

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

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S.C. Supreme Court

TIMOTHY J. WILSON

RESPONDENT/PETITIONER,

v.

STATE OF SOUTH CAROLINA

PETITIONER/RESPONDENT.

Appendix Vol. 2 of 3

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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1 Q Because the 31st is Halloween?

2 A Right.

3 Q So it's the day after Halloween you did this.
4 And that's almost two weeks, correct?

5 A Yes.

6 MR. STUMBO: No further questions, Your Honor.

7 THE COURT: Anything further of the witness
8 from the defense?

9 MR. CORNWELL: No, Your Honor.

10 THE COURT: Thank you, Doctor. You may step
11 down.

12 Does this witness need to remain?

13 MR. STUMBO: No, Your Honor, we would ask if
14 she can be excused.

15 THE COURT: Any objection?

16 MR. CORNWELL: No, Your Honor.

17 THE COURT: You're free to stay if you wish to
18 stay, go if you wish to leave. Thank you.

19 Ladies and gentlemen, we'll take a 15 minute
20 break. I've got a matter unrelated to this case
21 that I may have to do. It shouldn't take long.
22 Don't discuss the case.

23 (The jury retires to the jury room.)

24 THE COURT: Court's in recess for 15 minutes.

25 (Brief Recess.)

1 **THE COURT:** Is the State ready?

2 **MR. STUMBO:** The State's ready, Your Honor.

3 **THE COURT:** Defense ready?

4 **MR. CORNWELL:** Yes, Your Honor.

5 **THE COURT:** Bring in the jury.

6 (The jury returns to the courtroom.)

7 **THE COURT:** Call your next witness, Solicitor.

8 **MR. STUMBO:** Thank you, Your Honor. The State
9 calls Heather Smith to the stand.

10 **THE COURT:** Come around, please.

11 HEATHER SMITH,

12 having been duly sworn, testified as follows:

13 **THE CLERK:** Please have a seat and state your
14 full name for the record, please.

15 **THE WITNESS:** My name is Heather Smith,
16 S-M-I-T-H.

17 DIRECT EXAMINATION

18 BY MR. STUMBO:

19 **Q** Good afternoon, Heather Smith. How are you
20 doing today?

21 **A** Doing well. Thanks.

22 **Q** All right if I just call you Ms. Smith?

23 **A** Uh-huh.

24 **Q** Ms. Smith, where are you currently employed?

25 **A** I am currently employed at the Assessment and

1 Resource Center, also called the ARC. It's a
2 children advocacy center of Richland County.
3 Children advocacy centers are all over the State of
4 South Carolina and the country. And their purpose
5 is to provide forensic evaluation and treatment of
6 children who are suspected of child maltreatment,
7 being physical abuse, sexual abuse or neglect.

8 Q And what's your role there at the ARC?

9 A I am the treatment services coordinator, so I
10 coordinate all the treatment services that are
11 referred to the ARC. I'm also a forensic evaluator,
12 so I do conduct forensic interviews with children.
13 And I also provide training for the state and, also,
14 internationally, nationally, I've done trainings on
15 child abuse treatment and forensic interviewing.

16 Q So you do some forensic interviews similar to
17 what Dr. Benedetto did in this case?

18 A Yes, I do.

19 Q But in this case, you had a different role?

20 A I did.

21 Q What was that?

22 A I was the mental health therapist for victim
23 victim.

24 Q Let me back up just a little bit. If you
25 could, just give the jury a brief summary of your

1 educational background.

2 **A** Sure. I graduated from the University of South
3 Carolina with a B.A. in psychology. I have a
4 masters in counseling through the University of
5 South Carolina School of Medicine with an advanced
6 graduate degree in psychiatric rehabilitation that
7 allows me to assess and treat serious mental
8 illness. I'm also a licensed professional counselor
9 in the State of South Carolina.

10 **Q** So you said you had a masters degree in
11 counseling?

12 **A** Yes.

13 **Q** And have you had any specialized training since
14 your formal education that relates to child sexual
15 abuse?

16 **A** I have. I have undergone the forensic
17 interviewing training, which is a specialized
18 training in techniques on how to forensically
19 interview the dynamics of child abuse, that also
20 includes how children tend to disclose about abuse.
21 I've also had specialized training in trauma,
22 traumatic reactions in children and best practiced
23 treatment for treating those children.

24 **Q** About how many years of experience have you had
25 in this field of child maltreatment?

1 A I've been working with child maltreatment for
2 12 years, six of those have been at the ARC.

3 Q Okay. And in your time at the ARC, about how
4 many children do you estimate that you forensically
5 interviewed?

6 A It's between five and six hundred.

7 Q Okay. And, alternatively, about how many
8 children additionally have you had a treatment
9 relationship with?

10 A At the ARC or in my last 12 years?

11 Q In your last 12 years?

12 A That would be anywhere between seven, eight
13 hundred, something like that.

14 Q Okay. And if you could, just explain the
15 differences between the two roles. Why do you have
16 a different interviewer than you -- why does
17 somebody different do the treatment?

18 A Forensic evaluation and interviewing is solely
19 for the purpose of investigation. A forensic
20 interviewer typically only sees the child once,
21 maybe twice. They don't see them following that.
22 They make a report, they create a report following
23 their interview and then that is submitted to the
24 investigating agency that requested the service.

25 Mental health therapy is completely different.

1 You might see that child over years. And your focus
2 there is helping them function better at home and
3 school and then, of course, you're looking more at
4 their mental health symptoms and helping them to
5 succeed, you know, in their lives.

6 Q Okay. And is there any overlap between the
7 two? How do you conduct the treatment of a case
8 that may, for example, have to go to court for
9 whatever reason?

10 A Well, at the ARC, you know, we do see a lot of
11 cases that are going to be involved in an
12 investigation, so we are trained to provide mental
13 health treatment, that is what we call forensically
14 sensitive. So we're always going to be sensitive to
15 the fact that, you know, a child may have to testify
16 later in court so we don't want to influence or
17 suggest or lead the child in any way that would
18 impact the, you know, later on in the court process.

19 As part of that mental health therapy, we do
20 provide court education and preparation for the
21 child that may have to testify, but, you know, we
22 want to make very sure that we're not impacting the
23 child, the child's statements that they've already
24 made through the, you know, the years that we might
25 see them in therapy.

1 **Q** So do you have a therapy model that
2 incorporates some of the aspects of the RATAC
3 protocol?

4 **A** All of our therapists at the ARC are trained in
5 the RATAC protocol and in the forensic interviewing
6 process so that they understand and know what, you
7 know, what may happen later in terms of an
8 investigation. We don't really incorporate the
9 RATAC into the treatment. I'm not sure if that
10 answered that question.

11 **Q** That's fine. And have you had the finding
12 words treatment that teaches the RATAC?

13 **A** I have. I'm actually a faculty member on
14 finding words. So I train that to statewide
15 professionals who work with child abuse.

16 **MR. STUMBO:** Your Honor, at this time, the
17 State would ask or move that Heather Smith be
18 qualified as an expert in the field of child sexual
19 abuse assessment and treatment.

20 **THE COURT:** Any voir dire?

21 **MR. CORNWELL:** No, Your Honor.

22 **THE COURT:** Any objection?

23 **MR. CORNWELL:** No, Your Honor.

24 **THE COURT:** She is so recognized. You may
25 continue.

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

2 **BY MR. STUMBO:**

3 **Q** Now, Ms. Smith, was -- how did you get involved
4 in the case involving the defendant, Timothy Wilson?

5 **A** ... was referred to me for mental
6 health therapy following her forensic evaluation at
7 the ARC by Dr. Alicia Benedetto.

8 **Q** Okay. So you started your treatment after the
9 forensic interview?

10 **A** Yes.

11 **Q** And could you tell us -- just describe your
12 first impressions of ... to us.

13 **A** When ... came in for her initial appointment
14 with me, her mother brought her, she was an outgoing
15 child. She had a very healthy sense of humor. She
16 appeared very attached to her mother. They seemed
17 to have a very good interaction. They were close.

18 During my initial assessment period, I'm
19 really -- I talk to both the mother and the child or
20 the parent and the child, the caregiver and the
21 child, to see how they're functioning at home or
22 school. She appeared to be functioning adequately.
23 There had been some reports that her mother made to
24 me about having difficulty concentrating in the
25 classroom, the sexually reactive behaviors that she

1 had demonstrated at school and with some family
2 members, same age family members.

3 And she was -- when we talked about the reason
4 that she was coming in for therapy and her reasons
5 for being back at the ARC to see me for therapy, she
6 appeared very defensive and guarded and withdrew
7 from, you know, talking with me. She was anxious
8 about talking about anything to do with why she was
9 at therapy or why she would need therapy.

10 Q Would you say that she had a high level of
11 anxiety when it came to talking about these things?

12 A She did.

13 Q Did she appear sad at all?

14 A She did. She actually cried during our initial
15 meeting about her father not being in the home
16 anymore. At the time of the interview, she had been
17 living with a grandparent and had been removed from
18 the home that she shared with her mother, father and
19 brother.

20 When she came in for my initial interview with
21 her, which is a clinical interview, it has nothing
22 to do with the forensic investigation, it's more for
23 mental health purposes, she had been living back
24 with her mother and brother and the father had been
25 removed at that point. So she had a lot of -- she

1 was very tearful, very sad about her father being
2 removed, not being able to see him because that was
3 one of my -- one of the requests of me as the mental
4 health therapist was to monitor and ensure that she
5 was not being around her father. So I had to --
6 that was one of my roles as her mental health
7 therapist. So she was very sad, crying, expressing
8 the sadness verbally.

9 Q And how often have you met with ^{Victim} over the
10 past year and a half?

11 A We started -- I don't know the exact number. I
12 haven't counted up my sessions with her, but up
13 until approximately January to February of '08.
14 This was from, say, from November '06 to January,
15 February '08, we were meeting weekly, so, and those
16 were -- those were consistently attended
17 appointments. And then around January and February,
18 I decided, at that point in time, that biweekly, so
19 every other week sessions would be fine. She had
20 reached a level of stability at that point that I
21 felt like biweekly appointments were all that was
22 needed. And then closer to the court date, we
23 increased that to sometimes twice a week.

24 Q So how familiar have you become with ^{Victim's}
25 personality and her mannerisms?

1 **A** I'm very familiar. It's been a year and a
2 half, almost two years that we've been working
3 together.

4 **Q** During the course of these therapy sessions,
5 have you talked about the things that have happened
6 between her and dad?

7 **A** I have.

8 **Q** Okay. I'm going to throw out a couple of terms
9 at you and get your expert opinion on. Term delayed
10 disclosure, what does that mean to you?

11 **A** That is the -- that is when a child does not
12 tell immediately when something has happened to
13 them. Typically, that term is connected with child
14 abuse, so it's -- or a traumatic experience. So a
15 child might, you know, it could be a physical abuse
16 or sexual abuse incident or maybe a witness to
17 domestic violence, but children that -- especially
18 if it's within the family, tend to not disclose
19 immediately. And often times adults have difficulty
20 understanding that because if something were to
21 happen to us as adults, we would immediately run and
22 tell the police or call someone and make it stop,
23 but for children, specifically children where abuse
24 is happening within the home, they don't talk about
25 it, they don't tell immediately after something has

1 happened to them.

2 Q Is a child who delays disclosure of a traumatic
3 event is that a common phenomenon?

4 A It's very common. It's the typical way that
5 children tell.

6 Q In your training and experience, have you
7 observed this, how often, frequently, infrequently?

8 A In cases where abuse is disclosed, it is
9 frequently.

10 Q So more often than not, it's a delay of some
11 time before these things are disclosed?

12 A Yes.

13 Q All right. And what are some of the reasons,
14 and you've had experience in child psychology and
15 education and training, based on that training and
16 experience, what are some of the reasons why
17 children may delay that disclosure?

18 A They -- one of the big reasons that they may
19 delay disclosure is that they've been told something
20 will happen if they tell. So they may be
21 threatened, they may be threatened of, you know,
22 we'll lose our house, we'll lose the ability to pay
23 the bills, you know, even all the way up to threats
24 to hurt other people in the family or to kill
25 someone. So it can range from, you know, threats --

1 threats are one.

2 Another reason for delayed disclosure is if it
3 is a trusted family member, if it is someone that,
4 you know, that they, you know, love dearly, then a
5 child tends to delay the disclosure because they
6 want to keep the family intact. They may be
7 threatened or have fear of removal and put into a
8 foster care, foster home situation. Stress on other
9 family members could be another reason to delay the
10 disclosure.

11 Q Because of those dynamics, is it more likely
12 that there would be a delayed disclosure if the
13 perpetrator were a family member?

14 A Yes.

15 Q Okay. Let's talk a little bit about the way
16 children disclose. We've talked about timing of it
17 with delay. How do children typically relay a
18 traumatic event when they do disclose?

19 A It's typically a process, not a one time event.
20 So children tend to disclose -- what we call the
21 process of disclosure is typically, at first, they
22 may deny it if someone questions them about it.
23 They may say, no, that didn't happen to me. Then
24 they may move into another stage of disclosure.

25 And typically kids tend to deny it first and

1 then move into what we call the tentative phase of
2 disclosure, which is where they test the waters to
3 see how adults around them would react to it. So
4 they may say, I think someone might have touched me
5 or maybe someone touched me or probably somebody
6 touched me, in order to see, well how are the adults
7 around me going to react to it, are they going to,
8 you know, are all of these horrible things going to
9 start happening to me, or, are people going to
10 believe me and then do something about it.

11 And then there is a phase in that process of
12 active disclosure where children are ready to tell
13 everything, you know, they feel confident that the
14 people around them are going to protect them and
15 keep them safe and then that's when they -- we tend
16 to get the most disclosure where kids are actively
17 disclosing.

18 Q Okay. How about verbal versus nonverbal
19 disclosures? What is the difference between the two
20 and what's the significance of that?

21 A Well, I think that disclosure would have to be
22 verbal. Maybe I'm not understanding the question
23 but --

24 Q Are there other tools that y'all use at the ARC
25 to explain things that have been disclosed verbally?

1 **A** I'm sorry, I'm not --

2 **Q** Like dolls or --

3 **A** Other tools that might help, sure. Because
4 sometimes kids aren't able to voice or verbalize
5 what happened to them because they're anxious or
6 because they maybe have fear of, you know, something
7 that might happen to them, then in some cases
8 children would like to draw or write or use the
9 tools that we have for forensic interviewing. We do
10 have tools like anatomical dolls that are used
11 within that forensic interview. You would not use
12 that in a therapeutic setting because it's not an
13 investigation, it's for mental health treatment,
14 but, you know, children that are in that tentative
15 phase of disclosure not quite ready to become active
16 and feel confident about disclosing may be
17 comfortable drawing or writing or something that
18 gives it distance from the focus on them.

19 **Q** Would you expect to get a full disclosure every
20 time you have a child talk about an abuse scenario?

21 **A** And you're speaking about the forensic
22 interview?

23 **Q** Forensic interview or in therapy sessions?

24 **A** In the forensic interview, you don't expect
25 children to walk into an interview with a stranger.

1 that they've never met before and at the very
2 beginning of the interview, just start telling
3 everything about what happened to them. Actually,
4 children that do that, that's a red flag as a
5 forensic interviewer that something might not be,
6 you know, you would want to definitely look into
7 that as perhaps something that they've been told to
8 say or, you know, that would be a red flag that
9 something else was happening. But they typically
10 tend to take their time in a forensic interview.
11 They might warm up over a period of time to the
12 interviewer.

13 In therapy, it's a little bit different because
14 you do have a much longer time to see the child so
15 they do build a lot of rapport with you and a lot of
16 trust with you. In ^{Victims} case, this was very
17 important because her mother did not believe the
18 allegations. So, in that case, over the course of a
19 year and a half, you know, my job when I work with
20 children, I also work with the families because a
21 child is inside of a family unit and so that there's
22 going -- there are going to be problems with within
23 the family that need to also be addressed, so we
24 also work with the family members.

25 And throughout the course of a year and a half,

1 for victim and the fact that her mother did not
2 believe her statements that she was making and had
3 already made to numerous professionals and then to
4 me in therapy, it became necessary for me to become
5 very forensically sensitive because I did not want
6 victim to be pressured at home or to have someone
7 talking to her at home about it. So I -- for
8 victim, she pretty much remained in a tentative
9 phase of disclosure due to the fact that she didn't
10 have the maternal support at home.

11 Q But did she -- despite that, did she disclose
12 some of the stuff to you?

13 A She did. Part of the therapy, the best
14 practice, the best models out there, research has
15 been done on this for years, but at this current
16 time, the best model for working with children that
17 have undergone a trauma is to -- it's a phase
18 oriented model.

19 The first thing that you want to do, if I may
20 talk about that a little bit, it will help to
21 explain, but the first phase is to, what we call,
22 stress management. And so whatever the child,
23 whatever stresses they might feel, having anxiety or
24 having some symptoms of depression, you want to
25 address those first so that they're able to function

1 at school and get through the day and be at home and
2 not have meltdowns and not, you know, lose sleep or
3 not be able to eat. You want the child to be
4 comfortable and stable.

5 So the first step is just to get -- to help the
6 child learn and practice stress management
7 strategies. I mean, that can take anywhere from --
8 that can take anywhere from a month to three months
9 of treatment, which is what I did with ^{1/2 hr} So
10 she was able to really manage her anxiety from the
11 beginning with me. I really helped her with that
12 and focused on that.

13 And then the next phase of the model is what
14 you really want to do is try to help the child
15 process the abuse experience, so you're really
16 focused more on helping the child talk about it,
17 helping the child kind of relive the experience,
18 which is not -- it's very painful for children. I
19 mean, it's painful for adults to relive traumatic
20 experiences. If you've ever been in a car wreck or
21 had something bad happen to you, you know it's hard
22 to -- you don't want to think about it, you don't
23 want to have those memories. For a child, it's even
24 harder because they don't really know how to process
25 that or handle that. So with **victim** -- part of the

1 model is to help them relive the experience with you
2 and then later on with a parent so that the parent
3 can be the support at home.

4 I did that piece with *Victim*. It took a lot
5 longer than it would ordinarily if the mother had
6 been supportive. So *Victim* and I did that in
7 February of this year, 2008, where she constructed
8 what we call a trauma narrative. There are many
9 ways that you can have a child do that. Some
10 children like to draw it, some children like to
11 write it, some children like to verbalize it, you
12 know, in talking about it, which is kind of unusual
13 for younger children because children don't have the
14 language development that older children would have
15 to be able to talk about it, so typically younger
16 children either like to write or draw. *Victim*
17 constructed her trauma narrative through writing.

18 Q Now, just in a general sense, you can talk to
19 us about chronic abuse versus acute. What are the
20 differences between those two things?

21 A Chronic abuse is when something has happened to
22 a child for a long period of time more than once,
23 you know, chronically where it's happened to them
24 more than once, typically, you know, more than four
25 or five months. Whereas an acute incident of abuse

1 is something that may have happened to them once or
2 twice and then ended.

3 Q How easy is it for a child to pinpoint specific
4 dates and times when they've experienced chronic
5 abuse?

6 A It's very difficult for children to pinpoint
7 that because what happens is they -- the experience
8 happens to them over a long period of time, then
9 they tend to have memories about the event that are,
10 what we call, scripted. So it's like they all kind
11 of tend to blend together for them. And so they'll,
12 you know, they may get times confused or the things
13 that happened to them may have happened every time,
14 that's how they talk about it, where, in reality, it
15 may have been different things at different times.
16 So it really tends to confuse a child about the
17 memories that they're having. Typically -- and
18 especially if the abuse starts when they're young.
19 So the younger a child -- the abuse may start, then
20 the more scripted or more, you know, all of these
21 things -- the same things happened to them every
22 time which may or may not be true. So it just
23 really can cause some confusion in the child's
24 memory that starts and lasts for a long time.

25 Q Okay. Have you also had a chance to review the

1 forensic interview in this case?

2 A I have.

3 Q Have you had a chance to review disclosures
4 that ^{Victim} made to some of the other people that
5 have testified in court this week?

6 A I have.

7 Q Based on your training and experience and your
8 meetings with ^{Victim}, are the disclosures that she
9 made, are they compelling?

10 A They are compelling.

11 Q Okay. Compelling as opposed to problematic?

12 A Yes.

13 Q And can you just explain to the jury why you
14 find them to have been compelling?

15 A Sure. Over the last almost two years that I've
16 worked with ^{Victim}, part of, you know, through the
17 work with ^{Victim}, you know, like said, there is a
18 stage model for the treatment, one of -- the biggest
19 -- one of the biggest things that I needed to work
20 with ^{Victim} on was the sexual behaviors with other
21 children, you know, that needs to stop immediately.
22 So a lot of my initial work with her was helping her
23 learn that you can't do that to other children, you
24 know, you can't have sexual behaviors with other
25 children because that's not what children do, you

1 know, that's what adults do.

2 With ^{V. R. firm} he was very consistent. She felt
3 a lot of guilt about those behaviors. She was very
4 embarrassed by what she had done and would say
5 things to me, would want me to understand that, you
6 know, at first, she felt like it was her fault, but
7 she would always follow that up with, but, you know,
8 it's what my daddy did to me and it's what I
9 learned. So I made sure she understood that that
10 may be the case, but we have to stop it. So I
11 helped her deal with that a lot.

12 So, you know, and throughout the two -- the
13 almost two years that we worked together, she would
14 make statements periodically throughout our
15 treatment. Her statements have been consistent up
16 until -- you know, with the trauma narrative with
17 what happened with her dad, the sexual abuse that
18 happened with her dad.

19 Q How about the level of sensory detail? What
20 was the level of that over the course of these
21 disclosures?

22 A Her level of sensory detail has been consistent
23 as well with what she initially disclosed in the
24 forensic interview. She -- over the course of two
25 years, some of the memory has been lost for her

1 because, as it will when children age, they're not
2 going to remember what happened to them two years
3 ago. It has -- and her -- in her trauma narrative
4 especially when she wrote that in February of 2008,
5 she gave great detail and sensory description in her
6 trauma narrative.

7 Q In your opinion, is ^{with} more comfortable
8 writing this stuff or verbalizing?

9 A She continues to have a lot of anxiety and a
10 lot of sadness about her dad not being in the home
11 and not being around. She's not been able to see
12 her father in a year and a half nor have her
13 siblings.

14 Q Let me stop you right there. How about the use
15 of the dolls in the forensic interview that Dr.
16 Benedetto used, are those an appropriate tool for a
17 child like ?

18 A They are. The anatomical dolls are for
19 clarification, so you would never use them prior to
20 a child telling about something, you know, within
21 the forensic interview. The dolls are tools to be
22 used for that. Just like with the writing,
23 sometimes it's easier for children to show or write
24 it, they don't have the verbal ability that an adult
25 would to talk about it or even an adolescent to talk

1 about it with a lot of language. You know, children
2 are learning language. So when victim was
3 interviewed, she was seven and so at the age of
4 nine, she does have more verbal ability, but she'd
5 also lost some of the memory of it because she had
6 not seen her father or been, you know, it had
7 stopped happening so she didn't have the experience.

8 Q Was ^{victim's} process of disclosure here
9 consistent with a child who has undergone a sexual
10 trauma?

11 A It's very consistent.

12 Q Okay. In your opinion, is victim
13 characteristic, in her family situation,
14 characteristic of a child who may delay disclosure
15 of sexual abuse?

16 A Yes.

17 MR. STUMBO: Beg the Court's indulgence, Your
18 Honor.

19 THE COURT: Yes, sir.

20 (Pause.)

21 BY MR. STUMBO:

22 Q Just one more question, Ms. Smith. Safe to say
23 here that the process of disclosure went from less
24 to more in ^{victim's} case?

25 A To be -- I'm not sure that that is the case

1 with ^{v.2/mi} i. I think that she felt more comfortable
2 with me and was able to disclose it within her
3 trauma narrative levels of detail that were more
4 than a tentative phase.

5 Q Did you find that the longer that you met with
6 her, the more comfortable she got with you, the more
7 able she was to disclose things?

8 A Yeah, I would definitely agree with that. At
9 the same time, I would have to say that because I
10 was having to be forensically sensitive with her due
11 to the court process, that she really -- I didn't
12 focus on that as I would normally in treatment with
13 a child that had a supportive mother who I could
14 work with the mother and the child together on that
15 type of -- on the trauma narrative. So I had to,
16 you know, her trauma narrative was not as detailed
17 as it could have been.

18 Q But when you say you did this in a forensically
19 sensitive manner, you didn't ask her leading
20 questions?

21 A Exactly. I didn't suggest anything or have
22 her, you know, write things more than -- on one
23 occasion as you would in a normal therapy treatment
24 of trauma session. You would have -- a trauma
25 narrative might be written over three or four

1 sessions.

2 Q And her disclosures to you have been consistent
3 with the disclosures she's made to the other people
4 involved in this case?

5 A They have been.

6 MR. STUMBO: No further questions at this time,
7 Your Honor.

8 THE COURT: Cross?

9 CROSS-EXAMINATION

10 BY MR. CORNWELL:

11 Q You talked about her mother not being
12 supportive, but you also said that she was very fond
13 of her mother, very attached to her mother and that
14 her mother and her were very close; is that true?

15 A That is true. She was very close to her mother
16 and is still attached to her.

17 Q Okay. You also made a lot of statements in
18 regards to ^{Victim} her behaviors being consistent with
19 a certain diagnosis or, you know, certain things.
20 Now, when you say consistent, that doesn't
21 necessarily mean it's the case; is that true?

22 A Her statements to me in therapy have been --
23 are consistent with a child who has experienced
24 sexual abuse.

25 Q Maybe I need to rephrase the question. Just

1 because they're consistent with a child who has
2 actually been sexually abused, doesn't mean that she
3 has actually been sexually abused?

4 A Based on her statements to me, it is consistent
5 with sexual abuse.

6 Q I don't think you really answered the question
7 there, but maybe if I rephrase it, you'll understand
8 what I'm asking better. I'm not sure I'm getting it
9 across to you. When you say consistent, that
10 doesn't mean yes, does it?

11 A We look at a lot of different factors when
12 we're looking at consistency and looking at whether
13 or not a child has been sexually abused based -- and
14 the type of treatment that we would use to work with
15 them. So if you're asking me do I have direct
16 knowledge of the child being sexually abused, I was
17 not present while the sexual abuse happened to her
18 so I was not an eyewitness to that. Based on my
19 professional opinion in working with children who
20 have been sexually abused for 12 years, it's
21 consistent with a child who's been sexually abused.

22 Q But you're not on the stand testifying, yes,
23 she has been?

24 A I am not testifying that I eye witnessed her
25 being sexually abused. I did not see that.

1 **MR. CORNWELL:** Beg the Court's indulgence.

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

3 **BY MR. CORNWELL:**

4 **Q** Now, you said something about her being anxious
5 or reluctant about testifying and you mentioned that
6 that's not abnormal.

7 **A** Anxious and reluctant to testify?

8 **Q** I'm sorry. To disclose to you. I'm sorry.
9 Now, could that reluctance be due to her fibbing?

10 **A** ^{Victim} -- whenever a child is anxious or
11 reluctant to talk about something that may have
12 happened to them, in therapy, you want to be able to
13 talk to the child about what, you know, why are you
14 having feelings of anxiety, why are you reluctant to
15 talk to me, why do you appear depressed or
16 withdrawn. So you're not -- you're not formulating
17 your opinion of that based on something without
18 questioning it, you know.

19 So with ^{Victim} I would ask her, you know, why
20 are you so reluctant to talk with me or why are you
21 feeling anxiety right now and her response was
22 always that. And she would cry, you know, during
23 sessions and talk about how she was afraid that her
24 dad would be mad at her for telling what happened to
25 her and that her mom -- if her mom were to know

1 about what happened to her, she would also be mad
2 and **victim** would get in trouble.

3 Q Now, did -- was there any indication that her
4 father or her mother told her that?

5 A Um --

6 Q Did her father or mother say that to her, that
7 they would be mad if she told?

8 A She did not state to me that she was told that.

9 Q Thank you.

10 A But she did state to me that she felt that way.

11 Q Thank you. Now, you said before that at the
12 disclosure -- that sometimes this disclosure can be
13 confused and it can be kind of disjointed, but
14 children think like that or -- because of the
15 child's mind, the way they process things, that it
16 can be -- it could come out like that? Is that what
17 you testified to earlier?

18 A Could you repeat that? I'm not sure what the
19 question is.

20 Q You were talking about the way disclosure comes
21 out sometimes. You said sometimes that children can
22 confuse things and that it can come out kind of
23 confusing. It may not sound to us like it's all
24 together or it may seem disjointed, but you said
25 that's how a child's mind works in the process of

1 disclosure?

2 **A** I think you're speaking about two different
3 things. One is tentative disclosure, which is when
4 a child is hesitant out of fear or anxiety to tell
5 what happened. So they're saying things, they're
6 only giving you a little bit. They're not just
7 opening up and telling you everything all at once.
8 Versus chronic sexual abuse and the memories and how
9 they're encoded in the brain, they're very different
10 than a child who had had, let's say, two incidents
11 of being sexually touched. That's going to be
12 different than a child that's been touched over, you
13 know, maybe years. They're going to code those
14 memories differently.

15 So for a child that's been touched chronically,
16 they're going to code the memories in a way that
17 they may overlap. So the memories overlap. So when
18 they're telling someone -- an adult's coming to them
19 and saying, tell me about a time when that happened,
20 often times their disclosure can sound confusing or
21 unconvincing, but that -- they're doing what they
22 can, they're doing the best they can to tell you
23 what happened.

24 **Q** Isn't it true, and I think Dr. Benedetto kind
25 of addressed this, isn't it true that sometimes

1 children use their imagination, maybe, to fill in
2 the gaps?

3 A You know, there are -- as part of our forensic
4 interview, and I'm ^{Victim} ~~Victim~~'s mental health therapist,
5 but, you know, being a forensic evaluator and doing
6 lots of forensic interviews, you're evaluating for
7 that in the interview. You're looking at whether a
8 child makes, what we call, imaginative or
9 implausible statements or fantastic statements. So
10 you're doing a lot of assessment in the forensic
11 interview process where you're looking for that.

12 ^{Victim} ~~Victim~~ did not make fantastic, implausible,
13 imaginative statements in her interview. She hasn't
14 done so with me in therapy.

15 Q And that's assuming that everything a child
16 imagines is implausible; isn't that correct?

17 A Typically, children cannot imagine or be --
18 typically, a fantastical statement is going to be
19 one that's obviously fantastical like, you know, the
20 Teddy Bear or Winnie the Pooh touched me. You know,
21 an implausible or imaginative statement, you know,
22 you're -- would only be made -- it would sound
23 imaginative or implausible. If something happened
24 to a child and it happened to their body and they
25 had the experience of it, then they're going to be

1 able to tell you what happened in a way that makes
2 sense to them. So ^{victim} hasn't made to me, in
3 mental health therapy, any statements that are
4 implausible or imaginary.

5 Q And I'm not sure if you addressed the question
6 I asked, but maybe if I worded it differently. Is
7 your testimony that children are incapable of
8 telling realistic lies?

9 A That's not my testimony because children may
10 tell realistic lies.

11 Q Thank you.

12 MR. CORNWELL: No further questions.

13 THE COURT: Redirect?

14 MR. STUMBO: Just a couple, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. STUMBO:

17 Q Mr. Cornwell asked you about if she still loved
18 her mother. Do you feel like **victim** still loves her
19 mother?

20 A Very much.

21 Q And despite lack of maternal support --

22 MR. CORNWELL: Your Honor, may we approach?

23 THE COURT: Yes.

24 (Whereupon, a bench conference was held off
25 the record, in the presence of the jury, but out of

1 the hearing of the jury.)

2 BY MR. STUMBO:

3 Q Ms. Smith, you said that you feel like victim
4 loves her mother, yet she still disclosed events to
5 you. Did it cause her any trouble to disclose these
6 events to you?

7 A Sure.

8 Q And how is that related to her relationship
9 with her mother, or why is that significant to you?

10 A From the beginning of therapy with victim, she
11 was extremely worried about what was going to happen
12 to her family. So we often talked, you know, a big
13 part of my therapy with ^{1/2 him} was a grieving
14 process with her. She was grieving the loss of her
15 father being in a part of the family. And she would
16 frequently cry and was upset that, you know, he
17 would not be allowed to come back to the home or she
18 would not be able to see him again, that was really
19 a big deal for her. With that, a part of it also
20 was that her mother would be very angry at her if
21 she were to find out everything that had happened.

22 And so part of my therapy with victim was
23 working with her on the importance of telling the
24 truth and only, you know, talking about things that
25 really happened so that, you know, everyone can know

1 the truth. And, eventually, the -- victim is still
2 in therapy with me, so the treatment goals still are
3 to work with ; *V. 2 h m* and her mother on what happened,
4 you know, so that she can speak to her mother about
5 that.

6 Q And I think you testified just a second ago,
7 just to ask again for clarification, your opinion
8 here is based on your professional training,
9 experience and your meetings with victim, correct?

10 A Correct.

11 Q And that finding is that she has been
12 compelling in her disclosures?

13 A She's been consistent and compelling in her
14 disclosures of sexual abuse.

15 Q So that opinion is not based on an eyewitness
16 account, but your professional opinion?

17 A That's right.

18 MR. STUMBO: No further questions, Your Honor.

19 THE COURT: Recross?

20 RECROSS-EXAMINATION

21 BY MR. CORNWELL:

22 Q Is there any indication that *Victim's* mother
23 influenced her disclosure to you at all directly?

24 A Her mother did not put -- her mother -- when
25 you say influence, that's a little bit -- in terms

1 of direct influence --

2 Q Yeah, direct influence?

3 A I would say her mother did not tell her to say
4 or not say anything to me.

5 Q Now, is there any indication that ^{victim's}
6 mother has treated her any different, has been mad
7 at her or anything like that?

8 A Actually, at the beginning of treatment, that
9 was indicated. I spoke with the Department of
10 Social Services about that at one point that I felt
11 like Ms. Wilson had alienated affection towards
12 ^{victim} and that it was causing her anxiety and
13 depression. And we addressed that, I addressed that
14 with Ms. Wilson and she was able to -- she was able
15 to change that behavior towards ^{victim}. So we
16 worked -- I worked with her in therapy on that.

17 Q And how long -- you've been meeting with **victim**
18 for about a year and a half now you say?

19 A Uh-huh.

20 Q And during the course of these meetings, I'm
21 assuming, you guys, as part of the process, you have
22 to bond, there has to be some kind of bond?

23 A There is.

24 Q So you feel like you're really close with
25 **victim**?

1 **A** I do.

2 **Q** I guess there's kind of an emotional connection
3 there?

4 **A** I am attached to ^{victim} I consider her
5 well-being to be one of, you know, something that I,
6 you know, want her to succeed in life. I want her
7 to be safe and protected and, you know, would like
8 for her to be able to continue to work on what has
9 happened to her, the abuse that has happened to her
10 by her father and be able to move beyond it and,
11 what we call, integrate it into her life.

12 Unfortunately, when bad things happen to people, you
13 have to integrate them, you can't avoid them. And
14 so I do care about ^{victim} to that point that I want
15 her to be able to do that. And we haven't been able
16 to do that yet and I do hope that I'll be able to
17 continue working with her.

18 **Q** And who has she been with for the majority of
19 the time? She's been living with mom for the
20 majority of the time?

21 **A** She has lived with her mother. Besides taking
22 breaks for vacation and things, she's lived with her
23 mother since I've met with them.

24 **Q** Do you feel like mom knows the child pretty
25 well?

1 **A** I think that even after mother has been given
2 information and been provided with a little --
3 certain amounts of information, we don't want to
4 give her every bit of information that her child's
5 saying in therapy because there is that
6 confidentiality piece that you -- it's very
7 important to keep in a therapeutic relationship, but
8 even giving her statements and things that her child
9 has made in order to try and bring her into a more
10 supportive stance with ^{victim}, she still has not
11 been able to provide that for her.

12 **Q** That's not really what I asked you. I asked
13 you if you felt that mom knows ^{is} pretty well?

14 **A** I think she knows her daughter well, yes.

15 **Q** Do you think you know her daughter better than
16 her?

17 **A** No, I don't think that.

18 **MR. CORNWELL:** Thank you.

19 **THE COURT:** Anything further of the witness?

20 **MR. STUMBO:** Nothing further from this witness,
21 Your Honor.

22 **THE COURT:** Thank you. You may step down.

23 Any further witnesses for the State?

24 **MR. STUMBO:** Your Honor, that's the State's
25 case.

1 **THE COURT:** Ladies and gentlemen, I told you
2 when the State rested, I had to confer with the
3 attorneys about some legal issues and I had to do
4 that outside of your presence. I'm sure we're going
5 to break for lunch, but I need to talk with them
6 before I know what time to tell you to be back. So
7 if you'll step in the jury room, not discuss the
8 case, I'll get to you as quickly as I can.

9 (The jury retires to the jury room.)

10 **THE COURT:** Motions?

11 **MR. CORNWELL:** Your Honor, at this time, we'd
12 like to -- the defense would have a motion, Your
13 Honor.

14 **THE COURT:** Go ahead.

15 **MR. CORNWELL:** We'd like to make a motion for a
16 directed verdict based on there's not been any
17 evidence for which -- presented by the State, Your
18 Honor, to find my client guilty.

19 Your Honor, I would like to point to the
20 uncertainty of the testimony. There was a lot of,
21 you know, consistent withs and ifs involved in the
22 testimony, Your Honor. I would base my motion on
23 the -- on that, Your Honor. There was also some
24 contradictory statements in regards to the alleged
25 victim's testimony. There's even contradictory

1 statements in regards to some of the experts'
2 testimony. Based on my motion on that, we'd move
3 for a directed verdict at this time.

4 **THE COURT:** There's sufficient evidence to go
5 to the jury on the four indictments -- or to go
6 forward with the trial on the four indictments of
7 criminal sexual conduct with a minor in the first
8 degree. There's sufficient evidence to go forward
9 on the charge of lewd act.

