

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM GREENWOOD COUNTY

Eugene C. Griffith, Jr., Circuit Court Judge

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

GARY EUGENE LOTT,

APPELLANT

APPELLATE CASE NO. 2013-000494

RECORD ON APPEAL

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THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:

STATE’S EXHIBIT #1 (DVD)

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF GREENWOOD	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 13-GS-24-0101 <i>et al</i>
	)	
Gary Eugene Lott,	)	
	)	
Defendant.	)	

TRANSCRIPT OF JURY TRIAL

The within jury trial was held in the above-captioned case on February 25-28, 2013, before the Honorable Eugene C. Griffith, Jr. in the Court of General Sessions for Greenwood County, South Carolina; attended by counsel, as follows:

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(None)

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*Court's Exhibit 1 same as State's Exhibit 1

5

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4 (DEFENDANT PRESENT)

6 (Microphone feedback noise) -- is the micro-
7 phone on?

8 COURT REPORTER: It's crazy. I've
9 got to get it readjusted somehow.

10 THE COURT: Okay. Are we ready?

11 COURT REPORTER: Yes, sir.

12 THE COURT: All right. Solicitor?

13 SOLICITOR STUMBO: Judge, our
14 intention is to call two indictments today to
15 pick this jury on.

16 One of them is 2013-GS-24-0305.

17 That is an indictment for criminal sexual

18 conduct with a minor, first degree. We also

19 have an indictment that's captioned, Your

20 Honor, -- the number is 2013-GS-24-0101.

21 This was true billed back in January
22 before the grand jury. The caption for the
23 indictment, Your Honor, is criminal sexual
24 conduct with a minor, third degree; 16-03-
25 655(c). The law changed recently, Your Honor,

1 to add that subsection. When this incident
2 occurred, which was October 3rd, 2011, we still
3 had the lewd act on a minor statute. Truth
4 be told, Your Honor, this should have been
5 captioned as a lewd act on a minor on 16-15-
6 140, because at the time of the incident this
7 particular crime, CSC with a minor, third
8 degree, didn't exist. They essentially renamed
9 lewd act on a minor under the Crimes Against
10 Persons Chapter 3 instead of Chapter 15 of the
11 Code.

12 Your Honor, our Motion before we call
13 this in front of the jury would be a Motion to
14 alter or amend to conform with the body of the
15 indictment itself, which alleges the elements
16 of the old lewd act on a minor; which at the
17 time that this act occurred was a lewd act on a
18 minor.

19 The two crimes are charged because, as
20 you know, under the old case law -- and I don't
21 think that there has been a new case since the
22 statute has been amended. The lewd act on a
23 minor was not a lesser-included offense of CSC
24 on a minor. That being said, you know, we
25 indicted both. If the jury doesn't find that

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Jury Trial of February 25-28, 2013
before The Honorable Eugene C. Griffith, Jr

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1 there was penetration or sexual battery, they
2 can still find the lewd and lascivious elements
3 under lewd act.

4 Your Honor, our Motion is simply
5 a Motion before the Court to alter or amend the
6 caption of a document, 2013-GS-24-0101 to read
7 "lewd act on a minor, 16-15-140" under the
8 correct code at the time that this incident
9 occurred.

10 The 305 indictment, Your Honor, should
11 not change. Although, I have found that there
12 is a scriveners error in that one where it says
13 "on or about the 2nd day of October." Your
14 Honor, the other indictment says the 3rd day of
15 October. As you know, Your Honor, case law
16 says time is not of the essence in CSC cases if
17 it says on or about. I think we are okay but
18 just to amend these indictment to each other,
19 we would move to have Indictment 305 altered or
20 amended to conform to the evidence as to the 3rd
21 day of October instead of the 2nd day of
22 October.

23 THE COURT: Mr. Sheek, ---

24 MR. SHEEK: Thank you, Your Honor.

25 THE COURT: Address them separately,

1 if you would.

2 MR. SHEEK: As to the first Motion
3 to alter or amend on the criminal sexual
4 conduct with a minor in the third degree,
5 having researched that issue previously, I
6 believe that the case law is clear that the
7 caption is not the controlling factor of the
8 indictment but actually the body of the
9 indictment, which does sufficiently put us on
10 notice of that which we are to defend. So I
11 believe that their Motion is proper and I don't
12 have any objection to that.

13 THE COURT: Okay.

14 MR. SHEEK: As to the Motion to
15 amend on the second indictment on the date
16 issue -- again, Your Honor, we were put on
17 notice of what we were to defend. Whether it
18 happened on the 2nd or the 3rd is not material
19 to our defense. So we don't object to their
20 Motion.

21 THE COURT: Thank you much.

22 Without objection, they are both so amended
23 to conform to the 3rd, on both indictments,
24 and the proper caption on the face of the
25 indictment will be amended to conform

2

22 SOLICITOR STUMBO: Thank you,
23 Judge, if it may please the court, we are --
24 the first matter that we have is admissibility
25 of a forensic interview of the victim in this

1 case, under Section 17-23-175. The child
2 victim in this case was eleven at the time of
3 the incident and at the time of this
4 interview. It taken by the Greenwood County
5 Sheriff's Department at The Child's Place.
6 Heather Bennett, who is a forensic interviewer
7 with The Child's Place, who is in court today,
8 is the individual who done (sic) the forensic
9 interview. It was recorded by way of video
10 and audio.

11 Your Honor, we do have Ms. Bennett
12 and we would like to call her to the stand for
13 purposes of ---

14 THE COURT: Ms. Bennett, please
15 come forward and be sworn.

16 (WITNESS TAKES STAND)

17 HEATHER BENNETT, being duly sworn to
18 tell the truth, the whole truth and nothing
19 but the truth, testified, as follows:

20 DIRECT EXAMINATION

21 BY SOLICITOR STUMBO:

22 Q. Thank you for being here this afternoon,
23 Ms. Bennett. Do you work at The Child's Place
24 here in Greenwood?

25 A. I sure do.

1 Q. Are you a forensic interviewer at The
2 Child's Place?

3 A. I am.

4 Q. If you could, just for the court's
5 background and edification give your
6 educational -- a summary of your educational
7 background.

8 A. I received my bachelor's degree from
9 Anderson University in 2006. I think went on
10 and got my master's degree, which is a masters
11 in Education and Community Agency Counseling
12 from Winthrop University. I graduated from
13 there in 2008.

14 Q. Okay. After you graduated from Winthrop
15 in 2008, where did you go to work?

16 A. I actually have worked at Meg's House here
17 in Greenwood, I've worked for Anderson Mental
18 Health, and now I work at The Child's Place.

19 Q. Do you have any specialized education or
20 training beyond your formal education but in
21 the field of forensic interviewing?

22 A. Yes, when I was hired at The Child's
23 Place, they sent me to training in Columbia;
24 which was the Child First training, in July
25 of 2011.

1 Q. You say Child First. What did you learn
2 there at Child First, the training?

3 A. What you do is you learn how to interview
4 children, to be nonleading, to ask open-ended
5 questions. We also are taught the RATAC
6 protocol.

7 Q. Just to stop you there, could you explain
8 for the record what the RATAC protocol is?

9 A. Yes, it's an acronym that stands for
10 something.

11 Starting with "R", that's rapport
12 building.

13 You go on to the "A", which is anatomy
14 identification.

15 Then to the "T", which is touch.

16 Then you go to another "A", which is abuse
17 scenario.

18 Then "C", the last letter, is closure, I
19 think.

20 Q. This RATAC protocol, is it a standard for
21 interviewing children who have been allegedly
22 abused?

23 A. Yes.

24 Q. Is it used across the country?

25 A. Yes, it is.

1 Q. Were you trained in this -- at Child
2 First?

3 A. I was.

4 Q. Did you complete the training?

5 A. I did.

6 Q. Were you certified?

7 A. I was.

8 Q. Have you done any continuing education in
9 this field?

10 A. Yes. I've done different amounts of
11 training from since I was hired at The Child's
12 Place.

13 Q. How many times a year do you go train for
14 child interviewing techniques?

15 A. Two or three times a year. Then I also do
16 online trainings periodically throughout the
17 year.

18 Q. How long have you been at The Child's
19 Place?

20 A. Since July of 2011.

21 Q. And since you've been there, starting in
22 July of 2011, how many forensic interviews
23 have you done?

24 A. Two hundred and twenty-nine (229).

25 Q. Okay. Have those been on children?

1 Teenagers? What age groups have you ---

2 A. The age that I can interview is ages three
3 to seventeen. So they fall within those age
4 limits.

5 Q. Do you use the RATAC protocol in each of
6 those interviews?

7 A. Every one.

8 Q. Do you asking leading questions or
9 nonleading questions?

10 A. Nonleading questions.

11 Q. Did you have an occasion to interview a
12 young lady named **Minor Child**

13 A. Yes, I did.

14 Q. What was the date of that interview?

15 A. It was October 7th, 2011.

16 SOLICITOR STUMBO: Your Honor,
17 at this time, based on Ms. Bennett's extensive
18 training, her extensive experience of inter-
19 viewing two hundred and twenty-nine children
20 in the forensic interview setting, the State
21 would move, for purposes of this incamera
22 hearing, Ms. Bennett as an expert in child
23 forensic interviewing.

24 THE COURT: This is interviewing
25 with regards to sexual assaults?

1 SOLICITOR STUMBO: Correct.

2 THE COURT: All right. Mr. Skeen,
3 any *voir dire* from you?

4 MR. SHEEK: No *voir dire* from me,
5 Your Honor. No objection to her qualifica-
6 tion.

7 THE COURT: She will be so
8 qualified for the purpose of this hearing.

9 SOLICITOR STUMBO: Thank you,
10 Judge.

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR STUMBO:

13 Q. Ms. Bennett, you indicated that you
14 interviewed **Minor Child** What was the
15 date of that interview?

16 A. October 7th, 2011.

17 Q. Who is the alleged defendant in this case?

18 A. Gary Lott.

19 Q. Gary Lott, who is in the courtroom today?

20 A. Yes.

21 Q. Now, was this video recorded using video/
22 audio equipment?

23 A. Yes, sir.

24 Q. Have you had a chance to review the
25 recording of it?

1 A. I have.

2 Q. Did you bring a copy of that recording to
3 court with you here today?

4 A. I did.

5 Q. Do you have it with you?

6 A. I do.

7 SOLICITOR STUMBO: Your Honor, if I
8 may approach. (Tenders document to be marked
9 as exhibit)

10 DIRECT EXAMINATION CONTINUED

11 BY SOLICITOR STUMBO:

12 Q. Ms. Bennett, I am going to hand you back
13 what has now been marked for ID as Court's
14 Exhibit 1. Have you watched the contents of
15 that DVD?

16 A. I have.

17 Q. And is it a fair and accurate representa-
18 tion of the interview that you contacted with
19 Alissa Allen?

20 A. Yes.

21 Q. Did I ask you to put your initials on the
22 front of that disk?

23 A. I did.

24 SOLICITOR STUMBO: Your Honor,
25 at this time, the State would offer this DVD

1 into evidence for your review, for purposes of
2 this hearing.

3 THE COURT: Any objection?

4 MR. SHEEK: A couple of questions
5 if I might. I don't think that I have any
6 objection. Ma'am, have you had any communica-
7 tion with Ms. Allen other than this interview?

8 THE WITNESS: No.

9 MR. SHEEK: And are there any
10 parts of your conversation with Ms. Allen not
11 included on this videotape, this DVD?

12 THE WITNESS: No, sir.

13 MR. SHEEK: I have no objections,
14 Your Honor.

15 (SO ENTERED AS COURT'S EXHIBIT 1)

16 THE COURT: Very well. How do
17 y'all intend to play that.

18 SOLICITOR STUMBO: Typically,
19 Your Honor, how we have done it in the past,
20 if you want to watch it in chambers on a
21 laptop, we could just take a brief break or
22 have you do that at your leisure.

23 THE COURT: Sounds good to me.

24 SOLICITOR STUMBO: Okay. I
25 think, Your Honor, that we want to do that at

1 this time. Do you have any cross at this
2 time?

3 MR. SHEEK: I do not.

4 THE COURT: How long is it?

5 SOLICITOR STUMBO: Thirty-nine
6 minutes, Your Honor. Do you think that you
7 will have any followup questions of Ms.
8 Bennett?

9 THE COURT: No.

10 SOLICITOR STUMBO: We'd ask that
11 she would be released at this time for
12 purposes of the hearing.

13 THE COURT: And what we will do
14 tomorrow is -- for the introduction of this
15 later, we are going to need her here.

16 SOLICITOR STUMBO: That's right.

17 MR. SHEEK: Your Honor, I can tell
18 you that we are not going to object to the
19 State's Motion to introduce that at the trial.
20 So as far as followup questions, I doubt that
21 there will be any that we would have.

22 I have watched it. She doesn't use
23 leading questions. There is nothing
24 objectionable in the videotape. We won't ask
25 for any redactation (sic) of any comments,

1 so I can't imagine that there will be any
2 problem.

3 SOLICITOR STUMBO: And, Judge,
4 we may at the trial -- Jeff Scott, the
5 investigation in this case, actually watched
6 this interview from behind the glass, the one-
7 sided glass. Technically for the jury, I
8 don't need Ms. Bennett to ask those questions
9 about it. I may just for the record go -- but
10 we don't need Ms. Bennett for that.

11 THE COURT: Fair enough. Are we
12 done with this for now?

13 SOLICITOR STUMBO: I believe so.

14 THE COURT: Very good. Thank you
15 very much.

16 (WITNESS STEPS DOWN)

17 THE COURT: All right, ---

18 SOLICITOR STUMBO: If you want
19 to watch it now, Judge, that's fine.

20 THE COURT: Do you want to go on
21 and do the ---

22 MR. SHEEK: Well, I thought if you
23 wanted to have those arguments that we could
24 put those on the record for your consideration
25 this evening. Then you can watch that at your

1 pleasure. Like I say, again, we're not going
2 to object to it.

3 THE COURT: Okay. Then I'll do
4 that in a little bit.

5 SOLICITOR STUMBO: Judge, do
6 you want to go ahead and take up the second
7 Motion?

8 THE COURT: When you were speaking,
9 Mr. Sheek said any way that you want to go.
10 It suits me to go ahead while I am sitting
11 here. I will watch this in a moment.

12 MR. SHEEK: If you are ready, it
13 won't take me long to tell you what my argu-
14 ments are.

15 THE COURT: Okay.

16 MR. SHEEK: What I don't have with
17 me, and I apologize, Your Honor, is that I
18 made extra copies of the case law but didn't
19 bring it with me because I didn't know that we
20 would be doing this this afternoon. But I can
21 provide those to the court.

22 SOLICITOR STUMBO: I believe that
23 we have them here.

24 MR. SHEEK: Yes, you have them
25 also. The *Howard* case, you are probably

1 familiar with it, attempted burglary.

2 What our Motion is, Your Honor,
3 would be a Motion to limit the introduction
4 of evidence by the State in front of the jury
5 regarding Mr. Lott's prior conviction. Mr.
6 Lott pled guilty to lewd act on a minor in
7 1996 in the County of Saluda. As you know, in
8 this case Mr. Lott was indicted for criminal
9 sexual conduct with a minor in the first
10 degree under the Section 16-3-655 which makes
11 it first degree if it is a sexual battery on a
12 person between the ages of eleven to fourteen
13 and the person has previously pled guilty or
14 been convicted of an offense enumerated in 23-
15 3-430. I think that it is 23-3-430(c).

16 SOLICITOR STUMBO: Uh, 23-3-430
17 is the sexual registry statute, Judge,
18 subsection (c) ---

19 MR. SHEEK: Yeah, and in the
20 alternative (d) is where you may have pled
21 guilty to not one of the offenses listed in
22 (c) but the judge does require sex offender
23 registry. In this case, he was required to
24 register, by the judge's Order. I've seen the
25 sentencing sheet. Marc Westbrook required

1 as a special condition of probation that he
2 register as a sex offender. So it clearly
3 would apply under (d).

4 There is some question under (c)
5 because (c) does not list now lewd act on a
6 minor. It actually lists criminal sexual
7 conduct third. It did list lewd act on a
8 minor before the change of the nomenclature of
9 the offense. So I believe clearly that he was
10 convicted of an offense that at the time was
11 under 23-3-340.

12 This is our argument. I've looked
13 back at the case law, Your Honor, regarding
14 the presentation of evidence of a prior
15 offense as it constitutes an element of the
16 present crime. The *Howard* case seemed to be
17 the one most important. It dealt with the
18 State seeking to introduction convictions for
19 prior housebreaking or burglary, using it as
20 an enhancement to charge a man with burglary
21 in the first degree. In that case the Court
22 ruled that they could use that and present
23 that to the jury. Although the defense
24 offered to stipulate that it was a first
25 degree burglary, the State did not have to

1 accept that stipulation because they had a
2 right to prove every element of the crime.
3 But the *Howard* goes on to say but because of
4 Rule 403, the prejudicial effect outweighing
5 the probative value, the State should be very
6 careful in what it does and doesn't allow in
7 when proving its case.

8 Howard specifically talks about the
9 old *Chief* case. The old *Chief* case, and I
10 don't know if you've read that, it's a Federal
11 case where the defendant was charged with
12 possession of a firearm while a felon. There
13 the State sought to introduce the prior
14 conviction. What the Court said in *Chief*
15 is that you don't have to prove the particular
16 offense that he was convicted of, you merely
17 have to prove that he was convicted of a
18 felony to establish that he was ineligible to
19 possess a firearm.

20 And the *Howard* case talks about that.
21 They said in this case the legislature
22 specifically said prior housebreaking or
23 burglary convictions. Because the legislature
24 said that, the State has its right to prove
25 it.

1 I believe that this case is more
2 analogous to the old *Chief* case in that the
3 State doesn't have to prove a particular
4 offense. They merely have to prove that the
5 defendant was convicted of a crime listed
6 under 20-33-430 (sic), or is required to
7 register under 23-3-430(d).

8 That being the case, we're offering
9 to stipulate that Mr. Lott has been convicted
10 of an offense listed in 23-3-430. He is
11 required to register as a sex offender
12 pursuant to that statute.

13 We believe that with that stipulate,
14 because in this case the continuity of the
15 State's case is not hindered by that
16 stipulation. Because one of the things that
17 they talk about in *Howard* is that you can't
18 require the State to leave gaps in its story
19 that the jury must try to fill in.

20 With that stipulation, they have to
21 place the necessary element and to then
22 introduce it with that stipulation being
23 operative, I think, simply does make it
24 prejudicial effect by telling the jury that he
25 has been convicted of a sex crime on a child,

1 uh, -- much more prejudicial than probative.
2 Because, obviously, in 23-3-430 there is all
3 kinds of offenses: voyeurism, peeping Tom,
4 indecent exposure that can require registry.
5 I think obviously in this case that the State
6 seeks to put that in there, for the obvious
7 purpose of that when the jury hears that he's
8 got a prior sex case of a child it makes it
9 more likely that they would tend to believe
10 that he committed the crime with which he is
11 accused of this time.

12 I think the similarity in charges
13 actually makes it much more prejudicial. So,
14 with all that being said, I could get you
15 copies of those cases to look at, Judge.

16 We are offering to stipulate that he
17 is required to register under 23-3-430(d) and
18 has been convicted of a crime enumerated in
19 23-3-430(c). Therefore, we don't believe that
20 it is necessary for the State to put the
21 actual conviction in front of the jury.

22 THE COURT: All right. Solicitor?

23 SOLICITOR STUMBO: Thank you,
24 Your Honor. There are several cases that we
25 will cite as authority here. The primary one

1 is State v. Benton, 338 SC 151, a 2000 South
2 Carolina Supreme Court case that dealt with
3 burglary convictions.

4 I think most of our case law here,
5 that is published on this issue, deals with
6 burglary convictions, here on the State level.

7 Your Honor, there is an unpublished
8 Opinion, I understand, -- that's not anything
9 precedential or precedent here, but the *State*
10 *v. Welch* in the Court of Appeals, 2011-UP-503
11 that references the *State v. Benton* as
12 authority why they affirmed the conviction.
13 Your Honor, that particular case was a
14 criminal sexual conduct with a minor, first
15 degree, conviction that dealt with the prior
16 offense and elements. That particular case
17 cited *Benton* as support for the Court, a
18 unified decision by the Court of Appeals.

19 Essentially -- it doesn't go into
20 the facts, but it affirmed the conviction
21 citing *Benton* and then the statute itself,
22 which stated that the prior offense was an
23 element of the offense.

24 We would obviously rely on *Benton* and
25 its progeny, some other cases, that cited.

1 State v. James is one that we found, Your
2 Honor, related to this issue. That's a 2003
3 case. The cite on that is 355 SC 25, 583 SE
4 2nd 745. That's also a State Supreme Court
5 case regarding prior convictions.

6 Your Honor, I believe that the *Welch*
7 unpublished Opinion here is instructive if not
8 precedential in terms of what the Court would
9 have to decide here.

10 It is our position in this court
11 that, at least in the 403 analysis, Judge, in
12 that it is an element of the offense. I don't
13 know how it can be -- how it could more
14 probative that we put that we put in a
15 certified copy of the conviction.

16 Now, there is a -- there is a
17 connection between subsection (d) and
18 subsection (c). The CSC with a minor statute,
19 16-3-655(a)(2), which is what we charged this
20 case under, there is -- it's kinda of an
21 either/or provision, Your Honor. It says that
22 if you've pled guilty or been convicted of
23 section -- it doesn't say the section, but a
24 sexual registry conviction but it listed the
25 sexual registry statute.

1 At the time that this crime was
2 committed back on October 3rd, 2011, lewd act
3 on a minor existed. That's the prior offense
4 with which Mr. Lott was convicted in Saluda
5 County. Judge, it is our position that
6 because of that that it qualifies under that
7 provision, so under 23-3-430(c) as a crime
8 listed in the sexual registry statute for
9 which an enhancement can be made to a CSC to
10 first degree.

11 The victim in this case, Your Honor,
12 turned eleven just months before the incident.
13 So under normal circumstances, without a prior
14 conviction here, you'd be talking about --
15 just based on the age of the victim, a CSC 2nd
16 not a CSC 1st. So it is the only factor in
17 this case -- the only factor that elevates
18 this from a CSC 2nd to a CSC 1st.

19 So it is our position that it can't
20 be any more probative of that. It is an
21 element of the offense that we have to prove.
22 We would say that the stipulation is not good
23 enough. It's going to leave holes in the
24 jury's minds as to what -- *'What in the world*
25 *are they talking about? What kind of*

1 *convictions qualifies under this statute?*

2 I think it makes it unclear, Your Honor.

3 Obviously it's prejudicial but I think the
4 probative value here is so high that it
5 doesn't run afoul of Rule 403.

6 That would be our argument, Your
7 Honor. And, generally, we would rely on the
8 *State v. Benton* and its progeny as authority
9 here.

10 THE COURT: Anything else, Mr.
11 Skeen?

12 MR. SHEEK: The only response that
13 I would have, Your Honor, is that I agree with
14 the solicitor that I think the jury will be
15 saying 'what kind of conviction.' That is the
16 prejudicial effect that we are concerned of.
17 Because that's not a consideration in
18 determining the guilt of this defendant. We
19 put that lewd act conviction in front of them,
20 that's something that they are going to
21 consider.

22 THE COURT: I read up on this issue
23 several weeks ago on a burglary charge where
24 there were two issues. The defendant had
25 fifteen prior burglaries, essentially the same

1 day, several first, several seconds, there
2 were nonviolent seconds, several thirds. The
3 issue was, is an oral extinguishment that it
4 can be considered as more than one conviction
5 for the purpose of the burglary first statute,
6 the priors, the element.

7 And, second, how many could they use.
8 The State was agreeing to use only two of the
9 fifteen if I would allow the case to be
10 distinguishable because they were part of one
11 crime spree. It seemed to me that the cases
12 then, and I don't believe that the law has
13 changed in the last three weeks, was that even
14 though the defense wanted to stipulate that he
15 had a record for two priors, not to say that
16 they were Burglary 1st, Burglary 3rd or Burglary
17 2nd, admitting more than two while perhaps be
18 prejudicial that admitting all fifteen would
19 much more certainly be argumentative that they
20 were prejudicial and that the State wasn't
21 required to stipulate to two.

22 It seems like the same issue to me.
23 If it's an element, the State has got the
24 right to prove it. You can offer to stipulate
25 it but they don't have to accept it. Since

1 there is only one conviction, there is not
2 that number out there that they could try to
3 use them all. Consistent with my understand-
4 ing of the case law, I think that the State
5 could go either way. They can use either one
6 that they want. They can use the conviction
7 or they can use that he had to register
8 because of the conviction, however they want
9 to do it. I think that's how it works. So
10 they can do a certified copy of the indict-
11 ment, however they want to prove it.

12 SOLICITOR STUMBO: Well, Your
13 Honor, that may be another issue. I do have
14 a certified copy of the indictment and
15 sentencing sheet. Mr. Skeen has seen this,
16 I believe. If I could pass this up to Your
17 Honor, (tendering). If there is any other
18 issues that we need to talk about, related
19 to what is on the sentencing sheet or the
20 indictment, we can take that up.

21 MR. SHEEK: Your Honor, our issue
22 with either one of those going to the jury is
23 that it contains allegations for charges of
24 which he was not convicted. Both the
25 sentencing sheet and the indictment talk about

1 criminal sexual conduct with a minor. The
2 indictment talks about allegations for which
3 he was not convicted, that being penetration
4 and things of that nature. We would certainly
5 think that the information that goes to the
6 jury should not go beyond the prior
7 conviction.

8 THE COURT: (Upon review), was this
9 a trial or a plea?

10 SOLICITOR STUMBO: Plea.

11 THE COURT: That's what it looks
12 like but I wasn't sure.

13 SOLICITOR STUMBO: He pled on the
14 CSC down to a lewd act.

15 THE COURT: Solicitor, I am going
16 to tend to agree with Mr. Skeen that this is
17 -- it's allegations which he was not convicted
18 of, on both. This affidavit on the indictment
19 is inclusive of ---

20 SOLICITOR STUMBO: Your Honor, I
21 would agree that the indictment probably has a
22 lot more in it than what needs to go in front
23 of the jury for purposes of our case.

24 THE COURT: It seems to me that the
25 safest way under 403, so as not to create an

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1 issue, is that we redact the sentencing sheet
2 just to show the plea to the offense and
3 remove from the indictment those three lines
4 which are handwritten. If we just redacted
5 those three lines, and had indictment pled to
6 and leave this handwriting, everything would
7 remain, I think that would suffice to protect
8 the prejudicial effect. Showing the plea and
9 the sentence and that would be it. That's
10 what I think is the safest course to go so as
11 not to create an additional issue; which I
12 don't believe that Mr. Lott would have to
13 overcome. He doesn't have to disprove this,
14 he has to -- he doesn't have to appear with
15 it.

16 SOLICITOR STUMBO: Correct.
17 Your Honor, we agree.

18 THE COURT: My thinking is that if
19 what my thumb is covering up, if that were
20 redacted that this sentencing sheet would be
21 appropriate after redaction.

22 MR. SHEEK: That's -- I believe,
23 Your Honor, that if that part is redacted that
24 then the rest is consistent with your ruling.

25 THE COURT: That would be my ruling

1 on this. That if you are going to do it with
2 a certified copy that you have to do it that
3 way.

4 SOLICITOR STUMBO: I believe that
5 we could use a certified copy, Your Honor, and
6 white out those lines as long as it is not
7 obvious.

8 THE COURT: If you want to, to
9 protect the record, show the original, show
10 the redaction and we can tell the jury that we
11 are sending a copy back but that the original
12 is staying with the court reporter here.

13 SOLICITOR STUMBO: Or we could
14 make this copy, Your Honor, a Court's exhibit
15 and then the redacted copy will be a State's
16 exhibit for purposes of ---

17 THE COURT: Exactly. That way the
18 record will have the original, the redaction
19 that the jury sees. I think that that would
20 be consistent with my ruling and that it would
21 protect Mr. Sheek's client if it comes to pass
22 -- if he wants to challenge my ruling, they
23 can see what I saw, why I ruled, what the jury
24 saw. Then they can judge whether the 403 is
25 proper.

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1 MR. SHEEK: Yes, sir. Thank you,
2 Judge. We have no other pretrial matters.

3 THE COURT: That will give y'all
4 this afternoon to get that redaction squared
5 away.

6 SOLICITOR STUMBO: We'll do that,
7 Your Honor. We may go ahead and make the copy
8 with this blocked out, then we will make this
9 a Court's exhibit and ---

10 THE COURT: Court's Exhibit 2?

11 SOLICITOR STUMBO: Right. And
12 then we will have the other copy available for
13 the trial.

14 THE COURT: All right. Fair
15 enough.

16 (SO ENTERED AS COURT'S EXHIBIT 2)

17 THE COURT: Fair enough. We are
18 going to start -- the jury should be here by
19 9:30, and we'll start promptly after that,
20 as soon as Mr. Sheek gets through with this
21 doctor's appointment.

