on the stand, I
14 would have thought how is a four year old going to
15 testify? And she did a lot better than I would have
16 done. So let's just see how it goes, all right.

17 **MR. STUMBO:** Your Honor, we've prepared her for
18 the contingency of both things so she understands.

19 **THE COURT:** Let's see how it goes. Court's in
20 recess.

21 You need to be back here, Mr. Wilson, at nine
22 o'clock in the morning no later, all right?

23 **DEFENDANT WILSON:** Yes, sir.

24 **THE COURT:** The trial will go on without you if
25 you're not here, all right?

1 **DEFENDANT WILSON:** Yes, Your Honor.

2 **THE COURT:** Thank you.

3 (Whereupon, the proceedings were concluded
4 for July 29, 2008.)

5 (The following proceedings were held on July
6 30, 2008.)

7 (State's Exhibit Numbers 2 through 4,
8 drawings, were marked for identification purposes.)

9 **THE COURT:** All right. The first thing I need
10 to cover with you is that I was informed that one of
11 the jurors, juror number 170, Linda Page, called and
12 indicated that she was not feeling well. She called
13 back and stated that she was feeling better and that
14 she was dressed and she was going to come in.

15 I told the clerk to tell her that if she's got
16 a virus, go home. The clerk talked to her and she
17 said that she feels fine, that she doesn't think
18 that she has a virus. She was told that if she had
19 a problem, that she needed to take a break, get my
20 attention and we would stop. So if I stop you all
21 abruptly, that's probably what's going to be going
22 on, okay.

23 The second matter is that when we broke
24 yesterday, I'd indicated a ruling based on what I
25 had before me at that time, but stated that what I

1 would do this morning at nine o'clock was to meet
2 the child and make a determination as to whether I
3 could or could not make findings related to the
4 ability of the child to testify with her father
5 present in the courtroom.

6 We have moved courtrooms because of difficulty
7 with the sound system. When the technicians came
8 last night to work on the sound system, apparently
9 something was done that has created a noticeable hum
10 in the other courtroom. And so by the time I got
11 here this morning, the decision had been made to
12 move to 3B, which is a slightly smaller courtroom,
13 does not have a media room.

14 So the purpose for me meeting with the child
15 this morning aside from the obvious things of me
16 just being able to see her, talk to her, would be to
17 try to comply with what I've understood the South
18 Carolina procedure to be when a child witness is
19 having testimony presented by a video tape or
20 through some other procedure where the child is
21 separated from the defendant.

22 My understanding of that is followed pretty
23 much in line with what's in State versus Murrell,
24 which is one of the reasons why I told you all
25 yesterday what, I couldn't cite you the case, but

1 that I was familiar with the procedure where there
2 was always two-way communication. And in Murrell,
3 I'm looking at headnotes and I really don't like
4 quoting headnotes, but the headnote says as the
5 fourth factor that communication should be available
6 between counsel and defendant, which I've always
7 interpreted to be two-way communication and that
8 would be the counsel in the courtroom and the
9 defendant outside of the courtroom, as well as
10 having an attorney with the defendant in another
11 location.

12 Now, that's a long preamble to get to the
13 point. And the real point of all this is that what
14 I normally do, as was recommended in Murrell, what
15 I've always seen judges do in my practice was that
16 the judge would examine or talk to the child. Now,
17 they talk about in camera, which in chambers has
18 also been discussed. My recollection is that the
19 judges that did it in chambers had a court reporter
20 in there and talked to the child in an office. I've
21 just never really liked that procedure if I could
22 avoid it. I've always preferred to do it in the
23 courtroom.

24 Now, what I've always done is I would not be
25 sitting up here. I would -- when you brought the

1 child in, I would be down there on the floor leaning
2 up against that rail probably on the jury box. And
3 as the child's brought in, I would just talk to the
4 child and try to develop some sort of rapport and
5 reassure her and make sure that she understood that
6 people who sit in that chair have to tell the truth
7 and only the truth. Whether they're talking about
8 things that are fun and good or whether they're
9 talking about things that are sad or bad, they have
10 to tell the truth.

11 And then I'd introduce the lawyers. I'd have
12 the lawyers come over and say, These two guys are
13 here to help me find out the truth so they'll ask
14 you some questions, and then I'd turn it over to the
15 lawyers just so I could yield to somebody who has a
16 great deal more knowledge about the case than I and
17 give you all an opportunity to ask some questions so
18 I could make a determination about whether I felt
19 that the child could testify with the father
20 present.

21 Now, my law clerk advised me this morning that
22 the Solicitor's office had talked with the child in
23 light of my rulings yesterday and had decided that
24 they felt that she was -- reacted better to the
25 decision than maybe they had anticipated a little

1 bit, a little bit better reaction. And that because
2 of that and because of their discussions, presumably
3 with the experts, that what they had decided to do
4 was to forego that first part that I had offered to
5 do at nine o'clock and just bring the child in and
6 have the child testify just like as you would in any
7 other trial.

8 Obviously, if there's a challenge to her
9 competency, then you're going to have to establish
10 those competency questions, but I think they always
11 do that anyway.

12 So did I state that correctly and do I have the
13 right understanding?

14 **MR. STUMBO:** That's correct, Your Honor.

15 **THE COURT:** So then that's what we'll do.
16 We'll just start the trial.

17 State ready?

18 **MR. STUMBO:** The State's ready, Your Honor.

19 **THE COURT:** Defense ready.

20 **MR. CORNWELL:** We are, Your Honor.

21 **THE COURT:** Thank you very much.

22 Do you need anybody up here on the bench?

23 **MR. STUMBO:** Our first witness is going to be

24 **Victim** And we would just ask if it's okay, Susan
25 Powell, who's my victim's advocate, is back here by

1 the bailiff, if she can bring her around through
2 this back door --

3 **THE COURT:** That's the way they come in because
4 if they come in this way, they'll come in through
5 the holding cell.

6 **MR. STUMBO:** I was saying that way as opposed
7 to coming in through the --

8 **THE COURT:** That's fine. She can come through
9 here just like I said in that other courtroom, she
10 can come straight in and straight up on the witness
11 stand.

12 **MR. STUMBO:** Okay. Thank you. We're ready to
13 proceed.

14 **THE COURT:** Okay. Then bring the jury in,
15 please.

16 (The jury enters the courtroom at 9:47 a.m.)

17 **THE COURT:** Ladies and gentlemen, thank you
18 very much for coming in this morning. As you see,
19 we have moved to a different courtroom. The reason
20 for that is that the sound system got knocked out in
21 that other courtroom and when the technicians came
22 last night to work on it, they made it worse. So it
23 now has a loud hum in there.

24 We're going to work in here. It seems a little
25 stuffy in here, but we'll try to get the folks that

1 run the computers to turn the air conditioning up
2 and make you more comfortable, but I will tell you
3 the other courtroom we were in is the warmest
4 courtroom in the building so they might be able to
5 get us a little bit better air conditioning service
6 in here than they would in there.

7 Now, the first order of business is that I have
8 to place you under a different oath than the oath
9 you were put under Monday and that is now we need to
10 put you under the oath of a trial jury. So I need
11 you to stand, raise your right hand.

12 (The jury was duly sworn by the Clerk of
13 Court at 9:49 a.m.)

14 **THE COURT:** Anybody unable to take that oath
15 for any reason, raise your hand.

16 No hands are raised.

17 Okay. What we're going to do is I'm going to
18 take about seven to ten minutes to give you some
19 opening instructions. I'm going to tell you how we
20 usually operate court for the jury. I'm going to
21 then tell you how I expect the case to proceed. I
22 won't go through the whole thing, but I will tell
23 you how we'll get started. And then I'm going to
24 give you some instructions you have to follow
25 throughout the trial. I'll make this as quick as I

1 can, but I have to do this and I think it'll be
2 helpful to you.

3 We usually start with you at 9:30 in the
4 morning. We usually go until about 1:00 and break
5 for lunch. Normally, you'll be on your own for
6 lunch. The lunch break for the jury typically is at
7 least an hour and in some instances, an hour and a
8 half. We then start back with the jury between 2:00
9 and 2:30 and we usually break for the day between
10 5:00 and 5:30. Now, once we give you the case to
11 decide, we usually wait on you to decide it. And we
12 do sometimes have to make adjustments in that
13 schedule for various reasons that might arise. But
14 you now know as much as I know about how your day is
15 likely to go.

16 Now, the way the case will begin is that I'll
17 first recognize the attorneys to make their opening
18 statements to you. In opening statements, the
19 attorneys are not permitted to engage in what we
20 call argument. An opening statement can be an
21 introduction, an outline, an overview.

22 When the opening statements are finished, then
23 I will call upon the State to present its evidence.
24 The State brought the charges in this case and the
25 State has the entire burden of proof. The State has

1 to prove every essential element of an offense
2 charged beyond a reasonable doubt. So I will
3 recognize the Solicitors to present evidence in an
4 attempt to meet that burden.

5 When the State finishes presenting its case in
6 chief, the Solicitor will advise me that the State
7 rests. At that point, I have to send you out of the
8 courtroom and discuss legal issues with the
9 attorneys. When you come back after that, I'll tell
10 you where we go from there, but those are the
11 benchmarks you can be looking for as we get started.

12 Now, it is really important that you understand
13 some things. First, that oath that you just took
14 was one in which you promised us that you're going
15 to decide these cases based on the evidence and the
16 law. So you need to know where those things come
17 from:

18 The evidence comes from the sworn testimony of
19 witnesses. Evidence also can come in the form of
20 exhibits. An exhibit can be anything tangible
21 that's marked in the record. It can be a document.
22 It could be a video tape. It could be anything
23 tangible that's marked in the record..

24 If something is an exhibit, you will have it
25 with you in the jury room when you decide the cases.

1 So the reason I'm telling you that is because it's
2 not at all unusual for an attorney to have something
3 like a small photograph and try to show it to you
4 from a distance or hand it into the jury box and ask
5 you to circulate it around so you're trying to look
6 at this thing while you're also trying to pay
7 attention to what's going on up here on the witness
8 stand. So just realize that every exhibit will be
9 back with you in the jury room when you decide the
10 case so that you can look at it as much as you need.

11 Now, not everything that they might refer to is
12 going to be an exhibit. Sometimes documents or
13 charts or photographs are used for demonstrative
14 purposes to demonstrate. So if they're talking
15 about something and you can't see it, if you'll give
16 us a signal, we'll try to make sure that you can see
17 it.

18 You also need to understand that the law comes
19 from me. I tell you what the law is at the end of
20 the trial, that's my job.

21 With regard to the evidence, as I just told
22 you, the evidence comes from the exhibits and the
23 witnesses. What the lawyers say is not evidence. I
24 want you to pay attention to the lawyers because
25 they facilitate the introduction of the evidence,

1 but what comes out of their mouths is not evidence.
2 There's one exception to that rule. If we come upon
3 it, I'll tell you about it, otherwise I won't burden
4 you with it. So now you know where the law and the
5 evidence comes from.

6 It is also very important that you understand
7 that there are two judges in this courtroom. I'm
8 the judge of the law. As I've already told you, I
9 decide what law applies to the case and I tell it to
10 you at the end of the trial. I also rule on legal
11 issues as they arise and I preside over the trial, I
12 maintain order.

13 You're the other judge. You have to understand
14 that you're the only judge of the facts. Only you
15 are going to get to decide such things as whether
16 evidence is believable or not. Only you are going
17 to get to decide such things as what weight, if any,
18 to put on evidence. Deciding the facts is entirely
19 your prerogative and I will not invade your
20 province.

21 So I'm going to give you an example of our
22 different roles. It takes a couple minutes, but I
23 think it helps explain some things.

24 From time to time during this trial, one
25 attorney or another attorney may feel that the other

1 side is trying to put something before you that is
2 not proper, it doesn't fit within our rules for the
3 jury to consider. And if they feel that way, if
4 they feel that the other side is trying to put
5 something before you that the other -- is not proper
6 under our rules, these lawyers have taken an oath,
7 just like you've taken an oath now and I've taken an
8 oath, they've taken an oath, and they have an
9 obligation to stand up and raise an objection. And
10 if they do that, I have to make a ruling.

11 Now, I might send you out of the courtroom
12 while I consider that. And if I do, please
13 understand, folks, that that's just because I can do
14 it quicker that way.

15 Now, I never know going into a trial whether
16 there's going to be one objection or 101 objections.
17 So if I have to send you out of the courtroom a lot,
18 don't be worried about what we're doing out here,
19 don't think we're trying to hide anything from you,
20 just let me do my job and then we'll bring you back
21 in here and you can chalk it up to good exercise
22 that you got up and went out and came back in.

23 But the most important part is this, if I agree
24 that what was attempted to be elicited and put
25 before you does not fit within the rules for the

1 jury to consider, then I will sustain the objection,
2 which means you ignore that, whatever you may have
3 heard in response to that question and the question
4 in its entirety. You just ignore it. It's not
5 proper for a jury to consider.

6 But if I overrule the objection and I let it
7 come before you, I want you to understand that it
8 has not crossed my mind to think about whether that
9 thing is believable or not because that's not my
10 job, that's your job. It has not crossed my mind to
11 think about whether that thing should be given any
12 weight by the jury because that's not my job, that's
13 your job. All I have done is looked very narrowly
14 with tunnel vision to focus on, does that thing fit
15 within the rules for the jury to consider in this
16 case? And if I think it does, I let it come before
17 you and you decide whether it's believable or not
18 and you decide what weight, if any, that it should
19 have.

20 So please don't ever misunderstand any ruling I
21 make as being passing upon the facts of the case. I
22 won't be thinking about any of that. I'll just be
23 looking at the rules.

24 Now, while you've promised us that you're going
25 to decide this case based on the evidence and the

1 law, and you must do that, I am not telling you to
2 leave your common sense at home. We want you to use
3 your common sense. We want you to use your sense of
4 logic and reason and your good judgment. It just
5 makes good common sense that you keep an open mind
6 about the cases and that you don't make up your mind
7 until you've heard all of the evidence and you know
8 the law that applies to the case.

9 So there's a rule that I've already mentioned
10 to you. I've got to repeat it again. And that rule
11 is that you are not to discuss this case in any way
12 among yourselves until I tell you to. Now, that is
13 a very hard rule to follow because you 13 folks may
14 feel right now that you've got very little in common
15 except you all live in Lexington County and you all
16 got picked on this case, so the logical thing you're
17 going to want to talk about when you walk out of
18 here is what just happened in the courtroom. You
19 have to resist that temptation and not talk about
20 the case in any way at all until I tell you to begin
21 your deliberations.

22 Don't make comments in the courtroom. I had a
23 case a few weeks ago where I had a situation where a
24 juror was commenting about the evidence as it was
25 being presented. You can't do that. It's

1 inappropriate. Just sit, listen attentively. If
2 you need a break, you give me a signal, give the
3 bailiffs a signal and we'll take a break, but don't
4 be commenting about the evidence during the trial.

5 When you get the chance to deliberate, you can
6 talk about all of this as much as you want and we'll
7 wait on you.

8 Now, if anybody else attempts to contact you
9 and discuss the case or if anybody violates what I
10 just told you, you have to report that to me so that
11 I can deal with it. Give me the best description of
12 who it was and how it occurred if anybody attempts
13 to discuss the case with you.

14 Again, about media coverage, I still don't
15 think there's any media coverage of this trial, but
16 if there should be any, get away from it, don't let
17 yourselves be exposed to it any further and report
18 to me what you saw, heard or read through the media.
19 Don't do any independent investigation, like I told
20 you yesterday, don't go on the Internet and look up
21 law, don't try to go on the Internet and look up
22 anything related to this case, don't go out and look
23 around once you find out where this is alleged to
24 have occurred, just don't do independent
25 investigation.

1 Now, I'm getting close to the end of my
2 comments. You're going to notice from time to time
3 that I'm up here working on this computer. This
4 computer gives me access to law libraries that ten
5 years ago would be unimaginable, so I can look up
6 law.

7 In our state, in South Carolina, our judges
8 have the highest work load in the nation and we're
9 on the bench more than any other state in the
10 country. Because of that, we don't have much time
11 in the office to call people that we need to call
12 and to tend to paperwork we need to tend to and to
13 communicate and so we also are an innovator and a
14 leader in using technology. So every judge in this
15 state can instantly communicate with me if he or she
16 has a problem or if I run into a problem, I can put
17 something on there and get their advice.

18 Also, this is where I do my charge. This is
19 where I prepare what I'm going to tell you. So if
20 you see me working up here on the computer, I
21 promise you I am not playing video games. Number
22 one, I can't do it, I don't know how. And, number
23 two, this is way too important for me to be sitting
24 up here and playing video games.

25 But I have learned over the course of these

1 years that I can multitask to some degree. And if I
2 ever think that a computer is a distraction, I'll
3 put it down and ignore it. But please don't
4 misunderstand me looking at this computer screen as
5 being disinterested in the case, nothing can be
6 further from the truth.

7 So if I am focused in on working on something
8 and you need to get somebody's attention and you
9 can't get mine, these guys with the red coats are
10 the logical ones to try to get their attention.

11 The last thing I need to tell you is thank you.
12 I often tell juries you probably gleam by now that I
13 have no personality and I'm not the kind of person
14 who's going to sit up here and repeatedly say thank
15 you. I have a pretty firm belief about that. I
16 feel like it cheapens it when I do that.

17 I think that you should realize, and I hope you
18 do, that I know that you've got other places to be
19 and other things to do and I promise you I'll never
20 forget that. And if you're waiting on us, we're
21 working. I can't promise you that there won't be
22 waiting, you've already run into some of that this
23 week, but I do promise you if you're waiting, we're
24 working.

25 Now, to honor my commitment to you, I'll be

1 quiet now. I invite your close attention and you'll
2 now hear the opening statements from the attorney.

3 Solicitor, you're recognized for your opening
4 statement, Mr. Stumbo.

5 MR. STUMBO: Thank you, Your Honor. If it
6 please the Court.

7 THE COURT: Yes, sir.

8 MR. STUMBO: Was the ultimate betrayal of
9 trust. Fathers are supposed to be the protectors.
10 Fathers are supposed to be the ones that protect
11 their daughters from dark things, scary things,
12 things that will traumatize them. ^{victim's}
13 dad, he did the exact opposite of that. He not only
14 failed to protect her, he exposed her to things that
15 she should never be exposed to and did unspeakable
16 things that should never be done.

17 You're going to get a chance to hear ^{victim} in
18 a few minutes. She's going to take this witness
19 stand. She's going to talk to you about what she
20 went through.

21 Now, Mr. Johnson and I have a job to do here
22 and it's to try to present to you evidence that's
23 going to convince you beyond a reasonable doubt.
24 The Judge mentioned that a second ago. We bear the
25 burden of proof here. It's a burden we gladly bear

1 in this case.

2 We believe that once this evidence is put
3 before you on this witness stand this week, that you
4 will be firmly convinced. I want you to remember
5 that term, "firmly convinced". Beyond a reasonable
6 doubt is legalese, sometimes it's hard to remember
7 what that is. The Judge is going to tell you what
8 reasonable doubt is at the end of this case. One
9 thing he's going to tell you is that it's evidence
10 that leaves you firmly convinced. So I want you to
11 remember that phrase, "firmly convinced".

12 ^{Victim's} is going to be the first witness you're
13 going to hear from, it's direct evidence. It's the
14 best evidence you get. The Judge is going to talk
15 about direct evidence, which is eyewitness, people
16 that were there when this crime happened. ^{Victim}
17 was there.

18 You're also going to hear about circumstantial
19 evidence. We're going to bring in front of you a
20 number of witnesses who ^{Victim's} talked to, who
21 ^{Victim} went to, a medical doctor, a pediatrician.
22 We're going to bring before you other people who
23 have a lot of experience working with kids. They're
24 going to tell you what they think about this case
25 and what their experience has been. We're confident

1 that once you hear each and everyone of these
2 witnesses, ladies and gentlemen, that it's going to
3 be clear what the answer is, what the verdict's got
4 to be.

5 A verdict, when y'all go back and deliberate,
6 is simply just coming out and deciding what the
7 truth is. We're confident that you're going to know
8 the truth by the end of this case.

9 I like to think of it as a sponge. Basically,
10 y'all are holding a sponge and everything we're
11 throwing at you from this witness stand is going
12 into that sponge. When you go back into the jury
13 room after this case is done, you squeeze that
14 sponge and what comes out of it is the verdict.

15 And there's a lot of things you're going to
16 hear in this case that aren't pleasant. And I echo
17 the Judge's thanking you for being here this week.
18 There's other places you could be. And you're going
19 to be hearing stuff this week that you should never
20 have to hear about in this world, things that we
21 really don't want to believe actually happen, but
22 they do happen. T.J. Wilson is responsible for that
23 in this case, ladies and gentlemen.

24 I will just ask you to listen closely to each
25 and every witness we put up because really that's

1 what this case is going to be about. This isn't
2 like CSI. I know some people like that show. It's
3 a very entertaining show. I've watched it before.

4 In the real world, there's not always the DNA
5 evidence or the little fingerprint or the things
6 that they usually find in that show in a whole hour,
7 they've gone from crime to solving the case.
8 Typically, in the real world, ladies and gentlemen,
9 sometimes you have that.

10 What you're going to hear this week is
11 witnesses, testimony about what happened. It
12 doesn't make it any less true that it happened
13 because you don't have the fingerprint or the DNA
14 evidence. In the real world, we don't always have
15 that. So I want you to listen closely to the
16 witnesses because that's what this case is going to
17 be about, credibility of the witnesses. And at the
18 end of this case, I think you're going to know for
19 sure what the answer is, ladies and gentlemen.

20 I'm going to have a chance to come back at the
21 end and talk to you again. I appreciate your close
22 attention. And I ask you, at the end of this case,
23 find T.J. Wilson guilty of each and every count
24 we've charged him with.

25 **THE COURT:** Thank you, Mr. Stumbo.

1 Which of you is going to give the opening
2 statement? Okay, Mr. Cornwell, you're recognized
3 for your opening statement.

4 **MR. CORNWELL:** Thank you, Your Honor.

5 Ladies and gentlemen of the jury, I, too, would
6 like to echo my appreciation for you being here.
7 And, also, my client, T.J. Wilson, thanks you for
8 being here, because that's who you're here for.
9 This man has exercised his constitutional right to
10 have a trial. You're T.J. Wilson's jury.

11 T.J., look at your jury.

12 You, ladies and gentlemen, have a tremendous
13 burden. Over the course of this trial, you will
14 hear evidence presented by the prosecution. You'll
15 hear testimony from both sides. And as you can
16 already guess, they're not going to agree. Bottom
17 line is it does boil down to the credibility of the
18 witness, as you heard Mr. Stumbo say.

19 This case is going to be about he said/she
20 said. And you're going to have to make a decision
21 who you believe. Some of that testimony we believe
22 is going to contradict itself, but you make the
23 ultimate decision on whether or not somebody's
24 telling the truth or somebody's telling a lie.
25 Testimony will be presented on both sides to kind of

1 flesh out the details and, hopefully, make that job
2 easier for you.

3 Another thing you're going to hear a lot, if
4 you haven't heard a lot already, and I mean over the
5 course of your life, I'm pretty sure you've heard it
6 a lot, reasonable doubt. Now, this word is -- I
7 mean, this term is like bounced around a lot. I
8 mean, we hear it all the time and so it's easy to
9 not understand or not fully appreciate what that
10 exactly means. Reasonable doubt is just not 51
11 percent, yeah, there's a chance, more than likely,
12 he probably did something. That's not reasonable
13 doubt.

14 Reasonable doubt, in addition to being firmly
15 convinced of the evidence as Mr. Stumbo said,
16 reasonable doubt that he did it is any doubt that
17 gives you pause. And the Judge will instruct you
18 further on that. But, you know, some famous, you
19 know, leaders in our jurisprudence in this state
20 have termed it in that manner, defined it in that
21 manner, any doubt that gives you pause before you
22 make that decision, is he guilty? That's up to you.

23 Because as he stands right now, as he sits in
24 that chair right now, the man is not guilty. The
25 man is not guilty because we're entitled to a

1 presumption of innocence in this country and in this
2 state. It's what people fought for. It's what our
3 founders died for. It's the right of every American
4 citizen to come into this courtroom and he's girthed
5 with the robe of righteousness as a criminal
6 defendant because he sits in innocence, he doesn't
7 have to prove anything. They have to prove him
8 guilty. It's a right that each one of you have,
9 everybody in this courtroom and that's how serious
10 you should take it.

11 Now, another thing we need to talk about is the
12 role of everybody in here, okay. All of us, in some
13 form or fashion, the lawyers involved, the
14 witnesses, or some of them, we're actors to a
15 degree, okay. Everybody plays a role in this, you
16 know, everybody plays their role in this, this drama
17 that is the courtroom. Some people are genuine.
18 And those are the people that were actually involved
19 in this.

20 T.J., his dad, his mom, the victim's mother,
21 **victim** they're real people. Their lives are at
22 stake. They're the ones who are going to suffer or
23 flourish based on your decision. We here, we go
24 home, we move on, it affects us, but not as
25 personally as the people who are actually involved

1 in this case.

2 You'll hear testimony from victim You'll hear
3 testimony from her family. And her family is
4 standing by T.J., but that doesn't mean that they
5 don't love her any less. This is tearing them
6 apart. It's just that they've chosen the side that
7 they believe is right after hearing all of the
8 evidence themselves and hearing the accusations,
9 they've made a decision that they believe T.J. And
10 we believe that after you hear the evidence, after
11 you hear the testimony from the State, after you
12 hear the testimony from us, we believe you'll come
13 to the same conclusion and find him not guilty.
14 Thank you.

15 **THE COURT:** Thank you, Mr. Cornwell.

16 Solicitor, I need you to call your first
17 witness, please.

18 **MR. STUMBO:** Thank you, Your Honor. If it
19 please the Court, the State calls victim Wilson to
20 the stand.

21 (Pause.)

22 **THE COURT:** *Victim*, come up here and have a
23 seat for me, will you please? I need you to promise
24 that you'll tell us the truth.

25 **THE WITNESS:** I will.

1 **THE COURT:** You will? Okay. And I need you to
2 promise us that you will tell us only things that
3 are true, okay?

4 THE WITNESS: Okay.

5 THE COURT: Will you do that?

6 THE WITNESS: Yes.

7 **THE COURT:** Thank you very much. That man
8 right there, that's Mr. Stumbo. He's going to ask
9 you some questions and I'd appreciate it if you
10 would answer his questions, okay?

11 THE WITNESS: Okay.

12 DIRECT EXAMINATION

13 BY MR. STUMBO:

14 Q Good morning,

15 **A** Good morning.

16 Q Can you tell these people over here how old you
17 are?

18 A

19 Q When is your birthday?

20 **A**

21 Q And where do you go to school? Or, where are
22 you going to be going this year to school?

23 **A** I'm going to be going to Elementary
24 School.

25 Q Okay. And is this your first year going to

1 Lexington Elementary School this year?

2 A Yes.

3 Q And where did you go to school before you went
4 there?

5 A Elementary School.

6 Q And that's in Lexington, right?

7 A Yes.

8 Q And you live in Lexington now?

9 A Yes.

10 Q And who do you live with?

11 A My mom, my two brothers, that's it.

12 Q How old are your two brothers?

13 A The baby is seven weeks old and my brother is
14 six years old.

15 Q You said seven weeks. He's seven months,
16 right?

17 A Yeah.

18 Q So he was just born this year. He's little
19 baby still?

20 A Yes.

21 Q How many pets? Do you have any pets right now?

22 A Yes.

23 Q What do you have?

24 A A cat and two fishes.

25 Q What are the fishes names?

1 A My fish is called Blue Raspberry. Aaron's is,
2 I think -- no, it is Rainbow.

3 Q His is Rainbow?

4 A (Witness nodded head.)

5 Q Okay. Those are good names. What grade are
6 you going to be in this year when you go back to
7 school?

8 A Fourth.

9 Q So you went to a up through the third
10 grade?

11 A Yes.

12 Q All right. , what we're going to talk
13 about now is, I know we've talked about this before,
14 but about what the truth is and what a lie is, okay?