10 How can I let disseminating obscene material to
11 a minor 12 years or younger go forward, Solicitor?

12 **MR. STUMBO:** Your Honor, I believe, based on
13 Breann's direct testimony, as well as the testimony
14 of -- well, the interview, not only that, Detective
15 Mefford confirmed and testified to this on the stand
16 that there was access to pornography in the house,
17 which corroborates ^{vi 1.4.14m} talking about watching
18 pornography with her father and him actually
19 bringing her into the room. She said at one point
20 in the interview, he brought her in to rewind the
21 tape and he brought her in to look at. Her
22 description of it is people having sex.

23 And I think from what the statute says on the
24 definition of obscenity, of course, they have the
25 definition from the Supreme Court language, Your

1 Honor, that in our statute, which is 16-15, I
2 believe, 305 subsection D, which I think defines --
3 and I've got the statute here.

4 **THE COURT:** I've got it in front of me.

5 **MR. STUMBO:** And I believe there's a
6 contemplation there that when it involves obscenity
7 from a child's perspective, which is what we have
8 here, the jury -- the fact finder can make a
9 determination based on what the child would see as
10 something that's inappropriate or something that a
11 child should not see.

12 I believe that language, Your Honor, is as
13 follows: Subsection D of 16-15-305 says, Obscenity
14 must be judged with reference to ordinary adults
15 except that it must be judged with reference to
16 children or other especially susceptible audiences
17 or clearly defined deviant sexual group if it
18 appears from the character of the material or the
19 circumstances of its dissemination especially for or
20 directed to children or audiences or such a group.

21 I think from ^{victims} testimony, Your Honor,
22 both in court about how she talked about how there
23 was two people walking down the road and then they
24 sat down and did sex. In the interview, she talks
25 about how there was another particular description

1 she gave of two girls wishing that they had a boy
2 there and then a boy appeared and they did S-E-X. I
3 think that description, in light of the language
4 here in the statute defining obscenity, is something
5 that she says that her father actually made
6 available to her, which I think fits the statutory
7 definition.

8 **MR. CORNWELL:** Your Honor, I would have to
9 disagree. I think there was only one incident that
10 I can remember that would directly implicate or even
11 come close to implicating dad as far as like being
12 even in the same room with her while the pornography
13 was on and that's when she said something about
14 rewinding it.

15 I'd like to draw your attention to that because
16 in the prior testimony, she said that it was on Time
17 Warner Cable. And she was specifically asked was it
18 a DVD and she said, no, it was on T.V. You can't
19 rewind a T.V., Your Honor.

20 **THE COURT:** Oh, yeah, you can.

21 **MR. STUMBO:** You can if you have TiVo or DVR.
22 And, Your Honor, I think that argument would go,
23 again, to the weight of the evidence not its
24 existence, I believe, based on ^{Victims} testimony in
25 court, as well as the forensic interview --

1 **MR. CORNWELL:** And, Your Honor, there was no
2 testimony that there was TiVo or anything like that,
3 Your Honor, just to put that out there.

4 **THE COURT:** Well, my ruling's not going to be
5 based on whether the thing that the child is
6 talking about on the video could be rewound or not
7 rewound. Those are issues of fact. Those are
8 things that I don't get to assess. Consistencies
9 and inconsistencies in testimony, things of that
10 nature, I don't get to evaluate.

11 But obscenity is a very difficult area of the
12 law as you attorneys well know. It's been something
13 that the courts have wrestled with for many, many
14 years and it's something that people can have strong
15 disagreements about how to define something that is
16 objectionable or in extremely poor taste or merely
17 offensive, does not rise to the level of obscenity.

18 And when people start trying to define
19 obscenity, it makes all lawyers think of that very
20 famous quote of the Supreme Court Justice who was so
21 elderly, U.S. Supreme Court Justice, that he could
22 not really see particularly well. And so when
23 reviewing materials that were claimed to be obscene,
24 he had to have someone, an aid, tell him what was
25 going on on the screen. It also makes one think of

1 the U.S. Supreme Court Justice who said, You know it
2 when you see it.

3 There's not enough evidence in this case to let
4 me allow that charge to go forward. I mean, there's
5 a lot of suspicion. There's a lot of possibilities.

6 And I'm not necessarily saying that you have to
7 produce the exact film that was shown, but, you
8 know, at one time, the child was asked about
9 something she said, she heard sex going on on the
10 T.V. and they asked her what that was and she said,
11 Sex in the City. Well, she's right, but it's not
12 obscene under any kind of standards and it's just
13 not enough specifics in the child's testimony to
14 allow a jury to do anything other than to speculate
15 and that's not enough in a criminal courtroom. I'm
16 dismissing that charge.

17 **MR. STUMBO:** Thank you, Your Honor.

18 **THE COURT:** I realize it's a community
19 standard. I've read through the statute. I've read
20 through it. I've got it right in front of me right
21 now. I'd read that language about a child and that
22 you generally judge it by adults except you can
23 judge with reference to children, that sentence is
24 awfully hard to follow, but --

25 **MR. STUMBO:** It is, Your Honor. And, actually,

1 I indicted that charge later on the basis of
2 subsection D. If I didn't have that in this case,
3 if it wasn't involving a child, I never would want
4 to touch obscenity the way the Supreme Court's
5 defined it. I don't know what it is either to be
6 honest with you.

7 **THE COURT:** I don't fault you for charging it.
8 I don't fault you with that at all. I'm just
9 saying, I'm doing my job at this point. I have to
10 dismiss that charge. The other motions are denied:

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

12 **THE COURT:** All right. Mr. Wilson, give me
13 your attention. I need to go over some things with
14 you. I have to do this with everybody who's on
15 trial, whether they're on trial for murder or
16 whether they're on trial for a driving offense. I
17 need your responses to be under oath, so I need you
18 to raise your right hand for me.

19 TIMOTHY JACOB WILSON,
20 having been duly sworn, testified as follows:

21 **THE COURT:** Have a seat. Now, just speak
22 loudly enough so that the lady can take down what we
23 say.

24 **DEFENDANT WILSON:** Yes, sir.

25 **THE COURT:** We're at the stage of the trial now

1 where the State has rested and the next thing that
2 would happen is that I would give your side the
3 opportunity to present evidence for the jury to
4 consider. Do you understand that?

5 **DEFENDANT WILSON:** Yes, Your Honor.

6 **THE COURT:** So you know where we are in the
7 trial?

8 **DEFENDANT WILSON:** Yes, Your Honor.

9 **THE COURT:** Now, you're not required to put up
10 any evidence, but you may. And if you want to
11 testify yourself, you may. If you want to call
12 other witnesses to testify on your behalf, you may.
13 If you want to have other witnesses testify and you
14 choose not to testify, you may. What I'm trying to
15 get across to you is that nobody can force you to
16 testify. Do you understand that?

17 **DEFENDANT WILSON:** Yes, Your Honor.

18 **THE COURT:** In a criminal court setting like
19 we're in now, you have an absolute right to remain
20 silent. And if you choose not to testify, I'm going
21 to tell that jury that they cannot hold your silence
22 against you in any way at all. They can't discuss
23 it in their deliberations and that it's not to enter
24 their minds in making the decision of whether the
25 State has proven you guilty or failed to meet the

1 burden of proof. Do you understand that?

2 **DEFENDANT WILSON:** Yes, Your Honor.

3 **THE COURT:** Now, does he have a prior criminal
4 record that would subject him to impeachment?

5 **MR. STUMBO:** Nothing, Your Honor.

6 **THE COURT:** Now, this decision about whether
7 you testify or not is your decision and yours alone.
8 Do you understand that, Mr. Wilson?

9 **DEFENDANT WILSON:** Yes, Your Honor.

10 **THE COURT:** You're the person on trial and I
11 expect that you would confer with your attorneys and
12 perhaps with family members or friends or anyone
13 whose opinion you value on important decisions, but,
14 ultimately, it is your call to make. Do you
15 understand?

16 **DEFENDANT WILSON:** Yes, Your Honor.

17 **THE COURT:** Mr. Wilson, has anyone exercised
18 any type of undue influence over you to get you to
19 choose to testify or not testify?

20 **DEFENDANT WILSON:** No, Your Honor.

21 **THE COURT:** Are you clearheaded today? You
22 know what you're doing?

23 **DEFENDANT WILSON:** Yes, Your Honor.

24 **THE COURT:** Have you had any kind of medicine,
25 alcohol, drug or anything that would impair your

1 thinking?

2 **DEFENDANT WILSON:** No, Your Honor.

3 **THE COURT:** Do you suffer from any type of
4 physical or mental condition that impairs your
5 thinking?

6 **DEFENDANT WILSON:** No, Your Honor.

7 **THE COURT:** All right. Then what I'm going to
8 do at this point, Mr. Wilson, is I'm going to make a
9 finding that whatever decision you make about
10 testifying or not testifying, that you make it
11 freely, knowingly, voluntarily and intelligently.
12 You understand you have a right to testify or not
13 testify. You understand that if you choose not to
14 testify, I'm going to tell that jury they cannot
15 hold your silence against you in any way at all.
16 You understand that nobody can force you to testify,
17 it is your decision and yours alone to make. So if
18 anybody attempts to improperly influence you
19 regarding your decision about testifying or not
20 testifying, you have to let me know that
21 immediately. You understand?

22 **DEFENDANT WILSON:** Yes, Your Honor.

23 **THE COURT:** And whatever decision you may have
24 made at this point, you can change your mind until
25 you actually come up and take the stand if you

1 choose to testify or not testify, all right?

2 **DEFENDANT WILSON:** Yes, Your Honor.

3 **THE COURT:** And I'm not trying to suggest to
4 you that you should or you shouldn't, that's not my
5 decision and don't read into anything I said that
6 I'm trying to suggest what you should do.

7 All right. You all, as I understand it, do
8 expect to put up a case; is that right?

9 **MR. CORNWELL:** That is correct, Your Honor.

10 **THE COURT:** Okay. Bring the jury back in.

11 (The jury returns to the courtroom.)

12 **THE COURT:** Ladies and gentlemen, we're going
13 to break for lunch in a few moments and I'm going to
14 have you come back in about an hour.

15 As a result of my conversations with the
16 attorneys, I need to advise you at this point that I
17 instructed you at the outset of the trial that there
18 were separate and distinct indictments in this case
19 and that you were to evaluate each on its own merit
20 or lack of merit, I told you that there were six
21 indictments. As a result of my discussions with the
22 attorneys, I'm telling you that the indictment for
23 disseminating obscene material to a minor 12 years
24 or younger is no longer before you. Don't speculate
25 about why that is, don't try to figure it out, just

1 accept it. It doesn't make the remaining charges
2 any weaker nor does it make them any stronger. It
3 just means you will not be deciding that particular
4 charge.

5 Now, ladies and gentlemen, I need you back in
6 the jury room at 2:05. You have an hour for lunch.
7 I hope you a have a pleasant lunch. 'Don't discuss
8 the case. Thank you.

9 (The jury was excused for lunch.)

10 **THE COURT:** I do want to state for the record
11 that in considering those motions for a directed
12 verdict, with regard to the jurisdictional
13 requirement, I do recall one question where it was
14 actually stated in the question that the house was
15 in Lexington County. The officer in response to
16 that, I think, put forth sufficient evidence that
17 this occurred in Lexington County. If there were
18 other references to Lexington County, I just missed
19 them, but that's sufficient to let it go forward.

20 With regard to the age of the various
21 individuals, I know that there was testimony that
22 clearly could justify the jury determining that the
23 child was, at all times relevant, under the age of
24 11.

25 With regard to the lewd act charge, I don't

1 recall specific mention of a birth date of the
2 defendant. I may have missed it. It may be in some
3 of the records that are before the jury, I don't
4 know. He, it's been testified repeatedly as being
5 the father of the child. From the relevant dates
6 and from looking at him, it's obvious that he's over
7 the age of 14 at the time of the alleged lewd act.

8 Court's in recess until 2:05.

9 (Whereupon, there was a luncheon recess.)

10 **THE COURT:** Defense ready?

11 **MR. CORNWELL:** Yes, Your Honor.

12 **THE COURT:** State ready?

13 **MR. STUMBO:** The State's ready, Your Honor.

14 **THE COURT:** Bring in the jury, please.

15 (The jury returns to the courtroom.)

16 **THE COURT:** Ladies and gentlemen, as you heard
17 before the break, the State has rested its case in
18 chief. The next thing that will happen is that the
19 defense is given an opportunity to present evidence
20 for you to consider. This doesn't change the burden
21 of proof. The burden of proof is entirely on the
22 State, but the defense can present evidence for you
23 to consider in deciding whether the State has met
24 its burden of proof or failed to meet its burden of
25 proof.

1 All right. Defense counsel is recognized to
2 call their first witness.

3 MR. CORNWELL: Your Honor, we would call T.J.
4 Wilson to the stand, Your Honor.

5 THE COURT: Come around, please.

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

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

11 THE WITNESS: Timothy Jacob Wilson.

12 DIRECT EXAMINATION

13 BY MR. CORNWELL:

14 Q How are you doing, T.J.?

15 A Good.

16 Q Now, we've already kind of told the jury your
17 name. I know you got a new job recently. Where are
18 you working at right now?

19 A Currently, I'm working for American Concrete.

20 Q Okay. What do you do for them?

21 A I do a lot of maintenance work and anything
22 that needs done around the shop.

23 Q All right. And where are you living at right
24 now?

25 A Right now, I'm staying Value Place.

1 Q Is that like a hotel that you can rent, like,
2 by the week and everything like that?

3 A Yes.

4 Q And that's because of the situation going on
5 right now, right?

6 A Yes.

7 Q T.J., can you kind of tell us what this whole
8 situation has done to the family?

9 A Well, it took me out of the house. It's made
10 my children and my wife live without a husband and a
11 father. It's tore apart my father, my mother, my
12 grandmother, basically all family members in my
13 family.

14 Q So this is a situation that's kind of divided
15 the family, would that be safe to say?

16 A No. They all are standing behind us both.

17 Q All right. So as far as you know -- and I just
18 want to ask this straight out, T.J., and so you can
19 tell the jury, did you do this?

20 A No.

21 Q Did you touch your daughter inappropriately?

22 A No.

23 Q Did you touch her in her private area?

24 A No.

25 Q Did you ask her to touch you?

1 **A** No.

2 **Q** Did you have sexual intercourse with your
3 daughter?

4 **A** No.

5 **Q** Did you make your daughter watch pornography
6 with you?

7 **A** No.

8 **Q** Were you aware of any time where she was in the
9 room watching pornography with you?

10 **A** No.

11 **Q** Would you consider you and your daughter close?

12 **A** Yes.

13 **Q** Now, in the family structure, what was kind of
14 your role?

15 **A** As a disciplinary parent mainly.

16 **Q** So, basically, you did all of the discipline?

17 **A** Yes.

18 **Q** And we heard **victim** kind of testify that you,
19 you know, you may have spanked her. Did you spank
20 her a lot?

21 **A** Only if the circumstance required it.

22 **Q** Okay. And would you say ^{victim} was a problem
23 girl, a good girl, or, for the most part, a good
24 girl?

25 **A** She was our first child and I have a lot of

1 situations that, at the time, I deemed, you know, to
2 be a situation to be a spanking. It was quite
3 often.

4 Q Do you think you might have overreacted on
5 occasion?

6 A Yes.

7 Q Do you admit you may have made some mistakes in
8 raising her?

9 A Yes.

10 Q And you think that's because this is your first
11 child, maybe?

12 A Yes.

13 Q Now, can you kind of tell us about the incident
14 that happened with ^{Victoria} ~~Victoria~~ classmate when she was
15 in kindergarten?

16 A Yes. There was a time where she had went over
17 to a friend's house to spend the night. It was a
18 sleep over. It was shortly after a birthday party
19 which she had had, which, at first, I was reluctant
20 to even let her over there let alone spend the
21 night. I took her over to the residence and I met
22 the parents and saw the surroundings and deemed it
23 safe for Bree to spend the night. Typically, I'd
24 never do that.

25 Q You were kind of overprotective, huh?

1 A Yes.

2 Q So when Bree came back from the sleep over, how
3 did you find out about what happened?

4 A My wife had told me what had happened and that
5 was a matter of maybe four days.

6 Q About four days afterwards?

7 A If that.

8 Q Were there any other incidents with Bree and a
9 problem with her touching other kids or kids
10 touching her?

11 A As far as I know, there was one other occasion
12 -- or two other occasions actually. One that I know
13 of was she mentioned outside -- maybe multiple times
14 other than the two, but the one that I can remember
15 the most would be when it was her and the other two
16 children, which are my sisters, and my son was also
17 involved as she had stated.

18 Q Now, there was some testimony given that you
19 were in the military in part of 2006, was it?

20 A Yes.

21 Q What dates were you actually in the military?

22 A I joined January 28th. I had a, maybe, two
23 weeks to prepare and left February 1st.

24 Q February the 1st. And when did you come back
25 home after you left?

VOLUME TWO 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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1 **A** I had three months at boot camp. And when I
2 graduated boot camp, they give you ten days leave.
3 After the ten days leave, I had MCT, which is Marine
4 Corps training, Marine combat training. I had to go
5 back for that, that was another three weeks for
6 that. After MCT, there's no leave, just, I believe,
7 four days transporting from that base to another
8 base, which was no more than 15 minutes away. And
9 from there, I was stationed there until September
10 28th.

11 **Q** Where was that other base at?

12 **A** It was Camp Lejeune.

13 **Q** In North Carolina?

14 **A** North Carolina.

15 **Q** Now, did you -- you didn't get to come home
16 that whole time?

17 **A** No. I had one opportunity that I did get to go
18 home, but that was during the MOS school training at
19 the end.

20 **Q** Okay. That was toward the end. So when did
21 you finally come back home in 2006?

22 **A** September 28th.

23 **Q** And when you came home, was there anything
24 different about home? Did ^{1/5 64 m} react to you any
25 differently?

1 A No. She was happy to see me.

2 Q What about your wife? Did she react to you any

3 differently?

4 A No.

5 Q Did the family home seem to be pretty much

6 normal?

7 A Yes, other than the fact that I'd been gone for

8 so long.

9 Q Now, let's talk about home life a little bit.

10 Before you went to the military, did both you and

11 your wife work?

12 A Yes.

13 Q Where did you work at before?

14 A Time Warner Cable.

15 Q And what was kind of like your work schedule

16 with Time Warner Cable?

17 A I started work at 08 in the morning and got off

18 at anywhere from five o'clock, at 5:00 p.m., to any

19 time later than that.

20 Q So about 8:00 to 5:00 everyday and sometimes

21 you'd have to work over?

22 A Yes.

23 Q And was that Monday through Friday or how did

24 that work out?

25 A That was Monday through Friday, occasionally on

1 Saturdays.

2 Q All right. So you worked from five to six days
3 a week?

4 A Yes.

5 Q And you weren't at home during the day?

6 A No.

7 Q And when you were at home, was your wife home
8 with you?

9 A I would get there before she did because she
10 had to go pick up the kids.

11 Q So your wife picked up the kids?

12 A Yes, from their grandmother's.

13 Q All right. And grandma -- she picked the kids
14 up from school, maybe?

15 A Either the grandmother or my brother.

16 Q Okay. All right. So it wasn't -- you being
17 alone with the kids, that wasn't something that
18 happened a lot, was it?

19 A No.

20 Q It sounds like to me, I mean, Sunday is your
21 only day off, right?

22 A Sundays.

23 Q Did you go to church?

24 A No.

25 Q And when you're at home on Sundays, was your

1 wife at home with you?

2 A Yes.

3 Q And this is basically your schedule from before
4 you went to the Marines up until the point you left?

5 A Yes.

6 Q Now, after you got back from the Marines, do
7 you resume working for Time Warner Cable?

8 A Yes.

9 Q And that was in September of '06?

10 A Yes.

11 Q And how long did you keep working for them?

12 A I was working for them until I got fired for no
13 shows.

14 Q No shows?

15 A I was -- I was in jail.

16 Q And that was because -- you were missing work
17 because of these charges, right?

18 A Yes.

19 Q They arrested you and --

20 A Yes.

21 Q So for about, I guess, from September till they
22 arrested you, you basically had the same schedule?

23 A Yes.

24 Q Was your wife working at that time?

25 A Yes.

1 Q And it was the same routine, she'd pick the
2 kids up from grandma's house?

3 A Yes.

4 Q So is it even easy to recall a time when you
5 were with the kids alone?

6 A I can't recall one time.

7 Q Another question, and I'm sure you've heard,
8 you know, this story told, but the doors in your
9 house, did they have key locks on them or just --
10 how did they open?

11 A They have locks. They're just turn lock, but
12 they require a key, which is a paper clip like. You
13 just put the paper clip through the thing, but
14 there's only one in the house and it's above our
15 door.

16 Q So you basically just turn the lock from the
17 inside or whatever. It locks from one side, that's
18 what you're saying?

19 A Yes.

20 Q Just a standard doorknob?

21 A Yes.

22 MR. CORNWELL: Beg the Court's indulgence.

23 THE COURT: Yes, sir.

24 (Pause.)

25 BY MR. CORNWELL:

1 Q Now, T.J., there's been some speculation about,
2 you know, pornography in the house and all this
3 stuff. Was there any occasion where, you know,
4 **Victim** could have accessed this herself?

5 A Yes.

6 Q And did you have a lock on the channel, on the
7 cable?

8 A No.

9 Q Did you ever see *W. J. M.* watching T.V., flipping
10 through the channels herself?

11 A Yes.

12 Q And when was this? Was it like during the
13 mornings or something like that?

14 A There was a time where I had caught her on
15 channels that were higher up, which did not require,
16 you know, her to even view. It was On Demand
17 channels, things of that nature which she does not
18 even go to. Other than the On Demand channels,
19 there's also the pornographic, which are the adult
20 channels. And I woke up one morning and caught her
21 flipping from that channel standing between me and
22 the T.V. looking back with a shocked look on her
23 face like I had caught her doing something that she
24 shouldn't have been doing. And I walked up to her
25 and questioned her what she was doing, looked at the

1 channel and what number it was on and it was the
2 higher up channels.

3 Q And did she give you an answer?

4 A No.

5 Q What did she say?

6 A I don't know.

7 Q Now, is that common for her when she's fibbing?

8 A Yes.

9 Q To say I don't know?

10 A Yes.

11 Q And have you had a problem with ^{or at times} fibbing
12 before?

13 A Yes.

14 Q Is it a -- it's a big problem?

15 A It's a common problem with her. And we tried
16 to correct that by giving her rules and punishments
17 according to, you know, her lying as opposed to
18 other punishments that she would receive for other
19 things that are less drastic. Because lying, to me,
20 was -- it was bad. I did not like her lying to me,
21 her mother, her grandparents.

22 Q Is it safe to say that --

23 A Her teachers.

24 Q -- that was probably her biggest problem?

25 A Yes.

1 Q As far as behavior?

2 A Yes.

3 Q And is that probably what you disciplined her
4 more about than anything else?

5 A That was the only time she had ever gotten
6 spanked with a belt was when she would lie.

7 MR. CORNWELL: Beg the Court's indulgence.

8 THE COURT: Yes, sir.

9 (Pause.)

10 BY MR. CORNWELL:

11 Q What kind of things would ^{victim} typically lie
12 about?

13 A Mostly common things, but there's a lot of
14 issues with school. She would lie about doing her
15 homework. She would say she did it and then turn
16 around and we found out the next day that she had
17 not done it.

18 Q And is that why you started checking it?

19 A Well, I specifically made her sit at a table.
20 We had a table beside the kitchen and that was her
21 place, that was her own little area, that was where
22 she did her homework, that's where she could
23 concentrate the most, because if we had her anywhere
24 else, she had, you know, attention problems. I
25 mean, she would lose interest in the homework and

1 she'd start dwelling on the T.V., Aaron, what he was
2 doing, what we were doing and she wouldn't focus on
3 her homework.

4 Q And you wanted her to excel at school; is that
5 right?

6 A Yes.

7 Q And you admit you may have been a little hard
8 on her?

9 A I was.

10 Q But what other type of fibs would she tell?

11 A She had lied to me about the incident with her
12 and Destiny. Even after knowing what had happened,
13 my wife had told me what had happened after she had
14 told her and I went to question her and she would
15 not come out with it. She kept saying, I don't
16 know, I don't know. And I told her that I did know,
17 that Jes had told me.

18 Q So when she's confronted with a lie, does she
19 have -- she doesn't usually come out with it
20 straightforward?

21 A No.

22 Q You say she has a tendency to dig in?

23 A Yes.

24 MR. CORNWELL: No further questions at this
25 time, Your Honor.

1 **THE COURT:** Cross-examination?

2 **MR. JOHNSON:** Thank you, Your Honor.

3 CROSS-EXAMINATION

4 **BY MR. JOHNSON:**

5 **Q** Mr. Wilson, when your wife caught you watching
6 porno, was that on one of the Sundays you didn't go
7 to church?

8 **A** No, that could have been -- that could have
9 been any day.

10 **Q** Any day?

11 **A** Yes, like any Sunday because I did not go to
12 Sunday school or --

13 **Q** So you watch porno every Sunday?

14 **A** No.

15 **Q** Well, you said it could be any Sunday?

16 **A** Yes.

17 **Q** So when she caught you watching porno, that was
18 on a Sunday?

19 **A** That was on a Sunday, yes.

20 **Q** Okay. What about the other time?

21 **A** The other time, could you be more specific,
22 please?

23 **Q** Didn't she catch you watching porno at least
24 twice?

25 **A** Not to my knowledge.

1 Q So if she said that, then she's a liar?

2 A I would not call her a liar.

3 Q Just your daughter. Do you have a fibbing
4 problem about porno?

5 A No.

6 Q Well, let me get this clear. You were caught
7 watching porno by your wife, so that means, correct
8 me if I'm wrong, you were hiding this little
9 activity that you --

10 MR. CORNWELL: Objection, Your Honor. I think
11 he said he admitted that he got caught watching
12 porno which --

13 THE COURT: Over --

14 MR. JOHNSON: It's a different question, Your
15 Honor. I'm asking him --

16 THE COURT: I said overruled. Go ahead.

17 MR. JOHNSON: Thank you.

18 BY MR. JOHNSON:

19 Q You were caught, so that means you were hiding
20 this activity from your wife, correct?

21 A No.

22 Q All right. So when you're caught doing
23 something, what does being caught mean to you?

24 A You're involved in an activity that you know
25 and deem criminal.

1 Q So you're testifying that you would watch porno
2 in front of your wife?

3 A No.

4 Q No?

5 A No.

6 Q Okay. Are you testifying today that the years
7 where your daughter, ^{victim} or I could refer to her
8 as your first child, as you referred to her, I'll
9 refer to her as your daughter, the years where she
10 was seven years old and six years old and possibly
11 before then and all of those years, are you
12 testifying that you'd never had a moment alone with
13 her?

14 A When she was younger, yes.

15 Q And when you testified that you caught -- you
16 woke up and you caught ^{victim} watching porno or a
17 channel that was On Demand, where did you wake up,
18 in your bed?

19 A Yes.

20 Q Okay. So it was you and victim in your
21 bedroom?

22 A No.

23 Q Okay. Where was ^{victim} ?

24 A She was in the living room.

25 Q And when you had all these days where you

1 didn't go to work and you were fired for that, did
2 you go home?

3 A I was in jail.

4 Q Before you were arrested for this, and the
5 report was made October 20th, 2006, to the almost
6 three week period up until the day you were
7 arrested, for that period before your arrest,
8 Detective Mefford called you, didn't he?

9 A Yes.

10 Q And Detective Mefford asked you to come down
11 and talk to him, correct?

12 A Yes.

13 Q And you did not do that, correct?

14 A No, I did not.

15 Q And the second time he called you and said,
16 come down and give me an interview, you did not do
17 that, correct?

18 A No.

19 Q So after you learned of the allegation of some
20 -- the allegation of you raping your daughter, you
21 testified that you didn't do it, of course, at that
22 point after you learned of that, October 20th prior
23 to your arrest, you contacted the sheriff's
24 department to find out during that three week period
25 who was going to find out who raped your daughter.

1 I mean, you did that, didn't you?

2 A No.

3 Q Well, you contacted Detective Mefford at some
4 point in that three week period to ask him,
5 Detective Mefford, aren't you going to get on this
6 and work on this case and find out who really raped
7 my daughter?

8 A I did not know he was in the case until he had
9 called me.

10 Q Well, after he called you, surely you called
11 him back or called his boss and said, I demand that
12 you find out who raped my daughter. You did that,
13 right?

14 A No.

15 Q Did you want your daughter to be born?

16 A Yes.

17 Q Do you remember when she was born?

18 A Very well.

19 Q Do you remember the presence of your wife's
20 mother, Ms. Callahan, the day your daughter was
21 born?

22 A Yes.

23 Q Do you remember telling her -- as you walk up
24 and you discover that you have a daughter, do you
25 remember telling her, Uh, I wanted a boy?

1 A No.

2 Q You don't remember that?

3 A No.

4 Q You said your wife worked, correct?

5 A Yes.

6 Q So she had to leave the house to work?

7 A Yes.

8 Q Does your wife shop?

9 A Occasionally, yes.

10 Q Had to leave the house to do that, right?

11 A Yes.

12 Q And you said the doors do have locks, correct?

13 A Yes.

14 Q All right. And you testified that **victim** was
15 punished for lying, correct?

16 A Yes.

17 Q So if she was to think about telling the truth
18 or a lie, well, golly, she should be encouraged to
19 just tell the truth because she's been punished in
20 the past, correct?

21 A She should tell the truth.

22 Q And your punishment motivated her to tell
23 nothing but the truth, correct?

24 A Yes, should have.

25 Q Now, you said that *victim* lied about this

1 incident about this other child and her, and then
2 she said it happened after initially saying, Well, I
3 don't know, right?

4 A Yes.

5 Q Okay. And when she was interviewed and
6 questioned about you sexually assaulting her, she
7 basically did the same thing. She said, well I
8 don't want -- I don't know, but it happened. Here
9 you go, and then basically did the same thing,
10 didn't she? I mean, that sounds like the same
11 pattern, doesn't it?

12 A Are you asking for my opinion?

13 Q Yeah.

14 A No.

15 Q It doesn't. But you believe that she was
16 telling the truth about the incident with that
17 child, correct?

18 A Because she had told my wife.

19 Q And so when she told your wife that you raped
20 her and your mother that you raped her and the
21 counselor that you raped her and the other counselor
22 that you did it --

23 MR. CORNWELL: Objection, Your Honor.

24 MR. JOHNSON: -- she was telling the truth.

25 THE COURT: Hold on a second.

1 **MR. CORNWELL:** I don't think there's been any
2 testimony that she told her mother or her
3 grandmother that --

4 **MR. JOHNSON:** Your Honor, the video --

5 **THE COURT:** Wait a second. One at a time.

6 **MR. CORNWELL:** I don't think there's been
7 testimony to say that she told her mother or her
8 grandmother that T.J. did that to her.

9 **THE COURT:** I can't get into what the evidence
10 is, that's for the jury to decide.

11 Ask your question.

12 **MR. JOHNSON:** Thank you, Your Honor.

13 BY MR. JOHNSON:

14 **Q** So, clearly, there were times where you were
15 alone with your daughter?

16 **A** Before these allegations, yes.

17 **Q** Now, when did you meet your wife? How old were
18 you?

19 **A** Eighteen.

20 **Q** How old was she?

21 **A** Fourteen.

22 **Q** And when did you get married to your wife,
23 Mr. Wilson?

24 **A** In '06, April 20th.

25 **Q** All right. Been with her ever since?

1 A Yes.

2 Q Now, you testified earlier, you said that this
3 is tearing your family apart, correct?

4 A Yes.

5 Q And you said it's hard, it tears your family
6 apart. You mentioned your mother and your father
7 and your wife, correct?

8 A Yes.

9 Q What about poor *victim*? Didn't mention her,
10 did you?

11 A Yes.

12 Q In that statement, you did, just a few minutes
13 ago?

14 A I'd have to recall.

15 Q But you wanted a boy, right?

16 A (No response.)

17 Q You wanted a son, right?

18 A That's not the truth, no.

19 Q And this time you're off for your training,
20 they didn't swoop you off and keep you away forever.
21 You came home during that year, right?

22 A For ten days, yes.

23 Q Well, you came back September 20th, 2006?

24 A Yes.

25 Q And victim -- well, the disclosure was October

1 20th, 2006, correct?

2 A Yes.

3 Q And you were at home that whole time?

4 A Yes.

5 Q Well, when you heard the disclosure about
6 your -- these are your sisters?

7 A My sisters, one of the occasions was two of my
8 sisters and my son and ^{victim} ;

9 Q Oh, the sexualized behavior, the touching, is
10 that what you're referring to?

11 A That and any other occasion.

12 Q Well --

13 A Like Destiny.

14 Q -- you jumped on the phone and you demanded an
15 investigation and ARC interviews for those children
16 at that time, didn't you? I mean, these are your
17 sisters.

18 A No.

19 Q Oh, you didn't. Okay. Mr. Wilson, I don't
20 want you to have any problems with this testimony
21 because you gave it about five minutes ago, but you
22 did say that you can't recall a single time that you
23 were alone with your daughter. You did say that,
24 right?

25 A Yes.

1 Q Okay. And then about two minutes ago you told
2 me that there were times you were alone with your
3 daughter, correct?

4 A During or after the -- during the allegation
5 time period, I was not and I cannot recall a time
6 being alone with my daughter.

7 Q Okay. I want to straighten this out because
8 I'm a little confused. During the time your
9 daughter was seven years old, the time your daughter
10 was six years old, and maybe before then, you're
11 telling me there was never a time you got a chance
12 to be alone with your daughter?

13 A Before then, yes, during six and seven, no.

14 Q For two years, your wife didn't go out of the
15 house while you were there?

16 A I was never alone with victim.

17 Q So during that two year period when your wife
18 had to go to work, ^{victim} always had to go some
19 place else?

20 A Yes.

21 Q For two years?

22 A Yes.

23 Q And during that two years when your wife had to
24 go grocery shopping, you had to go with her, take
25 victim or take victim to a baby-sitter or somewhere

1 else, correct?

2 A Yes.

3 Q And you're testifying you did that for two
4 years?

5 A Yes.

6 Q When did you find time to watch porno and hide
7 it?

8 A I can't recall a time, but the only day that
9 would be open would be a Sunday.

10 Q But you did that?

11 A I found time, yes.

12 Q Sure. And your wife wasn't there when that
13 happened?

14 A No.

15 MR. JOHNSON: No more questions, Your Honor.

16 THE COURT: All right. Redirect?

17 REDIRECT EXAMINATION

18 BY MR. CORNWELL:

19 Q Now, T.J., I know it's kind of hard to answer
20 these questions, sometimes people try to trip you
21 up, but I'm going to ask you a question. He said
22 something about the locks on the doors. Were those
23 just normal door locks?

24 A Yes.

25 Q Were they the kind that turn or the kind that

1 you push the button in?

2 **A** You turn them from the inside.

3 **Q** You turn them from the inside, okay. Now, you
4 said, you know, the Solicitor made a big hoopla, you
5 know, about watching porno on Sunday. Is that
6 something you're proud of?

7 **A** No.

8 **Q** Is that something that you go around town
9 telling everybody?

10 **A** No.

11 **Q** Is that something that you necessarily want
12 your wife seeing?

13 **A** No.

14 **Q** And do you consider that something that's kind
15 of like a private thing?

16 **A** Yes.

17 **Q** Now, is that why you picked that time to do it?

18 **A** Yes.

19 **MR. CORNWELL:** Beg the Court's indulgence.

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

21 (Pause.)

22 **THE COURT:** Y'all can't be talking about
23 anything. Do you need a break?

24 **JUROR:** No. I was going to get him to get the
25 bailiff to ask him to speak up, not turn.

1 **THE COURT:** Mr. Cornwell, when you ask your
2 questions, please speak louder or don't turn.

3 We had told him that previously, but if you
4 have a problem, get the bailiff. Y'all don't talk
5 among yourselves, okay. Thank you.

6 **BY MR. CORNWELL:**

7 **Q** Now, ^{victim} knew that she could tell if
8 somebody touched her, right?

9 **A** Yes.

10 **Q** And when she was touched before, she did tell,
11 didn't she?

12 **A** Yes.

13 **Q** She came to mama and told, right?

14 **A** Yes.

15 **Q** Now, another thing that was brought up was this
16 -- something about a pinky promise. Do you even
17 recall that?

18 **A** I never have done that in my entire life.

19 **Q** Do you remember -- I mean, where could she have
20 gotten pinky promise from?

21 **A** I don't know. It could have been multiple
22 areas, school probably.

23 **MR. CORNWELL:** No further questions, Your
24 Honor.

25 **THE COURT:** Thank you.

1 Recross?

2 MR. JOHNSON: Nothing Your Honor.

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

4 Call your next witness.

5 MR. CORNWELL: Your Honor, we would call

6 Timothy S. Wilson to the stand, Your Honor.

7 THE COURT: Come around, please.

8 TIMOTHY STEVEN WILSON,

9 having been duly sworn, testified as follows:

10 THE CLERK: If you'll have a seat and state
11 your name for the record, please.

12 THE WITNESS: Timothy Steven Wilson.

13 DIRECT EXAMINATION

14 BY MR. CASTO:

15 Q Good afternoon, Mr. Wilson. Obviously, you're
16 the father of Timothy, T.J.?

17 A Yes.

18 Q And this whole incident, has it been
19 particularly painful for you?

20 A Yes, it has.

21 Q Just some introductory things, what type of
22 work do you do?

23 A Injection mold and plastics, our family-owned
24 business.

25 Q Do you still?

1 A Yeah, we've been in business since '56, 1956.

2 Q Going all the way back, if you would, describe
3 T.J.'s childhood. Specifically, was it a
4 particularly happy childhood?