22 MR. SHEEK: It won't take but a few
23 minutes. As soon as he gets there, I'll tell
24 him that I've got to go.

25 THE COURT: Since we have done this

1 this afternoon, that alleviates our having to
2 be here at 9:00 o'clock. We won't have any
3 pretrial tomorrow morning. It will be just
4 bring them in, we'll be ready to go when we
5 get them all in there.

6 SOLICITOR STUMBO: As soon as Mr.
7 Sheek gets back, we'll be ready to go.

8 MR. SHEEK: I will be here by 9:30.

9 THE COURT: That will give -- let's
10 make certain that we get the clothes arranged.
11 I know that Mr. Lott has some difficulty
12 borrowing clothes. Y'all get him the proper
13 clothes. All right. See you in the morning.

14 (COURT IN RECESS)

15 (TRANSCRIPT CONTINUED NEXT PAGE)

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24 SOLICITOR STUMBO: It is, Your
25 Honor.

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1 THE COURT: Mr. Skeen?

2 MR. SHEEK: Yes, sir.

3 THE COURT: Mr. Willingham, bring
4 me that juror.

5 (JUROR ENTERS COURTROOM)

6 THE COURT: Can you all hear me?
7 I'm not going to talk terribly loud or into
8 microphone.

9 SOLICITOR STUMBO: Yes, sir.

10 MR. SHEEK: (Affirmative nod).

11 THE COURT: I understood that you,
12 made a comment to Mr. Willingham (bailiff)
13 about a conversation or interaction with a
14 potential witness Monday evening.

15 JUROR: Correct.

16 THE COURT: Can you tell me who
17 that witness was?

18 JUROR: Heather Bennett.

19 THE COURT: How is she connected to
20 this case?

21 JUROR: I understand that she may be
22 a witness for the prosecution.

23 THE COURT: All right. Your
24 conversation with Ms. Bennett, how long did it
25 last?

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1 JUROR: About two minutes.

2 THE COURT: Where at?

3 JUROR: At Lander University.

4 THE COURT: All right. Now, did
5 she try to influence you in your position as a
6 juror, or does she just know you?

7 JUROR: I don't know. There is a
8 possibility that she may have known that I was
9 a juror.

10 THE COURT: Did you represent to
11 her that you were a juror?

12 JUROR: No, I did not.

13 THE COURT: All right. Now, this
14 conversation that you had with her, do you
15 believe that it is going to affect your
16 ability to be fair and impartial in this case?
17 Or, expressed another way, can you still be
18 fair and impartial and give both the State and
19 the defense a fair trial in this matter?

20 JUROR: Yes, sir.

21 THE COURT: Any questions from
22 y'all?

23 SOLICITOR STUMBO: No, sir.

24 MR. SHEEK: None, Your Honor.

25 THE COURT: I am satisfied that he

1 is able to ---

2 JUROR: I just felt like I needed to
3 let you know.

4 THE COURT: That's fine. That is
5 all that I need of you. You can go back in
6 there and we'll bring you back out.

7 (JUROR EXITS COURTROOM)

8 (NOTE: JUROR NOT IDENTIFIED BY NAME OR NUMBER)

9 THE COURT: Anything before we
10 bring the jury in?

11 MR. SHEEK: Yes, sir. I am going
12 to ask that he be relieved from any duty in
13 this case because -- for two reasons. One, he
14 has had contact with a witness in the case who
15 he felt like may have known that he was a
16 juror. Secondly, there was a witness list
17 read to the jury and they were asked if they
18 knew any of the witnesses. Obviously there
19 had to be some knowledge of one another, some
20 friendship or something, and he never
21 indicated that. I would have used one of my
22 strikes had I known that.

23 THE COURT: Was she on the witness
24 list?

25 SOLICITOR STUMBO: She wasn't,

1 Judge. She was not (sic). She was here on
2 Monday, she was here yesterday. I don't know
3 how she would have known that he was a witness
4 (sic), because she was not here for jury
5 selection. So we -- we didn't share the jury
6 list with her at all.

7 But that being said, Your Honor, I
8 think we're in a situation where probably, out
9 of an abundance of caution, -- I don't have
10 any problem with seating the alternate if
11 that's ---

12 THE COURT: That's why I've got an
13 alternate. My thinking is this, I want to get
14 it right the first time. I want to be fair, I
15 want to be just, and I want the jury to be
16 fair and just and be good listeners. If y'all
17 are okay with that, that's what we will do.

18 SOLICITOR STUMBO: We don't have
19 any problem.

20 THE COURT: Okay. Bring him back
21 out here.

22 (JUROR ENTERS COURTROOM)

23 THE COURT: All right, I've had a
24 discussion with the lawyers and out of an
25 abundance of caution, I am going not going to

1 put you in that position. So I am going to
2 excuse you and place the alternate. So I --
3 I very much appreciate you telling us. Had
4 you not, and we found out later, it would have
5 made a mess and we'd have to try ---

6 JUROR: Try it again. That was my
7 concern.

8 THE COURT: It's easier to get it
9 right the first time. So I appreciate it.
10 You didn't initiate the conversation but ---

11 JUROR: No, sir. She's has a
12 relationship with my wife and I ---

13 THE COURT: Very well. Thank you.

14 (WHEREUPON JUROR EXCUSED)

15 THE COURT: All right. Anything
16 else that we need to ---

17 MR. SHEEK: Yes, Your Honor. Last
18 night, based on the court's ruling to allow
19 the State to present evidence of the prior
20 criminal conviction for purposes of
21 enhancement, I would ask the court to
22 bifurcate the issues so that the issue of the
23 present allegations would be determined. If
24 the jury then determines that he is guilty of
25 these allegations, then the issue of

1 enhancement be presented in a separate
2 proceeding -- with the same jury, I think it
3 has to be the same jury. To be presented for
4 the purpose of penalty.

5 SOLICITOR STUMBO: Your Honor,
6 that is the first that I've heard of that.
7 We obviously oppose that. I think we have the
8 right to present our case to the jury on all
9 the elements. I don't see any basis for the
10 bifurcation.

11 THE COURT: I understand that most
12 of the case law that's come out regarding an
13 element which includes a prior conviction.
14 That is mostly from the burglaries side, with
15 two prior burglaries or the property -- where
16 the crimes are enhanced by prior convictions.
17 That's a little bit different. The property
18 crimes enhancement sentencing section is a
19 little bit different than a petit larceny.
20 With burglary, one of the element could be two
21 prior burglaries of any type.

22 Consistent with my prior ruling, I am
23 not going to bifurcate this because I think
24 that it is an element that the State is under
25 a burden of proof by reasonable doubt. So I

1 am not going to do that. I understand your
2 Motion, it's very interesting, but I am not
3 going to grant it.

4 MR. SHEEK: Yes, sir.

5 THE COURT: All right, are we ready
6 now?

7 SOLICITOR STUMBO: We are ready,
8 Your Honor.

9 MR. SHEEK: Yes, sir.

10 THE COURT: All right, bring them
11 in.

12 (JURY IN @ 10:00 A.M.)

13 THE COURT: As you all know, one of
14 the jurors has said that he realized, since
15 Monday, that he knew one of the potential
16 witnesses. Monday evening, they happened to
17 be a place together and had a conversation.

18 I don't want any issue of whether
19 they might know each other or be friends, his
20 wife be friends, it was easier to move him off
21 then than to put him in that position.

22 He didn't do anything wrong. He
23 said, 'I am not sure what I should do.'

24 Now, when we go through this trial,
25 I want to be particularly -- I want to make

1 certain that everybody is comfortable. We are
2 going to do that as best we can.

3 I want to make sure that everybody
4 can hear. So are we okay right now?
5 (Affirmative responses from various jurors).
6 All right. If that changes, the court
7 reporter and I work together to try to help
8 you out. The lawyers will be working more in
9 this area, and the witness seat is here by me,
10 so I want to make sure that everybody can
11 hear. Greenwood County has done some work on
12 this courtroom and actually this is the first
13 trial that's been held since they resprayed
14 the ceiling and put new lights in. Is that
15 right?

16 BAILIFF: Yes, sir.

17 THE COURT: So we are the first
18 ones to come back in here. The noise has
19 gotten better. There not as much echo, but
20 there still is some echo in here. That's one
21 of the issues that this courtroom has had over
22 the years. The County is trying to address
23 that. They're doing some improvements to it.
24 There were in here working yesterday
25 afternoon, looking at some new monitors for

1 evidence presentation to the jurors, whatnot.
2 So I guess we're in the intermediate phase,
3 trying this case while they're still working
4 on this. So that's just fine.

5 Now, this is not going to be a very
6 long case. The lawyers have told me that --
7 they've got several witnesses, but I expect
8 that we will probably be through tomorrow
9 before lunch, along about there, so we're not
10 going to have a lengthy trial.

11 Now, the job that y'all have go to
12 do, you've got to be good listeners. You can
13 take notes if you like.

14 I've got a job to do. I've got to
15 rule on legal issues from time to time. The
16 lawyers know, because they have been in front
17 of me numerous time, I hold court here
18 regularly, that if they have an objection to
19 an issue that's come before the court -- and
20 they've previewed some of that with me. They
21 kinda know their case a lot better than I do,
22 'cause they've been working on it. They've
23 just kinda given me a thumbnail sketch of what
24 they're gonna do.

25 If an issue comes up and either side

1 says, 'Judge, objection. Hearsay.
2 Relevance.' One word. That's to alert me,
3 like a red flag, that I've got to make a
4 ruling. In one word, 'this is what I am
5 concerned about, Judge.'

6 The lawyers just have to give me one
7 word, because I don't want a lengthy
8 explanation that y'all may or may not
9 understand. If that happens, I may make a
10 ruling. I may need to hear more. If I need
11 to hear more, I want it on the record so that
12 I know what they're getting at. One will say
13 'thus' and the other side with say 'that', and
14 it can get confusing. That's my job, is to
15 make those rulings. I've got to make them
16 properly and sometimes I need to hear more,
17 which is not important to y'all because that's
18 not your job, to make the legal rulings. That
19 will be my job.

20 If I need to do my job and I need to
21 hear more information from the lawyer, the
22 lawyers will say, 'Judge, I have a matter of
23 law, will you please listen?' And I always
24 say 'sure.' Y'all may be excused, I might
25 excuse y'all from the courtroom while I deal

1 with that. So when we do that, we may have
2 breaks from time to time. Don't take any
3 offense at that.

4 We're not trying to hide stuff from
5 you, it's just the rules of procedure, rules
6 of evidence, statutory rules. Sometimes they
7 are confusing because the General Assembly
8 makes 'em and we've got to try to follow them
9 and apply them. Sometimes I've got to make
10 rulings one way or the other. It's kinda like
11 I am being an umpire in baseball. I call the
12 ball, the strikes. Sometimes I want to look a
13 little closer at the replay and make sure that
14 I got the call right. I've got to make a
15 ruling. Then y'all can consider it, one way
16 or the other. You know, either Out, Safe or
17 First Base.

18 The case is going to get done, one
19 way or the other. If I make a mistake on my
20 ruling on the law, at another time and another
21 place that error will be corrected. For the
22 purposes of this trial, I am going to call it
23 just like I see it, just like an umpire. One
24 team will win, one will lose. That's just a
25 way to explain how I do my job.

1 Likewise, y'all's job is to listen
2 close, examine the evidence, listen to the
3 witnesses. There are certain questions that I
4 will give y'all at the very end of the trial.

5 The lawyers job is to advocate for
6 their clients.

7 Now, this is a criminal case. I've
8 got the indictments up here on the bench. The
9 indictment are accusations from the State to
10 the defense of what to prepare to come in and
11 defend themself on. All right?

12 Now, because the State has the burden
13 of proof, they made the accusation, the State
14 goes first. The State calls their witnesses
15 first, presents their evidence first.

16 The defense may or may not present
17 any evidence. They don't have to tell us that
18 until the end. They get to cross-examine the
19 witnesses that the State calls, all the way
20 down the line. Because it is arranged that
21 way, one person has got to start and one
22 person has to finish. Or one side has got to
23 start and one side finishes. Like a baseball
24 game, somebody bats first, somebody plays the
25 field first. You've got to start.

1 Well, y'all as a group cannot make up
2 your mind after the first witness, after the
3 first question, or after the first two
4 witnesses. That's why you can't discuss the
5 case, all the way through the case to the very
6 end -- until you hear my instructions on the
7 law. It's important, don't do that.

8 As I told you earlier, it's important
9 that you don't go on the internet, don't look
10 anything up because you might look up the
11 wrong things. My job is to tell you what the
12 law of South Carolina is: one, two, three.
13 You can consider this, this and this. The
14 internet doesn't do a good job of that. I
15 hope I do.

16 My job is to give you instructions at
17 the end of the trial, just like I've given you
18 some preliminary instructions right now. For
19 the purposes of this trial, y'all take the law
20 as I give it to you. Y'all listen closely to
21 the evidence as it is presented to you.

22 If during all this you need a break,
23 just get my attention. As the trial goes, I
24 go on the computer a little bit and I work on
25 my instructions that I'm going to give you at

1 the end of the trial. It's kind of a little
2 thing -- I don't have a speech that I am going
3 to read, say 'here you go.' It's tailored to
4 this trial, so I'm going to be working on it.
5 If I am looking at my computer, I -- I'm not
6 on Facebook because that's not allowed. I'm
7 actually working on getting my instructions to
8 you clear so that it will be understandable
9 and you can understand your task at hand.
10 Do you have a question?

11 JUROR: Can we let you know if we
12 can't hear?

13 THE COURT: Excellent question.
14 Give me the universal sign that 'I can't
15 hear.' And we will pick that up and -- you'll
16 get my attention and I will give the lawyers
17 this sign. That means "Louder." Good
18 question. We will do that. If that becomes
19 a problem, give me this sign and we will make
20 adjustments for that.

21 Jurors are not allowed to ask
22 questions. That's a good question. But at
23 the very end you'll be allowed to ask
24 questions, such as -- you'll hear testimony at
25 the end and you'll be instructed on the law.

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1 If you didn't quite understand, because I
2 talked fast, on the law then what -- what
3 y'all need to decide the case, you'll be told
4 by the witnesses. The lawyers are going to
5 tell the story through the witnesses. It is
6 the State's job to prove the case beyond a
7 reasonable doubt and I'll explain to you what
8 a reasonable doubt is, at the end.

9 As I told you, since the State brings
10 the case it is their job to prove the case.
11 Mr. Lott has no responsibility to prove or
12 disprove anything. The State has got to prove
13 the case. So those are the limited
14 instruction.

15 Now, you as a group, please all
16 stand. Ms. Hall is going to place you under
17 oath and we will get started.

18 (WHEREUPON JURY SWORN)

19 SOLICITOR WHITE: May it please the
20 Court?

21 THE COURT: Ms. White.

22 SOLICITOR WHITE: In just a few
23 minutes, y'all are going to hear from a
24 twelve-year-old girl named **Minor Child**
25 What this case will come down to at the end of

1 the day is whether or not you believe her.

2 You're going to hear from Minor Child and
3 she is going to tell you how this man sitting
4 right here, Gary Lott, came in when she was
5 sleeping and put his hand down her pants and
6 touched her in ways that he should have never
7 touched her.

8 I want you all to listen to Minor Child
9 very closely. Listen to the details that she
10 tells you all about what happened to her on
11 October 3rd, 2011.

12 You are also going to hear from
13 Minor Child mom's fiancé, kind of like her
14 stepdad. He's going to tell y'all that he was
15 the first person that Minor Child disclosed to,
16 who she told what had happened. And he's
17 going to tell you all about that and about
18 what he and Mr. Lott discussed the next day.

19 Finally you're going to hear from
20 Jeff Scott. He was the investigator with the
21 Greenwood County Sheriff's Office who looked
22 at everything and who ended up investigating
23 the case. Investigation Scott will tell you
24 about his investigation and he will tell you
25 about the elements that make this a criminal

1 sexual conduct in the first degree.

2 So listen closely to all three of
3 these witnesses as they give you those
4 details, as they fill in those blanks.

5 And, finally, you're going to see a
6 video. The video was made of Minor Child talking
7 to someone who was interviewing her four days
8 after this happened. So it was right after it
9 happened. You will hear from her today and
10 you'll see the video from where she talked
11 four days after this happened.

12 The Judge just told you all that it
13 is our burden to prove this case beyond a
14 reasonable doubt. That is a high burden, it's
15 a burden we welcome. What it means is that at
16 the end of the day you're firmly convinced
17 that this happened, that Minor Child is
18 telling the truth and that Gary Lott put his
19 hand down her pants and touched her.

20 It doesn't mean that you are one
21 hundred percent beyond the shadow of a doubt
22 convinced, because we could never do that.

23 It doesn't mean that something could
24 have been done differently. Keep your eyes on
25 the ball. What it means is that you are

1 firmly convinced. Don't get distracted.
2 The Judge used the baseball analogy. My
3 son played T-ball last year. It was so
4 frustrating because over and over it was a
5 ground ball, ground ball. I don't want you
6 to be looking at butterflies and Dandelions,
7 getting distracted by all the other stuff.
8 Like I said, what it is going to come down to
9 is this little girl and whether or not at the
10 end of the day you feel that you are firmly
11 convinced that this happened. Thank you.

12 THE COURT: Thank you, Ms. White.
13 Mr. Sheek?

14 MR. SHEEK: Thank you, Your Honor,
15 may it please the Court.

16 THE COURT: Yes, sir.

17 MR. SHEEK: Ladies and Gentlemen of
18 the jury, good morning. Again, my name is
19 Lance Sheek. The gentleman sitting right
20 beside me here is Michael Medlock, my law
21 partner. Then you all saw this gentleman
22 yesterday, this is Gary Lott who the State
23 refers to as the defendant. His name is Gary
24 Lott.

25 He was arrested here in Greenwood and

1 he is the one that the State has brought these
2 charges against.

3 What you have been chosen as is a
4 criminal jury. What does that mean? I don't
5 know if any of you have sat on a jury before,
6 brought any experience to -- this may be your
7 first time. But let me tell you what it is
8 not. You know, we have grown up in a society
9 of TV. When I was young, it was *Perry Mason*.
10 That might have been before some of y'all's
11 time. We've grown up now with years and years
12 of *Law & Order*.

13 I think a lot of times people that
14 don't actually work in this system of justice
15 that we have have a concept of our system of
16 justice based on what you see on TV. Let me
17 go ahead and tell you that's not the way that
18 it works. This is the real world.

19 That's what you have been chosen to
20 participate in, is our system of justice.
21 It's not going to unfold like a TV show, that
22 in forty-five minutes everything is going to
23 work out to your complete satisfaction where
24 somebody admits the fact of doing this or not
25 doing that, or some wonderful piece of

1 forensic evidence is going to come in to prove
2 or disprove something.

3 But what is the same as those TV
4 shows is that the State has the burden of
5 proving the offense that they've charged Mr.
6 Lott with, and they have to prove that beyond
7 a reasonable doubt.

8 Ms. White just got up here and talked
9 to you about that. She said basically, folks,
10 what it comes down to is to ask yourself if
11 you believe. That's what it comes to.

12 I understand why they want it to be
13 that way, because they want you to think that
14 if you were to vote not guilty, then you're
15 calling one person a liar and another person
16 telling the truth. But that's not what our
17 system of justice is. Don't be misled. Our
18 system of justice is that the State can bring
19 a charge and the State must prove beyond a
20 reasonable doubt the elements.

21 Now, you're going to be given an
22 option in this case of a Guilty or Not Guilty
23 verdict. There probably are three verdicts in
24 reality: Guilty, Not Guilty and Not Proven.
25 Because if you are not convinced of every

1 element beyond a reasonable doubt, then the
2 oath that you just took says that you will
3 return a verdict of Not Guilty. That is not
4 saying that someone is a liar or that someone
5 is telling the truth. That is saying that
6 'we, the jury, do not have enough information
7 to find beyond a reasonable doubt that what
8 you say happened happened.'

9 Now, why is that important? Well,
10 if you think about it, how would you prove a
11 negative? If I were to go out and, say, --
12 say that Mr. Medlock here, who I just
13 introduced to you, if about midnight I came
14 out of my condo and he tried to rob me. He
15 pulled a gun and demanded my wallet. If I
16 hadn't slammed the door and kept him out, that
17 man right there would have robbed me.

18 Now, the way that it works in South
19 Carolina, in our system of justice, is that if
20 I go to the police and I swear that happened,
21 they go to a magistrate and swear that that's
22 what I told them, the magistrate issues a
23 warrant. Mr. Medlock doesn't get to
24 participant in that as far as calling
25 witnesses or having any type of hearing. He

1 probably doesn't even know what's going on.

2 A warrant is issued, he gets
3 arrested. He gets taken in and has, first, a
4 bond hearing. A bond hearing is simply where
5 a judge sets the terms and conditions for a
6 defendant's release pending a trial on the
7 allegations. Again, it is not an evidentiary
8 hearing. Mr. Medlock doesn't get to call
9 witnesses or present evidence or anything like
10 that at that first hearing.

11 He can ask for a preliminary hearing
12 on that charge. At a preliminary hearing, the
13 State comes in before a judge, not a jury, and
14 they present probable cause evidence. While
15 Mr. Medlock can come and cross examine
16 whatever the State chooses to present, he
17 doesn't get to participant as far as calling
18 witnesses, presenting any evidence that he
19 wants. That is not the stage that he is in.
20 He doesn't get to do that.

21 If the judge finds probable cause,
22 then it will go to a grand jury. The State
23 has told you about an indictment in this case.
24 Our grand jury meets in a room back here and
25 they determine whether or not to issue an

1 indictment. As the Judge has told you, that's
2 simple a charging instrument. Now, that is a
3 secret. Mr. Medlock, now the defendant,
4 doesn't even get to go in there, he doesn't
5 get to have an attorney in there, he doesn't
6 get to call witnesses, not to examine anybody,
7 doesn't get to participate. An indictment is
8 issued.

9 I think a lot of times people think,
10 'Well, if they got to the stage of indictment,
11 then something must have happened.' That's
12 what I want you to understand, that all the
13 way through that process the defendant doesn't
14 get to participate.

15 When does a defendant get to
16 participate? Right here. This is the first
17 time that Gary Lott has gotten to participate
18 in this case in any meaningful way, to have an
19 attorney come in to test the evidence.

20 Now, why is testing the evidence
21 important? Because the State has told you
22 that it is going to come down to whether or
23 not somebody is telling the truth. Well,
24 you're going to be asked to determine who is
25 telling you the truth at the end of this case,

1 whether it is today, tomorrow or whenever we
2 conclude. You're going to go back into that
3 jury room that you've been sitting in, you're
4 going to deliberate. The Judge is going to
5 tell you to return a verdict, which literally
6 means "to speak the truth". That is really
7 what we are seeking here. We put that in your
8 hands, to determine what the truth is.

9 As the Judge has told you, everybody
10 has got a little bit different role in this
11 case. The State prosecutes, they are going to
12 bring you the evidence that they've created,
13 that they've gathered, however you want to
14 term it. They're going to ask you to find Mr.
15 Lott guilty. I guarantee you that. If they
16 weren't going to ask you that, they wouldn't
17 be sitting here at this table.

18 My job is to come in here for the
19 first time that Mr. Lott gets to participate
20 and protect his rights and test the evidence.
21 I'll tell you, up until now you're going to
22 see that no one has done that.

23 The judge here will rule on issues of
24 law. If the prosecutor were to stand up right
25 now and object to something that I am saying,

1 'that's improper, he can't do that' then we
2 would turn to the Judge and the Judge would
3 determine what the law is, what the proper
4 procedure is.

5 At the end of this case he is going
6 to do what we call "charge you." Literally
7 read to you from the law of South Carolina
8 that this is what the law says.

9 Then he going to tell you to find the
10 facts. So you people have the hardest job of
11 anybody in this courtroom. Don't think for a
12 second that we think that you've got the easy
13 job, you've just got to sit there and listen.
14 You've got the hardest job because you're
15 going to have to determine the facts. No one
16 gets to secondguess that. That is the hardest
17 job.

18 Why is that a hard job? Well
19 because, let's face it, allegations are easy
20 to make. I just told you all about the
21 scenario with Mr. Medlock. I could be very
22 convincing, probably, on the stand if I wanted
23 to swear that it happened. Obviously it
24 didn't happen. What if I swore that it did?
25 How would he prove that it didn't? There are

1 no cameras outside my condominium. There's no
2 other witnesses there. It's his word against
3 mine. He's living the next twenty-five years
4 in prison for armed robbery, maybe burglary.
5 How does he prove that it didn't happen?

6 Well, the law says that he doesn't
7 have to prove that it didn't happen. The law
8 says that they have to prove that it did
9 happen. That is a protection that all of us
10 as citizens of Greenwood County get to stand
11 behind, is that a mere allegation isn't going
12 to put us away. It's the proof.

13 Now, how do you do that? You come
14 into this courtroom armed with probably the
15 best tool that you've going to use when you
16 look at the evidence. What is that? It is
17 your common sense.

18 You, as the jury, have the sole job
19 to judge the credibility of the people who
20 testify. Credibility only means their
21 believability. Are they telling you the
22 truth? Are they not telling you the truth?

23 The solicitor can say that they do or
24 don't believe something. I can say that I do
25 or don't believe something. It doesn't matter

1 what I do or don't believe. What matters is
2 the facts as you find them. Now, how do you
3 do that? You've got to test it against the
4 other facts. We come up here, we put our hand
5 on the Bible and we swear to tell the truth.
6 When Moses was writing the law in this, three
7 thousand years ago, longer than that, he wrote
8 that if someone comes and brings a charge
9 against another that they must have a
10 corroborating witness, because even then they
11 had problems with false allegations.

12 Now, in this kind of case that
13 corroborating witness may not be a person.
14 It may be other pieces of evidence that
15 corroborate the story. You know, if I tell a
16 certain story about Mr. Medlock, what do we
17 look to see? Well, where was he? Does he own
18 a gun? If I say that he had a gun, what was
19 the description of the gun? Was it black, was
20 it silver? Was it an automatic, was it a
21 revolver? Was it a handgun, was it a long
22 gun? You look for the details and then you
23 go to corroborate. That's how you do it.
24 That's one thing that I learned.

25 I graduated in 1983 from Bowman Gray

1 High School outside of Winston-Salem. I don't
2 know if any of y'all are familiar with that
3 area. The old high school that I went to is
4 over on 158, not far from the racetrack.
5 They've built a new one now. But I learned
6 that people are not always honest. But
7 actually I graduated in 1984 from Mauldin High
8 School on Butler Road, just outside of
9 Greenville. Or was it Easley High School?

10 I actually did graduate from one of
11 those high schools in one of those years that
12 I told you. One of those is true. Right now,
13 do y'all have any idea which one that it was?
14 You don't. How would you know? Well, if it
15 was an important part of a trial, I would
16 imagine somebody could probably go, get my
17 transcripts and find out exactly where I
18 graduated from. If I sat here and told you a
19 lie, they'd have the evidence to tell you what
20 is true. That's how you corroborate, that's
21 what is important.

22 So if they stand up here and tell a
23 story, that's fine. But I want you to do one
24 thing for me. I want you to keep an open
25 mind. I want you to keep an open mind to the

1 end of this case. In the book of Proverbs,
2 that same book that I just told you about, in
3 Chapter 17, it says *"He who tells a story*
4 *first seems right until another comes along to*
5 *question it."*

6 Because when I sat here and told you
7 about going to the high school up at Bowman
8 Gray,, with the details of where it was, you
9 probably were believing me. When I told you
10 about going to Mauldin High School and where
11 it was, now you're starting to question it.

12 Keep an open mind in this case. You
13 wait until the end of this case and you see
14 what was done, what should have been done,
15 what could have been. Because we're on trial
16 here, this man sitting in this chair is on
17 trial here, for something that is very, very
18 serious.

19 The State has a duty to arm you with
20 tools that are necessary to complete the task.
21 They are going to ask you to find him guilty.
22 The people with the resources, they are the
23 people with the personnel, they are the people
24 with access to the witnesses is the State.
25 The one with the burden is the State.

1 Is Mr. Lott guilty? The law tells
2 you that right now he is presumed not guilty.
3 The only people that can take that away is
4 you, after the presentation of all the
5 evidence. So, please keep an open mind.

6 Now, I know you all have things that
7 you'd rather do. I doubt that any of y'all
8 were so excited that you got picked for jury
9 duty, that you got to come here and listen to
10 me talk. But I am going to tell you
11 something, just as I told you that this is the
12 first time that he gets to participate, the
13 first time that he gets someone outside the
14 realm of right here that will listen to the
15 evidence is you people. So we appreciate your
16 time here. We won't waste it. It's very,
17 very important to what we're doing here.
18 Thank you.