15 A Yes.

16 Q And you know the difference between the truth
17 and a lie?

18 A Yes.

19 Q Okay. Is the truth something that really
20 happened or something that didn't happen?

21 A That did happen.

22 Q And is a lie something -- is it something that
23 happened or did not happen?

24 A Did not happen.

25 Q Okay. Give you an example. Say I said to you

1 that I have a clown face -- well, hold on, I don't
2 want to ask you that, you may say that's true. Let
3 me use this example. If I told you I had a bright
4 red coat on, would that be the truth or a lie?

5 **A** A lie.

6 **Q** Okay. And if I said I had a grayish looking
7 coat, would that be the truth or a lie?

8 **A** Truth.

9 **Q** Okay. Very good. And what you're in here for
10 today do you understand that we're talking about
11 things that really happened?

12 **A** Yes.

13 **Q** So you're going to tell us the truth?

14 **A** Yes.

15 **Q** Okay. I'm going to ask you a few questions for
16 follow up, but I want you to make sure you stop me
17 if I ask you something that you don't understand,
18 just tell me you didn't understand it. Sometimes I
19 make confusing questions, so I'll try to make a
20 better one for you, okay. You just let me know.

21 **THE COURT:** Mr. Stumbo, when you get to the end
22 of this part, let me know because I need to know if
23 there's any issue about competency, okay?

24 **MR. STUMBO:** Yes, sir. I'm done.

25 **THE COURT:** Is there any issue about competency

1 of the witness?

2 MR. CORNWELL: No, Your Honor.

3 THE COURT: Thank you. The witness is
4 competent to testify. You may continue.

5 MR. STUMBO: Thank you, Your Honor.

6 BY MR. STUMBO:

7 Q Now, ^{victim} do you remember back when you were
8 seven going to see Ms. Alicia at the ARC?

9 A Yes.

10 Q Do you remember talking to her?

11 A Yes.

12 Q When you went to talk to Ms. Alicia at the ARC,
13 do you remember that being video taped? Did she
14 tell you that it was being taped?

15 A Yes.

16 Q Okay. And after you saw Ms. Alicia there, have
17 you been going back there to see Ms. Heather?

18 A Yes.

19 Q And this is Ms. Heather sitting right back
20 here?

21 A Yes.

22 Q That's sitting beside your mom?

23 A Yes.

24 Q That's your mom sitting beside Ms. Heather?

25 A Yes.

1 Q And Ms. Alicia, who you went to talk to before
2 that, do you remember her? She's sitting back
3 behind -- is that her back behind Ms. Heather?

4 A Yes.

5 Q Okay. And can you tell -- tell these people
6 over here what did you go to talk to them about?
7 Who did you go to talk to them about?

8 A Can you please say that again?

9 Q Who did you go talk to Ms. Alicia about?

10 A My daddy.

11 Q Okay. And what's your daddy's name?

12 A T.J.

13 Q What does T.J. stand for?

14 A Timothy Jacob Wilson.

15 Q Okay. And your dad used to live there with you
16 and your mom and your brother?

17 A Yes.

18 Q Okay. Tell me how, back when your dad lived
19 there, how was y'all's house set up? Did you have
20 your own bedroom there?

21 A Yes.

22 Q Okay. And did your brother have a bedroom
23 there in the house?

24 A Yes.

25 Q How about your mom and dad, where did they --

1 where was -- where did they sleep in the house?

2 A Together.

3 Q Okay. Did they have their own bedroom?

4 A Yes.

5 Q Now, just kind of describe for me how -- what
6 was in this bedroom? What kind of furniture was in
7 there?

8 A A dresser, closet, T.V. and that's it.

9 Q Did they have a bed in there?

10 A Uh-huh.

11 Q And -- so they had their own bedroom. Did
12 anybody else live with you at that time?

13 A No.

14 Q All right. victim I'm going to bring this
15 chart around here and show you a couple of those.
16 If you'll bear with me just a second. I'm going to
17 tape up a couple of pictures up here. victim while
18 we're waiting on the tape to put these up here, I'm
19 just going to show these to you. This is what's
20 marked 2 and 3. I'm going to show you Number 2
21 first. Have you ever seen that before, that
22 picture?

23 A Yes.

24 Q Okay. And where did you see that?

25 A With Ms. Alicia.

1 **THE COURT:** Say that again, I'm sorry. I was
2 making him move. Tell him where you saw that
3 before.

4 **THE WITNESS:** With Ms. Alicia.

5 **THE COURT:** Okay. Thank you.

6 BY MR. STUMBO:

7 **Q** I'm going to show you Number 3 -- and what --
8 if you could, just tell me what that is, what's that
9 a picture of, Number 2?

10 **A** A girl.

11 **Q** Is that writing on there stuff that you wrote?

12 **A** No.

13 **Q** How about the markings, the brown drawings?

14 **A** Yes.

15 **Q** Is that stuff you did?

16 **A** Yes.

17 **Q** Okay. I'm going to show you Number 3 now.

18 What's that a picture of?

19 **A** A boy.

20 **Q** Do you remember seeing that before?

21 **A** Yes.

22 **Q** And where did you see that?

23 **A** With Ms. Alicia.

24 **Q** And the writing on there, the words, who wrote
25 that?

1 **A** Ms. Alicia.

2 **Q** Did she write that after you told her what you
3 called those things on there?

4 **A** Yes.

5 **Q** Okay. I'm going to put Number 2 here. I'm
6 going to put Number 3 right beside it. And this is
7 just to make sure we're using the same words for
8 things because sometimes I might use a weird word
9 for something you don't know about. Can you see
10 that, victim?

11 **A** Yes.

victim

12 **THE COURT:** Can you see that,

13 **THE WITNESS:** Yes.

14 **THE COURT:** If you need to stand up and stand
15 over there a little bit and look that way, that's
16 okay, but you have to talk real loud if you do that,
17 okay?

18 **THE WITNESS:** Okay.

19 **THE COURT:** Thank you.

20 BY MR. STUMBO:

victim

21 **Q** All right. I'm just going to go
22 through some of this stuff on here and just tell me
23 -- lean up and look at it. On the girl chart,
24 State's Number 2, what do you call these up here?

25 **A** Eyes.

1 Q What do you call these?

2 A Feet.

3 Q How about right here?

4 A Mouth.

5 Q All right. What would you call this on a girl,
6 this area here?

7 A Boobs.

8 Q You said boobs?

9 A (Witness nodded head.)

10 Q And what would you call this area right here in
11 the middle?

12 A Private spot.

13 Q You said private spot?

14 A Yes.

15 Q And on -- when the girls turned around, what
16 would you call -- what would you call this area
17 right here?

18 A Bottom.

19 Q All right. On the boy, what do you call this
20 right here?

21 A Knee.

22 Q Knees. And what do you call this middle area
23 on a boy?

24 A Private.

25 Q Okay. You call it private spot or just

1 private?

2 A Just private.

3 Q Just private, okay. But on a girl, you said
4 private spot?

5 A Yes.

6 Q Okay.

7 THE COURT: Are those in evidence?

8 MR. STUMBO: Your Honor, they're being used for
9 demonstrative purposes only right now. Further
10 foundation will be laid later.

11 THE COURT: Fine.

12 BY MR. STUMBO:

13 Q All right. ¹ victim now that we've got the
14 words clear on what we call these things, I'm going
15 to ask you a few things. Have you ever called the
16 private parts anything else before?

17 A Yes.

18 Q Okay. What do you call those? What did you
19 call them before?

20 A Wrong spot.

21 Q Do you call them a wrong spot anymore?

22 A No.

23 Q Just private parts?

24 A Yes.

25 Q Now, has anybody ever touched you on your

1 private parts in a way that made you feel
2 uncomfortable?

3 A Yes.

4 Q And who did that?

5 A Daddy.

6 Q Okay. And have you ever had to touch any adult
7 on their private parts before?

8 A Yes.

9 Q Okay. And whose private part did you have to
10 touch?

11 A Daddy's.

12 Q And where did this -- where did those things
13 happen? Whose house did they happen at?

14 A Ours.

15 Q In what room in the house did it happen in, or
16 what rooms?

17 A The bedroom, living room and bathroom.

18 Q So these things happened more than one time?

19 A Yes.

20 Q You said these things happened more than one
21 time. How old were you when these things happened?

22 Were you seven or six or five? How old were you?

23 A Either seven or eight.

24 Q Okay. Did these things happen maybe when you
25 were six that you remember?

1 A I don't remember.

2 Q Okay. But you remember them happening when you
3 were

4 A Yes.

5 Q And maybe

6 A Yes.

7 Q Okay. When these things happened, you said
8 they happened more than once. Did you tell anybody
9 right away after they happened to you?

10 A Yes.

11 Q Every time they happened, you immediately went
12 and told an adult or did you wait?

13 A I waited.

14 Q Okay. Why do you remember waiting? What were
15 you thinking on that as far as why you wanted to
16 wait to tell somebody?

17 A To tell my mommy on the right time.

18 Q And you said you're waiting on the right time.
19 During the time that you -- it was just your secret
20 that you knew, were you scared to tell somebody?

21 A Yes.

22 Q Okay. Why were you scared?

23 A I don't know.

24 Q Did it make you feel sad?

25 A Yes.

victim

1 Q Okay. Now, who did you tell about
2 this -- these things that had happened first?

3 A My mommy.

4 Q Okay. And after you told your mommy, who did
5 you tell after that?

6 A My grandma.

7 Q Okay. And after that, did anything happen?

8 A I told Ms. Behrens.

9 Q Well, who is Ms. Behrens? Is she in here
10 today?

11 A Yes.

12 Q Is it this lady in the white and black coat
13 back here?

14 A Yes.

15 Q And where did Ms. Behrens work?

16 A Saxe Gotha Elementary School.

17 Q Was she the guidance counselor there at the
18 school?

19 A Yes.

20 Q And when you told her about these things, had
21 you talked to her before then? I mean, did you know
22 her in the school? Had you seen her before?

23 A Yes.

24 Q Okay. Did you ever see her in the hallway in
25 the school?

1 A Yes.

2 Q Did you like Ms. Behrens? Is she someone who
3 was a nice lady?

4 A Yes.

5 Q When you went to see her, were there other
6 things that you went to see her about other than to
7 tell her about your dad?

8 A No.

9 Q Okay. Do you remember ever going to talk to
10 her about some things that happened in class with
11 some of your other students?

12 A Yes.

13 Q Okay. What was that about?

14 A S-E-X.

15 Q S-E-X, okay. And what about S-E-X did you do?
16 What were the other students doing?

17 A Passing notes.

18 Q Okay. What did the notes say?

19 A I don't remember.

20 Q But they had the word S-E-X in it, is that what
21 you said?

22 A Yes.

23 Q Now, when those notes happened, was this after
24 these things had happened with your dad or around
25 the same time? When did it happen?

1 A I don't remember.

2 Q Okay. Now, did you decide to go talk to Ms.
3 Behrens about these things, about the things with
4 your dad?

5 A (No response.)

6 Q Did you talk to her first or did she talk to
7 you first?

8 A She talked to me first.

9 Q Okay. About the notes?

10 A No. I wrote her a note about that.

11 Q Okay. You wrote her a note and then you went
12 to see her?

13 A Yes.

14 Q Okay. All right. After you talked to Ms.
15 Behrens, who -- do you remember talking with someone
16 else that same day about what had happened? Who did
17 you talk to right after Ms. Behrens?

18 A I don't remember that.

19 Q Did somebody else come up to the school that's
20 in the courtroom here today to talk to you?

21 A Yes.

22 Q Okay. And who was that? Is that -- do you
23 know Ms. Christalyn?

24 A Yes.

25 Q Okay. That's Ms. Christalyn, is that her

1 sitting back there behind Ms. Behrens?

2 A Yes.

3 Q Did you talk to her a little bit about what had
4 happened between you and dad?

5 A Yes.

6 Q Okay. Now, everything that you've told Ms.
7 Behrens about what happened between you and dad,
8 were those things that really happened?

9 A Yes.

10 Q They were the truth?

11 A Yes.

12 Q Okay. Everything that you've talked to Ms.
13 Christalyn about, were those things that really
14 happened?

15 A Yes.

16 Q They were the truth?

17 A Yes.

18 Q Okay. After that day, do you remember going
19 somewhere else to talk to somebody about what
20 happened a little while after that?

21 A Yes.

22 Q Was there another -- was it a man or a woman
23 that you went to talk to right after that?

24 A Man.

25 Q Okay. And do you remember the man's name?

1 A No.

2 Q Was he a nice man or a mean man? What was he
3 like?

4 A Nice.

5 Q Okay. Did you talk to him a little bit about
6 what had happened between you and your dad?

7 A Yes.

8 Q The things that you told him, were they the
9 truth?

10 A Yes.

11 Q Were they things that really happened?

12 A Yes.

13 Q And, victim, who took you to go see that nice
14 man? Was it your mom or somebody else?

15 A Mommy.

16 Q All right. Now, we're going to go to the next
17 person. And I know these are a lot of people I'm
18 mentioning to you here. After you talked with this
19 nice man that your mommy took you to, you said
20 earlier you went to the ARC to meet with Ms. Alicia.
21 Was that the next person you talked to about this?

22 A Yes.

23 Q And this is what's called Number 1, State's
24 Number 1. This is a DVD. Have you watched that
25 with anybody?

1 A Ms. Heather.

2 Q You watched it with Ms. Heather, and that was
3 recently?

4 A Yes.

5 Q So it was not that long ago?

6 A Yes.

7 Q And do you remember what you saw in the video,
8 was that the way it really happened between you and
9 Ms. Alicia?

10 A Yes. victim

11 Q And, , since you talked to her, you said
12 you'd been going to see Ms. Heather; is that right?

13 A Yes.

14 Q Let me back up a little bit. The things you
15 saw in this video, the things you told Ms. Alicia,
16 were they things that really happened?

17 A Yes.

18 Q Were they the truth?

19 A Yes.

20 Q The things that you wrote on the board, were
21 they things that really happened?

22 A Yes.

23 Q They were the truth?

24 A Yes.

25 Q And some of the stuff, I remember she showed

1 you some dolls and y'all got to see those, were
2 those things with the dolls were they things that
3 really happened?

4 A Yes.

5 Q They were the truth?

6 A Yes.

7 Q Just a couple more questions, victim, and we'll
8 be done. You went to see Ms. Heather and have you
9 been going to see her for a while?

10 A Yes.

11 Q You even saw her this morning; is that right?

12 A Yes.

13 Q And have you talked to Ms. Heather about the
14 things that happened between you and your dad?

15 A Yes.

16 Q And all of the things that you've told Ms.
17 Heather, are they things that really happened?

18 A Yes.

19 Q And they're the truth?

20 A Yes.

21 Q All right. Is there -- you said -- and we
22 talked about that your dad had touched you in your
23 private spot and you had to touch him in his private
24 spot. When you touched him in his private spot, do
25 you remember anything else happening when you

1 touched him on his private spot?

2 A Yes.

3 Q Okay. What happened when you touched him on
4 his private spot?

5 A Pee came out.

6 Q Okay. And these things that you've talked
7 about that your dad did to you, is there any other
8 adult that's ever done those things to you?

9 A No.

10 Q And your dad's the only one?

11 A Yes.

12 Q How about have there been any other things that
13 have happened with other kids like this with you?

14 A Where?

15 Q At home or at other places. Is there any other
16 kids that you've ever had any of this happen with?

17 A Huh-huh.

18 Q Who were your cousins -- or your aunts and
19 uncles?

20 A Veronica, Lynnsey and that's it.

21 Q Veronica and Lynnsey, how old are they?

22 A Right now?

23 Q Uh-huh.

24 A Veronica is ten, Lynnsey is six.

25 Q Okay. Did you or any of them ever touch on

1 private parts at home?

2 A At their house.

3 Q At their house?

4 A Their old house.

5 Q And was this stuff that happened after the
6 things that happened with your dad or at the same
7 time or before?

8 A After.

9 Q Okay. Why did you show them those things? How
10 did you know about those things?

11 A Because daddy taught me.

12 Q Okay. Just a couple more questions, victim
13 You said your dad was Timothy Jacob Wilson. Is he
14 here in the courtroom?

15 A Yes.

16 Q Where is he sitting?

17 A Over there.

18 Q At which table? This table over here?

19 A Yes.

20 Q What color shirt is he wearing? Can you see?

21 A Orange.

22 Q Okay. Do you still love your dad, victim

23 A Yes.

24 Q And how did it make you feel when he did these
25 things to you?

1 A Sad.

2 MR. STUMBO: Thank you so much, *victim* That's
3 all of the questions I have for you, okay. Mr.
4 Cornwell is going to ask you a few questions.

5 THE COURT: Any questions of the witness?

6 *victim* do you need to take a break?

7 THE WITNESS: (Witness nodded head.)

8 THE COURT: You want to take a little break?

9 THE WITNESS: (Witness nodded head.)

10 THE COURT: You stay right there a second,
11 okay.

12 Ladies and gentlemen, step in the jury room.
13 Don't discuss the case.

14 (The jury retires to the jury room.)

15 THE COURT: Okay. *victim* we're just about
16 through, okay. Now, you go with that nice lady and
17 she can talk to you and reenforce you, but she can't
18 talk about any of the merits, okay. Whenever y'all
19 are ready, you let me know.

20 We're at ease.

21 (Brief Recess.)

22 THE COURT: Okay. *victim* are you ready?

23 THE WITNESS: Yes.

24 THE COURT: All right. Thank you.

25 Are both sides ready?

1 **MR. STUMBO:** Ready, Your Honor.

2 **THE COURT:** Mr. Cartin, bring the jury in for
3 me, okay.

4 (The jury returns to the courtroom.)

5 **THE COURT:** Okay. Mr. Cornwell, are you going
6 to do the examination?

7 **MR. CORNWELL:** Yes, Your Honor.

8 **THE COURT:** You're recognized.

9 CROSS-EXAMINATION

10 BY MR. CORNWELL: victim

11 **Q** How are you,

12 **A** Good.

13 **Q.** I know you haven't met me yet. I'm Mr.
14 Cornwell. It's the first time I've met you. I know
15 it's going to be hard what you have to talk about
16 and I appreciate you getting up here and talking to
17 me about the case and answering questions that I ask
18 you. Will you do that for me?

19 **A** Yes.

20 **Q** Mr. Stumbo talked to you about the difference
21 between the truth and a lie and he talked to you
22 about the importance of telling the truth. Do you
23 understand that?

24 **A** Yes.

25 **Q** All that I ask of you is that, you know, be

1 truthful, okay?

2 A Okay.

3 Q Mr. Stumbo asked you a question about if this
4 had happened to you before as far as S-E-X. Do you
5 remember a time where you and maybe one of your
6 friends were involved in S-E-X before you said this
7 thing happened with your dad, maybe when you were
8 about five in kindergarten?

9 A I don't remember that.

10 Q Do you not remember the time you told your mom
11 about what happened over a friend's house?

12 A Huh-huh.

13 Q Do you not remember the time when you spent the
14 night over a friend's house and there was an
15 incident there with you and one of your friends and
16 you talked about it to your mom and talked about it
17 to your grandmom? Do you remember what I'm talking
18 about now?

19 A Yes.

20 Q Can you tell me kind of what happened that
21 time?

22 A I think it was over at her house and she was in
23 her room. That's all I can remember of that.

24 Q And that was when you were in kindergarten,
25 though, so that was before you were seven?

1 A Yes.

2 Q You were about five then maybe?

3 A Yes.

4 Q Okay. And you remember telling mama about it?

5 A Yes.

6 Q You remember telling grandma about it?

7 A Yes.

8 Q And when you told them, did you tell them right
9 after it happened?

10 A Yes.

11 Q Okay. So you know when something like that
12 happens, you're supposed to tell an adult. That's
13 right?

14 A Yes.

15 Q And that's exactly what you did because you
16 knew that was the right thing, right?

17 A Yes.

18 Q As soon as it happened. Now, do you remember
19 another time with -- I know you talked about a time
20 that something similar happened with your aunts over
21 at your grandma's house?

22 A Yes.

23 Q I know you and Mr. Stumbo talked about that.
24 You told him about a time that, you know, it
25 happened after you said you and your dad did

1 something; isn't that correct?

2 A Yes.

3 Q Now, wasn't there a time before when you were
4 about, say, five or six that something happened with
5 your aunts at your grandma's house?

6 A Yes.

7 Q And that was before you said the incident
8 happened with your dad, right?

9 A Yes.

10 Q And do you remember what happened or can you
11 tell me about what happened?

12 A I can't remember it.

13 Q Did grandma find out about that?

14 A Yes.

15 Q And how did she find out?

16 A (No response.)

17 Q Well, let me -- did somebody tell on you? Is
18 that how grandma found out?

19 A I don't know.

20 Q You don't remember. It was a pretty long time
21 ago. How old are you, nine?

22 A Yes.

23 Q That would be about four years ago. That's
24 kind of hard to remember, I guess. And that's not
25 something you really want to remember, do you?

1 A Huh-huh.

2 Q Now, you talked about your house a little bit.
3 You talked about, you know, mom and dad had their
4 own room with Mr. Stumbo. Now, in your house, the
5 doors in the house, do they have locks on them?

6 A Yes.

7 Q Is it the kind of lock you've got to use a key
8 to open or is it just like a little turn knob?

9 A You have to have a key to open it.

10 Q All of the doors in the house you have to have
11 a key to open it?

12 A Yes.

13 Q Okay. Even the bathroom door?

14 A Yes.

15 Q Okay. Another question I'd like to ask you,
16 you talked about watching the video. How many times
17 have you watched it?

18 A Which video?

19 Q The video of you and you talking to Ms.
20 Benedetto; do you remember that?

21 A Yes.

22 Q How many times have you seen the video?

23 A Once.

24 Q You've only seen the video of your interview
25 one time?

1 A Yes.

2 Q And is that the only time you can remember or
3 are you telling the truth when you say you've only
4 seen it once?

5 A I've only seen it once.

6 Q So when you come to the -- and I know you come
7 up here and you talked to Mr. Stumbo and the people
8 in his office, they don't show you the video when
9 you come see them?

10 A No.

11 Q Okay. Do you remember a lot from the video?

12 A No.

13 Q So they don't show you the video to kind of get
14 you to remember what's going on?

15 A Only me and Heather watched it some other time.

16 Q And how many times did you and Heather watch
17 it?

18 A Me and Heather watched it over at where she
19 works and here.

20 Q Do you remember how many times?

21 A Just two.

22 Q Just two. I'm kind of confused. Before you
23 said you only watched it once, was that just one
24 time with Mr. Stumbo or was that just once all
25 together?

1 A Two times with Heather. I got mixed up there.

2 Q Okay. You just forgot. I understand. Another
3 thing you said, you know, and it's, you know, we're
4 all kind of old and our memories are kind of fuzzy.
5 You said these things happened when you were seven
6 and eight?

7 A Yes.

8 Q And you were telling the truth when you said
9 that?

10 A Yes.

11 Q Okay. Now, when we talk about truth and lie,
12 you know, it's real important that you tell the
13 truth because, you know, these people have to make a
14 decision partly based on what you tell them. You
15 understand that, right?

16 A Yes.

17 Q Now, is truth something that you tell the truth
18 all the time or do you ever lie? Have you ever
19 fibbed in your life?

20 A Yes.

21 Q Now, do you know what happens if you tell a
22 fib?

23 A Yes.

24 Q Do you get in trouble when you fib?

25 A Yes.

1 Q Now, you say you're telling the truth when you
2 tell the jury about what happened with your dad,
3 right?

4 A Yes.

5 Q Have they talked to you, Mr. Stumbo and Ms.
6 Smith, talked to you about the importance of telling
7 the truth about what happened with your dad?

8 A Yes.

9 Q Now, what would you think will happen if you
10 change your story about what happened with your dad?

11 A I would get in trouble.

12 Q You would get in trouble. And who told you
13 that?

14 A You.

15 Q I don't remember saying that. But if you draw
16 that inference, then in a way, you're kind of right,
17 but, no, you wouldn't get in trouble, but we'd all
18 be in trouble kind of because then we'd have a
19 situation where, where do we go from there. But
20 what I need to ask you now, victim is -- what I'm
21 trying to get across to you is if you came up here
22 and said, daddy didn't do it, what do you think
23 would happen?

24 A I don't know.

25 Q Do you think they'd be mad at you, Mr. Stumbo

1 and Ms. Smith?

2 **A** (Witness utters nonwords.)

3 **Q** You don't know. Are you saying you don't know
4 because you don't know?

5 **MR. STUMBO:** Your Honor, objection. He's
6 asking her to say what we would do if a certain
7 thing happens, calling for speculation.

8 **MR. CORNWELL:** Your Honor, I'm asking her --

9 **THE COURT:** Overruled. Go ahead.

10 **BY MR. CORNWELL:**

11 **Q** Getting back to the question, do you think you
12 would be in trouble with them?

13 **A** No.

14 **Q** Do you think you'd be in trouble with Ms.
15 Smith?

16 **A** No.

17 **Q** Okay. Now, you talked about your dad, and I
18 know Mr. Stumbo asked you this. You said you still
19 love your dad?

20 **A** Yes.

21 **Q** Do you miss him?

22 **A** Yes.

23 **Q** Do you want to be back with your family?

24 **A** Yes.

25 **Q** And you want your family together again?

1 **A** Yes.

2 **Q** Are you afraid of your dad?

3 **A** Nope.

4 **MR. CORNWELL:** Beg the Court's indulgence.

5 (Pause.)

6 **Q** Let's talk about how this kind of all started
7 at school. You mentioned some kids were passing
8 notes in class?

9 **A** Yes.

10 **Q** What were those notes about?

11 **A** S-E-X.

12 **Q** And they were passing them to you?

13 **A** Yes.

14 **Q** Did you write any notes?

15 **A** Yes.

16 **Q** Now, did you start writing the notes or did
17 they write the notes first and then you wrote back?

18 **A** I don't remember.

19 **Q** You don't remember. And how did you end up
20 talking to Ms. Behrens? Did you get in trouble
21 because of the notes?

22 **A** I think so.

23 **Q** And what did you and Ms. Behrens talk about?
24 Did she talk to you about the notes?

25 **A** Yes.

1 Q What did she say?

2 A I don't remember.

3 Q You don't remember. And it was a long time
4 ago, we understand that.

5 A (Witness nodded head.)

6 Q Do you remember who started writing the notes?

7 A No.

8 Q Was it you?

9 A (Witness utters nonwords.)

10 Q You don't remember if you started writing the
11 notes?

12 A Huh-huh.

13 Q Well, let me ask you this. Do you remember if
14 you got a note first or did you send the note first?

15 A I don't remember because it's been a long, long
16 time.

17 Q Okay. Now, you talked to Ms. Behrens first
18 after the notes?

19 A Yes.

20 Q And did you tell her then about what happened
21 with daddy?

22 A Yes.

23 Q Okay. I was kind of confused because before
24 when Mr. Stumbo had asked the question, you said
25 that you talked to mommy and grandma first and then

1 Ms. Behrens. Was that about something else you were
2 talking to mommy and grandma about, maybe?

3 A No.

4 Q So you did talk to mommy and grandma first
5 about daddy?

6 A Yes.

7 MR. CORNWELL: Beg the Court's indulgence.

8 THE COURT: Yes, sir.

9 (Pause.)

10 MR. CORNWELL: Thank you, Your Honor.

11 BY MR. CORNWELL:

12 Q And I'm not -- correct me if I've already asked
13 you this, but do you remember what those notes at
14 school were about? I mean, do you remember what
15 they said?