5 A I thought so.

6 Q And what kinds of things growing up was T.J.
7 involved in or activities?

8 A He was in track and we used to go fishing and
9 hunting a lot.

10 Q Those continued -- were those things that he
11 continued to be interested in through high school
12 age?

13 A Yes, it was.

14 Q And were those things he continued to be in,
15 obviously, through his late teens?

16 A Yes.

17 Q Growing up, were y'all a close-knit family when
18 T.J. was growing up?

19 A Yeah.

20 Q Do you think that T.J. felt like he could talk
21 to you about anything that was going on in his life?

22 A Yes, we talked about everything.

23 Q Do you remember roughly how old T.J. was when
24 Jessica came into his life?

25 A Yes, 18.

1 Q Eighteen?

2 A Yeah, I think.

3 Q Started dating before that?

4 A Yes.

5 Q And going back from the time that Jessica

6 entered his life all the way back to the time that

7 T.J. was a baby, had you ever heard or did anyone

8 ever tell you that someone had inappropriately

9 touched T.J.?

10 A No, sir.

11 Q Never inappropriately touched him in a sexual

12 kind of way?

13 A No.

14 Q And your relationship, was it still positive

15 through T.J.'s marriage with Jessica?

16 A Yes.

17 Q In other words, y'all talked about --

18 A Yeah.

19 Q -- things on his mind?

20 A Yes, sir.

21 Q And y'all talked about things when there were

22 good times?

23 A Yes.

24 Q And did y'all talk about things when there were

25 bad times?

1 A Oh, yeah. I was there for him.

2 Q And he could -- could he come to you with
3 something serious?

4 A Yes.

5 Q And, obviously, for as long as you've known
6 T.J., have you ever noticed any type of
7 inappropriate sexual touching or deviancy
8 demonstrated by T.J.?

9 A No, sir, I haven't.

10 Q About the time of 2005 and 2006, when these
11 allegations arose, did you notice any change
12 whatsoever on T.J.?

13 A No, sir.

14 Q Do you remember how old T.J. was when victim
15 was born?

16 A No, I don't. I can't -- I don't know --

17 Q Approximately?

18 A Nineteen, I think, or 18.

19 Q Do you remember T.J. being excited about the
20 birth of his daughter?

21 A Yes.

22 Q And you were going to be a granddad?

23 A Yes.

24 Q And your wife was going to be a grandma. Were
25 y'all excited about your new role?

1 A Yeah, I was, first granddaughter.

2 Q Since the time of ^{victim's} birth, has she spent
3 considerable amounts of time in your household,
4 essentially the grandparents' household?

5 A Yes, she has.

6 Q And do you think in that amount of time, that
7 you got a good opportunity to view her behavior?

8 A Yes.

9 Q In other words, she spent enough time with you
10 that you knew ^{victim} very well?

11 A I think I do, yes.

12 Q And is ^{victim} bad all the time?

13 A No.

14 Q But does ^{victim} get in trouble sometimes?

15 A Yes.

16 Q And based on your experience, when ^{victim} was
17 in your household, what were the chief things that
18 ^{victim} got in trouble for?

19 A Mostly hitting her brother and doing stuff like
20 that.

21 Q Do you recall times when ^{victim} may have told a
22 fib?

23 A Yes.

24 Q This isn't out of the ordinary for children, is
25 it?

1 A No.

2 Q But when ^{victim} would tell a fib, would she
3 stick with her story?

4 A Yeah, pretty much.

5 Q And do you recall an incident involving some
6 money being missing?

7 A Yes. It was in her house and I was visiting
8 and I was going to give Jessica some money to help
9 them out with their bills. And the morning I was
10 getting ready to leave, I'd laid some money on the
11 counter, on the kitchen counter, and I was in the
12 same room, in the living room. And I turned my back
13 and I was putting stuff away and I went back over
14 and there was a hundred dollar bill missing. And
15 the only -- ^{victim} walked in then and she's like,
16 what are you looking for, or something to that
17 effect. And I told her what I was doing and I said
18 I couldn't find it, asked her if she had seen it.
19 And she said, I don't know. And she just, like,
20 went back to her room.

21 So I continued to pack up and stuff because I
22 had to get going, I had to leave and drive back to
23 Ohio. So I told Jes about it and she asked her and
24 she said she didn't have it. So we thought maybe I
25 might have misplaced it in my suitcase. And when I

1 got home, I looked through the suitcase and it
2 wasn't there. So I never did find out where it went
3 or anything else, so.

4 Q With your wife, do you have a close
5 relationship with her?

6 A It's my ex-wife, yeah.

7 Q Well, would she relate -- what I'm asking is if
8 something was wrong with a family member, someone
9 was hurt or in trouble, would you hear about it?

10 A Yes, I would.

11 Q Okay. And did ^{victim} ever speak, that you know
12 of, about allegations of someone touching her before
13 these allegations?

14 A No, I didn't.

15 Q One thing that came up -- well, have you viewed
16 the video tape interview?

17 A Just in the courtroom here is the first time.

18 Q So you heard it?

19 A Yes, I did.

20 Q Did you hear all of it?

21 A Yes.

22 Q Do you ever remember a time that you have ever
23 allowed the children to play outside naked when they
24 are at your house?

25 A Never.

1 Q And is that something that you would ever do or
2 condone?

3 A No, I wouldn't.

4 Q When these allegations arose and up until this
5 date, what has become of your family?

6 A Pretty much total turmoil and it's like tearing
7 us apart, not allowed to talk to anybody about it or
8 do anything. It just feels like my hands are tied,
9 helpless.

10 Q Do you feel like you can only watch?

11 A Yes. Financially and everything, I just tapped
12 out.

13 Q How does that make you feel?

14 A Real bad.

15 Q And not to put words in the mouths of any of
16 the other family members, how does it make them
17 feel?

18 A Probably the same I'd say.

19 Q ^{victim} is your granddaughter. If you knew that
20 she was being hurt, would you do everything that you
21 could to help her?

22 A Yes, I would. I love her very much.

23 MR. CASTO: Thank you. No further questions.

24 THE COURT: Cross?

25 *****

1 CROSS-EXAMINATION

2 BY MR. JOHNSON:

3 Q Mr. Wilson, you love your son, don't you?

4 A Yes, I do.

5 THE COURT: Do you need a break?

6 THE WITNESS: I'll be all right.

7 THE COURT: Go ahead.

8 BY MR. JOHNSON:

9 Q Mr. Wilson, your son fibs, too, doesn't he?

10 A No.

11 Q He's never fibbed?

12 A Maybe a white lie here and there, yeah, maybe.

13 Q But your granddaughter is a thief and a liar?

14 A No, she isn't.

15 Q Okay. You want to help your son, don't you?

16 A I want to help all of our family.

17 Q Now, you testified, 2006, there was no
18 emotional change in your son when you saw him,
19 correct?

20 A Not towards me.

21 Q Even after this allegation where he was accused
22 of raping his own daughter?

23 A It's not true.

24 Q Well, I'm not asking you that. I'm asking you,
25 you said that he had no emotional change. He was

1 just -- after someone said, you're accused of raping
2 your daughter, his reaction was --

3 MR. CORNWELL: Your Honor, objection. I don't
4 think he said anything about his emotional state
5 after the accusation.

6 MR. JOHNSON: He was specifically asked by
7 defense, Your Honor, during the year 2006 --

8 THE COURT: I've already told y'all, I can't
9 get into those issues. You ask the question, the
10 jury decides whether that was part of a previous
11 answer or question.

12 MR. JOHNSON: Thank you, Your Honor.

13 BY MR. JOHNSON:

14 Q So during 2006, you testified during the year,
15 he had no change, emotional, right?

16 A Towards me, no.

17 Q And you talked about children never playing
18 naked, but were you there everyday?

19 A I live in Ohio. They just visit for weeks at a
20 time. And, no, they've never been naked in my
21 place. And only Aaron and ^{Victim}, that's the only
22 two that's ever visited me.

23 Q Okay. So you don't know about the other time?

24 A No, I wasn't present.

25 Q Right. Mr. Wilson, you said this is tearing

1 your family apart. Wouldn't you prefer for this to
2 just all go away?

3 A Yes, sir.

4 MR. JOHNSON: No more questions, Your Honor.

5 THE COURT: Redirect?

6 MR. CASTO: Briefly, Your Honor.

7 REDIRECT EXAMINATION

8 BY MR. CASTO:

9 Q When these allegations came out, describe how
10 you've seen it affect T.J. since they've come out
11 against him.

12 A He's an emotional wreck like I am. I didn't
13 get to see him when it all happened, whenever all
14 this happened. I just had a few phone calls with
15 him and tried to help him as best I could because I
16 didn't know of any other way to help him, you know.
17 I didn't know what to do.

18 Q You could only watch? .

19 A Yes.

20 MR. CASTO: No further questions.

21 THE COURT: Recross?

22 RECROSS-EXAMINATION

23 BY MR. JOHNSON:

24 Q You said your son's an emotional wreck?

25 A Yes.

1 Q Does that include today?

2 A I would say, yes.

3 Q Okay. So when he was on the stand staring
4 straight ahead with a monotone voice and not
5 shedding a tear, that was an emotional wreck?

6 A No, he's feeling it, too.

7 Q He's hiding it?

8 A Yes.

9 MR. JOHNSON: No more questions, Your Honor.

10 THE COURT: Anything else of this witness?

11 MR. CASTO: Nothing further at this time, Your
12 Honor.

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

14 Ladies and gentlemen, we'll take a break for
15 about ten minutes. Get you back out here. Don't
16 discuss the case.

17 (The jury retires to the jury room.)

18 THE COURT: We're at ease for ten minutes.

19 (Brief Recess.)

20 THE COURT: Defense ready?

21 MR. CORNWELL: Yes, Your Honor.

22 THE COURT: Do you have further witnesses?

23 MR. CORNWELL: Yes, Your Honor.

24 THE COURT: State ready?

25 MR. STUMBO: State's ready, Your Honor.

1 **THE COURT:** Bring them in.

2 (The jury returns to the courtroom.)

3 **THE COURT:** Call your next witness, please.

4 **MR. CORNWELL:** The defense would call Cathy
5 Arbogast to the stand, Your Honor.

6 **THE COURT:** Come around please, ma'am.

7 CATHY ARBOGAST,

8 having been duly sworn, testified as follows:

9 **THE CLERK:** If you'll have a seat and state
10 your name, spell your last for the record.

11 **THE WITNESS:** My name is Cathy Arbogast,
12 A-R-B-O-G-A-S-T.

13 DIRECT EXAMINATION

14 BY MR. CORNWELL:

15 **Q** Ms. Arbogast, I know I've spoken to your other
16 family members and asked them the same question, but
17 how is this whole thing -- what is it doing to the
18 family?

19 **A** Well, Christmas time we weren't able to visit
20 with T.J. because he wasn't allowed to leave the
21 state and we did keep contact with him with web cam
22 so he could kind of feel like he was part of it.
23 But Jessica had gone to Ohio with the kids. We
24 didn't get to have them, but that wasn't because of
25 this. But it's been difficult to be normal.

1 With the situation, we weren't allowed to leave
2 the kids unattended. They had to always be
3 supervised and by that, that meant ^{victim} had to
4 always be with me. And it made it difficult when we
5 had things to do, you know, we were always juggling
6 kids and trying to figure out how to make it so she
7 was always supervised. And it's been difficult
8 because I have to sit here and appear as though I
9 have to take sides. I mean, I had to take a side.
10 I love my granddaughter and I would never put her in
11 a position where she would be harmed, but we have
12 issues.

13 Q And what are those issues that you're referring
14 to?

15 A We have issues with honesty.

16 Q And is that with ^{victim}?

17 A Yes.

18 Q Now, ^{victim} stayed with you for a period of
19 time. You even home schooled her, didn't you, for a
20 while?

21 A For a short time.

22 Q How long did she stay with you?

23 A I really don't know the amount of time.

24 Q Is it some months or weeks?

25 A Maybe a couple months, I'm not sure, maybe not

1 even that long, maybe just around a month. I really
2 don't remember.

3 Q But you consider yourself to be very close with
4 your grandchild, don't you?

5 A Yes.

6 Q And you love her very much?

7 A Yes.

8 Q How well do you think you know her?

9 A Pretty well.

10 Q And getting back to these issues of honesty,
11 could you give us some -- could you give us some
12 details on that?

13 A When we had the incidents with the girls, when
14 it was discovered that there was something going on,
15 it was discovered between ^{Victim} and Lynnsey, she
16 denied that there was a problem. It snowballed into
17 everyone tattle tailing on everyone else and they
18 were all four involved by the time it was over. And
19 she's not the only one that lied about it.

20 Q Okay.

21 A I also have had to call her mom before to ask
22 her is this true or not. You know, if you have an
23 honest child, that's not a habit of having to call
24 and ask to verify information, but because we had
25 problems with lying, I often times would call and

1 say is this so or is this not so.

2 Q When she's caught in a lie, does she come
3 clean?

4 A One time we were -- after this all started and
5 ~~victim~~ had to be with me all the time, I had taken
6 both her and Lynnsey in the car with me. I needed
7 to get a new license plate. I needed verification
8 of speedometer reading. And I stopped at an auto
9 place and stepped out of the car just to get
10 somebody to come out and came back out with someone.
11 And when we went home later that night, it hit me,
12 you know, they had been in the car alone for a
13 little bit, I need to ask if anything happened. And
14 I asked Lynnsey, I called her -- I was working, we
15 were fixing up our house --

16 Q Not to interrupt, is that because of -- what do
17 you mean by anything happening?

18 A Between her -- because things had happened
19 between the children before, touching. So I called
20 Lynnsey in where I was working in the house and she
21 sat on the girls' bunk bed. And I asked her, I
22 ~~victim~~ said, Did touch you? And she slunk back and
23 kind of hid herself and I took that as she had. And
24 ~~victim~~ when was confronted with it, she denied it.

25 And I called Jessica in and we -- she -- I kept

1 the kids and she would come and pick them up. And I
2 called her in so we could talk to ^{victim} and ask her
3 to tell the truth about this particular situation.
4 And she held out, I don't know, could have been a
5 long time, but she finally admitted it, but it was
6 hard to get her to tell the truth. And we didn't --
7 we didn't spank her. We didn't do anything except
8 ask her to be honest and, you know, someone had made
9 a claim against her and I felt like Lynnsey was
10 being honest. I mean, she didn't say anything, but
11 I could tell she was guilty of participation.

12 Q Now, when ^{victim} is fibbing, can mom and dad
13 usually get it out of her? Do they -- they know how
14 to get the truth out?

15 A Well, she'd finally told Jessica, but I don't
16 know, as a practice, if it's hard for them or not, I
17 don't know.

18 Q It's hard, but do you think they usually get it
19 out of her?

20 A Maybe on some things, maybe not on others.
21 That's probably true with most children that lie.

22 Q That the parents can get it out of them?

23 A Sometimes, maybe not always.

24 Q Now, about her relationship with daddy, did

25 ^{victim} love daddy?

1 **A** I believe she loves him.

2 **Q** There was an incident in particular that I'd
3 like to talk to you about. Do you remember taking
4 her home one day and she was crying?

5 **A** Yeah.

6 **Q** Started crying?

7 **A** Yes. Now, this is after the incident with the
8 sleep over, and I'm not sure about the incident with
9 the girls, I'm not sure about that, if it was before
10 or after, I don't remember. But I had to take her
11 home and she started crying and we were in the car
12 and I asked her what was wrong. And she said, I
13 don't want to go home. And I asked her why not.
14 And she said, My daddy's mean to me. And I asked
15 her, I said, What do you mean he's mean to you?
16 Because I'm going to get a red flag, you know, I'm a
17 mother, I'm a grandmother, I wondered why she would
18 say this.

19 **Q** And because of her, you know, incidents
20 prior --

21 **A** Right. But I asked her why that was, and she
22 said, Because he yells at me. And I told her, I
23 said, ^{victim} you know, I yell at the kids sometimes
24 and I got yelled at sometimes when I was a kid,
25 people yell at each other. And then I asked her,

1 specifically, Has anyone ever touched you where they
2 shouldn't? And she said no. And I pursued it. And
3 I told her if anyone ever did, because this is after
4 the -- we'd already gone through the first situation
5 with the sleep over and -- so she already knew I
6 knew about that, and I'll tell you why I knew about
7 that -- I mean, more information about that in a
8 second.

9 But I told her if anyone did ever touch her,
10 she needed to tell us and that they would never be
11 able to -- or she would never have to be around
12 them, we would protect her from them, and that if
13 anyone ever threatened her, she was not to listen,
14 that she was to tell anyway, and that's pretty much
15 how I handled that. And she didn't tell me that
16 there was any other touching had taken place.

17 What I'd like to refer to on the kindergarten
18 episode when Jessica told me about that happening
19 and ^{victim} coming and telling her that it happened,
20 we praised her. I praised her personally. I told
21 her, You did the right thing, you know, that's what
22 you're supposed to do.

23 And I also went to her school. She was having
24 a special day. Her mom was working and her mom
25 couldn't go. They had a special day where they took

1 turns introducing the kids to the classroom and a
2 family member or friend or someone would come in and
3 say what they thought about the child. And on that
4 day, I went in and I told them, I said, I'm very
5 proud of ^{victim} She was brave in a hard situation
6 and she did what was right.

7 Q So she knew that she could talk to you guys
8 about any kind of situation?

9 A I was open for it.

10 Q And she knew --

11 A Even at the cost of whoever it would have been.

12 Q And that's what I was going to ask you next.
13 If you felt for one second that T.J. had done what
14 they accused him of, would you be over here
15 testifying for him?

16 A No.

17 Q Because you love your granddaughter; is that
18 right?

19 A Yes, I do.

20 Q Now, you've had an opportunity to, you know,
21 interact with T.J. some since this happened. How
22 has it affected him?

23 A Well, he's been, just recently since I've been
24 here, he's been sleepless, he's had upset stomach.
25 We're kind of all in the same boat on this. We're

1 nervous. It's a very serious allegation.

2 Q Is T.J. the type to kind of suck it up or is he
3 kind of the type to break down on people?

4 A No, he doesn't break down. As a matter of
5 fact, I'm always worried because I can't tell how
6 he's feeling.

7 Q Now, have you had an opportunity to speak with
8 T.J. specifically about the allegations? Have you
9 talked to him about what they're saying happened?

10 A Yes.

11 Q Have you asked him straight up if he did it?

12 A Yes.

13 Q What did he tell you?

14 A No.

15 Q Do you believe him?

16 A Yes.

17 MR. CORNWELL: No further questions, Your
18 Honor.

19 THE COURT: Cross?

20 CROSS-EXAMINATION

21 BY MR. JOHNSON:

22 Q Ms. Arbogast?

23 A Yes.

24 Q Would you like to tell people if you had
25 molested one of your children?

1 A No.

2 Q And let's talk about *victim*. Let me get this
3 straight, I just want to clarify your testimony.

4 She's a burden because she caused you problems, a
5 logistical problem --

6 A No.

7 Q Well, you said that, right?

8 A (No response.)

9 Q She's a logistical problem. You had to carry
10 her around with you, right?

11 A No. It was hard to -- what I said was it was
12 hard to work out the situation so that she was with
13 me when I had things to do, but I am very willing to
14 work on those situations. I'm not -- it was just
15 difficult.

16 Q You said it caused problems for the family,
17 turmoil?

18 A Yes.

19 Q And you want to keep the family together?

20 A As long as everyone is safe and everything is
21 right.

22 Q And that's your goal?

23 A Yes, I'd like to see that.

24 Q And you'd kind of like this whole thing to go
25 away?

1 **A** I would like to see the truth.

2 **Q** Well, let's talk about the truth. You believed
3 Lynnsey or -- yeah, it was Lynnsey, you believed her
4 when she didn't say a word. And you went to **victim**
5 and you had decided that ^{victim} was a liar following
6 that incident, correct?

7 **A** Well, we had already had the situation with her
8 kindergarten time and the girls touching each other,
9 so I already knew it had already happened. I
10 have -- I never had that problem in the home until
11 after that kindergarten episode and then we had the
12 touching things. And I -- when ^{victim} hasn't been
13 there, I haven't had the problem.

14 **Q** So she was a problem?

15 **A** No. What she was -- what they were doing was a
16 problem.

17 **Q** Okay. Let's talk about what they were doing.
18 What they were doing was touching each other
19 inappropriately?

20 **A** Yes.

21 **Q** And, of course, you immediately jumped on the
22 phone, called law enforcement, correct?

23 **A** No.

24 **Q** Oh. Well, you sent all these children down to
25 the ARC and you asked them to do a forensic

1 evaluation of all of them, didn't you?

2 A No.

3 Q No, you didn't do that. Because ^{victim} I was
4 lying, she's a liar, isn't she?

5 A No. It's not that she was lying. They were --
6 they all did some lying in this situation. But
7 after they had all told on each other, there were
8 witnesses against all of them. I'd like to be able
9 to say that I don't want to just assume that --
10 okay, I see what I said. I'm sorry. I usually do
11 ask for there to be two witnesses. And if there
12 isn't, they both get in trouble because if I can't
13 discern who's guilty, then I usually will set them
14 all on chairs, whoever -- if I can't get two
15 witnesses to confirm.

16 Q Okay. So let's talk about who you think is
17 guilty. You believed ^{victim} and praised her, you
18 testified, following the kindergarten incident and
19 her disclosure, correct?

20 A Yes.

21 Q Because you believed her?

22 A Yes.

23 Q So that disclosure about this inappropriate
24 touching against someone not in your family, that
25 was the truth?

1 A Well, the reason I thought she was guilty the
2 second time is because I thought she brought what
3 happened there over into my home. Though, I will
4 not say that my children couldn't think of it on
5 their own. I know kids will experiment.

6 Q So your children are lying, too?

7 A They have in these cases some.

8 Q But when she disclosed that touching from
9 kindergarten, she was telling the truth then. You
10 praised her for that, right?

11 A Yes, I did.

12 Q Did you praise her for disclosing the fact that
13 your son raped her? Did you praise her for that?

14 A No, I did not.

15 Q You didn't praise her for that, okay.

16 A She didn't come and tell me.

17 Q Well, since that happened, have you praised her
18 for her talking about him forcing her to sodomize
19 and being involved in sodomy and rape? Have you
20 praised her for that with your son, her father?

21 A I haven't believed that that happened.

22 Q Right. Well, when you found out about the
23 allegation, she's clearly talking about all these
24 details and you don't think your son did it, did you
25 jump on the phone and start calling law enforcement

1 and say let's find out who did do it?

2 A I felt like there was possibly pornography
3 viewing that may have been a source of information.

4 Q So that's all that happened you're saying. You
5 think, pornography viewing?

6 A Well, I know she has interacted with the other
7 children, that I know, but as far as pornography, I
8 would imagine is a lot of information.

9 Q Who in your family has admitted to lying about
10 pornography possibly today? Can you think of
11 anyone?

12 A Well, I --

13 Q Okay. Let me narrow it down. Your son --

14 A Okay. A person that watches pornography
15 doesn't mean they abuse children.

16 Q Oh, no, I'm just asking about lies, the people
17 in your family lying about pornography, because you
18 said ^{v. 2 tm} was a liar, but she told the truth when
19 she dis --

20 A I didn't say she is a lie -- well, she does
21 lie. Yes, she does lie.

22 Q And she was the burden, logistical problem.
23 But you're in turmoil, correct, you and your family
24 because of this?

25 A Well, everyone including ^{v. 2 tm} is in turmoil.

1 I know that --

2 Q Okay. That's the first time you mentioned
3 *victim* being in turmoil, so I'd like to ask you,
4 *victim* was in turmoil, but you didn't want to pursue
5 the investigation of what really happened to **victim**
6 did you?

7 A I never said I didn't want to pursue it.

8 Q What did you do? Did you contact Detective
9 Mefford?

10 A He was already contacted. They contacted me.

11 Q Right. And you were simply waiting, sitting by
12 as the years ticked by for someone to call you and
13 explain who raped your granddaughter and you didn't
14 feel the need to call anyone, correct?

15 A But I wasn't sure she was raped.

16 Q And you want the family to stay together,
17 right?

18 A Only if everyone's safe.

19 Q Well, if you have a problem with crying about
20 your granddaughter, we do have tissue, Ms. Arbogast.

21 MR. JOHNSON: No more questions, Your Honor.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY MR. CORNWELL:

25 Q Ms. Arbogast, when you mentioned pornography,

1 are you saying that's where -- you think that was
2 the inspiration for ^{victim's} stories?

3 A I don't know, possibly. It's a possibility.

4 Q And you're not saying that somebody -- that
5 T.J. showed it to her?

6 A No.

7 Q Okay. Now, you -- they're making a big deal
8 about you not reporting another person to law
9 enforcement. They got -- how did you find out about
10 these allegations? Were you contacted first?

11 A Jessica called me.

12 Q Jessica called you. And do you remember if
13 they mentioned T.J. as a suspect pretty much from
14 the beginning?

15 A I believe so.

16 Q So, in your mind, did you think it would have
17 benefitted to talk to law enforcement?

18 A No. They had already made that determination.

19 Q So you think they'd made their mind up?

20 A Yes.

21 Q Now, as far as ^{victim} goes, would you just like
22 to restate for the jury so that they'll be reassured
23 that you care for ^{victim}? How do you feel about

24 **victim**?

25 A I would rather tell people the cute things, the

1 good things, the nice things that she does than to
2 have to sit here and state the negative or the bad
3 character qualities.

4 Q And I know, to us, that seems common sense and
5 I know it may seem silly for me to ask you that, but
6 you want that out in the open. Now, the reason --
7 why was the reason you didn't ask law enforcement to
8 find the guy who did this?

9 A Because I didn't think there was a guy that did
10 it.

11 Q You think she was making it up?

12 A I know that ^{victim} can be led. And I felt like
13 I -- I don't know how they handle situations in the
14 schools and I often wondered what they're allowed to
15 do in speaking with a child without parents'
16 permission, you know, or who's with them, what are
17 they allowed to say. Sometimes ^{victim} will say
18 something just to be part of a conversation, like
19 we've talked about something we've done as a family
20 before where ^{victim} wasn't present and she would
21 say, oh, yeah, and add something to it when she
22 hadn't been there.

23 Q So she -- saying she'd just act like she was
24 there?

25 A Yeah. I just wonder what the allowances are

1 for.

2 Q So you love ^{victim} ?

3 A Yes.

4 Q Is it safe to say you just had some problems
5 with trusting her?

6 A Yes.

7 Q And that's because she has a history of
8 dishonesty?

9 A Yes.

10 Q Is that more than your other grandchildren or
11 children?

12 A I'm not around my other grandchildren enough
13 really to know if they have honesty issues, but my
14 children I don't believe lie as often as **victim**
15 does.

16 Q And that's been a big problem, has it?

17 A Yes.

18 MR. CORNWELL: Thank you.

19 THE COURT: Recross?

20 RECROSS-EXAMINATION

21 BY MR. JOHNSON:

22 Q Ms. Arbogast, let me get this straight. When
23 there was -- when it came up about this touching
24 with these children, you stated that ^{victim}
25 basically resisted telling the truth about it and

1 then she finally admitted to it, told the truth
2 about this touching with these children in your
3 family, correct?

4 A Yes.

5 Q And you feel that she was telling the truth?

6 A She had witnesses that substantiated that, yes,
7 she was involved.

8 Q So if there's no witness to a touching or a
9 rape, it didn't happen, is that what you're saying?

10 A It needs to be proven.

11 Q Well, you decided long ago when you first
12 talked to DSS and everybody, didn't you tell them,
13 well, there was this incident and ~~victim~~ was lying
14 about that? So you labeled her right there years
15 ago. You made your mind up back then, didn't you?

16 A No. It's taken years for her to -- for me to
17 see -- she hasn't always been around me, but we've
18 had problems since she has been. They moved down to
19 our house, I think, Jessica was -- I was pregnant
20 with Lynnsey and she was pregnant with Aaron.
21 Actually, the day they moved in, I had Lynnsey.

22 Q You said, ~~victim~~ was guilty of participation?

23 A Well, my children were guilty of participation.

24 Q And is it more convenient for you to believe

25 ~~victim~~ about disclosures of sexual assault or

1 inappropriate touching when the other party is a
2 stranger in kindergarten and not a member of your
3 family? Doesn't that go a little bit easier at home
4 when it's somebody outside the home she discloses?

5 A I guess I would think that maybe the difference
6 would be that, I think, that there are other issues
7 even at stake besides the lying. I think that one
8 of the issues is that sometimes she gets upset with
9 her dad, angry with him.

10 Q Okay. Well, you said that when you got this
11 disclosure about the incident in kindergarten with
12 victim [REDACTED], you said she was telling the truth, right?

13 A Well, her mom had made the determination that
14 she had told the truth.

15 Q Did you talk to the witnesses who saw the bad
16 touching?

17 A I only talked to Jessica.

18 Q Oh, but you just said that it's only the truth
19 when you've got a witness that you've interrogated,
20 correct?

21 A Well, she went -- they went to the family's
22 house and so I assume she knew what she was talking
23 about.

24 Q So based on that assumption, she was telling
25 the truth then, but now she's a liar?

1 **A** I didn't have proof that -- or anyone that
2 could say otherwise. And I knew that DSS and all of
3 you would be working on trying to find out the
4 truth.

5 **Q** We have. Ms. Arbogast, thank you for helping
6 me find the truth. You love your son, don't you?

7 **A** I do love my son.

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

9 **THE COURT:** Anything else of the witness?

10 **MR. CORNWELL:** No further questions, Your
11 Honor.

12 **THE COURT:** Thank you, ma'am. You may step
13 down.

14 Any further witnesses for the defense?

15 **MR. CORNWELL:** Yes, Your Honor. At this time,
16 we could call Jessica Wilson to the stand.

17 **THE COURT:** Let's take a break before we get to
18 the next witness.

19 Folks, we'll take a ten minute recess and then
20 we'll get back out here. Thank you. Don't discuss
21 the case.

22 (The jury retires to the jury room.)

23 **THE COURT:** Court's in recess for ten minutes.

24 (Brief Recess.)

25 **THE COURT:** Defense ready?

1 MR. CORNWELL: Yes, Your Honor.

2 THE COURT: State ready?

3 MR. STUMBO: Ready, Your Honor.

4 THE COURT: Bring in the jury.

5 (The jury returns to the courtroom.)

6 THE COURT: All right. Call your next witness,
7 please.

8 MR. CORNWELL: The defense will call Jessica
9 Wilson, Your Honor.

10 THE COURT: Come around, please.

11 JESSICA MARIE WILSON,
12 having been duly sworn, testified as follows:

13 THE CLERK: If you'll have a seat and state
14 your name, please.

15 THE WITNESS: My name is Jessica Marie Wilson,
16 W-I-L-S-O-N.

17 DIRECT EXAMINATION

18 BY MR. CORNWELL:

19 Q How are you doing, Ms. Wilson?

20 A I could be better.

21 Q What is your relationship to *v. 21, m*?

22 A I am her mother.

23 Q And I'll ask you, like I've asked every person
24 that's been up here, you know, how is this affecting
25 the family and everybody? And I'm asking you

1 specifically because *v. zhm* stays with you so you
2 would know how it's affecting her, also. Tell me
3 how it's affecting everybody.

4 A It has affected mainly *v. zhm* myself and my
5 two sons very badly.

6 Q Could you kind of explain what's been happening
7 with the family since this entire incident?

8 A Everyday life is not the same. We used to be a
9 family. Every time we go shopping, we see families
10 together. I have to deal with my kids asking where
11 their dad is and I have to be strong for them and
12 tell them I'm here for them, daddy loves you.
13 Everyday you wake up with it, you go to sleep with
14 it.

15 Q Now, I can't even begin to imagine the
16 difficult situation that you're in right now being
17 kind of forced to pick a side here --

18 THE COURT: Keep your voice up, please.

19 BY MR. CORNWELL:

20 Q What made you stand by your husband in this
21 situation?

22 A I have always been told to go with your gut
23 feeling. My heart and my gut tell me that he did
24 not do this.

25 Q And what makes you believe that to be true?

1 Why do you believe that that's true?

2 A My husband has never displayed any kind of
3 gross or any involvement that would be with a child.
4 Even our sex life has never been out of the -- you
5 know, it's normal, it's not weird stuff. He's just
6 -- that's not him, that's not his character. I've
7 known him for ten years, never once have I ever seen
8 anything like that.

9 Q You mean involving a child?

10 A Yes.

11 Q There is no indication that any behavior like
12 this was going on in your household?

13 A No, and I would be the first person to know. I
14 do laundry in the house. A mother/daughter bond is
15 as strong as anything else in this world. If my
16 daughter was hurting, I would know.

17 Q Now, let's talk about this incident when she
18 was in kindergarten. How did you find out about it?

19 A ^{victim} and I were cleaning her room. She was
20 supposed to be cleaning her room on her own, that's
21 hard for a child to do at that young age. She
22 always wants help, or, I don't want to do it, can
23 you help me. I went in there and I helped her. She
24 said, Mom, I need to talk to you. I said, What do
25 you need, ^{victim} She said, When I was at Destiny's

1 house, her cousin was doing gross stuff to us. I
2 said...

3 **THE COURT:** Do you need a break, ma'am?

4 **THE WITNESS:** No, I'm fine.

5 I asked her what kind of gross stuff. And she
6 just said the older cousin was making her and her
7 friend do things, take off their clothes. And the
8 older cousin was licking them in their private area
9 and the cousin was asking them, her and her friend,
10 to do nasty things together. And I said, ^{Victim} I
11 love you with all my heart, are you sure that's what
12 happened? She said, Yes, mommy.

13 The first thing I did was I called that mom up.
14 I said, You need to come to my house so we can have
15 a talk and it concerns your daughter and the cousin
16 that was over at the house that night. She said,
17 Well, what are you talking about? I said, You know
18 where I live, please just come to my house so we can
19 have a family meeting.

20 BY MR. CORNWELL:

21 **Q** And so you guys had a family meeting?

22 **A** Yes.

23 **Q** Were you and T.J. involved in the talk?

24 **A** Yes.

25 **Q** And the family sat down and discussed it?

1 A Yes.

2 Q And as a result of that, did you talk to
3 about what's supposed to happen when somebody does
4 that to you?

5 A Yes.

6 Q What did you tell her?

7 A That you come to an adult and you should have
8 told her mother at the time that it had happened.
9 She said she didn't feel comfortable telling her
10 mom. She only felt comfortable telling me. And
11 that's what she did, she told me.

12 Q So victim knew what to do if she was being
13 touched inappropriately?

14 A Yes.

15 Q Is that about the time you started having
16 troubles with victim being dishonest or was this
17 something that was ongoing?

18 A As far as I can remember, it's always been an
19 ongoing thing with my daughter.

20 Q And does that hurt you to admit that?

21 A It does.

22 Q Is that a difficult thing to say today?

23 A Yes. As my mother-in-law said, I would love to
24 tell you guys everything that's good about her.

25 Q Why don't you do that?

1 A Because I'm in a position where everybody asks
2 me her character, of the bad things that she does or
3 does she lie. My daughter's awesome. She is a
4 strong girl.

5 Q Why don't you tell the jury some good things
6 about *her*

7 A She always makes you smile. She's got her
8 daddy's humor. She loves her mom and her brothers.
9 She's like a little mama. She's very artistic. She
10 tells jokes all the time. She likes to refer to
11 herself as the class clown in school. She gets
12 along with everybody. She just makes my day.

13 Q But she does have a problem with honesty?

14 A She does.

15 Q Could you kind of share with everybody a
16 specific incident?

17 A Just like any normal kid, did you do your
18 homework, yeah. I check it, she didn't do it. It
19 seems like every time, ever since then, I would ask
20 her, did you do your homework, yes. I would check
21 it, no. Even after she knew I would get upset with
22 her that she had lied to me, she would still tell me
23 no.

24 There have been some instances at school where
25 she was at the YMCA after-school program and the

1 kids were engaging in spin the bottle. Where the
2 counselors were, I don't know. I did bring it to
3 their attention. She -- a student had seen what had
4 happened and went to the counselor and told them
5 that ^{victim} was involved in it. The counselor set
6 her aside and then asked her point blank, Were you
7 involved in spin the bottle and did you kiss this
8 little boy? And she said no. She did not know that
9 someone had seen her do it until the other child was
10 brought in and called her out on it. She later
11 admitted to it and she said she was sorry. She
12 didn't want to get the other kid in trouble because
13 when he got home, he would get a spanking.

14 Q So ^{victim} usually has to be boldly confronted
15 with her lies before she admits?

16 A That is what the hardest thing is to do right
17 now is she is not allowed to talk to me about any of
18 this. Me and her, we can't talk about it. From day
19 one, I was told to keep my mouth shut, I cannot talk
20 to my daughter, but just be a support for her. If I
21 had the opportunity to talk to her, I believe the
22 truth would come out. But because of my position, I
23 cannot talk to her. And it seems that myself and
24 her grandma, she can tell the truth to because she's
25 comfortable.

1 The counselors may say they know her and she's
2 comfortable around them, she's not. Only myself can
3 make her feel comfortable to where she can open up
4 and we have not had that opportunity to do.

5 **Q** And the reason -- did they tell you why you're
6 not allowed to talk to her? Is it because you don't
7 necessarily agree with her?

8 **A** That is.

9 **Q** And you find it hard to believe her in this
10 situation?

11 **A** I do. It's not the point that I don't believe
12 something had happened to her or she has seen
13 something, it's the person that she's naming.

14 **Q** And that's because you know your husband?

15 **A** I know my husband and I know my daughter.

16 **Q** And this is not part of his character?

17 **A** That is correct.

18 **Q** Do you believe it's in his nature to do
19 something like this?

20 **A** No.

21 **Q** How long have you known your husband?

22 **A** Ten years.

23 **MR. CORNWELL:** Beg the Court's indulgence.

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

25 (Pause.)