19 THE COURT: Ms. White.

20 SOLICITOR WHITE: The State calls
21 Minor Child

22 THE COURT: This is a young girl.
23 So if y'all can't hear her, just -- she's
24 young. Ms. White will try to adjust the
25 microphone and try to speak with her. Okay?

1 That goes for all the witnesses.

2 Ms. Moorehead, you're our foreperson.

3 You don't get paid extra. You have an extra
4 duty, though. You've got to write the
5 questions down, and when you need a break
6 just speak with Mr. Willingham.

7 (WITNESS TAKES STAND)

8 Minor Child being duly sworn to
9 tell the truth, the whole truth and nothing
10 but the truth, testified, as follows:

11 DIRECT EXAMINATION

12 BY SOLICITOR WHITE:

13 Q. Would you please tell us your name?

14 A. Minor Child

15 Q. Can you spell Minor Child for us?

16 A. (Emotional).

17 THE COURT: Minor Child it's okay.

18 You take your time. Okay? I am in not hurry.

19 Okay?

20 DIRECT EXAMINATION CONTINUED

21 BY SOLICITOR WHITE:

22 Q. Are you nervous, Minor Child

23 A. (Emotional/crying, affirmative nod).

24 Q. Just remember that we need you to answer
25 out loud, okay? She (court reporter) can't

1 take down nods. Can you spell your name for
2 us?

3 A. [REDACTED].

4 Q. And your last name is [REDACTED]?

5 A. Yes, ma'am.

6 Q. You're twelve years old, aren't you?

7 A. (Affirmative nod).

8 Q. Where do you go to school?

9 A. Brewer Middle School.

10 Q. What grade are you in?

11 A. Seventh grade.

12 Q. When is your birthday?

13 A. [REDACTED] [REDACTED].

14 Q. Let me just move this (microphone) a
15 little bit closer to you. Speak up a little
16 bit more for us.

17 A. (Affirmative nod).

18 THE COURT: This lady right here
19 (court reporter), she is taking down every-
20 thing that you say and everything that I say
21 too. That's her job. She just needs to hear
22 what you're saying. That little box that
23 she's got is a recorder. You need to speak up
24 so that she can get down what you're saying.
25 Don't be nervous.

1 (OFF RECORD BENCH CONFERENCE)

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR WHITE:

4 Q. All right. I am going to start over, just
5 to make sure that we've got everything set
6 now. So you are twelve years old?

7 A. Yes.

8 Q. And where do you go to school?

9 A. Brewer Middle School.

10 Q. What grade are you in?

11 A. Seventh grade.

12 Q. When is your birthday?

13 A. [REDACTED] 27th, [REDACTED].

14 Q. Where do you live, Minor Child

15 A. [REDACTED].

16 Q. Do you know how long you have lived there?

17 A. Two years, two a half.

18 Q. So were you living there back in October
19 of 2011?

20 A. Yes, ma'am.

21 Q. Who lives there with you?

22 A. My mom, my stepdad, my brother, my other
23 brother, my sister, me and my other brother.

24 Q. When you say your mom and your stepdad,
25 what are their names?

1 A. Kayla and James Baker.

2 Q. Do you know Mr. Gary Lott?

3 A. Yes, ma'am.

4 Q. All right. Is Mr. Lott in the courtroom
5 today?

6 A. Yes, ma'am.

7 Q. Can you point him out for us?

8 A. Right there (indicating defendant).

9 SOLICITOR WHITE: Your Honor, can
10 the record reflect that she pointed out the
11 defendant?

12 THE COURT: Solicitor, it so
13 reflects.

14 DIRECT EXAMINATION CONTINUED

15 BY SOLICITOR WHITE:

16 Q. Do you remember when you met Mr. Lott?

17 A. I'm not sure.

18 Q. How do you know him?

19 A. Through my stepdad and my mom.

20 Q. Can you tell us a little bit about your
21 relationship with him before October 2011?

22 A. It was okay. I used to ride his
23 motorcycle sometimes.

24 Q. Would he come over to your house and hang
25 out?

1 A. He used to eat dinner sometimes.

2 Q. Can you speak up just a little bit? What
3 was your answer?

4 A. He used to eat dinner with us sometimes.

5 Q. Would he come over a lot?

6 A. (Negative gesture), sometimes. Not a lot.

7 Q. And you said that he would take you for
8 ride on his motorcycle?

9 A. Yes, ma'am.

10 Q. Would you say that you were friendly with
11 him?

12 A. (Affirmative nod).

13 Q. You have to answer out loud.

14 A. Yes.

15 Q. Did Mr. Lott ever touch you in a way that
16 you didn't like?

17 A. Yes, ma'am.

18 Q. Do you remember about when that was?

19 A. Yes, ma'am.

20 Q. When was that?

21 A. It was around September something, 2011.

22 Q. Okay. What happened in September of 2011?

23 A. I was asleep. I woke up and I felt
24 somebody's hand down my pants. I knew that it
25 was him because his hand was shaking. Jamie

1 got up and went to the kitchen and I went in
2 there, and he told me to go back to bed.

3 Q. Was that the only time that happened?

4 A. Uh, -- no. When Jamie had to go to the
5 hospital, he was rubbing on my leg.

6 Q. Do you remember about when that was?

7 A. A couple of weeks before that happened.

8 Q. Did that happen -- so that would have been
9 September 2011? The first time that he was
10 rubbing on your leg?

11 A. You know, yeah, and this happened a few
12 weeks after.

13 Q. I'm sorry. The beginning of October 2011?

14 A. (Affirmative nod).

15 Q. Can you answer out loud for me?

16 A. Yes.

17 Q. So you said that you were asleep. Where
18 were you sleeping?

19 A. On our couch.

20 Q. Was that in, like, the living room?

21 A. Yes.

22 Q. Why were you sleeping on the couch?

23 A. I don't know. I guess I went to sleep on
24 the couch.

25 Q. Do you remember what you were wearing?

1 A. I think that it was a pink skirt, and I
2 don't remember the shirt.

3 Q. So you were asleep on the couch and --
4 what happened next?

5 A. I felt somebody's hand down my pants.

6 Q. Okay. What was the person's hand doing?

7 A. Uh, I'm not sure. I just felt it down my
8 pants.

9 Q. Was it on top of your skin?

10 A. Yes, ma'am.

11 Q. So there would have been clothes between
12 your skin and the hand?

13 A. I guess so -- yeah. Yes.

14 Q. I'm a little bit confused. It was on top
15 of the skin?

16 A. (Affirmative nod).

17 Q. So was it under your underwear?

18 A. Yes, ma'am.

19 Q. What did you do when you felt the hand
20 down your pants?

21 A. I moved over. I went in the kitchen so
22 that he quit.

23 Q. Did you ever open your eyes to see who it
24 was?

25 A. Yes, ma'am.

1 Q. Okay. Who was it?

2 A. Gary Lott.

3 Q. Is there any other way that you knew that
4 it was Mr. Lott?

5 A. Because his hand was shaking.

6 Q. Does Mr. Lott's hand shake?

7 A. Yes, ma'am.

8 Q. When the hand was down your pants, where
9 was he touching?

10 A. Well, inside and outside.

11 Q. When you say inside and outside, are you
12 talking about your private area?

13 A. Yes, ma'am.

14 Q. You said that Jamie woke up and went to
15 the kitchen and you went in there with him.
16 What happened after that?

17 A. He told me to go back to bed. So I went
18 back to bed. Then I gathered my covers and
19 went to my room.

20 Q. Okay. Did anything happen after you were
21 in your room?

22 A. Not that I can remember.

23 Q. When is the first time that you told
24 someone what happened?

25 A. The time when I got off the school bus.

1 I told -- Jamie was on the front porch and I
2 told him right that second.

3 Q. And was that the next day?

4 A. Yes, ma'am.

5 Q. Let me back up a little bit. Do you know
6 about what time of night that this happened?

7 A. Around 2:00 a.m., or 2:30 a.m. in the
8 morning.

9 Q. All right. How do you know?

10 A. Because when I went in the kitchen, I
11 looked at the clock on the stove.

12 Q. So this would have been 2:00 or 2:30 in
13 the morning?

14 A. (Affirmative nod).

15 Q. And when did you tell Jamie what happened?

16 A. The next day after I got off the school
17 bus.

18 Q. The next day, later that afternoon?

19 A. It was around like 4:30 when I got off the
20 school bus.

21 Q. What happened after you told Jamie what
22 had happened with Mr. Lott?

23 A. Well, he called mama and -- Gary came
24 over, and Jamie told me to go in the house.
25 I went in the house, I watched them out the

1 window and they hugged and then Jamie turned
2 around and put his cigarette out. Gary came
3 in the house and he talked to me. Then Jamie
4 told him to go back outside.

5 Q. What did Gary say to you when he came in
6 the house?

7 A. He said, uh, 'Don't tell anybody' because
8 it would ruin my mom's friendship. He told me
9 that ---

10 Q. Did he say ---

11 A. --- I was dreaming.

12 Q. I'm sorry, I cut you off. What else did
13 he say?

14 A. That I was dreaming.

15 SOLICITOR WHITE: Beg the court's
16 indulgence.

17 THE COURT: Yes, ma'am.

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR WHITE:

20 Q. Minor Child do you remember going to talk to
21 somebody at The Child's Place?

22 A. Yes, ma'am.

23 Q. And did she ask you questions kinda like I
24 am today about what happened?

25 A. Yes, ma'am.

1 Q. Were your answers to her that day -- is
2 that what really happened?

3 A. Yes, ma'am.

4 Q. And what you're telling this jury today,
5 is it what really happened?

6 A. Yes, ma'am.

7 Q. How do you feel about Gary now?

8 A. I don't like him at all.

9 MR. SHEEK: Objection to the
10 question. Relevance, Your Honor.

11 THE COURT: Overruled.

12 DIRECT EXAMINATION CONTINUED

13 BY SOLICITOR WHITE:

14 Q. Minor Child going back to the first time that
15 Mr. Lott touched you. Was he -- did he stay
16 at your house that night?

17 A. Yes, ma'am, because he had to take us to
18 school the next morning.

19 Q. Why did he have to take y'all to school
20 the next morning?

21 A. Because Jamie went to the hospital.

22 Q. So that's kinda of how you are remembering
23 when it happened?

24 A. (Affirmative nod).

25 SOLICITOR WHITE: Please answer any

1 questions that Mr. Sheek has for you.

2 THE COURT: Mr. Sheek.

3 MR. SHEEK: May it please the
4 court.

5 THE COURT: Yes, sir.

6 CROSS EXAMINATION

7 BY MR. SHEEK:

8 Q. Minor Child my name is Lance Sheek. I am
9 going to ask you a few questions. Okay?

10 A. (No verbal response).

11 Q. If you need to stop or take a break, you
12 just tell that judge sitting right beside you
13 and we will do that. Okay?

14 A. (No verbal response).

15 Q. Like the solicitor told you, I'll need you
16 to say yes or no because this lady (court
17 reporter) has to record it. Okay?

18 A. Okay.

19 Q. All right. I don't want to trick you or
20 anything but sometimes I am not clear on my
21 questions. If I ask you something that you
22 don't understand, just tell me that you don't
23 understand. Okay?

24 A. Okay.

25 Q. The solicitor asked you about going and

1 giving a statement to another lady a while
2 back. Do you recall doing that?

3 A. Yes, sir.

4 Q. And that lady told you that the -- that
5 what you were telling her was being recorded.
6 Do you remember that?

7 A. No.

8 Q. Well, the solicitor asked you if what you
9 told that lady was true and you said 'yes.'
10 Correct?

11 A. Yes.

12 Q. Do you remember what you told that lady?

13 A. A few things, not everything, just a few.

14 Q. If you don't remember it, how do you know
15 that everything that you told her was right.

16 A. (No verbal response).

17 Q. Well, let me ask you this. Has anybody
18 shown you that video lately and asked you to
19 watch it again?

20 A. (Affirmative nod).

21 Q. Is that a yes?

22 A. Yes, (emotional).

23 Q. Do you need to take a break, Minor Child

24 A. (Affirmative nod).

25 Q. All right.

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before The Honorable Eugene C. Griffith, Jr.

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1 MR. SHEEK: Judge, can we take a
2 little break for the witness?

3 THE COURT: I am going to let her
4 walk around a little bit, get her composure.
5 Y'all step in the jury room, go to the rest-
6 room, get a cup of coffee.

7 I don't know if we've got any
8 smokers. If you do, and we do, Mr. Willingham
9 or Mr. Higginbottom will get y'all a place
10 where you can do that. As soon as y'all are
11 ready -- that'll take more time, so as soon as
12 you all are ready, we'll be ready to go.

13 Can't discuss the case. We'll have
14 you back here in a minute.

15 (JURY OUT @ 10:45 A.M.)

16 THE COURT: This is off the record
17 -- (conversation with witness about bulldog).
18 Wendy, let her walk around a little bit. She
19 just can't talk to anyone during the break. I
20 was showing her a picture of my bulldog.

21 (BRIEF RECESS)

22 (DEFENDANT PRESENT)

23 THE COURT: You want to discuss
24 Court's Exhibit 1, the video?

25 MR. SHEEK: Yes, sir.

1 SOLICITOR WHITE: What is one? The
2 video. Okay. What's two, Solicitor? So this
3 is three.

4 COURT REPORTER: What's two?

5 SOLICITOR WHITE: The anatomical
6 drawings that he is getting. There's ---

7 COURT REPORTER: And what is three?

8 SOLICITOR WHITE: The certified ---

9 COURT REPORTER: --- conviction.

10 SOLICITOR WHITE: Yeah.

11 (STATE'S EXHIBITS 1 THROUGH 3 MARKED)

12 THE COURT: All right. Have we got
13 the video issue resolved?

14 MR. SHEEK: I think that we are
15 just marking it for identification.

16 SOLICITOR STUMBO: Well, and --
17 that's correct, Your Honor. We will put it
18 in through Investigator Scott when he takes
19 the stand. I don't think that there is any
20 objection to foundation.

21 MR. SHEEK: No, sir. We resolved
22 that yesterday.

23 THE COURT: That's what I was
24 thinking. I just want to make certain that
25 we have a smooth transition for ---

1 SOLICITOR STUMBO: The only other
2 thing before we bring them out here, Your
3 Honor, is that we have Court's Exhibit 2, the
4 unredacted copy of the sentencing sheet on
5 prior convictions, the Indictment. State's 3
6 now is the redacted copy of the sentencing
7 sheet. My intention is to put that in
8 through Detective Scott.

9 THE COURT: Three?

10 SOLICITOR STUMBO: Right. I'll
11 hand you State's 3 and Court's 2 and ask him
12 to look at them. Then, you know, I'll ask him
13 if State's 3 follows ---

14 THE COURT: Okay. That sounds
15 consistent with my instructions yesterday.

16 SOLICITOR STUMBO: Correct.

17 THE COURT: All right. Bring them
18 in.

19 (JURY IN @ 11:00 A.M.)

20 THE COURT: Mr. Sheek. Continue.

21 CROSS EXAMINATION

22 BY MR. SHEEK:

23 Q. If you need another break, you just tell
24 us. That's fine. Now, we talked about you
25 giving the statement previously to the lady --

1 I believe her name was Charlotte. Do you
2 remember her, a red-headed lady?

3 A. Yes.

4 Q. You went to a place here in Greenwood, she
5 asked you some questions about what happened?

6 A. Yes.

7 Q. Were you telling her the truth, to the
8 best of your ability at that time?

9 A. Yes, sir.

10 Q. And are you doing that today?

11 A. Yes, sir.

12 Q. Now, you said today and, I believe, to
13 Charlotte also that the only way that you knew
14 it was Gary was because the hand was shaking?

15 A. Yes, sir.

16 Q. It wasn't because you saw him or anything
17 like that?

18 A. Well, at first I knew it was him because
19 his hand was shaking. Then I looked and it
20 was him. So I was, like, 'Oh, that's Gary.'

21 Q. When you looked, what was he doing then?

22 A. He was like -- like -- he -- I moved over
23 and he, like, jerked away. Then I looked up
24 and he was like leaning down like this.

25 Q. You said that you were sleeping on the

1 couch?

2 A. Yes, sir.

3 Q. Was Gary sleeping in the house?

4 A. Yes, sir.

5 Q. Do you know why Gary was sleeping in the
6 house?

7 A. Because he was on his motorcycle and it
8 was raining.

9 Q. Was that something that he would do from
10 time to time.

11 A. Well, he -- no, not really.

12 Q. Well, let me ask you this. You have a
13 room there at the house, right?

14 A. Yes, sir.

15 Q. But that night you were sleeping on the
16 couch?

17 A. Yes, sir.

18 Q. Is sleeping on the couch something that
19 you normally did?

20 A. I used to do it a lot, and then when --
21 then when I got my bunkbeds, I slept in my
22 room a lot.

23 Q. Okay. Did you have your bunkbeds in
24 October of 2011?

25 A. No, sir.

1 Q. So at that point you said that you slept
2 on the couch a good bit?

3 A. Yes, sir.

4 Q. What kind of bed did you have then?

5 A. Like a queen-sized bed, but my sister
6 always slept in it.

7 Q. Was your sister in it that night?

8 A. Uh, I think so.

9 Q. Well, you said that you got your covers
10 and went to your room; right?

11 A. Yes, sir.

12 Q. Well, tell me a little bit about this
13 house. The kitchen, how close is that to the
14 den?

15 A. Well, when you walk in our living room and
16 -- you're in the living room and you turn that
17 way, there's our dining room. So I had to go
18 out of the living room, through the dining
19 room and turn that way and there's the
20 kitchen.

21 Q. And you said that Jamie got up and went
22 into the kitchen?

23 A. Yes, sir.

24 Q. How long was it after you say that Gary
25 had done this that Jamie went to the kitchen?

1 A. I am not sure.

2 Q. Do you know what Jamie went to the kitchen
3 for?

4 A. I guess he got bored, because he was doing
5 the dishes. When I walked in the kitchen, he
6 was doing the dishes.

7 Q. So Jamie wasn't asleep at 2:00 or 2:30 in
8 the morning when this occurred, was he?

9 A. I don't think so.

10 Q. So when Jamie went in the kitchen to do
11 the dishes, you got up and went in there with
12 him?

13 A. Yes, sir.

14 Q. Okay. Was this far enough away from the
15 den that Gary couldn't hear or see what you
16 were doing in the kitchen?

17 A. He could have heard. He could hear me,
18 but he couldn't see me.

19 Q. And you talked to Jamie?

20 A. Well, I went in there and he told me to go
21 back to bed. The next day I told him what
22 happened.

23 Q. Okay. Was Jamie living there at the time?

24 A. Yes, sir.

25 Q. Well, where would he normally sleep?

1 A. In my mama's room, with her.

2 Q. Where was your mama's room in relation to
3 your bedroom?

4 A. It was -- see, our bedrooms are on two
5 different sides of the house.

6 Q. Okay.

7 A. My bedroom is on the far right and her
8 bedroom is at the far left.

9 Q. So her bedroom is on the end of the house
10 where the den is?

11 A. Well, it's right beside the dining room.

12 Q. Now, you said that you went through the
13 dining room to get to the kitchen; right?

14 A. Yes, sir.

15 Q. Okay. So if I'm sitting here in the den
16 where you were sleeping on the couch, what is
17 the very next room beside you?

18 A. The -- uh, the other living room. Because
19 we have two -- well, one's a living room and
20 one's a den. One has got a fireplace.

21 Q. How far was your mother's bedroom from
22 where you were sleeping?

23 A. I am not sure. It's like -- you're in the
24 living room and then you go, like, our dining
25 room and then you go to kitchen and you can go

1 to my mom's room through the dining room. You
2 can go to the kitchen through the dining room,
3 too.

4 Q. Okay. You said the kitchen was close
5 enough that when you were in there talking to
6 Jamie that Gary could have heard you?

7 A. Yes. The kitchen, I could -- if I was
8 standing in the kitchen, I could walk back
9 there in about, like, three seconds.

10 Q. Okay. So the kitchen and your mom's
11 bedroom are close together?

12 A. Yes.

13 Q. So you can hear what is going on in the
14 den from your mom's bedroom?

15 A. Yes.

16 Q. Now, tell me about your bedroom. Does it
17 have a lock on the door?

18 A. Yes.

19 Q. Did it have a lock on the door that night
20 is what I'm talking about?

21 A. Yes, sir.

22 Q. And that lock actually locks kind of
23 backwards. It locks from the outside, doesn't
24 it?

25 A. Yes, but Jamie fixed it and now it locks

1 from the inside.

2 Q. Yeah, but on this night it locked from the
3 outside, didn't it?

4 A. Yes.

5 Q. So you could actually lock someone in the
6 bedroom, not lock them out of the bedroom?

7 A. Yes.

8 Q. Now, you told the lady when you went for
9 the forensic interview that you got your
10 covers, you went to the room and locked the
11 door. Isn't that what you told her?

12 A. Yes. Then I stayed in there for the whole
13 night. Then -- I guess -- I guess -- then
14 somebody opened my door and I had to wake up.
15 Like the next morning somebody opened my door.

16 Q. Okay. You stayed there for the whole
17 night?

18 A. Yes.

19 Q. And you're sure of that, right?

20 A. Yes, sir.

21 Q. And that would be the absolute truth
22 today, wouldn't it?

23 A. Yes, sir.

24 Q. Is that what you told the lady when you
25 gave your statement?

1 A. (No verbal response).

2 Q. Or do you remember?

3 A. I'm not for sure.

4 Q. Well, let me ask you this. You said
5 before that somebody -- I guess from the
6 Solicitor's office -- got you to watch the
7 tape of your statement?

8 A. Yes.

9 Q. When was that?

10 A. Yesterday.

11 Q. And did they go over your testimony with
12 you?

13 A. (Pause) ---

14 Q. Do you understand what I'm asking? Do you
15 want me to ask it a different way?

16 A. Yes, sir.

17 Q. Okay, that's fair enough. Did they tell
18 you the kind of questions that they would be
19 asking you?

20 A. Yes, sir.

21 Q. And did they tell you what kind of
22 questions to expect me to ask you?

23 A. Yes, sir.

24 Q. Because, obviously, you were nervous about
25 having to come to court. It gets a little

1 nervous, doesn't it?

2 A. (Affirmative nod).

3 Q. I understand. That's fine. You okay?

4 A. (Affirmative nod).

5 Q. Okay, we're not wanting to trick you.

6 We just want to find out what happened.

7 Do you recall whether or not you told the

8 forensic interviewer whether or not you went

9 back out to sleep in the den again that night?

10 A. I don't know. I can't remember half the
11 video.

12 Q. Well, let me ask you this. Do you
13 remember that night. When you're testifying
14 today, are you testifying from what you
15 remember happening?

16 A. Yes, sir.

17 Q. Okay. Did you go back out and sleep in
18 the den after Jamie had went to bed?

19 A. I don't think so.

20 Q. Okay. All right. Now, let's talk about
21 the motorcycle for a second. Let's talk about
22 something else that you said. You said that
23 you used to ride the motorcycle with Gary?

24 A. Yes, sir.

25 Q. If you just had to guess, and nobody is

1 trying to pin you down to a number, but just a
2 guess, how many times do you think that you
3 went on motorcycle rides with Gary?

4 A. Uh, -- I don't know. I know that it was a
5 lot, though.

6 Q. It was a lot?

7 A. (Affirmative nod).

8 Q. Here, let me show you something. I
9 believe that you told the lady in the
10 interview what kind of motorcycle that it
11 was. Do you remember what it was?

12 A. I think it was a Gold Wing motorcycle.

13 Q. Very good. It was a Gold Wing. You are
14 exactly right. Is that a picture of it there?

15 A. Yes, sir.

16 Q. Okay. Now, when y'all would take these
17 motorcycle rides, would it be just the two of
18 you?

19 A. Yes.

20 Q. And y'all did this a lot?

21 A. Yes, sir.

22 Q. Where would you go, what types of places
23 would you go?

24 A. We'd ride around town, we'd go to his
25 house sometimes and play with his dog, stuff

1 like that.

2 Q. When you'd go to his house and play with
3 his dog, who would be there? Did he live with
4 anybody?

5 A. No, it was just me and him -- was just him
6 and his dog.

7 Q. About how times did y'all do that?

8 A. Three or four times.

9 Q. How long have you known Gary -- and I
10 understand that you may not be exactly right,
11 and that's all right. Just a guess?

12 A. About a year and a half.

13 Q. You talked to the Solicitor about another
14 time you said he rubbed your legs. Was that
15 about a week before this time in October that
16 we're talking about?

17 A. Yes, sir.

18 Q. That was the night that Jamie had to go
19 the hospital?

20 A. Yes, sir.

21 Q. Do you know who called Gary to come over,
22 stay in the house and take you to school?

23 A. I am not sure.

24 Q. Somebody must have called him. He wasn't
25 staying there that night, was he?

1 A. No.

2 Q. Okay. Do you recall when you went in your
3 room, Minor Child and I'm talking about this
4 night that you say that he put his hand down
5 your pants, when you went in the door, did you
6 lock the door?

7 A. Yes.

8 Q. How would you have done that? Describe
9 how you did that.

10 A. When I walked up to my door, I walked in
11 and I shut it. I went to sleep and I stayed
12 in my room all night, I'm pretty sure. Then
13 somebody had -- somebody had, I guess,
14 unlocked the door to wake me up.

15 Q. Who was that?

16 A. I don't know. I know somebody had
17 unlocked it because when I woke up I had --
18 I hadn't opened my door, and it was unlocked.

19 Q. So whoever opened the door, you don't know
20 who it was?

21 A. No.

22 Q. Now, did anybody come and mess with the
23 door in the middle of the night? Make you
24 think that they were trying to get in?

25 A. I don't -- I don't remember.

1 Q. That's fine. Because if they had of, from
2 the outside they could have just opened it up?
3 It locked from the outside, didn't it?

4 A. Yes, sir.

5 Q. And you couldn't get out until someone
6 actually let you out, could you?

7 A. Yes, sir.

8 Q. Now, describe to me again -- and I know
9 that you told the Solicitor, but what were you
10 wearing on the night in October that you say
11 Gary did this to you?

12 A. A pink skirt, and I can't remember the
13 shirt.

14 Q. So when you say that he put his hands
15 down your pants, you are referring to your
16 underwear?

17 A. Yes, sir.

18 Q. But you were wearing a skirt, you said?

19 A. Yes, sir.

20 Q. All right. Do you have any children that
21 lived around you at that time that you liked
22 to play with?

23 A. Hummm, -- (pause) -- not -- yeah, like my
24 neighbors.

25 Q. Is that the little one with the first name

1 of Chase?

2 A. Yes, sir.

3 Q. Okay. Do you remember on these motorcycle
4 rides talking to Gary about Chase?

5 A. No, I don't think so.

6 Q. Do you remember Gary talking to your mom
7 about Chase touching you?

8 A. No.

9 Q. Do you ever remember your mom telling you
10 that you couldn't play with Chase?

11 A. Yes.

12 SOLICITOR WHITE: Objection.
13 Relevance.

14 MR. SHEEK: The relevance goes
15 to motive, Your Honor, for telling this
16 particular story.

17 THE COURT: All right, I want to
18 hear more about this. Y'all step in your jury
19 room. Don't discuss the case.

20 (JURY OUT @ 11:14 A.M.)

21 MR. SHEEK: May I proffer that,
22 Your Honor?

23 THE COURT: Yes.

24 PROFFER EXAMINATION

25 BY MR. SHEEK:

1 Q. Minor Child you just said yes, that your
2 mother told you that you couldn't play with
3 Chase. Is that correct?

4 A. Yes, sir.

5 Q. Do you remember why?

6 A. No.

7 Q. Do you remember it having something to do
8 with the conversation that Gary had with your
9 mother about Chase?

10 A. Well, -- (pause). Yeah, it come back
11 to me, he -- he talked to my mama and then I
12 couldn't play with Chase anymore.

13 Q. You weren't happy about that, were you?

14 A. Well, I didn't have nobody else to play
15 with -- (emotional).

16 Q. Okay. Thank you.

17 (PROFFER EXAMINATION CONCLUDED)

18 MR. SHEEK: That's all that I have,
19 Your Honor.

20 SOLICITOR WHITE: Your Honor, I think
21 that this is coming pretty close to a third-
22 party guilt situation. He got into Chase
23 touching her and -- I guess pushing off the
24 touching on to this Chase.

25 MR. SHEEK: Well, we can drop out

1 the touching, Your Honor, and simply go to the
2 fact that he had a conversation with her
3 mother. That because of that conversation
4 that she wasn't allowed to play with Chase
5 anymore and she wasn't happy about it, which
6 is what she just testified to. We'll leave it
7 at that.