16 A No. All I remember is it was about S-E-X.

17 Q Okay. And what about S-E-X?

18 A (Witness utters nonwords.)

19 Q Were they -- were the notes about -- were they
20 asking to do S-E-X; do you remember that?

21 A Huh-huh.

22 Q And about how many people -- do you remember
23 how many kids were passing the notes around?

24 A Nope.

25 Q It was more than two?

1 A Yes.

2 Q Okay. So it was more than two, but you just
3 don't remember exactly how many?

4 A Yes.

5 Q Okay. Let's talk about mommy and daddy a
6 little bit. When you're at home with mom and dad
7 and you -- say if you did something bad that you
8 weren't supposed to, who would, I guess, put you in
9 time out or give you a spanking or fuss at you, who
10 would do that?

11 A Daddy.

12 Q Daddy, all right. And did daddy do that more
13 than mommy?

14 A Yes.

15 Q Okay. So daddy was kind of strict on you?

16 A A little bit.

17 Q More than you like. You wish daddy was a
18 little nicer?

19 A Yes.

20 Q But did daddy ever talk to you about why he had
21 to discipline you? Did he ever, you know, give you
22 a little speech about, you know, you're not supposed
23 to do that and now you have to go to time out when
24 he gave you time out?

25 A I don't...

1 Q You don't remember. And it's been a long time
2 since you've seen your dad, hasn't it?

3 A (Witness nodded head.)

4 Q So it's kind of hard to remember those type of
5 things. But you do remember he was the one that did
6 those type of things, right?

7 A Yes.

8 Q Now, was daddy at home a lot?

9 A Yes.

10 Q Let me rephrase that. Did daddy leave the
11 house for long periods of time? He was gone a lot,
12 wasn't he?

13 A Yeah, because he had to go to the Marines.

14 Q And do you remember, you know, how long he was
15 gone or you can't remember?

16 A I can't remember.

17 Q Okay! If I said he was gone for about six
18 months out of the year, does that sound about right?

19 A (Witness nodded head.)

20 Q And mommy and daddy, both of them worked when
21 you lived with daddy and mommy together, did both of
22 them work?

23 A I don't remember.

24 Q You don't remember if both of them had jobs?

25 A Huh-huh.

1 Q Okay. Now, let's kind of talk about what
2 happened between you and daddy. Do you remember if
3 it was daytime or nightttime?

4 A What are you talking about? I don't
5 understand.

6 Q What happened between you and your dad at your
7 house, was it daytime when it happened?

8 A I don't remember.

9 Q You don't remember. You don't remember if the
10 sun was out?

11 A Huh-huh.

12 Q Do you remember if mom was at home when it
13 happened?

14 A Nope.

15 Q Do you remember if anybody was in the house?

16 A Just my little brother.

17 Q But you don't remember if mommy was at home?

18 A She wasn't.

19 Q She wasn't. Where would mommy be at this time?

20 A Shopping.

21 Q Shopping?

22 A (Witness nodded head.)

23 Q Okay.

24 MR. CORNWELL: Beg the Court's indulgence, Your
25 Honor.

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

2 (Pause.)

3 **BY MR. CORNWELL:**

4 **Q** Now, **victim**, when you were living with mommy
5 and daddy, daddy worked with Time Warner Cable,
6 didn't he?

7 **A** Yes.

8 **Q** And he worked all day. Did he work all day?
9 Did he go in the morning and come back in the
10 evening?

11 **A** Yes.

12 **Q** Okay. Do you remember how many days a week he
13 worked? Did he work almost everyday?

14 **A** I don't remember.

15 **Q** You don't remember, okay. Do you remember if
16 he worked on Saturday?

17 **A** Huh-huh.

18 **Q** Okay. Going back to what we talked about
19 earlier about what happened at school with Ms.
20 Behrens. Do you remember getting in trouble at home
21 the day before going to school that day? Do you
22 remember if daddy fussed at you before, the day
23 before you went to school?

24 **A** About what?

25 **Q** You don't remember getting in trouble about a

1 night light?

2 A Yes.

3 Q And that was the day before you talked to Ms.
4 Behrens, right?

5 A Yes.

6 MR. CORNWELL: All right. Thank you.

7 No further questions, Your Honor.

8 THE COURT: Mr. Stumbo, do you have any
9 additional questions?

10 MR. STUMBO: Just a few, Your Honor.

11 REDIRECT EXAMINATION

12 BY MR. STUMBO:

13 Q ^{victim} Mr. Cornwell was asking you about when
14 these things happened, who was at home. You said it
15 was just your little brother was there?

16 A Yes.

17 Q And when mommy was gone, it was just daddy, you
18 and little brother, what kind of things would he be
19 doing in his bedroom?

20 A Who, my brother?

21 Q No, your dad. Did he have a T.V. in his
22 bedroom?

23 A Yes.

24 Q Did you ever see him watching T.V. in there?

25 A Yes.

1 Q Okay. And what kind of things did you see him
2 watching on T.V.?

3 A S-E-X.

4 Q And you say S-E-X, can you describe to me what
5 you saw on the T.V.? What kind of people were on
6 there -- how many people were on there doing S-E-X?

7 A Two.

8 Q Do you remember anything else about that, about
9 what they were doing on the T.V.?

10 A S-E-X.

11 Q Were they walking down the road? Were they in
12 a house? What were they doing?

13 A Both.

14 Q Now, what does -- when you saw these things on
15 T.V., is that connected in any way to what your dad
16 did to you when he touched you on your private
17 parts? Did that happen around the same time?

18 A I don't remember.

19 Q Okay. When he asked you to touch his private
20 parts and you said the pee came out, did that ever
21 happen when he -- around the time he was watching
22 the movies in the bedroom?

23 A Nope.

24 Q Okay. Was mom ever home when he was watching
25 S-E-X on the T.V.?

1 A No.

2 Q He wouldn't watch it when mommy was there?

3 A Huh-huh.

4 Q Did he ever ask you to come in and do anything
5 with the T.V. or the video?

6 A Yes.

7 Q What did he ask you to do?

8 A Fix it.

9 Q Fix it. When you say fix it, what do you mean
10 by that? Play it again or what?

11 A It was stalled because I had to fix it.

12 Q Okay. Just a couple more questions, victim.
13 Mr. Cornwell asked you if you ever told a fib and
14 you said you have before.

15 A Yes.

16 Q Would you ever tell a fib about something like
17 this, something that your dad did to you? Is that a
18 serious thing to you what happened?

19 A Yes.

20 Q Between your dad and you. Is that something
21 that you would tell a fib about?

22 A No.

23 Q So everything you told everybody about, that
24 has been the truth?

25 A Yes.

1 Q Everything you've said here today has been the
2 truth?

3 A Yes.

4 Q And Mr. Cornwell also talked about you maybe
5 getting in trouble. Have you ever heard from me
6 that you'd get in trouble if you didn't say a
7 certain thing or not? Have I ever said you'd get in
8 trouble for anything?

9 A From you?

10 Q Yeah.

11 A Nope.

12 Q Okay. Has Ms. Heather ever said you'd get in
13 trouble if you didn't say the things she wanted you
14 to say?

15 A No.

16 Q Okay. Have I always told you I wanted you to
17 tell us the truth?

18 A Yes.

19 Q Okay. Ms. Heather, all she's ever asked from
20 you is just to tell the truth?

21 A Yes.

22 Q And that's all you've ever told her is the
23 truth, right?

24 A Yes.

25 Q So you wouldn't get in trouble if you came back

1 and said that you weren't telling the truth, would
2 you?

3 A No.

4 Q You never heard that from me, have you?

5 A No.

6 Q One other thing about just getting, you know,
7 talking about getting in trouble. Did Ms. Behrens
8 ever punish you for the notes about the S-E-X? Did
9 she give you a punishment for that?

10 A I don't remember.

11 Q Okay. You don't remember getting -- do you
12 remember just going to talk to her about it?

13 A Yes.

14 Q But you didn't get in trouble for that, you
15 just had to talk to somebody; is that right?

16 A Yes.

17 Q And you just talked to Ms. Behrens about it and
18 then it was over?

19 A Yes.

20 Q Okay. You talked about your dad going off to
21 the Marines. Some of these things that happened
22 between you and your dad, did they happen before he
23 went off to the Marines?

24 A Yes.

25 Q Okay. And when he went off to the Marines, did

1 he ever talk to you about what had happened?

2 A (No response.)

3 Q Did y'all ever talk about what had happened?

4 Did you ask him about what he had done?

5 A Can you say it in a way I can understand,
6 please?

7 Q Do you remember a pinky promise?

8 A Yes.

9 MR. CORNWELL: Objection, Your Honor.

10 THE COURT: Yes.

11 MR. CORNWELL: That's leading.

12 THE COURT: Overruled.

13 MR. STUMBO: I'll re-ask it.

14 BY MR. STUMBO:

15 Q Did you talk to your dad about this stuff
16 before he went off to the Marines?

17 A Yes.

18 Q And what did he say to you? What did y'all do?

19 A Pinky swore.

20 Q Okay. What did you pinky swear about?

21 A That he wouldn't do anymore S-E-X.

22 Q After he came back from the Marines from his
23 training, did he come back home after that?

24 A Nope.

25 Q Well, did he ever -- any of these things that

1 you talked about, did they happen again after he
2 came back after he pinky swore?

3 A I don't -- if he did because...

4 COURT REPORTER: I couldn't hear her.

5 THE COURT: Can you say that again for us,
6 *victim*? Get a little bit closer to the mic. Do you
7 remember what you just said?

8 THE WITNESS: Yes, sir.

9 THE COURT: Can you say it for us again? I
10 didn't hear you.

11 THE WITNESS: I said that I didn't -- that I
12 don't remember because I couldn't see him anymore.

13 BY MR. STUMBO:

14 Q That was after the pinky promise?

15 A (Witness nodded head.)

16 MR. STUMBO: Thank you, *victim*. That's all of
17 the questions I have for you, okay. Mr. Cornwell
18 may have a couple more.

19 THE COURT: Recross?

20 RECROSS-EXAMINATION

21 BY MR. CORNWELL:

22 Q *victim* you just told Mr. Stumbo that you saw
23 some -- you saw your dad watching some videos in his
24 bedroom.

25 A Yes.

1 Q Now, was there a rule about going into mommy
2 and daddy's bedroom? Wasn't there a rule? You
3 weren't supposed to go in there?

4 A I don't remember that.

5 Q You don't remember?

6 A (Witness shook head.)

7 Q Now, you said you saw your daddy watching these
8 videos. He was watching them by his self?

9 A In the room?

10 Q In his room?

11 A Yes.

12 Q Now, he didn't know you saw him watching them,
13 did he?

14 A I don't know.

15 Q You don't know. But when you saw him watching
16 them, you left after that?

17 A Yes.

18 MR. CORNWELL: Okay. No further questions,
19 Your Honor.

20 THE COURT: Okay. victim, thank you. You can
21 leave with that lady there.

22 Call your next witness.

23 MR. JOHNSON: State calls Rosemary Behrens.

24 *****

25 *****

1 ROSEMARY BEHRENS,
2 having been duly sworn, testified as follows:

3 THE CLERK: If you'll have a seat. State your
4 name, spell your last for the record, please.

5 THE WITNESS: Rosemary Behrens, B-E-H-R-E-N-S.

6 DIRECT EXAMINATION

7 BY MR. JOHNSON:

8 Q Ms. Behrens, good morning. Where do you work
9 right now?

10 A I'm at Lexington Baptist Counseling Center.

11 Q Okay. What do you do there?

12 A I'm a licensed counselor.

13 Q Where did you used to work?

14 A Saxe Gotha Elementary School.

15 Q What did you do there?

16 A Guidance counselor.

17 Q Okay. On October 20th, 2006, did you have an
18 occasion to speak with victim [REDACTED]?

19 A Yes.

20 Q Okay. Tell me about that.

21 A [REDACTED] was in my office to speak to me. I
22 teach classes, so I had spoken with her before and
23 taught her before and we were acquainted with each
24 other. And she was explaining to me some things
25 that were -- that sounded as though they were

1 inappropriate between her and her father. So I
2 asked her to tell me more about that to try to
3 determine exactly what it was that she was trying to
4 tell me about. Sometimes kids know S-E-X and they
5 think it's something else, so I had to determine
6 what she was actually talking about.

7 And she told me that her father would be lying
8 in his bed -- in her parents' bed in his bedroom,
9 her mom and dad's bedroom, with her beside him and
10 there were videos on that had naked people in them
11 and that he would ask her to rewind the video to a
12 certain part and ask her to put her hand on his
13 penis or private part. And so being a mandated
14 reporter, of course, I reported that to DSS and told
15 her that someone would be coming to speak with her
16 about it, and would always say, just, you know, tell
17 the truth. And she was frightened, she was nervous,
18 but I reassured her that, you know, somebody would
19 talk with her about it and it was okay to tell.

20 Q Okay. In addition to that, did she disclose
21 anything about her father touching her?

22 A Yes. She said that he touched her as well on
23 her private part. I don't remember her saying
24 private spot that day, but I think she said privates
25 or private part.

1 Q What was her demeanor? How did she act when
2 she was telling you this?

3 A She was a little afraid, a little worried about
4 telling that kind of thing, but she told me enough
5 where I knew I had to make a report, so I didn't
6 question her any further, you know, about the
7 details, but she was worried about somebody coming
8 to see her about it, so I just tried to reassure her
9 at that point.

10 MR. JOHNSON: No more questions, Your Honor.

11 THE COURT: Cross?

12 CROSS-EXAMINATION

13 BY MR. CORNWELL:

14 Q How are you doing, Ms. Behrens?

15 A Okay.

16 Q Now, when a child talks to you about this kind
17 of behavior, as soon as they mention this type of
18 thing, you're mandate -- you have to report it,
19 right?

20 A Yes, of course.

21 Q And, at that point, there's not a, really, an
22 exploration into whether or not these allegations
23 are true or false? You're a mandatory reporter, so
24 when this comes up, you have to do it; is that
25 right?

1 **A** Yes. I don't...

2 **Q** You don't interrogate them?

3 **A** I don't ask for more detail than what I need to
4 do if I need a report to be made or not.

5 **Q** And let's say, I guess, what can be sufficient
6 for you to report, it doesn't have to be a lot as
7 long as the accusation is made; is that correct?

8 **A** Ask me that again.

9 **Q** As long as they accuse someone of molesting
10 them, you have to report it?

11 **A** Yes.

12 **Q** It doesn't matter the amount of details or that
13 doesn't come into play, the law says you have to
14 report it?

15 **A** Right. I can't determine if an allegation is
16 true or not. That's not part of my job. I turn it
17 over to DSS.

18 **Q** How did she come to your office that day?
19 Let's talk about that a little bit. Why was she at
20 your office? That was because of those notes we
21 talked about earlier?

22 **A** There were some notes that were written, which
23 is not -- we never knew exactly who wrote what notes
24 and how the notes came into play, but it's typical
25 for children to come and see me or ask to come and

Victim

1 see me and had asked to come and see me to
2 talk.

3 Q Okay. And were the notes kind of like, that
4 triggered all of this...

5 A There was suspicion about her being involved
6 with the notes.

7 Q Okay.

8 A But I don't know who wrote the notes.

9 Q What did those notes say; do you remember that?

10 A They were typical of children that -- you know,
11 the yes and no box, you know, do you want to be my
12 best friend, do you want to whatever, check yes or
13 no. Those kind of just little brief notes that kids
14 pass back and forth.

15 Q Now, were some of those do you want to S-E-X,
16 check yes or no?

17 A Yes, there was one.

18 Q Now, would you say that's typical?

19 A Sometimes if kids know how to spell a word that
20 they think they're not supposed to use, they may not
21 necessarily know what it is or they may know what it
22 is or may not, but sometimes we see kids write words
23 they're not supposed to use.

24 Q But you said earlier you don't know if Victim
25 was the one who wrote that note or received it?

1 **A** The notes did not have names on them.

2 **MR. CORNWELL:** All right. Thank you.

3 **THE COURT:** Redirect?

4 **MR. JOHNSON:** No redirect, Your Honor.

5 **THE COURT:** Thank you, Ms. Behrens. You may
6 step down.

7 Is this witness free to go?

8 **MR. STUMBO:** Yes, sir.

9 **THE COURT:** Do y'all need her to stay?

10 **MR. CORNWELL:** No, Your Honor, I can't think of
11 any reason.

12 **THE COURT:** Ms. Behrens, you're free to go if
13 you wish to go. You're free to stay, if you wish to
14 stay.

15 Do you have another witness we can do?

16 **MR. STUMBO:** Yes, sir. The State would call
17 Christalyn Thompson Howard to the stand.

18 **THE COURT:** Come around please, ma'am.

19 CHRISTALYN THOMPSON HOWARD,
20 having been duly sworn, testified as follows:

21 **THE CLERK:** State your name and spell your last
22 for the record, please.

23 **THE WITNESS:** My name is Christalyn,
24 C-H-R-I-S-T-A-L-Y-N, Thompson, T-H-O-M-P-S-O-N.

25 *****

DIRECT EXAMINATION

BY MR. STUMBO:

Q Ms. Thompson, do you have a new last name?

A Oh, yes, it's Howard.

Q And I understand you recently got married?

A I did.

Q Congratulations for that.

A Thank you.

Q I'll call you Ms. Thompson, though, is that okay?

A That's fine.

Q Where are you currently employed, Ms. Thompson?

A For the Department of Child Protective Services.

Q Is that part of DSS?

A It is.

Q That's the Department of Social Services?

A That's correct.

Q And what is your title there?

A I'm an assessment worker.

Q Okay. And as an assessment worker, what would be your day-to-day responsibilities there?

A I make contacts with children and families and assess whether or not children are at risk of being abused or neglected.

1 Q And is this in response to reports that come
2 in?

3 A That's correct.

4 Q Okay. When a report comes in regarding a child
5 possibly being abused or neglected, what are your
6 responsibilities at that point?

7 A My responsibilities are to make a timely
8 contact with the child and assess whether or not the
9 child is in imminent danger.

10 Q Okay. When you say timely contact, is there a
11 specific time that you have to see them?

12 A That's correct. If it's sexual abuse, we have
13 two hours to make contact. If it's physical abuse
14 or physical neglect, we have up to 24 hours
15 depending on the severity of the abuse or neglect.

16 Q Okay. I'm just going to back up a little bit.
17 Can you tell us a little bit about your educational
18 background?

19 A Sure. I received my bachelors degree in social
20 work from Winthrop University. I received my
21 masters degree in counseling from Webster
22 University.

23 Q Okay. And have you worked at -- with Child
24 Protective Services since your education?

25 A Yes, immediately following my undergraduate

1 schooling.

2 Q And how long have you been there at DSS?

3 A Three years.

4 Q Okay. In that time since you finished your
5 formal education, have you had any other training in
6 regards to child sexual abuse?

7 A Yes. We're mandated to receive at least 24
8 hours of training every year as I work for the
9 department. So I've received some trainings through
10 the local sheriff's departments, the local police
11 departments, some advanced training in child sexual
12 maltreatment. I completed the finding word South
13 Carolina training, investigating child abuse and
14 sexual abuse trainings and a lot of different child
15 abuse prevention trainings.

16 Q You mentioned the finding words class. What do
17 you learn in the finding words class?

18 A You learn the proper protocol for interviewing
19 children who are alleged to have been abused or
20 neglected.

21 Q Okay. Now, do you do forensic interviews as
22 part of your job?

23 A No, I do not.

24 Q Okay. Do you do interviews of children,
25 though?

1 **A** I do conduct interviews.

2 **Q** And that's for the purpose of assessment on the
3 front end?

4 **A** That's correct.

5 **Q** When you've talked to a child who has disclosed
6 some sexual abuse, what's your next step? Who do
7 you refer the case to at that point?

8 **A** I refer the child to one of the child advocacy
9 centers, the Dickerson Center or the Assessment and
10 Resource Center in Columbia.

11 **Q** Okay. The Assessment Resource Center, y'all
12 call that the ARC?

13 **A** The ARC.

14 **Q** The Dickerson Center is in Lexington?

15 **A** That's correct.

16 **Q** And just to give me an estimate, about how many
17 child abuse, sexual abuse or otherwise do you think
18 you've worked in your three years there at DSS?

19 **A** I average a case load about 25 to 30 cases and
20 it's been consistent that way since I started, so
21 probably about 400 or more cases.

22 **Q** All right. I'm going to refer you specifically
23 to this case involving the defendant T.J. Wilson.
24 When did you become involved with this case?

25 **A** On October 20th, 2006.

1 Q Okay. Who did you receive a report from?

2 A From our intake office. A reporter calls the
3 intake office and the worker that's up next to get a
4 report just happened to be me.

5 Q Okay. And that reporter -- or the intake
6 reporter, who do they make contact with?

7 A Whomever is on the other line or comes into the
8 office, sometimes it's law enforcement, sometimes
9 it's a medical professional. In this case, it was
10 the school.

11 Q Okay. Was it Ms. Behrens who just testified?

12 A It was Ms. Behrens.

13 Q About what time did that come in on October
14 20th?

15 A The intake report shows it came in at about
16 9:30 a.m.

17 Q Okay. What was your next move at that point?

18 A My next move, because it was sexual abuse, I
19 have to meet with my supervisor about the case and
20 let her know that I'm responding to a sexual abuse
21 case and then I go to the school to meet with the
22 child.

23 Q Okay. Did you do that in this case?

24 A That's what I did.

25 Q And did you have any conversation with Ms.

1 Behrens before you talked to victim ?

2 A Yes, because the schools are mandated to speak
3 with us prior to us meeting with the child, so I had
4 to talk with Ms. Behrens first.

5 Q Did Ms. Behrens brief you on what she knew at
6 that point?

7 A Yes. She told me that ^{victim} had come and
8 talked with her first, yes.

9 Q Was this the same morning that you actually
10 received the intake report?

11 A Uh-huh, that all occurred at the same time.

12 Q Okay. Who else was present when you talked to
13 victim ?

14 A Ms. Behrens.

15 Q She was in the room with you?

16 A Yes.

17 Q Okay. And you can refer to your own notes to
18 refresh your memory, but who did -- you said it was
19 an allegation of sexual abuse. Who did ^{victim} say
20 had done this to her?

21 A Her father, T.J. Wilson.

22 Q Okay. And have you talked to T.J. Wilson in
23 the meantime since then?

24 A Yes, I'm mandated to talk with him.

25 Q And that's in your role when assessing the

1 family situation?

2 A That's correct.

3 Q And is Mr. Wilson here in the courtroom today?

4 A He is.

5 Q And where is he sitting?

6 A Right over there.

7 Q What color shirt is he wearing?

8 A Orange. victim

9 Q And is this ...'s father?

10 A Yes, it's her father. victim

11 Q Now, what's the scenario? When did ... say
12 these things happened? What was going on in the
13 house at the time?

14 A What do you mean? I'm not sure I understand
15 your question.

16 Q Basically, when did victim -- in ...'s
17 conversation with you, did she indicate when these
18 things had happened?

19 A She was not clear about -- like she couldn't
20 give me dates or times or anything and I'm sure
21 that's because of her age, but she was able to say
22 it had happened while she was seven years old and a
23 little bit younger.

24 Q Okay. And did she say what was going on in the
25 house at the time when these things happened, who

1 was there?

2 A She said that her brother would be there and
3 her mom would not be there.

4 Q Okay. And where in the house would she say
5 these things happened?

6 A In her parents' bedroom.

7 Q And what was her dad doing at the time
8 according to [REDACTED]?

9 A According to [REDACTED], her dad would be in the
10 bed and she would be in the bed with him.

11 Q Okay. What was going on in the room at the
12 time?

13 A *Victim* said that her father would get her to
14 put a movie in the DVD player and they would watch
15 the movie with people doing S-E-X on the movie.

16 Q Okay. Did she describe the movie that she put
17 in in any way?

18 A She just said that there were men and women in
19 the movie and that the men and women were black and
20 white in race.

21 Q And how did she describe what they were doing?
22 What did she call it?

23 A She called it S-E-X. Well, initially, I think
24 she said the S word actually. And then I asked her
25 what the S word meant because I couldn't guess and

1 she said S-E-X.

2 Q Did she say what was going on in the bed at the
3 time?

4 A She said that her dad would take her hand and
5 touch his front privates and then she would have
6 to -- he will take his hand and touch her front
7 privates.

8 Q Okay. And what would she say would happen when
9 mom came home?

10 A That dad would change to like the news or
11 something else on television.

12 Q Did she talk to you or did you ask her anything
13 else about this going on with anybody else in her
14 family, this type of activity?

15 A If I recall, I did ask her that and she did
16 not -- she did not indicate that anyone else had
17 touched her.

18 Q Any other adult?

19 A Any other adult, no.

20 Q Okay. How about, and you can refer to your
21 notes to refresh your memory on this, any other
22 contact with other children?

23 A Yes. She did talk about having contact with
24 her aunts who are close in age with her.

25 Q And did she say where that happened? Was that

1 at her house?

2 A She mentioned that it had happened at her
3 grandmother's house.

4 Q Did she talk about the notes that had been
5 passed around in class?

6 A She did mention about notes that read, Do you
7 want to have sex, and she said it said S-E-X.

8 Q And after this, just to wrap up, is there
9 anything else she said communication between her and
10 her dad about what had happened?

11 A She asked -- she told me that her dad had pinky
12 promised before he left for the Marines that --
13 pinky promised that he wouldn't touch her again, but
14 when he came back, he continued to touch her. And
15 she asked me to make her daddy stop touching her
16 since he promised he wouldn't do it anymore.

17 MR. STUMBO: No further questions at this time,
18 Your Honor.

19 THE COURT: Cross?

20 CROSS-EXAMINATION

21 BY MR. CORNWELL:

22 Q How are you doing -- is it hyphenated or do
23 I --

24 A No.

25 Q -- just refer to you as Ms. Howard?

1 A Ms. Howard.

2 Q Okay. How are you doing, Ms. Howard?

3 A I'm fine.

4 Q I think I've seen you before in passing.

5 A Probably.

6 Q In your report, I think it mentions that **victim**
7 said her father would be watching the movies while
8 her and her brother were on the bed and he'd be
9 masturbating. I've seen that in the DSS report.

10 I'm not sure if that's something you wrote up or --

11 A No, it's not in my report. You may be
12 referring to something else, but it's not in what
13 I've written.

14 Q And I don't know if this is your handwriting or
15 not, but it's part of a six page kind of deal that I
16 have.

17 A Oh, no, that's not -- you're talking about the
18 intake report, that's not my report.

19 Q Okay. I just saw your name on top. I'm sorry.

20 A That's okay. That just shows that that report
21 came to me.

22 Q Okay. But are you familiar with the intake
23 report at all?

24 A Uh-huh.

25 Q You have reviewed it?

1 **A** Yes. Those are the reports that we get when
2 phone calls are made by reporters.

3 **Q** Maybe looking at it might refresh your memory
4 about --

5 **A** No, I know exactly what it says.

6 **Q** Oh, okay.

7 **A** But that's the report that's stimulated from
8 our intake office. When someone calls in to make a
9 report, the person in the intake office generates a
10 report based on what the person on the phone or in
11 person told them and they hand that to me and I go
12 out and initiate contact.

13 **Q** And she originally alleged that her and her
14 brother would be on the bed while he would be
15 masturbating while watching these movies, according
16 to the intake report?

17 **A** According to the intake report.

18 **Q** Okay. Are you saying now that that's not true?

19 **A** Maybe that's what was told to the intake worker
20 who typed up the report, that's not what was told to
21 me.

22 **Q** And, also, at the time -- on the intake report,
23 it says that grandmother lived downstairs and she
24 was at home when this would happen, is that what you
25 remember on the intake report?

1 A Yes, but that report also says allegations and
2 it also reads allegedly throughout the entire
3 report, so it's just -- they're allegations.

4 Q So we shouldn't be -- it doesn't have a lot of
5 weight?

6 A No, it's not factual information all the time.
7 That's my job to go out and assess whether or not
8 it's true.

9 Q All right. Also, you said that after you did
10 your investigation, that I think you determined that
11 they actually lived in a single story residence?