1 BY MR. CORNWELL:

2 Q Jessica, this hasn't been easy for you, has it?

3 A No.

4 Q It hasn't been easy performing this balancing
5 act, has it?

6 A (Witness shook head.)

7 Q How hard has it been deciding to believe
8 husband or daughter?

9 A Very hard. I just wish I could talk to her
10 about it.

11 Q And you want to talk to her about it not just
12 to see if she's lying, but so you can maybe help
13 her?

14 A Be there for her more.

15 Q Because you can't be there for her the way you
16 want to right now, can you?

17 A No.

18 Q Is there anything that you'd like the jury to
19 know about your situation right now?

20 A Just that it's been very hard on myself and my
21 children. The whole family has been affected. And
22 I am sitting up here today telling you that it is
23 not her fault, not at all. She needs her mom and
24 her father. It's hard to go everyday with this.

25 Q And why do you think she hasn't told the truth

1 about what's happened yet?

2 A Because her mom is not allowed to talk to her
3 about it.

4 Q Do you think she might be a little in over her
5 head?

6 A Yes.

7 MR. CORNWELL: Thank you. No further
8 questions.

9 THE COURT: Cross.

10 CROSS-EXAMINATION

11 BY MR. STUMBO:

12 Q You said you've known T.J. for ten years,
13 Jessica?

14 A Yes.

15 Q I know this week's been hard on you. I'm going
16 to be as brief as I can. So when did you meet T.J.?

17 A I was 14 and a half.

18 Q Okay. So y'all started going out when you were
19 14 and a half?

20 A Yes.

21 Q So this is the man you've been in love with
22 since you were, basically, a young teenager,
23 correct?

24 A Yes.

25 Q You don't want to believe that the man that

1 you've been in love with since you were a young
2 teenager could ever do something like this to your
3 child, do you? You don't want to believe that, do
4 you?

5 A It's not that I don't want to believe it, I
6 don't believe it.

7 Q Well, you said it was your gut feeling. So
8 it's not about what the evidence is, it's about what
9 your gut feeling is, right? You've got feelings for
10 this man, right?

11 A And my daughter, yes.

12 Q Okay. So you made a judgment call based on
13 your gut feeling, right, not what -- not what the
14 evidence is, not what impartial people have said
15 about this case, but what your gut feeling is,
16 right?

17 A That and my knowledge with my son and my
18 daughter, yes.

19 Q You said if ^{12th} was hurting, you'd want to
20 do anything for her as her mother, correct?

21 A That's correct.

22 Q You don't think she's hurting right now?

23 A I'm there for her.

24 Q Do you think she's hurting right now what she's
25 had to go through here this week?

1 **A** Yes.

2 **Q** Do you think she wanted to go through this this
3 week and talk to all of these people about this
4 stuff; do you think she wanted to do that?

5 **A** No.

6 **Q** All it would take would be one word from her,
7 right, that this didn't happen, I was just lying, I
8 was making it up. She wouldn't have to come up here
9 and go through all this stuff, would she?

10 **A** (No response.)

11 **Q** Correct?

12 **A** That's correct.

13 **Q** And you say she's a good girl. I believe
14 you're right, she is a good girl. But yet,
15 according to you, she's come up with this elaborate
16 story and lie accusing her own dad, but, yet, she's
17 a good girl?

18 **A** That wouldn't make her bad a girl.

19 **Q** That she would come up with the stuff we've
20 heard of this week accusing her dad of some of the
21 most heinous things you can think of, but she's a
22 good girl?

23 **A** It would be a girl that would need more love
24 and attention from her dad.

25 **Q** Oh, he gave her plenty of attention, didn't he?

1 A No.

2 Q Well, he says he can't remember a time where he
3 was alone with ^{him} in this year and a half period
4 and he was her father. Now, you tell me if
5 that's -- you can't ever remember a time where you
6 left the house and left him alone with the kids to
7 let him watch the kids, that never happened?

8 A Honestly, the kids went everywhere that I went
9 even if I went to the gas station.

10 Q Well, why was that?

11 A Because they love their mom.

12 Q You're telling me their father, not one time in
13 a year and a half, did he ever stay at home and
14 watch the kids?

15 A That is correct. I'm sorry it's so hard for
16 you to believe, but you were not in my house and you
17 don't know it.

18 Q I didn't say that. And I'm asking the
19 questions here, Jessica. You have to remember that.

20 A Okay.

21 Q Now, you told Detective Mefford that on at
22 least two occasions, you caught him looking at
23 pornography, right?

24 A That's correct.

25 Q That's not something he did all out in the open

1 in front of you, is it?

2 A No.

3 Q So he was hiding from you, correct?

4 A (No response.)

5 Q That's something that he hid from you. He
6 didn't want you to know about that, correct?

7 A I don't know if I would call it hiding.

8 Q He tried to keep that away from you. He
9 wouldn't do it when you were around, right?

10 A He probably didn't want us to be exposed to
11 that.

12 Q So he would hide that from you, but you
13 completely believe him when he says he didn't do
14 anything -- these things that **victim** said; is that
15 what you're telling us?

16 A (No response.)

17 Q Why the difference?

18 A Can you repeat that?

19 Q Why would you believe -- not believe him when
20 he was trying to hide the pornography, but believe
21 him when he says he didn't do anything to **victim**?

22 A (No response.)

23 Q He wasn't open with you about the pornography,
24 was he?

25 A I never asked.

1 Q Well, you caught him in the act, right?

2 A Right.

3 Q Okay. So would it take you basically catching
4 him in the act of molesting your daughter before you
5 believe him -- or before you wouldn't believe him
6 anymore? I'm sorry, I asked that the wrong way.
7 Would it take you catching him in the act before you
8 would not believe him?

9 A No, I think evidence would.

10 Q And by evidence, you mean you being able to
11 talk to her and being able to tell her what you
12 believe and get her to agree with you; is that
13 correct?

14 A Not get her to agree to (sic) me, just speak
15 with me about it. The ev...

16 Q I'm just trying to figure this out here. You
17 talk about evidence and what you believe and it
18 seems like to me you're overlapping the two, right?

19 A No. She comes to me when things happen. She
20 is a tiny girl. You guys have all seen she is a
21 tiny girl. I have never seen marks. I've never
22 seen anything to make it seem like something has
23 happened or had been done to her.

24 Q Tiny girls don't know about the kind of things
25 she was showing the interviewers with those dolls,

1 do they? They're not supposed to, are they?

2 A They're not supposed to unless they have seen.

3 Q Should tiny girls know about sexual positions?

4 A If they've seen porn, then, yeah, she would
5 know different positions which she was demonstrating
6 on that tape.

7 Q Detailed oral sex, that she would know that,
8 know all about that?

9 A If she saw.

10 Q So just because she may have one night seen a --
11 little bit of porn, she was able to concoct this
12 whole elaborate scheme of what your husband did to
13 her?

14 A I don't think it was just one night that she
15 had seen it. Not only that, she has been in
16 households where it has been done to her.

17 Q Well, you said about just some touching between
18 kids, right? We weren't talking about oral sex and
19 sexual intercourse that she showed in the video,
20 right? Those are two different things, correct?

21 A What was that?

22 Q The thing that happened at the sleep over, that
23 was somebody just touching -- the kids touching each
24 other, right?

25 A No. The older cousin was licking her in her

1 private area.

2 Q Okay. And this is all based on what victim
3 said at the time happened?

4 A It wasn't just It was the cousin and
5 the friend that had said it, too. victim

6 Q Okay. And you believed that told the
7 truth that time?

8 A I do.

9 Q Because it was somebody else outside of the
10 family that was doing it to her, right?

11 A And she had come to me, yes.

12 Q I believe she said on that witness stand this
13 week that she came to you before she went and talked
14 to the school counselor; do you remember that?

15 A She never did because I would be the one to
16 report it not the school counselor.

17 Q So she's lying about that, too?

18 A About what?

19 Q About telling you first?

20 A She is.

21 Q You said that this has been tearing the family
22 apart, right?

23 A Yes.

24 Q Would it be easier if it just would all go
25 away?

1 **A** No, because my daughter obviously needs
2 something or she wouldn't feel this way. And I
3 feel, as a mom, I had let her down in some way and
4 her dad for not giving her attention or being so
5 hard on her. And when this all come about, that is
6 what hit me, my daughter needs extra love and I and
7 my husband did not give it to her.

8 **Q** But it never hit you that she might be telling
9 the truth, Jessica? You never even considered that,
10 did you?

11 **A** I did. Believe me, I did.

12 **Q** But your gut just told you it wasn't true?

13 **A** My gut and what I know, yes.

14 **Q** What you know? You said -- what do you know?

15 **A** Like I said, the evidence.

16 **Q** What evidence? Please tell me what evidence
17 are you talking about? Talking about what happened
18 between her and the cousins or aunts and uncles?

19 **A** No, I know that that had happened. She had
20 come to me and her grandma about that after --

21 **Q** Does it seem possible to you that those things
22 happened because of what she said on the witness
23 stand this week, that she told them that this is
24 what dad did to me and that's why these incidents
25 happened with cousins?

1 **A** What was your question?

2 **Q** Is it possible that the incident with the aunts
3 and uncles and little brother, A.J., happened
4 because of what she said this week that she told
5 them that dad did these things to me; is that
6 possible?

7 **A** No.

8 **Q** Did you ever consider that to be the truth?

9 **A** I did think about it.

10 **Q** But your gut told you, no, that can't be true,
11 this is the man I've been in love with for ten
12 years, he couldn't have done those things to my
13 daughter. It's a hard thing to believe, isn't it,
14 Jessica?

15 **A** (No response.)

16 **Q** Just a couple more questions and I'll be done.
17 Now, when you were young, isn't it true that your
18 sister accused your father of molesting her?

19 **MR. CORNWELL:** Objection, Your Honor.

20 **THE COURT:** Hold on just a minute.

21 Yes.

22 **MR. CORNWELL:** Objection, Your Honor. I don't
23 see what the relevance of this questioning is.

24 **MR. STUMBO:** It's coming around to it, Your
25 Honor. It goes straight to her credibility as a

1 witness.

2 **THE COURT:** Ladies and gentlemen, I need for
3 you to step in the jury room. Don't discuss the
4 case

5 (The jury retires to the jury room.)

6 **THE COURT:** What do you want to ask her?

7 **MR. STUMBO:** I can proffer the questions if
8 you'd like me to, Your Honor.

9 **THE COURT:** Tell me what it's about.

10 **MR. STUMBO:** Your Honor, essentially, I've
11 gotten this from Jessica's mother, who's here in the
12 courtroom today and is ready to testify in reply, we
13 plan to call her on reply, that when Jessica and her
14 sister were young, Jessica's sister made an
15 allegation of sexual abuse against their father.
16 Their father was ultimately convicted of that. And
17 mother -- according to mother, Jessica never
18 believed that father did that either and took
19 father's side in that situation.

20 I think it goes straight to motive to take her
21 husband's side in this case and is related to that
22 and related to the line of questioning I've been
23 asking her about it being is it based on your gut
24 feeling or otherwise. I think it goes straight to
25 her credibility, Judge.

1 **THE COURT:** What's your position?

2 **MR. CORNWELL:** Your Honor, I don't think it
3 goes to credibility at all. I think he's on very
4 thin ground there, Your Honor. How does it go to
5 credibility, her credibility as a witness? I think
6 she's a very credible witness. I mean, I don't --
7 maybe you can flush that argument out a little
8 further.

9 **MR. STUMBO:** Well, Your Honor, she says she
10 believes T.J., but she thinks ^{victim} is lying. A
11 very similar situation has happened in her life
12 where she has taken sides not based on necessarily
13 anything she knows, but just what she believed and I
14 think that goes to the evidence in this case. She's
15 testifying as to her belief in a similar situation
16 before, she believed one side based on gut instinct
17 and not anything else. And I was going to just
18 leave it at that, Your Honor. I'm not going to go
19 into details about the --

20 **MR. CORNWELL:** Your Honor, that's kind of like
21 saying that I'm going to be a Braves fan because I
22 used to like the Chiefs. I mean, it -- I mean, just
23 because I did something similar in the past or held
24 a belief before in the past based on a similar
25 style, doesn't -- or something similar, doesn't mean

1 -- I don't see how that relates to credibility, Your
2 Honor. And I don't think the door's been open to
3 that either, Your Honor.

4 **MR. STUMBO:** Primarily, Your Honor, I would say
5 it goes to motive in this case as to her position
6 here in this case.

7 **MR. CORNWELL:** Your Honor, I think the only
8 time something is allowed in to show motive is when
9 you're talking about other crimes, wrongs or acts
10 and there's no -- I mean, alleged other crime or
11 wrong or act here. That's the only rule of evidence
12 I can think of where motive comes into play.

13 **MR. STUMBO:** Your Honor, I'm looking at 608(e)
14 of the South Carolina Rules of Evidence.

15 **THE COURT:** I just read it.

16 **MR. STUMBO:** Bias, prejudice or any motive to
17 represent may be shown to impeach the witness.

18 **MR. CORNWELL:** Your Honor, if he's offering it
19 for impeachment, doesn't she have to make a
20 statement that denied that or something before? I'm
21 still not following here.

22 **THE COURT:** It's permissible to offer evidence
23 related to a person's character, in this instance,
24 the defendant's character, to show that the
25 character is inconsistent with the commission of the

1 crime that the defendant is charged with. And I
2 assume that that was part of the reason that you put
3 this witness on the stand was to testify that his
4 character is inconsistent with commission of these
5 acts. I had added a section in the charge while she
6 was testifying on that very issue to tell to the
7 jury.

8 Now, it didn't just stop at that, though. And
9 this is part of the dilemma that I have on a lot of
10 these rulings I'm having to make is that you all are
11 venturing into a lot of different areas that, quite
12 frankly, cause me some concern. At one time, she
13 was being asked questions that I thought were
14 pitting her against the other witnesses, but that's
15 not the first time that that's happened in this
16 trial. No objections were raised by either side, so
17 I don't rule.

18 Now, Rule 608 states that the credibility of a
19 witness may be attacked or supported by evidence in
20 the form of opinion or reputation, but subject to
21 these limitations: One, the evidence may refer only
22 to character for truthfulness or untruthfulness,
23 and, two, evidence of truthful character is
24 admissible only after the character of the witness
25 for truthfulness has been attacked by opinion or

1 reputation evidence or otherwise.

2 And then subsection (b) reads: Specific
3 instances of the conduct of a witness, for the
4 purpose of attacking or supporting the witness'
5 credibility, other than conviction of a crime as
6 provided in Rule 609, may not be proved by extrinsic
7 evidence. They may, however, in the discretion of
8 the court, if probative of truthfulness or
9 untruthfulness, be inquired into on
10 cross-examination of the witness, one, concerning
11 the witness' character for truthfulness or
12 untruthfulness, or, two, concerning the character
13 for truthfulness or untruthfulness of another
14 witness as to which character the witness being
15 cross-examined has testified.

16 The giving of testimony, whether by an accused
17 or by any other witness, does not operate as a
18 waiver of Fifth Amendment privilege.

19 And subsection (c) states: Evidence of bias,
20 prejudice or any motive to misrepresent may be shown
21 to impeach the witness either by examination of the
22 witness or by evidence otherwise adduced.

23 I don't see an (e), but (c) is what I thought
24 you were referring to.

25 **MR. STUMBO:** I'm sorry. I misspoke, Your

1 Honor. It was subsection (c) that I read from.

2 **THE COURT:** And (c) is the one that causes me
3 some concern. And I do think that there are many
4 different ways that doors have been opened. If this
5 witness has a prejudice against believing that
6 people commit criminal sexual conduct and is a
7 family member and that person was convicted, or some
8 predisposition towards that, and she's gotten up
9 here and been allowed to testify about all these
10 things about her gut reaction and whether she
11 believes this or believes that, which generally is
12 not admissible, I mean, fact finding is for the
13 jury, then I think there's a pretty strong argument
14 that she can be questioned about a prior incident.

15 **MR. CORNWELL:** Your Honor, the only thing I
16 will say is I think that it says, Bias, prejudice or
17 motive to misrepresent. It seems like Solicitor
18 Stumbo wants to introduce evidence of bias -- that
19 she has a bias, not that she's lying.

20 **MR. STUMBO:** I think credibility --

21 **THE COURT:** I don't read the rule that way. I
22 read the rule that somebody could have a legitimate
23 bias and not even realize they have it and see
24 things a particular way and believe them to be
25 completely true, but the jury gets to understand

1 that there may be some potential bias that would
2 cloud that person's judgment.

3 Now, prejudice is the one that I was focusing
4 on. And prejudice is a very, very -- covers a very,
5 very broad range of matters. Let me read these case
6 notes.

7 (Pause.)

8 **THE COURT:** One of the notes to the rule, which
9 we're fortunate in that the notes are not just
10 somebody's opinions, the notes are actually part of
11 the rule making process in our state, reads that
12 under Rule 608(c), bias, prejudice or any motive to
13 misrepresent may be shown to impeach the witness.
14 And then it goes down to explain, This subsection
15 preserves South Carolina precedent holding that,
16 quote, generally anything having a legitimate
17 tendency to throw light on the accuracy,
18 truthfulness and sincerity of a witness may be shown
19 and considered in determining the credit to be
20 accorded his testimony. It cites State versus
21 Jones, which is a 2001 case of the Supreme Court of
22 South Carolina, 343 S.C. 562.

23 I mean, I don't know that I would have chosen
24 the words bias, prejudice or motive to misrepresent
25 in this specific instance. I'm not faulting the

1 rule makers. Believe me, that's not my purpose in
2 making that point. I'm just saying that, generally,
3 those aren't the things that jump out at me, but
4 when I started looking in the rules, that's the
5 first place I looked was Rule 608.

6 What I think has happened is by her testifying
7 about all of this stuff about her gut reaction and
8 how she feels in her gut and all of this and putting
9 that before the jury, that has, in fact, opened the
10 door to this line of inquiry. And, further, under
11 Rule 608(c) and that Jones case, that it does have a
12 legitimate tendency to throw light on the accuracy,
13 truthfulness and sincerity of the witness. What the
14 jury does with it is up to the jury. So the
15 objection's overruled.

16 Bring the jury in.

17 (The jury returns to the courtroom.)

18 **THE COURT:** The objection's overruled. You may
19 continue.

20 **MR. STUMBO:** Thank you, Your Honor.

21 **BY MR. STUMBO:**

22 **Q** Just a couple more questions, Jessica. I
23 believe before we broke, I'd asked you about the
24 allegations made against your father by your sister.
25 Were those made by your sister against your father?

1 **A** I believe so.

2 **Q** You believe so. Now, what happened with those?
3 Was your father ultimately convicted of that?

4 **A** Honestly, I don't even know.

5 **Q** You don't know whether your father was
6 convicted of a crime or not?

7 **A** No. The only thing that I know he's been
8 convicted of, that my mother has gone against him,
9 is child support.

10 **Q** Okay. Now, when your sister made this
11 allegation against your father, who did you believe?

12 **A** I believed my dad because my sister and I
13 talked and she said it didn't happen, she just said
14 it.

15 **Q** Now, I don't want you to say what your sister
16 said happened, but what did you believe -- why did
17 you believe that?

18 **A** Because she said she had just said it. That's
19 why I don't know, like I don't know if you have the
20 file work or anything. And I was young then
21 anyways, but I clearly remember her saying it didn't
22 happen.

23 **Q** Would your mother know what happened?

24 **A** My mom and I don't have a good relationship, so
25 I'm sure she'd come up here and say whatever

1 happened. And I don't know what happened because I
2 was young at the time, but if you call my sister in
3 here, it would probably be more credible.

4 Q But your mom would know whether he was
5 convicted of a crime or not, wouldn't she?

6 A She would.

7 Q But you don't know about that, do you?

8 A No.

9 Q And that time it was your gut feeling that your
10 dad didn't do it, right?

11 A My sister told me so that's how I knew the
12 truth.

13 Q Did you love your father?

14 A I love my father, but I did not grow up with my
15 father.

16 Q It has nothing to do with this time, though,
17 when you believe your husband over your daughter?

18 A This has nothing to do with that.

19 Q That's -- this is just based on your gut
20 reaction --

21 A This is my family and my life.

22 Q And this is based on your gut feeling, right?

23 A I didn't just say gut.

24 Q So it's your life. So it's what would happen
25 if it was actually true what ^{victim} was saying,

1 right?

2 A Believe me, if I thought it did happen, I
3 wouldn't be here. I would not be on both sides.
4 It -- I don't know what else to tell you, but it's
5 not just gut, like I had said before. It's hard to
6 be in my position right now.

7 Q I understand that.

8 A And believe me, I went through everything,
9 everything. I even went to DSS. And I went to
10 Heather and I said, you know, we need to figure this
11 out. And they said they cannot pursue that because
12 **victim** has not said another name. So I did try.
13 And I told them that I wanted to call a detective
14 back over to my house and they said I was not
15 allowed.

16 Q Who told you that you weren't allowed to call
17 the detective?

18 A DSS told me.

19 Q They told you you weren't allowed to call
20 Detective Mefford?

21 A And mention that I thought someone else was
22 involved, yes.

23 Q And who at DSS told you that?

24 A There's so many case workers, I just remember
25 it being told to me. And I think -- I want to say

1 it was Christalyn, but I'm not just going to throw
2 -- because I remember sitting in my house saying it.

3 Q So they told you you couldn't go to Detective
4 Mefford and discuss the case?

5 A Yes -- no, not the case, that I had felt that
6 someone else had done this or we need to find out
7 who else had done it.

8 Q I just want to make sure what you're saying is
9 that Christalyn told you you couldn't go and talk to
10 Detective Mefford, is that what you're testifying --

11 MR. CORNWELL: Objection, Your Honor. I think
12 she said she didn't remember if it was Christalyn or
13 not.

14 THE COURT: He's on cross. He's allowed
15 latitude. Overruled.

16 BY MR. STUMBO:

17 Q I believe you said Christalyn was the one who
18 told you you couldn't call Detective Mefford and
19 talk about this case?

20 A I believe it was someone in the DSS and I
21 thought it had been Christalyn, but I know it was
22 DSS that had told me.

23 Q Detective Mefford didn't tell you that, did he?

24 A No.

25 Q You got a telephone?

1 A Do I have a telephone?

2 Q Yes.

3 A A home phone or a cell phone?

4 Q Either one.

5 A I do.

6 Q So you have the ability to pick up the phone
7 and call this man, don't you, if you feel like
8 there's something you need to tell him?

9 A At the time, I didn't feel like I had that
10 right to do that because I was to keep my mouth
11 shut.

12 Q And Christalyn told you that?

13 A I said I had believed that Christalyn did, but
14 I know it was someone at DSS. I did a lot more
15 talking with Christalyn at the beginning than any
16 other DSS worker.

17 Q So it's your gut feeling now that you told
18 Christalyn and not somebody else?

19 A No.

20 Q Or Christalyn told you that?

21 A I believe why I say Christalyn is because she
22 did most of the safety orders also and she kind of
23 went over what I was allowed and couldn't do. And I
24 remember saying, when I first went in the interview,
25 when I got called from work to go in there, and I

1 told her there had to have been someone else. And
2 she said, Well, ^{victim} didn't mention anybody else.
3 Our main focus is on her father, Timothy Jacob
4 Wilson.

5 Q And you heard the interview. It was played
6 right here in this courtroom this week, right?

7 A Yes.

8 Q How many times did she say it was dad that did
9 it to her?

10 A I didn't count.

11 Q She didn't talk about any other adults, did
12 she?

13 A No.

14 MR. STUMBO: Nothing further of this witness at
15 this time, Your Honor.

16 THE COURT: Redirect?

17 REDIRECT EXAMINATION

18 BY MR. CORNWELL:

19 Q They talked about the interview and you heard
20 that interview and you saw it, didn't you?

21 A Yes.

22 Q In that interview, do you remember ^{victim}
23 saying mommy and grandma know because Christalyn
24 told her?

25 A I believe that, yes, that was said.

1 Q So she didn't tell you?

2 A (No response.)

3 Q *T. 4m*, she didn't tell you about --

4 A No, she didn't.

5 Q And do you know if she told anybody but the
6 people who talked to you about it, DSS, law
7 enforcement?

8 A She never told anybody else but just the
9 counselor and DSS workers.

10 Q Now, from the outset of this, what have they
11 been telling you about talking to *V. 4m* about this?

12 A I was not allowed to discuss this with her.

13 Q And did you kind of take that to mean no
14 talking about it in general?

15 A Yes. I was just supposed to give love and
16 support to her.

17 Q Now, you think the safe thing to do was just
18 kind of keep mum about the incident in general?

19 A Yes. I was not allowed to talk about it, or
20 let them know if I was on the phone with him.

21 Anything that had to do with her dad, I was not
22 allowed to talk about or anything that had to do
23 with anything that happened was not allowed to be in
24 her presence.

25 Q Now, is that the only reason that you haven't

1 really discussed or talked to anybody else about
2 this incident?

3 A Yes.

4 Q Because you were instructed to?

5 A Yes.

6 Q Now, we've heard them talk about your gut
7 feeling or whatever. It wasn't just a gut feeling
8 that you based your support on T.J. on, is it?

9 A No.

10 Q Well, what else is it? What besides just the
11 gut feeling?

12 A My knowledge with how my husband is and how my
13 daughter is.

14 Q And you're talking about what you testified to
15 earlier in that she has a problem with honesty?

16 A Yes.

17 Q And in general except for some embarrassing --
18 understandably embarrassing moment with pornography,
19 is T.J. an honest guy?

20 A Yes.

21 Q And that's not to say he's an angel?

22 A No, nobody is.

23 MR. CORNWELL: Thank you.

24 THE COURT: Recross?

25 MR. STUMBO: Just briefly, Your Honor.

RECROSS-EXAMINATION

BY MR. STUMBO:

Q Jessica, just one question. Did it ever occur to you that the reason why you were asked not to talk to [victim] about what had happened was so that you wouldn't be pit between your husband and your own daughter on an issue this serious? Did that ever occur to you that they didn't want to put you in that position?

A Yes.

Q And why would that be?

A (No response.)

Q You have feelings for [victim] right?

A Right.

Q You have feelings for your husband, right?

A Correct.

Q So for you to be put in the middle of this to figure out what happened would put you between him and her, correct?

A Yes.

Q Did it ever occur to you that they were trying to protect you from that?

A (No response.)

Q From being put in that position to take sides?

A (No response.)

1 MR. STUMBO: No further questions, Your Honor.

2 THE COURT: Anything further of the witness?

3 MR. CORNWELL: No, Your Honor.

4 THE COURT: Thank you, ma'am. You may step
5 down.

6 Any further witnesses from the defense?

7 MR. CORNWELL: No, Your Honor.

8 THE COURT: Thank you.

9 Any reply from the State?

10 MR. STUMBO: Your Honor, I do have two very
11 brief reply witnesses. They shouldn't take long.

12 THE COURT: Call them.

13 MR. STUMBO: Your Honor, the State calls Arleen
14 Callahan to the stand.

15 THE COURT: Come around to the clerk, please.

16 ARLEEN ANN CALLAHAN,
17 having been duly sworn, testified as follows:

18 THE CLERK: If you'll have a seat, state your
19 name and spell your last for the record, please.

20 THE WITNESS: My name is Arleen Ann Callahan,
21 C-A-L-L-A-H-A-N.

22 DIRECT EXAMINATION

23 BY MR. STUMBO:

24 Q Thank you for being here today, Ms. Callahan.

25 A You're welcome.

1 Q What is your relation to the defendant, T.J.
2 Wilson?

3 A He's son-in-law.

4 Q Okay. And Jessica's your daughter?

5 A Daughter.

6 Q And where do you currently live?

7 A I live in Cleveland, Ohio.

8 Q All right. And did Jessica ever live up in
9 Ohio with you?

10 A Yes.

11 Q How old was she when she lived at home with you
12 in Ohio?

13 A From birth until 16.

14 Q Okay. When is the first time you met T.J.
15 Wilson?

16 A She was 14.

17 Q That's the first time you met her when your
18 daughter was 14, or you met him?

19 A Well -- yeah.

20 Q How old was he at the time?

21 A She had said 17, but I believe he was 19.

22 Q How old is your daughter now?

23 A She's 25.

24 Q So that would mean, just by doing simple math,
25 that **victim** was born when she was, what, 15, 16?

1 A Uh-huh, 15 going to be 16.

2 Q Okay. When she was born, do you remember that
3 day when ^{V. 2 tim} was born?

4 A Yes, I do.

5 Q Were you there in the hospital room?

6 A Yes, I was.

7 Q Was T.J. there?

8 A Yes, he was. ^{V. 2 tim}

9 Q What did T.J. say when ^{V. 2 tim} was born?

10 A Well, after she was born, he was standing over
11 by the thing where they put her under a light and
12 they clean her. And I walked up to him, patted him
13 and said congratulations and he stated that he
14 didn't want a girl, that he wanted a boy.

15 Q How did that make you feel as a grandma?

16 A I felt really awful, hurt because that was my
17 first granddaughter. ^{V. 2 tim}

18 Q Do you love ^{V. 2 tim} ?

19 A Oh, yes, I do with all my heart.

20 Q Have you been able to see her much in the past
21 year and a half?

22 A No.

23 Q Has Jessica ever brought her up to see you?

24 A Just when my mother was really sick and then
25 when she passed. So I've seen her twice this year.

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- 1 Q Do you want to see more often?
- 2 A Yes, I do.
- 3 Q You had a falling out with Jessica over this?
- 4 A Yes, I have.
- 5 Q Now, I asked Jessica about an incident a moment
- 6 ago. Did you hear that testimony?
- 7 A Yes.
- 8 Q Was your husband ever charged with sexual abuse
- 9 of one of your daughters?
- 10 A Yes, he was.
- 11 Q Was that daughter Jessica or another?
- 12 A It was my older daughter, Carry.
- 13 Q Ultimately, did that case come to court?
- 14 A Yes, it did.
- 15 Q All right. And was your husband convicted?
- 16 A Yes, he was. And it is on file.
- 17 Q Were you separated from him at that time?
- 18 A Yes.
- 19 Q Is this what caused the separation or --
- 20 A Yes, that and his drinking. We were actually
- 21 separated at the time the incident happened, but
- 22 didn't find out until years later, and they were at
- 23 a visitation with him for a weekend.
- 24 Q Did Jessica ever believe that it actually
- 25 happened?

1 A No.

2 Q She took your husband's side?

3 A Yeah.

4 Q Ms. Callahan, do you wish you had a better
5 relationship with your daughter?

6 A Oh, yes, I do.

7 Q Do you still love her?

8 A Oh, with all my heart, love all my kids,
9 grandkids.

10 MR. STUMBO: Thank you, Ms. Callahan.

11 No further questions at this time, Your Honor.

12 THE COURT: Cross?

13 MR. CORNWELL: Yes, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. CORNWELL:

16 Q You stated that you love ? *victim*

17 A Yes, I do.

18 Q Do you remember calling *victim* names?

19 A Calling her names? *victim*

20 Q Did you ever call a slut, thief, a liar?

21 A No.

22 Q Do you remember an incident involving *victim*
23 and your son?

24 A Yes, there was a couple of them.

25 Q Isn't it true that you called *victim* names

1 after you found out what happened between them?

2 A No, I did not. I recall somebody else calling
3 them names.

4 Q Isn't it true that you and your daughter don't
5 get along?

6 A No, we haven't in quite a while.

7 Q Isn't that why you're here today?

8 A No, I'm here today for my granddaughter,
9 **victim**.

10 Q You're here to put the ax in their back, aren't
11 you?

12 A No, I'm not. I'm here for the concern of my
13 granddaughter --

14 MR. CORNWELL: No further questions.

15 THE COURT: Redirect?

16 REDIRECT EXAMINATION

17 BY MR. STUMBO:

18 Q How far did you drive last night to be here in
19 court today?

20 A Ten and a quarter hours, 623 miles.

21 Q Would you come that far just to make a story
22 up?

23 A No, I would not.

24 Q Under oath?

25 A No.

1 MR. STUMBO: No further questions, Your Honor.

2 THE COURT: Recross?

3 MR. CORNWELL: Beg the Court's indulgence.

4 THE COURT: Yes, sir.

5 (Pause.)

6 RECROSS-EXAMINATION

7 BY MR. CORNWELL:

8 Q Do you recall an incident where you tried to
9 claim ^{victim} on your taxes?

10 MR. STUMBO: Your Honor, this is beyond the
11 scope of my redirect.

12 THE COURT: Do you want to be heard?

13 MR. CORNWELL: Your Honor, I'll withdraw the
14 question, but I think he did ask about ^{victim} and
15 stuff on redirect.

16 MR. STUMBO: On redirect, I asked her how far
17 she drove to get here.

18 THE COURT: Let me get it straight because if
19 you withdraw the question, I don't have anything to
20 rule on. If you want me to rule, then I'll be happy
21 to hear both arguments.

22 MR. CORNWELL: I withdraw the question, Your
23 Honor.

24 THE COURT: Okay. Thank you, ma'am. You may
25 step down.

1 Do you have further reply witnesses?

2 MR. STUMBO: Just one very short one, Your
3 Honor. The State would call Christalyn Thompson to
4 the stand.

5 THE COURT: You're still under oath, ma'am.

6 CHRISTALYN THOMPSON HOWARD,
7 having been previously duly sworn, resumed the
8 witness stand and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. STUMBO:

11 Q I'll be very brief, Ms. Thompson. Were you
12 here in the courtroom a second ago when Jessica
13 indicated that you told her to not call Detective
14 Mefford about this case?

15 A I was.

16 Q Did you ever say such a thing to her?

17 A No, I did not.

18 Q Would you ever suggest that they -- that a
19 victim's family member couldn't call law
20 enforcement?

21 A No, I actually encourage them to call law
22 enforcement.

23 Q Why would she make this up about something you
24 said?

25 A I'm not sure.

1 Q Did you tell her, though, that you would rather
2 her not talk to ^{victim} about the specifics of this
3 incident?

4 A I did.

5 Q Why would you do that?

6 A So that it would not be said that she told
7 victim to say or to not say something.

8 Q In your view, would that pit her -- put her
9 between her husband and her daughter?

10 A That's correct.

11 Q Would you have suggested that in any such case
12 like this?

13 A I suggest it in every case.

14 MR. STUMBO: No further questions, Your Honor.

15 THE COURT: Cross?

16 CROSS-EXAMINATION

17 BY MR. CORNWELL:

18 Q Did you hear that she said that you told her or
19 that she thought you told her?

20 A I heard she said that she thought that
21 Christalyn Thompson told her.

22 Q Thought you told her?

23 A Yes.

24 MR. CORNWELL: Thank you.

25 THE COURT: Redirect?

1 **MR. STUMBO:** Nothing further from this witness,
2 Your Honor.

3 **THE COURT:** Thank you, ma'am. You may step
4 down.

5 Any further reply evidence?

6 **MR. STUMBO:** The State rests, Your Honor.

7 **THE COURT:** Thank you.

8 Ladies and gentlemen, you now have all of the
9 evidence you're going to have to decide these cases.
10 There are two stages that remain in this trial, the
11 closing arguments and the charge.

12 We will plan to start in the morning at nine
13 o'clock. You will hear the closing arguments of the
14 attorneys. After which, I will tell you the law --
15 I tell you what, y'all be here at 9:15 because I'm
16 going to give the lawyers what I intend to tell you
17 tonight and I'll meet them at nine o'clock and we'll
18 talk about it a few minutes before you are needed.
19 So I need you back here at 9:15. Unless I change
20 something, it's going to take me about 24 minutes to
21 explain the law to you.

22 I hope you have a pleasant evening. Remember
23 all of those admonitions. I need you in the jury
24 room in the morning at 9:15. Thank you.

25 (The jury was excused for the day.)

1 **THE COURT:** Mr. Wilson, I'm going to take you
2 into custody tonight.

3 Court's in recess until nine o'clock in the
4 morning. I want the lawyers to stay here until you
5 get the law so we can talk about it at nine o'clock
6 in the morning. Thank you.

7 (The proceedings were concluded for July 31,
8 2008.)

9 (The following proceedings were held on
10 August 1, 2008.)

11 **THE COURT:** All right. What do y'all need to
12 talk to me about the charge?

13 **MR. CORNWELL:** Your Honor, I spoke to you
14 yesterday about ABHAN as a lesser included offense.
15 I have a request for a charge as to lesser included
16 offenses, I guess typically call it King charge.

17 **THE COURT:** Just get the court reporter to mark
18 it as a Court Exhibit.

19 (Court's Exhibit Number 1, request to
20 charge, was marked for identification purposes.)

21 **MR. CORNWELL:** I'm not exactly sure of the
22 wording if it was reasonable doubt or a doubt, I'm
23 not sure, but I put reasonable doubt in there.

24 **THE COURT:** I read the cases that you gave me
25 yesterday afternoon, State versus Whitten

1 W-H-I-T-T-E-N. It's a 2007 case of the Court of
2 Appeals. And Dempsey versus State, a 2005 case of
3 the Supreme Court of South Carolina. I was familiar
4 with both of the cases, but I read them last night.
5 I don't see anything that would justify a charge of
6 assault and battery of a high and aggravated nature.
7 It's criminal sexual conduct in the first degree or
8 nothing.

9 The allegations -- first of all, both of those
10 cases cited the proposition, which I'm sure is what
11 you were advancing them for, about if there's any
12 evidence that the trial -- that the defendant is
13 guilty of a lesser offense rather than the greater,
14 then the judge should submit the lesser offense to
15 the jury, but in both of those cases, if I remember
16 correctly, the appellate court said they should not
17 have done it or it was proper not to do it.

18 I don't see ABHAN as a lesser included offense
19 in this case. So I note your objection -- or your
20 request to charge that and denied.

21 Anything else concerning the proposed draft?

22 **MR. CORNWELL:** Nothing further, Your Honor.

23 **MR. STUMBO:** Nothing from the State, Your
24 Honor.

25 **MR. CORNWELL:** Your Honor I would ask for maybe

1 about ten more minutes before we call the jury out.

2 **THE COURT:** That's fine.

3 I need to talk to you all about the verdict
4 form. I didn't give those to you last night
5 because, quite frankly, I wanted to talk to you
6 about them first. We've got language in the newest
7 version of the CSC with a minor statute and the
8 language was put in there as part of Jessica's law,
9 I think. The intent being at the time of the
10 adoption of the statute, that a repeat offender
11 could be given the death penalty. Of course, there
12 are also provisions about a repeat offender being
13 given life imprisonment.