8 Because when it comes to -- I'll tell
9 what the State argues, 'why would a child make
10 something up.' If there is a motive for her
11 being upset with this man, that is something
12 that I can go into. It's not third-party
13 guilt. I am not saying Chase did anything.
14 But there was a conversation between him and
15 her mother and because of that conversation
16 she wasn't allowed to play with the child, and
17 that upset her. That's as far as I am going
18 with it.

19 SOLICITOR WHITE: Your Honor, that's
20 exactly what he has already said. He said,
21 'Do you remember talking to Gary about Chase
22 touching you?' 'Do you remember Gary having a
23 conversation with your mom?' That's trying to
24 say that Chase was the one who touched. If he
25 wanted to get into some sort of motive for her

1 to be angry with Gary, he didn't have to go
2 anywhere close to this touching business.

3 MR. SHEEK: I will not mention
4 touching any further. They've objected to it.

5 SOLICITOR WHITE: Your Honor, we
6 don't think that the bell can be unrung.

7 SOLICITOR STUMBO: Your Honor,
8 we'd ask that it be stricken from the record.
9 I mean, that's the severity of this. Under
10 third-party guilt case law, I think that it
11 should be stricken from the record and a
12 curative instruction be given to the jury.

13 MR. SHEEK: Well, Your Honor, my
14 client has a right to fully testify in his
15 defense. He will testify as to what the
16 conversation with her mother was. She's
17 already confirmed it happened.

18 THE COURT: Your definition of
19 "confirmed" is pretty broad.

20 MR. SHEEK: She said as a result of
21 a conversation that Gary had with her mother
22 that she wasn't allowed to play with Chase.
23 I have a right to get that in.

24 THE COURT: That's ---

25 MR. SHEEK: Otherwise I'm being

1 told, basically, that if there's a reason for
2 this child to be upset with this man that I
3 can't put it in evidence.

4 SOLICITOR WHITE: Your Honor, I think
5 that he didn't have to go, again, with the
6 third-party guilt, the allegation that someone
7 else touched this child. That is a lot
8 different than saying that he was mad -- that
9 she was mad because 'I can't play with my
10 friend anymore.'

11 MR. SHEEK: Now, that the State has
12 objected, I will concede that point and simply
13 stay with the conversation. Now they are
14 saying that we cannot unring that bell.
15 Neither can I go and unring the bell when they
16 asked about 'did he touch you before.' That
17 was objectionable. But once I object, I'm
18 highlighting it for the jury, so I simply let
19 it go. We're not being tried or accused in
20 this indictment with touching her before, and
21 that was completely improper testimony.

22 THE COURT: Well, it's in the
23 video.

24 MR. SHEEK: But sometimes -- it
25 might be, Your Honor. But sometimes if you

1 don't object, you go back later and ask for it
2 to be stricken, it's a little bit late. Or to
3 say that you can't follow a proper line of
4 testimony because it 'started a way I didn't
5 like', is prejudicial to the defendant.

6 THE COURT: I can't get, maybe, the
7 relevance of the Chase conversation because I
8 don't have any time reference to it.

9 MR. SHEEK: I don't think that we
10 have to put a timing on it, Your Honor. If
11 she was upset because she wasn't allowed to
12 play with the child and that condition arose
13 because of a conversation that he had with her
14 mother, then that is a possible motive for
15 basis.

16 She can say that's not the reason.
17 She can say that this really happened and
18 that's the reason that I am saying it. That's
19 fine.

20 But if there is a motive or bias out
21 there, I get to explore it. Otherwise I think
22 you're telling the defendant, 'hey, there may
23 be a reason that this child is upset with you
24 but you can't bring that out in front of the
25 jury' because it is too prejudicial. But the

1 State is going to put in a prior lewd act and
2 I've got to deal with it.

3 THE COURT: Well, you can't -- I
4 don't think it's fair for you to argue 'I let
5 that one go, so they need to let this one go.'
6 That's not a fair argument and I'm not going
7 to listen to that.

8 MR. SHEEK: I'm not trying to argue
9 that. I'm ---

10 THE COURT: That's your strategy.
11 You do your own strategy but don't bring it up
12 that 'because I did this, you ought to give me
13 this one.' I'm -- I'm not where I do that. I
14 understand your strategy. If I was trying the
15 case, I may agree with it. But that's not a
16 reason for me to let this in or not let this
17 in, because you didn't. So I'd rather not
18 hear that argument.

19 MR. SHEEK: And I didn't mean it
20 in that tone. What I meant was that when you
21 talk about prejudicial effect versus probative
22 value, the defendant has a right to present a
23 full defense.

24 If it is completely without
25 relevance, then I understand. But relevance

1 is a broad definition, whether it makes
2 something more likely than not. Motive is
3 always and bias is always relevant, because
4 I know that I am going to face the argument
5 'why would she make it up.'

6 SOLICITOR STUMBO: Your Honor,
7 this could be -- and I agree with Mr. Skeen
8 that he could have stopped with:

9 'Did Gary have a conversation with
10 your mother.'

11 'Yes.'

12 'Did it involve him asking your
13 mother not to let you play with this other
14 child?'

15 If that is all that we are talking
16 about, I think we're in a little bit different
17 posture here. But what he -- what Mr. Skeen
18 brought up in front of this jury is more
19 prejudicial because he's trying to make it
20 look like another person committed the crime.
21 We had no notice of this. It's never come up
22 before. I think the third-party case law --
23 I think it's a textbook case of third-party
24 guilt, just throwing those bare allegations
25 out there that some other child did the same

1 act that the defendant is being accused of.

2 MR. SHEEK: Absolutely, Your Honor.

3 If I were to get up at any point in this case,
4 including at closing arguments, and say 'Chase
5 did this', 'this is what this was about, it
6 was someone else.' Then I think that it's
7 third-party guilt and the State is exactly
8 right.

9 If they want to move to strike the
10 prior question, I'm fine with that. But to
11 not allow me to explore what she has already
12 confirmed is prejudicial to my client.

13 I would limit it to:

14 'Did you like to play with Chase?'

15 'Did Gary have a conversation with
16 your mother that resulted in your not being
17 allowed to play with Chase?

18 Did it upset you.'

19 Her answer in the proffer was "yes"
20 to all of that.

21 THE COURT: I want Ms. Cross to
22 tell me the question that you asked last in
23 front of the jury. I want to know where it
24 was. What the last two questions were that
25 were asked of this girl about that

1 conversation.

2 COURT REPORTER: Give me just a
3 minute to locate it.

4 THE COURT: That's fine.

5 COURT REPORTER: (Playing audio):

6 Q. *Do you have any children that*
7 *lived around you at that time that you liked*
8 *to play with?*

9 A. *Hummm, -- (pause) -- not --*
10 *yeah, like my neighbors.*

11 Q. *Is that the little one with the*
12 *first name of Chase?*

13 A. *Yes, sir.*

14 Q. *Okay. Do you remember on these*
15 *motorcycle rides talking to Gary about Chase?*

16 A. *No, I don't think so.*

17 Q. *Do you remember Gary talking to*
18 *your mom about Chase touching you?*

19 A. *No.*

20 Q. *Do you ever remember your mom*
21 *telling you that you couldn't play with Chase?*

22 A. *Yes.*

23 THE COURT: Stop right there. She
24 answered "no" to that.

1 MR. SHEEK: The second one was a
2 "yes", Your Honor.

3 THE COURT: I thought "no."

4 MR. SHEEK: She "yes" when I asked,
5 "Do you remember your mom telling you that you
6 can't play with Chase?"

7 THE COURT: I'm talking about two
8 questions before, 'Do you remember telling
9 Gary?' "No." 'Do you remember your mom ...'
10 -- "no."

11 COURT REPORTER (Playing audio from
12 proffer testimony):

13 Q. Minor Child you just said yes, that
14 your mother told you that you couldn't play
15 with Chase. Is that correct?

16 A. Yes, sir.

17 Q. Do you remember why?

18 A. No.

19 Q. Do you remember it having
20 something to do with the conversation that
21 Gary had with your mother about Chase?

22 A. Well, -- (pause). Yeah, it
23 come back to me, he -- he talked to my mama
24 and then I couldn't play with Chase anymore.

25 MR. SHEEK: But that was during the

1 proffer testimony.

2 SOLICITOR WHITE: Her answer was yes.

3 THE COURT: What I heard was "Do
4 you remember talking to Gary about it?"
5 "No."

6 MR. SHEEK: Okay.

7 THE COURT: "Do you remember Mom and
8 Gary talking about it?" "No."

9 "Do you remember your Mom telling you
10 that you couldn't play with Chase?" "Yes."

11 I think that is where you are stuck.
12 I think it's fair to leave it there.

13 MR. SHEEK: So I can't ask her
14 about it? If that's the Court's ruling, I
15 won't --

16 THE COURT: No, no, I -- I was
17 under the impression that she said -- "Do you
18 remember Mom talking to him" and she said no,
19 that she didn't.

20 MR. SHEEK: That's fine, Judge.
21 Our question would be -- since she said 'yes',
22 that she wasn't allowed to play with Chase,
23 the only other question on that issue was,
24 'Were you upset about that?'

25 THE COURT: Well, since she

25 Then how do you have motive then, for

1 her to ---

2 MR. SHEEK: At this point, if I had
3 to do closing arguments this second, probably
4 not. But as we proceed through the case, I
5 believe that there will be. Because she said
6 that she was told that she couldn't play with
7 Chase. That she wasn't happy about it.

8 If he were to testify, theoretically
9 testify *'I had a talk with her mother about*
10 *what she said was going on' and 'her mother*
11 *wouldn't let her do it. And she told me she*
12 *was upset with me about that.'* Then I think
13 that I would.

14 THE COURT: Well, that's different.
15 But right now what she said was clear, what I
16 heard. So -- (pause).

17 MR. SHEEK: Your Honor, if it makes
18 it any simpler, if she has answered -- I
19 don't know if she answered in front of the
20 jury about it upsetting her. I think that
21 they were objecting while she was answering.

22 THE COURT: The question is did her
23 mother tell her that she couldn't play with
24 Chase.

25 MR. SHEEK: Yes.

1 THE COURT: She can answer that.

2 MR. SHEEK: Right.

3 THE COURT: And did that bother
4 her? She can answer that.

5 MR. SHEEK: That is as far as I
6 intend to go with her.

7 THE COURT: But clearly what she
8 has testified to in front of the jury is what
9 she said.

10 MR. SHEEK: Right. Yes, sir.

11 THE COURT: Do you all agree?

12 MR. SHEEK: I do agree with that,
13 Your Honor. I think the question itself
14 invoked third-party guilt issues. The very
15 question of, 'did you talk to Gary' about some
16 other kid touching her. I know that she said
17 'no.'

18 There again, and Ms. White and I just
19 talked about this, the objection would have
20 come at that question had we known that it was
21 coming.

22 MR. SHEEK: If they're asking for
23 you to tell the jury to strike the question
24 about another person touching her, to
25 disregard any testimony about another person

1 touching her, I'm fine with that.

2 SOLICITOR STUMBO: I think that
3 that would cure it, Your Honor. If you could
4 instruct the jury that our objection was
5 sustained and that -- you know, that any
6 question about some other person touching her
7 at this point is an improper question.

8 MR. SHEEK: I would not go -- I
9 am not going to consent to that, that the
10 question wasn't proper. I am saying that if
11 they want a curative instruction that they are
12 not to consider my question as evidence, then
13 I am fine with that. But I don't want an
14 instruction to the jury that my question
15 wasn't proper, because it was.

16 THE COURT: Semantics. All right,
17 my ruling is that the two questions that she
18 was asked -- I don't know how to do this
19 without creating another issue.

20 How about this? Let's go back and
21 ask the questions -- (pause) -- I don't know
22 about that either.

23 I'm open to suggestions how to cure
24 it. I don't want to reemphasize anything
25 either way.

1 SOLICITOR STUMBO: Well, Your
2 Honor, I think if -- if you sustain our
3 objection, strike from the record the prior
4 line of questioning, starting with his
5 question about -- something about telling
6 someone that Chase touched her, telling Gary
7 that. Striking the record back to that point.

8 Mr. Skeen can go into, like we said,
9 those other questions about -- I guess the
10 questions of 'Did your mother say that you
11 couldn't play with Chase anymore?' I think
12 **Minor Child** answer was 'no', or that she doesn't
13 remember that.

14 And what was the second question?

15 THE COURT: First one was,
16 'Did you talk to Gary about Chase
17 touching you?

18 I don't remember

19 Did your mother and Gary talk about
20 it?

21 No.'

22 Then we stopped.

23 MR. SHEEK: And then I said,
24 "Did your mother tell you that you couldn't
25 play with Chase anymore" and she said "yes."

1 I was in the process of asking "Were
2 you upset about that?" That is the point they
3 objected.

4 So here's my -- I've got several
5 problems that I want to put on the record.
6 One, when we are talking about curative, I am
7 in no way consenting that there is something
8 to cure. My questions are not evidence.

9 They objected -- the question that
10 they are talking about, they objected to three
11 questions later. Now are wanting to go back
12 and strike the line of testimony based on that
13 one question, which I don't think ---

14 THE COURT: In their defense, you
15 didn't tip your hand that you were going to
16 talk about Chase touching. You probably
17 should have.

18 MR. SHEEK: No, Judge, I didn't say
19 anything about not tipping my hand.

20 SOLICITOR STUMBO: Well, Your
21 Honor, I mean -- as I said, quite frankly ---

22 THE COURT: If you move into third-
23 party guilt and you know it, you know -- and
24 you know that you can't, that's kinda getting
25 close; isn't it?

1 MR. SHEEK: No, sir, I don't
2 believe so.

3 THE COURT: All right. You know
4 that you're going to get close to a Rule, get
5 a mistrial, and that's not a -- that's okay?

6 MR. SHEEK: I am not arguing third-
7 party guilt, Your Honor.

8 THE COURT: What are you arguing?

9 MR. SHEEK: I am arguing that the
10 child was upset with a man over a conversation
11 that he had with her mother that resulted in
12 her not being able to play with her friend.

13 THE COURT: And you know the way
14 that you characterize that question had third-
15 party guilt written all over it.

16 MR. SHEEK: No, sir, I don't ---

17 THE COURT: You can't tell me that
18 you didn't know that.

19 MR. SHEEK: I am telling you that
20 I didn't know that, Your Honor.

21 THE COURT: I am going to take a
22 break for a little bit, because I'm unhappy
23 with that answer. Everybody stand at-ease.

24 (BRIEF RECESS 11:35 - 11:40 A.M.)

25 (DEFENDANT PRESENT)

1 THE COURT: All right, here is what
2 I want to do. I am going to tell the jury to
3 disregard the two questions regarding that.
4 She answered --- 'I don't remember, I don't
5 know.' Those two questions.

6 Or I would suggest that we could say
7 that those questions weren't clear, so we are
8 disregarding those and Mr. Skeen will be
9 allowed to ask his next question, which will
10 be "Did you mother tell you that you couldn't
11 play with Chase anymore?" "Did that bother
12 you?" Those two question, I believe are okay.

13 Without republishing, 'I want you to
14 disregard the two questions which I find' --
15 that the State finds objectionable.

16 MR. SHEEK: Yes, sir.

17 THE COURT: Can we live with that?

18 MR. SHEEK: May I, for purposes of
19 the record, -- the Court has indicated its
20 frustration and displeasure with my answer.
21 May I explain what I was trying to tell the
22 court, on the record?

23 THE COURT: What I didn't under-
24 stand is -- I know you're experienced and I
25 know that you understand the definition of

1 third-party guilt and I know you would
2 anticipate the State being unhappy with that
3 question, and it creating a problem for us.

4 MR. SHEEK: Yes, sir.

5 THE COURT: And that was not
6 your intent, I understand, but that's what
7 happened.

8 MR. SHEEK: If I can explain, your
9 question to me was 'Do you not think that was
10 third-party guilt?' And I'll tell you why it
11 is not. I am not going to argue, I am not
12 going to extenuate or try to say that on
13 October 2nd, 3rd or any other night that this
14 man was sleeping in the house that Chase was
15 even there, much less put his hand down her
16 pants. That would be third-party guilt.

17 And if I get up and argue 'some other
18 dude did it', that's third-party guilt. I'm
19 not going there and that's the reason that I
20 didn't think that question went to third-party
21 guilt. 'Chase is the real bad guy, not my
22 guy.'

23 THE COURT: And I understand that.
24 But what I didn't -- what I understand is that
25 you're questioning the State's sincerity,

1 their having an issue with that. Certainly
2 you would know that would be an issue for
3 them. You've been a prosecutor before.

4 MR. SHEEK: I understand their
5 sincerity, but sometimes from this side of
6 it you ---

7 THE COURT: Let's leave it at that.

8 MR. SHEEK: Yes, sir.

9 THE COURT: Okay.

10 SOLICITOR STUMBO: Your Honor,
11 just to make clear, are you going to sustain
12 Ms. White's objection?

13 THE COURT: Yes.

14 SOLICITOR STUMBO: On the record?
15 To the jury?

16 THE COURT: Yes, I am.

17 SOLICITOR STUMBO: Thank you.

18 THE COURT: Bring us the jury.

19 (JURY IN @ 11:43 A.M.)

20 THE COURT: For the purposes of the
21 record, an objection was made just before the
22 break. The court sustained the objection.
23 What I am going to do is I'm going to allow
24 Mr. Sheek to rephrase the question.

25 MR. SHEEK: Thank you, Your Honor.

1 THE COURT: All right.

2 MR. SHEEK: May it please the
3 Court.

4 THE COURT: Yes, sir.

5 CROSS EXAMINATION RESUMED

6 BY MR. SHEEK:

7 Q. Minor Child I want to be clear in my
8 question. I'd asked you -- at some point your
9 mother told you that you couldn't play with
10 Chase anymore. Correct?

11 A. Yes.

12 Q. And you weren't happy about that, were
13 you?

14 A. No, because I had nobody else to play
15 with.

16 Q. I understand. Thank you.

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

19 THE COURT: Any redirect, Ms.
20 White?

21 REDIRECT EXAMINATION

22 BY SOLICITOR WHITE:

23 Q. Minor Child Mr. Sheek asked you about when
24 you talked to -- about watching the video of
25 when you talked to Heather Bennett. Is what

1 you said on that video and what you've told
2 the jury here today, is that the truth?
3 Is that what happened?

4 A. Yes.

5 Q. And he asked you about meeting with
6 somebody from our office to talk about what
7 you were going to talk about here today,
8 didn't he?

9 A. Yes.

10 Q. Did anyone from my office or law enforce-
11 ment ever tell you what to say here today?

12 A. No.

13 SOLICITOR WHITE: No further
14 questions, Your Honor.

15 MR. SHEEK: Recross?

16 THE COURT: Yes, sir.

17 RECROSS EXAMINATION

18 BY MR. SHEEK:

19 Q. The Solicitor just asked you if anybody
20 ever told you what to say. You had
21 conversations with several people before you
22 ever talked to the police or to the forensic
23 interviewer about this, didn't you?

24 A. Yes.

25 Q. I mean, you talked to Jamie, of course?

1 A. Yes.

2 Q. And of course when your mom came home, she
3 would have talked to you about it. Right?

4 A. Yes.

5 Q. And some other people came over and talked
6 to you about it before the police came over,
7 didn't they?

8 A. Yes.

9 Q. Do you remember who those people were?

10 A. Brandi and my Aunt Tequila (phonetic).
11 I think that's it.

12 Q. Do you remember why they came to talk to
13 you before the police?

14 A. (No verbal response).

15 Q. If you don't remember, that's fine. You
16 don't have to try to guess.

17 A. I don't remember.

18 Q. That's fine. Thank you.

19 MR. SHEEK: Thank you.

20 THE COURT: All right. You may
21 step down, young lady.

22 (WITNESS STEPS DOWN)

23 THE COURT: The State calls James
24 Baker, Your Honor.

25 (WITNESS TAKES STAND)

1 JAMES BAKER, being duly sworn to tell
2 the truth, the whole truth and nothing but the
3 truth, testified, as follows:

4 DIRECT EXAMINATION

5 BY SOLICITOR WHITE:

6 Q. Would you please tell us your name?

7 A. James Baker.

8 Q. And -- speak into the microphone. I know
9 that you are struggling with a head cold.
10 Where do you live, Mr. Baker?

11 A. [REDACTED].

12 Q. Who lives with you there?

13 A. Kayla, Minor Child Brenton, Leland, Kara and
14 mine and Kayla's new son, Nicholas.

15 Q. So Kayla Allen, Minor Child -- all of her
16 children?

17 A. Yes, ma'am.

18 Q. How did you meet Kayla Allen?

19 A. We was at Lake Murray in Lexington and my
20 mom invited -- I think that my mom invited
21 Gary, or something like that, down to Lake
22 Murray 'cause there were having, I guess, a
23 get-together. He brought Kayla and Kayla's
24 friend.

25 Q. So you actually met Kayla through Mr.

1 Lott?

2 A. Yes, ma'am.

3 Q. How long have you known Gary Lott?

4 A. Ten-plus years. A long time.

5 Q. What kind of relationship did y'all have?

6 A. It was very good. We was pretty good
7 friends.

8 Q. How old is Mr. Gary?

9 A. Late forties, fifty, something like that.

10 Q. Does he have any sort of -- I guess,
11 physical conditions that stand out to you?

12 A. His hands shake a little bit.

13 Q. Do you know what that is from?

14 A. (Negative gesture), uh-uh.

15 Q. Has Gary ever spent the night with you at
16 [REDACTED]?

17 A. About three or four times.

18 Q. And let me back up a little bit. What
19 county is 601 McKenzie Road in?

20 A. It's on 96, I think.

21 Q. Is it in Greenwood County?

22 A. Yeah. I think so. I am from Columbia,
23 so I am not sure on all this stuff.

24 Q. What we are talking about, are we talking
25 about south Greenwood, going towards ---

1 A. Towards Saluda, yes, ma'am. Right off of
2 one seventy, uh, -- (pause)

3 Q. Have you ever had Gary help you get the
4 children to school?

5 A. Yeah.

6 Q. When was that?

7 A. Probably when I had to go to the hospital.
8 They had me on medication, so I pretty much
9 slept a lot. So I had him use my Suburban to
10 take them to school

11 Q. You said it was when you went to the
12 hospital. Do you remember a date, round about
13 a date?

14 A. Not really.

15 Q. In 2011?

16 A. Yes.

17 Q. Do you remember -- well, let me take you
18 to October 3rd, 2011. Do you remember what you
19 were doing that day?

20 A. I was sitting out on the front porch.

21 Q. About what time of day was it?

22 A. Probably about 4:15. Usually Minor Child gets
23 off about 4:30, so it was probably around that
24 time.

25 Q. What happened when Minor Child got home from

1 school that day?

2 A. The bus dropped her off on the main road,
3 I guess. I can see the bus from the porch.
4 She kinda hopped off of it and -- kinda angry-
5 like. She walked up to me and asked if Gary
6 was coming over. I told her that I didn't
7 know. She said, 'Well, he better not spend
8 the night.' That's when she broke down and
9 started crying and told me what had happened.

10 Q. What happened after she told you what had
11 happened?

12 A. I was in -- you know, I was trying to make
13 sure. I know how kids, you know, they usually
14 dream or something like that. I was asking
15 her, 'Are you sure? This is a serious
16 accusation.'

17 She told me pretty much in detail what
18 happened. So like I said, I saw Gary's pickup
19 truck start turning in. I told Minor Child to go
20 in the house.

21 Gary come up to the porch and I confronted
22 him about it then. He was like, "Are you
23 serious?"

24 Q. Okay. So what did -- did you -- when you
25 say that you confronted Gary about it, did you

1 tell Gary that Minor Child had said that she was
2 sleeping?

3 A. No. All I said was that she said he had
4 put her hands on her, or something like that.

5 Q. And what did Gary say about it?

6 A. He was like "Are you serious?" He kept
7 saying that over and over. He was, like,
8 "No, I didn't. Can I talk to her?" I told
9 her (sic) no. Well, I told him no.

10 Q. What happened after you told him no, that
11 he couldn't talk to her?

12 A. I sat on the porch -- our chairs, you
13 know, are sitting like this (indicating).
14 Our door is over here. I've got an ashtray
15 over on this side. I turned over this way to
16 put my cigarette out and he walked in the
17 house anyway, and he started talking to her.

18 Q. Did you hear any of his conversation with
19 her?

20 A. Somewhat. Like I said, the door was shut.
21 As soon as I noticed that he was in the house,
22 I walked in and grabbed him by his arm and
23 kept telling him, you know, that was a mistake
24 or something like that.

25 Q. Did he say anything after you pulled him

1 back out of the house?

2 A. He said, you know, that he wanted me to
3 fix it, to make it go away. I told him that
4 I'd see, I'd talk to Kayla and all that. He
5 said, you know, that he wanted it to go away.
6 That if I do, then -- you know, then I
7 wouldn't have to worry about anything,
8 everything would be taken care of.

9 Q. When you say -- kind of explain that last
10 statement a little bit more. You said that if
11 you make it go away, he said that it would be
12 taken care of.

13 A. Like when he got his VA money or whatever,
14 I wouldn't have to worry about money.

15 Q. Now, do you remember getting up in the
16 middle of the night, I guess on October 2nd
17 into October 3rd, 2011?

18 A. Yeah.

19 Q. What happened that night?

20 A. Usually, you know, I wake up pretty much
21 around the same time anyway. Like I say, I
22 was going to the hospital. There was pains
23 just going through my foot and it just wakes
24 me up. I woke up and I went to the kitchen.
25 You know, I couldn't go back to sleep, so I

1 started doing the dishes. Minor Child walked in
2 there. She looked like she was half asleep.
3 I told her to go back to bed. She just went
4 back and did.

5 Q. Had you been in the bedroom -- in your
6 bedroom -- before you came into the kitchen?

7 A. Yes, ma'am.

8 Q. Were you asleep in there?

9 A. Yes, ma'am.

10 Q. Do you know about what time of night this
11 was?

12 A. Probably 2:00, 2:30. Like I say, I
13 usually wake up about the same time every
14 night.

15 Q. I think you said that was because you had
16 pain?

17 A. Yes, ma'am. All through my foot.

18 Q. Is that the same reason you had to go to
19 the hospital?

20 A. Yes, ma'am.

21 Q. Does Minor Child sleep on the couch fairly
22 frequently?

23 A. Well, not anymore. You know, back then
24 she did. It was like her and her brother
25 would sleep on the couch, her older brother.

1 Q. Did you hear anything from Gary after he
2 left on October 3rd?

3 A. You talking about the next day or
4 whatever?

5 Q. Yes. Have you head anything from him
6 since then?

7 A. Yes, ma'am. He called me probably about
8 six times, wanted to talk to Kayla or whatever
9 and see what was going on with her, I guess.
10 After Kayla talked to the police, they told us
11 not to have no more contact with him. So I
12 just quit answering the phone.

13 Q. Now, the night when you had to go to the
14 hospital, you said that that was a few weeks
15 before October 2nd-3rd?

16 A. Yes, ma'am.

17 Q. What time did you have to go to the
18 hospital then?

19 A. I'd say around 11:00, 12:00, 10:00 or
20 11:00.

21 Q. And did y'all call Mr. Lott to stay with
22 the children?

23 A. Yes, ma'am.

24 Q. And you said that you left your truck for
25 him to drive the kids to school the next

1 morning?

2 A. Yes, ma'am.

3 Q. So you and Ms. Allen, y'all were not in
4 the house early that morning?

5 A. (No verbal response).

6 SOLICITOR WHITE: Please answer any
7 questions that Mr. Skeen has for you.

8 THE COURT: Cross examine.

9 MR. SHEEK: If it may please the
10 Court.

11 THE COURT: Yes, sir.

12 MR. SHEEK: Thank you, Your Honor.

13 CROSS EXAMINATION

14 BY MR. SHEEK:

15 Q. Mr. Baker, in response to the solicitor's
16 questions you just said that the night you
17 were in the hospital, you said, was a couple
18 of weeks before?

19 A. Yes, sir.

20 Q. That's to the best of your recollection?

21 A. Yes, sir.

22 Q. You understand that when you come here to
23 court that accuracy is kind of important in
24 criminal trials?

25 A. Oh, yes.

1 Q. Would you be surprised to learn that you
2 were at the hospital September 29th, four days
3 before this?

4 A. Like I said, this happened nearly two
5 years ago. So -- (pause).

6 Q. Let's talk about it then. Does that sound
7 right?

8 A. I mean, I've been in and out since I've
9 been up here. So ---

10 Q. Well, how accurate is your memory after
11 this year or year and a half if you can't
12 remember if it was four days or two weeks?