12 A Uh-huh.

13 Q So there would be no downstairs there?

14 A That's correct.

15 Q And when you did your investigation, was there
16 any -- did the story change any from the original
17 intake information? What else was different?

18 A What do you mean?

19 Q When I talked to you about the intake
20 information, you said, of course, that you had to go
21 do your own investigation.

22 A Uh-huh.

23 Q So did any other things differ from your
24 investigation in the intake report?

25 A Differ, I'm not clear -- I know that that part

1 was not told to me. I don't know that it was
2 different, but I was not told those things.

3 Q For instance, was there any allegation that the
4 little brother was involved?

5 A I think so, yes.

6 Q After you did your investigation?

7 A No, not to me, not to me.

8 Q So that was different from the intake report in
9 that regard?

10 A That will be correct.

11 Q And also -- and during the course of your
12 investigation, did anyone actually go in the home?
13 Did anybody go in the home?

14 A Yes, I'm mandated to go into the home.

15 Q Was there any pornography found in the home?

16 A I'm not allowed to search. I'm not a law
17 enforcement officer.

18 Q Do you know if anybody ever did search?

19 A Not that I'm aware, I don't know.

20 Q Did you have an opportunity to speak with
21 Mr. Wilson about these allegations?

22 A Yes.

23 Q And did you -- did he indicate that they had
24 pornography in the house?

25 A He indicated that they had a lot of access to

1 pornography on television because he did not block
2 their T.V. from the sex channels, I guess, if you
3 want to call it that.

4 Q So the pornography they had in their house,
5 according to Mr. Wilson, was through cable T.V.?

6 A I would assume so, yes.

7 Q And not DVDs?

8 A According to him, yes.

9 Q Did you get a chance to talk to his wife?

10 A Yes.

11 Q And did she indicate that they had any
12 pornographic DVDs?

13 A She said that she looked and did not find any.

14 Q Okay. Did you find out anymore information in
15 regards to any prior incidents with ^{Victim} and --
16 not necessarily other adults, but just prior
17 incidents involving acting out sexually?

18 A Prior to my getting involved?

19 Q Yes.

20 A Yes.

21 Q And what were those -- what kind of stuff did
22 that involve?

23 A I was told about the interactions between she
24 and her aunts touching their privates -- touching
25 each other's privates, excuse me.

1 Q Do you remember, did they tell you about how
2 old they were when this happened?

3 A No. And I typically don't ask children because
4 depending on their age, they can't tell me anyway.

5 Q So you didn't find that out from the parents or
6 grandparents? You found that out from ^{V.ictim}?

7 A The grandmother had -- she did tell me about
8 that, but we did not talk about the age the children
9 were.

10 Q Did they tell you about a prior incident even
11 prior to that when she was in kindergarten?

12 A Her mom had told me about something that
13 happened with another kid when she was in
14 kindergarten.

15 Q And that would predate the allegations against
16 daddy?

17 A That's correct.

18 MR. CORNWELL: Beg the Court's indulgence.

19 THE COURT: Yes.

20 (Pause.)

21 BY MR. CORNWELL:

22 Q Ms. Howard, and I don't say this to belittle
23 your role in this because your department does
24 wonders for the state and we appreciate your job,
25 but in your capacity, is it sort of like a

1 preliminary investigation, like a cursory
2 investigation, and the more in depth stuff is left
3 to, you know, the forensic interviewers and law
4 enforcement?

5 A Yeah, and a number of other people, that's
6 exactly correct.

7 MR. CORNWELL: Okay. No further questions.

8 THE COURT: Redirect?

9 MR. STUMBO: Just briefly, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. STUMBO:

12 Q Ms. Howard, Mr. Cornwell talked about the
13 little brother. How old is the little brother at
14 this time? You can refer to the intake summary or
15 your notes.

16 A Let me see if I have that. And he may be able
17 to tell us by looking at that intake report. I
18 think his birth date is documented on there.

19 Q Do you have the intake report with you up
20 there?

21 A Aaron, at the time, was born in *Virginia* so he
22 was, what, four maybe, if he had turned four yet.

23 Q Three maybe four?

24 A Yes.

25 Q You said you didn't generate this intake

1 report, that's just what you have when you go out on
2 a scene. When you followed up, was there anything
3 that gave any rise to the little brother being
4 involved other than what somebody else had said on
5 the intake sheet?

6 A No.

7 Q Can you act on something that you don't have
8 personal knowledge of in your role as --

9 A No. I ask questions about what's written on
10 our intake reports.

11 Q And ^{victim} never made any statements to you
12 that the little brother actually saw what had
13 happened?

14 A That's correct.

15 Q Now, Mr. Cornwell discussed this, too. You go
16 to the house and talked to the parents?

17 A They actually came to my office.

18 Q Okay. They talked to you in your office?

19 A Uh-huh.

20 Q Did you talk to them about the pornography in
21 the house?

22 A I did.

23 Q And where was Mr. Wilson employed at this time?

24 A At Time Warner Cable.

25 Q Okay. And did he have access to Time Warner

1 Cable in the house?

2 A Yes, he did.

3 Q And did they talk about what channels he had?

4 A Yes, he did.

5 Q Okay. And was there any discussion about
6 whether the channels were blocked or not?

7 A Yes.

8 Q Okay. And were any channels blocked according
9 to them?

10 A According to Ms. Wilson, they had not been
11 blocked, no. She said -- she actually asked him
12 during the conversation why hadn't he blocked all
13 the channels.

14 Q Okay. And I think you mentioned also that she
15 had said to you that she looked for any pornography
16 at the time?

17 A Yes.

18 Q But you weren't able to verify that?

19 A No. I'm not allowed to search a person's home.

20 Q Can you go out and get a search warrant for
21 somebody's house?

22 A No, I can't do that.

23 Q Who would have to do that?

24 A Law enforcement.

25 Q At this point was law enforcement involved?

1 A No.

2 Q At what point did they get involved in this
3 case?

4 A My report was faxed to law enforcement, but it
5 was maybe a few days later that a detective was
6 actually assigned to the case.

7 Q And who was that detective?

8 A Detective Mefford.

9 Q And he's here today in the courtroom?

10 A He is. *victim*

11 Q After makes the disclosure, you said
12 that you make references to either the Dickerson
13 Center or the ARC. What did you do in this case?

14 A I contacted the ARC to schedule an appointment
15 for a forensic interview and a medical examination.

16 Q Okay. To your knowledge, that was conducted?

17 A That was conducted. I was present at the ARC
18 when she had the forensic interview.

19 Q Were you in the room?

20 A No, I'm not allowed to be in the room, but I
21 was at the office.

22 Q You were able to review the report, the video
23 from the forensic --

24 A Yes.

25 Q Just one more question, Ms. Howard. In the

1 time you talked to **victim** at the school when she
2 disclosed what you talked about today, can you just
3 give us your observations of how she was, how did
4 she appear to you?

5 **A** When I met with her at the school, she was
6 nervous, she didn't really want to talk. And I
7 explained to her that my job was to help children
8 and to make sure that they were safe and that's when
9 she proceeded to tell me to help her to -- help to
10 make her daddy stop touching her.

11 **Q** Did she appear -- did she want to tell you
12 about this stuff?

13 **A** She did want to tell me. She was very sad
14 about what happened actually.

15 **MR. STUMBO:** No further questions, Your Honor.

16 **THE COURT:** Recross?

17 **MR. CORNWELL:** Beg the Court's indulgence, Your
18 Honor.

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

20 (Pause.)

21 **RECROSS-EXAMINATION**

22 **BY MR. CORNWELL:**

23 **Q** Kind of back to your report, the report you
24 filed. I know you mentioned in your report that
25 T.J. and his wife had taken *victim*, after she

1 reported, to get counseling?

2 A No, I think just Ms. Wilson, if I'm not
3 mistaken.

4 Q This is your report?

5 A No, that's not my report. That's the report
6 from the ARC.

7 Q From the ARC?

8 A Yes.

9 Q I'm sorry. Getting all confused here.

10 A That's all right.

11 Q They named you as an informant, that's why I
12 was --

13 A Right. I'm the one -- I called them and told
14 them some of what ^{victim} told me and then they
15 scheduled an appointment, that's it.

16 Q Now, you mentioned that -- and I know we talked
17 about the difference between this intake report and
18 your actual report and how your actual report is a
19 result of your investigation. And the intake report
20 is basically what prompts you to go investigate; is
21 that right?

22 A That's right.

23 Q Now, is it safe to say that the information
24 from the intake report in this case, that the source
25 of that would be from victim, from talking with

1

2

Christalyn
A I would hope so, yes.

3

Q So the information that's in that intake report came from her mouth?

4

5

A No. The children don't call our office, if that's what you're asking.

6

7

Q No. What I'm asking is the information that's in there basically came as a result of talking with

8

9

10

Christalyn
A That is correct.

11

MR. CORNWELL: All right. Thank you.

12

THE COURT: Anything else from this witness?

13

MR. STUMBO: Nothing further, Your Honor.

14

THE COURT: Thank you very much. You may step

15

down.

16

Is this witness free to go?

17

MR. STUMBO: Yes, Your Honor, if we could have

18

Ms. Thompson excused.

19

THE COURT: Any objection?

20

MR. CORNWELL: I don't have any objection.

21

THE COURT: You're free to go if you wish to

22

go. You're welcome to stay if you would like to

23

stay.

24

Do you have another witness you can do?

25

MR. STUMBO: I do, Your Honor, but I may need

1 to discuss an issue with this witness, so we may
2 need to do something outside the presence of the
3 jury, a legal matter.

4 **THE COURT:** Ladies and gentlemen, please step
5 in the jury room, don't discuss the case.

6 (The jury retires to the jury room.)

7 **THE COURT:** All right. We'll be ease, if you
8 need to talk to anybody.

9 **MR. STUMBO:** I do, Your Honor. And I do want
10 to put something on the record regarding -- we've
11 had some issues, he wants to be covered under HIPAA.
12 And we've subpoenaed the records and his testimony,
13 I think, he would like just maybe some further
14 assurances on the record from Your Honor that it's
15 court ordered. ^{Victim} disclosed some of this stuff
16 to him, too, so -- it was part of a counseling
17 session that was outside of the State's deal here.
18 This was something that their family did, so.

19 **THE COURT:** All right. I don't tend to give
20 legal advice, but my understanding of HIPAA is that
21 if it's court ordered, it's disclosed. If it
22 relates to alcohol or drugs, it falls under HIPAA
23 and another section of federal law which requires a
24 separate hearing by the court. But there's no
25 allegation and drug treatment, so.

1 **MR. STUMBO:** Well, that was my conversation
2 with Mr. Robinson. I said that he -- essentially,
3 if we subpoena the records and it's a criminal case
4 involving child sexual abuse, that that falls under
5 the mandatory reporting statute and there's
6 exceptions for that in HIPAA. Now, I'm no HIPAA
7 expert, but.

8 **THE COURT:** All I can say is it happens all the
9 time that they come in and reveal records from
10 medical files, civil and criminal. All right, thank
11 you.

12 **MR. STUMBO:** Thank you, Judge.

13 (Brief Recess.)

14 **THE COURT:** Are you ready now? Do you need
15 anything else on the record?

16 **MR. STUMBO:** I don't think so. I'm going to
17 just ask him some questions that will follow that
18 up. We can do that in front of the jury.

19 **THE COURT:** Defense ready for the jury?

20 **MR. CORNWELL:** Yes, Your Honor.

21 **THE COURT:** Mr. Cartin, bring the jury in,
22 please.

23 (The jury returns to the courtroom.)

24 **THE COURT:** Call your next witness, Solicitor.

25 **MR. STUMBO:** Thank you, Your Honor. The State

1 would call Gregory Robinson to the stand.

2 **THE COURT:** Come up to the clerk, please.

3 GREGORY H. ROBINSON,

4 having been duly sworn, testified as follows:

5 **THE CLERK:** If you'll have a seat, state your
6 full name and spell your last for the record,
7 please.

8 **THE WITNESS:** My name is Gregory H. Robinson,
9 R-O-B-I-N-S-O-N.

10 DIRECT EXAMINATION

11 BY MR. STUMBO:

12 **Q** Good afternoon, Mr. Robinson. How are you
13 doing today?

14 **A** Doing well. How are you?

15 **Q** Fine. Would you tell the jury what your
16 current profession is?

17 **A** I'm a licensed professional counselor in the
18 State of South Carolina.

19 **Q** Okay. Do you have your own counseling
20 business?

21 **A** I do.

22 **Q** And what's the name of that business?

23 **A** I'm self-employed. I work at a -- I rent space
24 at a business called Turning Point Counseling.

25 **Q** Is that here in Lexington County?

1 A Yes, sir.

2 Q Where is that located?

3 A It's actually -- it's in West Columbia, 2999
4 Sunset Boulevard.

5 Q Right down by the hospital?

6 A Yes, sir.

7 Q And what's your primary area of practice?

8 A I provide -- I work primarily with children and
9 I provide individual and family therapy.

10 Q Okay. And about what percentage of your family
11 therapy deals with children that you see?

12 A Sometimes it varies according to my case load,
13 but around 70, 75 percent.

14 Q Okay. Now, are you under my subpoena to be
15 here today?

16 A Yes, sir.

17 Q I actually served a subpoena on you to come
18 testify?

19 A That's right.

20 Q And, also, to submit records related to this
21 case?

22 A Yes, sir.

23 Q And you were directed by me as an officer of
24 the court to provide this information because it's
25 related to this case, correct?

1 A That's right.

2 Q And are you also a mandatory reporter under the
3 state -- South Carolina law for this sort of thing?

4 A Yes.

5 Q So in general, what would you do if a child
6 were to disclose sexual abuse to you?

7 A I'm mandated, if I am the first person to
8 discover that information, to report it to the state
9 and report it to law enforcement.

10 Q Okay. In regards to this case, were you the
11 first person to have it disclosed to you?

12 A No, sir.

13 Q Okay. There were others before you?

14 A (Witness nodded head.)

15 Q But, ultimately, the information that was
16 provided to you was under the direction and order of
17 the court of Lexington County?

18 A I'm sorry?

19 Q You were ordered by the court and me as an
20 officer of the court to provide this information?

21 A Yes, sir, at this point, yes.

22 Q How did you get involved with this case
23 initially? Did you meet with the victim in this
24 case, ^{Victim} ~~the victim~~ ?

25 A I did.

1 Q And was that at the direction of the State or
2 the family?

3 A The family.

4 Q Okay. And who brought her to your office? Was
5 it her mother or grandmother? Who brought her up
6 there?

7 A Her mother.

8 Q Did you have any discussions with mother before
9 you actually met with ^{victim}?

10 A I did.

11 Q Were you able to find out what was going on up
12 to that point?

13 A Yes.

14 Q And what did you determine to do after speaking
15 briefly with mom?

16 A At mom's request, I determined to meet with
17 ^{victim} one-on-one in an individual situation in my
18 office.

19 Q Okay. And were you able to talk to ^{victim}
20 about the family dynamics there in the home?

21 A Yes.

22 Q Okay. Did she tell you anything about where
23 dad was, if he was at home or at work or in the
24 military? Did she discuss any of that with you?

25 A Yes.

1 Q Okay. And where did she say that he was at
2 that time?

3 A Are you -- you're meaning on the day that we
4 met or in general?

5 Q Just in general, if he had been working in
6 Columbia, was he in the military, what did she
7 indicate?

8 A That, at the time, he was in town, he was
9 working.

10 Q Okay. Did she mention anything to you about
11 dad being in the military?

12 A Yes.

13 Q It was your understanding from her, at that
14 time, that he had returned from the military?

15 A Right.

16 Q Okay. What was your understanding of how this
17 disclosure was made or how it initially came out?

18 Who did she tell first to your knowledge?

19 A To my knowledge and according to the record, a
20 school counselor at her school.

21 Q Okay. And how did you broach the subject with
22 her about things that had happened with dad? How
23 did that come about during your meeting with ^{victim}
24 And you can refer to your notes, just take your time
25 with it, if you need to.

1 **A** Well, as is typical, I try to spend some time
2 helping a child feel comfortable understanding why
3 they're visiting my office, why they're there and
4 ask general questions about a child's relationship
5 with all family members.

6 **Q** Is this somewhat to build a rapport with the
7 child?

8 **A** Yeah.

9 **Q** Is that typical in child counseling and
10 interviewing sessions?

11 **A** Yes. And we'll talk about where they go to
12 school and what kind of things they enjoy doing and
13 that sort of thing.

14 **Q** Okay. And did you ask her why she was there or
15 if she understood why she had been brought to see
16 you?

17 **A** Yes.

18 **Q** And what did she indicate to you that it was
19 about?

20 **A** Well, she -- I think she had the basic
21 understanding it was about just some things going on
22 in the family and more specifically about her and
23 her dad not getting along.

24 **Q** Okay. Did she make any mention about her
25 relationship with her dad after that?

1 **A** She did.

2 **Q** Okay. And what did she say about dad? Like I
3 said, you can refer to your report to refresh your
4 memory.

5 **A** She had said several times that she just wants
6 her dad to spend time with her and take her to the
7 movies and play with her, that she enjoyed playing
8 in the backyard with him and going to the movies
9 with him and doing those type of things.

10 **Q** Okay. How about did she say anything about
11 what had happened between her and dad, any reference
12 to any instances of things that had happened?

13 **A** She said that there had been times when he
14 would yell at her a lot and she didn't like that.
15 She just wanted him to spend time with her and to go
16 to the movies and to play together.

17 **Q** Okay. Did she say anything about what had
18 happened to her at school and what she had talked to
19 the school counselor about?

20 **A** She did. I had asked her if she -- I had,
21 again not trying to lead her, but had asked her, in
22 the process of talking about school, that had she
23 talked to someone at school about something that --
24 or what was going on at home and she said that she
25 had.

1 Q Okay. Did she make any reference to a -- call
2 this anything or a word if anything had happened
3 between her and dad?

4 A Well, she did say, at first, she said she has
5 been talking to people, but not about dad, but about
6 the S word.

7 Q Did you inquire about what she meant by the S
8 word?

9 A I did. I asked what -- questioned her about
10 the S word and what that meant and then she spelled
11 out S-E-X.

12 Q Okay. Did she tell you how that related in any
13 way to her father?

14 A Well, I asked her who she'd been talking with
15 and why she had been talking about that. And she
16 said that -- another thing that I had asked is if
17 she was talking about that because she was upset
18 with someone.

19 Q And did she say if she was upset with someone?

20 A She simply said, My dad.

21 Q Okay. You said earlier she said she just
22 wanted daddy to come home and play with her, I
23 think?

24 A Uh-huh.

25 Q She said she missed her dad?

1 **A** Yeah.

2 **Q** Did she say if she loved him or not?

3 **A** Yes.

4 **Q** Okay. And how did she respond when she said
5 that she loved him? Did she say anything else about
6 that? And like I said, you can refer to your
7 report.

8 **A** She said at one point in the assessment that
9 she loves her daddy and just wants him to be nicer
10 to her.

11 **Q** Okay. When she talked about S-E-X in the
12 context of dad, did she say if dad had done anything
13 like that to her?

14 **A** Well, she told me, when she was talking about
15 S-E-X, that she had seen it written down at school
16 where another kid would write it on a note and ask
17 if she wanted S-E-X.

18 **Q** So she told you about notes being passed at
19 school?

20 **A** Uh-huh.

21 **Q** Okay. And did she tell you where anything had
22 happened between her and her father?

23 **A** Well, she talked about -- I asked about how
24 many kids at school this had been going on with and
25 she said maybe four or five. And when I asked her

1 what she did, she said, Nothing, to me. And then I
2 asked -- followed up by asking how this related to
3 her dad since she said she'd been talking about her
4 dad at school..

5 Q How did she respond to that?

6 A She looked around the room, and I've got a
7 note, for about 25 seconds and didn't say anything.

8 Q Did she ever tie the -- talk about S-E-X back
9 in with conversations about her dad and being at
10 home?

11 A Ultimately, she said that she did not want her
12 daddy to do S-E-X with me anymore.

13 Q Okay. Did you ask her where this happened or
14 when it happened? How did she respond to that?

15 A I did ask her where this was when this happened
16 and she told me she was at home.

17 Q Did she specify where in the house?

18 A She did not.

19 Q Did she say anybody else was at home?

20 A She told me her brother was at home.

21 Q Did she mention anything about the television?

22 A She did.

23 Q Okay. What did she say about that?

24 A She said that, and now she's saying the word
25 sex, told me that she saw sex on the television.

1 Q Did anything about daddy related to that?

2 A And she told me that she saw daddy doing sex to
3 himself.

4 MR. STUMBO: Thank you, Mr. Robinson.

5 That's all the questions that I have of this
6 witness at this time, Your Honor?

7 THE COURT: Cross?

8 CROSS-EXAMINATION

9 BY MR. CORNWELL:

10 Q How are you doing, Mr. Robinson?

11 A Good.

12 Q Was ^{Victim} the only person in the family that
13 you were counseling or were you their family
14 counselor?

15 A The way I approach things is I do involve
16 family when necessary to help the child.

17 Q All right. And just kind of -- and it's fine
18 if you refer to your report or whatever. What time
19 of day did she say that -- when she said she saw
20 daddy doing sex to himself, what time of day? Did
21 she mention what time of day it was?

22 A She had said it was afternoon.

23 Q In the afternoon?

24 A Uh-huh.

25 Q And where did she say mommy was at the time?

1 A She told me that her mother was at work.

2 Q At work, okay. And what she said -- did she
3 say she walked by the bedroom or did she go in or
4 was that not clear?

5 A She -- let me refer to my note here. She told
6 me that she had finished her homework and went into
7 her daddy's bedroom to have him check it and sign
8 it.

9 Q And that's when she saw him?

10 A Yes.

11 Q And what did she do after that?

12 A She told me...

13 Q Didn't she say she went to bed after that?

14 A Yes.

15 Q So according to her, she kind of just saw him,
16 left and went to her room?

17 A Yes.

18 Q Is there any indication in what she told you
19 that daddy even noticed she was there?

20 A No.

21 Q Now, once you got finished talking with victim
22 did you ever talk to the family or talk to her
23 parents about, you know, what you guys kind of
24 talked about?

25 A Uh-huh.

1 Q Do you remember what you discussed with her
2 parents?

3 A We talked about the fact that an investigation
4 was open about this.

5 Q Uh-huh. And do you remember telling her
6 parents anything about your opinion on what she had
7 to tell you?

8 A Yes.

9 Q What did you tell them?

10 A Well, what I did is I -- based on what I had
11 found, I made a --

12 MR. STUMBO: Objection, Your Honor. This
13 witness can't give an opinion. I don't think he's
14 been qualified as an expert is what he's calling
15 for.

16 THE COURT: Do you want to be heard?

17 MR. CORNWELL: Your Honor, I guess I can
18 rephrase the question.

19 BY MR. CORNWELL:

20 Q Did you tell them anything after the interview?

21 A Yes.

22 Q What did you tell them?

23 A Well, based on the information, I had made a
24 referral -- was making a referral to the ARC and
25 learned that they had already had an appointment for

1 the ARC.

2 Q Okay. Did you tell them --

3 MR. CORNWELL: Beg the Court's indulgence.

4 THE COURT: Yes.

5 (Pause.)

6 BY MR. CORNWELL:

7 Q When you interview children, and specifically
8 in these type of cases, do you kind of look for
9 signs they might be fibbing?

10 A Yes.

11 Q And what kind of signs do you look for?

12 A Typically, if a kid is very eager to give
13 information and volunteers information without being
14 asked.

15 Q Okay. And do you tell the parents if the kid
16 shows those signs?

17 A (No response.)

18 Q Generally?

19 A Yes, I do.

20 Q Do you remember telling ^{victim's} parents that
21 she showed signs of fibbing?

22 A No. I did speculate that perhaps that it was
23 inconclusive based on my interview whether something
24 happened or not, which is why I made the
25 recommendation to go to the ARC.

1 **Q** Okay. Another thing, kind of dating back to
2 earlier in your report, you said that ^{victim} had
3 talked about daddy being the disciplinarian,
4 basically. Did you get any indication that there
5 was some ill will there or maybe she favored a
6 parent over the other?

7 **A** No, not necessarily. And I don't know if it
8 was about discipline, but I did get information
9 that -- I do recall -- I'm sorry, but -- could you
10 repeat the question?

11 **Q** I was saying, did you get any indication that
12 she favored one parent over the other or, you know,
13 there was some ill will on her part towards daddy?

14 **A** Yes. That mom had said that there was some
15 anger --

16 **MR. STUMBO:** Objection, Your Honor.

17 **THE COURT:** Yes.

18 **MR. STUMBO:** Hearsay. I don't believe that
19 witness has taken the stand yet.

20 **MR. CORNWELL:** I can withdraw the question.

21 **THE COURT:** All right.

22 **MR. CORNWELL:** No further questions.

23 **THE COURT:** Redirect?

24 **MR. STUMBO:** Just briefly, Your Honor.

25 ****

REDIRECT EXAMINATION

BY MR. STUMBO:

Q You said that ^{U, 2 times} -- Mr. Cornwell asked you about kind of when this happened, where dad was at the time. And I think you indicated she said she was doing her homework at one point, went in to have him sign it and saw this stuff on T.V. Did she indicate these sorts of things happened just once or more than one time?

A When I asked her if this, meaning sex, happened one time or more times, she declined an answer.

Q You say she declined to answer. And I think you said earlier that when you first asked her about what she meant about dad, she looked around the room for about 25 seconds and didn't answer?

A Yes.

Q Did she ever appear at any time to be just eager to tell you all this stuff about what her dad had done to her?

A Overall she didn't.

Q And after she made the limited disclosure that she made to you, you determined to follow up with an ARC interview or suggest that?

A Uh-huh, yes, sir.

Q Was it your understanding that had already been

1 arranged?

2 A Yes.

3 Q But it had not yet occurred at that point?

4 A Right.

5 Q What date did you meet with ^{Victim} ?

6 A The date I have on this note is October 26th,
7 2006.

8 MR. STUMBO: No further questions, Your Honor.

9 THE COURT: Recross?

10 MR. CORNWELL: Just one.

11 RECROSS-EXAMINATION

12 BY MR. CORNWELL:

13 Q Mr. Robinson, who brought ^{Victim} to you? Was
14 it both T.J. and his wife?

15 A It was his mother.

16 Q His mother?

17 A Uh-huh.

18 Q And do you know whose idea it was to have you
19 talk to ^{Victim} ?

20 A I believe it was his mother's.

21 MR. CORNWELL: All right. Thank you.

22 THE COURT: Anything further of this witness?

23 MR. STUMBO: Nothing further, Your Honor. We
24 would ask that Mr. Robinson be excused at this time.

25 THE COURT: Any objection to the witness being

1 excused?

2 **MR. CORNWELL:** No, Your Honor.

3 **THE COURT:** You're free to go, sir. Thank you.

4 **THE WITNESS:** Thank you.

5 **THE COURT:** Do you have a 15 minute witness?

6 **MR. STUMBO:** Your Honor, we have a long one,
7 but I think we intend to do something with this
8 video. I think we can do 15 minutes worth and set
9 up the video for after lunch.

10 **THE COURT:** Call your witness.

11 **MR. JOHNSON:** Thank you, Your Honor. The State
12 calls Doctor Alicia Benedetto.

13 **THE COURT:** Come around, please.

14 ALICIA BENEDETTO,
15 having been duly sworn, testified as follows:

16 **THE CLERK:** If you'll have a seat and state
17 your name and spell your last for the record,
18 please.

19 **THE WITNESS:** My name is Alicia Benedetto.
20 It's B-E-N-E-D-E-T-T-O.

21 DIRECT EXAMINATION

22 BY MR. JOHNSON:

23 **Q** Afternoon, Dr. Benedetto. Where do you work
24 right now?

25 **A** At the ARC, the Assessment and Resource Center

1 in Columbia.