14 At the very bottom of the proposed charge, I
15 had cut and pasted one sentence from all of that
16 language. It states, In the case of a person
17 convicted at trial for a violation of CSC with a
18 minor first degree, the judge or jury, whichever is
19 applicable, must designate as part of the verdict
20 whether the conduct that constituted the sexual
21 battery involved sexual or anal intercourse by a
22 person or intrusion by an object.

23 Now, my recollection is the U.S. Supreme Court
24 has stated in a case from another state that you
25 can't put people to death in the United States

1 unless they kill somebody. I think the Attorney
2 General of South Carolina, perhaps others, has said,
3 we're going to keep enforcing this law in South
4 Carolina until they declare it unconstitutional.
5 I'm not getting in the middle of that. But I'm
6 trying to comply with the law as it's currently
7 written on our books and here's what I came up with:

8 You have one charge of CSC with a minor in the
9 first degree which alleges that there was fellatio.
10 I don't see how fellatio fits within that question
11 from Jessica's law. So on that one, I've just got
12 the two options as not guilty or guilty of criminal
13 sexual conduct with a minor in the first degree and
14 then in parentheses, I've got fellatio so that the
15 jury will know which indictment we're talking about.

16 All right. And then he has an allegation of
17 cunnilingus. Again, I don't see how cunnilingus
18 fits within the definition or what is contained in
19 that last sentence from Jessica's law that I read to
20 you, so I've got on that one not guilty or guilty of
21 criminal sexual conduct with a minor in the first
22 degree including proof that the defendant -- well,
23 it should be the same -- so it would be the same as
24 the other one except where the other one had
25 fellatio, this one would have cunnilingus.

1 I found two different spellings of fellatio.
2 I'm kind of scared to do a whole lot of word
3 searches about fellatio, they'll be coming to
4 confiscate my computer or something. So if I
5 misspelled it, I apologize.

6 And then with sexual intercourse, obviously,
7 that would fit within that last sentence. So what
8 I've got on that one is not guilty or guilty of
9 criminal sexual conduct with a minor in the first
10 degree including, this is the additional language
11 that's normally not in there, including proof that
12 the defendant performed sexual intercourse by
13 intrusion, however slight, of his penis into the
14 minor's vagina. I thought if I just stated a
15 separate question saying, if you had found the
16 defendant guilty of CSC first degree on this
17 indictment, do you find that the State has proven
18 beyond a reasonable doubt that he inserted his
19 penis, however slightly, into the minor's vagina,
20 but that's a stupid question because that's a
21 definition of sexual intercourse. So that's the way
22 I've got it worded.

23 Now, with the digital penetration, I don't know
24 if the language in that section of Jessica's law is
25 meant to include that or not because it states

1 sexual intercourse, anal intercourse or insertion of
2 an object. What does that mean?

3 So the definitions in the CSC statute are
4 pretty clear, they've been around a long time and
5 everybody works with them without any troubles, but
6 anyway, just in case somebody down the road ever had
7 to review this, the way I've got this one worded is
8 that the two options are not guilty or guilty of
9 criminal sexual conduct with a minor in the first
10 degree including proof that the defendant inserted
11 his finger, and then I've got a parentheses S to
12 make it plural or singular, into the minor's vagina.

13 That's the way I've got the verdict forms done.
14 I know you're not seeing them so I'm just reading
15 them to you. Of course, the lewd act is just a
16 standard not guilty or guilty.

17 But if you all have any thoughts about that,
18 I'd be happy to hear them. I haven't printed them
19 out yet. Matter of fact, I'm looking at them and
20 I've got to do a little bit of work on them to get
21 them to fit on the page like they're supposed to.
22 I've got one page each. Do y'all have any comments
23 about any of that?

24 **MR. STUMBO:** Your Honor, I'll leave that in
25 your judgment if you think that's necessary. I feel

1 like if they come back with a guilty verdict on the
2 indictment that alleges specifically there was
3 sexual intercourse, I don't know if that's not the
4 way it would be interpreted later anyway, but if you
5 feel like it's necessary to put it on the verdict
6 form, I don't have a problem with that.

7 **THE COURT:** I don't know. If they said that
8 the judge can make a finding after it, but it says
9 the judge or the jury as -- again, I don't know, I'm
10 not going to get off on a rant.

11 **MR. CORNWELL:** Your Honor, I think that's
12 appropriate.

13 **THE COURT:** All right. You say you need about
14 ten minutes?

15 **MR. CORNWELL:** Yes, Your Honor.

16 **THE COURT:** All right. We'll be at ease.

17 (Brief Recess.)

18 **THE COURT:** All right. Defense ready to argue?

19 **MR. CORNWELL:** Yes, Your Honor.

20 **THE COURT:** State?

21 **MR. STUMBO:** State's ready, Your Honor.

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

23 Bring in the jury.

24 (The jury enters the courtroom at 9:35 a.m.)

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

1 as I told you yesterday, you have all of the
2 evidence you are going to have to decide the cases.
3 And there are two stages that remain in this trial,
4 closing arguments and the charge.

5 Now, the way the closing arguments will work is
6 that defense counsel will make the first closing
7 argument. And since the State has the burden of
8 proof, the State gets to go last, and so the
9 Solicitor will make his closing argument.

10 Now, I always take a break between the time
11 that they finish their closings and the time that I
12 talk to you. And sometimes I take a break between
13 the two closings depending upon the length of it.
14 So we just play it by ear. I invite your close
15 attention.

16 Mr. Cornwell, you're recognized for your
17 closing argument.

18 **MR. CORNWELL:** Thank you.

19 Ladies and gentlemen, we've finally come to the
20 end of this, what I described as a drama at the
21 beginning of this trial, that's because, just to be
22 frank, there are some elements, some thematic
23 elements any time that there's a trial. We're all,
24 as I said earlier, actors to a certain degree.
25 We're all hired guns, if you will. We're basically

1 here advocating different positions.

2 My job and my duty is to defend this man's
3 innocence. The State's job and their duty is to
4 overcome the burden of reasonable doubt to convince
5 you guys that he is not innocent. And the phase of
6 the trial that we're in now is we hand this over to
7 you to decide this man's fate.

8 Like I said earlier, we're here representing
9 different positions. The State has brought experts
10 to forward or advance their position, if you will.
11 And granted, me, my co-counsel, Mr. Casto, have
12 advanced our position of a winner.

13 The end of the drama's over now. We're to the
14 point in the trial now where it's about real people,
15 the people that we've represented, the people that
16 we're fighting for, the people whose rights and
17 freedom are on the line.

18 What have we heard today? The number one
19 question on everyone's mind, as you've heard the
20 stories and as you've heard the witnesses, as you've
21 heard the experts, has got to be why would this
22 little girl make this up? Why would she do that?
23 What motives, what in her mind would cause her to
24 make it up? Let's explore that a little bit.

25 You've heard through testimony from people on

1 both sides of this drama that this little girl had
2 been molested before more than once before she
3 alleges the incidents with her father and before the
4 alleged incidents with her father occurred. You've
5 heard that. That was in testimony.

6 You've also heard that the relationship between
7 her and her father, while they did love each other,
8 father's role in the house was the disciplinarian.
9 You've heard from Mr. Robinson, when he took the
10 stand, that the only thing she wanted was for daddy
11 to come home and be nicer to her. You've heard from
12 even some of the other experts that one of her main
13 concerns is that daddy be nicer to her.

14 You heard from ^{family} grandmother that there
15 was an incident in the car where she didn't want to
16 go home. Why? Because she felt like daddy was too
17 mean. She just wanted him to be nicer to her.

18 You've seen and heard testimony that ^{victim} victim
19 she likes attention, she likes the center of
20 attention -- she likes to be the center of
21 attention.

22 You've also heard testimony, which it was
23 obviously painful for the family to come up here and
24 talk about, that victim has a problem with honesty.
25 Now, this is not something that the family wanted to

1 come up here and talk about. This is not a
2 situation where they wanted to come air dirty
3 laundry or come up here and talk bad about a beloved
4 member of their family. That's not easy. That's a
5 difficult thing to do. It is a terrible thing to
6 have to do, but they've been placed in a terrible
7 situation. They've been placed in a situation where
8 they have to balance who they believe, do they
9 believe their granddaughter or do they believe their
10 son?

11 The experts state, made it abundantly clear
12 that they believe the granddaughter.

13 Now, you have to ask yourself who knows both
14 parties better? I did. I not only asked myself, I
15 asked the expert, Do you know **victim** better than her
16 mother? She said no.

17 Who knows T.J. Wilson? Who knows **victim**? Who
18 has enough information, who knows them well enough
19 to listen to both of them and decide who's telling
20 the truth? Who knows it? I'm going to leave that
21 question to you. But I think the testimony has
22 proven or showed that the family made their
23 decision. They heard the story. They weighed what
24 they knew about ^{victim} they weighed what they knew
25 about T.J. and they took their stand, very difficult

1 decision, a very horrible decision to have to make,
2 a very terrible decision to have to make.

3 You heard the State in cross-examination of the
4 family members tried to use that against them. I
5 don't fault them for that, that's their job. Now,
6 was it fair? Maybe, maybe not, but that doesn't --
7 shouldn't allow that to let you think that they love
8 that little girl any less.

9 Let's talk about *her* statement. Let's
10 talk about her forensic interview. Let's talk about
11 the expert testimony. Now, there's one thing I've
12 got to say about experts, all right. In the legal
13 community, we use experts just like anybody else out
14 there and the world uses experts in everyday life.
15 You've got a problem need fixing, you go to an
16 expert. Car broke, go to the expert. A.C. broke,
17 go to the expert. You've got a problem, get an
18 expert. They had three experts, you know why?
19 Because they've got problems with their case.

20 The number one problem, you heard the expert
21 talk about the story being coherent, internal
22 coherence in the story, but in her forensic
23 interview and in her statements, she's contradicted
24 herself a few times, okay. The details just
25 conflict.

1 For instance, there's no mention of penetration
2 anywhere. Then all of a sudden in this interview at
3 the end when the dolls come out, she's demonstrating
4 all this sexualized behavior, all this intercourse
5 and everything else that just magically happened.
6 Where does this come from? It's not internally
7 coherent.

8 Let's talk about her delayed reporting. They
9 say, oh, this is normal, this is, you know, happens
10 all the time. But we know for a fact that *victim*
11 was abused before and she told. She knew what to
12 do. She knew to tell and that's exactly what she
13 did when it happened before. And now all of a
14 sudden she's a delayed reporter.

15 You see the only thing is they have the perfect
16 answer for everything, every problem you have. Oh,
17 if, you know, we need internal cohesiveness, we need
18 the story to flow, you know, it's consistent. Oh,
19 but if it's not, if it's not consistent, if it comes
20 out jumbled and if it comes out confused, well
21 that's just because kids remember things
22 differently. They remember things differently and
23 they maybe use their imagination to plug in the gaps
24 sometimes and, you know, but they would never use
25 their imagination to plug in that type of gap. No,

1 that was real. Now, this is fake, but that was
2 real.

3 I submit to you that's your job. You determine
4 what was true and what was a lie.

5 Another thing that we need to talk about is the
6 source of these sexualized behaviors. You know,
7 much has been made about that. And, you know, they
8 try to say that, oh, it's because of abuse with her
9 father. But we know for a fact that she was abused
10 before. We know that for a fact. It's came out on
11 testimony. She said it over and over again. She
12 was abused before. That I submit to you is the real
13 source of the problem.

14 Let's talk about the evidence of this
15 penetration. We had an expert get up here, a doctor
16 who examined her, said, hey, no tears in the hymen,
17 hymen intact, fully intact, wide, thin, clear. She
18 said it was so clear, you could flash a light
19 through it and see through it, you know. It was
20 that clear, you know.

21 And, of course, the State got up there and
22 asked her some questions and she was like, oh, wait,
23 wait, that doesn't make a difference. If the
24 hymen's there, you know, that doesn't necessarily
25 mean he didn't have sex with her.

1 A grown man had sex with a seven year old,
2 you've seen her, she was nine and she was small,
3 imagine her at seven, smaller, and left no physical
4 signs of abuse after what she alleged was a repeated
5 pattern of sexual abuse, no physical signs? Are you
6 kidding me? And that's exactly why I crossed
7 examined her.

8 And low and behold, the summary of her
9 testimony is, well I can't tell if she (sic) did or
10 I can't tell if he didn't. Why was she here? That
11 testimony didn't help at all. We're back at square
12 one. No physical signs of sexual abuse. No
13 physical signs of sexual abuse.

14 Another thing I'd like to talk to you about,
15 and this is for the family involved, the State went
16 through great lengths to try to paint a picture of
17 this family as insensitive to ^{victim's} needs,
18 uncaring about the investigation. This family was
19 given very, very strict directions not to
20 communicate with ^{victim} about this case at all.
21 There was to be no communication.

22 And they have this -- now, once again, this
23 almost circular logic going on where, you know, you
24 didn't care about your daughter, you're not
25 supporting her, you don't care about your daughter.

1 Well, that's because she couldn't talk to her.

2 Well, you couldn't talk to her because you didn't
3 believe her. And it's -- do you see the circular
4 reason in there? It's just not appropriate. We all
5 know the truth.

6 You saw ^{victim's} mother on that stand. You saw
7 the pain in her eyes. You heard the pain in her
8 voice. You saw her. You heard her. You know this
9 is tearing her up. And I know all of this is not
10 necessarily evidence as to T.J.'s guilt, but it's
11 just terrible that that woman was put through that
12 just to make them look bad.

13 The fact of the matter is that T.J.'s innocent.
14 And his family stands behind him supporting him
15 today because they believe in his innocence because
16 they know T.J. And you've heard them testify
17 several times if they had talked to ^{victim} or been
18 allowed to talk to ^{victim} and for one instant
19 believed that what she was saying was the truth,
20 T.J. is sitting by himself over there with me and
21 Mr. Casto to keep him company. The whole dynamic
22 would be changed. You'd see the family over here
23 supporting ^{victim} because she's a fantastic girl.

24 You've seen her on the stand. She's a great
25 girl, but she's a troubled girl, maybe through no

1 fault of her own. She's been abused. Yes, she has.
2 She has been molested. Yes, she has, but not by her
3 father, not by T.J. Wilson.

4 Once again you may ask yourself what -- Mr.
5 Cornwell, I'm still -- I just -- why would she keep
6 up with the story after all this time? You have to
7 understand how this works. When children accuse
8 these crimes, the story is reenforced to them over
9 time while they're waiting trial. It's a situation,
10 and you've probably seen it in your life happen to
11 other people, you've probably seen it in your life
12 happen to children before, maybe it happened to you,
13 you get in too deep. You hold on to a story. You
14 dig in a little bit. And then the stakes get higher
15 if you renege on that story. And the longer time
16 goes on, the higher the stakes get, the harder it's
17 going to be for you to back down on your word.

18 Can you imagine how intimidating the prospect
19 of the child after all of this contact with the
20 State, after all of this contact with the
21 counselors, after all of this forensic interviewing,
22 after all of this attention showered upon her, it
23 would be for her to go back and say, well, you know,
24 these past two years that I've been spending with
25 you guys, well I've been lying the whole time? It

1 would be hard for me to do that. I couldn't even
2 imagine how hard it would be for a child to do that.

3 And I know what's going to happen, they're
4 going to say, well if she loved her father so much,
5 it wouldn't be that hard. But, you know, like I
6 said, I can't get in her mind. They can't get in
7 her mind. They don't know what's going on in that
8 child's mind. I can't imagine how hard it would be
9 for her to do that, to have to go back and tell the
10 truth after all of these years of telling them the
11 story they wanted to hear. Because don't you think
12 for one minute that their request of the family or
13 the questioning of the family, well why didn't you
14 go to the police officers and tell them that they
15 need to find the guy who did it or -- what's the
16 word I'm looking for -- genuine. Because they made
17 up their mind from the get-go that daddy did this
18 and they weren't even trying to hear an alternative
19 hypothesis.

20 I mean, it's commentary on how sad the state of
21 our world is when there is sexual abuse, that we
22 immediately look to the parents as the main
23 suspects. And therein lies, I guess, a fundamental
24 difference between what I do and what they do,
25 outlook on the world is different. It's a cold,

1 scary, cynical world where everybody's out to get
2 you, even your parents from the State's perspective.

3 From us, my perspective, sometimes kids lie,
4 sometimes kids get over their head, sometimes kids
5 can be confused about what happened to them,
6 especially if they don't know how to express what
7 they've seen, what they've experienced, sometimes
8 they can be confused, sometimes they can be
9 mistaken. And not all parents molest their
10 children. No matter what it might seem like every
11 time you turn on the T.V., every time you watch
12 MSNBC or whatever show's on. Much like the
13 Solicitor said, you know, this is not CSI, this is
14 not television, this isn't Law and Order, it's
15 criminal intent. Everybody's not a criminal. Every
16 child (sic) doesn't molest their kids. It's just
17 not the case.

18 And I know what **victim** said. I know what she's
19 been saying, but I also know what the parents say,
20 what grandma says, what her mother says, what the
21 family thinks, the family, the same family who knows
22 both of them personally, intimately for years, the
23 same mother who birthed her into the world. These
24 people, I submit to you, are the ones who really
25 know the people involved here. The real people, the

1 people who have no agenda, the people who aren't
2 paid to take a position. It's not about us. It's
3 about the real people who are affected. The real
4 stakes, that is what we have to concentrate on.

5 Now, let's talk about reasonable doubt. The
6 Judge is going to instruct you on that. You have to
7 go back there and go through all this evidence and
8 decide has there been -- has the State overcome this
9 hurdle of reasonable doubt?

10 You have to think of it in terms of, as what I
11 talk to my clients about, a different hurdle
12 sometimes you have to jump to prove different
13 things. There's something we call reasonable
14 suspicion, which is probably like this bump on the
15 floor right here and you just step over it. And
16 then you've got something they call probable cause,
17 which is a little bit higher, you know, maybe the
18 height of this table.

19 Reasonable doubt is the highest legal burden
20 posed and that's for a reason. It's not supposed to
21 be easy to put people behind bars. It's not. Our
22 system was not designed to make it easy to find
23 people guilty. It's just not the way it works.
24 It's a hard job. It's a difficult task. It's a
25 task you have to take serious once you go back there

1 in that room and pour over this evidence. It's
2 something you need to remember and always be
3 conscious of in the back of your mind when you're
4 making your decisions.

5 Now, I've worked in different areas of the
6 state, talked around, talked to different people in
7 the state and, you know, talked to different
8 attorneys. And, you know, they all talk about
9 Lexington County and, oh, I don't want to try a case
10 in Lexington. I don't know, those juries, I just
11 don't know, they're so hard. I don't know if they
12 can do it, you know, they're so conservative,
13 they're not open minded.

14 I don't believe that not for one second because
15 I've worked here almost a year now and I've seen the
16 people in Lexington County. I've met the people in
17 Lexington County. And everyone that I've met in
18 Lexington County has been reasonable, open minded,
19 willing to take the time to understand the issues
20 that are put before them. And, I mean, everybody,
21 the Solicitor's office, you know.

22 But I just want you to understand that that is
23 your duty. Use your common sense, use your
24 judgment, use what your life experience gives you,
25 bring that to the table when you make those choices

1 that you have to make, the same terrible choices
2 that T.J.'s family has had to make. You now bear
3 the burden of deciding what happens to this man. I
4 would just ask that you return a verdict of not
5 guilty. Because as he sits before you now, he is
6 not guilty. Thank you.

7 **THE COURT:** Thank you, Mr. Cornwell.

8 Solicitor, you're recognized for your closing
9 arguments.

10 **MR. STUMBO:** Thank you, Your Honor. If it
11 please the Court.

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

13 **MR. STUMBO:** It's about trust and betrayal,
14 ladies and gentlemen. ^{victim} didn't deserve
15 this. What she deserved was a father who did what
16 he was supposed to do, deserved a father who would
17 take care of her, would protect her from the things
18 that are bad in this world. Instead, what she got
19 was this, being put in a position where she has to
20 come up here on this witness stand in front of the
21 jury this week and this court and talk about the
22 horrible things that happened to her at the hands of
23 her father.

24 Now, one thing I do agree with Mr. Cornwell
25 about that he said, he said something about **victim**

1 was a good girl. He said y'all got to see her up
2 here. Her mother said that yesterday, she is a good
3 girl.

4 And one thing they did is they taught her how
5 to tell the truth and tell a lie. That's clear,
6 ladies and gentlemen. She came up here time and
7 time again, she's shown that she knows what the
8 truth is, she knows what a lie is. And she
9 consistently has told the truth despite the fact
10 that her family's turned their back on her.

11 She has nothing to gain, ladies and gentlemen,
12 nothing. In fact, the fact that her family doesn't
13 believe her would lead me to believe that if she
14 wanted to get out of this, all she would have to do
15 is say it didn't happen. That's all she would have
16 to do.

17 Mr. Cornwell would have you believe that us,
18 the State, has some kind of stake in this, that we
19 want to see this kind of thing happen, that we take
20 pleasure in it. I assure you, ladies and gentlemen,
21 there has not been one moment of pleasure that I've
22 had since I've been working in this case.
23 Everything about it is horrible and despicable. And
24 I don't want to believe these kind of things happen
25 either, but they do.

Victim
1 Now, sat on the stand this week and told
2 you what she's told numerous other people that have
3 talked to her in this case. She's told you time and
4 time again that dad made her touch him and
5 masturbate him. She talked about pee coming out.
6 That in and of itself should show you how credible
7 she is. She doesn't even know -- have the context
8 to know what that is that came out. Because she was
9 six.

10 Should a six year old know about this kind of
11 stuff and experience this kind of stuff? No. Yet
12 she was able to come up here and give you that
13 detail. She's been able to give every person she's
14 talked to in this case detail about what happened,
15 has always been consistent.

16 Mr. Cornwell would have you believe that
17 because there was some touching and inappropriate
18 touching going on with some other kids, that that
19 somehow absolves Mr. Wilson or makes ^{Victim} a liar.
20 Come on, you know better than that. To compare
21 those two things is apples and oranges, ladies and
22 gentlemen. To say that touching between children
23 out in the backyard, which I would submit to you was
24 a result of what that man did, to somehow compare
25 that to the horror of a father sexually penetrating

1 his daughter is preposterous.

2 All 12 of you are reasonable people and know
3 that a six year old shouldn't know about this kind
4 of stuff and shouldn't be able to give this kind of
5 detail unless it's something that's happened to her.
6 She never wavered.

7 She was asked numerous times by Dr. Benedetto
8 if there was any other adult, could she be mistaken,
9 was it somebody else. Every time it was daddy
10 because he was the one who touched. She confirmed
11 it time and time and time again.

12 She didn't deserve this, ladies and gentlemen,
13 didn't deserve it at all.

14 As the judge is going to instruct you and as
15 Mr. Cornwell just talked about a little bit,
16 reasonable doubt is the burden that Mr. Johnson and
17 I have in this case. It's a very high burden, I
18 agree with that. It's not a burden we've shied away
19 from in the least in this case, not for a minute,
20 because of that little redheaded girl that was
21 sitting on that stand is why. That's why. We're
22 here, ladies and gentlemen, because of this little
23 girl. Don't you doubt for a minute that we are
24 afraid of the burden in this case.

25 Now, what I put together here for you is

1 something that will help you get where we want you
2 to see in this case. As we said, it's not beyond
3 all possible doubt, but only beyond a reasonable
4 doubt. There's not a lot of things, and the Judge
5 will tell you this, that we know in this world with
6 a hundred percent certainty. What he's going to
7 instruct you is that it's proof that leaves you
8 firmly convinced of the defendant's guilt.

9 Now, let's look at the elements of the statute
10 here. Criminal sexual conduct with a minor in the
11 first degree, we've got four counts of that. Very
12 simply, the two elements of those crimes are this,
13 ladies and gentlemen: One, you have to have a
14 sexual battery, and I'm going to explain to you in a
15 minute what a sexual battery is; secondly, that the
16 victim is under the age of 11. Four of the counts
17 that you're going to consider in the jury room,
18 ladies and gentlemen, involve these two elements.

19 Now, what is a sexual battery? Our laws of
20 this state defines sexual battery as sexual
21 intercourse, cunnilingus, fellatio or anal
22 intercourse or intrusion, however slight, of any
23 part of the person's body or of any object of the
24 genital or anal openings. Essentially, there's got
25 to be some kind of penetration to have a sexual

1 battery. And there's an exception in the law for
2 medically recognized treatment.

3 How about lewd act, that's the fifth indictment
4 that you're going to have to consider in the jury
5 room. First, that the defendant's over 14 years of
6 age. Secondly, that the victim's under 16. Third,
7 that the defendant willfully commits or attempts to
8 commit a lewd or lascivious act. Fourthly, that
9 it's upon the body of the victim. And, fifth, with
10 the intent of arousing, appealing to or gratifying
11 the lust, passion or sexual desires of the
12 defendant's self or of the child.

13 Now, what does lewd and lascivious mean? I've
14 just taken this straight out of the dictionary.
15 Lewd means preoccupied with sex and sexual desire,
16 obscene or indecent. Lascivious, giving to or
17 expressing lust or lecherous, exciting sexual
18 desire, salacious.

19 Difference -- and the main difference I want
20 you all to focus on when you're considering these
21 indictments, in lewd act, a sexual battery or a
22 penetration is not required, simply that an act was
23 committed on the child that excited the desires of
24 the person or the actor who committed it.

25 Now, this is going to be kind of hard to read

1 so I'm going to focus you in. Here's the elements
2 and here's the facts that we presented to you in
3 this court this week.

4 The first indictment for CSC with a minor, of
5 course, the elements are: The victim's under 11 and
6 the sexual battery occurred. *Victim* said these
7 things happened when she was six or seven, that's
8 the reason for the range of the dates in the
9 indictments. March 19th, 2005 was the day she
10 turned six years old. October 20th, 2006, as you
11 heard from the witnesses in this case, is the day
12 that she disclosed to the guidance counselor at
13 school when she was seven.

14 Now, as you saw in the forensic interview, and
15 you'll have a chance to review it again if you need
16 to in the jury room as State's Exhibit 1, that
17 **victim** demonstrated the vaginal -- her father, the
18 male doll, actually inserting his penis inside of
19 her vagina.

20 Now, this is something, ladies and gentlemen,
21 that she had a hard time verbalizing. And like you
22 heard from Ms. Smith and Dr. Benedetto, that's not
23 unusual for these children. They may be able to
24 tell you daddy touched me in my front private parts,
25 but may need to draw it or show you with some other

1 nonverbal tool how that actually happened. **victim**
2 did that, ladies and gentlemen.

3 Second indictment, again, she's under the age
4 of 11, sexual battery occurs. Was she under the age
5 of 11? Again, the dates between 2005 and 2006 that
6 she describes when she was six or seven. She
7 describes her having to perform oral sex on her
8 father, which in the sexual battery definition, the
9 scientific term for that will be fellatio. The
10 Judge will instruct you on that. She clearly, in
11 the video, shows her father's -- the doll
12 representing her father, the penis going into her
13 mouth. She was very clear about that detail.

14 Thirdly, again, she's under the age of 11. She
15 says she's six or seven years old when it happens.
16 And she demonstrates her father digitally
17 penetrating her vagina again with the dolls. And
18 she's consistently said, ladies and gentlemen, even
19 verbally talked about her father touching her front
20 private spot. She pointed to the anatomical
21 drawings that we had. You'll have those in the jury
22 room as well. She's been consistent with everybody
23 she's talked to about her father touching her front
24 private spot.

25 Indictment number four for CSC with a minor,

1 again, the victim says she was six or seven years
2 old when this happened to Dr. Benedetto. She
3 demonstrated with the dolls her father actually
4 performing oral sex on her. She had his mouth on
5 her vagina and demonstrating this with the dolls,
6 and, again, the scientific term for that is
7 cunnilingus. The Judge is going to instruct you on
8 that. That's part of sexual battery under our law.

9 Fifthly, lewd act on a minor, this is a little
10 more complicated with the elements, essentially
11 you've got to prove the defendant's over 14 here. I
12 think we know Mr. Wilson is over 14 years of age.
13 The victim's under 16 years of age, again Breann's
14 birthday's March 19th, 1999. She turned six years
15 old in 2005 on that date.

16 And the second -- the most important elements
17 here, obviously the last two, that he commits a lewd
18 or lascivious act and he did that with the intent of
19 essentially arousing himself. Now, what ^{victim}
20 described, ladies and gentlemen, again consistently,
21 time and time again was that this man made her put
22 her hand on his privates while he's watching porn
23 and essentially masturbating to the point of
24 ejaculation. She called it pee.

25 Bottom line of all this, ladies and gentlemen,

1 I know this is kind of hard to read and it's real
2 busy with the words, is I want you to see that each
3 and every element here, ladies and gentlemen, you've
4 had credible evidence put before you this week to
5 prove the case, but it all really comes back to
6 **victim**. So let's connect the dots. What does all
7 this mean?

8 It really comes down to what *victim* says,
9 ladies and gentlemen. And all we would have had to
10 do to meet our burden of proof in this case is to
11 put that little girl on the stand and let her talk
12 to you. That's enough, the story she told is enough
13 for you to go back into that jury room and come back
14 out and find this man guilty.

15 We talked a little bit about motive. What
16 motive does *victim* have? What motive did she have
17 initially to go? Their theory is because she got a
18 spanking, that she's going to go in and make up this
19 incredible level of detail of how she was sexually
20 abused. It doesn't make sense, ladies and
21 gentlemen. You can use your common sense to see
22 that that's a preposterous suggestion.

23 She has no motive -- she had no motive to lie
24 then. And what benefit does she have from making it
25 up and coming into this courtroom? I'd say none.

1 She stands to lose by coming in here and telling you
2 the truth. She's got no motive, ladies and
3 gentlemen.

4 Family the whole time has betrayed or turned
5 their back on her and, yet, she still is brave
6 enough to get up here and tell you the truth of what
7 happened. She's never wavered from that not once.
8 Like I said before, it's a lose/lose situation. The
9 family already thinks she's a liar.

10 She still loves her dad, so why would she lie
11 and come in here and make all this up? Mr. Cornwell
12 suggests it's because when you get deeper into it or
13 you've got to just dig in your heels. And, ladies
14 and gentlemen, do you think she wanted to come up
15 here and talk about this this week over this year
16 and a half period to deal with this if it didn't
17 happen to her? The argument just doesn't hold
18 water, ladies and gentlemen.

19 Like I said, all we needed was her to come up
20 here and give her testimony this week, we could have
21 sat down and rested and I believe you would have had
22 enough to go back in that jury room and find this
23 man guilty because that little girl had no reason to
24 come and make those things up, to give the level of
25 detail she gave.

1 And I want you to know I wouldn't have wanted
2 to waste your time this week with any unnecessary
3 evidence, but we put up other witnesses who are
4 professional, impartial people. You heard their
5 testimony, they've got no ax to grind here.

6 Dr. Benedetto's seen hundreds of kids come
7 through her office for interviews. Two thirds of
8 the time she finds that there's a problem with the
9 testimony. So why does Dr. Benedetto have any kind
10 of motive to lie or make up something against this
11 man? She doesn't. That's her job. She's a
12 professional.

13 Heather Smith has no motive to come in here and
14 make this stuff up. She's seen hundreds of children
15 come through her office through the course of her
16 work. She found ^{J. G. Smith} compelling time and time
17 again.

18 So all of this other evidence you've heard has
19 been corroborating evidence of what you heard from
20 victim.

21 They talked about the process of disclosure, it
22 is consistent with children who have been sexually
23 abused. Very rarely do you have a child that would
24 disclose something right away be able to give you
25 all the detail and tell you the whole story from the

1 get-go. It's just -- one, they told you in their
2 professional opinion, that never really happens.

3 And you, by your common sense and your everyday
4 experience, ladies and gentlemen, know that if
5 you've been around kids. You know that they talk in
6 different language than we do and sometimes it takes
7 some time to really understand what they're talking
8 about when they're telling you the story. It makes
9 perfect sense here that ^{victim} did the same thing.

10 She was conflicted about this. She didn't know
11 what to do, who to tell. She gave a little bit at
12 first to the guidance counselor and Greg Robinson
13 and Christalyn Thompson from DSS. Later, when she
14 had time and the tools she could use where she
15 didn't just have to verbalize it but could show, she
16 was able to tell Dr. Benedetto more.

17 I would say that the disclosures to the first
18 three people she told, which were the guidance
19 counselor, Mr. Robinson, Christalyn Thompson, you
20 heard their testimony, ladies and gentlemen, it was
21 very -- what she told them was very similar in
22 nature as to what happened. Daddy made me touch his
23 private parts, daddy touched my private parts. All
24 of them basically stopped at that point and said
25 we're going to get this girl to someone who can

1 really evaluate this in a professional setting. And
2 were always very consistent about what happened.

3 So what happened next? As all three testified,
4 Mr. Robinson, DSS, the guidance counselor, they knew
5 that someone professional needed to come in, that
6 person was Dr. Benedetto from the ARC. And you've
7 seen the entire interview start to finish, ladies
8 and gentlemen. You tell me if she was putting words
9 in Breann's mouth, if she was trying to just get her
10 to say something that she wanted to hear. That's
11 just not true, ladies and gentlemen.

12 As Mr. Cornwell -- Mr. Cornwell tried to
13 suggest to you that the entire time she was just
14 trying to get ^{victim} to come off of something she
15 wanted to hear. You've seen the video, she doesn't
16 ask leading questions. She let ^{victim} tell the
17 story. She confirmed with ^{victim} that this is only
18 things that really happened. She says that time and
19 time again in the interview, Now is this something
20 that really happened or didn't happen? I did that
21 with ^{victim} on the stand this week, Are these things
22 that really happened or didn't happen? She's been a
23 resolute, ladies and gentlemen, the whole time she's
24 told you things that really happened. She didn't
25 want to tell you they happened. It's painful for

1 her. But it came about one piece at a time even
2 with Dr. Benedetto.

3 Dr. Benedetto found that there was compelling
4 disclosure of multiple incidents of sexual abuse.
5 She described that on the stand. Each and every
6 element of each and every indictment that you're
7 going to consider, Dr. Benedetto found that Breann's
8 test -- disclosures were compelling for each and
9 every one of those instances of abuse.

10 Like she said, she's seen hundreds of children,
11 only about a third of a time do they find that it's
12 compelling. They've got no agenda here, ladies and
13 gentlemen. They're professional, they're
14 experienced and they saw a little girl who was
15 telling the truth.

16 She said ^{victim} was not fantastical, she was
17 very clear in her disclosures. There was never any
18 time where she -- she told us even on cross, I
19 believe, she told Mr. Cornwell that she was even
20 skeptical, that that was her job to be skeptical and
21 critical to make sure she asks the right questions
22 and sees the red flags. She told you, ladies and
23 gentlemen, she didn't see those in this case.

24 **victim** disclosed just consistently with the children
25 she finds to be compelling for sexual abuse.

1 Doctor Luberoff rule -- and the reason we
2 brought her up here, and Mr. Cornwell said that
3 didn't help us at all, the reason I did that, ladies
4 and gentlemen, is this, I used to have
5 misconceptions about this, too, I would have thought
6 just before I started working these kind of cases
7 and learning the scientific parts of this, that any
8 child that would have been sexually penetrated, that
9 there would be some physical evidence of that, that
10 were just my preconceived notions.

11 Doctor Luberoff said on the stand, told you
12 about 90 percent of the -- I think she said she's
13 done four or five thousand medical exams of children
14 who have been alleged to be sexually abused over her
15 20 year career. She says the numbers that she has,
16 about roughly 90 percent of those comes back just
17 like in this case, that it's a normal exam.

18 She tells you -- she talked about the
19 disclosure. And the reason I asked her the dates, I
20 know that sounded like a simple question, how many
21 days are between the time she disclosed and the day
22 that she was examined, well what I calculated, she
23 said 12 days, but just assuming, since she was at
24 school the morning she disclosed, even if the time
25 her father molested her was the day she disclosed;

1 this, there would have been 13 days, about two weeks
2 between the time that she disclosed and the time
3 that Doctor Luberoff actually examined her. And
4 like she told you, that's plenty of time, even if
5 there were physical marks or trauma to the vaginal
6 area, that it would have been healed in that amount
7 of time.

8 Furthermore, she said even if she could have
9 examined her the next day, and even if there was
10 sexual abuse, that the hymen may not have been --
11 would have been intact or it could have healed even
12 if there were abrasions to it.

13 So it's not unusual at all here, ladies and
14 gentlemen, that ^{victim} had a normal physical exam.
15 It doesn't prove the defense's assertion that this
16 doesn't happen to ^{victim} and that Breann's lying.
17 That's why I brought Dr. Luberoff to see you in this
18 case, just to explain that.

19 How about Heather Smith? Heather's been
20 meeting with ^{victim} for about the past year and a
21 half to two years since right after the forensic
22 interview up to this week. Heather's seen five to
23 six hundred kids that she's done forensic
24 evaluations on to make a determination of whether
25 it's compelling or not.

1 What she told you from this witness stand is
2 that ^{victim's} disclosures have been compelling time
3 and time again and that they're consistent, ladies
4 and gentlemen, with the phenomenon of delayed
5 disclosure, one, of a child who doesn't disclose
6 until a little bit later. It can happen for a
7 period of time, that's very common with children.
8 Sometimes children are abused that don't disclose
9 until they're adults. Sometimes they never
10 disclose. That's not unusual particularly in family
11 situations.

12 And I asked her is the fact that this man is
13 her father is that consist -- would that be
14 consistent with the fact that she didn't tell about
15 this for some time while it was going on? She said,
16 yes, perfectly consistent. And why? Because of the
17 emotional dynamics that that was playing on ^{victim}
18 She was confused. She was scared. She didn't know
19 what to think. She didn't know how to put the
20 things that this man did to her into context. She
21 just didn't know. That's why she waited.