13 A. It's pretty good.

14 Q. Because when she says that he touched her
15 improperly, that would be a pretty important
16 fact; wouldn't it?

17 A. Yes, sir.

18 Q. That would stand out in your mind?

19 A. Yes, sir.

20 Q. Well, did she tell you that he did it two
21 weeks before October 3rd or four days before
22 October 3rd?

23 A. The day that she told me was the next day
24 after that it happened.

25 Q. I am talking about this first incident,

1 when you went to the hospital. You left your
2 truck for him to drive the kids to school.

3 A. She never told me about that.

4 Q. Okay. Well, then, let's talk about this.
5 She never told you about that one?

6 A. Uh-uh, (negative gesture).

7 Q. And you haven't talked to her about that
8 since then?

9 A. (Negative gesture).

10 Q. Is that a "no?"

11 A. Yes, sir, that's a "no."

12 Q. How long have you been living with
13 Minor Child mother?

14 A. Since August 2011.

15 Q. Okay. So you started living there in
16 August and this happened in October?

17 A. Yes, sir.

18 Q. Now, I want you to tell this jury with as
19 much detail that you can when Gary came over
20 that day, after Minor Child had told you what she
21 says that he did, -- from the time that he
22 parked his truck until the time that he went
23 into the house, with as much detail as you
24 can, what happened.

25 A. Like I said, when Gary pulled up and --

1 you know, he was all -- he was all happy-go-
2 lucky, you know, and everything.

3 After Minor Child told me everything, I asked
4 Gary about it. He kept saying, "Are you
5 serious? There is no way." . You know.

6 Q. Let me stop you one second. You said
7 "after Minor Child told me everything", did she
8 tell you everything after Gary got there?

9 A. No. This was before.

10 Q. Okay. I want you to just tell with as
11 much detail as you can what happened from the
12 time that Gary got there until he went into
13 the house.

14 A. Like I say, Gary pulled up. He come up
15 and said 'hey' and all this. That's when I
16 asked him about, you know, the incident.

17 He kept saying, "Are you serious? Are you
18 serious? There's no way that I done this."

19 He kept asking me to let him talk to Minor Child
20 and I told him no. Like I said, I turned ---

21 Q. Where was he standing?

22 A. Like I said, our porch is looking out
23 towards the road and he was standing right
24 there in front of our steps. The porch is up
25 here. I'm sitting right here. So he was

1 standing pretty much in front of the front
2 door.

3 Q. Okay. Were you upset with him?

4 A. No.

5 Q. So Minor Child had come home and told you
6 that he'd put his hand down her pants and you
7 weren't upset with him?

8 A. I wanted to find out, make sure that it
9 was true.

10 Q. So you had some doubt in your mind as to
11 whether or not it happened?

12 A. No, sir. I just wanted to make sure that
13 I got all the facts. Like I told her, you
14 know, I wanted to make sure that this was
15 accurate because it is a strong allegation
16 against somebody.

17 Q. Well, you said in your direct testimony
18 that you asked her for details. Is that
19 correct?

20 A. Yes, sir.

21 Q. Okay. Well, then, let me stop you before
22 you tell us about when he went in the house.
23 Tell me what she told you happened, as much
24 detail as she told you.

25 A. She said that he put his hands down her

1 pants.

2 Q. Right.

3 A. You know, around her private area.

4 Q. Do you know what she calls that private
5 area?

6 A. I don't get ---

7 Q. Okay, that's fine.

8 A. I don't talk to her like that.

9 Q. All right.

10 A. But, like I said, I asked her numerous
11 different ways, you know, to make sure that
12 it was true and everything.

13 Q. Well, you said that you asked her for
14 details. What details did she give you? We
15 understand that she says that he put his hands
16 down her pants. Was she awake when he did
17 that or asleep?

18 A. She said that she was asleep.

19 Q. Okay. So when she woke up, what did she
20 say happened?

21 A. She said that he jerked his hand out and
22 -- whenever she laid back down, she looked at
23 him and kept looking up to see if he asleep or
24 something.

25 Q. Okay. So he was sleeping in the den also?

1 A. Yes, sir. The couch goes this way beside
2 our front door and -- he was laying this way.
3 The door is here, he was here, and she was
4 this way.

5 Q. Was he sleeping on the floor?

6 A. Yes, sir.

7 Q. And her brother was sleeping on the other
8 couch?

9 A. Yes, sir.

10 Q. You said that was her older brother?

11 A. Yes, sir.

12 Q. All right. Now, when you asked him what
13 he'd done with his hands, what was her answer?

14 A. She said that he had it down her pants.
15 And I asked her did it go over the underwear
16 or under the underwear. She said that it went
17 under her underwear.

18 Q. Did you ask her what else he had done with
19 his hands?

20 A. Yes, sir. She said that was all he did,
21 was put his hands under her underwear.

22 Q. Okay. So he approaches you on the porch.
23 You said that you weren't upset with him.

24 A. Right.

25 Q. But you believed what Minor Child had told

1 you?

2 A. Yes, sir.

3 Q. Why would that not make you upset?

4 A. I mean, I am not going to -- everybody
5 asked me the same thing, you know. I told
6 them that I am not going to fight somebody
7 just because of whatever. That's not going to
8 be good for Minor Child. If I show that I am
9 upset, that is not going to do her any good.

10 Q. Okay. So he talked to you, asked you "are
11 you serious" several times.

12 A. Yes, sir.

13 Q. Denied it.

14 A. (Affirmative nod).

15 Q. Then he went in the house?

16 A. Yes, sir.

17 Q. Did anything else happen before he went in
18 the house?

19 A. No.

20 Q. You said that he went in and closed the
21 door?

22 A. No, not the -- the door is one of them
23 little glass doors, you know that has got
24 them little hydraulic things that shuts
25 automatically.

1 Q. So it shut automatically?

2 A. (Affirmative nod).

3 Q. Did you hear it shut?

4 A. Uh-uh, (negative gesture).

5 Q. How long was he in the house before you
6 went in there?

7 A. No. As soon as I turned back around, I
8 was in the house with him.

9 Q. So he didn't have much time to talk to her
10 at all?

11 A. No. Probably maybe like ten, fifteen
12 seconds, something like that.

13 Q. Okay. And you immediately took him by the
14 arm to take him back out?

15 A. Yes, sir. When I grabbed him by his arm
16 he kept, you know, kept trying to stay in
17 there and keep talking to her. I kept saying,
18 you know, 'let's go.'

19 Q. When you took him back out, what happened?
20 Tell us with as much detail as possible what
21 happened from the time that you took him out
22 the door until he got in his truck and left.

23 A. He said that 'I have to talk to Kayla.'

24 That 'This is a whole -- it's a mistake.'

25 That I have to fix this, make it go away,

1 whatever. That if I do, that he will make
2 sure that I'm taken care of.

3 Q. Okay.

4 A. Then I told him, I said, 'Go home.' I'll
5 call you later' and everything like that.

6 Q. Okay. Did anything else happen?

7 A. He said that, you know, that -- like I
8 say, it's been a while. Pretty much all he
9 said was that I had to make it go away, that I
10 had to fix it. Like I say, I told him to go
11 home and -- you know, he got in his truck and
12 he left. Maybe thirty minutes later, he
13 called my phone.

14 Q. At which point did you hug this man that
15 you believe had done this?

16 A. I didn't hug him. Like I said, ---

17 Q. You didn't hug him?

18 A. --- he was on the front porch. No, sir.

19 Q. Positive?

20 A. Definite. Whenever he tried to come back
21 in the house, I grabbed his arms, with both my
22 arms, and turned him around to go towards his
23 ---

24 Q. Okay. That's fine.

25 A. --- truck.

1 Q. You didn't hug him before he left?

2 A. No. No, sir.

3 Q. Hug him before he came in?

4 A. No, sir.

5 Q. All right. Then he left?

6 A. Yes, sir.

7 Q. Now, you told the solicitor that he called
8 you as much as a half a dozen times. Six
9 times?

10 A. Yes.

11 Q. Over what span of time?

12 A. Probably within a hour.

13 Q. Did he call you any more that day?

14 A. Oh, he called. I mean, he called me
15 numerous times that day but I only answered
16 six times.

17 Q. Over what span of time was he calling?

18 A. It was probably about twenty to thirty
19 times.

20 Q. Over what span of time?

21 A. Oh. Well, it was after 5:00, so it was
22 probably in two hours.

23 Q. Did he call you any after that day?

24 A. Yes, sir. He called me the next day until
25 I guess they picked him, or whatever. I just

1 quit answering the phone.

2 Q. When was that? Over what span of time did
3 he call you? How many days did he call you?

4 A. I guess all the way up until he got
5 arrested.

6 Q. When was that?

7 A. I am not exactly sure the specific date.

8 Q. Did you call Minor Child mother and tell her
9 what had happened?

10 A. I think that I texted her first. Then I
11 called her, or she called me.

12 Q. Did she come straight on home?

13 A. Yes, sir. Well, she was at work when I
14 texted her. Then she called me and every-
15 thing.

16 Q. Did you speak with a couple of
17 investigators with the Greenwood County
18 Sheriff's Department?

19 A. I believe that I did. I am not exactly
20 sure of their names or anything.

21 Q. Well, did you talk to a woman and a man
22 investigator?

23 A. I know that I spoke with Jeff Scott.

24 Q. Do you remember when you gave the -- did
25 you give them a written statement?

1 A. Yes, sir, I did.

2 Q. And was there a woman investigator present
3 when you did that?

4 A. I believe so.

5 Q. Sir?

6 A. I believe so.

7 Q. You're not sure?

8 A. I am not exactly -- I mean, there was a
9 whole bunch of people in the police
10 department. So -- I mean in the little office
11 there.

12 Q. Let me ask you this, you said that you
13 talked to her about 2:30 in the morning --
14 Kayla?

15 A. No.

16 Q. In the kitchen.

17 A. No. I talked to Minor Child

18 Q. I mean Minor Child About 2:30 in the
19 morning?

20 A. It was 2:00 or 2:30.

21 Q. Okay. And you said that she was about
22 half asleep?

23 A. Yes, sir.

24 Q. Did you notice anything else unusual about
25 her?

- 1 A. No.
- 2 Q. Who took them to school the next morning?
- 3 A. Gary did.
- 4 Q. Gary took them to school?
- 5 A. Yes, sir.
- 6 Q. Why didn't you take them?
- 7 A. Because I was sick from everything that I
- 8 had had done. I had him to take my Suburban
- 9 to take them to school.
- 10 Q. Okay. So he took them to school on the
- 11 morning of October 3rd?
- 12 A. Yes.
- 13 Q. Okay. Who got, uh, Minor Child up and helped
- 14 her get ready for school and those type
- 15 things?
- 16 A. I believe Gary did.
- 17 Q. Okay. Where was -- does her mother work?
- 18 A. Yes, sir.
- 19 Q. What time does she go to work?
- 20 A. It depends. Between -- sometimes she goes
- 21 in at 4:00, sometimes 5:00.
- 22 Q. Four or five?
- 23 A. Yeah, usually 4:00 or 5:00. It just
- 24 depends on her schedule.
- 25 Q. How long -- well, you were living there.

1 How long was Gary in charge of taking care of
2 getting these kids up, getting them to school?

3 A. That was just like rare occasions. That
4 was probably one time, maybe twice.

5 Q. Well, we already know about twice 'cause
6 you said that it happened when you were in the
7 hospital and it happened on this morning, you
8 say; correct?

9 A. Yes, sir.

10 Q. All right. Did you talk to Minor Child that
11 morning before she went to school?

12 A. No, sir.

13 Q. Did you talk to her brother or anybody
14 else?

15 A. No, sir. As I said, they had me on
16 medication. So I was kinda out of it anyway.

17 MR. SHEEK: I have no further
18 questions, Your Honor.

19 THE COURT: Redirect?

20 SOLICITOR STUMBO: Beg the
21 court's indulgence, Your Honor, (sidebar
22 with Ms. White).

23 SOLICITOR WHITE: No further
24 questions, Your Honor.

25 THE COURT: You may step down.

1 (WITNESS STEPS DOWN)

2 THE COURT: Is this a good time for
3 the lunch break? Do y'all want to work until
4 about 1:00 and take a break, or do you want to
5 take lunch now and come back about 1:30. I
6 will give y'all a choice. If you go now, can
7 you be back in a little more than an hour?
8 Are you okay? All right, we will break until
9 1:30. You all be back in the jury room at
10 1:30 because we're going to start promptly at
11 1:30. You can't be discussing the case. You
12 can leave your notebooks in your seat, if you
13 like. Nobody will bother them. Or you can
14 take them to the jury room, whatever you like.

15 (JURY OUT @ 12:10 P.M.)

16 THE COURT: We've be at-ease until
17 1:30.

18 (LUNCH RECESS)

19 (DEFENDANT PRESENT)

20 THE COURT: Are you ready?

21 SOLICITOR STUMBO: Yes, sir.

22 THE COURT: Mr. Skeen?

23 MR. SHEEK: Yes, Your Honor. Thank
24 you.

25 THE COURT: Bring in the jury.

1 (JURY IN @ 1:33 P.M.)

2 THE COURT: Call your witness.

3 SOLICITOR STUMBO: Your Honor,
4 the State calls Investigator Jeff Scott.

5 (WITNESS TAKES STAND)

6 JEFF SCOTT, being duly sworn to tell
7 the truth, the whole truth and nothing but the
8 truth, testified, as follows:

9 DIRECT EXAMINATION

10 BY SOLICITOR STUMBO:

11 Q. Good afternoon, Investigator Scott. How
12 are you doing today?

13 A. Good.

14 Q. I can tell by the badge that you wear
15 there that you are law enforcement?

16 A. Yes, sir.

17 Q. What agency do you work for?

18 A. Greenwood County Sheriff's Office.

19 Q. What is your title at the sheriff's
20 department?

21 A. Investigator.

22 Q. How long have you been an investigator?

23 A. Four years.

24 Q. Before investigations, what did you do at
25 the sheriff's office?

1 A. I spent four years in Uniform Patrol.

2 Q. Let's give the jury a little background
3 of your education and experience. Education,
4 first of all.

5 A. I completed the Criminal Justice Academy
6 in Columbia in 2005, went straight to work in
7 the uniform patrol and worked there for four
8 years.

9 Promoted to Investigations in 2009.
10 I attended the investigator class at the
11 Criminal Justice Academy, again. I've worked
12 in investigations since that time.

13 Q. So from 2005, you've been in law
14 enforcement for about eight years?

15 A. Yes, sir.

16 Q. In those eight years, ballpark for me how
17 many investigations you've done.

18 A. Upward of thousands.

19 Q. What types of cases have you had the
20 opportunity to be involved with at the
21 sheriff's department?

22 A. We work a range of cases. We don't --
23 I've worked anything from petit larceny,
24 grand larceny, murder, burglary, assault and
25 batteries, just about everything.

1 Q. Have you had an opportunity to investigate
2 sexual assault cases?

3 A. I have.

4 Q. Does one of those investigations involving
5 Gary Lott?

6 A. It is.

7 Q. When did the sheriff's department, not
8 necessarily yourself but the sheriff's
9 department, get called out for the first time?

10 A. I think the initial report on this was
11 taken on October 3, 2011, at 6:44 in the
12 evening.

13 Q. Okay. Who responded to the call at that
14 time?

15 A. Deputy Clint Burden.

16 Q. Uniform ---

17 A. He's a uniform patrol officer.

18 Q. Where did he respond to?

19 A. He responded to the home of Minor Child
20 which is [REDACTED], which is located
21 in the County of Greenwood.

22 Q. So that is in Greenwood County?

23 A. Yes, sir.

24 Q. What area of Greenwood? The south part of
25 town?

1 A. (Affirmative nod), south part of town.

2 It's actually a Ninety-Six address, but it is
3 Greenwood County.

4 Q. You said **Minor Child** house. Were you
5 able -- was Deputy Burden or yourself, the
6 investigative team, able to determine how old
7 **Minor Child** was at this time?

8 A. Yeah, she was -- I believe it's in the
9 report. She was eleven years old at the time
10 of the incident.

11 Q. Okay. Did you get her date of birth?

12 A. Date of birth -- I don't have that in my
13 report. That's one of the things that they
14 keep out of the report, but it's in the
15 computer system.

16 Q. But it is in the report that she was an
17 eleven-year-old child?

18 A. Yes, sir.

19 Q. What were the allegations at the time?
20 What was the reason for Deputy Burden to go
21 out there to 601 McKenzie Road that night?

22 A. She had reported that Gary Lott had
23 touched her inappropriately.

24 Q. **Minor Child** had?

25 A. Yes.

1 Q. Now, when did you get involved with the
2 case?

3 A. The case was assigned to me on the fourth,
4 October the 4th, 2011.

5 Q. Is that standard protocol, that the
6 investigating officer goes out and takes
7 a report when it gets transferred to
8 Investigation?

9 A. It is.

10 Q. When you got involved with the case, did
11 you go talk to anyone at that point?

12 A. I had **Minor Child** mother, Kayla, and her
13 stepdad come -- they came to the sheriff's
14 office and spoke with me. Both did give me a
15 written statement as to what **Minor Child** had told
16 them.

17 Q. When you say her stepdad, are you
18 referring to James/Jamie Baker?

19 A. Yes.

20 Q. The same individual who testified here
21 earlier?

22 A. Yes, sir.

23 Q. You did speak with him?

24 A. Yes, sir.

25 Q. Were you able to give him an opportunity

1 to write a statement for you?

2 A. I did.

3 Q. So he gave you a written statement?

4 A. Yes.

5 Q. How about Ms. Allen, did she give you a
6 written statement?

7 A. She did.

8 Q. Now, at that time did you actually go get
9 a statement or talk to Minor Child

10 A. I did not speak to Minor Child Due to her
11 age, we had The Child's Place -- which is set
12 up to interview younger children. I arranged
13 a forensic interview with her, set up in the
14 next day or two.

15 Q. In this day and age of law enforcement, is
16 that standard protocol?

17 A. Yes, sir. It is.

18 Q. There is a child advocacy center here in
19 Greenwood, is that right?

20 A. Yes, sir.

21 Q. Where is it located here in Greenwood?

22 A. Phoenix Street, I believe it is.

23 Q. It's out on Phoenix Street?

24 A. Yes.

25 Q. Now, did you ultimately arrange to have

1 Minor Child brought over there to the Phoenix
2 Street location?

3 A. Her parents did, (affirmative nod). I met
4 them there.

5 Q. Okay. Now, these child advocacy centers,
6 -- tell the jury, Investigator Scott, about
7 what these places are like.

8 A. It's ---

9 Q. Just give us a summary.

10 A. Basically they have a room set aside.
11 It's a very comfortable room. They have a
12 small couch. They have a large notepad where
13 the person who does the interview actually
14 sits down with them. They ask them basic
15 questions: who lives with them, with their
16 family, who lives in the household. They
17 basically try to get them very comfortable and
18 become familiar with them.

19 After that they go through with them that
20 there are set rules, ground rules. I think
21 one of them is that anything that is talked
22 about in the room has to be truth.

23 They tell the child that if they make a
24 mistake or ask them the wrong question, that
25 it's okay for them to correct them and make it

1 right.

2 They have them label body parts as to what
3 the child calls certain body parts. Just
4 basically make them comfortable so that they
5 will talk.

6 Q. Is this the structure that a forensic
7 interview follows every time?

8 A. Every one that I have been to is the same.

9 Q. Okay. Is there a protocol for that? Do
10 they call that something? Is there a name?

11 A. Forensic interview is what I know it as.

12 Q. Okay. When you say forensic, is that for
13 the purpose of something involved with law
14 enforcement?

15 A. That's right.

16 Q. Okay. Now, uh, they have a number of
17 interviewers over at The Child's Place; is
18 that correct?

19 A. The few interviews that I've had there has
20 been one -- I've only dealt with one lady.

21 Q. What is her name?

22 A. Heather -- (pause) -- I can't remember the
23 last night, but it's Heather.

24 Q. Heather, the forensic interviewer, she
25 conducted the interview in this case?

1 A. She did.

2 Q. Now, what kind of questions does she ask?

3 Leading questions? Nonleading questions?

4 Can you characterize them?

5 A. Very nonleading questions. Basically they

6 want the child to tell them in their own words

7 what happened.

8 They may ask them, like, 'Has anyone ever

9 touched you in your private area' or whatever

10 they call that area. But that's about it.

11 They want the child to be honest, to tell it in

12 their own words.

13 Q. And were you able to observe the interview

14 in this case?

15 A. I was. They have a camera set up in the

16 room. They even let the child know before-

17 hand. They point out the camera and let them

18 know that it is being recorded.

19 Q. So you were able to observe the interview

20 as it was taking place? Live?

21 A. Yeah, they have a monitor set up in

22 another room where we can sit and watch.

23 Q. But in the room at the time, who was in

24 the room for the interview itself?

25 A. It's just the child and the person doing

1 the interview.

2 Q. Okay. Now, in anticipation of court, were
3 you able to watch the forensic video?

4 A. I was.

5 Q. And is it -- does it fairly depict the
6 interview as you recall it?

7 A. Yes, sir, it does.

8 Q. Is it a fair and accurate representation
9 of the interview?

10 A. Yes, sir.

11 SOLICITOR STUMBO: Your Honor,
12 at this time the State would offer State's
13 Exhibit 1 into evidence.

14 THE COURT: Any objection?

15 MR. SHEEK: Previously stipulated.
16 No objection, Your Honor.

17 THE COURT: Madame Forelady, just
18 so that you all understand. When they
19 describe the -- the videotape is on that DVD.
20 It will be admitted into evidence. It'll be
21 played shortly. And when you all are in the
22 jury room, y'all can review it.

23 Both sides agree that she was a
24 proper interviewer and asked proper questions,
25 so y'all will get to see it in its entirety.

1 (SO ENTERED AS STATE'S EXHIBIT 1)

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR STUMBO:

4 Q. You also mentioned that they go through
5 this process of having the child identify in
6 their own words the body parts?

7 A. That's right.

8 Q. Okay. And, uh, I'm going to hand you what
9 has been marked for ID as State's Exhibit 2.

10 A. Okay.

11 Q. Take a look at that.

12 A. (Complies).

13 Q. State's Exhibit 2, is this -- have you had
14 a chance to review this before court today?

15 A. I have.

16 Q. And this is what was attached to the
17 forensic interview?

18 A. It is.

19 Q. And it fairly and accurately depicts what
20 you saw that day with the victim actually
21 identifying with her own words ---

22 A. Yes.

23 Q. --- the body parts?

24 A. It does.

25 Q. Who actually writes the words, the child

1 or the interviewer?

2 A. The interviewer writes it as the child
3 tells her.

4 SOLICITOR STUMBO: Your Honor,
5 at this time the State would offer State's
6 Exhibit 2 into evidence.

7 MR. SHEEK: No objection, Your
8 Honor.

9 THE COURT: That is the one from
10 the interview?

11 SOLICITOR STUMBO: It is.

12 THE COURT: All right. I saw this
13 -- I reviewed the videotape myself, and I saw
14 this. During the interview process, they show
15 pictures, label certain things. The diagram
16 was used -- so you'll also have this. So
17 that's what we are talking about.

18 (SO ENTERED AS STATE'S EXHIBIT 2)

19 DIRECT EXAMINATION CONTINUED

20 BY SOLICITOR STUMBO:

21 Q. Detective Scott, you were able to observe
22 -- what, if anything, was the disclosure about
23 -- let me rephrase that.

24 Where was the disclosure (sic) taking
25 place? Where did Minor Child say that this

1 happened?

2 A. It happened to her on the couch in her
3 home on McKenzie Road.

4 Q. And she alleged that the defendant here,
5 Gary Lott, was in the home?

6 A. She did.

7 Q. And when did she say that this occurred?

8 A. The incident -- it was the first of
9 October, around October 3rd, 2011. I believe
10 that's the date that she said.

11 Q. Was it the night before Deputy Burden gets
12 called out to the scene?

13 A. It was. Yes, sir.

14 Q. And that was on October 3rd? Correct?

15 A. It was.

16 Q. And the disclosure included what kind of
17 sexual abuse?

18 A. That he stuck his hand in her pants and
19 touched her skin, skin to skin, on what she
20 called her "bad spot." Uh, inside and
21 outside.

22 Q. Okay, you said bad spot. On State's
23 Exhibit 2 ---

24 SOLICITOR STUMBO: If I may
25 approach the witness, Your Honor.

1 THE COURT: Yes, sir.

2 DIRECT EXAMINATION CONTINUED

3 BY SOLICITOR STUMBO:

4 Q. On State's Exhibit 2, what did Minor Child
5 identify her front private parts as?

6 A. Her "bad spot."

7 Q. She disclosed that Mr. Lott had his hands
8 on her bad spot?

9 A. Yes, sir.

10 Q. Did she make an indication of whether it
11 was just on the outside of her bad spot or
12 inside, or what did she say?

13 A. She said that it was inside and outside,
14 and that it was under her pants.

15 Q. Now, after you were able to hear this
16 disclosure, after watching and observing the
17 interview, did you ever give Mr. Lott a chance
18 to give his side of the story?

19 A. Well, Mr. Lott came in when he was
20 arrested and ---

21 MR. SHEEK: Objection, Your Honor.
22 I have a Motion.

23 THE COURT: All right, we have a
24 legal issue that we need to take up. Y'all
25 need to go to your jury room. Don't discuss

1 the case.

2 (JURY OUT @ 1:46 P.M.)

3 THE COURT: All right?

4 MR. SHEEK: Your Honor, at this
5 point I believe that I have to object and move
6 for a mistrial because the State cannot elicit
7 testimony of my client ---

8 COURT REPORTER: I can't hear you.

9 THE COURT: Come a little closer so
10 that Ms. Cross can hear you.

11 MR. SHEEK: I apologize.

12 THE COURT: Start again.

13 MR. SHEEK: I think that to protect
14 my client that I am going to have to ask for a
15 mistrial. The State is not allowed to elicit
16 testimony or to comment on my client's
17 exercise of his fifth amendment right to
18 remain silent. In this case he did not give a
19 statement.

20 I am assuming, since I objected so
21 quickly that where we were going is, 'Yeah, I
22 gave him a chance to give a statement but he
23 got a lawyer' or 'he declined to give a
24 statement.'

25 SOLICITOR STUMBO: Your Honor,

1 the only purpose for even asking that question
2 is not to elicit what necessarily the
3 defendant did but to make sure that this
4 investigator did a full investigation. That
5 he didn't just -- because I assume the
6 argument in closing will be, 'well, this is
7 just one side of the story, from the State.'
8 The investigator here did his job and he gave
9 an opportunity to the defendant but, uh, I
10 don't think that's a comment from the State
11 respective on his fifth amendment right.

12 MR. SHEEK: Your Honor, I think
13 that if I raise it in my questioning, open the
14 door, they would have more than -- they would
15 certainly have the right to come in and say
16 then, 'did you not give him an opportunity?'
17 I think that it would be improper for me to
18 argue in closing that they didn't give him an
19 opportunity if that question obviously is not
20 allowed. But they've asked the question ---

21 THE COURT: What was the question
22 that he asked that you object to?

23 MR. SHEEK: 'Did you give Mr. Lott
24 an opportunity to tell his side of the story?'

25 SOLICITOR STUMBO: Well, Your

1 Honor, I think in opening -- I remember Mr.
2 Sheek saying this is the defendant's first
3 chance to give a defense or to tell his side
4 of the story.

5 MR. SHEEK: To an unbiased jury,
6 yes. That is what I was arguing the whole
7 time, is that 'you were the first unbiased
8 panel to be assembled.'

9 I think the state law is pretty
10 clear. The State cannot initiate a comment
11 on his decision not to give a statement.

12 Now, that's a bell that I can't
13 unring.

14 SOLICITOR STUMBO: Well, Your
15 Honor, ---

16 THE COURT: Your Honor, I ---

17 THE COURT: You asked that
18 question?

19 SOLICITOR STUMBO: I haven't made
20 the first comment about the defendant's right
21 to remain silent. Obviously Mr. Sheek has
22 already talked about, in opening, that he
23 didn't have an opportunity. I don't want
24 the jury to walk away with the impression
25 that Detective Scott didn't give him an

1 opportunity. He did a full investigation.

2 THE COURT: Your client did not
3 give a statement?

4 MR. SHEEK: No. The implication
5 that the jury is going to be left with is --
6 I mean, we've all been involved in this long
7 enough -- 'he didn't want to tell you what he
8 did' or 'he didn't want to give his side of
9 it.'

10 THE COURT: You ---

11 MR. SHEEK: On advice of counsel,
12 he did not give a statement. I could then
13 put my client and ask, 'You didn't give a
14 statement. Why?' He could say, 'well, I
15 talked to you and you told not to.' They
16 would wonder why. That's the reason the rule
17 is that they can't elicit that testimony.