2 Q Okay. What do you do there?

3 A I'm a forensic evaluator at the ARC. I also
4 have -- I have a small therapy load and provide
5 training to child abuse professionals statewide.

6 Q Okay. And forensic evaluation, what does that
7 involve?

8 A It's an investigative interview at the request
9 of law enforcement and Department of Social
10 Services. When there are allegations of child
11 abuse, they'll ask us to conduct a forensic
12 evaluation with a child generally in the age of 3 to
13 around 18 to help to discover whether or not
14 something may have happened.

15 Q And what type of experience have you had
16 overall? How many children have you interviewed,
17 evaluated?

18 A I've been at the ARC full-time since 2001 and I
19 have interviewed around a thousand children, perhaps
20 a little more.

21 Q Could you tell us something about your
22 education and training?

23 A Certainly. My undergraduate degree is in
24 psychology from New York University and my masters
25 degrees and my doctor degree are from Saint Johns

1 University also in New York.

2 Q What type of training in South Carolina?

3 A I completed -- following my training in New
4 York, I completed a one year internship, psychology
5 internship at the William S. Hall Psychiatric
6 Institute. Following which, I was offered a
7 position with the Department of Mental Health as the
8 coordinator of treatment services for their child
9 and adolescent division. I did that for one year
10 and then was offered a position at the ARC, which is
11 a division of the Department of Mental Health and
12 I've been there since.

13 Q What types of courses do you teach now?

14 A As I said, part of my position at the ARC
15 involves training child abuse professionals in
16 forensic interviewing techniques with children. We
17 teach a particular protocol known as the RATAC
18 protocol, that's an acronym for the stages of the
19 semistructured protocol. And I teach that
20 quarterly. In fact, it's in session right now.
21 When I'm not here, I'm there teaching.

22 Q So in addition to doing forensic interviews,
23 you teach other people how to do these interviews?

24 A That's correct.

25 MR. JOHNSON: Your Honor, at this time, I'd

1 move to qualify this witness as an expert in
2 forensic evaluation of child sexual abuse.

3 THE COURT: Any voir dire?

4 MR. CORNWELL: No, Your Honor.

5 THE COURT: Any objection?

6 MR. CORNWELL: No, we don't have an objection,
7 Your Honor.

8 THE COURT: She is so recognized. You may
9 continue.

10 MR. JOHNSON: Thank you, Your Honor.

11 BY MR. JOHNSON:

12 Q Dr. Benedetto, on November 1st, 2006, did you
13 have an occasion to speak to ^{Victim} ~~Dr. Benedetto~~?

14 A Yes, I did.

15 Q Tell me about that.

16 A I received a referral through Department of
17 Social Services, Lexington DSS, from Christalyn
18 Thompson to interview ^{Victim} ~~Dr. Benedetto~~ in reference to
19 some concerns of sexual abuse.

20 Q Okay. And where did that interview take place?

21 A At the ARC in Columbia.

22 Q Okay. And describe the setting. Where were
23 you at at the ARC?

24 A We use a child friendly setting. It's a small
25 room with comfortable chairs, not a lot of

1 distractions or toys in it, just basically some
2 furniture and a flip chart, large flip chart paper
3 that we use to sometimes write notes on. And
4 there's a camera in the room that records all of our
5 interviews and we tell children about that that it's
6 being recorded at the time.

7 Q Was that audio and video recording?

8 A Yes.

9 Q Okay. And who was present during your
10 interview with the child?

11 A In the room for the interview are only the
12 child and myself.

13 Q Okay. Dr. Benedetto, I'm going to show you
14 what's been marked State's Exhibit number 1. I'm
15 going to ask you if you recognize this?

16 A Yes.

17 Q Okay. What is that?

18 A That is a copy of the interview that I
19 conducted with ^{VR 12/1/11} [redacted].

20 Q Now, have you seen that?

21 A Yes.

22 Q Okay. Is that a fair and accurate
23 representation of the complete interview with ^{VR 12/1/11} [redacted]
24 Wilson?

25 A Yes.

1 **MR. JOHNSON:** Your Honor, at this time, I would
2 move this State's Exhibit 1 into evidence.

3 **THE COURT:** Any objection?

4 **MR. CORNWELL:** No objection, Your Honor.

5 **THE COURT:** Mark it in the record, please,
6 Madame Court Reporter.

7 (State's Exhibit Number 1, DVD, admitted
8 into evidence.)

9 **MR. JOHNSON:** Your Honor, this particular
10 exhibit is a two hour interview. At this point, I
11 was wondering if the Court would like to take a
12 break for lunch and then come back.

13 **THE COURT:** Okay. Ladies and gentlemen, we'll
14 break for lunch now. I need you back in the jury
15 room at two o'clock, please.

16 Now, when you come back from lunch, my
17 understanding is that you're going to be watching a
18 video, which is about two hours in length. We'll
19 probably take some breaks during that time, but
20 that's what you can expect when you come back.
21 Don't discuss the case or let anybody discuss the
22 case with you. You're on your own for lunch. If
23 you'll just follow the bailiff, please.

24 (The jury was excused for lunch.)

25 **THE COURT:** Doctor, during the break, you

1 cannot discuss your testimony with anyone, okay?

2 **THE WITNESS:** I understand.

3 **THE COURT:** Thank you.

4 All right. Ladies and gentlemen, some of you
5 were not here yesterday, so let me make sure that
6 everybody hears this. It's really important that
7 you understand that while the jury goes out and into
8 a secured area, they funnel around back into the
9 common areas. So as you're leaving, there is a
10 chance that you may come in contact with a juror.
11 You need to avoid that. The best thing to do is to
12 give them a chance to clear out before you leave.

13 You also need to be mindful of the fact that
14 each juror is different and some people don't eat
15 lunch. So some jurors will just stay around the
16 courthouse, some will walk out and just kind of hang
17 around in their cars, some will walk up and down
18 Main Street and just window shop. So you need to be
19 vigilant in making sure that as you're leaving, that
20 you're not talking about the case in any way that
21 could be overheard by a juror who might be right
22 around the corner that you don't see. And if you go
23 to a restaurant, be very careful to look around and
24 make sure there's no juror within earshot.

25 Now, if there is contact with a juror, we'll

1 have to stop everything we're doing and I'll have to
2 go through a hearing to determine not only what was
3 said, but to make an evaluation myself of why it was
4 said. And if I feel that there has been some
5 violation of this order that I've given you, I can
6 hold you in contempt of court and I can send you to
7 prison for six months without a jury trial. So we
8 don't want to slow down the trial and we certainly
9 don't want to get into any of those other things, so
10 be careful.

11 Mr. Wilson, once again, I have to make one of
12 those decisions about whether to let you stay out or
13 whether to take you into custody.

14 Where is the child now?

15 MR. STUMBO: She has left, Your Honor, with her
16 aunt, which is her mother's sister, so she's no
17 longer here.

18 THE COURT: All right. Mr. Cornwell, is your
19 client on a restraining order that he has no contact
20 with the child?

21 MR. CORNWELL: That is correct, Your Honor,
22 with any of the children actually.

23 THE COURT: All right. Mr. Wilson, I'm going
24 to let you stay out. The lunch break's until two
25 o'clock, make absolutely certain you're back here by

1 no later than two o'clock, all right?

2 **DEFENDANT WILSON:** Yes, Your Honor.

3 **THE COURT:** Thank you very much.

4 Court's in recess until two o'clock.

5 (Whereupon, there was a luncheon recess.)

6 **THE COURT:** Y'all want her back on the stand?

7 **MR. STUMBO:** While the video's being played, I
8 don't know that she needs to be up there.

9 **THE COURT:** She's not going to comment on it?

10 **MR. STUMBO:** Not during the playing of it.

11 **THE COURT:** Okay. I'm sorry.

12 Defense ready?

13 **MR. CORNWELL:** Yes, sir.

14 **THE COURT:** Are y'all cued up and ready to go?

15 **MR. JOHNSON:** Yes, sir.

16 **THE COURT:** Bring the jury in.

17 (The jury returns to the courtroom.)

18 **THE COURT:** All right. Solicitor.

19 **MR. JOHNSON:** Thank you, Your Honor. At this
20 time, I'm going to publish State's Exhibit 1 to the
21 jury.

22 (Whereupon, State's Exhibit Number 1 was
23 played.)

24 (During the playing of State's Exhibit
25 Number 1, the following occurred.)

1 **THE COURT:** Mr. Johnson, can you pause it?

2 **MR. JOHNSON:** Yes, sir.

3 **THE COURT:** All right. Folks, we'll take a 15
4 minute break. We'll get you back out here. Don't
5 discuss the case.

6 (The jury retires to the jury room.)

7 **THE COURT:** All right. Court's in recess for
8 15 minutes.

9 (Brief Recess.)

10 **THE COURT:** State ready?

11 **MR. STUMBO:** State's ready, Your Honor.

12 **THE COURT:** Defense?

13 **MR. CORNWELL:** Yes, Your Honor.

14 **THE COURT:** Go ahead and bring the jury in,
15 please.

16 (The jury returns to the courtroom.)

17 **THE COURT:** Go ahead, Mr. Johnson.

18 **MR. JOHNSON:** Thank you, Your Honor.

19 (Whereupon, the playing of State's Exhibit
20 Number 1 was continued.)

21 (During the playing of State's Exhibit
22 Number 1, the following occurred.)

23 **THE COURT:** Mr. Johnson, pause it. Any idea
24 how long is left?

25 **MR. JOHNSON:** I'm guessing 30 to 40 minutes,

1 somewhere in that range.

2 **THE COURT:** We'll take a ten minute break,
3 folks, and then we'll get you back in to hear the
4 rest of it.

5 (The jury retires to the jury room.)

6 **THE COURT:** We're at ease for ten minutes.

7 (Brief Recess.)

8 **THE COURT:** Both sides ready?

9 **MR. STUMBO:** We are. Just one issue, Your
10 Honor, before we start back. It's been brought to
11 my attention, and I've observed it some, too. I
12 know the defendant's mother and the victim's
13 grandmother is sitting here watching the video, and
14 I don't mind that, that's fine, but I have observed
15 them making some facial expressions, nodding her
16 head, shaking her head. I'd just ask Your Honor to
17 ask her not to do that while the video's playing.

18 **THE COURT:** Nobody in the courtroom is supposed
19 to do anything to express any sort of agreement,
20 disagreement or anything with any witness, including
21 anything that's displayed by video.

22 **MR. STUMBO:** Thank you, Your Honor. The
23 State's ready.

24 **MR. CORNWELL:** Ready. Your Honor.

25 **THE COURT:** All right. Bring the jury in.

1 I'm not saying they did or they didn't, I'm
2 just saying -- all right, y'all, y'all let me take
3 care of this. I just expressed a general principle
4 that applies to everybody. I'm not calling anybody
5 out, just stay still and stay quiet. If y'all get
6 going back and forth with one another, I am going to
7 step in.

8 MR. CORNWELL: I think she was apologizing,
9 Your Honor.

10 THE COURT: I don't care what she's doing, I'm
11 just telling y'all.

12 (The jury returns to the courtroom.)

13 THE COURT: All right. Mr. Johnson.

14 MR. JOHNSON: Thank you, Your Honor.

15 (Whereupon, the playing of State's Exhibit
16 Number 1 was continued and completed.)

17 THE COURT: All right. Doctor, I need you back
18 up here, please. You're still under oath.

19 BY MR. JOHNSON:

20 Q Dr. Benedetto, I'm going to show you what's
21 been marked State's Exhibit 2, 3 and 4. I'm going
22 to ask you if you recognize these exhibits?

23 A Yes.

24 Q What are they?

25 A These are the anatomical drawings that I used

1 to have ^{victim} name body parts and show me places
2 where -- when she indicated something had happened,
3 those are the drawings she used to show. And this
4 is the flip chart paper that she was writing on and
5 that I was writing on during the interview.

6 Q Do they appear to be in the same condition as
7 they appeared on that day of your interview?

8 A Yes.

9 MR. JOHNSON: Your Honor, at this time, I move
10 State's Exhibit 2, 3 and 4 into evidence.

11 THE COURT: Objection?

12 MR. CORNWELL: Your Honor, I would object to
13 them being prejudicial, Your Honor. It would
14 prejudice my client to have them back there kind of
15 looking at those drawings and everything like that,
16 Your Honor. I'm not sure if that's -- if it
17 outweighs -- if the probative value outweighs its
18 prejudicial effect, Your Honor.

19 THE COURT: Your objection is under Rule 403
20 prejudicial value -- prejudicial effect exceeding
21 any probative value?

22 MR. CORNWELL: Yes, Your Honor.

23 THE COURT: All right. Your objection's
24 overruled.

25 Mark those in evidence, please, Madame Court

1 Reporter.

2 (State's Exhibit Numbers 2 through 4,
3 drawings, admitted into evidence.)

4 MR. JOHNSON: Thank you, Your Honor. At this
5 time, I'm going to publish this to the jury.

6 BY MR. JOHNSON:

7 Q Dr. Benedetto, I wanted to ask you to go back
8 to what you said before the video played. You
9 mentioned the RATAAC and the protocol you used to --
10 basically, the protocol you used to do these types
11 of interviews. What does RATAAC stand for?

12 A As I said, it's an acronym, R-A-T-A-C. The R
13 stands for a rapport building phase, it's the first
14 part of what we do with children to help ensure
15 their comfort in the room, to get a sense of their
16 competency and their ability to communicate. So we
17 talk with them. You heard that I asked her some
18 open-ended questions about her school and the
19 difference between home schooling just to get a
20 sense of her ability to have a conversation with
21 someone or if she's a child who just gives very
22 short answers. She was very easily engaged and had
23 very good vocabulary, was able to converse.

24 Q During that rapport building, talk about this
25 book you used. What was the purpose of that book?

1 **A** Yes. After I did some rapport building and
2 asked her about who was in her family and where
3 she's living and got the names of family members, I
4 used a truth/lie assessment book. You saw me using
5 a -- this little book that has questions that help
6 us determine whether a child understands the
7 difference between telling the truth and telling a
8 lie and then also whether or not they understand the
9 moral imperative that it's important to tell the
10 truth. So I asked her four questions to distinguish
11 whether she understood which one was telling the
12 truth and which one was telling a lie and then four
13 about which one would get in trouble to help
14 determine her ability to understand that part of it.
15 And she got all of those correct.

16 **Q** So, in your opinion, you're saying she knew the
17 difference and she was indicating to you she knew
18 the difference between truth and a lie?

19 **A** Yes. She demonstrated full competence. There
20 would only be a six percent chance that a child
21 could do that just by chance guessing at the
22 answers.

23 **Q** You just gave testimony about her ability to
24 engage and -- so was she assertive? What was her
25 mannerisms when she started talking to you?

1 **A** Once she got comfortable in the room, she was
2 talkative and friendly and was quite willing to
3 correct me. At one point, I started to write one of
4 her aunt's names Cassandra with a C and she
5 corrected me and said it was a K and also told me
6 that she didn't know how to spell the whole name,
7 but knew that it started with a K. So that's good
8 information with me. And then I reenforced it with
9 her that it's important that she tell me if I get
10 anything wrong today, that I wanted to be sure that
11 I get everything right.

12 **Q** Okay. I know the RATAC, A stands for what?

13 **A** That is the anatomy identification stage where
14 I brought out the drawings and we use those so that
15 I can establish a common language for body parts
16 with children. Children use all different names for
17 body parts and I want to make sure up front that I
18 know what they call different parts. She was able
19 to go through the drawings and name parts on both
20 the male and female. And she referred to the breast
21 as boobs, the vaginal area as private, buttocks as
22 bottom and penis as private.

23 **Q** State's Exhibit 2 and 3, are those the
24 anatomical drawings you're referring to in your
25 testimony?

1 A Yes.

2 Q Okay. What's the importance regarding the
3 children and naming body parts and getting that
4 clear?

5 A We do that early on in the interviews before
6 she had made any disclosure. I wanted to make sure
7 that I understand what names she's using for parts
8 and then I can use the drawings at a later point in
9 the interview if I need to clarify with her what
10 she's talking about.

11 Q All right. In RATAC, what does the T stand
12 for?

13 A That stands for touch inquiry. And at that
14 point, we ask children about a range of different
15 types of touches, positive touches and then moving
16 into more negative. So I started by asking her
17 about kisses and hugs and asked her to show me on
18 the picture where she gets kisses. And I do that so
19 that she -- this is a novel experience for children.
20 They've never come in and had an interview like this
21 as a general rule and so this experience of talking
22 to me and my asking her these kinds of questions is
23 new. And I wanted her to start getting trained up
24 in the process that when she says, I get kisses on
25 my cheek, I wanted her to show me on the picture

1 where that is and teach her that it's very important
2 that I know exactly what part she's talking about
3 when she's talking about body parts.

4 Q And when she gave you those answers, the use of
5 these exhibits, does that help, in your opinion,
6 create more reliable information from a child?

7 A Yes. I mean, the point of it is clarity. We
8 want to be very accurate and clear and make sure
9 that we're not guessing about anything or
10 interpreting something or putting words in a child's
11 mouth. So I asked her about positive touches, hugs,
12 kisses, tickles and then moving on to what would be
13 more negative touches like whether she gets hit or
14 spanked or anything of that sort. And she was able
15 to talk about that and again show on the picture
16 where that happens, again moving from showing me
17 positive touches to more negative touches. And then
18 finally moving into asking her about whether she
19 knows about parts on the body that people are not
20 supposed to touch on her.

21 Q And did she disclose to you whether or not she
22 had a touch that was a negative touch?

23 A Are you talking about earlier with being hit or
24 with --

25 Q Following the --

1 **A** Following that, yes. Yes. She did not want to
2 reveal very much about it. I want to make sure I
3 quote her accurately.

4 She showed on the picture where people are not
5 supposed to touch and said, everybody's not allowed
6 to touch the private, and pointed on the drawing to
7 parts on both the female and the male drawing that
8 people shouldn't touch. Asked if somebody had
9 touched her, she paused and nodded and said that she
10 didn't want to tell about it, she'd already told two
11 people, went on to talk about that that she had told
12 two people about it, that the touches had happened
13 more than one time. And asked who had touched her,
14 she said that she did not want to tell because she
15 would cry and that she had cried when she told other
16 people.

17 **Q** Did she say anything about anybody in
18 particular would have a reaction if she told?

19 **A** A little bit further along in the interview,
20 she did. I explained to her that I wanted to make
21 sure that I understood what she was saying and asked
22 her about why she was staying at her grandmother's
23 house and she said it was about the private's. And
24 I asked her what it was that she couldn't tell and
25 she pointed to the vaginal area and the buttocks on

1 the female drawing. And, again, I asked her who had
2 touched her and she did not want to say.

3 And I -- so I moved to instead of a more open
4 question like that, I just asked her whether it was
5 a grown up or a kid or somebody else. And she says,
6 a grown up. And then I asked her if it was somebody
7 that she knows or somebody she doesn't know. She
8 said somebody that she knows. And then I asked her,
9 Well what would happen if you tell about it? And
10 she said that daddy would be maddy. And then I
11 said, Well how come he would be mad? And she said,
12 because he is the person who touched.

13 Q All right. Now, the A in RATAC, the second A,
14 what does that stand for?

15 A That's the abuse scenario, so that would be the
16 longest segment of the interview that you saw where
17 once a child has made a disclosure to the question
18 of whether somebody has touched them, then we try to
19 elicit as many details as would be developmentally
20 appropriate for a child.

21 Q Okay. And during this whole process, did you
22 use nonleading or leading questions?

23 A Nonleading questions. The protocol is designed
24 to ask open-ended questions whenever possible. With
25 young children, you sometimes need to move beyond

1 just an open-ended question to perhaps a question
2 with selected responses like at your house or
3 somebody else's house or some place else, you know,
4 just to give them some choices and then sometimes a
5 yes or no question, but we avoid leading questions,
6 of course, at all cost.

7 Q Talk to me about delayed disclosure, what's
8 that?

9 A That refers to the fact that children very
10 often will not tell immediately when something has
11 happened to them in the way of sexual abuse. Most
12 children are hesitant to tell, some will delay just
13 a short while, some will delay for days, weeks,
14 months, years. What we know from research with
15 adult survivors is that most of them did not tell
16 during childhood, so it's not unusual for a child
17 not to tell immediately. And there are lots of
18 reasons children don't tell.

19 Q Talk to me about finding words, what is that?

20 A Finding words is the name of the training that
21 we teach at the ARC. It's called Finding Words
22 South Carolina. And it's a program that's been
23 replicated in a number of states around the country
24 now in order to teach child abuse professionals
25 interviewing techniques that are developmentally

1 appropriate and legally defensible when interviewing
2 children about abuse. And we use the protocol to
3 interview about all sorts of abuse not just sexual
4 abuse, physical abuse, neglect, witness to violence,
5 any kind of scenario.

6 Q When you use this type of questioning, did you
7 feel that the testimony was consistent or the
8 questions, everything was consistent with ^{verification} ?

9 A Yes. Children will often tell a little bit at
10 a time. What we say about it in the field is that
11 disclosure is a process rather than an advantage.
12 It doesn't just all come out at once. Children will
13 tell a little bit and test the waters to see how are
14 people reacting to this information and what's going
15 to change my world and what are going to be the
16 ramifications for me. So they'll often tell just a
17 little bit to start with and then go on to disclose
18 some more, which was the pattern in this interview.

19 Q Okay. Talk to me about specific details or
20 sensory details or different details from this
21 interview that made an impression on you?

22 A Well, one of the things, lots of things, but
23 one of the things that we look for are what we call
24 idiosyncratic details that a child discloses, things
25 in a child's own language that speak to an

1 experiential component rather than something that
2 somebody has told them about or they've just seen,
3 details that have that ring of truth that a child
4 was actually there and experienced it as opposed to
5 learned it through some other means, because, as we
6 know, there are other ways that children can learn
7 about things and we want to be very clear when we're
8 trying to discern what's happened whether that's
9 been the case or not.

10 Q How compelling is it when a child uses
11 nonverbal tools to communicate with you and answer
12 questions?

13 A It's another way that children can communicate.
14 Sometimes children don't have the language and
15 sometimes it's just too hard for them to put into
16 words. You may recall that earlier in the interview
17 ^{vs. LHM} I said -- I asked her to tell about one time
18 that she could remember and she said, I'm thinking
19 about some things, I can't get it out. And it was
20 hard for her to put things into words. And for her,
21 she would just kind of shrug her shoulders and kind
22 of give a response like that when she couldn't
23 verbalize it.

24 When I offered her the option of writing
25 something down, that seemed like something that she

1 could do. And she was very clear and helpful to me
2 in labelling and being really accurate about what
3 she was doing. And I checked in with her frequently
4 to make sure that I had the right impression of what
5 she was saying.

6 Q All right. What is your opinion regarding the
7 use of the dolls and the fact that she gave you
8 additional information later on in the interview
9 using the dolls?

10 A Again, I think it speaks to the fact that she
11 had a difficult time verbalizing some of what took
12 place and had a difficult time feeling, perhaps
13 trusting that it was all right to disclose all of
14 it. She started out very gradually and told more as
15 the interview progressed. The dolls were a tool
16 that helped her explain things that would have been
17 very difficult for a seven year old to put into
18 words in terms of body positioning and body parts.
19 It would be a very overwhelming task for a seven
20 year old to put all of that in words.

21 What I did make sure was that she had already
22 made a disclosure that something had happened before
23 I brought out the dolls and clarified with her that
24 I wanted her to show me things that had happened.

25 Q Okay. Did you consider during this interview,

1 did you watch out for signs of coaching or other
2 possible motives for this child to say these things?

3 A Certainly. One of my jobs, very important part
4 of my job is to look for what we call alternative
5 hypotheses. I want to make sure that if there's
6 another explanation for something, an additional
7 explanation, that we're exploring it, or even an
8 additional perpetrator in the picture, we want to
9 make sure that we're exploring that and make sure
10 that we're crystal clear about what the child is
11 trying to communicate and not missing something.

12 Q What is a fantastical detail or language?

13 A Fantastical or implausible details refer to
14 things that children might say that don't sound as
15 if they could have happened, you know, Spider Man
16 came in my bedroom last night and took my clothes
17 off, you know, something that we would have to ask
18 questions about because that's not likely to have
19 happened, that sort of thing.

20 Q Did you get any of those from ^{victim} --?

21 A No. ^{victim} was not fantastical or implausible,
22 she was quite clear.

23 Q When she gave you this -- gave you these
24 answers, what was your finding ultimately regarding
25 this disclosure?

1 **A** I found it to be a compelling interview. In
2 our interviews, we can rate them as either being
3 compelling for some sort of abuse, so, in other
4 words, compelling for sexual abuse and/or physical
5 abuse and/or neglect or compelling for no abuse, the
6 finding can be that the interview was compelling
7 that there was not abuse. Alternatively, it can be
8 problematic for any of those forms of abuse. So, in
9 other words, the child may have made concerning
10 statements or there may be some question and I have
11 some concerns about some area, but I'm not willing
12 to call it compelling at that point and that can be
13 for lots of different reasons. It can be based on
14 the child's age, information that the child gives
15 that perhaps sounds implausible that I think needs
16 to get checked out by some other agency, law
17 enforcement or DSS, for example.

18 **Q** So you said this was a compelling disclosure
19 for sexual abuse. How often does that happen?

20 **A** At the ARC, our percentages, and we have kind
21 of figured this out, less than a third of the
22 interviews are actually ruled compelling for abuse.
23 So two thirds are ruled either problematic or
24 compelling for no abuse.

25 **Q** During your career, have you testified for the

1 defense?

2 A Yes, at times.

3 Q Dr. Benedetto, I just wanted to wrap this up
4 and be clear. Did the child convey any other sexual
5 abuse besides touching?

6 A Yes.

7 Q And, specifically, what type of abuse?

8 A She indicated penile penetration of her vagina.
9 She indicated that her father performed oral sex on
10 her and she on him. She indicated that he licked
11 her chest area. She indicated that he had her
12 masturbate him to ejaculation and that she witnessed
13 him masturbating himself as well.

14 Q All right. Just a few more questions. The
15 behavior with the relatives, the minor children, the
16 other children, Veronica and all them, what is the
17 term sexualized behavior and how does it relate to
18 that?

19 A We would call that sexually reactive behavior.
20 Sometimes when children have been exposed to sexual
21 abuse, they may reenact some of the things that have
22 happened to them. It's not an uncommon phenomenon.
23 Children will imitate, particularly children at this
24 young age bracket, will imitate behavior that has
25 been done to them. So if you take a child, for

1 example, to a physician and they get shots, they'll
2 come home and want to give everybody shots because
3 that's something that's happened to them and they
4 want to reenact that behavior. Part of it is that
5 they're curious about it. In this case, part of it
6 was that it was stimulating and interesting to her
7 and also I think that it was a reenactment of the
8 trauma that she experienced.

9 Q All right. And is it common for a child in
10 this situation to disclose even more information
11 after they talk to you over the years as time goes
12 by?

13 A Yes. As I said, it's a process. And even
14 though this was a very lengthy interview, I would
15 not, you know, rule out the possibility that she
16 would disclose more at a later date.

17 MR. JOHNSON: No more questions, Your Honor.

18 THE COURT: Do you want to question the witness
19 today or in the morning?

20 MR. CORNWELL: Your Honor, we can wait till the
21 morning if it please the Court.

22 THE COURT: All right. Can you be back
23 tomorrow?

24 THE WITNESS: I can do that.

25 THE COURT: Ladies and gentlemen, we'll recess

1 for the day. I need you back in the jury room,
2 you'll probably be in the first jury room, tomorrow
3 at 9:30, 9:30 in the morning. Remember all of those
4 admonitions about not discussing the case and all of
5 those other things I told you. I hope you have a
6 pleasant evening. Thank you.

7 (The jury was excused for the day.)

8 **THE COURT:** Doctor, I know you know the drill,
9 but I have to say this for the record. Don't
10 discuss your testimony with anybody during the
11 recess.