22 Thank God she's outgoing like they said and
23 brave. Her mother said she's a brave little girl,
24 she's outgoing. Thank God. If she wasn't as
25 outgoing as she was, she may not have ever told

1 anybody and she'd be walking around with this hurt
2 and pain even today. Fortunately she was brave
3 enough to come in and finally tell Ms. Behrens at
4 school that day.

5 Heather Smith continued to talk about a lack of
6 maternal support. Ultimately, you saw that on the
7 stand.. Now, Jessica said that she still loves
8 *victim* and I believe that, but it's more convenient
9 for her, ladies and gentlemen, to believe that it
10 didn't happen.

11 Not only is it more convenient, she has a
12 history of this. You heard what she said on the
13 stand, her father -- her mother came -- she said she
14 didn't know whether her father was convicted. You
15 heard from the wife of the man that was convicted,
16 Jessica's father, that he did molest her sister and
17 she took her dad's side. Does that sound familiar?
18 That's the exact reason why everybody in this case
19 asked her not to talk to *victim* about what happened
20 in the meantime because she had already made up her
21 mind that she wasn't telling the truth. What's that
22 going to do to *victim*

23 And it puts her in the position to choose
24 between her husband and her child. Who put her in
25 that position, ladies and gentlemen? The defense

1 would have you believe that it's ^{victim's} fault.
 2 T.J. Wilson put his wife in that position, not
 3 ^{victim} Don't believe it, ladies and gentlemen.
 4 Don't believe that this is ^{victim's} fault like they
 5 would say.

6 They want to talk about these little instances
 7 and little stories about ^{victim} telling -- having
 8 these experiences with these other kids. How about
 9 dad? What about the story about the missing hundred
 10 dollar bill when he thinks it might have been
 11 ^{victim} ? And he doesn't know.

12 Grandma gets up here and talks about, well,
 13 ^{victim} -- there's something that happened while she
 14 was in the post office, I believe she said, out in
 15 the car and her daughter just kind of shrugged her
 16 shoulders when asked if something happened between
 17 her and ^{victim} Well, automatically grandma took a
 18 side there. She decided that ^{victim} was at fault
 19 before she knew anything else. That's exactly what
 20 she's done in this case, she made up her mind from
 21 the very beginning that ^{victim} was not telling the
 22 truth and that her son was not the child molester
 23 that he is.

24 That's understandable, ladies and gentlemen.
 25 I'm not faulting them for this. They love their

1 son. They love [redacted] victim [redacted]. They're in a tough
2 position.

3 Bottom line, though, is emotion shouldn't
4 dictate what happens in this case. This is about
5 facts. This is about how believable victim was
6 sitting on this witness stand and the witnesses that
7 backed that up, talked about how compelling her
8 disclosures have been, not about family members who
9 have already made up their mind long ago what
10 happened even though none of them were there.

11 The defense had their way, it would seem to me
12 that we would almost have to have an eyewitness in
13 the room every time a child was molested in order to
14 prove it or to have some gross physical signs of
15 that when they were examined by the doctor. Doctor
16 Luberoff told you we normally don't have that.

17 You've got the job to decide whether victims
18 telling the truth or whether her father is telling
19 the truth.

20 How about sexually reactive behavior? Dr.
21 Benedetto and Ms. Smith talked about this in great
22 detail how this is very common and the whole
23 incident between victim [redacted] and her aunt and uncle, I
24 believe, and brother in the backyard, very
25 consistent with a child that's experienced these

1 things. And [redacted] victim told you from the witness stand,
2 she said, I told them what daddy did to me. She
3 said it in the forensic interview. That was why
4 they were doing these things. Not the other way
5 around as they would have you believe that she did
6 these things and that's why she's making this stuff
7 up for some reason. It's preposterous, ladies and
8 gentlemen. [redacted] v. 6/11 told them, this is what dad did
9 to me.

10 And you've got the direct evidence from an
11 eyewitness in this case, that's [redacted] v. 2/11 You've got
12 the corroborating testimony of Ms. Behrens, of Greg
13 Robinson, of Christalyn Thompson of DSS. You've got
14 Dr. Benedetto who's done hundreds of interviews with
15 children, found [redacted] victim compelling. You've got
16 Heather Smith who this is her life's work and this
17 is what she does. She knows what the red flags are
18 and she's seen them. She's had more cases than not
19 that were problematic as opposed to compelling.
20 Every step of the way, [redacted] victim story has been
21 corroborated through people that don't have any
22 personal interest in this case, any motive, any
23 bias.

24 Now, how about the defense's case? What did
25 they put before you this week? They put before you

1 Mr. Wilson who sat on that stand and basically
2 didn't blink an eye, didn't shed a tear, didn't seem
3 to be a bit conflicted about what was going on. And
4 I would suggest to you I never heard ^{Wilson's} name
5 come from his mouth when he was talking about how
6 this has affected their family. I heard him talk
7 about -- I heard grandma talk about logistical
8 problems, well we can't see so and so at Christmas
9 time, it's been hard to communicate.

10 What about ^{Wilson}, What about the affect it's
11 had on her? I didn't hear them consider that.
12 Surely didn't hear the defendant say it.

13 What did he say in the hospital room when she
14 was born? According to the grandma, maternal
15 grandma, he said, I want a boy. He rejected her
16 from day one.

17 All of the witnesses you heard from the State
18 -- or the defendant, what's his motive to lie? I
19 think that's yours to decide. I think it's pretty
20 clear. How about bias? Every one of these
21 witnesses were family members, people that have been
22 put in a bad position, I'll grant you that, put in a
23 bad position by T.J. of having to take sides in this
24 thing. Everyone of them have a bias. They love
25 T.J., I don't fault them for that, it's their son.

1 The bottom line though, ladies and gentlemen,
2 is their belief, their gut feeling, like Jessica
3 talked about, that they had made up really from the
4 beginning in this case that it wasn't true, that
5 ^{victim} was lying, it's not persuasive evidence,
6 ladies and gentlemen. It's based on emotions and
7 it's based on family relationships. Again, nothing
8 that I would fault them for, but this courtroom's
9 about facts and evidence. Evidence shows that their
10 son's guilty and they don't want to believe it.

11 It's much easier in this case if it would just
12 go away, if ^{victim} is just telling a fib. If she's
13 telling a fib, then they go back to life as normal.
14 It's the easy decision to make to back him, ladies
15 and gentlemen.

16 And I would say to you, T.J.'s betraying not
17 only applies first and foremost to little ^{victim} for
18 what he did to her, but not only that, he's been
19 able to convince his wife and his father and his
20 mother that he didn't do it, which makes him even
21 more dangerous, ladies and gentlemen. He's betrayed
22 the family by what he's done here and ^{victim} is the
23 casualty. I ask you to consider that when you go
24 back in the jury room when you're comparing State's
25 witnesses and defense's witnesses in this case.

1 I'm going to leave you with this haunting
2 statement that ^{victim} said several times about this
3 pinky promise. Promised her that he wouldn't do it
4 again, wouldn't do it anymore. He did it again.
5 Can you think of anything more despicable than that?

6 What we're left with is a little girl who has
7 been traumatized, has been hurt at the hands of her
8 father and on top -- insult to injury, they want to
9 call her a liar. If she's the good girl that they
10 say she is, and I believe that she is, she wouldn't
11 be making this stuff up, ladies and gentlemen,
12 because it's true. As painful as it is, it's true.

13 T.J. Wilson has been successful deceiving his
14 own family, don't let him deceive you. The lies
15 stop today. The deception stops today. I'll leave
16 that in your hands to do that. Thank you, ladies
17 and gentlemen.

18 **THE COURT:** Thank you, Solicitor.

19 Ladies and gentlemen, as I told you, we'll take
20 a brief recess and then I'll get you back out here
21 and tell you the law. Don't discuss the case yet.

22 (The jury retires to the jury room.)

23 **THE COURT:** We're at ease.

24 (Brief Recess.)

25 **THE COURT:** I had made myself a note and I

1 overlooked it. I had not given you all an
2 opportunity to make your motions or either we had
3 just skipped the motions at the end of all of the
4 evidence. So I need y'all to put that on the
5 record.

6 **MR. CORNWELL:** Your Honor, I would make my
7 motion for a directed verdict based on my prior
8 reasons, Your Honor. I just ask that you consider
9 that in making your decision.

10 **THE COURT:** Thank you very much. Your motions
11 for a directed verdict are considered as having been
12 made at the close of all of the evidence and are
13 respectfully denied.

14 Ladies and gentlemen, during the charge, please
15 stay still, stay quiet, don't do anything to
16 distract the jury, don't be moving about. Unless
17 there's an emergency or something of that nature,
18 stay still and stay quiet.

19 Bring the jury in.

20 (The jury returns to the courtroom.)

21 **THE COURT:** Members of the jury, all of the
22 evidence has been presented. You've heard the
23 arguments of counsel and it's now time for me to
24 instruct you on the law that applies to the case.
25 Thank you for the manner in which you've conducted

1 yourselves. Please continue to pay close attention
2 during this next stage.

3 Now, first, you need to understand some basic
4 ground rules. You, the jury members, are the sole
5 judges of the facts. You decide all of the issues
6 of fact. You alone determine the credibility of the
7 witnesses, in other words, whether or not a witness'
8 testimony is believable. You decide the truth of
9 the evidence, its effect, its value and its weight.

10 Now, in your review of the evidence, you may
11 believe all that a witness said or none of it. You
12 may believe part of what a witness said and not
13 believe the balance. You may believe one witness
14 against many or many against one. You may consider
15 any interest, bias or prejudice that you feel that a
16 witness has in the case. You may consider the
17 demeanor and the appearance of the witness and the
18 opportunity for knowledge that the witness had. You
19 may consider the lack of evidence presented by the
20 State. But you're not to exercise these
21 considerations arbitrarily. What I want you to do
22 is to use your common sense, use your sense of logic
23 and reason and your good judgment.

24 I need to explain to you that during the trial
25 of the case, testimony was presented by persons

1 designated as expert witnesses. The rules of
2 evidence allow someone by virtue of education,
3 training and experience to render opinions as expert
4 witnesses. Now, you may accept or reject the
5 testimony of an expert witness just as you may any
6 other witness in whole or in part.

7 It's improper for me to give you a charge on
8 the facts of the case. I can't discuss the facts
9 with you. I can't even convey to you an impression
10 as to what, if any, personal opinions I may develop
11 about the facts of the case as it goes along. So
12 if, during any stage of this trial, you have
13 developed an impression that I've got a personal
14 opinion about the facts, you must remove that
15 totally from your mind. You're the sole judges of
16 the facts.

17 Now, I am the judge of the law that applies to
18 the case. And under your oath, you're bound to
19 accept and apply the law as I give it to you, that
20 means you have to abandon any conflicting ideas that
21 you might have about what the law is or what it
22 should be. I give you the law, you apply it to the
23 facts as you determine them to be and in that way,
24 you reach your verdicts.

25 It's also my job to decide what evidence is

1 admissible. If I've ruled something inadmissible or
2 told you to disregard something, you're not to
3 consider those things in arriving at your verdicts.
4 Base your verdicts on the competent evidence before
5 you, consider the testimony of the witnesses and the
6 exhibits admitted in the trial.

7 Now, I need to explain to you that there are
8 two types of evidence generally presented in a
9 trial, direct evidence and circumstantial evidence.
10 Direct evidence is evidence of direct perception,
11 including the testimony of a person who asserts or
12 claims to have actual knowledge of a fact such as an
13 eyewitness. Circumstantial evidence is proof of a
14 chain. It's proof of a chain of facts and
15 circumstances indicating the existence of a fact.

16 The law makes absolutely no distinction between
17 the weight or value to be given to either direct or
18 circumstantial evidence nor is a greater degree of
19 certainty required of circumstantial evidence than
20 of direct evidence. What you need to do is weigh
21 all of the evidence in the case and after weighing
22 all of the evidence, if you're not convinced of the
23 guilt of the defendant beyond a reasonable doubt,
24 you must find him not guilty.

25 The defendant in these cases, Timothy Jacob

1 Wilson, is presumed innocent. This is no mere legal
2 theory, it is a fundamental and substantial right to
3 which everyone is entitled. It's been described as
4 being like a robe of righteousness that's placed
5 around an accused and remains with him through every
6 stage of the proceeding. It continues to exist
7 after you go back to your jury room to deliberate so
8 that he is presumed to be innocent unless and until
9 you, the jury, determine that the State has proven
10 him guilty beyond a reasonable doubt.

11 A defendant is not required to prove his
12 innocence. He's not required to prove anything at
13 all. The burden's on the State to prove the guilt
14 of the defendant beyond a reasonable doubt and it's
15 required that every essential element of an offense
16 charged be proven by the State beyond a reasonable
17 doubt.

18 Now, that doesn't mean that the State has to
19 prove the guilt of the defendant beyond all doubt or
20 beyond every doubt. The appropriate standard is
21 proof beyond a reasonable doubt.

22 Some of you may have served as jurors in civil
23 court and if you have, you know that the burden of
24 proof in civil court requires establishing that
25 something is more likely than not, that it's

1 probable. And we call that the greater weight or
2 preponderance of the evidence. But in a criminal
3 court setting such as we're in now, the standard is
4 much higher and the proof must be much stronger than
5 we require in civil court. The burden of proof in a
6 criminal case such as these cases is proof beyond a
7 reasonable doubt.

8 So what do I mean by that? Proof beyond a
9 reasonable doubt is proof that leaves you firmly
10 convinced of the defendant's guilt. There are few
11 things in the world that we know with absolute
12 certainty and in criminal cases, the law does not
13 require proof that overcomes every possible doubt.
14 If, based on your consideration of the evidence, you
15 are firmly convinced that the defendant is guilty of
16 a crime charged, then you must find him guilty of
17 that crime. If, on the other hand, you think
18 there's a real possibility that he is not guilty,
19 you must give him the benefit of the doubt and find
20 him not guilty.

21 There's no obligation on the part of Mr. Wilson
22 to raise any doubt or any other possibility. He's
23 presumed to be innocent. And the State has the
24 entire burden of proof and has to prove the
25 defendant guilty to the exclusion of any other

1 reasonable possibility -- or any other real
2 possibility.

3 Now, I need to explain to you that evidence of
4 good character and reputation may be considered by
5 you and such evidence may go toward the issue of
6 whether a person possesses a character inconsistent
7 with the commission of the crime charged, such
8 evidence alone may be a reasonable doubt. The
9 weight you give that testimony like all of the other
10 testimony in the case is for you to decide in your
11 judgment. You may consider testimony of the
12 defendant's good character along with all of the
13 other evidence in deciding whether or not the State
14 has proven that the defendant committed the crime
15 charged.

16 Now, we're going to turn to the specific
17 charges in this case. As I've told you, there are
18 five separate and distinct indictments involving
19 separate alleged incidents. Four of the indictments
20 charge criminal sexual conduct with a minor in the
21 first degree, another indictment charges the
22 defendant with committing or attempting to commit a
23 lewd act on a child. I remind you that each charge
24 has to be evaluated separately.

25 All of the indictments allege that the conduct

1 took place in Lexington County between March 19,
2 2005 and October 20, 2006. And all allege that the
3 minor was victim [REDACTED] who is alleged to have been
4 born on [REDACTED] [REDACTED] [REDACTED].

5 Now, one indictment for criminal sexual conduct
6 alleges that the defendant committed the crime of
7 criminal sexual conduct with a minor in the first
8 degree in that he committed a sexual battery
9 specifically alleged to be sexual intercourse upon
10 the minor.

11 Another indictment for criminal sexual conduct
12 in the first degree with a minor alleges that the
13 defendant engaged in sexual battery specifically by
14 having the minor perform oral sex on him.

15 Another indictment for criminal sexual conduct
16 with a minor in the first degree alleges that the
17 defendant engaged in sexual battery on the minor by
18 digitally penetrating her vagina.

19 Another indictment for criminal sexual conduct
20 with a minor in the first degree alleges that the
21 defendant engaged in sexual battery on the minor by
22 performing oral sex on the minor.

23 And the indictment for lewd act alleges that
24 Mr. Wilson, who's date of birth is alleged to be
25 December 8, 1978, willfully and lewdly committed or

1 attempted to commit a lewd or lascivious act upon or
2 with the body or the parts of a body of the minor
3 with the intent of arousing, appealing to or
4 gratifying the lust, passions or sexual desires of
5 himself or the minor. In that indictment, it is
6 specifically alleged that the defendant made the
7 minor perform masturbation on him to the point of
8 ejaculation.

9 I caution you, as I did at the beginning of the
10 trial, that an indictment is not evidence and it has
11 no evidentiary value.

12 Now, in evaluating a criminal case, the first
13 thing you must understand is that the State must
14 prove that the offense in question occurred in
15 Lexington County, South Carolina. If not, then you
16 cannot convict the defendant of the offense.

17 The next thing you must understand is that the
18 indictment specifies a range of time. It specifies
19 and defines the time frame of the charges. The
20 State has to prove that the specific crime occurred
21 during the time frame alleged in the indictment. If
22 the State fails to prove that a crime charged
23 occurred in the time frame alleged in the
24 indictment, then you must find the defendant not
25 guilty of that charge.

1 I'm now going to explain to you the law related
2 to the charge of criminal sexual conduct with a
3 minor in the first degree. A person is guilty of
4 criminal sexual conduct in the first degree if he
5 engages in sexual battery with a person who is less
6 than 11 years of age. The State has to prove beyond
7 a reasonable doubt that the defendant engaged in
8 sexual battery with the minor.

9 The term sexual battery is a defined term. And
10 sexual battery means sexual intercourse,
11 cunnilingus, fellatio, anal intercourse or any
12 intrusion, however slight, of any part of a person's
13 body or any object into the genital or anal openings
14 of another person's body except when such intrusion
15 is accomplished for a medically recognized treatment
16 or diagnostic purposes.

17 The State has to prove beyond a reasonable
18 doubt that victim [REDACTED] was less than 11 years of
19 age at the time of the sexual battery.

20 Now, to recap, in order for the defendant to be
21 found guilty of criminal sexual conduct with a minor
22 in the first degree, the State has to prove beyond a
23 reasonable doubt that Mr. Wilson engaged in sexual
24 battery as alleged in the specific indictment in
25 question with victim [REDACTED] in Lexington County

1 during the time frame alleged in the indictment and
2 that victim [REDACTED] was less than 11 years of age at
3 that time.

4 Now, once again, there are four separate and
5 distinct charges of criminal sexual conduct with a
6 minor in the first degree, one alleges sexual
7 intercourse by the defendant against the minor. To
8 prove sexual intercourse, the State has to prove
9 beyond a reasonable doubt that the defendant
10 inserted, however slightly, his penis into the
11 vaginal opening of the minor.

12 Now, another indictment alleges digital
13 penetration by the defendant and that is an
14 allegation that the defendant inserted one or more
15 of his fingers into the vagina of the minor. To
16 prove the defendant guilty of that indictment, the
17 State has to prove beyond a reasonable doubt that
18 the defendant inserted a finger or fingers, however
19 slightly, into the vaginal opening of the minor.

20 Another indictment alleges that the defendant
21 had the minor perform fellatio or oral sex upon him.
22 Fellatio derives from a Latin word, fellatus, and
23 that means to suck and it refers to oral stimulation
24 of the penis.

25 In another indictment, it alleges that the

1 defendant had the minor to perform oral sex on
2 him -- I'm sorry -- in another indictment, it's
3 alleged that the defendant had the minor perform
4 oral sex or cunnilingus on the minor female. I said
5 that -- I didn't word that well. The indictment
6 charges that the sexual battery was cunnilingus by
7 the minor on her father, so it does allege that the
8 defendant had the minor perform cunnilingus -- bear
9 with me a second -- it should read that he performed
10 oral sex or cunnilingus on the minor female. Sorry.

11 Cunnilingus derives from the Latin words, two
12 Latin words, cunnus, which translates to the vulva,
13 and lingere, L-I-N-G-E-R-E, which means to lick. In
14 modern usage, it refers to oral stimulation of the
15 vulva or the clitoris. The vulva is the external
16 female genitalia. The clitoris is the sensitive
17 external organ of the reproductive system in a
18 female that is capable of becoming erect and is
19 located above or in front of the urethra at the
20 upper part of the vulva. I'm sorry, I just had
21 those words wrong in that and didn't catch it.

22 Now, I need to explain to you, ladies and
23 gentlemen, that the law provides that the testimony
24 of a victim in a case of criminal sexual conduct
25 with a minor does not necessarily require

1 corroboration. And a jury may convict someone of
2 criminal sexual conduct based only upon the
3 testimony of a victim if that testimony proves all
4 of the essential elements of the offense to the
5 satisfaction of the jury beyond a reasonable doubt.
6 Now, corroborating evidence would be evidence that
7 supports the testimony for the victim. It's up to
8 you to review all of the evidence and give it such
9 weight, if any, that you decide it should receive.

10 And, finally, I need to talk to you about the
11 lewd act charge. In addition to the allegations of
12 criminal sexual conduct, the defendant is charged
13 with committing or attempting a lewd act upon a
14 child. It's unlawful in this state for a person
15 over the age of 14 to willfully and lewdly commit or
16 attempt a lewd or lascivious act upon a child under
17 the age of 16 years with the intent of arousing,
18 appealing to or gratifying the lust, passions or
19 sexual desires of the perpetrator or the child.

20 Now, a person acts willfully when he acts
21 voluntarily and intentionally with the specific
22 intent to commit the unlawful act. A lewd act is
23 one that is obscene, lustful, indecent, lecherous or
24 wanton. A lascivious act is one that is lewd,
25 indecent, obscene or tends to incite lust or deprave

1 the morals in respect to sexual relations.

2 Now, here, the lewd act that's alleged is
3 having the minor perform masturbation upon the
4 defendant.

5 So to recap, in order to find the defendant
6 guilty of a lewd act charge, the State has to prove
7 beyond a reasonable doubt each of the following
8 things: First, that the lewd act occurred during
9 the time specified in the indictment; second, that
10 it occurred in Lexington County; third, that the
11 defendant was over the age of 14 at the time of the
12 offense; fourth, that he willfully and lewdly
13 committed or attempted a lewd or lascivious act upon
14 victim [REDACTED]; fifth, that victim [REDACTED] was under
15 the age of 16 years at the time of the incident;
16 and, sixth, that the defendant committed the act
17 with the intent of arousing, appealing to or
18 gratifying his lust, passions or sexual desires or
19 those of the child.

20 Now, the last concept I need to explain to you
21 about the law is that the defendant is entitled to
22 every reasonable doubt arising in the entire case.
23 If, upon any issue of fact essential to a
24 conviction, you have a reasonable doubt as to how
25 that issue should be resolved, you have to resolve

1 that doubt in the defendant's favor.

2 If, upon reviewing an entire case, you have a
3 reasonable doubt as to whether the defendant has
4 prove -- whether the State has proven the defendant
5 guilty of an offense charged, Mr. Wilson is entitled
6 to that reasonable doubt and a verdict of not guilty
7 on that charge.

8 On the other hand, if, upon reviewing an entire
9 case, you find that the State has proven every
10 essential element of the crime charged against the
11 defendant beyond a reasonable doubt, it's equally
12 your duty to find the defendant guilty of that
13 charge. That's the law.

14 Now, ladies and gentlemen, when you go back to
15 the jury room, you're going to have with you all of
16 the exhibits that have been admitted in the trial
17 and you're going to have with you these verdict
18 forms. On these forms, you're going to tell us your
19 decisions. There are five separate verdict forms,
20 one corresponding to each indictment. And I'm going
21 to go over these things with you.

22 And before I do, I'm supposed to explain to you
23 that I am not trying to suggest anything to you by
24 the order in which I state anything. I have to say
25 some things first and some things second, just

1 because to say them all, I have to say one and then
2 another. So the truth is that I did these verdict
3 forms at a computer school about 15 years ago and
4 all I do now is change names and cases.

5 Now, what I've done is there's a caption at the
6 top. It just says, State of South Carolina, County
7 of Lexington in the Court of General Sessions,
8 that's the court we're in. And then it's got, The
9 State versus Timothy Jacob Wilson, this defendant,
10 that's on every one of them, Verdict form. And then
11 it has a case number and the case numbers are
12 slightly different, one for each indictment.

13 Now, hopefully, in an attempt to clarify what
14 you're considering on each piece of paper, what I've
15 done is I've written up here at the top the charge
16 that you're dealing with. This one is indictment
17 789 and it reads, As to the charge of criminal
18 sexual conduct with a minor in the first degree,
19 alleging the defendant performed sexual intercourse
20 with the minor child, okay, so this is the one that
21 goes with the allegation of sexual intercourse,
22 you -- it reads, We, the jury, unanimously find the
23 defendant, and you check one option. You may find
24 the defendant not guilty or you may find the
25 defendant guilty of criminal sexual conduct with a

1 minor in the first degree, which, in this case,
2 includes proof that the defendant performed sexual
3 intercourse by intrusion, however slight, of his
4 penis into the minor's vagina. So that's one
5 indictment.

6 The next indictment is for number 790, I'm just
7 going in numerical order now, and it reads, As to
8 the charge of criminal sexual conduct with a minor
9 in the first degree, alleging the defendant made the
10 minor person perform fellatio upon the defendant's
11 penis, we, the jury, unanimously find the defendant,
12 you may find him not guilty or you may find the
13 defendant guilty of criminal sexual conduct with a
14 minor in the first degree, and in parentheses I put
15 the word fellatio.

16 Indictment 791 reads, As to the charge of
17 criminal sexual conduct with a minor in the first
18 degree, alleging the defendant performed digital
19 penetration of the vagina of the minor child, we,
20 the jury, unanimously find the defendant, and you
21 may find him not guilty or you may find him guilty
22 of criminal sexual conduct with a minor in the first
23 degree including proof that the defendant inserted
24 his finger or fingers into the minor's vagina.

25 The next indictment is 792 and it reads, As to

1 the charge of criminal sexual conduct with a minor
2 in the first degree, alleging the defendant
3 performed cunnilingus on the minor child, we, the
4 jury, unanimously find the defendant, you may find
5 him not guilty or you may find him guilty of
6 criminal sexual conduct with a minor in the first
7 degree. And once again, in parentheses for clarity,
8 in this case, I've written the word cunnilingus.

9 And then the numbers skip over a little bit.
10 You don't need to be concerned about that. This is
11 the lewd act charge. It's indictment 2293. And it
12 reads, As to the charge of committing a lewd act on
13 a minor, we, the jury, unanimously find the
14 defendant, you have two options, you may find him
15 not guilty or you may find him guilty of committing
16 a lewd act on a minor under the age of 16 years.

17 Now, ladies and gentlemen, I'm just about
18 through. I want to say a couple of things to you
19 housekeeping-wise. There's something wrong with my
20 printer and it will bleach out a word occasionally.
21 We have printed these things out multiple times
22 trying to get the best forms we can. So if you see
23 a word that looks to be a little bit bleached out,
24 that doesn't mean I'm trying to erase it or minimize
25 it, it just means that's the best I can get the

1 printer to do. It's full of toner. It just picks
2 some places and it's different places. So don't
3 read anything into a word that might be bleached
4 out. You can read all of the words on here, I
5 checked that.

6 How you go about taking your votes and how you
7 go about your deliberations is all in your
8 discretion, subject to this requirement: Your
9 verdicts have to be unanimous. All 12 of you must
10 agree in order for the foreman to record your
11 verdict.

12 Mr. Foreman, part of your job is to record the
13 verdicts and I think you'll find these forms
14 self-explanatory if you just look at the language
15 below the caption in each one and then make sure the
16 jury knows what you're talking about. And whatever
17 verdict the jury reaches on that particular charge,
18 you need to check the response chosen by the jury
19 and sign your name on the signature line on each of
20 these verdict forms.

21 Now, folks, I've probably told you over the
22 course of the last several days not to discuss this
23 case, I probably told you that dozens of times. And
24 believe it or not, it's not time yet. The law says
25 that I have to discuss with the attorneys what I

1. just told you before you start deliberating on the
2 cases. And that's just common sense. We don't want
3 you back there using the wrong law to decide the
4 cases. So if I told you something wrong, they have
5 to be given a chance to point it out to me. If I
6 agree that I misstated something, I'll bring you
7 back in and I'll clarify that.

8 But if I'm satisfied with what I told you,
9 here's the signal you need to look for. I'm going
10 to send the exhibits and the verdict form into the
11 jury room. They will bring a television and a DVD
12 player in there if you want to use that. They will
13 bring the alternate out. When the bailiffs are out
14 of the room, the alternate is out of the room and
15 you've got those documents, the exhibits and that
16 T.V. in there with you, you start talking about the
17 case. You don't have to wait another second. When
18 you've reached your verdicts, knock on the door, the
19 bailiff will respond to your knock.

20 Thank you very much for your attention. You
21 may retire to your jury room.

22 (The jury retires to the jury room.)

23 **THE COURT:** State for the record exceptions,
24 additions, objections to the charge from the State?

25 **MR. STUMBO:** Nothing from the State, Your

1 Honor.

2 **THE COURT:** Aside from the ones that you've
3 already asked for, that is lesser included offenses
4 and King charge, do you have anything else?

5 **MR. CORNWELL:** No, Your Honor.

6 **THE COURT:** Thank you.

7 All right. Folks, check the exhibits please,
8 check the verdict forms. When you're satisfied,
9 give those to the bailiff.

10 (Pause.)

11 **THE COURT:** Y'all bring the alternate out.

12 (Whereupon, the alternate enters the
13 courtroom.)

14 **THE COURT:** Mr. Alternate, everybody made it
15 through the case in good health so we didn't have to
16 use you. I do use alternates in about half the
17 cases, particularly if it's going beyond the day. I
18 really don't want to start a case without an
19 alternate. In a criminal case, once I swear the
20 jury, that's when they say jeopardy attaches. If I
21 lose a juror and I don't have one to put in the
22 spot, the trial stops. So I hope you realize I
23 didn't have you sitting over there for nothing.

24 **JUROR:** I understand.

25 **THE COURT:** I appreciate your service very

1 much. You're welcome to stay if you wish to stay.
2 You're free to go if you wish to go. And they'll
3 mail you a little check in about ten days and it
4 will have a slip in there if you need to show any
5 employers or anything that you were actually up
6 here. Thank you, sir.

7 (The alternate was excused.)

8 **THE COURT:** All right. We're going to be at
9 ease pending a verdict. Mr. Wilson is still in
10 custody.

11 What I'm going to do is I'm going to let them
12 deliberate for a while. At some point, rather than
13 order their lunch in, if they have not reached a
14 verdict say by 1:00, I'm probably going to let them
15 go over to Cribs and eat. So y'all just stick
16 around. You'll know when they're going to eat. Of
17 course, nobody can go to Cribs. You can go anywhere
18 else, but you can't go where they're going.

19 We'll put it in the jury's hands and see what
20 they decide. I don't envy their job. We're at ease
21 pending a verdict.

22 (The jury commenced its deliberations at
23 11:30 a.m.)

24 (A recess transpired.)

25 **THE COURT:** I've been informed the jury has a

1 verdict. Obviously, I have no way of knowing what
2 the jury's decided.

3 This is something I say in every case. When
4 the verdict is read, please stay still, stay quiet,
5 don't show any sign of approval or disapproval with
6 the verdict, don't shake your head in agreement or
7 disagreement, don't make any sounds. We'll get
8 through this just fine. I know this is a very
9 emotional case and I know that might be hard
10 depending upon how the verdict comes out, but you
11 have to follow that directive now.

12 Bring in the jury.

13 (The jury returns to open court to report
14 its verdict at 4:08 p.m.)

15 **THE COURT:** Madame Clerk.

16 **THE CLERK:** Mr. Foreperson, have you reached a
17 verdict?

18 **FOREMAN:** We have.

19 **THE CLERK:** If you'll pass it to the bailiff,
20 please.

21 (Bailiff hands the verdicts to the Judge.)

22 **THE COURT:** These verdicts are in the case of
23 the State versus Timothy Jacob Wilson. Indictment
24 2008-GS-32-789 is a charge of criminal sexual
25 conduct with a minor in the first degree, alleging

()
1 the defendant performed sexual intercourse with the
2 minor child. The verdict of the jury is guilty of
3 criminal sexual conduct with a minor in the first
4 degree including proof that the defendant performed
5 sexual intercourse by intrusion, however slight, of
6 his penis into the minor's vagina, signed by the
7 foreman.

8 Indictment 790, as to the charge of criminal
9 sexual conduct with a minor in the first degree,
10 alleging the defendant made the minor perform
11 fellatio upon the defendant's penis, we, the jury,
12 unanimously find the defendant guilty of criminal
13 sexual conduct with a minor in the first degree. ()

14 Indictment 791, as to the charge of criminal
15 sexual conduct with a minor in the first degree,
16 alleging the defendant performed digital penetration
17 of the vagina of the minor child, we, the jury,
18 unanimously find the defendant guilty of criminal
19 sexual conduct with a minor in the first degree
20 including proof that the defendant inserted his
21 finger into the minor's vagina, signed by the
22 foreman.

23 On indictment 792, as to the charge of criminal
24 sexual conduct with a minor in the first degree,
25 alleging the defendant performed cunnilingus on the ()

1 minor child, we, the jury, unanimously find the
2 defendant guilty of criminal sexual conduct with a
3 minor in the first degree.

4 Indictment 2293, as to the charge of committing
5 a lewd act on a minor, we, the jury, unanimously
6 find the defendant guilty of committing a lewd act
7 on a minor under the age of 16, signed by the
8 foreman.

9 Mr. Foreman, ladies and gentlemen of the jury,
10 if I have accurately stated your verdicts, that is
11 guilty on each of the charges, please signify by
12 raising your right hand.

13 All hands are raised. Thank you.

14 All right. Any matters to take up prior to the
15 jury being discharged from the State?

16 **MR. STUMBO:** Nothing from the State, Your
17 Honor.

18 **THE COURT:** From the defense?

19 **MR. CORNWELL:** Your Honor, I would ask that the
20 jury be polled.

21 **THE COURT:** As to each one or collectively?

22 **MR. CORNWELL:** Collectively, Your Honor.

23 **THE COURT:** All right. Ladies and gentlemen of
24 the jury, the clerk is going to call the role. As
25 your name is called, please raise your hand so that

1 we know where to look, what person to look at.
2 She's going to ask you either a two-part question or
3 a two separate questions: Were these verdicts, are
4 they still your verdicts. Answer the clerk's
5 questions truthfully.

6 Madame Clerk, are you ready?

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

8 Juror number 108, Leon Heying, was this your
9 verdict and this is still your verdict?

10 **JUROR:** Yes.

11 **THE CLERK:** Juror number 188, Toni Rose, was
12 this your verdict and is this still your verdict?

13 **JUROR:** Sure.

14 **THE CLERK:** Juror number 197, Mamie Shumpert,
15 was this your verdict and is this still your
16 verdict?

17 **JUROR:** Yes.

18 **THE CLERK:** 196, Rebecca Shull, was this your
19 verdict and is this still your verdict?

20 **JUROR:** Yes.

21 **THE CLERK:** Juror number 92, Christopher
22 Grunwald, was this your verdict and is this still
23 your verdict?

24 **JUROR:** Yes.

25 **THE CLERK:** Juror number 170, Linda Page, was

1 this still your verdict and is this still your
2 verdict?

3 JUROR: Yes.

4 THE CLERK: 241, Esther Wilson, was this your
5 verdict and is this still your verdict?

6 JUROR: Yes.

7 THE CLERK: Juror number 165, Tina Ormerod, was
8 this your verdict and is this still your verdict?

9 JUROR: Yes.

10 THE CLERK: Juror number 54, Frances Day, was
11 this your verdict and is this still your verdict?

12 JUROR: Yes.

13 THE CLERK: Juror number 110, April Hinkle, was
14 this your verdict and this is still your verdict?

15 JUROR: Yes.

16 THE CLERK: Juror number 173, Edward Patterson,
17 was this your verdict and this is still your
18 verdict?

19 JUROR: Yes.

20 THE CLERK: Juror number 4, Sandra Ashley, was
21 this your verdict and is it still your verdict?

22 JUROR: Yes.

23 THE CLERK: All jurors polled, Your Honor.

24 THE COURT: Everybody answered?

25 All right. Any further matters to take up

1 prior to the jury being discharged from the defense?

2 MR. CORNWELL: Beg the Court's indulgence.

3 THE COURT: Yes, sir.

4 (Pause.)

5 MR. CORNWELL: No, Your Honor.

6 THE COURT: All right. Ladies and gentlemen,
7 there are some legal matters that I have to address
8 with the attorneys. I do want to speak to you
9 briefly before I let you go for the week and thank
10 you for your service, but I do have to address these
11 matters with the attorneys. I need to do that
12 outside your presence. If you'd step back in the
13 jury room, I'll be back in there as quickly as I
14 can. Thank you.

15 (The jury retires to the jury room.)

16 THE COURT: Post-trial motions?

17 MR. CORNWELL: Your Honor, I would move that
18 you render a verdict setting aside the verdict of
19 the jury, Your Honor, as is no reasonable jury could
20 have found my client guilty of these charges, Your
21 Honor.

22 THE COURT: All right. There were facts placed
23 in evidence sufficient to support all of the jury's
24 verdicts, that motion's respectfully denied.

25 You also move for a new trial?

1 **MR. CORNWELL:** Yes, Your Honor.

2 **THE COURT:** Motion likewise is respectfully
3 denied.

4 Do you have sentence sheets?

5 **MR. STUMBO:** Not yet, Your Honor. I can get
6 those probably within about five minutes, so.

7 **THE COURT:** I need them.

8 **MR. STUMBO:** Yes, sir.

9 **THE COURT:** Y'all let me know when you're
10 ready. We'll be at ease. I'm not going to talk to
11 the jury until after all of this is over and done.

12 (Brief Recess.)

13 **THE COURT:** Does the State have anything on
14 sentencing?