18 THE COURT: Your Honor, I think
19 your standard charge in closing, obviously you
20 would tell this jury that they cannot consider
21 the fact whether he takes the stand or doesn't
22 take the stand. Or that he exercised his
23 right to remain silent, that that is his
24 right. That it is not his burden to prove.
25 I think Your Honor is going to cover that in

1 your charge.

2 THE COURT: If he chooses not to
3 testify, the charge is very specific with what
4 the jury will not do with his remaining
5 silent.

6 SOLICITOR STUMBO: Your Honor, ---

7 THE COURT: I am trying how to
8 explain to the jury that you're to rephrase
9 your question.

10 SOLICITOR STUMBO: Your Honor,
11 I will be glad to say when they come back in
12 that we withdraw the last question. Or if you
13 want to rephrase it, I can ask 'Detective
14 Scott, did you fully investigate the case and
15 interview all parties, have an opportunity to
16 speak to all the parties involved?' He had an
17 opportunity to speak with not only Mr. Lott
18 but -- that's a more generalized question.
19 I'll be glad to do that.

20 THE COURT: What you are trying to
21 avoid is giving him an option in closing to
22 say 'well, they never asked my client a
23 thing.' He can't do that.

24 MR. SHEEK: No.

25 THE COURT: And he won't do that.

1 MR. SHEEK: No, sir. I think that
2 would be a mistrial for the State if I did
3 that.

4 THE COURT: Well, (pause).

5 SOLICITOR STUMBO: Well, Your
6 Honor, we're constantly in these trials, as
7 you know, having to defend the actions of law
8 enforcement, what they did, what they didn't
9 do. I think that this is part and parcel of
10 that. I am not making any comment on whether
11 he did make a statement or he -- or he -- you
12 know the Constitutionality of the decision Mr.
13 Lott made. I am not making any comment on
14 that.

15 MR. SHEEK: Obviously the question
16 elicits, 'did he give a statement.' I don't
17 know how the response could be anything but a
18 -- I mean, the State just can't raise his
19 right to remain silent or use it. They can't
20 even comment on it in closing, much less bring
21 it up in the case in chief.

22 THE COURT: All right, I tell you
23 what. I'm going to sustain the objection.
24 I am going to allow you to withdraw your
25 question and ask the open-ended questions of

1 'did you investigate your case fully and
2 interview all parties.' Leave it at that.
3 I think that is the cleanest way to do it.

4 SOLICITOR STUMBO: Yes, Your
5 Honor.

6 THE COURT: Bring the jury back in.
7 (JURY IN @ 1:53 P.M.)

8 THE COURT: You may continue,
9 Solicitor. I am going to allow you to
10 rephrase your question.

11 SOLICITOR STUMBO: Thank you,
12 Your Honor. We will withdraw the prior
13 question and ask it this way ---

14 DIRECT EXAMINATION RESUMED
15 BY SOLICITOR STUMBO:

16 Q. Detective Scott, did you have an
17 opportunity to talk to all parties involved
18 with this case?

19 A. I did.

20 Q. Do you feel like you gave it a full
21 investigation? Talked to everybody that
22 was involved in this?

23 A. Yes, sir.

24 Q. Now, you testified earlier that there
25 was a disclosure of penetration or inside

1 and outside touching here; is that correct?

2 A. Yes, I did.

3 Q. Based on what you knew at this point, did
4 you make a decision to charge the defendant?

5 A. I did.

6 Q. And what was the charge?

7 A. Criminal sexual conduct, first degree.

8 Q. You said first degree?

9 A. Yes.

10 Q. Now, were you able to determine the
11 child's age at the time that this happened?

12 A. Yes, sir.

13 Q. How old was the child?

14 A. Eleven.

15 Q. Now, based on the elements that you had at
16 that point, why did you make the decision to
17 charge criminal sexual conduct first degree?

18 A. Based on the prior criminal history.

19 Q. Was there a prior conviction?

20 A. There was.

21 Q. That you were able to discover?

22 A. Yes, sir.

23 MR. SHEEK: At this point we would
24 renew our previous objection.

25 THE COURT: Having had a pretrial

1 issue, your issue is preserved. My ruling is
2 consistent with ---

3 SOLICITOR STUMBO: State's 3,
4 Your Honor, ---

5 THE COURT: --- State's Exhibit 3,
6 which will be utilized for the purposes of
7 proof on that element?

8 SOLICITOR STUMBO: Yes, sir.

9 DIRECT EXAMINATION CONTINUED

10 BY SOLICITOR STUMBO:

11 Q. Detective Scott, I am going to hand you
12 what has been marked for ID purposes as
13 State's Exhibit 3. If you could, review that.

14 A. (Upon review), okay.

15 Q. Okay. Have you seen that before you took
16 the stand here today?

17 A. Yes, I have.

18 Q. What -- you said that there was a prior
19 conviction of Mr. Lott. What was he convicted
20 of?

21 A. Criminal sexual conduct.

22 Q. If you could refresh your memory.

23 A. (Upon review), lewd act.

24 MR. SHEEK: Your Honor, may we
25 approach?

1 THE COURT: Yeah.

2 (OFF RECORD BENCH CONFERENCE)

3 THE COURT: Ladies and Gentlemen,

4 I want to make sure that y'all understand.

5 Our General Assembly changed the law back in

6 2010. They basically rewrote all the criminal

7 laws and some of the old -- I don't know,

8 "nomenclature," the words used to describe

9 certain crimes got changed. The crime of lewd

10 act on a minor is now called criminal sexual

11 conduct third degree. It is one of the

12 offenses which I published which is an

13 accusation by the State against Mr. Lott in

14 this trial.

15 They're called different things but

16 the elements are very similar because the law

17 was rewritten. It creates confusion but --

18 there used to, like, assault and battery with

19 intent to kill and assault and battery of a

20 high and aggravated nature and simple assault.

21 Most of the prosecutors and defense attorneys

22 knew what that meant. Now it is assault and

23 battery first, second and third degree. They

24 mean the same thing but by different words.

25 This is very similar to that. Lewd

1 act with a minor formerly is now criminal
2 sexual conduct with a minor third degree.

3 So I don't want to create confusion.
4 That'll be part of my instruction at the very
5 end but I wanted to make certain that we don't
6 get confused of the charges by the questions
7 that the State is asking.

8 Mr. Skeen is just making certain that
9 they are clear on what the questions are.
10 That's his job, that is his responsibility.

11 I will give y'all very detailed
12 instructions on these two crimes, consistent
13 with the allegations here, and make certain --
14 hopefully -- that you all understand them. So
15 y'all will have that to consider.

16 SOLICITOR STUMBO: Thank you,
17 Your Honor.

18 DIRECT EXAMINATION CONTINUED

19 BY SOLICITOR STUMBO:

20 Q. Detective Scott, looking at State's
21 Exhibit 3 there, is that a certified copy
22 of a sentencing sheet?

23 A. It is.

24 Q. Where is that sentencing sheet from?

25 A. Saluda, South Carolina.

1 Q. Certified by who?

2 A. Clerk of Court.

3 Q. The Clerk of Court, Saluda?

4 A. Yes, sir.

5 Q. Okay. Whose name is on that sentencing
6 sheet?

7 A. Gary Lott.

8 Q. What is the charge that he was convicted
9 of in that case?

10 A. Lewd act with a minor.

11 Q. All right. It's a lewd act on a minor,
12 from Saluda.

13 A. (Affirmative nod).

14 Q. When, uh, was he convicted of that?

15 A. October 1996.

16 Q. What was another condition of the court
17 upon that conviction? That is written on
18 State's Exhibit 3?

19 A. To register as a sex offender.

20 SOLICITOR STUMBO: Your Honor,
21 at this time a sufficient foundation has been
22 laid. Obviously subject to Mr. Sheek's prior
23 objection or pretrial Motion, we would offer
24 State's Exhibit 3 into evidence.

25 MR. SHEEK: Subject to my prior

1 objection.

2 THE COURT: Subject to objection,
3 so admitted. State's -- Court's Exhibit 3 is
4 now State's Exhibit 3, consistent with the
5 same number.

6 (SO ENTERED AS STATE'S EXHIBIT 3)

7 SOLICITOR STUMBO: Court's Exhibit
8 2 is now State's Exhibit 3, Your Honor.

9 THE COURT: Okay.

10 SOLICITOR STUMBO: Yes, sir.

11 DIRECT EXAMINATION CONTINUED

12 BY SOLICITOR STUMBO:

13 Q. Detective Scott, based on the sexual
14 battery alleged by the victim, the age of the
15 victim and this prior conviction, what was the
16 appropriate charge by you in this case?

17 A. Criminal sexual conduct first degree, with
18 a minor.

19 SOLICITOR STUMBO: Beg the Court's
20 indulgence, Your Honor.

21 DIRECT EXAMINATION CONTINUED

22 BY SOLICITOR STUMBO:

23 Q. Did you charge Mr. Lott with that?

24 A. I did.

25 SOLICITOR STUMBO: Please answer

1 any questions that Mr. Sheek may have,
2 Detective Scott.

3 CROSS EXAMINATION

4 BY MR. SHEEK:

5 Q. Detective Scott, when you charge somebody,
6 you get a warrant? Is that how you do it?

7 A. Yes, sir.

8 Q. Okay. On what date did you procure a
9 warrant against Mr. Lott for criminal sexual
10 conduct first degree?

11 A. This was October 3rd, 2011.

12 Q. What date?

13 A. October 3rd.

14 Q. That was in the first degree?

15 A. (Upon review), yes. Yes, sir.

16 I'm sorry. October 7th, 2011.

17 Q. May I see what you're referring to?

18 A. (Tenders).

19 Q. (Upon review), okay. Now, you charged him
20 on October 7th.

21 A. (Affirmative nod).

22 Q. What was the first date that you said that
23 you became involved with this case?

24 A. October 4th.

25 Q. And October 4th, what did you do? When

1 you got assigned the case, what did you do?

2 A. First, I made contact with Ms. Allen.

3 Q. Kayla Allen?

4 A. Kayla Allen, (affirmative nod). Made
5 arrangements for them to come to the Sheriff's
6 Office so that I could speak with them.

7 Q. Okay. And at the sheriff's department,
8 y'all have an interview room set up with a
9 video camera so that you can video these type
10 interviews; right?

11 A. We do, but this was not an interview.
12 This was just that I wanted a statement from
13 them.

14 Q. You didn't record the statement that you
15 got?

16 A. The statement was in writing.

17 Q. Did you record -- okay. Are you saying
18 that there was not an interview, that you just
19 said 'here, give me a written statement' and
20 there was no other discussion?

21 A. Basically I had them come in, just wanted
22 a statement from them.

23 Q. Why in the world -- were you the chief
24 investigator on this case?

25 A. I was.

1 Q. Well, why wouldn't you have set and talked
2 with her a little bit, get some information?

3 A. The main thing that I wanted to know was
4 what happened. I wanted to hear her story.

5 Q. But you guys didn't talk about what
6 happened before you asked her to give a
7 written statement?

8 A. We may have spoke briefly but mainly they
9 sat down and wrote their statements.

10 Q. All right. So a written statement then
11 was the only thing that you got from her?

12 A. That's right.

13 Q. I am going to hand you this two-page
14 document, a copy of what I have been given.
15 Is that a copy of her written statement?

16 A. (Upon review), it is.

17 Q. That's the entirety of what she told you?

18 A. Yes.

19 Q. Okay. And none of that was recorded, it
20 was just written down?

21 A. Yes, sir.

22 Q. I imagine that when you investigate these
23 cases -- I believe that you said at one point
24 that the birth date was in the computer
25 system; right?

1 A. It is.

2 Q. Everything that y'all do, you enter into a
3 computer ---

4 A. Yes.

5 Q. --- like everybody else nowadays.

6 A. (No verbal response).

7 Q. I imagine that generates a lot of paper if
8 you print all that out. Correct?

9 A. Right.

10 Q. And when the first officer reported to the
11 scene, he would have done an incident report
12 about what he observed or what he saw.
13 Correct?

14 A. Yes, sir.

15 Q. And that was Officer C. Burden?

16 A. Yes, sir.

17 Q. I hand you this incident report and ask
18 you, is that a copy of Officer Burden's
19 incident report?

20 A. It is.

21 Q. Okay. That one paragraph that is typed in
22 there, this small section right here, is that
23 the entirety of his report about that?

24 A. There is a little bit more on another
25 page.

1 Q. Two lines on the other page?

2 A. Yes, sir.

3 Q. So that was the entirety of what Officer
4 Burden did. Correct?

5 A. Yes, sir.

6 Q. And he didn't do any interviews, did he?

7 A. No. I think that he spoke briefly with
8 the parents and he spoke briefly with Minor Child

9 Q. Okay. Because, basically, he took the
10 report and then called Investigations.

11 A. That's right.

12 Q. Then when you do the investigation,
13 whether it is you or Officer Tyler, everything
14 that y'all do, you enter into a supplement
15 report. Correct?

16 A. Right.

17 Q. I am going to hand you the only
18 supplemental report that has been provided to
19 me, which reflects a little less than four
20 lines long. Is that your supplemental report?

21 A. It is.

22 Q. Is that the entirety of your supplement
23 report contained in your computer system
24 regarding your investigation of this matter?

25 A. It is.

1 Q. There are no other reports by any other
2 investigators, are there?

3 A. No.

4 Q. So when you told the Solicitor a few
5 moments ago that 'I had an opportunity to do a
6 full investigation', your full investigation
7 amounted to less than four typed lines?

8 A. I feel confident that I did a full
9 investigation.

10 Q. I understand that, but the entirety of
11 what you did is not even four typed lines;
12 correct?

13 A. Yes, sir.

14 Q. Would you agree with me that the charge is
15 rather serious?

16 A. I do.

17 Q. And when investigating it, you obviously
18 anticipate coming to court sometime later?

19 A. Right.

20 Q. And you're going to sit in front of a
21 jury, much as you are today, and you're gonna
22 tell these people why you believe that your
23 arrest was proper. Correct?

24 A. That's right.

25 Q. And that the State feels that the

1 defendant should be convicted of the crime?

2 A. Right.

3 Q. What you, as an investigator, think is
4 absolutely the most crucial and important
5 thing you as an investigator can gather when
6 doing an investigation?

7 A. As much information as I can.

8 Q. Evidence, right?

9 A. Right.

10 Q. Have you ever in the thousands of
11 investigations that you talked about, ever
12 had someone tell you a lie?

13 A. Yes, I have.

14 Q. Have you ever had someone tell you some-
15 thing that they were just incorrect about, not
16 necessarily an intentional lie?

17 A. I have.

18 Q. Let me ask you this, if a person who is an
19 alleged victim tells you a story but then that
20 story changes, for whatever reason, what do
21 you do as an investigator? I mean, what is
22 your response to that?

23 A. I try to dig deeper into it.

24 Q. You need to confirm which story would be
25 true?

1 A. That's right.

2 Q. You reviewed this videotape that you said
3 that you went to The Child's Place and watch-
4 ed, correct?

5 A. I did.

6 Q. Now, this lady that gave the interview,
7 she is not a member of law enforcement, is
8 she?

9 A. No, she isn't.

10 Q. Not trained in law enforcement techniques
11 or ---

12 A. Not that I am aware of.

13 Q. Has no duties in regard to an investi-
14 gation, period. Does she?

15 A. Not that I know of.

16 Q. All she does is sits down and talks to the
17 child?

18 A. Right.

19 Q. Was the child's statement in the interview
20 that she gave consistent with the testimony
21 that she has told you today as she sat on the
22 stand?

23 A. It is.

24 Q. It is consistent?

25 A. It is, (affirmative nod).

1 Q. Are there any inconsistencies?

2 A. (No verbal response).

3 Q. Do you want a chance to watch it before we
4 go through it?

5 A. Uh, -- yeah, we could do that.

6 MR. SHEEK: Your Honor, with the
7 Court's permission, it's already in evidence,
8 may we play the ---

9 SOLICITOR STUMBO: Your Honor, it
10 was our intention to publish it right after
11 Detective Scott got done anyway. So I have no
12 problem with it. In fact, at this time, if --
13 you can ask him about his incident reports.
14 Should have brought some to court but --
15 under Rule 106, I don't have any problem with
16 them coming in. If he can ask him about his
17 incident reports, under the rule of
18 completeness -- since he's asking the
19 questions, the jury might like to see them.

20 MR. SHEEK: But the rule says that
21 if I have ---

22 THE COURT: Wait a minute, wait a
23 minute. Now we're getting into a legal issue.

24 SOLICITOR STUMBO: I know that
25 I ---

1 THE COURT: Let's watch the video?

2 MR. SHEEK: Yes, sir. That's fine.

3 THE COURT: All right, and then we
4 will address that issue again at the break.
5 We will watch the video now and -- that issue
6 is not yet ruled upon.

7 Madam Forelady, what we are going to
8 do is we're going to play the video for you.
9 Your chairs swivel, so they're going to let
10 you watch there. We will watch from here.

11 (VIDEO PLAYING BEFORE JURY)

12 THE COURT: Let's start from the
13 very beginning.

14 (WHEREUPON VIDEO PLAYED BEFORE JURY)

15 THE COURT: Madam Forelady, let's
16 take a break. Y'all step into your jury room.
17 Have a smoke break if you need to. But don't
18 discuss the case. Y'all step into the jury
19 room.

20 (JURY OUT @ 2:49 P.M.)

21 THE COURT: Okay, I want to address
22 the issues but I'm going to take a break
23 first. Let's take a break now.

24 SOLICITOR STUMBO: That's fine.

25 (BRIEF RECESS 2:49 - 3:02 P.M.)

1 (DEFENDANT PRESENT)

2 THE COURT: All right, let's
3 address the two issues that we took up right
4 before the playing of the video, regarding
5 the incident report, the supplemental report
6 and the Motion for a mistrial. Well, there's
7 three issues actually.

8 Regarding the incident reports, it is
9 your case to try this. You've got the witness
10 here. He wrote it. You can ask him if he
11 wrote it. He can refresh his memory if he
12 needs to.

13 It seems to me that it is repetitive.
14 But if you want him to read it, he can read
15 it.

16 MR. SHEEK: Your Honor, he only
17 wrote one incident report.

18 THE COURT: Well, he wrote the
19 supplemental.

20 MR. SHEEK: That's right.

21 THE COURT: And that's the only one
22 that he wrote.

23 MR. SHEEK: That's correct.

24 SOLICITOR STUMBO: I will withdraw
25 my Motion. It's not -- on further review,

1 you're right. There is no need to take up the
2 court's time.

3 MR. SHEEK: And I am going to
4 withdraw my Motion for a mistrial, based on
5 his criminal sexual conduct. I believe that
6 your curative instruction took care of that
7 issue.

8 THE COURT: Okay. I'm glad that
9 it did. I appreciate you withdrawing.

10 MR. SHEEK: Yes, sir.

11 THE COURT: All right. So we're
12 going to publish the contents of the supple-
13 mental report, through the witness, if you
14 choose to do so. But neither one will be
15 admitted into evidence. Which that's proper.

16 MR. SHEEK: Yes, sir. I am not
17 moving it into evidence.

18 THE COURT: That's -- I anticipated
19 it not coming in, and my anticipation will not
20 be disappointed. Okay. Y'all ready to go at
21 it?

22 MR. SHEEK: Yes, sir.

23 THE COURT: All right, we're ready
24 if they are ready.

25 (JURY IN @ 3:03 P.M.)

1 THE COURT: Ms. Cross, this is off
2 the record, this next comment.

3 (OFF RECORD COMMENTS BY JUDGE
4 REGARDING WAITING ON CLERK TO ENTER COURTROOM)

5 MR. SHEEK: Mr. Sheek, whenever you
6 are ready we can continue.

7 MR. SHEEK: Thank you, Your Honor.

8 CROSS EXAMINATION RESUMED

9 BY MR. SHEEK:

10 Q. Investigator Scott, on the 4th when you
11 got the call, you had Minor Child mother come
12 to the police department?

13 A. On the 5th, I believe it was when they
14 came.

15 Q. Did you interview anybody on the 4th?

16 A. I think the -- the only people that I
17 ever talked to was Ms. Allen and her fiancé.

18 Q. Okay. You took written statements from
19 them but you didn't take any recorded state-
20 ments?

21 A. That's right.

22 Q. And at no point did you ever interview
23 Minor Child

24 A. No.

25 Q. And you asked Minor Child to go do a forensic

1 interview; which she did, as we just saw, on
2 October 7th?

3 A. That's right.

4 Q. Between taking the two written reports on
5 the 5th and this forensic interview on the 7th,
6 was there anything done in the investigation
7 of this case?

8 A. We just waited on the forensic.

9 Q. And after the forensic on the 7th -- after
10 the interview, was there anything else done
11 other than obtaining a warrant?

12 A. That's it.

13 Q. So you would agree with me that the
14 entirety of the investigation was a written
15 statement from **Minor Child** mother and from her
16 boyfriend, and the forensic interview?

17 A. That's right.

18 Q. Now, you've had a chance to watch this
19 forensic interview today?

20 A. I did.

21 Q. And you were actually present when she
22 gave it, in person, weren't you?

23 A. I was.

24 Q. Now, you saw in the forensic interview
25 how she talked about going to her room after

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1 talking to Jamie in the kitchen; right?

2 A. Right.

3 Q. And locking the door?

4 A. Right.

5 Q. Can you tell the jury about this lock on
6 her door?

7 A. From what she said, the lock was on the
8 outside. That's all that I know.

9 Q. Okay. Well, can you tell the jury if you
10 ever went and viewed it?

11 A. I did not.

12 Q. Did you ever determine whether or not she
13 went in and locked it, whether she could have
14 went back out of that room without someone
15 letting her out?

16 A. No.

17 Q. Well, you heard her testify that someone
18 would have to unlock it for her to get out?

19 A. Right.

20 Q. And you saw in the forensic interview
21 where she said that she took her covers, went
22 in the room and locked the door; right?

23 A. Right.

24 Q. And you heard her say that she heard
25 somebody fiddling with the doorknob?

1 A. That's right.

2 Q. Is that what she testified to on the
3 stand?

4 A. I don't recall her mentioning it.

5 Q. Okay. Well, you saw in the forensic
6 interview where she said that she went back
7 out -- took her covers and went back out to
8 the den and went back to sleep?

9 A. Right.

10 Q. Which is contradictory to what she
11 testified to on the stand. Correct?

12 A. Correct.

13 Q. Now, I noticed in your supplemental report
14 that you put a statement in there that was
15 curious. You said, that "in the forensic
16 interview it was determined that she was being
17 honest." Is that accurate?

18 A. That's accurate.

19 Q. Okay. Who made that determination?

20 A. In my opinion, I felt that she was being
21 honest.

22 Q. Okay. Well, when she said on the stand
23 that she didn't go back out of the room and on
24 the forensics that she went back to the room,
25 to sleep in the den, which time was she being

1 honest?

2 THE COURT: Wait a minute.

3 (OFF RECORD SIDEBAR)

4 THE COURT: Okay.

5 CROSS EXAMINATION CONTINUED

6 BY MR. SHEEK:

7 Q. Can you show us the diagram of the house?

8 A. I don't have one.

9 Q. Can you show us photographs of the house?

10 A. I don't have any.

11 Q. Has this child been interviewed by anybody
12 in law enforcement, whether it be you, a
13 member of the solicitor's office, an
14 investigator for the solicitor's office,
15 between October 7th and the time that she
16 testified?

17 A. The only interview that I am aware of was
18 the one at The Child's Place.

19 Q. Okay. When she said that she talked to
20 the Solicitor's Office yesterday, were you
21 part of that?

22 A. I was not.

23 Q. You said, I believe, that you never
24 interviewed Minor Child -- why?

25 A. Because of her age. Deputy Burden

1 reported that she was shy towards him, to the
2 fact that he was a man. So I just went ahead
3 and set up the interview for the forensic at
4 The Child's Place because that is their
5 specialty.

6 Q. Well, we have already determined that also
7 Investigator Tyler, Amy Tyler, was involved
8 with this. Wasn't she?

9 A. She was there when Ms. Allen gave her
10 statement. That was her only part.

11 Q. And you never sought to take any type of
12 statement from Minor Child by Amy Tyler or any
13 other females at the sheriff's department?

14 A. Not when I have The Child's Place
15 available.

16 Q. Did you ever go over the interview with
17 somebody from The Child's Place and ask for
18 any followup with the child regarding
19 statements about -- for instance, why she
20 would go back out to sleep on the couch after
21 this alleged incident?

22 A. She's a twelve-year-old (sic) girl. I
23 just -- her recollection sometimes is not
24 going to be as consistent as an adult.
25 That's just -- I look at the big picture, not

1 just one small piece of it.

2 Q. Did you ever ask Mr. Baker about hugging
3 Mr. Lott after this allegation had been made
4 by Minor Child

5 A. I don't remember if I did or not.

6 Q. So would it be fair to say that the
7 entirety of the investigation was the two
8 written statements and the forensic interview?

9 A. It is.

10 Q. No followup after the forensic interview,
11 in any way, shape or form?

12 A. No, sir.

13 MR. SHEEK: No further questions,
14 Your Honor.

15 THE COURT: Redirect?

16 SOLICITOR STUMBO: Just a couple,
17 Your Honor.

18 REDIRECT EXAMINATION

19 BY SOLICITOR STUMBO:

20 Q. Detective Scott, I believe that there was
21 a question about Miss Heather being at The
22 Child's Place not being trained. Do they have
23 to have training to be forensic interviewers?

24 A. It's my understanding that they ---

25 MR. SHEEK: Your Honor, I am going

1 to object to the form of the question. My
2 question to him was, 'is she a trained law
3 enforcement officer.' That was my question.
4 She is not.

5 THE COURT: I think that's
6 consistent with her testimony. She testified
7 in-camera that she is a trained forensic
8 interviewer; earlier in pretrial, for the
9 purpose of not having to have her come and
10 retestify that she is the one that conducted
11 the interview.

12 REDIRECT EXAMINATION CONTINUED

13 BY SOLICITOR STUMBO:

14 Q. Detective Scott, there's training for
15 forensic interviewers; correct?

16 A. To my knowledge there is.

17 Q. And, uh, are you familiar with the
18 correspondence works of Child First? The
19 training course for forensic interviewing?

20 A. I'm not that familiar with that part.

21 Q. But forensic interviewers at The Child's
22 Place, how often do they deal with law
23 enforcement?

24 A. I've dealt with them several times,
25 probably at least three or four times in the

1 past two years; me personally, and I don't
2 handle the majority of these kind of cases.

3 Q. Are they consulted with by the Greenwood
4 County Sheriff's Office on this case?

5 A. They are. Yes, sir.

6 Q. And the other law enforcement agencies
7 around the 8th Circuit: Newberry, Abbeville,
8 Laurens counties?

9 A. That's my understanding, yes.

10 Q. Now, there was a question asked about the
11 statement that the victim, Minor Child makes
12 about hugging Mr. Lott. Could that be
13 construed as what James was talking about,
14 holding Mr. Lott to ---

15 MR. SHEEK: Objection.
16 Speculation.

17 THE COURT: If you know.

18 SOLICITOR STUMBO: Your Honor, I
19 won't go into that.

20 THE COURT: All right. Okay, fair
21 enough.

22 SOLICITOR STUMBO: Your Honor,
23 at this time I have no more questions of
24 Detective Scott.

25 THE COURT: Any recross?

1 MR. SHEEK: Recross, yes sir.

2 THE COURT: Okay.

3 RECROSS EXAMINATION

4 BY MR. SHEEK:

5 Q. The training forensic interviewer went to,
6 where is it?

7 A. I don't know.

8 Q. How long is it?

9 A. I have no earthly idea.

10 Q. How much does it cost?

11 A. I don't know.

12 Q. What kind of education does she have prior
13 to going to that training?

14 A. I don't know.

15 Q. What information was provided to her from
16 your investigation prior to conducting this
17 forensic interview?

18 A. Just the incident report.

19 Q. What about the written statements from the
20 witnesses (sic)?

21 A. I don't think that they viewed it. I gave
22 them the information of my knowledge.

23 Q. So when she is doing the forensic inter-
24 view, she is basically going blind in other
25 words?

1 A. (No verbal response).

2 Q. She doesn't know what the investigation
3 that ---

4 SOLICITOR STUMBO: Your Honor,
5 that's argumentative.

6 MR. SHEEK: Well, let me rephrase
7 it.

8 THE COURT: Rephrase.

9 RECROSS EXAMINATION CONTINUED

10 BY MR. SHEEK:

11 Q. Does the forensic interviewer know what
12 the allegations are prior to giving the
13 forensic interview?

14 A. They do.

15 Q. And do they know what statements were
16 given by the other witnesses?

17 A. I think the only information that they had
18 was what I provided them, and I don't let them
19 look at the actual written statement -- as I
20 remember.