12 **THE WITNESS:** I understand.

13 **THE COURT:** You may step down.

14 All right. I've cautioned you all a couple of
15 times about being mindful that the jury is in the
16 same common area. I got one report at the lunch
17 break, didn't deal with contact with a juror, but
18 about people involved in the case standing in an
19 area where the jury has to walk through. Don't do
20 that, please. We've got enough things to deal with,
21 enough issues to wrestle with and enough anxiety to
22 go around without having to worry about whether
23 there's some sort of misperception in that. So
24 whenever you all take a break, don't congregate over
25 here on this side where the jurors have to walk in.

1 and out.

2 It's nothing that I deem necessary to do an
3 inquiry about. It was not any report of any contact
4 or any discussion with a juror.

5 Mr. Wilson, I'm going to let you remain out
6 again tonight. Don't have any contact with the
7 child or with anybody.

8 And nobody is to be discussing anything about
9 this case with the child.

10 Make sure you're back here in the morning no
11 later than 9:30, all right?

12 **DEFENDANT WILSON:** Yes, Your Honor.

13 **THE COURT:** Okay. Y'all may want to hang
14 around a few more minutes before you leave, make
15 sure the jury has cleared out. 9:30 in the morning.
16 Thank you.

17 (Whereupon, the proceedings were concluded
18 for July 30, 2008.)

19 (The following proceedings were held on July
20 31, 2008.)

21 **THE COURT:** Is the State ready?

22 **MR. STUMBO:** State's ready, Your Honor.

23 **THE COURT:** Defense?

24 **MR. CORNWELL:** Yes, Your Honor.

25 **THE COURT:** You can bring in the jury.

1 (The jury enters the courtroom at 9:30 a.m.)

2 **THE COURT:** All right. Dr. Benedetto, I need
3 you back on the stand please. You're still under
4 oath.

5 Cross-examination?

6 **MR. CORNWELL:** Thank you, Your Honor.

7 **CROSS-EXAMINATION**

8 **BY MR. CORNWELL:**

9 **Q** Good morning, Dr. Benedetto.

10 **A** Good morning.

11 **Q** Now, just for my purposes, it's Beneditto or
12 Benedetto?

13 **A** Benedetto.

14 **Q** Okay. I didn't want to butcher that the rest
15 of this cross-examination.

16 **THE COURT:** Speak up a little bit for me,
17 please.

18 **BY MR. CORNWELL:**

19 **Q** Dr. Benedetto, reviewing the video, you did the
20 interview with ^{VR2tm} Do you think she was being
21 truthful the entire video?

22 **A** Truth wouldn't be a matter for me to decide. I
23 found her disclosure to be compelling. I believe
24 that she did the best she could to tell me what she
25 recalled accurately.

1 **Q** All right. And I noticed, and I'm assuming
2 this is part of the RATAC protocol, that you didn't
3 discourage her from sharing with you at any point.
4 You didn't kind of -- when she started talking, you
5 didn't interrupt, you kept that to a minimum. Is
6 that part of the protocol?

7 **A** Certainly. When children start to give a
8 narrative, you don't want to interrupt them because
9 that can cause them to forget where they are and
10 it's our job to remember what they say and then go
11 back and ask about particular issues that I might
12 have questions about.

13 **Q** And I noticed during these alleged disclosures
14 that, you know, you did, in fact, keep any kind of
15 interruptions to a minimum. Is it your practice not
16 to question the disclosure, just to accept them as
17 they come? That's how you're supposed to do it
18 or --

19 **A** No. My practice is to listen to what a child
20 says. And if she's talking, not interrupt her, let
21 her get out her thought and then ask questions to
22 help clarify what it is that I just heard to make
23 sure that I've got the right idea about it.

24 **Q** Now, at any point -- or is it pretty much
25 common practice, you know, to not discourage

1 disclosures, that you don't say anything that would
2 suggest to the child that you don't believe her?

3 A It's true that I would not tell a child that I
4 don't believe her within the interview. I ask
5 questions to try and clarify what it is the child is
6 trying to say, but I would not, within an interview,
7 tell a child that I don't believe her. That doesn't
8 mean that I don't have questions about it and I
9 might end up ruling that the interview is
10 problematic because indeed I do have questions about
11 the veracity of what the child is saying, but I
12 would not say that in the interview.

13 Q You would probably ask her something like, now
14 is that something that happened?

15 A Correct.

16 Q And as you can imagine, I watched this video
17 several times and so did the Solicitor's office and
18 I'm not sure how many times you viewed it, but
19 during the course of that interview, I noticed that
20 you didn't really use that kind of phrasing or use
21 that technique a lot during that interview as far as
22 is that something that really happened or anything
23 like that, is that because you found her disclosure
24 compelling?

25 A I actually -- I'm not sure what you would call

1 often, but I actually said that quite a number of
2 times to her when she made disclosures, particularly
3 when, with the dolls, she started demonstrating
4 things that she had not previously verbalized. I
5 wanted to be crystal clear that it was not something
6 that she had merely witnessed, that it was something
7 that she had experienced.

8 Q Now, is that because you may have had some
9 doubts about that?

10 A It's my job to be, skeptical might not be the
11 right word, it's my job to be very cautious and to
12 be sure that just because a child demonstrates a
13 behavior, that I'm not assuming that I know where
14 she learned that behavior.

15 Q And you found that disclosure compelling also,
16 the disclosure with the dolls?

17 A Yes, I did.

18 Q Even though you, I noticed during that part,
19 you did use the, Is that something that happened?

20 A I wanted to be very clear. She had -- I had
21 just asked her what parts -- what parts of her body
22 that her father had touched her with and she pointed
23 to the hand and the penis on the drawings. And in
24 my mind, I realized that she had earlier talked
25 about touching his penis and I wanted to be very

1 clear that we weren't misunderstanding. So I
2 brought out the dolls and that's at the point of
3 which she had demonstrated vaginal penetration and I
4 wanted to be clear with her that that was something
5 that had actually happened to her as opposed to some
6 other explanation.

7 Q Now, by the time she'd talked to you, she had
8 already talked to about two or three different
9 people at that point?

10 A Yes.

11 Q And she had not disclosed any allegations of
12 penetration or anything before that point?

13 A I believe that's correct.

14 Q All right. Kind of backtrack in the interview
15 towards the beginning, you talked about it a little
16 yesterday with Mr. Johnson about the truth/lie, you
17 know, you go through this whole procedure to make
18 sure she understands the truth and a lie. And she
19 kind of passed that with flying colors, right?

20 A Yes, she did.

21 Q Now, Doctor, and, you know, correct me if I'm
22 wrong, but just because she knows the difference
23 between a truth and a lie, doesn't guarantee she's
24 telling the truth to you; is that correct?

25 A That is correct. The truth/lie book basically

1 gives us an opportunity to understand whether the
2 child knows the difference and understands the moral
3 imperative and we follow it up with that sentence
4 telling them that, in this room, we only talk about
5 things that are real and true. It does not mean,
6 though, that children sometimes still feel that they
7 cannot for some reason disclose within the room or
8 tell because they may have -- they may understand
9 the truth, but it may be too risky for them to make
10 a disclosure.

11 Q Now, the way you just said that, it sounds like
12 that if they don't disclose, they're lying, but if
13 they do disclose, it's true?

14 A No. No, certainly not, no. If they don't --
15 if they pass the truth/lie assessment, it does not
16 mean that they will not later, for whatever reason,
17 not tell the truth about something and usually those
18 have to do with the dynamics of the situation, the
19 relationship they may have with the alleged
20 perpetrator, the response of the family to the
21 disclosure, lots of reasons that a child may tell
22 the truth or not tell the truth, whether it's tell
23 the truth that it happened or tell the truth that it
24 didn't happen.

25 Q Now, Dr. Benedetto, kind of staying on the same

1 subject matter, it's not -- and you may have said
2 this earlier, you don't really make a judgment call
3 as to whether it was true or not, do you?

4 A Right. It's not my job to judge the
5 credibility of it, but to rate it as either
6 compelling or problematic.

7 Q And a compelling disclosure is not necessarily
8 a statement to the credibility of the disclosure or
9 the credibility of the person making the disclosure?

10 A That's correct.

11 Q Thank you.

12 MR. CORNWELL: Beg the Court's indulgence.

13 THE COURT: Yes, sir.

14 (Pause.)

15 BY MR. CORNWELL:

16 Q Dr. Benedetto, as part of finding a disclosure
17 compelling, part of that analysis is if that
18 disclosure has internal coherence; am I correct in
19 saying that?

20 A Yes.

21 Q And what are the elements of internal
22 coherence? Could you kind of explain that?

23 A Certainly. I look for core consistency in what
24 the child is disclosing. So if the child is -- and
25 that doesn't mean that from the beginning of the

1 interview, they are saying the same exact thing as
2 they are at the end because most children start out,
3 as I said yesterday, tentatively disclosing a little
4 bit to a perfect stranger who's asking them very
5 personal questions, so that's not what I mean by
6 consistency.

7 What I look for is, are we talking about the
8 same individual and is there an element that ties it
9 together that has that ring of truth throughout the
10 interview; does the child use developmentally
11 appropriate language; what factors do I hear within
12 the interview or know about that might suggest to me
13 that there are significant alternative hypotheses,
14 for example, is it a custody situation that I need
15 to be concerned about someone influencing the child,
16 that doesn't mean that it did or didn't happen, but
17 it's something that I need to explore; elements of
18 that sort; the language; the consistency of the
19 disclosure and exploring alternative hypotheses.

20 And if they are there, making a determination as to
21 whether the data support those hypotheses. If they
22 do, then I would call it problematic. So, in this
23 case, I had several alternatives that I looked at.

24 Q Now, in listening to what you just said, it
25 seems like that a disclosure can -- a child can

1 disclose and contradict themselves in the
2 disclosure, but still be found compelling?

3 A Possibly, yes, it depends on the specific
4 instance. So, for example, if a child starts out
5 tentatively saying something and then through
6 appropriate questioning, goes on to disclose more,
7 that would not cause me to feel that it was not
8 consistent. If, on the other hand, I -- for
9 example, sometimes we're asked to view videos from
10 other interviewers and take a look at them. And if
11 I saw an interview where a child said something, but
12 then through the process of questioning, I felt that
13 words were put into her mouth or the right question
14 wasn't asked to make sure about something, then I
15 would have a question as to why the change in the
16 disclosure.

17 Q Now, before you talk to a child, you already
18 have been kind of briefed on the situation, you know
19 the nature of what you're trying -- the information
20 you're trying to get from her?

21 A Yes. It varies from case to case as to what I
22 know. It's not a matter of my trying to get
23 anything from her. I just know that there's an open
24 investigation, somebody has a concern that's risen
25 to the level where either law enforcement and/or DSS

1 are involved in the case and have asked that a
2 forensic evaluation be conducted to help determine
3 from the child's standpoint whether something
4 happened.

5 Q And I may have phrased that wrong. I guess,
6 the proper thing would be to say, do you have an
7 idea that the information that the child has
8 disclosed before, and that's the information that
9 you're trying to, you know, obtain from her, to see
10 if she's going to disclose to you or --

11 A Well, I have an idea, but I know from
12 experience that information that may be on an
13 intake, information that a child may have disclosed
14 to someone else -- I'm not going in there to try and
15 confirm what's on my piece of paper in other words.
16 I'm going in there and asking open-ended questions
17 in a way that would elicit whether anything has
18 happened to this child.

19 Q Now, if a child says, no, something didn't
20 happen, if you ask a question, a direct question
21 about an incident and she says no, do you still
22 pursue that line of questioning?

23 A It depends. Children are very concrete, so
24 sometimes if you ask a question in one way, they'll
25 give you one response and then if you ask it in a

1 different way, they may understand it differently.
2 So, for example, if you say to a child, did you have
3 clothes on, they might say no, but they might say
4 yes to pajamas. So we'll try to phrase it -- we'll
5 try to ask them about different ways of asking about
6 something because they might not understand it in
7 the first way that you ask. So we won't generally
8 ask the exact same question about the exact same
9 issue, but we'll try to ask questions that allow the
10 child to tap their memory and think about it in
11 different ways.

12 Q I noticed in the video that victim said I don't
13 know a lot -- I mean, a great deal to -- as an
14 answer to a great deal of your questions. Even
15 after she began to expose -- disclose some things
16 when you asked certain details, she kept saying, I
17 don't know, I don't know. Is that common?

18 A Yes. I believe that she was, as I said,
19 testing the waters to see what would happen. She'd
20 already made some disclosure and I think that she
21 was hesitant. Later on in the interview, she talked
22 about feeling a little bit shaky having told all of
23 this for the first time to someone, and so it did
24 not surprise me that she said I don't know. She
25 also sometimes would just shrug and some of the

1 questions she may not have been quite sure what the
2 answer was.

3 Q And just to kind of clarify what I'm asking, a
4 lot of the questions that she said I don't know to,
5 she never gave an explanation for; isn't that
6 correct? She just, I don't know was her final
7 answer.

8 A You'd have to give me an example, but there may
9 have been some -- right, children don't necessarily
10 know, you know, what they're coming into this
11 interview and going to be asked about and different
12 elements might be salient to different children at
13 different times. This is a chronic situation, so
14 it's very possible that there were parts that she
15 just did not know the answer to.

16 Q Now, a key component of the RATAC protocol and
17 how you guys conduct forensic interviews is the use
18 of nonleading questions; is that correct?

19 A That's correct.

20 Q I'd just kind of like to discuss that a little
21 bit. There was a point in the interview where you
22 asked ^{5:24m} if she'd ever touched his private area
23 and she pointed towards the pants, isn't that
24 correct, the private area on the pants?

25 A That sounds correct. You'd have to show me

1 exactly where that was, but that sounds accurate.

2 Q There's also, as a follow-up question to that,
3 you asked her if she touched the clothes or the
4 actual skin?

5 A Yes.

6 Q Her answer to that was she doesn't know if it
7 was on the clothes and the skin, and that was about
8 56 minutes into the interview; do you recall that?

9 A Yes.

10 Q Now, she didn't give an answer, you know, an I
11 don't know, you know, a clarification of what she
12 meant by I don't know, but 57:17 into the interview
13 you made the statement, So he made you touch his
14 private, tell me what he made you do to it. She
15 hadn't yet said that she touched his private?

16 A Well, she had pointed to the private and
17 whether -- so the question was what part did he make
18 you touch and she pointed to the private. Whether
19 it was on clothes or not, sometimes children will
20 say he made me rub his pants.

21 Q Now, you don't consider that giving her a cue
22 or a form of a leading question when you suggested
23 that she touched his private?

24 A She had already said that.

25 Q She said he touched his private area and she

1 said --

2 MR. JOHNSON: Objection, Your Honor. He's not
3 allowing the witness to answer the question.

4 THE COURT: I'm sorry?

5 MR. JOHNSON: He's not allowing the witness to
6 answer the question. He cut her off. She was
7 answering the question.

8 THE COURT: Had you finished your answer,
9 ma'am?

10 THE WITNESS: I can continue explaining. When
11 I asked her where she touched and she pointed on the
12 drawing to that area, that's what she called
13 private. So I was using the same language she used.
14 She didn't use private area.

15 BY MR. CORNWELL:

16 Q But didn't she answer, I don't know, when you
17 asked her if she touched the skin or the pants?

18 A Yes.

19 Q And your follow-up question suggested that she
20 touched the skin?

21 A I didn't -- no, I didn't view it that way
22 because she had told me she didn't know, but the
23 private was where she touched and the private was
24 what I referred to. At that point, I didn't know
25 whether she had touched on clothes or skin, that

1 wasn't clear to me.

2 Q Now, when you showed her the chart, she pointed
3 to the private, what did she call the -- she called
4 the male anatomy, the actual part of the male
5 anatomy, the private, right?

6 A Yes.

7 Q So in her mind that's what she considered the
8 private?

9 A Right. The drawing doesn't have clothes on it.

10 Q Exactly. So when you asked her if she touched
11 the skin or the pants and she said, I don't know,
12 didn't that signal any -- did that set off any alarm
13 bells to you or...

14 A It set off questions. I wanted to establish
15 what she had done to that part of the body, whether
16 it was -- it could turn out that it was some sort of
17 nonabuse related touch that was a possibility so
18 that's why I asked the follow-up questions.

19 Q Is that why you followed up with the somewhat
20 leading statement, So he made you touch his private,
21 tell me what you did to it? And the reason I say
22 that's leading is because it suggests that she did
23 something to it --

24 MR. JOHNSON: Objection, Your Honor. Mr.
25 Cornwell is testifying.

1 **THE COURT:** Ask a question, don't make a
2 statement.

3 **MR. CORNWELL:** I was just explaining why I was
4 asking her the question.

5 **THE COURT:** That's the part that's
6 objectionable. You have to ask a question, not make
7 a statement.

8 **MR. CORNWELL:** Yes, Your Honor, sorry. I
9 apologize.

10 BY MR. CORNWELL:

11 **Q** But you kind of suggested that she did
12 something --

13 **MR. JOHNSON:** Objection, Your Honor. He's
14 testifying still.

15 **THE COURT:** He hadn't finished -- he can say
16 something like that and then put a question mark on
17 the end and make it okay. Go ahead.

18 BY MR. CORNWELL:

19 **Q** You suggested in your question that she did
20 something to the private; isn't that correct?

21 **A** She had already said that she did something.
22 What I wanted to know was what was it and did it
23 constitute some sort of abuse. And I use the
24 language made -- made her touch because children
25 often feel in some way responsible, culpable for

1 what happened and we want it clear within the
2 interview that I am not holding her responsible for
3 what happened. So I use -- I did not want it to
4 sound as though she voluntarily did that.

5 Q Now, isn't it true when you asked her that
6 question originally, she says she thinks she touched
7 the private area; do you recall that?

8 A Yes. That's the kind of language that children
9 use when they're making a tentative disclosure, I
10 think it might have happened, I'm not sure, I think
11 maybe he made me do that.

12 Q There's also a point in the interview, and
13 maybe you can explain this better than me, but at
14 about an hour into the interview, you asked her
15 about this alleged pinky promise when she said she
16 wouldn't do that stuff. The victim says -- you
17 asked her, Did he tell you why he kept doing it, and
18 she responds, He didn't tell me he kept doing it,
19 she said, She found out he was still doing it
20 because she saw the T.V. show. What is she talking
21 about? That was totally confusing to me, maybe you
22 can --

23 A Sure. Let me find the section where she talks
24 about that. My understanding of that was that she
25 had made a pinky promise with him and then walked

1 into the room and that he was still -- that was the
2 time when she was talking about him jumping on the
3 pillow and that there was pornography on the
4 television.

5 Q So that pinky promise had nothing to do with
6 him touching her?

7 A No, that was not my understanding of what she
8 said, but the fact that he was continuing to do
9 something that she had -- that had been part of the
10 abuse prior to that constituted for her that he had
11 broken the promise. She said that at that
12 particular time, he did not do something to her, he
13 was doing it to the pillow, but then went on to
14 disclose some other instances.

15 Q So the behavior that you think she's reporting
16 at that time was, and this is based totally on her
17 kind of description of what happened, is that she
18 kind of walked in on him doing something?

19 A That was -- at that point in the interview,
20 that is what she said, that she did the pinky
21 promise and that she found out that he was still
22 doing it when she saw him watching the T.V. shows.
23 And she talked about several times walking in when
24 she would be doing her homework and that -- that
25 that was how she knew that he had not kept that

1 promise.

2 Q Now, there was a story she tells about running
3 from daddy with the keys in her hand and locking all
4 the doors.

5 A Yes.

6 Q Did you find that story compelling, also?

7 A Yes. That is -- well, there are two
8 possibilities. One, that I considered, and probably
9 the more likely, is that that's what's known as an
10 empowerment strategy when a child wants to take
11 control over a situation that they really have no
12 control over and they will sometimes, particularly
13 when they're being questioned about it, want to
14 appear more powerful and more capable and able to
15 protect themselves than perhaps they were. So she
16 talked about grabbing the keys and running in the
17 bathroom and locking the door because he wanted to
18 pull her pants down. That was the more likely
19 hypothesis in my mind. The other possibility was
20 that perhaps on an occasion she actually did. I
21 followed it up, she said, at that time, he did not
22 get her pants down.

23 And what we do to kind of make sure that we're
24 getting the whole picture then is ask children, well
25 you told me at that time nothing happened, were

1 there any times when something -- when it did
2 happen? And she went on to say, yes, that there
3 were times.

4 Q So would it be a fair summary of what you just
5 said to say -- would this be a fair summary of what
6 you just said, basically to make herself feel more
7 powerful, she made some stuff up?

8 A I don't think that I would put it that way. I
9 would say that at that moment, asked that question,
10 she, hypothesis one, wanted to let me know that she
11 did some things to try and protect herself and keep
12 that from happening. Whether or not that happened,
13 I can't be sure.

14 Q I'm sorry. I may not have finessed it the way
15 it should have been finessed, Doctor. But are there
16 other reasons people -- kids make stuff up during
17 the interviews?

18 A Certainly, yes.

19 Q And would one of those reasons they may
20 continue to say, if the allegation was false, stick
21 to their story, be fear of a punishment from telling
22 a fib?

23 A That may be true in some -- it's kind of a
24 hypothetical that that certainly is a possibility.
25 I don't believe that the data in this case support

1 that hypothesis.

2 Q And ^{Victim} was well aware of the consequences
3 or rewards with truth and lie; isn't that the case?

4 A Yes.

5 Q And --

6 MR. CORNWELL: Beg the Court's indulgence.

7 THE COURT: Yes, sir.

8 (Pause.)

9 BY MR. CORNWELL:

10 Q I'd like to kind of fast forward towards the
11 end of the video when we were talking about, you
12 know, when the dolls came out. There was a point
13 when she started, she goes into this story about her
14 and her aunt and her brother were outside playing
15 naked and the brother just approaches the aunt and
16 started some sexualized behavior on the aunt. Did
17 you find that compelling?

18 A Well, that actually was corroborated elsewhere,
19 so we know that there was some sort of a sexual play
20 incident. And I found the fact that she was willing
21 to tell me about that incident actually lended
22 credence in my mind because she was talking about
23 something with peers that she probably could get in
24 trouble for and she was willing to tell me about
25 that. So I --

1 Q Were you aware that her brother A.J. was about
2 three at this time?

3 A Yeah. He was four, I believe. I believe he
4 was four years at the time that the interview took
5 place. I don't know how old he was when that
6 incident took place.

7 Q And she says A.J. came up to Veronica and she
8 demonstrated with the dolls where he just basically
9 came up to her and started, you know, sexualized
10 behavior, he got on top of her and inserted his
11 penis. And she said she doesn't know where A.J.
12 learned this from, he just did it. Do you find that
13 compelling?

14 A I find it concerning since it was corroborated
15 that there was sexual play, sexual activity between
16 all of those children. And one of my concerns was
17 for those other children and that there may have
18 been -- they may have either witnessed or been
19 victims of something themselves. And ^{Victim} had
20 said that she had told about it and talked about it.

21 Also, let me just explain, children who have
22 been exposed to sexual material to the extent that
23 ^{Victim} had disclosed sometimes will -- so the fact
24 that she described him inserting his penis, he's
25 three years old, is that likely to have happened?

1 No. But is it possible that he was undressed and
2 doing some sort of sexual activity or something that
3 she interpreted that way? Yes.

4 Q So because of her prior exposure to either
5 pornography or sexualized behaviors, she may add
6 some details that aren't necessarily true like with
7 A.J. inserting his penis?

8 A She may interpret what he was doing in a more
9 adult way than obviously we know a three or
10 four-year-old child could or that a seven-year-old
11 child typically would be aware of.

12 Q Now, you are aware there are prior incidents of
13 abuse before these alleged incidents with her
14 father?

15 A Tell me specifically what you're referring to,
16 with the aunts?

17 Q Not with the aunts, but the incident that
18 occurred with her at the kindergarten. And there
19 was a prior incident with the aunts, also, but I'm
20 specifically referring to the incident with the
21 classmate in kindergarten?

22 A I was aware that there was an incident at a
23 sleep over of some sort, yes.

24 Q And you are aware that that involved an older
25 child and that ^{victim} was a victim in that case,

1 also?

2 A I don't have the full details, but Ms. Wilson
3 did let me know that there was an incident to that
4 effect.

5 Q Now, were you also aware that there was a
6 prior -- an incident prior to these alleged
7 incidents with the father involving the aunts, also?

8 A I'm sorry, can you --

9 Q There was an incident with the aunts prior to
10 these alleged incidents with the father, also. Were
11 you aware of that?

12 A With the father?

13 Q No.

14 A I'm sorry. I believe that's what you said.

15 Q No. There was an incident with her aunts.

16 A Yes.

17 Q Prior --

18 MR. JOHNSON: Objection. I believe he's
19 calling for hearsay --

20 MR. CORNWELL: Prior to the incidents.

21 THE COURT: Hold on just a second.

22 Yes.

23 MR. JOHNSON: I believe he's getting into
24 hearsay, Your Honor.

25 MR. CORNWELL: Your Honor, I'm just asking her

1 was she aware of that, and as part of her
2 investigation, that would have come out.

3 **THE COURT:** It is something that an expert
4 would typically run upon in formulating opinions.
5 The fact that it is hearsay does not prevent the
6 expert from being asked about it. If she's not an
7 expert witness, you've got an issue, but you don't
8 with an expert. Go ahead.

9 **BY MR. CORNWELL:**

10 **Q** Were you ware of the events with her aunts that
11 occurred prior to the alleged events with her
12 father?

13 **A** Yes, the incidents that I've been talking
14 about, the sexual play incidents, is that what
15 you're referring to?

16 **Q** Yes.

17 **A** Yes.

18 **Q** Now, one of those that we know about occurred
19 prior to her allegations against daddy; are you
20 aware of that?

21 **A** Yes. I was under the impression that they had
22 all occurred prior to the time that I saw her.

23 **Q** All right. What I meant was prior in time to
24 her allegations against father?

25 **A** That they had taken place before, that's

1 unclear to me. The time frame of when, I don't
2 know.

3 Q And that's fine if you don't.

4 A *V. Z. Mr.* told me that it happened when she was
5 six and seven and wasn't sure about -- she kind of
6 shrugged her shoulders when I asked about before
7 that, and I have no way of dating the incident with
8 the aunts.

9 Q Now, it's possible that her sexualized behavior
10 could have come from this prior abuse; isn't that
11 possible, Doctor?

12 A It is possible that there may have been an
13 incident and that she may have learned something
14 from it. It is not -- the data do not fit the
15 hypothesis that everything that she disclosed to me
16 was something that happened at the sleep over or
17 with her peer aged aunts.

18 Q But, and this is what I'm trying to get at, the
19 source of her sexualized behavior stems from sexual
20 abuse; isn't that correct?

21 A Well, that was the question to me at the time.

22 Q Is that what your opinion is?

23 A That -- my opinion was that what she disclosed
24 to me was compelling and consistent with a child
25 that was sexually abused.

1 Q Okay. Fair enough.

2 MR. CORNWELL: No further questions.

3 THE COURT: Redirect?

4 MR. JOHNSON: Thank you, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. JOHNSON:

7 Q Dr. Benedetto, did this child in any interview
8 that you're aware of or your interview indicate that
9 any adult had ever touched her in any inappropriate
10 way other than her father?

11 A No. And I was -- that was one of my hypotheses
12 is, was there someone else. There were a number of
13 other adults in the home, particularly a number of
14 -- or not in the home, but in the picture and a
15 number of other adult males in particular and I
16 wanted to be very clear. So not only did I ask her
17 if somebody else had ever touched her, but I went so
18 far as to go through everybody's name on there to be
19 very clear, even people like grandma and grandpa and
20 everybody just to make sure that she had an
21 opportune -- and she was very clear about the
22 people -- consistent about the people that had been
23 involved in any sort of sexual touching with her and
24 clear about her knowledge of the fact that her
25 father had only done that to her is what she said.