15 **MR. STUMBO:** Just briefly, Your Honor, and I
16 think nothing else needs to be said from our
17 perspective. You heard our closing statement and
18 how serious we feel like the charges are some of the
19 most serious crimes I think we have under our laws
20 in the justice system. We would leave sentencing in
21 your discretion, but we would ask you to give him as
22 much prison time as you see fit to give him, Judge.

23 One matter just a clarification, I know the
24 sentencing range changed on the CSC with a minor
25 first degree I believe in July of '06, that's in the

1 middle of the incident dates in the indictments. I
2 would assume that Your Honor would sentence based on
3 the older range, which was 10 to 30. And I think it
4 went to 25 to life when Jessica's law was passed in
5 Summer of '06.

6 **THE COURT:** I actually just picked up on that.
7 I'm glad you pointed it out, though.

8 **MR. STUMBO:** We don't have a problem with the
9 10 to 30 range. I think it's probably -- I don't
10 know how you'll resolve that question.

11 **THE COURT:** Anything related to sentencing from
12 the defense?

13 **MR. CORNWELL:** Your Honor, we would request
14 that you consider the lower sentencing range of 10
15 to 30. The Solicitor said he didn't have a problem
16 with that and that's exactly what we would request
17 you consider, Your Honor, in considering what
18 sentence you give him. I don't know if you want to
19 hear mitigation at this point or --

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

21 **MR. STUMBO:** Your Honor, just a matter of
22 clarification before they do that, I didn't mean by
23 when I said that I think that the law would probably
24 allow for 10 to 30, but we would leave it in Your
25 Honor's discretion whether it be consecutive or

1 concurrent on the charge.

2 **THE COURT:** I understand.

3 No, hold on now.

4 **MR. CORNWELL:** You don't want to hear from the
5 family?

6 **THE COURT:** I'll hear from the family, but I'm
7 not going to bring -- you bring one up at a time.

8 Yes, sir.

9 **MR. WILSON:** Your Honor, he's a good son. He's
10 a good man. He tries hard to be good, you know.
11 He's a Marine. I wish you'd be lenient on him.
12 We're going to try hard to fix this family or
13 whatever we need to do.

14 **THE COURT:** Thank you very much, sir. Anything
15 else?

16 **MR. WILSON:** I can't talk. I'm sorry.

17 **THE COURT:** I understand.

18 Anybody else?

19 **MR. CORNWELL:** Yes, Your Honor, his mother.

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

21 **MS. ARBOGAST:** Your Honor, in my heart, I still
22 have questions. I don't agree with the verdict.
23 T.J.'s not perfect and I would never claim him to
24 be, but I still believe in his innocence. And I
25 believe that we know things that may not have come

1 out.

2 I'm proud of him for joining the military to
3 protect and die for his country, if necessary. And
4 I believe he would die for each member of his
5 family, if necessary. I believe he has that kind of
6 character. I believe his children need him, all of
7 them, and his wife.

8 I can't do anything to change it, what has
9 taken place. And I love him. I love my
10 granddaughter. I would never put her in a position
11 I felt she was endangered and I would never just say
12 he was innocent if I thought he was guilty.

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

14 **MS. ARBOGAST:** Thank you, Your Honor.

15 **THE COURT:** Thank you.

16 **MS. JIRLES:** All I want to say is when he came
17 back from the Marines, he was so excited to come
18 home. All he kept saying is he just -- I'm sorry.
19 He just wanted to be a better father and more in
20 touch with his family and not so disconnected from
21 them. He just -- he's a good brother and I love
22 him. That's all I wanted to say.

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

24 Anybody else?

25 **MR. CORNWELL:** That's all, Your Honor.

1 **THE COURT:** Mr. Wilson, I'd be happy to hear
2 anything you want to say. Now, obviously, your
3 attorneys may not want you to say some things,
4 anything that might be deemed to be any kind of
5 admission generally your lawyers would not want you
6 to be saying and I'm certainly not suggesting that
7 you should admit anything.

8 The one thing I do have to cover with you is to
9 make sure you know that you have a very limited time
10 in which to file an appeal and your appeal must be
11 in writing. So you have to file the notice of
12 intent to appeal, assuming that you want that done,
13 which I certainly assume you do. You should
14 instruct your attorneys to file that and then an
15 office in Columbia would pick up the case at that
16 point and would pursue it for you. Do you
17 understand that?

18 **DEFENDANT WILSON:** Yes, Your Honor.

19 **THE COURT:** You can't wait around though. You
20 have to do it right away. Do you understand?

21 **DEFENDANT WILSON:** Yes, Your Honor.

22 **THE COURT:** Anything else you want to tell me?

23 **DEFENDANT WILSON:** I would like to say that I
24 accept what the jury has found, but I disagree. I
25 feel that my family has communicated with them my

1 character and how I feel towards my children. I
2 love each and every one of them to death.

3 My family, along with my wife, ^{V. L. H. M.} Aaron
4 and Ian, I can't explain to anyone the feelings I
5 have for each and every one of them. I love them to
6 death. I would never hurt any of them. My family
7 knows that more than anyone in this room right now.
8 There's no one else in here that knows me more than
9 them. My children would vouch for me if they could
10 stand up in this courtroom today and would say the
11 exact same thing that my family has said today.

12 I would do anything to protect them. I joined
13 the Marine Corps when I was 27. I didn't do that
14 because I didn't know what I was getting into, I
15 knew exactly what I was getting into. I did that to
16 protect my family.

17 Now, that took me away from my family and it
18 hurt me just to go through boot camp, just to be
19 away from them, but I knew what I was trying to do.
20 I was trying to protect and be a better father for
21 my family. The entire time I'm going through this
22 boot camp, all I could think about is them every
23 second, every day, they're all that go through my
24 head. And I come back, I spend a little bit of time
25 with them and I'm taken back away from them. Now, I

1 can't explain how hard that is to explain to
2 anybody, but it hurts. I would give my life for
3 each and every one of them and if it requires me
4 going through this just to see them again, I will do
5 it.

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

7 Anything else?

8 **MR. CORNWELL:** Yes, Your Honor. I just kind of
9 like to speak on my client's behalf.

10 **THE COURT:** All right. Speak up for me.

11 **MR. CORNWELL:** Your Honor, anytime you have a
12 case like this, it's, you know, it's been said
13 several times in the course of this trial that these
14 are some of the most serious offenses anyone could
15 be facing, some of the most serious offenses any
16 judge could have to preside over and a jury would
17 have to decide on, any Solicitor would have to
18 prosecute, Your Honor. And we understood that going
19 in.

20 Me and T.J. -- T.J. hasn't been a client of
21 mine for a long time as opposed to, you know, some
22 of my other cases, Your Honor, but I've spoken with
23 him and in talking with him, Your Honor, he
24 understood the risks in going to trial, he
25 understood what could happen, what the possible

1 outcome could be. The entire time, Your Honor, he
2 maintained his innocence, Your Honor, the entire
3 time. And as a family, we do accept and we respect
4 the verdict of the jury, Your Honor, not
5 necessarily -- obviously, it wasn't necessarily our
6 position, Your Honor, but, you know, it's our legal
7 system, it's the best in the world, we accept the
8 results of the process, Your Honor.

9 I will say about T.J., Your Honor, you know,
10 you can imagine we have a lot of clients over at the
11 public defender's office and he is definitely not
12 our typical client, Your Honor. He's definitely not
13 someone who has a long history of anything. He has
14 no criminal record, Your Honor. He has no example
15 of this behavior and his history, nothing
16 whatsoever, Your Honor.

17 He's a guy who tried his best to provide for
18 his family when he was out there working. He tried
19 to be a good father. He admits his mistakes, Your
20 Honor, in doing that, maybe he was too hard on his
21 daughter he said and maybe he was gone from his
22 family too much, Your Honor.

23 But when I talk to T.J. and when I see T.J., I
24 see just a normal guy. I guess that's what made it
25 doubly hard for me to be his attorney with these

1 charges. And I know this sounds kind of awful, but
2 it's human nature in a way that when you have --
3 when you see somebody, you make a snap judgment.
4 And a lot of times, I'm not going to lie, you know,
5 we get clients with certain charges and you kind of
6 do that. You almost, in your mind, you're like,
7 that guy did it, or this woman did it, you know, you
8 get a feeling or you get a hunch or something. With
9 T.J., Your Honor, I just didn't get that.

10 When I met the guy and read what he was accused
11 of, it was kind of shocking to me. And I can only
12 imagine how it was for him to come home from the
13 military being at Camp Lejeune being away from his
14 family for a period of months and have to come home
15 and he's working and then find out that these
16 accusations have been lodged against him, I can't
17 even fathom. I can't put myself in his shoes.

18 All I can say and all I can speak to is the
19 quality of the man that I know, the quality of his
20 family and that's not -- one of my main concerns is
21 that during the course of this trial, the family and
22 my client have been kind of painted as callous
23 towards the victim in this case, Your Honor. And I
24 tried my best to get across that this is just a
25 terrible, terrible situation that they've all been

1 put in and that the position they've taken does not
2 diminish the love they have for ^{Mr. Cornwell} whatsoever,
3 Your Honor, but it is a difficult position that
4 they've been put in.

5 And in talking with the family, their goal is
6 to rebuild. They know that they're entering into a
7 new phase, basically without T.J., so they're going
8 to have to rebuild their family. They're going to
9 have to put together their family and they're going
10 to have to cope and learn to cope without him and
11 learn to, you know, it's going to be a struggle for
12 them, Your Honor.

13 I would just ask for the Court to consider any
14 leniency you can for my client, Your Honor, in light
15 of his lack of a criminal record and in light of his
16 military service, Your Honor, in light of his
17 familial support. Your Honor, I would just ask that
18 you consider any leniency that you can grant my
19 client in crafting your sentence.

20 **THE COURT:** Thank you very much, Mr. Cornwell.

21 I have not written down the sentence. And in a
22 few moments, I'm going to have to decide what to put
23 on these pieces of paper, but I can assure you that
24 nothing in here, in this sentence, is in any way
25 based upon a feeling that the family is callous

1 toward the child. Any attempt to paint it that way,
2 as far as my ears, fell on deaf ears. And quite
3 frankly, any sarcasm that was lodged toward them did
4 not impress me.

5 You folks have a seat.

6 (Pause.)

7 **THE COURT:** I've been doing this long enough to
8 know that the last thing that anybody wants to hear
9 at this point in time is for me to sit up here and
10 preach sermons or go into any longwinded
11 explanation, that everybody just wants to hear the
12 sentence. And I'm going to keep this very brief.

13 Having been in courtrooms for the last 30
14 years, the one thing that's rather shocking to me
15 that I learned is that you can't really tell what a
16 child molester looks like. I've had CEOs of major
17 corporations, I've had people who had half the
18 courtroom in the big courtrooms full of church
19 people supporting them who enter guilty pleas, I've
20 even had the father of one of the premier child
21 abuse experts come in front of me. You can't tell
22 by the way anybody else looks and you can't tell by
23 the way that person lives every other aspect of
24 their lives whether or not they're a child molester,
25 which makes it extremely frightening.

1 For the family of the defendant, my heart goes
2 out to you. I admire you for standing beside
3 Mr. Wilson.

4 There's some cases where I have to sentence
5 where I sit up here and I just don't really know if
6 the jury's done the right thing or not. And as you
7 all heard me say in another proceeding not related
8 to this case, they don't give me any greater wisdom
9 than anybody else when they let me buy one of these
10 robes and put it on. But I believe that child was
11 telling the truth.

12 They don't show in the movies that when a man
13 ejaculates, he jumps up and runs in the bathroom.
14 They don't show the kind of things in detail that
15 that little girl testified about. And nobody gave
16 any explanation of how she could possibly have come
17 to the depth of knowledge that she had absent
18 long-term abuse.

19 The sentence of the Court on indictment 789,
20 criminal sexual conduct with a minor in the first
21 degree, is 30 years plus costs and assessments; 791,
22 criminal sexual conduct with a minor in the first
23 degree, 30 years concurrent; 792, criminal sexual
24 conduct with a minor first degree, 15 years
25 concurrent; 2293, lewd act on a minor, 15 years

1 concurrent. Credit for jail time under section
2 22-13-40, that will be calculated and applied by the
3 department of corrections.

4 Sentence of the Court on indictment 790 is 15
5 years consecutive. Good luck to you, sir.

6 Court's adjourned sine die.

7 (The jury was excused.)

8
9 END OF PROCEEDINGS
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C E R T I F I C A T E

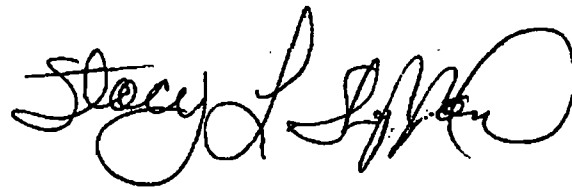
STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 29th of July, 2008.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

January 8, 2009



Stacy L. Sheppard
Circuit Court Reporter

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 [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.

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

D.M. Skelton
ASSISTANT SOLICITOR

DOCKET NO. 2008 -GS-32- 791

WITNESSES

LCSD
Mefford, Roy

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

CDR# 0385

Indictment for

Criminal Sexual Conduct with Minor Child 1st
Degree

§16-3-655(1)

DONALD V. MYERS, SOLICITOR

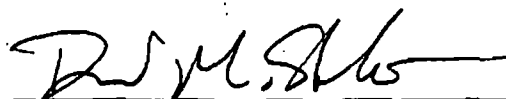
Edmund Patterson
Foreperson of Petit Jury
Date: 8-1-08

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 , 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.

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


ASSISTANT SOLICITOR

DOCKET NO. 2008 -GS-32- 792

WITNESSES

LCSD
Mefford, Roy

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. Schilling
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)
)

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 December 8, 1978, 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 [redacted] date of birth: [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.

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

Dr. H. S. L.
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 Lattman *8-1-08*
Foreperson of Petit Jury
Date:

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

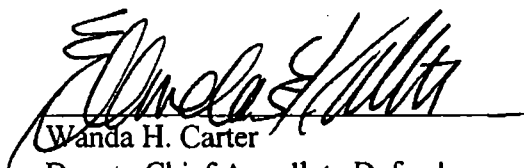
§ 16-15-140

DONALD V. MYERS, SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

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

July 1st, 2009



Wanda H. Carter
Deputy Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

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

FINAL ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The lower court erred in allowing the solicitor to cross-examine the victim's mother, who testified on behalf of the defense, regarding a prior incident wherein she did not believe the prosecutrix's allegation of sexual abuse against a male in order to show her bias because the prior incident in question was wholly unconnected to the persons involved in the instant case.

STATEMENT OF THE CASE

Appellant Timothy Jacob Wilson was convicted of lewd act on a minor and four counts of first degree criminal sexual conduct with a minor per jury trial held during the July 2008 term of the Lexington County General Sessions Court before the Honorable William P. Keesley, Judge. Appellant was sentenced to imprisonment for a period of forty-five years. Appellant appealed. This brief follows.

ARGUMENT

The lower court erred in allowing the solicitor to cross-examine the victim's mother, who testified on behalf of the defense, regarding a prior incident wherein she did not believe the prosecutrix's allegation of sexual abuse against a male in order to show her bias because the prior incident in question was wholly unconnected to the persons involved in the instant case

The minor female victim in this case testified that her father, i.e., appellant, touched her on her private parts and that he made her touch his private parts. The victim stated that this happened more than once when she was seven or eight years old. R. p. 246, line 25 – p. 248, line 13.

School Guidance Counselor Rosemary Behrems testified that she investigated when she learned that the victim had been involved in the passing of sex notes in school. Behrems testified that she talked with the victim, and that the victim stated that her father asked her to put her hand on his penis and that he touched her on her private parts. R. p. 283, line 1 – p. 284, line 25.

Christalyn Howard, who is a DSS assessment worker, testified that the victim stated that her dad would guide her hand to touch his front privates and then he would take his hand and touch her front privates. R. p. 288, line 9 – p. 297, line 7.

Licensed Professional Counselor Gregory H. Robinson testified that the victim told him that she did not want her dad to do sex with her any more. R. p. 314, line 8 – p. 324, line 3.

Forensic evaluator Alicia Benedelto testified that the victim stated that her dad had touched her and that she indicated that there was penile penetration and that he licked her chest area. R. p. 331, line 19 – p. 350, line 12; R. p. 357, lines 8 – 13.

Investigator Roy Mefford watched the videotaped interview of the victim and confirmed the victim's allegation of penile and digital penetration by appellant. R. p. 419, lines 12 – 14.

Appellant testified at trial on his behalf and denied having sexual intercourse with his daughter. Also, appellant denied touching her inappropriately in her private area and vice versa. R. p. 496, line 11 – p. 498, line 4. Jessica Wilson, who is appellant's wife and the victim's mother, testified that her gut feeling was that her husband did not commit these acts of sexual misconduct against their daughter. Wilson stated that their daughter was dishonest and that she supported the defense because she knew her husband and she knew her daughter. R. p. 591, lines 6 – 16; R. p. 557, line 17 – p. 566, line 6.

On cross-examination of Jessica Wilson, the solicitor asked Wilson about a prior incident involving her sister's accusation that their father sexually abused her sister, and why she (Wilson) believed that her sister lied and that her father was innocent. R. p. 575, lines 16 – 21. The defense objected and argued that Wilson's opinion regarding this prior incident was irrelevant information which in effect had no bearing on Wilson's credibility in connection with the instant case. R. p. 575, lines 22 – 23; R. p. 577, lines 2 – 8; R. p. 577, lines 20 – p. 578, line 3; R. p. 578, lines 7 – 12; R. p. 578, lines 18 – 21. The court ruled that the inquiry was allowed via SCRE 608 (C) and admitted the same into evidence.

Under SCRE 608(C) evidence of bias, prejudice, or any motive to misrepresent may be shown to impeach the witness. See also State v. Mizzell; 349 S.C. 326, 563 S.E.2d 315

(2002). In State v. Brewington, 267 S.C. 97, 226 S.E.2d 249 (1976), the court cited to 98 CJS Witnesses § 460 & 560 (b) in reiterating that the jury must determine the credibility of a witness and that on cross-examination any fact may be elicited which tends to show interest, bias, or partiality of the witnesses. However, it appears that credibility questions usually relate to the actors and circumstances involving the issues of that particular case at hand instead of issues on other unrelated cases that have no bearing or relevance to that particular case at hand.

Note that in all of the following cases, the attempt to show a witness' bias revolved around the issues or facts of that particular case. For example, in State v. Brewington, 267 S.C. 97, 226 S.E.2d 249 (1976) where the issue was which one of two people who allegedly participated in an assault was more culpable, the court ruled that appellant's partner's testimony admitting that he was more culpable and his admission that he previously pled guilty to the assault charge was held to have been competent admissible evidence on the question of bias because the evidence either bolstered the partner's admission of greater culpability or proved him to be unworthy of belief since he had already been sentenced and had nothing to lose. Also, compare the case of State v. Mizzell, *supra*, where the court reversed and held that the trial judge erred in not allowing cross-examination of a co-conspirator's potential sentence in exchange for his testimony against the defendant in an attempt to show bias. And in State v. Starnes, 340 S.C. 312, 531 S.E.2d 907 (2000), the court held that a witness' romantic relationship with a party in the case was a source of potential bias of which the jury should be aware in order to fully evaluate the witness' testimony. In Starnes, the court held that it was error to refuse the defense an opportunity to elicit information regarding a state's witness' romantic relationship with the deceased in

order to establish that the defendant owed the deceased money and how that led to bad blood between the two before the defendant shot and killed the deceased. Additionally, there was a question regarding one witness' loyalty to a party in the case allowed to show bias also in the case of State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001).

Here, Jessica Wilson's opinion about a case that involved a prior sexual abuse allegation involving characters who were different from the ones involved in the case at bar held no probative value whatsoever. In other words, the state attempted to elicit evidence that Wilson's failure to support her sister in her allegation against their father established her as one who was biased against female victims and could not support any female victim's case against an accused male's sexual misconduct, and that as a result, her support of appellant and not her daughter, who was the alleged victim, could not be trusted as a reliable position or opinion. Wilson's position in a totally unrelated case had no bearing on any bias that Wilson's position in such cases and had no bearing on the allegation in the present case. Wilson's opinion in the prior case was not only irrelevant because it concerned another case, but the same was inaccurate because Wilson stated that she did not support her sister's claim because her sister recanted and admitted that her (sister's) allegation against her father was false.

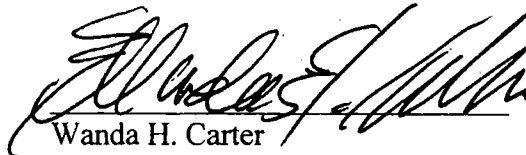
Thus, under the totality of the circumstances, the lower court erred in allowing the solicitor to question Wilson in the manner discussed in this argument because this fell outside the purview of bias questioning allowed under SCRE Rule 608. The lower court erred in allowing the solicitor to cross-examine the victim's mother, who testified on behalf of the defense, in order to show bias because the prior incident in question should not have been used to show bias and violated appellant's right to a fair trial guaranteed under the

fourteenth amendment to the United States Constitution and article 1 § 3 of the South Carolina State Constitution.

CONCLUSION

Based on the foregoing argument, appellant's conviction should be reversed and his case remanded to the Lexington County General Sessions Court for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Wanda H. Carter', is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

July 21, 2009

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

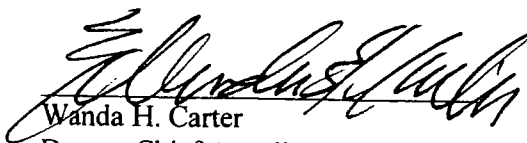
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Timothy Wilson states:

1. She is Deputy Chief Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge William P. Keesley, which was held on August 1, 2008, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Timothy Wilson.

Respectfully submitted,



Wanda H. Carter
Deputy Chief Appellate Defender

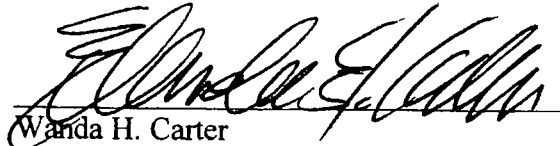
ATTORNEY FOR APPELLANT

July 21, 2009

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

July 21, 2009

A handwritten signature in black ink, appearing to read "Wanda H. Carter", is written over a horizontal line.

Wanda H. Carter
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

Attorney for Appellant

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Lexington County

William P. Keesley, Circuit Court Judge

THE STATE,

RESPONDENT,

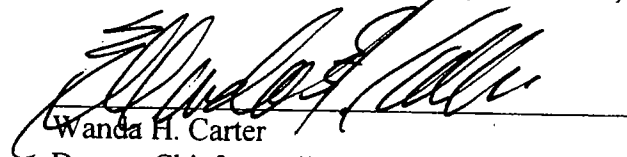
V.

TIMOTHY WILSON,

APPELLANT

CERTIFICATE OF SERVICE

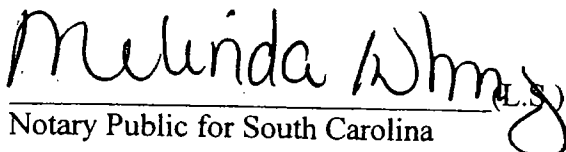
The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, Assistant Deputy Attorney General, Office of the Attorney General, Rembert Dennis Building, 1000 Assembly Street, Rm. 519, Columbia, SC 29201; and the Final Anders Brief of Appellant and Record on Appeal have been served upon Timothy Wilson, #329926 at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 21st day of July, 2009.



Wanda H. Carter
Deputy Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 21st day of July, 2009.


Notary Public for South Carolina

My Commission Expires: October 30, 2018

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SC Court of Appeals

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

APPELLANT PRO-SE ANDERS BRIEF REPLY

TIMOTHY WILSON, #329926
BRCI-CONGAREE #140
4460 BROAD RIVER ROAD
COLUMBIA, SOUTH CAROLINA
29210

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TABLE OF AUTHORITIES

CASES

McKNIGHT V. STATE, OPINION #26494

STATEMENT OF ISSUE ON APPEAL

THE LOWER COURT ERRED IN NOT ALLOWING THE APPELLANT A CONTINUANCE TO OBTAIN
EXPERT WITNESSES TO COUNTER THE STATES EXPERT WITNESSES.

STATEMENT OF THE CASE

THE APPELLANT ADOPTS THE STATEMENT OF THE CASE UNLESS OTHERWISE STATED
HEREIN AND STANDS BY THE RECORD.

ARGUMENT

THE LOWER COURT ERRED IN NOT ALLOWING THE APPELLANT A CONTINUANCE TO OBTAIN EXPERT WITNESSES TO COUNTER THE STATES EXPERT WITNESSES.

THE APPELLANT'S ATTORNEY MOVED BEFORE THE COURT FOR A CONTINUANCE BASED UPON A RECENT SUPREME COURT OPINION. HE FELT THE RULING WAS RELEVANT AND NECESSARY TO ACCOMPLISH HIS LEGAL EFFORTS. R. P. 31, LINE 16- R. P. 31, LINE 20-R. P. 32, LINE 1-25- R. P. 33, LINE 1-18.

THE COURT AFTER FURTHER INQUIRY OF THE SUBSTANCE OF COUNSEL'S MOTION. DENIED THE REQUEST AT R. P. 49, LINE 10-13.

THIS WAS ERROR. **SCRCRIMP**, RULE 7 (a)-(c) ALLOWS THE GRANTING OF CONTINUANCE UPON GOOD CAUSE BEING SHOWN AND SUCH MOTION IS NOT INTENDED FOR DELAY. APPELLANT'S COUNSEL PROVIDED SUFFICIENT REASONS FOR HIS REQUEST AT R. P. 33, LINE 1- P. 36, LINE 1-4.

AS A RESULT, THE COURT ABUSED IT'S DISCRETION IN DENYING THE APPELLANT'S REQUEST. SEE **McKNIGHT V. STATE**, OPINION #26484. THE COURT IN DENYING APPELLANT'S REQUEST AND KNOWING THE POSITION OF THE APPELLANT'S PREDICAMENT. THIS ACTION SHIFTED FROM THE NEED FOR A CONTINUANCE TO A FAILURE OF PROOF AND THIS COURT SHOULD TAKE **JUDICIAL NOTICE OF SAME**.

WHEREFORE, APPELLANT WOULD SUBMIT THE RECORD AS EXHIBIT'S OF THE COLLOQUY WITH BOTH ATTORNEY'S AND ASK FOR THE COURTS REVIEW AND RULING IN THIS RESPECT. **R.P. 31, LINE 1-P. 49, LINE 1-25.**

CONCLUSION

TJW

BASED UPON THE FORGOINJ ARGUMENTS THE APPELLANT PRAY THAT THE COURT REMAND THIS MATTER FOR FURTHER BRIEFING AND GRANT THE RELIEF REQUESTED HEREIN.

RESPECTFULLY SUBMITTED.
S/ 
TIMOTHY WILSON, #329926
BRCI-CONGAREE #140
4460 BROAD RIVER ROAD
COLUMBIA, SOUTH CAROLINA
29210

DATED: Oct 1, 2009
COLUMBIA, SOUTH CAROLINA

(6)

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
WILLIAM P. KEESLEY, CIRCUIT COURT JUDGE

THE STATE,

RESPONDENT,

V.

TIMOTHY WILSON,

APPELLANT

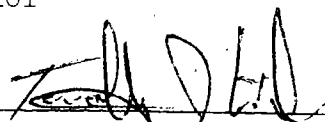
APPELLANT PRO-SE ANDERS BRIEF REPLY

CERTIFICATE OF MAILING

I HEREBY CERTIFIES THAT A TRUE COPY OF THE APPELLANT'S PRO-SE ANDERS BRIEF WAS MAILED TO THE BELOW STATED ADDRESS BY PLACING SAME AT THE BROAD RIVER CORRECTIONAL INSTITUTIONAL MAIL ROOM WITH POSTAGE PRE-PAID AND ADDRESSED AS FOLLOWS:

HONORABLE JEANETTE BARBER
CLERK, SOUTH CAROLINA COURT OF APPEALS
P.O. BOX 11629
COLUMBIA, SOUTH CAROLINA 29201

S/



TIMOTHY WILSON, #329926

BRCI-CONGAREE #140

4460 BROAD RIVER ROAD
COLUMBIA, S.C. 29210

SWORN TO AND BEFORE ME THIS

1 DAY OF OCT 2009

Eugene Becht (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES

My Commission Expires April 4, 2016

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Timothy Wilson,

Appellant.

Appeal From Lexington County
William P. Keesley, Circuit Court Judge

Unpublished Opinion No. 2010-UP-472
Submitted October 1, 2010 – Filed October 28, 2010

APPEAL DISMISSED

Deputy Chief Appellate Defender Wanda H. Carter,
of Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh, and
Assistant Deputy Attorney General Salley W. Elliott,

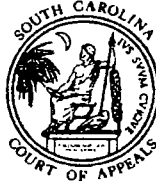
all of Columbia; and Solicitor Donald V. Meyers, of
Lexington, for Respondent.

PER CURIAM: Timothy Wilson appeals his convictions for lewd act on a minor and four counts of first-degree criminal sexual conduct with a minor. He argues the trial court erred in allowing the State to cross-examine the victim's mother concerning allegations of sexual abuse in an unrelated matter. After a thorough review of the record and counsel's brief pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's motion to be relieved.¹

APPEAL DISMISSED.

SHORT, THOMAS, and LOCKEMY, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



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ATTORNEY GENERALS

OFFICE

The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

November 17, 2010

REMITTITUR

The Honorable Beth Carrigg
205 East Main Street, Suite 146
Lexington, SC 29072-3599

Re: The State v. Wilson, Timothy
2008-GS-32-00789 2008-GS-32-00792
2008-GS-32-00790 2008-GS-32-00793
2008-GS-32-00791

Dear Ms. Carrigg:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Sincerely,

V. Claire Allen

V. Claire Allen
Deputy Clerk of Court

VCA/tf

cc: Deputy Chief Appellate Defender Wanda H. Carter
Timothy Wilson
Assistant Deputy Attorney General Salley W. Elliott

ORIGINAL

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

ORDER GRANTING APPLICATION
FOR POST CONVICTION RELIEF

I. PROCEDURAL HISTORY

A. Post Conviction Relief Procedural History

This matter comes before the Court by way of an Application for Post Conviction Relief (PCR) filed in Lexington County on February 1, 2011. On September 7, 2011, Respondent (the State) submitted a Return. On March 23, 2012, Tricia A. Blanchette, Esquire, was substituted as Applicant's counsel. On October 10, 2012, a Motion for Discovery was filed, and the State submitted a Return on October 19, 2012.

On November 13, 2012, a motion hearing was held at the Lexington County Courthouse in front of the Honorable Edgar W. Dickson. Applicant was present and represented by Tricia A. Blanchette, Esquire. Respondent was represented by Salley W. Elliott, Senior Assistant Deputy Attorney General. On December 7, 2012, an Order Authorizing Discovery was issued and subsequently filed on December 14, 2012.

On December 21, 2012, Applicant, through counsel, submitted an Amendment to Application for Post Conviction Relief, which added the following specific allegations to his original allegations of ineffective assistance of trial and appellate 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. 783 OCT - 7 10 3 30
3. Ineffective assistance of trial counsel for failure to raise an objection to the juror shortage. Transcript pp. 7, 50. CLERK OF COURT LEXINGTON, SC
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.

An evidentiary hearing into the matter was held before this Court on January 29, 2013, at the Lexington County Courthouse. Applicant was present at the hearing and was represented by Tricia A. Blanchette, Esquire. The State was represented by J. Benjamin Aplin, Assistant Attorney General.

During the hearing, Applicant testified on his own behalf. Applicant's counsel also called Gaye Allen-Cook, Donna Schwartz-Watts, Gregory Robinson and trial counsel, Casey Cornwell, Esquire to the stand. Applicant's counsel introduced twenty exhibits. This Court was also provided a copy of the Application, the Respondent's Return, Applicant's Amendment, the records of the Lexington County Clerk of Court concerning the subject conviction, the trial transcript, and Applicant's records from the South Carolina Department of Corrections.

At the close of the hearing, this Court took the matter under advisement. Thereafter, this Court requested that Applicant's counsel submit a proposed Order, from which this Order follows.

B. General Sessions Procedural History

Applicant is presently confined in the South Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. During the March 2008 term of the Lexington County Grand Jury, Applicant was indicted on four counts of Criminal Sexual Conduct with a Minor (CSC), 1st Degree (Indictment No.: 2008-GS-32-789 to 792). Subsequently, Applicant was indicted for Lewd Act on a Minor (Lewd Act)

(Indictment No.: 2008-GS-32-2293) during the July 2008 term of the Lexington County Grand Jury. On July 29, 2008, a jury trial was conducted at the Lexington County Courthouse in front of the Honorable William P. Keesley. Applicant was represented by Casey Cornwell, Esquire, and Bennett Casto, Esquire, of the Lexington County Public Defender's Office. The jury found Applicant guilty as indicted. On August 1, 2008, the Honorable William P. Keesley sentenced Applicant to confinement for concurrent terms of fifteen (15) years for Lewd Act (Indictment No.: 2008-GS-32-2293), thirty (30) years for CSC, 1st Degree (2008-GS-32-789), thirty (30) years for CSC, 1st Degree (2008-GS-32-791), fifteen (15) years for CSC, 1st Degree (Indictment No.: 2008-GS-32-792) and a consecutive term of fifteen (15) years for CSC, 1st Degree (Indictment No.: 2008-GS-32-790), for an aggregate sentence of forty-five (45) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected by Wanda H. Carter, South Carolina Office of Appellate Defense. The South Carolina Court of Appeals affirmed Applicant's convictions and sentences. State v. Wilson, Op. No. 2010-UP-472 (S.C. Ct. App. filed October 28, 2010). The Remittitur was issued on November 17, 2010.

II. APPLICABLE LAW

In a PCR action, the "burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP).

For Applicant to meet his burden of proof and prevail on his allegations of ineffective assistance of trial counsel, the two-prong test applicable to such a claim must be met. See Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 2065 (1984).

The first prong analyzes whether counsel failed to render reasonably effective assistance under the prevailing professional norms. Id. The second prong places the burden on Applicant to show that but for counsel's deficient performance the outcome would have been different. Id. The second prong is known as the "prejudice" requirement. This requirement is met if counsel's actions or inactions resulted in prejudice to Applicant.

See Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 539 (1995).

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the entire record and has heard the testimony and arguments as presented at the hearing. This Court has also had the opportunity to observe each witness and pass upon his or her credibility. This Court has weighed the testimony accordingly. This Court finds the testimony of the evidentiary hearing witnesses to be generally credible.¹ Set forth below are the relevant findings of fact and conclusions of law on each issue raised by Applicant as required by S.C. Code Ann. § 17-27-80 (2003).

A. Ineffective Assistance of Trial Counsel Claims Raised by Applicant

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.

At the evidentiary hearing, Applicant testified that he met with counsel three times before trial due to being out of the State for military obligations. PCR Transcript pp. 94-5. While on the stand, Applicant went through a number of discovery documents and detailed how he believed a review of such documents with counsel would have aided

¹ This Court has also made specific findings of credibility as detailed in the Findings of Fact and Conclusions of Law on each issue.

his defense. He explained he felt counsel failed to discuss defense strategy with him and failed to conduct an independent investigation. He also testified he believed that neither he nor any of the defense witnesses were properly prepared for trial. PCR Transcript p. 161.

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CLERK OF COURT
LEXINGTON, SC

When trial counsel (Mr. Cornwell) took the stand, he made it clear that he wished that he would have been given more time to prepare, which was the driving force behind his motion for a continuance. PCR Transcript p. 198, 211. He recalled reviewing the discovery upon receipt, but he agreed that he wished he had more time to review it with Applicant or prepare Applicant or his witnesses for trial. PCR Transcript pp. 211-12, 232-3. Regardless, he concluded that he did a "decent" job at trial. PCR Transcript p. 214.

In Lounds v. State, 380 S.C. 454, 670 S.E.2d 646 (2008), the Supreme Court of South Carolina reversed the lower court and granted PCR relief when counsel failed to conduct a reasonable investigation. The Court held that a reasonable investigation includes interviewing witnesses and conducting an independent investigation of the facts of the case. Lounds, 380 S.C. at 460, 670 S.E.2d at 649, See Ard v. Catoe, 372 S.C. 318, 642 S.E.2d 590 (2007). Despite having limited time, as was detailed in counsel's request for a continuance, this Court finds that counsel did conduct a reasonable investigation and prepared with Applicant prior to trial. Counsel requested and received an Order of Protection for time to prepare and it appears that counsel prepared in an adequate manner in consideration of his caseload as a public defender. Furthermore, counsel requested a continuance and explained his concerns to the trial court; thus, preserving the issue on the record. As a result, this Court finds that trial counsel was not ineffective for failing to

prepare and investigate since he did such even if his attempts were not perfect. Therefore, this claim must fail on the first prong of the Strickland analysis.

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.

By way of his Amendment and through his testimony at the evidentiary hearing, Applicant alleged that trial counsel was ineffective when he failed to obtain and utilize experts. In support of his allegation, Gaye Allen-Cook and Dr. Donna Schwartz-Watts were called at the evidentiary hearing and respectively qualified as experts in "clinical therapy involving family and children, specializing in sexual and physical abuse," and "forensic psychiatry." PCR Transcript pp. 15, 41.

Gaye Allen-Cook testified that she reviewed the case materials, including the forensic interview video, and met with Applicant. She explained that she found Applicant to be "appropriately remorseful" and to struggle with social anxiety. PCR Transcript pp. 46-7. She addressed her review of the forensic interview video and concluded that her only concern was the length of the interview. PCR Transcript p. 44. She expressed concern with the number of people that spoke with the victim regarding her disclosure prior to the forensic interview and explained "delayed disclosure." PCR Transcript pp. 44-5. She testified that she would have been willing to review the video with defense counsel, assist in preparation for trial and be utilized as a witness at trial. PCR Transcript pp. 48, 61.

Dr. Donna Schwartz-Watt testified that she reviewed the case materials and evaluated Applicant. She went through her findings from her evaluation of Applicant, which included a normal sexual history and a finding that he was "low risk" to reoffend.