21 Q. I'm sorry. You don't remember if you gave
22 them the statements or not?

23 A. I don't remember giving them the state-
24 ments.

25 MR. SHEEK: That's all that I have,

1 Your Honor.

2 THE COURT: Nothing further from
3 the State, Your Honor.

4 THE COURT: You may step down.

5 (WITNESS STEPS DOWN)

6 THE COURT: Call your next witness.

7 SOLICITOR STUMBO: Your Honor, that's
8 the State's case.

9 THE COURT: All right. We will let
10 y'all step to your jury room or outside,
11 whichever your pleasure is. I've got a few
12 things that I need to put on the record.
13 We'll have you back out here momentarily.

14 (JURY OUT @ 3:16 P.M.)

15 THE COURT: Mr. Sheek, you got a
16 Motion?

17 MR. SHEEK: Your Honor, we're going
18 to renew our Motion for a mistrial.

19 THE COURT: Hang on. All right?

20 MR. SHEEK: We are going to renew
21 our Motion for a mistrial based on the
22 question that the State asked regarding my
23 client giving testimony on his behalf in the
24 investigation, giving a statement.

25 We also would ask for a mistrial

1 based on the bifurcation issue and the failure
2 to accept the stipulation issue; which have
3 already been ruled on, but for the record I am
4 just preserving our rights.

5 THE COURT: All right.

6 MR. SHEEK: We renew our Motion for
7 a mistrial for the question that was asked by
8 the State, which I think was improper.

9 Moving on to the issue of a Motion
10 for directed verdict, I believe that the
11 evidence, when viewed in the light most
12 favorable to the State, that they have not
13 presented sufficient evidence to ---

14 SOLICITOR STUMBO: The child
15 testified that it happened in Greenwood
16 County, that he touched her inside and outside
17 of her "bad spot", which we identified as her
18 genital area. So I think that there is some
19 evidence and I make that Motion.

20 THE COURT: I think that it is a
21 jury question, as to weight.

22 MR. SHEEK: Yes, sir.

23 THE COURT: For them to consider.
24 I agree with you.

25 MR. SHEEK: And I -- you've already

1 ruled on our Motions for mistrial?

2 THE COURT: Yes, the record is
3 protected regarding a mistrial for the
4 question which was not answered regarding
5 the interview of your client, as to whether
6 or not he provided a statement. A curative
7 instruction was given.

8 Likewise, on the pronouncement of the
9 sentencing sheet as to the conviction of lewd
10 act, which is similar to CSC third now. I
11 have a curative instruction. For those
12 reasons, I deny that one.

13 For the bifurcation, consistent with
14 my ruling, I am denying your Motion for a
15 mistrial on that issue. Is that all for you?

16 MR. SHEEK: Yes, sir.

17 THE COURT: Okay. All right. Have
18 you decided what you are going to do?

19 MR. SHEEK: Yes, sir. After
20 discussion with my client, I believe that my
21 client does wish to take the stand in his
22 defense. I do not disagree with his decision
23 in that regard. I would like the Court to, of
24 course, go over his rights with him and make
25 sure that he is making that decision of his

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1 own accord.

2 THE COURT: Okay. Mr. Lott, --
3 would you put him under oath? And you
4 (defendant) can stay there.

5 (WHEREUPON DEFENDANT SWORN)

6 THE COURT: Mr. Lott, do you
7 understand that you have a right to testify
8 or to not?

9 DEFENDANT: Yes, sir.

10 THE COURT: Your Constitutional
11 right to remain silent is your right only.

12 DEFENDANT: Yes, sir.

13 THE COURT: It is not anyone else's
14 here.

15 DEFENDANT: Yes, Your Honor.

16 THE COURT: It is your decision to
17 decide whether you want to testify in this
18 trial or not. Once you waive that right, you
19 can't take it back. Do you understand?

20 DEFENDANT: Yes, sir.

21 THE COURT: Now, if you were to
22 choose not to testify, I would give very
23 specific instructions to the jury. All twelve
24 would be told that they could not discuss your
25 silence in any way. That they would have to

1 consider and make a determination of your
2 guilt or innocence on the previous State's
3 offering and not discuss your testifying or
4 failure to testify at all. They could not
5 discuss it. It is a nonissue.

6 If you decide to testify, that will
7 be your decision. Do you understand your
8 right to remain silent?

9 DEFENDANT: Absolutely.

10 THE COURT: Have you had enough
11 time to discuss that issue with Mr. Medlock
12 and Mr. Skeen?

13 DEFENDANT: Absolutely, Your Honor.

14 THE COURT: Do you need more time
15 with them on that issue?

16 DEFENDANT: No, sir.

17 THE COURT: You're comfortable that
18 you understand what you're doing?

19 DEFENDANT: Yes, Your Honor.

20 THE COURT: And you're going to
21 waive your right to remain silent, freely and
22 voluntarily, and testify?

23 DEFENDANT: I am going to testify.

24 THE COURT: Now, you understand
25 that the State will have an opportunity to

1 cross examine you?

2 DEFENDANT: Absolutely, Your Honor.

3 THE COURT: And they can, perhaps,
4 use any prior convictions against you to try
5 to discredit your believability?

6 DEFENDANT: We've talked about
7 that, (affirmative nod).

8 THE COURT: Also, I'm certain that
9 Mr. Sheek has explained this to you. If you
10 don't testify and you offer no evidence on
11 your side of the case, you would have the
12 final argument. Mr. Sheek would have the
13 final argument, on your behalf, in front of
14 the jury. Do you understand that?

15 DEFENDANT: Yes, Your Honor.

16 THE COURT: So by presenting
17 testimony, you then allow the State to
18 summarize their case last. Do you understand
19 that?

20 DEFENDANT: Absolutely, Your Honor.

21 THE COURT: Understanding all these
22 things, you're still comfortable with waiving
23 your right to remain silent?

24 DEFENDANT: Yes, Your Honor.

25 THE COURT: Anything else?

1 MR. SHEEK: I would ask at this
2 point if the State believes that they have
3 any prior convictions that they can use for
4 impeachment. In the last ten years.

5 SOLICITOR STUMBO: Well, Your
6 Honor, his prior conviction is in evidence.
7 I know it's over ten years and I -- I'm not
8 sure if there is any extra prejudice in asking
9 him about something that is in evidence. But
10 I agree with Mr. Skeen that this is beyond the
11 ten-year portion.

12 MR. SHEEK: Your Honor, it is
13 obviously an element of the offense and I
14 think your charge to the jury will be that
15 they can only consider it as an element of
16 the offense and not in terms of his guilt.
17 Since it would not be allowed for impeachment
18 outside of it being an element, I don't think
19 it matters.

20 THE COURT: I wasn't aware of any
21 prior record, whether he had one or not. So
22 that's why I asked the question.

23 SOLICITOR STUMBO: That's
24 correct, Your Honor. There is no other
25 conviction on the record but for the one

1 . that is in evidence.

2 THE COURT: Okay.

3 MR. SHEEK: I guess I am making a
4 Motion at this point that the State would not
5 be asking him to explain that. I am not going
6 to ask that.

7 THE COURT: If you open the door,
8 they can walk in. If you don't open the door,
9 they've got to stay outside of that issue.

10 MR. SHEEK: Yes, sir.

11 THE COURT: All right. I'm with
12 you on that one.

13 MR. SHEEK: Your Honor, we're ---

14 THE COURT: A preliminary Motion,
15 if you don't open the door they can't go in
16 on a prior conviction, because of its age.

17 MR. SHEEK: Yes, sir.

18 THE COURT: It is certainly
19 admitted for purposes of proving the element
20 of a prior conviction subject to the
21 registered sex offender. CSC first.

22 Do you all need another minute or are
23 we ready to go?

24 MR. SHEEK: Can I have a minute to

25 ---

1 THE COURT: Sure. My idea is that
2 if he testified -- we're approaching 3:30
3 before we get started. When we get done with
4 him, we'll argue and charge tomorrow. I am
5 not going to put this jury into the night.
6 We'll do that in the morning. Just so you all
7 know. I don't want you to hurry up or to slow
8 down because we are going to try to get done
9 today, because we're not going to do that.

10 MR. SHEEK: All right.

11 THE COURT: Are they ready? Tell
12 them to smoke if they want to smoke.

13 (BRIEF RECESS 3:23 - 3:33 P.M.)

14 (DEFENDANT PRESENT)

15 THE COURT: All right, are you
16 ready?

17 MR. SHEEK: Yes, sir.

18 THE COURT: Okay, bring in the
19 jury.

20 (JURY IN @ 3:33 P.M.)

21 THE COURT: All right. Mr. Sheek?

22 MR. SHEEK: Thank you, Your Honor,
23 may it please the court, ---

24 THE COURT: Yes, sir.

25 MR. SHEEK: -- the defense calls

1 Gary Eugene Lott to the stand.

2 (WITNESS TAKES STAND)

3 GARY EUGENE LOTT, being duly sworn to
4 tell the truth, the whole truth and nothing
5 but the truth, testified, as follows:

6 DIRECT EXAMINATION

7 BY MR. SHEEK:

8 Q. Please state your name?

9 A. Excuse me? Sir?

10 Q. Give us your full name, for the record?

11 A. Gary Eugene Lott.

12 Q. Last name spelled L-o-t-t.

13 A. That's correct.

14 Q. Were are you from originally, Gary?

15 A. Saluda, South Carolina, sir.

16 Q. And is that where you were living at the
17 time that this incident happened?

18 A. Yes, sir.

19 Q. Tell us a little bit about what you've
20 done for living through your life.

21 A. I started in the military after high
22 school. I graduated from Saluda High School,
23 went to the military for many years --
24 seventeen, to be exact. I got out of service
25 early. When I got out of the service, I came

1 home and started working with Brinkman
2 (phonetic) Mills.

3 Q. Okay. To move along to the situation that
4 we are actually here for today, do you know
5 the Allen Family? Minor Child Kayla Allen?

6 A. That is correct, sir.

7 Q. Jamie Butler, do you know him?

8 A. Jamie Baker.

9 Q. Jamie Baker. I'm sorry, I apologize.

10 A. Yes, sir.

11 Q. How long have you known Kayla Allen and
12 Minor Child

13 A. I met Kayla, sir, -- I started DJ'ing at
14 Chris' Bar & Grill, which is now JD's Sports
15 Bar & Grill. I had her come in and -- I'd
16 hosted one of her birthday parties. Come to
17 find out, her dad and I had known each other
18 for twenty years. I just kinda took her
19 underneath my wing and, you know, looked after
20 her.

21 Q. Is Kayla younger than you are?

22 A. Absolutely, sir.

23 Q. Has that relationship progressed -- and
24 by relationship, I mean friendship. Y'all
25 have never been anything than friends, right?

1 A. No, sir, have not.

2 Q. As your friendship progressed, did it get
3 to the point where you would go by her house
4 and visit her from time to time?

5 A. Well, it was more that Kayla would call me
6 or text me to come and eat dinner over at
7 Jim's (phonetic) house or at her house.
8 That's the way it started.

9 Q. And did you meet Mr. Baker, Jamie, through
10 Kayla?

11 A. No, sir. I had known Jamie ten-plus
12 years.

13 Q. Okay.

14 A. Because his mom were best friends.

15 Q. That's right. They actually met through
16 you, didn't they?

17 A. Yes, sir, I introduced those two together.

18 Q. Okay. So would you say that you had a
19 close friendship with Jamie and Kayla?

20 A. Absolutely, sir.

21 Q. And did you also get close with the
22 children?

23 A. Well, of course, sir. Yes, sir.

24 Q. And would you do things with Minor Child from
25 time to time?

1 A. Yes, sir. She'd just die to get on that
2 motorcycle. I mean, her mama would have to
3 stop her sometimes. But she just -- and of
4 course if she wanted to ride, I'd say okay.
5 I'd ride her, you know. And they'd say,
6 'Gary, why do you cater to her?' Listen, if
7 the kid wants to ride, I'd ride her, you know.
8 She was just a child, you know.

9 Q. How many times would you say that y'all
10 went on a motorcycle ride?

11 A. Twenty, thirty, forty times. Somewhere in
12 there. I can't even tell you. It was a good
13 many times.

14 Q. What kind of places would y'all go?

15 A. We'd ride all over. Back roads. Wherever
16 she wanted to go. The store in town or
17 wherever. Down to the house. I've got a
18 little dog, Lilly, which is a little Yorkie.
19 She just died to -- she just fell in love with
20 that dog. You know, so she wanted to go down
21 there and pick Lilly up sometimes and bring
22 her up. I would, you know, carry her down to
23 pick up the dog.

24 Q. And you were here when she testified that
25 y'all would go to your house together?

1 A. Yes, sir.

2 Q. Was anybody else around when y'all did
3 that?

4 A. No, sir.

5 Q. Now, the motorcycle that you're talking
6 about, she said that it was a Gold Wing. Is
7 that what it was?

8 A. That's correct, sir.

9 Q. The big Honda touring bikes?

10 A. True, sir. Yes, sir.

11 Q. So would it be fair to say that you and
12 Minor Child had a good relationship?

13 A. Oh, absolutely, sir. Yes, sir.

14 Q. Now, turning to the incident in question
15 over the 3rd, 4th ---

16 A. Yes, sir.

17 Q. Whatever date that she says, after
18 midnight. Do you recall spending the night
19 over at the house that night?

20 A. Yes, sir, I do.

21 Q. Did you sleep in the living room?

22 A. Yes, sir, I did.

23 Q. Who else slept in the living room?

24 A. Her brother -- her older brother, Brendon,
25 slept on the loveseat and Minor Child slept on the

1 couch.

2 Q. How old was Brendon at the time?

3 A. Brendon, I want to say that he was about
4 -- I don't know, eight or nine.

5 Q. When you say -- was he older or younger
6 than Minor Child

7 A. He's a little bit younger than Minor Child as
8 I recall.

9 Q. Okay. So he was sleeping in the room?

10 A. Yes, sir.

11 Q. Did there come an occasion where you
12 remember Jamie coming into the kitchen, in the
13 early morning hours?

14 A. Absolutely not, sir.

15 Q. Are you saying that it did not happen or
16 he didn't?

17 A. When I go to sleep, I am the type person
18 that I don't wake up. People can testify than
19 when I'm asleep, I'm asleep.

20 Q. Okay. When did you wake up the next
21 morning? About what time?

22 A. I woke up the next morning, on that
23 particular morning, when Jamie woke me up.
24 The door was open and a cold gust of wind hit
25 me. He was standing there trying to fight

1 with Brendon, to put his little -- it was like
2 a hoodie, but it was camouflage. Minor Child had
3 already -- getting ready to take them to
4 school.

5 Q. Did you take Minor Child and her brother to
6 school that day?

7 A. Absolutely not, sir. Jamie took them to
8 school.

9 Q. Now, there was some testimony that a
10 little less than a week before that, because
11 Jamie had been in the hospital, that they
12 asked you to take the kids to school.

13 A. Yes, sir. Kayla had texted me and said
14 that Jamie was in the hospital and would I
15 come by from JD's on the way home and stop
16 there because she wanted me to do her a favor
17 and take the -- drive the kids to school the
18 next day.

19 Q. Did Kayla have to get up and go to work
20 real early?

21 A. Yes, sir, she did.

22 Q. Okay. On that day did you take the kids
23 to school?

24 A. That particular day I took them to school;
25 yes, sir.

1 Q. But on October -- for lack of a better
2 term, the day that you were accused of this,
3 you did not take them to school?

4 A. I did not. No, sir.

5 Q. Sir, at any time during the night did you
6 get up and put your hands on Minor Child

7 A. I did not touch that child. No, sir, I
8 did not.

9 Q. And I don't just mean in a sexual way.
10 Did you get up and pat her on the back, on her
11 shoulder, rub her arm?

12 A. Absolutely not, sir.

13 Q. Okay. Was there an incident where you
14 talked with Kayla's mother about this next-
15 door friend that Minor Child talked about? I'm
16 sorry, Kayla's mother, (negative gesture).
17 Did you talk to Kayla about Minor Child friend?

18 A. Yes, sir.

19 Q. Is this the little boy that lived next
20 door that she talked about that she liked to
21 play with?

22 A. Yes, sir.

23 Q. I am not asking you what your discussion
24 was about, but you -- you had a discussion
25 with her, with Kayla?

1 A. Yes, sir. I did.

2 Q. Was this as a result of the discussion
3 that you had with Minor Child

4 A. Yes, sir, absolutely.

5 Q. And to your knowledge was Minor Child then
6 told that she could not play with this little
7 child anymore?

8 A. Yes, sir. She was told that she could not
9 play with him anymore.

10 Q. Did Minor Child ever say anything to you about
11 that?

12 A. She did. She was actually upset, really
13 upset with me. She said, 'Gary, I don't like
14 you no more because you told mama that I --
15 you know, what Chase did, and I can't play
16 with him anymore.'

17 Q. And about how long prior to the day that
18 you were accused of this did that happen?

19 A. It was about a week and a half, sir.

20 Q. Now, Gary, I asked you about the morning
21 of these allegations. Have you ever touched
22 Minor Child in an improper manner?

23 A. Absolutely not, sir. No, sir.

24 Q. Have you ever touched her, period? Hugged
25 her or anything else?

1 A. Well, of course I've hugged the kid. You
2 know, she was a lovable child. I mean, you
3 know, getting off the motorcycle or whatever.
4 But nothing in an inappropriate way. You
5 don't -- you just don't do that.

6 Q. How many times do you think you've been
7 out alone, just you and Minor Child

8 A. To give a more accurate description, I'd
9 say about thirty-five times, sir.

10 Q. All right.

11 MR. SHEEK: Beg the court's
12 indulgence just one moment.

13 THE COURT: Sure.

14 SOLICITOR STUMBO: Your Honor,
15 may we approach briefly?

16 THE COURT: Sure.

17 (OFF RECORD BENCH CONFERENCE)

18 MR. SHEEK: Thank you, Mr. Lott.
19 Please answer anything that the Solicitor may
20 have of you.

21 SOLICITOR STUMBO: I don't have
22 any questions.

23 THE COURT: Very good. You may
24 step down.

25 (WITNESS STEPS DOWN)

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1 THE COURT: Anything else?

2 MR. SHEEK: Defense rests.

3 THE COURT: All right. It is
4 almost 4:00 o'clock and I'm very reluctant
5 to do closing arguments and my instructions,
6 which would make y'all work in the night.
7 Be back here in the morning at 9:30.

8 Solicitor, are you going to call
9 a rebuttal witness? You have that option.
10 Sorry I forgot that.

11 SOLICITOR STUMBO: Beg the
12 court's indulgence.

13 THE COURT: Yes, sir.

14 SOLICITOR STUMBO: We don't have
15 anything further.

16 THE COURT: When you come in the
17 morning you'll hear the attorneys' summaries
18 and my instructions on the law, then you will
19 begin your deliberations. But for tonight you
20 still can't talk about the case. Just tell
21 your family members that you're on the jury
22 and you just can't talk about it. I'll see
23 y'all here first thing in the morning, at
24 9:30.

25 Put your name on your books. That

1 way we'll be sure that you get your book in
2 the morning. Give it to Mr. Willingham and
3 they will take care of it tonight, because
4 they are in charge of that. They won't
5 criticize your handwriting.

6 (JURY OUT @ 3:45 P.M.)

7 THE COURT: All right. Anything
8 else this afternoon? We'll see y'all in the
9 morning. Do you have any proposed charges
10 that you would like for me to consider?

11 MR. SHEEK: Your Honor, do you
12 already have a standard charge regarding the
13 prior conviction as a element as to whether
14 that is probative that he committed this
15 offense. Or do you want me to work up a
16 proposal?

17 THE COURT: I would appreciate a
18 proposal.

19 MR. SHEEK: Okay. I'll do that
20 overnight. I think that I can get a statement
21 straight out of the *Howard* case that probably
22 explains it.

23 THE COURT: Okay.

24 SOLICITOR STUMBO: Your Honor,
25 there -- part of a line of CSC statutes, I

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1 think 16-3-657 or 656. I don't have it in
2 front of me, Judge, but it's that criminal
3 sexual conduct cases, that the testimony need
4 not be corroborated. We would like for you to
5 incorporate that in your charge.

6 THE COURT: I've given that before.
7 It's a one-sentence line, I believe.

8 SOLICITOR STUMBO: It is.

9 THE COURT: I thought that I had
10 that statute up a minute ago.

11 MR. SHEEK: Just so that we are
12 clear, we are not touching on any argument
13 that that prior conviction has probative
14 value. The State can say that it's an
15 element, that they have to show a prior
16 conviction but I don't think that the State
17 can argue 'folks, look at the entirety of it,
18 he's already been convicted of this once.'

19 SOLICITOR STUMBO: No, Your
20 Honor. It certainly has probative value,
21 but it is an element.

22 THE COURT: I agree with the --
23 it's probative of the element. All right.
24 Just so that I am clear, we conformed the
25 indictments prior and I may have miswrote on

1 these, but 655(c), CSC with a minor third,
2 which is I understand the -- is the new
3 language for lewd act. Lewd act was 14-140.

4 SOLICITOR STUMBO: That's
5 correct.

6 THE COURT: And in instructing this
7 jury, are we instructing them CSC first or, in
8 the alternative, or lewd act? Or CSC first,
9 CSC third? How do you all want it? It
10 doesn't seem any different to me.

11 SOLICITOR STUMBO: Well, I think
12 that we need to instruct on the law as it was
13 at the time. CSC first, and instruct them on
14 lewd act with a minor. The incident took
15 place before the change in the law, so I think
16 that the appropriate thing -- as we amended
17 the indictments to conform to the law at the
18 time, that would be 16-15-140. I think that
19 you could use the old lewd act on a minor
20 charge, Your Honor, from the charge book and
21 that that would be appropriate. We may need
22 to change or amend that on the indictment as
23 well as the caption itself.

24 THE COURT: The indictment says CSC
25 with a minor third. It has the CSC minor code

1 section, 16-3-355. So consistently ---

2 MR. SHEEK: I think that it should
3 be 16-3-655, which is CSC with a minor first
4 degree. Then 16-15-140, which is the old lewd
5 act.

6 THE COURT: So the -- the verdict
7 form that I'm submitting to the jury --
8 because I am not submitting the indictments to
9 them -- will say -- and I've got a draft of it
10 that my law clerk -- we'll have:

11 *As to the charge of CSC first, we*
12 *find Guilty or Not Guilty.*

13 *As to the charge of lewd act on a*
14 *minor, we find the Defendant Guilty or Not*
15 *Guilty.*

16 SOLICITOR STUMBO: That's fine with
17 us, Your Honor. That is what I anticipate.

18 THE COURT: Okay.

19 SOLICITOR STUMBO: And, Your
20 Honor, just for the record, I -- I think it's
21 a similar situation to cases we have now that
22 were committed prior to 2010; the sentencing
23 Act of, say, a shooting case. We would try
24 that case today as a assault and battery with
25 intent to kill, not attempted murder, if it

1 occurred before 2010. I think the same is
2 analogous here.

3 THE COURT: Okay. Well, I am going
4 to use the nomenclature of CSC first and lewd
5 act, all the way in the instructions. So
6 y'all call them that as y'all see fit in your
7 closings.

8 SOLICITOR STUMBO: Yes, sir.

9 THE COURT: I am not going to
10 characterize it as lesser-included:

11 *'If you do not find the Defendant*
12 *guilty of CSC first, you then consider the*
13 *offense of lewd act on a minor.'*

14 SOLICITOR STUMBO: Correct.

15 THE COURT: But not both.

16 MR. SHEEK: Correct.

17 SOLICITOR STUMBO: Well, I do
18 think under the old case law, Your Honor, that
19 it could -- with it not being a lesser-
20 included offense that he'd need to be found
21 guilty of both, one or the other, or neither.
22 That's the -- that's my reading of the old
23 case law.

24 THE COURT: I guess what I am
25 concerned about is the two acts testimony, and

1 there are two charges. I don't want them to
2 think that the first act, which he is not
3 charged with, ---

4 MR. SHEEK: Exactly.

5 THE COURT: That is part of my
6 concern. So y'all think about it overnight.
7 I will go with what y'all agree to.

8 SOLICITOR STUMBO: Okay.

9 THE COURT: And I don't disagree
10 with you, but on this case factually there was
11 a first time and then there was a time on the
12 third.

13 SOLICITOR STUMBO: That's right.

14 THE COURT: That was testified to.
15 I don't want to create confusion that there is
16 two offenses. It was actually one event.
17 Right, it could be -- but, does that create
18 confusion or not?

19 I will be here early so y'all can
20 tell me what you want to do on that.

21 SOLICITOR STUMBO: Yes, sir. And
22 obviously the reason we charged both, and this
23 has been my practice throughout my career, is
24 that on a case like this, if the jury finds
25 there is a question as to the penetration

1 element, then there is still a crime that has
2 been committed. If that makes sense, Your
3 Honor. I think that's what the case law
4 reflects, prior to sentencing -- for the change
5 in the law.

6 THE COURT: Okay. I am not telling
7 y'all what I'm going to do. Y'all talk about
8 it and commit to one or the other and we will
9 go with that. See you in the morning.

10 MR. SHEEK: What time in the
11 morning do you want to start?

12 THE COURT: 9:30, the jury will be
13 here.

14 (COURT IN RECESS)

15 (TRANSCRIPT CONTINUED NEXT PAGE)

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23 MR. SHEEK: I've got the case here,
24 Judge, and I'll hand up a copy to the
25 Solicitor.

1 SOLICITOR WHITE: We have it.

2 MR. SHEEK: You've got one, okay.

3 The next to the last page, bottom paragraph,
4 says -- where it dropped the record, but --
5 *"When evidence of other crimes are admitted*
6 *for exhibit purposes, the trial judge should*
7 *instruct the jury of the considerations or the*
8 *purpose for which it is offered."* That refers
9 to the *State v. Johnson*.

10 Other than that, I think I'm familiar
11 with your standard charges and don't have
12 anything else, -- and you may have already had
13 that one.

14 THE COURT: All right. I'm going
15 to put a sentence in there to that extent
16 where the, uh, "in the elements of CSS first:
17 actor, victim's age, had a prior conviction
18 enumerating Code Section 655." Then when I
19 put that in there, this crime that requires
20 them to register as a sex offender. Then we
21 can put the sentence in there that, "The
22 *evidence submitted by the State proving the*
23 *prior conviction is admitted for that purpose*
24 *only, and you should limit your consideration*
25 *to his guilt on the evidence presented*

1 *herein.*" How about that? I think that would
2 be appropriate.

3 SOLICITOR STUMBO: That's fine.

4 THE COURT: Okay. Let's get going.
5 Bring them in.

6 (JURY IN @ 9:36 A.M.)

7 THE COURT: Good morning, Ladies
8 and Gentlemen of the jury. This is the time
9 for the attorneys to summarize their
10 respective positions that they believe the
11 facts and evidence have shown -- the attorneys
12 will summarize their cases separately. After
13 the summarize their cases and present to you
14 what they believe that the evidence has shown,
15 then I will provide you instructions on how to
16 evaluate the testimony and evidence which has
17 been presented.

18 I told you that any of the documents,
19 and you haven't got a lot of them but several
20 have been admitted. Y'all will have those in
21 the jury room and be able to read them. Don't
22 try to go very fast, you'll have plenty of
23 time. The video of the little girl, if you
24 want to re-see that or if you want to hear any
25 testimony of any witness a second time, you'll

1 have an opportunity to ask. 'We want to hear
2 the testimony of...' -- whomever. We can
3 replay that for you.

4 Then my instructions are -- as one
5 juror put it to me, 'Judge, you kinda gave us
6 a drink of water through a fire hose, you gave
7 us a lot. So can we hear instructions on such
8 and such?' So I understand that the
9 instructions are sometimes, first time
10 through, kinda of confusing. I try to make
11 them simple. I try to keep them organized.
12 If you need my instructions a second time,
13 that will be one of your jobs this morning, to
14 write a note to Mr. Willingham, 'We would like
15 to hear instructions on what reasonable doubt
16 means.' That's will be one of the
17 instructions that I give you this morning,
18 what reasonable doubt is. I explain that.
19 So if you want an opportunity to hear it
20 again, I can do that again.

21 With that little preliminary
22 explanation, it is now time for the attorneys
23 to argue and summarize. Mr. Sheek -- or do
24 you want the State to open?

25 MR. SHEEK: Do they wish to open on

1 the law?

2 SOLICITOR STUMBO: We'll just start
3 with the argument, Judge.

4 THE COURT: Fair enough.

5 MR. SHEEK: Thank you, Your Honor,
6 may it please the court.

7 THE COURT: Yes, sir.

8 MR. SHEEK: Ladies and Gentlemen of
9 the jury, over the course of yesterday you
10 heard all of the evidence which you are going
11 to have in which to do the job that you've
12 been empaneled to do, and that is to reach a
13 verdict about the allegations brought against
14 Gary Lott.