1 Q And out of all this nonverbal disclosure, did
2 she indicate that anybody else showed her
3 pornographic movies with S-E-X in it?

4 A No.

5 Q Did she indicate to your knowledge, from your
6 knowledge, in any interview, in your interview on
7 these two anatomical charts on this sheet in any way
8 that any other adult had touched her over the
9 clothes or under the clothes in a private area in
10 any inappropriate way?

11 A No. *UT of m* was extremely consistent about that
12 throughout the interview and since.

13 Q And did she indicate that anybody else at all
14 had penetrated her private area with their penis
15 other than the defendant, her father? Did she say
16 anybody else did that?

17 A No.

18 Q Did she indicate that she was forced to perform
19 oral sex on the penis of any male other than her
20 father?

21 A No. And, again, I specifically checked about
22 all of the males in the picture.

23 Q Did you lose count of the number of times you
24 asked this child is this the truth, is this what
25 really happened, is this something that really

1 happened? I mean, did you do that so many times
2 that you lost count?

3 **A** Well, I didn't count, but --

4 **Q** You did it several times?

5 **A** I did it a number of times.

6 **Q** Okay. And the fact that penetration was
7 disclosed on this interview and not on a previous
8 interview, the actual penetration disclosed with the
9 anatomically correct dolls, does that relate to what
10 you testified earlier about bits and pieces of a
11 story and that's consistent with the way a child
12 discloses sexual abuse?

13 **A** Yes. And in particular, in this case, this was
14 really the first real opportunity that ^{victim} had
15 been given where somebody was asking her in this
16 kind of depth and detail. Her first disclosure to
17 her guidance counselor at school that was not a
18 scenario in which the guidance counselor was asking
19 her those questions nor should she be, you know,
20 appropriately, nor would the DSS caseworker,
21 Christalyn Thompson, ask her those questions. This
22 was the first opportunity that that had happened.

23 And if you noted at the end of the interview, I
24 stepped out of the room for a few minutes and then
25 came back in and asked some questions about the man,

1 the guy that she went to see because that was
2 something that I wasn't real clear about since -- I
3 couldn't quite figure out who that was because I
4 knew that she'd spoken to DSS, which was
5 appropriate, and that they had scheduled this
6 interview. And I wondered who this other individual
7 was, whether it was somebody from law enforcement or
8 another DSS caseworker. And I wanted to clarify who
9 that would have been or how she would get to that
10 interview because one of the things we are concerned
11 about is not having children interviewed over and
12 over again by various people, so we try to minimize
13 the number of interviews that they undergo. And
14 what I found out was that that was something that
15 was initiated by her parents not through any agency.

16 Q Now, let's address this issue about compelling
17 that Mr. Cornwell raised. When a child makes a
18 compelling disclosure, what does that make you feel
19 about whether or not that child is telling the truth
20 or, in general, it happened like the child said it
21 happened versus problematic?

22 A Right. Problematic would mean that I have
23 questions about it that need to be explored further
24 and that at some point it could either then go into
25 the category of compelling for no abuse if there's

1 more investigation or it could be eventually found
2 by some other agency compelling for some kind of
3 abuse. When I call it compelling for abuse, that
4 means that I've looked at all of the data that I
5 have available to me and that I find that that
6 child's disclosure was coherent, consistent,
7 compelling for sexual abuse in this case.

8 Q Are you saying that that also means that it's,
9 in your mind, unlikely that there was some other
10 cause that may have inspired her to make up a story
11 or to have a sexualized behavior?

12 A Yes. As I said, I looked at several -- there
13 were several hypotheses that I looked at, three main
14 ones. And I looked very carefully at them because
15 that's my job is to make sure that there isn't some
16 other explanation, so, in other words, is it
17 possible that she just was mad at her father and --
18 for giving her spankings and so decided to make this
19 disclosure about him. I looked at that. Looking at
20 her behavior in the interview, the fact that she was
21 afraid to tell me this information because she was
22 going to get a spanking didn't support the fact that
23 she would be then making the allegation because she
24 was mad about getting spankings, it just didn't fit.

25 Q Does fear -- in your experience, usually fear

1 prevents a child from making a full disclosure right
2 away?

3 A Yes, fear is the largest factor that prevents
4 children from disclosing, fear of something.

5 Q And who did she say would be maddy if she told?

6 A Her daddy.

7 Q And who brought up the pinky promise?

8 A She did.

9 Q And what was daddy watching after the pinky
10 promise was made she said had been broken?

11 A The nasty movies, the pornography.

12 Q And what did he have her do after the pinky
13 promise?

14 A She described a great deal of sexual activity
15 after that point.

16 Q And in relation to the movie with S-E-X on it,
17 what did he have her do, his daughter?

18 A She described her -- him having her masturbate
19 him to ejaculation.

20 Q How about controlling the movie, anything?

21 A Yes. She talked about rewinding the movie to
22 the sex part, that they tried to, that it was
23 broken, but.

24 Q How did that make you feel about the compelling
25 nature of this pinky promise and all that detail?

1 **A** Well, those are the kinds of things that are --
2 that idiosyncratic detail that I spoke about. So
3 her talking about the rewinding the movie, rewinding
4 on the T.V. is a compelling detail, that's something
5 that she experienced doing, her talking about. At
6 one point, she said -- she had said that he took her
7 clothes off -- or her clothes were off and I said,
8 And then what happened? And she said, I was naked,
9 I didn't like it. Again, her voice got very quiet,
10 it was experiential, told me that that was something
11 that was an experience rather than just something
12 she saw.

13 She also talked about the positioning of her
14 legs at various points. He told her to put her legs
15 in a certain way, things like, What did he say, he
16 said it felt good. Particularly when she talked
17 about being on the bed, I think she used the
18 language, he scooted underneath her and described
19 his penis coming between her legs, again very
20 idiosyncratic, very experiential detail.

21 **Q** Was there any fantastical language in this
22 disclosure at all?

23 **A** No.

24 **Q** Do you think -- or in your experience in
25 conducting this interview, are you aware of a

1 simple, any type of a simple key that can be pushed
2 into a lock and open a door within a home that could
3 cause that to be a possible occurrence?

4 A Yes.

5 Q Okay. And does that make you think that it may
6 have happened or, yet, it's one other sign that a
7 child is, like you said, empowerment, which, in your
8 opinion, makes you think the child is doing what?

9 A Trying to -- either actually trying to stop the
10 abuse or wants to make sure that the interviewer
11 knows that she did something to try and stop it.

12 Q Does that relate to a feeling of shame?

13 A Yes, it relates to feeling of shame,
14 helplessness, powerlessness, the dynamics --

15 Q Is that increased by the fact that the man was
16 her father?

17 A Yes. The fact that the alleged perpetrator is
18 her father, of course, has a huge impact on the
19 child's willingness to disclose her feelings about
20 who it was clear, even in my interview, that she
21 loved him and continues to.

22 Q She said she loved her father?

23 A It was clear from her demeanor in the interview
24 that she loved him.

25 Q She say she missed her father?

1 A She said that here I believe.

2 Q Now, let's clarify another point. At the very
3 beginning of your interview, we're going through
4 RATAC, you built a rapport, people are identified,
5 you go into past A, past anatomical, who brought up
6 that stuff?

7 A That was her language.

8 Q All right. And what was her response when you
9 said, What is that stuff?

10 A Right. She said the privates.

11 Q Did you ever say the privates before that?

12 A No.

13 Q And did she show you what the privates were on
14 these anatomically correct drawings?

15 A Yes, she did.

16 Q And why did she say, Daddy would be maddy?

17 A If she told about it.

18 Q And why would dad be mad? Did she tell you
19 that?

20 A Yes, because he was the person who touched.

21 Q Who pointed to the hand indicating what he
22 touched with, you or her?

23 A She did.

24 Q Who drew the penis here and the penis there?

25 A ^{victim}
did.

1 Q How does that make you feel about the
2 compelling nature of that disclosure?

3 A Again, it was highly compelling. She was using
4 the tools that were available to her in the room to
5 explain to me something that children don't have a
6 lot of language to explain.

7 Q What about saying the pee was white -- I mean,
8 yellow; what about that statement? Tell me about
9 that.

10 A That's something that I have heard before, it's
11 not uncommon. The sexual abuse when it starts is a
12 very new experience for children. What they know
13 comes out of a penis or out of a vagina is pee, it's
14 pee and it's yellow. So she initially said white
15 and then kind of self-corrected and said yellow.
16 And as I said, I've heard that before.

17 Q Did the victim ever disclose to you that dad
18 didn't touch me?

19 A No.

20 Q All right. Did she ever, as the other witness
21 testified to, did she ever start feeding you
22 information and detail right away to make you hear
23 everything she's got to say at the very beginning of
24 the interview to indicate she wasn't telling the
25 truth?

1 **A** Not at all, she was quite reticent.. She was
2 friendly and open at the first part when I was
3 building rapport, but when it came down to asking
4 her questions that related to abuse, she became
5 quite hesitant and reticent. It was not easy to get
6 her warmed up at that point.

7 **Q** Did she relate that she would cry?

8 **A** Yes.

9 **Q** And she had cried in the past whenever she
10 disclosed it?

11 **A** That's right. And I reassured that that would
12 be okay if she did.

13 **Q** Let's talk about sexualized behavior. Can a
14 four year old conduct sexualized behavior like her
15 brother after exposure to sexual assaults by adults?

16 **A** Can a -- are we speaking about A.J.?

17 **Q** Can he hear about that or have something that
18 occurred to him and cause him to do a sexualized
19 behavior?

20 **A** Oh, certainly, certainly, that would not be
21 uncommon at all for a four year old to engage in
22 some sort of sexualized behavior after having either
23 seen or been the victim of some sort of --

24 **Q** All right. How good are children at creating
25 time lines or giving you a specific date when

1 there's multiple assaults; how good are they at
2 that?

3 **A** The concept of time is very confusing really
4 for adults, as well as children. And children don't
5 even come into this interview, they don't even know
6 they're coming to the interview usually, but if they
7 do, they don't come into it knowing that they're
8 going to be asked questions of this sort. They have
9 -- at the time that the abuse takes place, they have
10 no reason to try and remember, I better remember
11 that it was daytime on such and such a date when
12 this started. Often children don't even know when
13 exactly it started because when was the first time
14 that, you know, a line was crossed. It might not
15 really be clear to them.

16 We don't even ask children questions about
17 time. What I will sometimes ask is, as I did with
18 **victim**, okay, you are seven now, did it happen when
19 you were seven, did it happen when you were six.
20 That's the kind of question that I might be able to
21 get from a seven year old, but certainly nothing
22 about time of day or season.

23 And, again, this was chronic abuse, so it
24 happened over a period of time. Her memory for that
25 is going to be different than a child who's had only

1 one instance of abuse, a single incident is going to
2 be a description of that incident. When there's
3 chronic abuse, it goes into what we call script
4 memory and the child is talking in more general
5 terms about how it usually was and what would
6 usually happen because it's happened over time and
7 many times.

8 Q And overall the majority of the times, the
9 majority of interviews that you conduct are what?
10 You have a finding of what in the majority of
11 interviews?

12 A As I said, two thirds of our interviews are
13 problematic. One third are found compelling.

14 Q And if they're problematic in the past, have
15 you ever testified for a defense?

16 A Yes. My job is to look at all of the data and
17 form an opinion. And if I feel that the data
18 supports that something did not happen, then I'm
19 glad to testify for the defense. I'm not paid by
20 either side, so.

21 Q That's a brave little girl, isn't it?

22 A Yes.

23 MR. JOHNSON: No more questions, Your Honor.

24 THE COURT: Recross?

25 *****

RECROSS-EXAMINATION

BY MR. CORNWELL:

Q Dr. Benedetto, what materials were you allowed to look at before you conducted the interview as far as the investigation up to that point?

A The only material that I had was the ARC intake.

Q The ARC intake information?

A Right.

Q So you didn't have the DSS information?

A I spoke with Christalyn Thompson and got some information from her, that's why she's listed as the informant on my report, but I didn't have their notes.

Q Did you have any of the -- Mr. Mefford's information on that report at that time?

A No, I don't believe there was any at that time.

Q And you said you had the ARC intake information?

A Yes.

Q What do they kind of do in the ARC intake?

A It's just a very general form that let's me know who referred the case to the ARC, whether they're referred for medical exam or forensic evaluation or both and whatever details are

1 available, sometimes it's minimal, just a sentence
2 or two, sometimes it's quite a lot. There will be
3 incident reports from the police attached and
4 statements from various people involved, it really
5 depends. In this case, it was fairly brief.

6 Q What was ^{victim} referred for, the forensic
7 interview only or both, the medical?

8 A Both.

9 Q Okay. And is the forensic interview conducted
10 before or after the --

11 A That just depends on the situation. Sometimes
12 children, based on our scheduling, come for the exam
13 on a different day than they come for the interview.
14 In this case, I believe they were on the same day
15 and I believe the exam was prior to my interview.

16 Q Did you have the exam information when you
17 conducted your interview or no?

18 A No, I don't believe that I did. The physician
19 works there and I believe she'll be here, she may be
20 able to let you know that.

21 Q We've spoken about the RATAC protocol and we've
22 spoken about -- Mr. Johnson brought up, you know,
23 that you've testified for the defense on occasion.
24 RATAC protocol, isn't it part of a training course
25 or something like that? I think you spoke about it

1 briefly when you were talking about your
2 credentials.

3 A Right.

4 Q And that training takes place or is sponsored
5 by CornerHouse; is that correct?

6 A Yes, CornerHouse and the American Prosecutor's
7 Research Institute at the time that I took it.

8 Q Isn't it true that this type of training is
9 geared mostly towards prosecution?

10 A It is designed to help us elicit accurate
11 information from children. One of the concerns is
12 that when interviews are done inappropriately, that
13 doesn't help anyone. Our investment is in finding
14 out the truth. So, I guess, you could say that
15 perhaps because they sponsor it, it would -- I would
16 say that it's geared toward finding the truth really
17 not toward --

18 Q And what I mean by that in terms of, I guess,
19 in business terms, the target market is a
20 prosecutor?

21 A Yes -- well, the individuals that attend the
22 training that I conduct are mostly law enforcement
23 and child protective services, DSS workers and some
24 solicitors as well.

25 Q I have here kind of a printout of their web

1 site.

2 (Pause.)

3 **MR. CORNWELL:** I would like to get this marked
4 as an exhibit, if you don't mind, Your Honor.

5 **THE COURT:** Any objection?

6 **MR. STUMBO:** No objection, Your Honor.

7 **THE COURT:** Mark it in evidence, please, Madame
8 Court Reporter.

9 (Defendant's Exhibit Number 1, document,
10 admitted into evidence.)

11 BY MR. CORNWELL:

12 **Q** And on the web site, it kind of brags, I would
13 highly recommend all agencies to send a D.A. to the
14 training. Our D.A. attended it, it changes the
15 outlook on all cases. It says, as part of the
16 target audience, it says that --

17 **MR. JOHNSON:** Your Honor, I'd ask Mr. Cornwell
18 to ask a question at this point.

19 **MR. CORNWELL:** I'm getting to that.

20 BY MR. CORNWELL:

21 **Q** What I'm saying is isn't it true that this is
22 targeted toward solicitors, law enforcement --

23 **MR. JOHNSON:** Your Honor, in addition, she has
24 not even seen the exhibit.

25 **THE WITNESS:** I'm not familiar with their web

1 site, so I really couldn't speak to what that says.
2 The training that I am on the faculty for is geared
3 toward, as I said, child abuse professionals, so.

4 MR. CORNWELL: Thank you. No further
5 questions.

6 THE COURT: Anything further of this witness?

7 RE-REDIRECT EXAMINATION

8 BY MR. JOHNSON:

9 Q Isn't it true that defense attorneys can attend
10 this training?

11 A Yes, I suppose they could.

12 MR. JOHNSON: Thank you.

13 THE COURT: Anything further of the witness
14 from the defense?

15 MR. CORNWELL: No further questions.

16 THE COURT: Thank you, Doctor. You may step
17 down.

18 We'll take a ten minute break, ladies and
19 gentlemen. We'll get started back then. Don't
20 discuss the case.

21 (The jury retires to the jury room.)

22 THE COURT: Court's in recess for ten minutes.

23 (Brief Recess.)

24 THE COURT: Is the State ready?

25 MR. STUMBO: The State's ready.

1 **THE COURT:** Defense?

2 **MR. CORNWELL:** Yes, Your Honor.

3 **THE COURT:** Bring in the jury.

4 (The jury returns to the courtroom.)

5 **THE COURT:** Call your next witness.

6 **MR. JOHNSON:** Thank you, Your Honor. The State
7 calls Investigator Roy Mefford.

8 **THE COURT:** Come around, please.

9 ROY MEFFORD,

10 having been duly sworn, testified as follows:

11 **THE CLERK:** If you'll have a seat, state your
12 name and spell your last for the record, please.

13 **THE WITNESS:** Roy Mefford, M-E-F-F-O-R-D.

14 DIRECT EXAMINATION

15 BY MR. JOHNSON:

16 **Q** Investigator Mefford, where do you work?

17 **A** The Lexington County Sheriff's Department.

18 **Q** How long have you worked there?

19 **A** Approximately 11 years.

20 **Q** What are your duties currently there?

21 **A** Currently, I'm assigned to the major crimes
22 unit, investigator.

23 **Q** All right. Now, back in 2006, did you have an
24 event where you came in contact with the defendant
25 and his family?

1 A Yes. I received a case in regard to the
2 family, yes.

3 Q Tell me about that.

4 A On October 26th, I received what's called a DSS
5 intake. It's a reporting process that DSS has and
6 they send over any intakes that need to be looked
7 over to law enforcement also. And when I received
8 that, I made contact with the DSS caseworker
9 assigned, Christalyn Thompson.

10 Q All right. What did they indicate to you?

11 A At that time, I learned that the child was away
12 from the alleged perpetrator, which is the number
13 one concern. And then I learned that a forensic
14 interview had been set up with the ARC.

15 Q And the child being who?

16 A *victim*

17 Q And the perpetrator is who?

18 A Timothy Wilson.

19 Q Are they related?

20 A Yes, he is her father.

21 Q And what did you do?

22 A At that point, I spoke to Christalyn Thompson
23 again after the forensic interview and got a
24 briefing from her about the disclosure made. And at
25 that point, I met with the mother at the residence

1 where this occurred, which is 616 Crestwood Arch in
2 the Red Bank area of Lexington County, South
3 Carolina.

4 Q Did the mother indicate anything to you about
5 details of your investigation?

6 A At that point, she had no -- she did not say
7 she had any knowledge of the sexual abuse. At that
8 point, I was trying to get some background
9 information and there was some disclosure of some
10 pornographic material being exposed -- the child
11 being exposed to that. And, at that point, she
12 confirmed that there was access in the home because
13 of her husband working for Time Warner Cable. And,
14 at that point, the fact of access to pornography was
15 not in dispute at that point, in my opinion.

16 Q Did you attempt to contact the defendant,
17 Mr. Wilson?

18 A I did after I met with Christalyn to receive a
19 video. And, at that point, I viewed the video. And
20 anytime you get a case like this, you want to look
21 at the forensic video before you try to make contact
22 with any perpetrator. Obviously, you want to know
23 what questions to ask and you want to see their --
24 have their reaction to some of the things that the
25 child says in the interview and you just want to

1 know the full disclosure at that point not just the
2 initial disclosure to DSS. So I viewed the video
3 and I attempted to make contact with him by phone,
4 yes, sir.

5 Q Did you make contact with the defendant over
6 the phone?

7 A I did. He identified himself as Timothy Wilson
8 and I requested an interview with him at that time.

9 Q Did he come in for an interview?

10 A Not at that time.

11 Q Did you call him back?

12 A I did. When I didn't receive a follow-up call
13 from him for the interview, approximately five days
14 later, I called him back to request another
15 interview and I did not hear back from him after
16 that as well.

17 Q Did he ever come in for an interview at all?

18 A No, sir.

19 Q All right. Now, the home that you indicated in
20 Lexington County, South Carolina, was that the home
21 that the victim was referring to on the video?

22 A Yes, sir, it was their home. I confirmed that
23 with the mother that they had lived there for
24 approximately four years and that would be within
25 the window of the allegations that she made.

1 Q All right. Talk to me about the dates on the
2 warrants that you got.

3 A Obviously, as been -- is well known when we're
4 dealing with children, dates and times are very hard
5 to pinpoint, especially with a child of this age.

6 So, at that point, by viewing the video, I narrowed
7 it down to when she said her age of six, which would
8 be her birthday, I started with the date of the --

9 which would be -- which would be

10 her birthday since she said that it happened

11 when she was six, and then I went from there up

12 until the date of the disclosure on the 20th of

13 October when she made the initial disclosure to the
14 counselor that we were aware of.

15 Q And, eventually, you got warrants for the
16 defendant's arrest?

17 A I did. I took the information from the
18 forensic interview and presented it to a magistrate
19 and obtained warrants on him for the disclosures
20 made in the interview as regards to the sexual
21 assaults.

22 Q All right.

23 MR. JOHNSON: No more questions, Your Honor.

24 THE COURT: Cross?

25 MR. CASTO: Briefly, Your Honor.

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

2 CROSS-EXAMINATION

3 BY MR. CASTO:

4 **Q** Detective Mefford?

5 **A** Mefford.

6 **Q** Do you mind if I call you detective?

7 **A** Sure.

8 **Q** This first came -- this case first came to you
9 in 2006 through a DSS report?

10 **A** Yes.

11 **Q** And it was in November of 2006, approximately,
12 when this case came to you?

13 **A** It's actually in October.

14 **Q** October of 2006 --

15 **A** October 24th is when -- what happens is DSS may
16 get the call on, like, in this case, they got the
17 call on the 20th of October. There's a process
18 where they screen through all the intakes and then
19 they're sent over to the sheriff's department,
20 there's another screening process by supervisors and
21 they decide which ones get assigned to an
22 investigator. So I was actually given that intake
23 on the 24th and that's when I made contact with
24 Christalyn Thompson.

25 **Q** And it was at that point that you started your

1 investigation?

2 A Well, at that point, I received a briefing from
3 Christalyn because obviously, as is clear in this
4 case, these intakes are somebody's interpretation of
5 what they hear sometimes and the intake itself is
6 not always accurate, you're getting that from
7 somebody calling in to a person at DSS and then
8 that's provided on. She had already had a four day
9 time to dispute or look at this intake and realize
10 that ^{victim} was the sole victim being alleged in
11 this case based on her interview with ^{victim} And
12 so the intake is, you know, at that time, she had
13 done the preliminary investigation and at that
14 point, my interview -- my investigation began;
15 however, it really does not begin until the forensic
16 interview is completed. My first initial thing is
17 to make sure the child is away from the perpetrator
18 and that the interview is set up, which had already
19 been done.

20 Q So you had opened up your file essentially?

21 A Yes. We do an initial report with generic
22 information and I did that after I talked to
23 Christalyn and realized that the main focus in the
24 -- the main victim was ^{victim} ..

25 Q And, at that point, then you started

1 investigating; that's correct?

2 A Actually, the investigation began when I knew
3 the full disclosure from the forensic interview,
4 yes, sir. The investigation you can say probably
5 really began on the 1st of November after the
6 interview.

7 Q Okay. And your investigation eventually took
8 you to the household of T.J. and Jessica Wilson?

9 A It did.

10 Q And through the course of your investigation,
11 you asked them several questions?

12 A I asked her some questions, yes.

13 Q And you asked her about several aspects of
14 their life?

15 A Yes.

16 Q And in particular, through the course of your
17 investigation, you asked about their marriage?

18 A Yes.

19 Q You learned that they had started dating when
20 they were teenagers?

21 A Yes.

22 Q And at that point in 2006, they had, in fact,
23 already been married for eight years?

24 A Correct.

25 Q She informed you that she'd been at the

1 Lexington address -- they'd been at that household
2 for four years?

3 A Four years, correct.

4 Q And you learned that Jessica never suspected
5 any type of physical or sexual abuse between T.J.
6 and ^{victim} at that time?

7 A That's what she said, yes.

8 Q Was she very candid and open and honest with
9 you?

10 A She appeared to be.

11 Q She even indicated to you that there was no
12 change in T.J., her husband's sexual habits during
13 this time?

14 A Correct.

15 Q And there were no instances of any type of
16 sexual inappropriateness or deviancy towards her at
17 any point in their relationship?

18 A Towards the mother?

19 Q Towards the mother?

20 A Not that she told me of, no. I didn't
21 specifically ask that. I just asked about the
22 general sex life.

23 Q And you also inquired about T.J.'s discipline
24 of victim when she gets in trouble?

25 A Yes.

1 Q And you learned that while he's very strict,
2 that there was nothing to indicate, when he was
3 punishing her, to indicate physical abuse or cruelty
4 of any kind?

5 A Not that she indicated.

6 Q And nothing to indicate any type of emotional
7 or mental abuse when she was being punished for
8 something?

9 A I'm not sure if we got into mental abuse and
10 things like that.

11 Q Fair enough.

12 A And, at this point, I have not seen the video
13 yet. I'm asking general questions of anything, just
14 -- and it's more of to see if there's any red flags
15 that are raised from speaking to the mother at that
16 point. I don't get too detailed like as far as her
17 mental state or anything like that because obviously
18 the people before me were much more qualified in
19 that aspect of it.

20 Q Sure. Fair enough. You also learned about the
21 husband's place of employment in the time period of
22 2005 and 2006?

23 A Yeah. There was a gap. He worked at Time
24 Warner Cable in 2005, stopped working there when he
25 went in the Marines and then began working there

1 when he returned home is the indication I got.

2 Q Okay. And so he did work at Time Warner Cable
3 in 2005?

4 A Uh-huh.

5 Q One of the perks or benefits of the job seemed
6 to indicate that you get this all inclusive cable
7 package?

8 A That's what she indicated.

9 Q And she indicates to you that she gets the
10 family channels, the premium channels, the sports
11 stuff and even including pornographic material?

12 A We didn't get into specifics. It was more of
13 a, I'm trying to identify where this may have --
14 where the exposure may have been. And she
15 volunteered the fact that they got all of the
16 channels and that may be where she saw this either
17 pornographic or something that she should not have
18 -- she characterized it of something inappropriate
19 or pornography is the way she -- we didn't talk
20 about every single channel they got. It was clear
21 to me that they got channels that would have this
22 type of activity on them.

23 Q And she indicated to you that this access could
24 be a possible source of where ^{1/2 time} got this type
25 of information?

1 **A** Obviously, it could be. There's no dispute
2 that there was pornography access in the house.

3 **Q** And you indicated that after T.J. had worked at
4 Time Warner, he joined the military?

5 **A** Yes, the Marines I believe.

6 **Q** And she indicated to you that when this
7 interview took place in November of 2006.

8 **A** Yes.

9 **Q** That because of T.J.'s military service, that
10 he had been gone for most all of that year?

11 **A** Yes.

12 **Q** Because of training?

13 **A** Yes.

14 **Q** And so based on that fact, Jessica indicated to
15 you that she didn't believe he'd have the
16 opportunity to engage in this type of behavior?

17 **A** Well, during that time frame. We're talking a
18 much wider time frame than that six months or
19 whatever he was gone to the military. Obviously,
20 during that time frame, it would be difficult.
21 However, when you widen that time frame out and she
22 had -- really didn't have -- she had not seen
23 anything, but, obviously, common sense tells you
24 when he's gone away with the Marines, he couldn't
25 have done it, but that's why we have that wide time

1 frame, sir. And that's in sort of -- there is a
2 time before and a time after he went into the
3 Marines that covers that time frame.

4 Q But this does speak to the majority of the
5 year, most all the year of 2006?

6 A Of that particular year 2006, yes, sir.

7 Q She indicated to you that ^{Victim} might have a
8 possible motivation to make this up because of how
9 strict T.J. is?