PCR Transcript pp. 21-2, 23. She indicated that if she had been contacted prior to his trial, she would have arranged for a physiologic assessment. PCR Transcript p. 23. She explained in detail that Applicant suffers from a social phobia, which impaired his ability to testify at trial. PCR Transcript pp. 16-17, 23, She testified that she could have informed trial counsel of this phobia and assisted him with prepping Applicant for trial. PCR Transcript p. 23. When asked by the State, Dr. Schwartz-Watts indicated that this could include medication. PCR Transcript p. 30.

When trial counsel took the stand, he addressed his motion for continuance and his argument that he needed time to obtain expert(s). He explained that he would typically utilize experts to evaluate his client and to review the forensic video. PCR Transcript p. 196. When asked specifically about the experts offered at the evidentiary hearing, he concluded that the experts would have helped, especially with understanding Applicant's anxiety / social phobia. PCR Transcript p. 199. After some discussion, he clarified that he would have wanted an expert to conduct some type of arousal or sexual predator test. PCR Transcript pp. 219-220, 234-35. He also explained that he had thoroughly reviewed the forensic video and did research to prepare his cross-examination of the State's experts.

As was stated at the evidentiary hearing, this Court finds that both experts called by Applicant were duly qualified in their respective fields, but this Court struggles to find resulting prejudice from the failure to utilize such experts. PCR Transcript pp. 237-9. This Court acknowledges that counsel readily admitted at trial and at the evidentiary hearing his need for experts in the case, but failed to articulate or explain this need. Thus, this Court cannot find that counsel's failure to obtain expert witnesses amounts to

ineffective assistance that affected the outcome of trial. Therefore, as stated at the evidentiary hearing, this claim must fail.

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3. Ineffective assistance of trial counsel for failure to raise an objection to the juror shortage.

DEPT. OF COURT
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While on the stand, Applicant pointed out two places in the transcript where the trial court noted that jurors were missing prior to the selection of the jury. Trial Transcript pp. 9, 50. As was established by the State at the evidentiary hearing and is supported by the transcript, the jury selection was completed and strikes exercised without the juror shortage creating an issue. No exceptions were made on the record to the jury selection. Trial Transcript p. 99. At the evidentiary hearing, counsel agreed that he did not object, but he concluded that he should have "strategy-wise, because maybe that would have gotten me the continuance I really needed." PCR Transcript p. 228, lns. 17-22.

This Court is not convinced that counsel rendered deficient performance when he failed to object to the juror shortage or use it as a basis for supporting his request for a continuance as counsel alluded to at the evidentiary hearing. As the record established, a jury was selected and the juror shortage did not hinder jury selection. The record demonstrates no prejudice suffered by Applicant. Therefore, this Court finds that this claim must fail under both prongs of the Strickland analysis.

4. Ineffective assistance of trial counsel for agreeing to admit the video of the forensic interview of the victim.

By way of his Amendment, Applicant alleged that trial counsel was ineffective when he agreed to the admission of the video recording of the victim's forensic interview. Trial Transcript p. 207. As was stated in the transcript and by both witnesses at

the evidentiary hearing, counsel informed Applicant that he planned to use the video as part of Applicant's defense. Trial Transcript p. 207, PCR Transcript pp. 126. As a result, this Court finds that counsel's agreement to the admission of the video was reasonable trial strategy that was discussed with Applicant. Therefore, no deficiency is found and this claim must fail under the first prong of the Strickland standard.

5. Ineffective assistance of trial counsel for failure to protect Applicant's confrontation rights during the testimony of the victim.

As is reflected in the trial record and was testified to by Applicant and trial counsel, the lower court denied the State's motion to have the victim testify outside the courtroom, and the State agreed to forego any questioning of the victim on veracity in the courtroom prior to her testimony. Trial Transcript pp. 174, 195, 198-215. Defense counsel also did not enter a challenge to her competency. Trial Transcript pp. 239-40. By way of his Amendment and his testimony at the evidentiary hearing, Applicant alleged that counsel was ineffective because accommodations were made to ensure that the victim would not have to make eye contact with him during her testimony. Applicant explained that her in court identification of him demonstrated that she was not able to see him during her testimony. Trial Transcript p. 257, PCR Transcript pp. 126-132. He alleged that counsel failed to protect his confrontation rights.

When he took the stand, trial counsel recalled that the victim could not see Applicant, but he surmised that he did not see how making a motion would have made a difference. PCR Transcript pp. 204-5. This Court agrees with trial counsel's conclusion. Clearly, counsel argued vigorously to protect Applicant's confrontation rights, and the victim was required to testify in the courtroom as a result. This Court finds Applicant's

claim to be without merit. Therefore, this claim must fail under the first prong of the Strickland analysis.

6. Ineffective assistance of trial counsel for putting forth an unreasonable defense strategy.

While on the stand, Mr. Cornwell explained that his strategy boiled down to showing that the victim had a problem with “fibbing” and was troubled. PCR Transcript p. 226. He explained that he utilized the family members called as defense witnesses as experts on the victim and her behavior. PCR Transcript p. 210. He also explained that he did not object to the State’s pitting of the witnesses because pitting was part of his defense trial strategy. PCR Transcript p. 222.

When Applicant took the stand, he went through a number of discovery documents and detailed how he thought counsel should have further developed his trial strategy. He noted that counsel was precluded from introducing a document during the testimony of Christalyn Howard (DSS) that addressed inconsistent details regarding his son. Trial Transcript p. 299-300. He also highlighted inconsistencies in the testimony regarding his daughter’s version of events. PCR Transcript pp. 144-45.

In Ingle v. State, 348 S.C. 467, 560 S.E.2d 401 (2002), the South Carolina Supreme Court found that counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness and such strategy is measured under an objective standard of reasonableness. Under this standard, this Court finds that trial counsel did not put forth an unreasonable trial strategy based upon the record. Therefore, this claim must fail under the first prong of the Strickland standard.

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.

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At the evidentiary hearing, Applicant called Gregory Robinson as a witness. Mr. Robinson explained that he is a licensed professional counselor, and he testified at trial regarding his meetings with the victim. PCR Transcript p. 72. Mr. Robinson explained that he also met with Applicant twice and Applicant appeared to be very involved and eager to help his daughter. PCR Transcript p. 76. He acknowledged that defense counsel never asked him about his meetings with Applicant. PCR Transcript p. 75.

When Applicant took the stand, he alleged that counsel should have questioned Mr. Robinson about their meetings. PCR Transcript p. 152. He explained that Mr. Robinson's testimony regarding the meetings could have refuted the State's assertion that he "didn't care." PCR Transcript pp. 152-3.

When asked about Mr. Robinson, trial counsel responded that failing to ask him about his meetings with Applicant was "oversight on his part." PCR Transcript pp. 201-2. When asked if he thought his testimony could have affected the outcome of trial, counsel stated: "I think it would have shown to the jury that he was interested in getting to the bottom of it instead of trying to cover up something, you know, I think it would have helped." PCR Transcript p. 202, lns. 12-15.

Despite counsel's assertions that he should have further questioned Mr. Robinson and his opinion that it would have helped, this Court is not convinced that counsel's failure amounts to ineffective assistance of counsel that affected the outcome of trial. As to Alicia Benedetto, Christalyn Thompson and Heather Smith, this Court finds that Applicant has failed to establish how counsel should have more fully cross-examined

each witness. This Court also finds that the record of trial establishes that counsel conducted a reasonable cross examination of each of these witnesses. Therefore, this claim must fail.

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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).

Based upon the record, the testimony at the evidentiary hearing, the case law submitted by counsel and the arguments made by both parties, this Court finds that trial counsel rendered ineffective assistance of counsel that prejudiced Applicant when he failed to object to the testimony of Heather Smith and Alicia Benedetto.² This Court

² Pursuant to the South Carolina Rules of Evidences, a prior statement by a witness is not hearsay when: [T]he declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is (A) inconsistent with the declarant's testimony, or (B) consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive; provided, however, the statement must have been made before the alleged fabrication or before the alleged improper influence or motive arose, or (C) one of identification of a person made after perceiving the person, or (D) consistent with the declarant's testimony in a criminal sexual conduct case or attempted criminal sexual conduct case where the declarant is the alleged victim and the statement is limited to the time and place of the incident. Rule 801(d)(1), SCRE. Thus, under Rule 801(d)(1)(D), SCRE, corroborative witness testimony is limited to time and place of the alleged assault. The corroborative testimony cannot include "details or particulars" regarding the assault. Dawkins v. State, 346 S.C. 151, 551 S.E.2d 260, 262 (2001).

Applicant made an allegation of failure to object to hearsay testimony. At the evidentiary hearing the State argued the testimony challenged by the Applicant was neither improper vouching nor improper hearsay. PCR Transcript p.247, lns. 10-16. After listening to the State's argument in regard to vouching, this Court declined the State's request to make a specific response to the Applicant's hearsay allegation, directing the parties to instead focus on the allegation of improper bolstering/vouching.

After the hearing, the Applicant provided this Court with a list of transcript references in support of his allegations, and the State provided this Court with its response to the particular allegation of improper hearsay. The State claimed the victim's prior statements were not hearsay under Rule 801(d)(1)(B), SCRE, because they were consistent with her trial testimony and were offered by the State to rebut an express or implied charge against the victim of improper influence (the victim's repeated viewing of the videotaped forensic interview in preparation for trial), or motive (the victim's fear of getting into trouble with the solicitor if she changed her story at trial), and because they were made before the alleged improper influence or motive arose.

denied Applicant's verbal amendment to include a claim pursuant to State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), that counsel was ineffective for failing to object to the qualification of Heather Smith (forensic interviewer) as an expert.³ PCR Transcript pp. 241-2. Therefore, this claim will not be addressed.

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It is well established that it is improper for an expert to comment on the veracity of a child's accusations of sexual abuse. See State v. Dawkins, 297 S.C. 386, 393-94, 377 S.E.2d 298, 302 (1989) (Finding therapist indicating he believed victim's allegations were genuine was improper.); See also State v. Dempsey, 340 S.C. 565, 571, 532 S.E.2d 306, 309 (Ct.App.2000) (Finding therapist's testimony children were being truthful in ninety-five percent of instances in which sexual abuse was alleged was improper vouching for child), State v. Hill, 394 S.C. 280, 294, 715 S.E.2d 368, 376 (Ct. App. 2011) ("The law is clear that it is improper for a witness to give testimony as to his or her opinion about the credibility of a child victim in a sexual abuse matter.").

Recently, in State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), the South Carolina Supreme Court explained:

Even though experts are permitted to give an opinion, they may not offer an opinion regarding the credibility of others. It is undeniable that the primary purpose for calling a "forensic interviewer" as a witness is to lend credibility to the victim's allegations. When this witness is qualified as an expert the impermissible harm is compounded. Our courts have previously held that "[t]he assessment of witness credibility is within the exclusive province of the jury," and that witnesses generally are "not allowed to testify whether another witness is telling the truth." State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012); see also L.A. Bradshaw, Annotation, Necessity and Admissibility of Expert

As it advised the parties to do at the evidentiary hearing, this Court now focuses its analysis on the issue of improper bolstering/vouching. Thus, this Court declines to find trial counsel ineffective for failing to object to the testimony of Alicia Benedetto and Heather Smith on grounds that it included hearsay in the form of the victim's out of court statements.

³ The State indicated no objection to the amendment. PCR Transcript p. 242, lns. 2-3.

Testimony as to Credibility of Witness, 20 A.L.R.3d 684 (1968 & Supp. 2012) (stating an expert witness should not vouch for the truthfulness of a witness). Specifically, it is improper for a witness to testify as to his or her opinion about the credibility of a child victim in a sexual abuse matter. State v. Hill, 394 S.C. 280, 294, 715 S.E.2d 368, 376 (Ct. App. 2011); cf. Smith v. State, 386 S.C. 562, 564-65, 689 S.E.2d 629, 631 (2010) (observing the forensic interviewer interjected impermissible hearsay into the trial, which improperly bolstered the victim's testimony; the forensic interviewer testified that the victim told her that the defendant had sexually assaulted her and that she found the victim's statement "believable").

In Jolly v. State, 314 S.C. 17, 20, 443 S.E.2d 566, 568 (1994), the South Carolina Supreme Court found trial counsel ineffective for failing to object to the introduction of a social worker's testimony that the child Victim had discussed her sexual abuse by Jolly. The Court reversed the PCR court's denial of relief after finding there was a "reasonable probability" that the social worker's testimony affected the outcome of Jolly's trial. Id. at 21, 443 S.E.2d at 569.

Additionally, in State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011), the South Carolina Supreme Court held that the trial court erred in allowing the State to introduce portions of a forensic interviewer's written reports about interviews conducted with the three alleged minor victims. The Court stated, "In each report, the forensic interviewer stated that during the interviews, each child had 'provide[d] a compelling disclosure of abuse by [appellant].'" Id. at 480, 716 S.E.2d at 94 (alterations in original). The Court found this was error as "[t]here is no other way to interpret the language used in the reports other than to mean the forensic interviewer believed the children were being truthful." Id.

In State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012), the South Carolina Court of Appeals reversed and remanded finding that the trial court erred in

permitting an expert in forensic interviewing (Heather Smith) to give testimony that

bolstered the credibility of the victim. The Court of Appeals explained:

Smith never testified directly that she believed what the victim stated in her interviews or in her testimony. McKerley argues, however, that there is no way to interpret Smith's testimony other than as her opinion that the victim was telling the truth. We agree.

Smith's testimony in this case describing what forensic interviewers do demonstrates that virtually all of her testimony indicates she believed the victim was truthful, and thus is inadmissible for the same reason identified by the court in Jennings. Smith explained:

We want to be able to, . . . after assessing [the child's] behavior and what they are stating in an interview, look at that along with the other information that we may have had at the beginning of the interview and give an opinion as to whether we think something happened

Smith's "opinion as to whether [she thinks] something happened" is nothing other than her inadmissible opinion as to whether the victim was telling the truth.

Id. at 465, 725 S.E.2d at 142.

After citing to Smith's testimony that she "found [both interviews with the victim] to be compelling for sexual abuse," the Court of Appeals noted a number of specific portions of her testimony that were improper.⁴ Id. at 466-7, 725 S.E.2d at 142. The Court

⁴ "We are looking for accuracy of information" given by the victim; "we are going to . . . make sure that what the child is telling us is based on something they would have experienced on their own body or that they would have seen or heard, the sensory information"; "those statements have a level of detail that . . . they would be able to tell [only] if something were to have happened"; "we are also looking at . . . are there other possible reasons, are there other possible explanations"; "we are looking to see if [this] could . . . be explained in another way"; "we are looking to be sure it adds up"; "we are looking to see if what they tell us throughout the interview is the same from the beginning to the end"; "we are also looking at their behavior and the way they are expressing themselves in the interview . . . their behavior and their language".

In forming her "opinion as to whether . . . something happened," she considered whether the victim's statements were "consistent with the other information" she has on the case; and in forming her "opinion as to whether . . . something happened," she considered "does this child appear to be giving statements that are similar to, in my experience, in my training and what I have learned, similar to what other children with the same experience may have had."

Finally, in response to a question asking her to "explain what a compelling finding would be," she stated:

concluded: "In this particular case, none of this testimony has any relevance except insofar as it informs the jury Smith believes the story told by the victim." *Id.* at 467, 725 S.E.2d at 143.

In State v. Kromah, 401 S.C. 340, 359, 737 S.E.2d 490, 500 (2013), the South Carolina Supreme Court addressed the trial testimony of Heather Smith and held:

We find Smith's testimony about a "compelling finding" to be inappropriate here. Smith should not have been allowed to testify about a compelling finding of child abuse as that was the equivalent of Smith stating the Child was telling the truth.

The Court also took the opportunity to provide a non-exclusive list of statements that should be avoided by forensic interviewers when testifying at trial, the Court explained:

Because the admissibility of forensic interviews and the testimony based thereon at trial has been the subject of several recent appeals, we believe it would be helpful to set forth, by way of example, the kinds of statements that a forensic interviewer should avoid at trial: that the child was told to be truthful; a direct opinion as to a child's veracity or tendency to tell the truth; any statement that indirectly vouches for the child's believability, such as stating the interviewer has made a "compelling finding" of abuse; any statement to indicate to a jury that the interviewer believes the child's allegations in the current matter; or an opinion that the child's behavior indicated the child was telling the truth.

A forensic interviewer, however, may properly testify regarding the following: the time, date, and circumstances of the interview; any personal observations regarding the child's behavior or demeanor; or a statement as to events that occurred within the personal knowledge of the interviewer.

Id. at 360, 737 S.E.2d at 500-1.

The compelling findings are the things that we look at, that we talked about looking at earlier in terms of how the disclosure comes about in the interview with me; whether it is detailed, does it have consistency, does it have the sensory level of detail that a child typically wouldn't have, or only would have if something had happened to them.

At the evidentiary hearing and at this Court's request following the hearing, Applicant, through counsel, provided a detailed list of citations from the trial testimony of Heather Smith and Alicia Benedetto that Applicant submitted were objectionable.⁵ What this Court finds most troubling in the referenced trial testimony is the repeated use of the terms "compelling" and "consistent," along with the repeated explanation of the accuracy of the information obtained from the victim. Trial Transcript pp. 348, lns. 7-10, 352, lns. 6-25, 353, lns. 10-25, 354-6, 388, lns. 11-12, 389, lns. 6-25, 390-1, 392, lns. 24-25, 393, 394, lns. 5-11, 399, lns. 8-13, 466-8, 469, lns. 8-11, 471, 479, lns. 11-14.

Applicant, through his Amendment and counsel, argued that trial counsel rendered ineffective assistance of counsel when he failed to object to the vouching and/or bolstering testimony of Heather Smith and Alicia Benedetto. The State argued evidence of the victim's veracity was admissible pursuant to Rule 404(a)(2), SCRE, as evidence of a pertinent character trait of the victim offered by the prosecution to rebut the Applicant's attempts to depict her as having an untruthful character. This Court finds that the higher courts have made it abundantly clear that the testimony at issue is not only objectionable but inadmissible if offered for the improper purpose of vouching for a witness or bolstering credibility.

At the evidentiary hearing, trial counsel admitted that he felt that he could get overruled if he objected, so he did not enter an objection to the testimony at issue. PCR Transcript pp. 207-8. He admitted that he should have objected and that he was aware of the case law, such as the "Jolly case." PCR Transcript p. 208, lns. 1-9. Trial counsel

⁵ The list provided to the Court is as follows: Trial Transcript pp. 332, lns. 12-14, 346, lns. 1-11, 348, lns. 7-10, 349, lns. 4-16, 350, lns. 19-20, 352, lns. 6-25, 353, lns. 10-25, 354-56, 357, lns. 7-13, 379, lns. 6-22, 381, lns. 10-25, 387, lns. 16-25, 388, lns. 11-12, 389, lns. 6-25, 390-91, 392, lns. 24-25, 393, 394, lns. 5-11,

explained that he wished that he had been more aggressive with his objections at trial, and it was something that he realized during the trial not just as he reviewed the transcript post trial. PCR Transcript pp. 213-214.

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The Applicant had previously acknowledged the overriding theme during his trial, according to both sides, was credibility. PCR Transcript p.179, ln. 17-p. 180, ln. 1. He identified certain documents trial counsel received during discovery he believed counsel should have used to further attack the victim's credibility. PCR Transcript .p.113, ln. 2-p.115, ln. 4; p.182, ln. 16-p.185, ln. 7. The Applicant admitted trial counsel seemed to be executing a strategy of putting the victim's character trait of being a liar into evidence by calling witnesses to show she was not a truthful person. PCR Transcript p.191, ln 4-p.192, line 13).

During cross-examination at the evidentiary hearing, trial counsel confirmed this strategy, explaining he called four witnesses in the Applicant's defense for the purpose of showing the victim fibbed a lot. He testified he wasn't sure if character trait was the right word, but acknowledged he wanted to show the victim was prone to fibbing and was stubborn and willing to stick with a lie. PCR Transcript p.226, ln. 5-p.227, ln.11. Trial counsel also reviewed pages 263-265 of the trial transcript and explained this portion of his cross-examination of the victim was an effort to show her trial testimony may have been unduly influenced by watching the video tape of her forensic interview in preparation for trial. PCR Transcript .p.224, ln. 11-p.225, ln. 5. Trial counsel next examined pages 266-267 of the trial transcript and testified it was his effort to show that

396, lns. 10-16, 399, lns. 21-22, 402, lns. 10-11, 455, lns. 24-25, 456, lns. 1-7, 461-62, 464, lns. 4-7, 466-68, 469, lns. 8-11, 4717-2, 476, 479, lns. 11-14.

the victim's fear of getting in trouble with the solicitor may have established an improper motive for her trial testimony. PCR Transcript .p.225, ln. 6-p.226, ln. 4

As described above, the State first argued trial counsel was not ineffective for failing to object to bolstering/vouching testimony from the State's experts because evidence of the victim's veracity was admissible pursuant to Rule 404(a)(2), SCRE, as evidence of a pertinent character trait of the victim offered by the prosecution to rebut the Applicant's attempts to depict her as having an untruthful character. The State further argued the victim's prior statements were not hearsay under Rule 801(d)(1)(B), SCRE, because they were consistent with her trial testimony and were offered by the State to rebut an express or implied charge against the victim of improper influence (the victim's repeated viewing of the videotaped forensic interview in preparation for trial), or motive (the victim's fear of getting into trouble with the solicitor if she changed her story at trial), and because those statements were made before the alleged improper influence or motive arose. Finally, the State argued that even if counsel was ineffective for failing to object to the alleged vouching and hearsay testimony, the Applicant was not entitled to a new trial because he failed to prove prejudice in light of the admission of the video tape of the forensic interview. The State contended any error in admission of the testimony was harmless in light of the overwhelming evidence contained in the video tape.

After fully considering trial counsel's testimony and arguments from both parties, it is clear that counsel did not provide a reasonable strategic basis for not objecting. As summarized above, the appellate courts have made it clear that the exact testimony offered in this case has no place in a trial, yet trial counsel admittedly failed to object to

it.⁶ Based upon the record, the testimony at the evidentiary hearing, the case law submitted by counsel and the arguments made by both parties, this Court finds that trial counsel rendered ineffective assistance of counsel that prejudiced Applicant when he failed to object to portions of the testimony of Heather Smith and Alicia Benedetto.

Furthermore, this Court is not convinced of the State's harmless error argument. As Applicant and counsel stated, it is clear from the transcript that the entire case hinged on the credibility of the victim.⁷ In their opening arguments, both parties argued that the entire case boiled down to credibility. Trial Transcript pp. 231-2. Therefore, it is inconceivable that counsel's admitted error was harmless and did not affect the outcome of Applicant's trial when the testimony at issue clearly bolstered the credibility of the victim.

Based upon the foregoing, this Court finds that trial counsel was ineffective and Applicant was prejudiced as a result. Therefore, Applicant must be granted relief on this ground.

9. Ineffective assistance of trial counsel for failure to address possible bias expressed by the trial court stemming from a prior case.

As was addressed by Applicant, the trial court commented about another case he tried involving a four year old victim and remarked that the defendant, a police officer, reminded him of Applicant. Trial Transcript pp. 209-210. Applicant alleged that trial counsel should have objected and/or addressed on the record the court's bias expressed in

⁶ This Court has addressed the cases decided after Applicant's trial in 2008 since such cases are directly on point. This Court does not find that counsel should have been clairvoyant and made objections based upon the cases handed down after trial, but this Court does find that the body of case law was in place prior to trial, as was admitted by counsel, for an objection to be made to the testimony at issue.

⁷ When asked by this Court at the evidentiary hearing, the State agreed that "this is a credibility case, that there is no physical findings of abuse by an qualified medical doctor." PCR Transcript p. 242, lns. 7-15.

those comments. After putting these comments in the proper context, this Court finds that this claim must fail since the trial court comments were made in support of his denial of the State's motion to have the victim testify outside the courtroom. Therefore, this Court finds no basis on which counsel should have objected or addressed the matter on the record. As a result, this claim must fail under the first prong of the Strickland analysis.

10. Ineffective assistance of trial counsel for failure to make a directed verdict argument on all charges.

By way of his Amendment and his testimony, Applicant alleged that counsel failed to make a specific argument for a directed verdict on all charges due to the variation in the dates between the indictment and the victim's testimony. PCR Transcript p. 136. This Court has reviewed the record and finds that counsel made an argument for a directed verdict on all charges. Trial Transcript pp. 483-4. Specifically, counsel noted the inconsistent and contradictory testimony. Trial Transcript pp. 483-4. Upon a review of the trial record, this Court finds that this claim must fail under the first prong of the Strickland analysis.

11. Ineffective assistance of trial counsel for failure to object to pitting of witnesses by the State, as pointed out by the trial court.

For the reasons discussed in issue #6 above, this claim is also denied.

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.

At trial, Jessica Wilson was called as a witness for the defense⁸. On direct the following testimony was elicited:

⁸Jessica Wilson is the mother of the victim and wife of Applicant.

Trial Counsel: What made you stand by your husband in this situation?

Ms. Wilson: I have always been told to go with your gut feeling. My heart and my gut tell me that he did not do this. 1913 OCT -9 D 3:31

Trial Transcript p. 558, lns. 20-24. During cross-examination, the State asked Ms. Wilson the following question: "Now, when you were young, isn't it true that your sister accused your father of molesting her?" Trial Transcript p. 575, lns. 17-18. Trial counsel immediately objected and jury was sent out while the court heard arguments. Trial Transcript pp. 575-581. In making his ruling, the trial court concluded that the questions by trial counsel regarding "her gut and all of this" had "opened the door to this line of inquiry." Thereafter, the State was allowed to elicit testimony regarding her siding with her father after the accusations made by her sister and questions regarding her "gut" feelings. Trial Transcript pp. 584-5. In trying to explain the questions about her "gut," Ms. Wilson explained that she contacted DSS and wanted to talk to the detective, but she was informed that she could not contact the detective. Trial Transcript p. 586. When asked who she spoke with at DSS, she indicated that she did not remember but it may have been Christalyn. Trial Transcript pp. 586-7.

As a result of her testimony, the State called Arleen Callahan and Christalyn Howard in reply. While on the stand, Ms. Callahan explained that she had separated from her husband due to his drinking when the incident took place between her husband and her daughter that Ms. Wilson had been asked about. Trial Transcript p. 596. She explained that Ms. Wilson took her father's side even though he was charged and convicted of sexually abusing her sister. Trial Transcript pp. 596-7. When Christalyn Howard took the stand in reply, she testified that she never informed Ms. Wilson that she

could not call the detective and she encouraged her to talk to the victim.⁹ Trial Transcript pp. 600-1.

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By way of his Amendment and testimony, Applicant alleged that trial counsel rendered ineffective assistance when he opened the door to the ~~damaging cross~~ examination of Jessica Wilson and the reply testimony of Arleen Callahan. PCR Transcript pp. 167-8. He further alleged that trial counsel should have utilized the DSS "Safety Plan", which was introduced as Applicant's Exhibit #19, to refute the reply testimony of Christalyn Howard. PCR Transcript pp. 168-9.

When trial counsel took the stand, he readily admitted that he opened the door as the trial court ruled. PCR Transcript p. 209. He explained: "That's kind of the risk you take when you ask those kinds of questions." PCR Transcript p. 209, lns. 17-18. He explained that it was detrimental to the case and it turned the case into a "mini circus." PCR Transcript pp. 209-210. He also explained that he was heavily relying upon Ms. Wilson as one of his "experts" on the victim. PCR Transcript pp. 210-11. When asked on cross-examination, he concluded that "looking back" he would have chosen to not call Ms. Wilson as a witness. PCR Transcript p. 221, lns. 3-23.

This Court has had the opportunity to review the complete record and weigh the testimony offered at the evidentiary hearing. This Court agrees with trial counsel's assessment that the testimony elicited as a result of his direct examination of Ms. Wilson was detrimental to Applicant's case, yet this Court finds that trial counsel did not provide assistance that fell below reasonable professional norms in his decision to call and in the questions asked of Ms. Wilson at trial. Furthermore, this Court is not convinced that

⁹ In the trial transcript, the name Christalyn Thompson Howard is given for the witness. On some of the exhibits and throughout the evidentiary hearing, she is referred to as Christalyn Thompson.

counsel's failure to question Ms. Howard about the "Safety Plan" amounted to ineffective assistance of counsel that affected the outcome of trial. Therefore, this claim must fail.

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.

By way of his Amendment and through his testimony at the evidentiary hearing, Applicant alleged that counsel failed to advise him regarding "Jessica's Law" and the changes to the jury charge and applicable sentencing range. PCR Transcript p. 172. When asked, trial counsel could not recall if he discussed these matters with Applicant. PCR Transcript p. 230. Regardless, this Court has reviewed the record and finds no merit to Applicant's claim that failure to discuss such should be considered ineffective assistance of counsel, particularly where satellite monitoring is a collateral consequence of the sentence. Furthermore, no prejudice can be deduced from counsel's failure, if such occurred, to discuss these matters with Applicant. Therefore, this claim must fail under both prongs of the Strickland analysis.

- B. Ineffective assistance of appellate counsel for failure to raise the motion for continuance on appeal.

Following the Applicant's trial, a timely Notice of Appeal was filed, and Applicant's direct appeal was perfected by Wanda H. Carter, Deputy Chief Appellate Defender for Appellate Defense. On July 21, 2009, a Final Anders Brief of Appellant was submitted to the South Carolina Court of Appeals. On October 12, 2009, Applicant submitted "Appellant Pro-Se Anders Brief Reply," which raised the following issue: "The Lower Court Erred in not Allowing the Appellant a Continuance to Obtain Expert Witnesses to Counter the States Expert Witnesses." On October 28, 2010, the South

Carolina Court of Appeals dismissed October 28, 2010. State v. Wilson, Op. No. 2010-UP-472 (S.C. Ct. App. filed October 28, 2010).

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At the evidentiary hearing, Applicant, through counsel and testimony, alleged that appellate counsel was ineffective for failing to raise the motion for continuance on appeal and explained that the decision entered by the South Carolina Court of Appeals did not specifically reference review of Applicant's brief. When asked, trial counsel responded that he thought the continuance would be granted and he "didn't understand why" the issue was not raised by appellate counsel. PCR Transcript p. 215.

In response, the State called Jennifer Roberts, Assistant Attorney General, to the stand.¹⁰ Ms. Roberts explained that she had previously worked as a staff attorney at the South Carolina Court of Appeals, and she testified to her experience in reviewing appeal submitted pursuant to Anders. PCR Transcript pp. 7-9. On cross-examination, Ms. Roberts admitted that she did not handle Applicant's appeal and that an Opinion would typically reference the review of an Appellant's pro-se brief. PCR Transcript pp. 9-10.

In support of his claim, this Court was provided a copy of Bennett v. State, 383 S.C. 303, 680 S.E.2d 273 (2009), which counsel stated explored the issue of ineffective assistance of appellate counsel related to an Anders Brief and requires that the Strickland standard be applied. PCR Transcript p. 254. See Smith v. Robbins, 528 U.S. 259, 120 S.Ct. 746 (2000) (Finding that even when the appellate counsel believes his client's appeal is without merit and thus files an Anders brief, the appellant may be entitled to a merits brief and the challenge of appellate counsel's performance should be reviewed under Strickland.) This Court has reviewed the submitted case law and the entire record.

¹⁰ By agreement of the parties and approval of the Court, Ms. Roberts was called as the first witness at the evidentiary hearing. PCR Transcript pp. 5-6.

This Court cannot find that appellate counsel was ineffective for failing to raise an issue that was raised in Applicant's pro-se brief and reviewed by the Court pursuant to Anders. This Court is not convinced that the omission of language in the Opinion stating that the pro-se brief was reviewed means that it was not reviewed since the brief was clock stamped by the Court of Appeals. Furthermore, the Opinion states that the Court thoroughly reviewed the record prior to dismissing the appeal and granting counsel's motion to be relieved. Therefore, this Court refuses to find appellate counsel ineffective for failing to raise an issue that she was not directed to brief by the Court of Appeals pursuant to Anders.

V. CONCLUSION

Based upon the foregoing, this Court orders that the Application for Post Conviction Relief is hereby granted. This Court further finds that no other allegations were raised at the PCR hearing. Therefore, any additional allegations are deemed waived because no evidence was presented.

IT IS THEREFORE ORDERED:

1. That Applicant has met his burden of proof as to his specific allegation of ineffective assistance of trial counsel as detailed above, but has failed to meet his burden of proof as to all other allegations of ineffective assistance of trial counsel as detailed above;
2. That Applicant has not met his burden of proof as to his allegation of ineffective assistance of appellate counsel;
3. That the Application for Post Conviction Relief be granted and the Applicant's convictions be vacated and he be granted a new trial;
4. That Applicant be transferred from the custody of South Carolina Department of Corrections to the custody of Lexington County pending the disposition of his criminal case, with normal bond proceedings.

AND IT IS SO ORDRED this 24th day of September, 2013

2013 SEP 24 11:32
2013 OCT - 9 12:32
R. Lawton McIntosh, Circuit Judge
Tenth (10th) Judicial Circuit
CLERK OF COURT
LEXINGTON, SC

Anderson, South Carolina

ORIGINAL

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP- 32-402

Timothy J. Wilson
329926

State of SC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the 9th day of Oct, 2013 and a copy mailed first class or placed in the appropriate attorney's box on this 9th day of Oct, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

Jirica Blanchette

ATTORNEY(S) FOR THE PLAINTIFF(S)

J. Whitmire

ATTORNEY(S) FOR THE DEFENDANT(S)

John Carnage
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO LEXINGTON COUNTY
COURT OF COMMON PLEAS

The Honorable R. Lawton McIntosh, Circuit Court Judge
Case No. 2011-CP-32-0402

TIMOTHY J. WILSON,

Respondent,

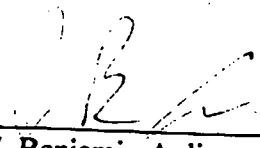
v.

STATE OF SOUTH CAROLINA,

Petitioner.

NOTICE OF APPEAL

The State of South Carolina hereby appeals from the Order Granting Application for Post-Conviction Relief of the Honorable R. Lawton McIntosh, presiding Judge for the Eleventh Judicial Circuit, dated September 24, 2013. The Order was received by the State on October 18, 2013.



J. Benjamin Aplin
Assistant Attorney General
S.C. Bar No: 8729

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3741

November 15, 2013

Tricia A. Blanchette, Esquire
P.O. Box 12725
Columbia, South Carolina 29211

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

CERTIORARI TO LEXINGTON COUNTY
COURT OF COMMON PLEAS

The Honorable R. Lawton McIntosh, Circuit Court Judge
Case No. 2011-CP-32-0402

TIMOTHY J. WILSON,

Respondent,

v.

STATE OF SOUTH CAROLINA,

Petitioner.

PROOF OF SERVICE

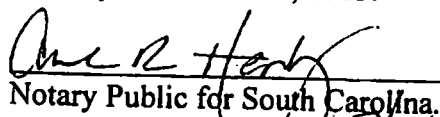
I, Angela Bennett certify that I have served the Notice of Appeal on Timothy J. Wilson by depositing a copy of it in the United States Mail, postage prepaid, on November 15, 2013, to Tricia A. Blanchette, Esquire, his attorney of record, to the address below.

Tricia A. Blanchette, Esquire
P.O. Box 12725
Columbia, South Carolina 29211



Angela Bennett
Administrative Assistant

SWORN to before me this
15th day of November, 2013.


Notary Public for South Carolina.

My Commission Expires: 7/18/2017

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

NOV 19 2013

APPEAL FROM LEXINGTON COUNTY ATTORNEY GENERALS
Court of Common Pleas
Post Conviction Relief
OFFICE

Honorable R. Lawton McIntosh, Circuit Court Judge

Case No.: 2011-CP-32-0402

Timothy J. Wilson,

Respondent-Petitioner,

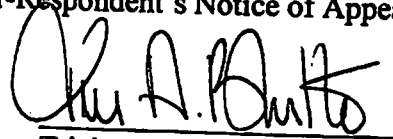
vs.

State of South Carolina,

Petitioner-Respondent.

NOTICE OF CROSS-APPEAL

Timothy J. Wilson cross-appeals the Order Granting Application for Post Conviction Relief, which was signed by the Honorable R. Lawton McIntosh on September 24, 2013 and filed on October 9, 2013. Respondent-Petitioner, through counsel, received notice of the entry of this Order on October 18, 2013. Respondent-Petitioner, through counsel, received a copy of Petitioner-Respondent's Notice of Appeal on November 18, 2013.



Tricia A. Blanchette
SC Bar No. 74904
PO Box 12725
Columbia, SC 29211
(803) 988-0008

November 19, 2013

Other Counsel of Record:

J. Benjamin Aplin
Assistant Attorney General
PO Box 11549
Columbia, SC 29211

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas
Post Conviction Relief

Honorable R. Lawton McIntosh, Circuit Court Judge

Case No.: 2011-CP-32-0402

Timothy J. Wilson,

Respondent-Petitioner,

vs.

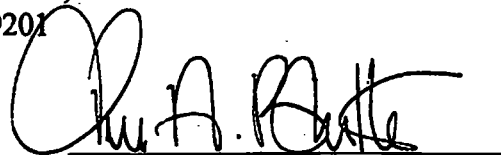
State of South Carolina,

Petitioner-Respondent.

CERTIFICATE OF SERVICE

I, Tricia A. Blanchette, Attorney for Respondent-Petitioner, hereby certify that I hand-delivered this 19th day of November 2013, a copy of a Notice of Cross-Appeal, to J. Benjamin Aplin of the Attorney General's Office, at:

Office of the Attorney General
ATT: J. Benjamin Aplin, Ast. Attorney General
1000 Assembly Street, 5th Floor
Columbia, SC 29201



Tricia A. Blanchette
PO Box 12725
Columbia, SC 29211
(803) 988-0008

November 19, 2013