10 MR. JOHNSON: Objection, Your Honor, calls for
11 speculation.

12 MR. CASTO: Did she indicate to you --

13 THE COURT: Overruled. Go ahead.

14 MR. CASTO: Thank you, Judge.

15 BY MR. CASTO:

16 Q She indicated to you that ^{Victim} may have a
17 possible motivation to make something up because of
18 how strict T.J. is towards ^{Victim}?

19 A Well, she didn't offer that. Whenever I --
20 obviously in a case like this, I'm there to find out
21 if there's any reason or any kind of dispute of the
22 facts or any kind of inconsistencies or gross
23 inconsistencies in this. And one of my main thing
24 is, is there a motivation? That's something that I
25 asked, that was not offered her -- she is responding

1 to a question, a specific question I ask in cases
2 like this. And that was her -- so it's not a, you
3 know, this is why it happened. It's more of a, I
4 put them in a situation of tell me what would
5 motivate this and try to get that. And that's what
6 her response to my question was.

7 Q Okay. And your investigation led you to
8 eventually view the interview with *victim*

9 A Correct.

10 Q And you watched the whole thing?

11 A Yes.

12 Q You saw the allegations that *victim* made
13 including, as we just heard, allegations of penile
14 and digital penetration?

15 A Yes.

16 Q And they were quite numerous, as we've heard
17 before, allegedly?

18 A Yes.

19 Q *victim* today is nine years old, correct?

20 A Yes.

21 Q And she's still a very small child, correct?

22 A Correct.

23 Q And in 2006, she would have been six or seven
24 and even smaller?

25 A Yes.

1 Q Another step of your investigation was to
2 review the medical exam performed on ^{victim} .?

3 A Yes.

4 Q And it's not like CSI, is it, unfortunately?

5 A Unfortunately, no.

6 Q However, the purpose of sending her to that
7 exam was to learn what you could to see if there was
8 any evidence there?

9 A Correct.

10 Q And it would certainly have been possible to --
11 well, it certainly would have been possible if there
12 was any tearing or redness or swelling or the
13 breaking of her hymen that would further implicate
14 T.J.?

15 A If there were, yes.

16 Q And do you remember the results of that medical
17 exam?

18 A I do. They were -- there was no -- from what I
19 understand, there was no sign of -- sign of abuse,
20 but does not rule out -- it was a normal exam, but
21 did not rule out sexual abuse.

22 Q And it's fair to say that she received a normal
23 exam, correct?

24 MR. JOHNSON: Objection, Your Honor, he's
25 asking for --

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

2 **MR. JOHNSON:** -- he's asking for some expert
3 testimony here from an investigator, Your Honor,
4 it's medical testimony.

5 **MR. CASTO:** Just his review of what the doctor
6 had done.

7 **MR. JOHNSON:** Your Honor, it's hearsay and it's
8 also --

9 **THE COURT:** It's hearsay. Y'all have been
10 asking hearsay the whole trial, but it's hearsay and
11 somebody finally objected.

12 Sustained. You can't ask him what somebody
13 else said. Go ahead.

14 BY MR. CASTO:

15 **Q** In your investigation, you learned of the
16 results of that exam?

17 **A** I did.

18 **Q** And they were that --

19 **A** I can read you the exact diagnosis, I guess you
20 would say the exact results, if you would like me
21 to. I don't want to say something -- I don't want
22 to use the improper terminology that Dr. Luberoff
23 uses because obviously she knows way more about it
24 than I do.

25 **Q** All I meant was that she received a normal

1 exam?

2 A Normal exam does not rule out, it is -- there's
3 different categories, but she received a normal exam
4 that did not rule out sexual abuse is the way it's
5 worded. And I may not be exact, but that's -- if I
6 can read it off directly, then that's what it says
7 basically is a normal exam, does not rule out sexual
8 abuse and she would have to explain that last part
9 of course.

10 MR. CASTO: Beg the Court's indulgence.

11 THE COURT: Yes, sir.

12 (Pause.)

13 BY MR. CASTO:

14 Q Just one final question, in your report --

15 A My supplemental report?

16 Q Yes, sir.

17 A The one that I prepared, right?

18 Q That's correct.

19 A Yes.

20 Q It said noticeable signs of sexual abuse,
21 correct?

22 A That is what my interpretation of it is, but
23 the medical terms, I'm far from using the exact
24 terms I assure you, but her report will clearly be
25 able to state that and as well as she will.

1 **MR. CASTO:** Thank you, Detective.

2 **THE COURT:** Redirect?

3 REDIRECT EXAMINATION

4 **BY MR. JOHNSON:**

5 **Q** Detective Mefford, would you say that the wife
6 was sort of conflicted there when you were asking
7 questions about the situation where her husband was
8 accused of raping his own daughter?

9 **A** Yes.

10 **Q** Wouldn't you say that -- well, I'll go to
11 something else. In your conversation with the
12 defendant's wife, didn't she mention something to
13 you about catching the defendant watching porno?

14 **A** She did.

15 **Q** Tell me about that.

16 **A** She indicated that she had caught him on the
17 Internet with pornography and had threatened to
18 leave him because of it.

19 **Q** And did she give a time frame for that?

20 **A** She said it was -- I have to refer to my notes
21 just to be correct.

22 **Q** Please feel free.

23 **A** Yeah, she said that on two occasions she caught
24 him, it was middle of 2005 and early 2006, and that
25 she caught him with pornographic images and has been

1 checking the computer ever since for that.

2 Q So she checks it, she looks for it?

3 A That's what she said.

4 Q And even after she said, We've got all these
5 channels, she made it clear that he doesn't do that
6 in front of her, he doesn't watch those channels in
7 front of her while she's there?

8 A I'm not sure if we discussed that, but I took
9 from it if she didn't want him looking at
10 pornography on the computer, then the T.V. wouldn't
11 be much different. I don't know if we specifically
12 covered that.

13 Q And the defendant wasn't gone that whole year,
14 was he?

15 A Not the entire year, no, sir.

16 Q And the defendant never came in in response to
17 your phone calls. He didn't show up at your office
18 to give you an interview or a statement, did he?

19 A That's correct he did not.

20 Q And how many times did their family call you
21 inquiring about tracking down the person who really
22 did this?

23 A None.

24 Q Zero?

25 A Zero.

1 **MR. JOHNSON:** No more questions, Your Honor.

2 **THE COURT:** Recross?

3 **MR. CASTO:** Briefly, Your Honor.

4 **RECROSS-EXAMINATION**

5 **BY MR. CASTO:**

6 **Q** Does your report indicate how many times that
7 Jessica Wilson had seen T.J. looking at things on
8 the Internet?

9 **A** It says twice.

10 **Q** Two times?

11 **A** Two times that she caught him.

12 **Q** And then she says -- or she indicated to you
13 that since that time, she had never found anything
14 else?

15 **A** Correct.

16 **MR. CASTO:** No further questions.

17 **THE COURT:** Anything further of the witness?

18 **MR. JOHNSON:** Nothing further, Your Honor.

19 **THE COURT:** Thank you, sir. You may step down.
20 Call your next witness.

21 **MR. STUMBO:** Your Honor, the State calls Dr.
22 Susan Luberoff to the stand.

23 **THE COURT:** Come around, please.

24 ****

25 ****

1 SUSAN LUBEROFF,
2 having been duly sworn, testified as follows:

3 THE CLERK: If you'll have a seat and state
4 your name and spell your last for the record,
5 please.

6 THE WITNESS: Susan Luberoff, L-U-B-E-R-O-F-F.

7 DIRECT EXAMINATION

8 BY MR. STUMBO:

9 Q Good morning, Dr. Luberoff.

10 A Good morning.

11 Q What is your current profession?

12 A I'm a pediatrician.

13 Q Okay. And do you have a private practice or do
14 you work for the state? Who do you work for?

15 A I work for the University of South Carolina
16 School of Medicine Department of Pediatrics.

17 Q And as part of your job at USC Pediatrics
18 Department, what is your primary role in your
19 day-to-day job?

20 A I'm stationed at the Assessment and Resource
21 Center, which is a facility that evaluates children
22 who are suspected of having been physically or
23 sexually abused or neglected.

24 Q So you work at the same place that Heather
25 Smith works?

1 A Yes.

2 Q And Alicia Benedetto, who we've heard this
3 morning?

4 A Yes.

5 Q If you could, just give the jurors a brief
6 summary of your educational background.

7 A I graduated from the USC School of Medicine in
8 the third class in 1983 in Columbia. And I
9 completed a three year pediatrics residency at what
10 was then called Children's Hospital at Richland
11 Memorial. I've had ongoing training, continuing
12 education in pediatrics and specifically in child
13 abuse matters. Particular pieces that would be
14 pertinent would be in about 1990, if I recall, I
15 spent six weeks in Denver, Colorado, at the Camp
16 National Center on child abuse as a scholar and
17 resident, which was sort of like a minifellowship.
18 And I also completed a three week course in
19 Huntsville, Alabama, at the National Children's
20 Advocacy Center in child sexual abuse intervention.
21 And I've attended numerous workshops and trainings
22 over my career in various aspects of child physical
23 and sexual abuse and I also provide training.

24 Q So you teach some of these seminars as well?

25 A Yes, I do.

1 Q Are you licensed to practice medicine in the
2 State of South Carolina?

3 A Yes, I am.

4 Q And about how many children have you examined
5 in your career for purposes of finding out if
6 there's any evidence of sexual abuse?

7 A My estimate would be between four and 5,000.

8 Q And that's over how many years?

9 A About 20 years.

10 Q Okay. And about how many times have you been
11 qualified as an expert in the courts of this state?

12 A Well over a hundred times.

13 MR. STUMBO: Your Honor, at this time, the
14 State would offer Dr. Susan Luberoff as an expert in
15 the field of pediatrics and child abuse assessment.

16 THE COURT: Any voir dire?

17 MR. CORNWELL: No, Your Honor, no objections.

18 THE COURT: She is so recognized. You may
19 continue.

20 MR. STUMBO: Thank you, Your Honor.

21 BY MR. STUMBO:

22 Q Dr. Luberoff, did you have occasion to conduct
23 an examination in regards to the case against the
24 defendant Timothy Wilson?

25 A I examined victim [REDACTED].

1 Q Okay. Did you understand ^{victim} was his
2 daughter?

3 A I did.

4 Q And how old was ^{victim} when she came in?

5 A She was seven when I examined her.

6 Q Okay. Do you remember the date of that?

7 A I believe it was November the 1st of 2006.

8 Q Was this -- do you remember if it was the same
9 day before or after she had her forensic interview?

10 A As I recall, it was the same day and my
11 recollection is that I did the exam before the
12 forensic interview, but I can't state that with
13 great certainty.

14 Q And if you could, just summarize for the jury
15 what your findings were with -- in regards to
16 victim?

17 A When I examine children for any type of
18 suspected abuse, we look -- we do a very careful
19 exam of the child for general overall health and
20 also for any signs of any kind of abuse. So the
21 exam includes a very careful inspection of all of
22 the skin including between the fingers and toes, the
23 scalp and so on, we look at the ears, listen to the
24 heart, do a very detailed examination of the
25 genitalia. And victim's exam revealed some

1 scratches and bruises on her shoulder and her
2 history for that was that her dog had jumped on her.
3 And she had a minor injury inside her mouth of the
4 frenulum, which is the little piece of skin that
5 holds your lip to your gum in the middle of your
6 mouth, that was a healed injury that was old. And
7 her genital exam, her private areas, were normal.

8 Q Okay. When you say normal -- so were your
9 findings that it was a normal exam?

10 A Yes.

11 Q And when you say normal, what else is part of
12 that? Does it rule out -- or what does it say about
13 sexual abuse scenario?

14 A When we -- if we find injury to that area, then
15 the injury can sometimes be tied to a particular
16 history that a child is giving about abuse.
17 Ordinarily, we don't find injury in children because
18 children are not as easily injured in that area as
19 most people think they are. And if they are
20 injured, the area heals very quickly. So if we
21 don't see a child within a week or two after an
22 injury occurred, it'll usually be completely healed
23 to the point that we can't tell that anything has
24 happened.

25 Q So would it be unusual to find that there's no

1 permanent scarring after a child's been sexually
2 abused?

3 A It's actually quite uncommon to find permanent
4 scarring after sexual abuse even involving chronic
5 penetration.

6 Q And you base this on the amount of time between
7 the time that there's a disclosure or the event
8 happened and the time you actually conduct your
9 exam, correct?

10 A As well as the fact that there very commonly is
11 no actual injury in the first place.

12 Q Does -- can younger tissue heal quickly, does
13 it heal quicker than an older person or what's your
14 opinion on that?

15 A Well, younger tissue definitely heals more
16 quickly than, say, an elderly person's tissue would
17 in that area, but young children and -- middle aged
18 and younger women heal quite quickly in that area.

19 Q Okay. Can you talk to us and give us an
20 opinion about -- I know there's sometimes a
21 conception out there that if there's vaginal
22 penetration, that the hymen is broken. In your
23 medical opinion to a reasonable degree of medical
24 certainty, what's your opinion on that as to
25 children who have been sexually abused?

1 **A** Actually children who have been sexually abused
2 generally do not have breaking or tearing of the
3 hymen and I would be glad to sort of explain that
4 anatomy and why it is, if it would be helpful.

5 **Q** That's fine, if you can give us a brief
6 explanation of that, if you could, Doctor.

7 **A** The hymen, first of all, is a piece of tissue
8 that -- and I'm going to use my hands to kind of
9 demonstrate. I'm not an artist, so drawing it
10 probably wouldn't really help you. But if this is
11 the vagina where I've kind of made a circle out of
12 my hand, and this, of course, is very exaggerated
13 for a seven year old child, but the hymen is a piece
14 of tissue or skin, a membrane, that is near the
15 beginning of the vagina, but it's not outside the
16 body, it's located up inside. And there are
17 structures that help to protect that area, the
18 labia, or the lips, fold over the outside of it.
19 Above the vagina is a bone called the pubic bone
20 that helps to protect that area from accidental
21 injury.

22 The hymen itself has an opening in it. A lot
23 of people don't realize that there is an opening in
24 the hymen from the time the child -- from before the
25 time the child is born, the majority of people have

1 an opening in the hymen, and that's important, the
2 opening needs to be there because female vaginas
3 produce secretions and fluids and then later when a
4 person is old enough to have a period, the uterus is
5 producing blood that has to get out, so that opening
6 is there.

7 The hymen surrounds the opening and the hymen
8 is made of normal, living, human tissue that
9 stretches, it can be moved out of the way. If a
10 child is penetrated, particularly with care and time
11 and lubrication, then it's actually quite unusual
12 for that organ to get injured during the
13 penetration. If it does get injured, it's a mucus
14 membrane type tissue that I would compare it to the
15 lining of your mouth. And if you think about the
16 inside of your mouth and if you've ever had a really
17 good injury inside your mouth and kind of feel
18 around in there and see if you feel a scar, that
19 type of membrane usually doesn't need scar tissue to
20 complete its healing, it'll usually just heal. And
21 if it is injured, it'll generally heal to the point
22 that we can't tell. It'll cover over with brand
23 new, similar material and we can't tell.

24 Now sometimes we can. If the injury is
25 particularly deep or dirty and doesn't heal well,

1 then perhaps we'll see a missing piece of the hymen
2 or perhaps in a really dramatic case of injury, we
3 might even see a scar or a scar even further down
4 toward the anus, but that's really quite unusual
5 even in children of ^{victim's} age.

6 Q And about what percentage of the exams that
7 you've done have resulted in normal -- the diagnosis
8 that you had for ^{victim's} which is normal but doesn't
9 rule out sexual abuse?

10 A At least 90 percent.

11 Q So it would be fair to say that a very small
12 percentage of the time you actually find physical
13 evidence of sexual abuse?

14 A That's correct. And then also other physical
15 evidence would be signs of sexually transmitted
16 diseases, discharge and so on, we're looking for
17 that, too. And there was no sign of that in **victim**.
18 Again, that's a somewhat unusual finding especially
19 in a younger child.

20 Q So the real world is not always like CSI?

21 A No.

22 MR. STUMBO: No further questions at this time.

23 THE COURT: Cross?

24 MR. CORNWELL: Yes, Your Honor.

25 *****

1 CROSS-EXAMINATION

2 BY MR. CORNWELL:

3 Q Isn't it true that your position, in regards to
4 signs of sexual abuse and the hymen, isn't it true
5 that yours is not a definitive position?

6 A I'm not sure I understand the question.

7 Q Isn't there some variation amongst the medical
8 community, should I say, an opinion, on what kind of
9 signs there would be if a hymen was penetrated?

10 A Different people use different terminology, for
11 instance. There certainly is disagreement about
12 some types of findings whether certain particular
13 findings or injuries are definitely correlated with
14 abuse or not.

15 Q Now, one of the, I guess, the most definitive
16 sign of sexual abuse in looking at a young lady's
17 hymen, would you agree that it would be a laceration
18 or tear to the hymenal ring down to the base?

19 A There really are only a handful of findings
20 that are medical proof of sexual abuse. One of
21 those is an actual separation, complete separation
22 of the hymen if we're looking at a child laying on
23 her back and look at the vaginal area as a clock
24 down in the six o'clock or back side position. If
25 we do see that, then that is a very strong medical

1 support for penetrating trauma of some kind. Now,
2 we can see that not as sexual abuse, we can see it
3 in an accidental impalement of the child on
4 something for instance.

5 The other forms of medical proof of sexual
6 abuse in a female are certain conditions, pregnancy,
7 the presence of gonorrhea or syphilis, those are
8 considered medical proof of sexual abuse. So the
9 list of things that the physician can find that
10 proves sexual abuse is actually quite short.

11 Q And, Doctor, would a fair summary of your, you
12 know, testimony, prior testimony here, be that we
13 couldn't tell if he did penetrate, but we can't say
14 that he didn't?

15 A That's correct. On the medical exam, we can't
16 -- I could not tell you just from the medical exam
17 whether he did or did not.

18 Q At least on the exam you performed or are you
19 saying you can never tell?

20 A No, certainly sometimes I can tell, but on --

21 Q And what kind of signs would be present if you
22 could tell, what would you see?

23 A For instance, if I were to see a separation of
24 the hymen at that six o'clock position that was deep
25 all the way down to the floor of the vagina or --

1 Q Did you see that?

2 A No, I didn't.

3 Q What else?

4 A In a child who has just very recently
5 experienced an injury, then we might see fresh
6 injury in that area.

7 Q You didn't see that?

8 A I did not.

9 Q Is there anything else you would see?

10 A As I mentioned, signs of sexually transmitted
11 diseases might be something that we would see.

12 Q Now, you said something about the hymen healing
13 and -- is it your position that the hymen never
14 shows signs of healing after it's healed?

15 A No, that's not my position at all. It can, it
16 can require scar tissue to heal. It can heal
17 imperfectly where we see missing pieces of it or
18 evidence that there has been an injury. We
19 certainly can sometimes find injury evidence.

20 Q Now, isn't it true that the younger the child,
21 the more likelihood that there would be physical
22 signs of trauma?

23 A Depending on what particular act you're talking
24 about.

25 Q Repeated sexual intercourse?

1 **A** Then it would be more likely to find evidence
2 in a younger child. Once a child has reached
3 puberty and beyond that, it's even more difficult to
4 injure that area, so it's less likely beyond puberty
5 to see injury. But even in prepubertal children,
6 it's quite unusual to see evidence.

7 **Q** Now, in prepubertal, would you say that was
8 about nine through ten or eleven or something like
9 that?

10 **A** Well, prepubertal being the time of a child's
11 life before she starts experiencing hormonal
12 influences from estrogen and developing breasts and
13 pubic hair. And the hymen grows a great deal at
14 puberty, it becomes very thick and grows, on its
15 surface area, grows until there's really quite a lot
16 of room there if there needs to be. It grows under
17 the response of estrogen so that by the time a child
18 is of the age to be able to become pregnant if a
19 penis or something of that size is introduced into
20 that area, the hymen can give enough room for that
21 so that there's not injury to that part of the body
22 while it's performing its intended function.

23 **Q** So a younger child is more likely to show signs
24 of injury, older, less likely?

25 **A** That's true.

1 **MR. CORNWELL:** Beg the Court's indulgence.

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

3 (Pause.)

4 BY MR. CORNWELL:

5 **Q** Now, Doctor, is there anymore information that
6 you could have used to make a more definitive
7 finding in regards to whether there was penetration
8 or sexual abuse with this child?

9 **A** I'm not sure what the question means.

10 **Q** Specifically, would actually seeing the
11 perpetrators genitals allow you to make a more
12 definitive finding on that, would that matter at
13 all?

14 **A** No.

15 **Q** Okay.

16 **MR. CORNWELL:** Beg the Court's indulgence.

17 **THE COURT:** Yes.

18 (Pause.)

19 BY MR. CORNWELL:

20 **Q** Now, just to be sure, Doctor, did you receive
21 kind of a report about what had happened to the
22 child before you did your medical exam? Did you
23 kind of know what she was alleging?

24 **A** Yes, I had the ARC intake.

25 **Q** And when you spoke with Solicitor Stumbo

1 earlier, you said that your normal exam doesn't rule
2 out sexual abuse, but you also said that activities
3 described in the intake information would not be
4 expected to leave injury or evidence. What kind of
5 activities were described in the intake information?

6 **A** As I recall, the intake information was about
7 touching, but I would have to review that.

8 **MR. CORNWELL:** Would you object to her seeing
9 this?

10 **MR. STUMBO:** No, to refresh her memory.

11 **THE WITNESS:** Yes, the intake information that
12 I had was that ^{victim} ~~victim~~ had made a statement that her
13 father would touch her private parts and put her
14 hand on his private parts.

15 **BY MR. CORNWELL:**

16 **Q** And the reason I pointed you to your statement,
17 your diagnosis and conclusion, because I find the
18 way you phrase it interesting in that you said, The
19 activities described in the intake information would
20 not be expected to leave injury or evidence; is that
21 correct?

22 **A** That's correct.

23 **Q** If, in this intake information, she would have
24 described repeated sexual abuse, would you then
25 expect to see signs of sexual abuse then?

1 **A** Well, as I explained, I usually do not see
2 signs even in those cases, I'm more likely to see
3 signs in those cases, but in the majority of cases,
4 we don't. And I would further explain that the
5 hymen is not on the outside of the body, it's in the
6 beginning of the vagina. And when children of
7 Breann's age describe penetration, we might
8 interpret that as meaning all the way up to the
9 uterus, but penetration that the child is describing
10 may not be that far into the vagina, it may be
11 between the labia or in the early part of the
12 vagina, which would -- it would be less likely to
13 leave injury to that hymen.

14 **Q** But if there was full penetration, then that
15 likelihood would greatly increase you believe?

16 **A** If there's full penetration, the likelihood
17 would increase somewhat.

18 **Q** Would you say significantly?

19 **A** It would increase somewhat.

20 **MR. CORNWELL:** Thank you. No further
21 questions.

22 **THE COURT:** Redirect?

23 **MR. STUMBO:** Just briefly, Your Honor.

24 *****

25 *****

REDIRECT EXAMINATION

BY MR. STUMBO:

Q Dr. Luberoff, Mr. Cornwell asked you about if it's possible that scarring would occur when the hymen healed. Now, if you found that in the case of a child, would that necessarily mean that -- what category would that be in? Would that be in the 90 percent that's normal or the ten percent that's not?

A No. If we found scarring of the hymen, that would be in the ten percent that's not a normal finding.

Q So even though it's possible, it's still much less likely that you're going to find that, if you look at all of the cases that you've done over your career?

A That's correct. And even looking at that less than ten percent of cases where we do find something abnormal, the something that we find abnormal, only a small of that, less than ten percent is a scar. More of my abnormal findings have been positive evidence of sexual -- sexually transmitted diseases or a missing portion of hymen, for instance, where there's not actually scar in its place, but there's a missing piece.

Q So if there were multiple weeks, one to two to

1 three weeks, between the time that victim had last
2 been abused and the time that you conducted your
3 exam, would it surprise you to not find any physical
4 scarring or evidence?

5 A It would not surprise me at all.

6 Q And is that why your finding was that it didn't
7 rule out sexual abuse?

8 A That's correct. A normal exam does not rule
9 out sexual abuse including penetration.

10 Q So victim's case here is in that 90 percent
11 where you typically don't find?

12 A Yes.

13 MR. STUMBO: No further questions, Your Honor.

14 THE COURT: Recross?

15 RECROSS-EXAMINATION

16 BY MR. CORNWELL:

17 Q Getting back to this 90 percent, you don't know
18 exactly the timetables or when her most recent
19 alleged incident of sexual abuse was, do you?

20 A I don't.

21 Q So you can't make a definitive, I guess,
22 estimate if she's in that 90 percent because if
23 she's alleging that it happened the day before, then
24 there would be signs; isn't that correct?

25 A There may well not be signs if it happened the

1 day before.

2 Q But --

3 A But there would be more of a chance of signs if
4 it happened the day before.

5 Q Another question, what are the age ranges
6 amongst the girls that you usually examine? Do they
7 usually fall in ¹²⁻¹⁵ s age or older or --

8 A I examine children, the youngest I've ever had
9 to examine, I think, was about two weeks old all the
10 way up to 21 years old. And then I also examine
11 vulnerable adults, which are adults that maybe have
12 problems with intelligence or problems that make
13 them more vulnerable to having something happen and
14 not being able to express it.

15 Q Does the -- and, you know, coming back to the
16 hymen, does the shape or the form of the hymen have
17 a lot to do with whether or not there would be, you
18 know, any signs of sexual trauma?

19 A It has something to do with it. There are many
20 different shapes that that hymen can take. It can
21 be what we call circular, which means that there's
22 hymen around the hole opening into the vagina. It
23 can be shaped like a crescent moon where it starts
24 at one point and there's hymen down in the posterior
25 part, but really not any at all up under the urethra

1 where the child pees. That shape of hymen, the
2 crescentic or moon shaped hymen, generally has a
3 little bit larger of an opening associated with it
4 because there's not hymen at the top part. So it
5 would be reasonable to think that a crescent shaped
6 hymen would be even less likely to sustain an injury
7 given the same circumstances as a child with a
8 circular shaped hymen.

9 Q And just to be clear, *V. Z. mi* ... didn't have a
10 crescent shaped hymen?

11 A She had a circular shaped hymen.

12 Q And in your description of that hymen, and if
13 you need to look at this again, could you kind of
14 describe it to the jury?

15 A Yes. What I've written here is that her hymen
16 was circular and very wide, meaning there was a good
17 amount of hymen, and that it was thin, meaning that
18 it was like a membrane. Like if I had been able
19 somehow to put a light behind it, I would be able to
20 see light through it from the back to the front,
21 that's how we expect a child of that age to look
22 past puberty, it thickens up and looks quite
23 different. And then I've also described the edge of
24 it as being something smooth, I didn't see any
25 missing pieces or any deep notches or anything like

1 that on the edge.

2 Q Now, and this is me kind of guessing, I'm not a
3 doctor, it's my layman, it would appear to me that a
4 thin hymen would break more easily. Would that be
5 appropriate -- I mean, am I right on that?

6 A A thin hymen is going to tear more easily than
7 a hymen past puberty when the estrogen has had its
8 effect, but prepubertal children are supposed to
9 have a thin hymen, that's generally what we see in
10 children Breann's age and we still generally don't
11 see any injury to it.

12 MR. CORNWELL: All right. Thank you. No
13 further questions.

14 THE COURT: Anything further of the witness?

15 MR. STUMBO: Just one more question, Your
16 Honor.

17 RE-REDIRECT EXAMINATION

18 BY MR. STUMBO:

19 Q And, Dr. Luberoff, this is -- not to back away
20 from the medical aspect of this, you said you
21 conducted your exam on November 1st?

22 A Right.

23 Q And how many days are between October 20th,
24 2006 and November 1st, 2006?

25 A 12 if I'm counting correctly.