15 What I am going to try to do over
16 the new few moments is talk to you about the
17 evidence that we've heard, about what is going
18 on. I am sure that I will forget something.
19 The State is going to get an opportunity to
20 stand up here after I am done and respond to
21 whatever it is that I've told you. I don't
22 get to stand back up and reply to anything
23 that they raise. That's just the way it goes.
24 It's got to end at some point.

25 So bear with me for the next few

1 minutes. I will try not to waste your time
2 again, but you can see that we are here on a
3 very, very important matter because a member
4 of our community, Gary Lott, has been charged
5 with a crime. As I told you at the beginning
6 of this case, I'm sure in a few minutes when
7 everybody is done talking that one of the last
8 things that the Solicitor's Office is going to
9 ask you to do is find Mr. Lott guilty. If
10 they weren't going to do that, I don't think
11 that we would be sitting here. So that's the
12 ultimate question, 'are we going to find him
13 guilty?'

14 As we start, I want to ask you one
15 thing. Have y'all figured out where I went to
16 school? Was it Bowman Gary High School off
17 158, was it Mauldin High School, or was it
18 Easley? It wasn't Easley? What about the
19 others?

20 If you've ever been to Winston, you
21 all know where Bowman Gary is, where the old
22 high school was, right past the racetrack
23 after you passed the hospital.

24 Or if you've been to Mauldin, you
25 know where it is. Same school where they had

1 built before, off Butler. I can give you more
2 detail about it if you want it.

3 But which one did I go to?

4 Well, if that was the question that
5 you had to decide and the sheriff's department
6 was appointed to bring you the evidence to
7 determine that, and what they brought you was
8 a report three and a half lines long, that
9 says 'in the entirety of our investigation, I
10 talked to one person who said Mr. Skeen claims
11 that he went to Bowman Gray High School and
12 graduated in 1983.' Then we had Mr. Sheek come
13 in and he told this lady that he went to
14 Butler (sic) High School in 1983. 'Now I want
15 you, the jury to find that's what happened.'

16 If that is what they did, are you
17 going to be comfortable making that deter-
18 mination beyond a reasonable doubt? We are
19 going to talk about what that means in a
20 second.

21 Because I can give you all the
22 details about that, where it is, when they
23 built the new one, where the old one was,
24 about it at any time. But I never attended
25 it. My grandparents lived up there, I know

1 where that high school is. I went to Mauldin
2 High School and graduated in 1984.

3 But if that sheriff's department had
4 of said, 'Here are the transcripts from
5 Greenville County for Lance Sheek, this is his
6 date of birth, this is his social security
7 number, this is where he graduated. We
8 checked in Forsythe County and they don't have
9 a record of him.' Then you would probably
10 feel more comfortable in making that decision.

11 Now, why is that important? Well,
12 how do you prove a negative? I started out
13 in my opening statement talking about a story
14 where this man robbed me. If he had to come
15 in and prove that it didn't happen and I
16 happened to know for a fact that on the night
17 I was talking about that he was at home alone,
18 and I do know that. How is he going to prove
19 that he wasn't at my house robbing me? No
20 witness can put him anywhere. It's my word
21 against his. If I am willing to say it
22 happened, then we are going to be in this
23 court.

24 Now, if the only investigation is
25 that he said it happened and we didn't go to

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1 look to see, if we didn't find out that
2 anybody in Edgefield County, down there where
3 he lives, who said Mr. Sheek was down there
4 when he said he was up there. Did he go get
5 gas, use a debit card? Actually at the time
6 that Mr. Sheek says that he was being robbed,
7 this man was forty-five miles away putting gas
8 in his car. Was he making a phone call from
9 his telephone that hit a cell tower down
10 there? Those are the kinds of things that you
11 go to corroborate.

12 There is one thing that the judge is
13 going to tell you is that there is a statute
14 that says the statements of a victim of
15 criminal sexual conduct don't have to be
16 corroborated. What that means is that the
17 State, to go forward with the prosecution,
18 doesn't have to have an eyewitness that says
19 something did or didn't happen. But it does
20 not mean that the standard of reasonable doubt
21 is relaxed or that you as the jury don't have
22 the right to find out what corroborating
23 evidence that there is of a crime.

24 Now, look at reasonable doubt. It
25 was interesting in this case that the State

1 started out immediately in their opening
2 statement by trying to relax the standard of
3 reasonable doubt. At the very beginning of
4 this trial they started telling you that it
5 was 'not some doubt, you can have a doubt
6 about anything.' Now, why do you think that
7 that State led off their case not with 'here's
8 the evidence that we have', but with 'here's
9 why reasonable doubt is not that big a deal.'

10 There is only one reason why. They
11 knew, before they ever called the first
12 witness, that reasonable doubt was a problem
13 that they were going to have and they're
14 trying to get you, the jury, to relax that
15 standard. So let's talk a second about what
16 it is.

17 Let me try to put this (easel) where
18 it is not in everybody's way. There's not a
19 good place in this courtroom to do it. Judge,
20 if I set it right here, will that be all
21 right?

22 THE COURT: Yes, sir.

23 MR. SHEEK: The best illustration
24 that I ever saw of reasonable doubt was
25 somebody likening it to a staircase. It's

1 like climbing a staircase (sketching staircase
2 on easel pad before jury). When the State
3 comes to you, they've got to climb this
4 staircase because this upper step is "Guilty."
5 That's where you are going to go. That's the
6 target that they've got to get to.

7 So how do we go, as we present this
8 evidence? Because we have started out on the
9 ground floor, which is "presumed innocent."

10 So as they go up this staircase, what
11 have they proved? Is it proven by the defense
12 somehow that Mr. Lott is not guilty. We've
13 proven it. We've got some witness who says
14 that on October 3rd when they said that was
15 happening, 'I've got ironclad proof that he
16 was in Minnesota somewhere.'

17 And they got some evidence that we
18 can prove it is "not likely."

19 And we've got evidence that "maybe"
20 it happened.

21 Have they even proven that it is
22 "probable."

23 Because if they have, then your
24 verdict is still "not guilty". A lawyer once
25 told me, and this was when I first started,

1 uh, -- and he said, "Ladies and Gentlemen, if
2 you look at this evidence, you go back in that
3 room and you decide yourselves that Gary Lott
4 probably did this, 'I think after looking at
5 everything, looking at all the evidence, I
6 think he probably did this.' Then you only
7 have one thing that you can find, that's "not
8 guilty." Because "probably" doesn't do it.
9 It is beyond a reasonable doubt."

10 The judge is going to give you a
11 definition. They said "firmly convinced."
12 I think the judge's definition is probably
13 something like this, 'a reasonable doubt is
14 that kind of doubt that would cause a
15 reasonable person to hesitate to act.'
16 That is the latest of one of the Supreme
17 Court's definitions. But y'all probably
18 know what a reasonable doubt is.

19 But let's use that standard, that it
20 would cause a reasonable person to hesitate to
21 act.

22 Let's put it in this terms. Let's
23 say that you had to go to the doctor -- I had
24 to go yesterday morning before we got started.
25 Let's say that doctor says, 'Look, you've got

1 this problem. We're going to need to go in,
2 we're probably going to need to do surgery.
3 It's a pretty important decision whether or
4 not you are going to let that happen. You
5 say, 'Alright, Doc, why do you think that I
6 need to do that?' And he says, 'Well, now
7 there is this test that we could do. I didn't
8 do it. There are some things that we can look
9 at that I haven't looked at. Basically the
10 entirety of what I've done can be summed up in
11 less than a full paragraph in these three
12 lines. But I tell you what, let's schedule
13 your surgery.'

14 Are you going to say, 'all right,
15 let's set it up.' Or are you going to say,
16 'I think I probably want to get a second
17 opinion.'

18 If you want that second opinion,
19 you've got reasonable doubt.

20 Now, let's talk about specifically
21 what has been presented in this case when we
22 determine whether or not there is reasonable
23 doubt. There's a couple of things that I've
24 learned over doing this -- I'm in my twenty-
25 first year of doing this among jurors. There

1 are a couple of things that jurors do not want
2 to do.

3 One, they do not want to set a guilty
4 man free. You don't. You don't want to put a
5 guilty man back out on the street, that's done
6 something that he should have done; especially
7 not with these allegations, because there's a
8 lot of emotion tied up with these allegations.
9 You just don't want to do that.

10 But, also, they don't want to put an
11 innocent man in prison.

12 So how do you determine whether or
13 not he is guilty. You take the statements of
14 the witnesses and you test it amongst the
15 other evidence that there is.

16 Now, often you see prosecutors say
17 that they just want 'em to burn. They started
18 out in opening statement telling you that,
19 having you look over here -- chase butterflies
20 is the term that I think that they used. I
21 don't want to ask you to look at butterflies.
22 Butterflies have nothing to do with this case.

23 But do you think for a second that I
24 am asking for too much when I do ask for an
25 investigation of the allegations? I mean,

1 let's face it. That chair right now is filled
2 by Gary Eugene Lott. When this case is over,
3 he's going to be gone from that chair. No
4 matter what happens, he's not going to be
5 sitting there. That chair is going to be
6 filled with another defendant, another trial
7 with other allegations. But as citizens of
8 this county, that chair is sitting there for
9 any one of us that's faced with an allegation.
10 We can rely on the fact that the State has to
11 prove it beyond a reasonable doubt. That's
12 our protection.

13 Just as I made up a story about what
14 he (Mr. Medlock) did, it could happen at any
15 time. If we don't rely on that, if we relax
16 that standard of reasonable doubt, that's when
17 innocent people go to prison.

18 So let's talk about if I'm asking too
19 much of them. Look at the investigation in
20 this case. The investigator got up there and
21 he told you that he's been involved in
22 thousands of investigations, said he's been
23 doing this a long time. He's not new to the
24 game. So ---

25 'You've got these computers.

1 *You enter everything that you do, don't you?*

2 *Yes, we do.*

3 *It generates a report?*

4 *Yes, it does.*

5 *Can you tell me if in your report, as*
6 *the investigator...' -- because see that first*
7 *report was from the deputy that responded to*
8 *the call, and he called the investigator.*

9 *'Your report, would you agree with me*
10 *that it is less than four lines on this*
11 *supplemental report and there are no other*
12 *reports whatsoever?*

13 *That's true.*

14 *If there had of been any other*
15 *investigation, there would have been a report*
16 *about it?*

17 *Yes, there would have been.'*

18 *That was it. And when I pressed him*
19 *further 'what did you find out', what did his*
20 *investigation consist of?*

21 *This (displaying supplemental report)*
22 *is the totality of it. I invite the State to*
23 *get up here and tell you that there was any*
24 *more than this, because the testimony is --*
25 *one thing that the judge is going to tell you,*

1 and I think that he has already mentioned
2 this, is that what I am telling you today and
3 what the solicitor tells you is not evidence.
4 The evidence is what came from that witness
5 stand. So if I say something different from
6 what you remember, then your memory is what
7 you rely on.

8 But I invite you to look back at it.
9 The judge told you that you're going to have
10 the forensic interview or if you want to hear
11 the testimony of a witness that has been
12 recorded by this court reporter, that can be
13 made to happen. It's there for you. This is
14 the totality of their investigation:

15 One, they get a call. That is the
16 way that most criminal investigation start,
17 somebody calls in and they make a report.

18 Two, the deputy responds, goes to the
19 house. The deputy goes to the house, makes an
20 initial report and calls the investigator.

21 The investigator asks Kayla, which is
22 **Minor Child** mother, and her boyfriend to come in
23 to give a statement.

24 They give a statement.

25 After that we only have two people,

1 and I'll put it in a circle -- two people.

2 Now, what would you do, if somebody
3 comes in and gives a statement? You sit down
4 and talk with them. Right? 'Okay, tell me
5 what happened, where she says that it
6 happened, how it happened, let's get some
7 details.'

8 But that didn't happen. He flat out
9 told you that it didn't happen. Because I
10 asked him:

11 'You've got the interview room where
12 y'all can videotape these things?'

13 Well, we didn't take a statement from
14 them. I just asked them to give me something
15 in writing.'

16 I followed up on that. One thing
17 that they tell you in law school is don't ask
18 a question that you don't know the answer to.
19 But I did. In many cases I have to.

20 'Well, what did they -- did you take
21 a statement from them?

22 No.

23 Well, did you follow up on it?

24 No.'

25 So you take the two written

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1 statements, and then what is the very next
2 thing that happens? This was on, I believe
3 that he said October 4th. If I've got that
4 date wrong, y'all will have the correct one.

5 Forensic interview. Now, keep in
6 mind that this is an interview done by a
7 person that is not law enforcement, she is
8 not a trained law enforcement individual. He
9 couldn't tell you what training that she even
10 has.

11 *'Where did she go to school?*

12 *What is her education before she went*
13 *to whatever forensic training course that she*
14 *went to? What is the name of the protocol*
15 *that she uses?'*

16 He couldn't tell you any of that,
17 could he? Because he don't know. All he
18 knows is that he watched her give an
19 interview.

20 You all watched the interview.
21 You can go back and watch that. Was that an
22 interview where there was discussion with the
23 child to see what the child says? That's
24 what it looked like to me. Or was it an
25 investigation where they make certain

1 statement and you go, 'Well, now, wait a
2 second. Explain to me how this happened or
3 why this happened.' That doesn't go on,
4 because that is not what the forensic
5 interview is for. A forensic interview is not
6 a criminal investigation. It's to let the
7 child say what the child wants to say. You
8 don't ask leading questions, you just let the
9 child talk. So he has the forensic interview.

10 I asked him, 'What is the next thing
11 that happened?' That's on October 7th, three
12 days later. The next thing that happens is
13 that we issue a warrant. The warrant was
14 issued on October 7th.

15 *'At any time, did you go back after*
16 *this forensic interview and check on anything*
17 *that the child had said?*

18 *No.'*

19 Give us a diagram of the house where
20 it happened. I mean, let us understand. If
21 it happened the way that it has been reported,
22 then where did it happen, who else was in the
23 room?

24 Jamie was in the kitchen. How far
25 away from him -- from where this supposedly

1 happened was he?

2 She says that she went in her room
3 which supposedly locked from the outside, so
4 if she locked it and went in, then someone
5 else would have to let her out. Where is
6 that room? How does that lock work?

7 Nothing.

8 We don't have a picture of the house.

9 We don't have a diagram to look at,
10 check on anything.

11 He issued the warrant.

12 *'Can you tell me what investigation*
13 *was done between the time that you issued the*
14 *warrant and the time we've come to court*
15 *today?*

16 *Nothing.'*

17 Nothing.

18 *'Well, were you here when the child*
19 *talked to the solicitor's office?*

20 No.

21 *Did take part of that?*

22 No.'

23 That's it.

24 *'We're done. We took two written*
25 *statements, we did a forensic interview and*

1 *we're done.'*

2 And we're going to take that to a
3 jury and ask them to convict beyond a reason-
4 able doubt?

5 Now, why is that a problem? Well,
6 let's say for instance that the solicitor's
7 office interviews this child and the child
8 says what the child testified to on the stand
9 that's different from what she says in that
10 forensic interview.

11 Now, why are there differences?
12 What's going on? Why -- which one is
13 reliable? Because let's face it, Ladies and
14 Gentlemen, these two came and gave a state-
15 ment, which were not put in evidence. We
16 don't have what those statements were.

17 They did a forensic interview and
18 that's all that you have. Go through the
19 evidence that the State is going to bring you
20 and see if there is anything else there.

21 If you think for a second that this
22 solicitor's office, which has investigators,
23 and this sheriff's department which has the
24 investigators, deputies and resources, would
25 not bring something, have something else that

1 they just forgot to bring in, (negative
2 gesture). They've brought you everything that
3 they have.

4 Do you think that they didn't have
5 access to this child, to talk to her? I can't
6 as a defense lawyer tell any witness to come
7 in and talk to me. That's just not the way
8 that our system works. Can't do depositions.
9 It's just not allowed in this state. So a lot
10 of what I get to hear, I hear at the same time
11 you get to hear during the testimony. I'm
12 hearing it at the same time that you are.

13 So what was done to look at some of
14 the discrepancies? Let's talk about that,
15 because to convict and get to that highest
16 step, you've got to do it on that and that
17 alone.

18 So let's talk about the forensic
19 interview and what testimony was given in
20 this hearing. Things are generally done
21 for a reason. Statements are given for a
22 reason. There were some interesting things
23 in that forensic interview that I want you
24 to look at.

25 One, the demeanor. I mean, obviously

1 the child got on the stand and she immediately
2 got upset, broke down. The State talked about
3 the emotions that are obviously in a case like
4 this. But emotions are not part of the
5 evidence and it certainly cannot be considered
6 in your verdict.

7 But what is interesting is that just
8 a few days before this supposedly happens,
9 when she goes in and gives a forensic inter-
10 view, what was her demeanor? Was there a
11 single shed tear? Was there any upset whatso-
12 ever or was she leaned back, relaxed, yawning.
13 When the woman goes out of the room, she's
14 drawing smiley faces and hearts. We're
15 talking about just a few days later.

16 But when she comes in here, she is
17 very upset. Now, is she upset because of what
18 happened in October of 2011 or is she upset
19 that she is being made to testify in front of
20 this man that something happened, that really
21 didn't?

22 Well, if it didn't happen, why would
23 she make it up? Well, one thing you learn
24 when you go through the training is that in
25 allegations, not just sexual of course, that

1 there are false allegations. There just are.
2 People say things for, maybe, a number of
3 reasons. I can't tell you what it would or
4 wouldn't have been.

5 Could it have been the situation with
6 the neighbor child, that she in the forensic
7 interview talked about being her best friend.
8 That she loved to go out and ride the horses,
9 ride the four-wheeler or whatever it was that
10 she said, the trails that she talked about.

11 She even said from the stand, 'yeah,
12 *there was a conversation or something happened*
13 *so that my mother said that I couldn't play*
14 *with him anymore, and I was upset about that.'*

15 And it was uncontradicted when Gary
16 Lott testified that he was the one that had
17 the conversation with her mother.

18 Now, did you hear anybody called to
19 the stand to say that conversation didn't
20 happen just like Mr. Lott said? You've seen
21 the child's mother sitting in the courtroom
22 throughout this trial. You heard them talk
23 about taking a written statement from the
24 mother. But at any point did you see the
25 mother sitting right there, under oath,

1 talking to y'all?

2 Why would you call Jamie/James Baker
3 to the stand and not call the mother? Because
4 he called her to come home and talk to the
5 girl.

6 That's another thing that I want you
7 to think about, this forensic interview. Who
8 did the child talk to? The child says, "I
9 talked to Jamie when I got there and he called
10 my mom." Then mom comes home and she talks to
11 her about what happened. You heard her say
12 that. 'Then Brandi comes up and talks to me
13 about what happened. The Tequila comes up
14 and talked to me about what happened.'

15 And all this before the police ever
16 come, but do we have Kayla, the mother? Do
17 we have Brandi? Do we have Tequila? Anybody
18 sitting on this stand talking to you about it?

19 And as the State is going to say,
20 'Well, they can't really talk about what the
21 child says. What good is that going to do?'
22 Well, Ladies and Gentlemen, they brought us
23 Jamie Baker -- and we'll talk about his
24 testimony in a minute, -- so don't think that
25 they won't call the people that the child has

1 talked to. And things are generally done for
2 a reason. So why were they not put up there?

3 Let's talk about the child's
4 statement. Now, on October 7th, she goes and
5 gives a statement. The State asked several
6 times, "*Was what you told that interviewer*
7 *true?*" *'Yes, it was.'*

8 The interviewer goes, *'we are only*
9 *going to talk about things that are true.'*

10 The child says that Gary touched her,
11 touched her in the middle of that night, that
12 she got up and -- a few minutes later -- when
13 Jamie comes in the kitchen, she goes and talks
14 to him. She doesn't tell Jamie anything that
15 had happened. I don't know why.

16 Then that's where it gets interest-
17 ing, because she says "*I got my covers and*
18 *went to my room.*" No information about why
19 she was sleeping in the den when she had a
20 room, but that's fine. But she says, "*I went*
21 *in my room and I locked the door.*" She even
22 explains to the forensic interviewer that that
23 door 'locks from the outside, so you can lock
24 me in' but you can't lock somebody out. She
25 confirmed that when I talked to her on the

1 stand. *"I locked my door, took my covers and*
2 *went in my room and locked the door."*

3 I invite you to look at the forensic
4 interview again if you have any questions
5 about this. Because she said that she stayed
6 there for awhile. But there she says -- let
7 me talk about what we have in evidence, and I
8 will list them:

9 She says that when she went to her
10 room that she locked the door. She says that
11 in the forensic interview and she says it on
12 the stand.

13 Here is where we go this way. On the
14 forensic interview she says what? *'In a few*
15 *minutes I heard someone'* -- not someone but
16 him. *'I heard him jiggling the doorknob.'*

17 Now, we all know that she couldn't
18 have known who was jiggling that doorknob if
19 she didn't talk to anybody? She can't. I
20 mean, if she -- if somebody jiggled the
21 doorknob, the most that she could have known
22 is that somebody jiggled it. But she says
23 "him." She is accusing Gary of doing that,
24 jiggling the doorknob. Jiggling the doorknob.

25 Now she said on the stand that

1 nothing happened. She said that *'nothing*
2 *happened until about 6:00 o'clock the next*
3 *morning when somebody unlocked the door and*
4 *let me out. I don't know who it was.'* That's
5 what she testified to y'all in this courtroom.

6 And I asked her about that:

7 *'Did somebody mess with the door?'*

8 *'No.'*

9 In the forensic interview she said
10 that she got her covers and went back to the
11 den. Went back to the den and went back to
12 sleep. That's what she said. Not that *'I*
13 *got my covers and went to the den because it*
14 *was 6:00 o'clock in the morning and I was*
15 *getting ready for school.'* She says, *'I got*
16 *my covers and went to the den, went back to*
17 *sleep.'* Or, *"went back in there and went to*
18 *sleep."*

19 Now, ask yourselves, if he had done
20 what she says that had done, such that she
21 went in and locked the door -- which wouldn't
22 have kept him out, it would have kept her in.
23 There's two problems with her saying that *'I*
24 *got up and went back to the den.'* One, who

1 let her out -- because somebody had to unlock
2 the door for her. And, two, why is she going
3 back to the den to sleep on the couch beside
4 the man that she is testified has touched her
5 once the week before and who'd put his hand
6 down her pants that morning? It doesn't make
7 sense does it? But she says that it happened.

8 Now, after meeting with the
9 Solicitor's Office in preparing for the trial,
10 she testified on the stand that that is not
11 the way that it happened. That's what I
12 thought was interesting. 'Well, at some point
13 then we'll hear from Mom, Brandi or Tequila
14 who talked to her and find out what she told
15 them happened.'

16 Because they brought Jamie Baker to
17 the stand to talk about what he'd talked to
18 her about. He said, 'I went into detail with
19 her' but when I pressed him about what those
20 details were, could I get them from him?
21 "Tell this jury in as much detail as is
22 possible..." -- how many times did I say that?
23 Now, I'm inviting a witness that I've never
24 talked to to tell you whatever he wants to
25 tell you.

1 But we never did hear from Kayla, we
2 never did hear from Brandi, we never did hear
3 from Tequila to find out what really happened.

4 Now, the reason I asked the deputy
5 about going down and looking at this door, the
6 doorknob and things like that, is that there
7 are some things about this that are just
8 unusual, odd. If you want to look at things
9 in a logical way.

10 If the State were going to say that
11 this is a man that messes with children and,
12 because of that, he messed with this child
13 that night, then let's look at the history
14 that he and the child have together. He'd
15 known her for a long time. Had been on
16 numerous motorcycle rides, and she agreed to
17 that, Minor Child did; many times, thirty to forty
18 times was the number given that they had gone
19 out on motorcycle rides, just the two of them.

20 She says, *'we went to his house.'*

21 *'Well, was there anybody else there*
22 *with you?'*

23 *'No.'*

24 So he's got her at his house alone,
25 he's got her out on the motorcycle alone.

1 Nothing ever happens. But the man waits until
2 he is sleeping in their house, with her on the
3 couch, her older brother on the loveseat just
4 a couple of feet ago, with Jamie who everybody
5 knows, as he says, always wakes up at 2:00 or
6 2:30 in the morning in the room a few feet
7 down the hallway, and that's the time that he
8 chooses to try to molest this little girl?
9 Which does just happen to happen a week after
10 the conversation that she's not allowed to
11 play with Chase anymore. Nobody contradicted
12 that.

13 Like I said, the mother is sitting
14 right there. If it didn't happen, I'm
15 assuming that she would have been called to
16 say that it didn't happen, would have been put
17 up in rebuttal to say that it didn't occur,
18 that that was not the conversation, that
19 *'That's not why I didn't let her play with*
20 *him. It had nothing to do with any*
21 *conversation with Gary Lott.'*

22 But it is uncontradicted that even
23 the child says that the mother made her stop
24 playing with Chase, and that she was upset
25 about it. She says that.

1 So it was after that happened that
2 these allegations come, that the child comes
3 back home from school and says 'well, he
4 better not come back.' 'Why?' Then she
5 starts telling this story that she has told.

6 When you look at that in the totality
7 of the circumstances, you've got to ask
8 yourself if it is proof beyond a reasonable
9 doubt. Because I am going to tell you, folks,
10 that I don't have anybody that puts Gary Lott
11 somewhere else. As a matter of fact, Gary
12 Lott says that he was there that night. He
13 could have got on the stand, if he'd wanted to
14 lie to you, and said '*I wasn't there.*'
15 Because I will tell you one thing, the police
16 didn't do an investigation to have anybody to
17 prove that he was there. They rested their
18 case. Other than Minor Child saying that he was
19 there, Jamie Baker saying that he was there,
20 what proof do they have?

21 If he wanted to lie to you, to make
22 up a story to get out of trouble, he could
23 have said, '*I wasn't there that night. I*
24 *never did it. I didn't drive them to school a*
25 *week earlier. Never happened. You've got no*

1 *proof of it.'*

2 He said, 'Yes, I was there the week
3 *before. Jamie went to the hospital, they*
4 *called me to take the kids to school and I*
5 *did.'* But he says on the morning that they're
6 saying this happened, 'I didn't take the kids
7 *that morning.'* But he never says that he
8 wasn't there. Ask yourself now, if he was
9 just going to lie to get out of trouble, he'd
10 lie about a lot more than just that. But he
11 didn't.

12 Their investigation didn't show any-
13 thing else. Now, I do not know what their
14 investigation may or may not have shown that
15 would have given you some answers to some
16 questions that should have been answered for
17 you. Because when you look at it, like I
18 said, the way that they say that it happened,
19 the opportunities that this man had when they
20 were alone away from the house, when no one
21 else was around, to have tried anything that
22 he wanted to, but to wait until that time with
23 everyone in the house and the brother sleeping
24 right there beside her on the loveseat, it's
25 illogical. It doesn't make sense.

1 Now, you also have to ask yourself if
2 a child would make something like this up? I
3 mean, that's always a question that you have.
4 When I started dealing with kind of cases many
5 years ago, that's a question that I asked.
6 But when you're looking at motivation from
7 their standpoint, don't look at it from our
8 way of thinking.

9 If I tried to figure out why an
10 eleven-year-old does something that I may
11 think is illogical, irrational or just 'oh, my
12 gosh, who would do something that could get
13 somebody arrested just because they were mad?'
14 Eleven-year-olds don't think that way. It's
15 not, 'he's going to go to prison', it's not
16 this kind of stuff. It's that, '*I'm mad.*
17 *He's done something that I didn't like, I'm*
18 *going to get back at him.'*

19 I don't know if that is what happened
20 or not. Well, on the flip side, I don't know
21 whether her side of the story is what
22 happened. But I do know that the story that
23 she told on October 7th, 2011, and the story
24 that she told yesterday are substantially
25 different.

1 Now, the State is going to have to
2 ask you to ignore those differences. They are
3 simply going to have to. Because if they
4 don't ask you to ignore those differences,
5 then what are you going to do with the case?
6 In a few minutes they are going to get the
7 chance, as I said, to stand up here and talk
8 about everything that I've said.

9 Again, I invite them to tell you how
10 you, as the jury, can find beyond a reasonable
11 doubt without ignoring the fact that her story
12 changed and not in little respects. Because
13 what are they going to say?

14 If her story today is not what her
15 story was on October 7th, why is that? Is she
16 mistaken? Does she just not remember? Well,
17 if she just doesn't remember, that's a problem
18 when you're asking someone to convict because
19 they don't have any other evidence other than
20 her statement alone.

21 Is it that she told something that
22 wasn't true? Well, if that's the case, which
23 one wasn't the truth?

24 Then you've got a situation where law
25 enforcement says, '*I determined her to be*

1 *truthful based on my experience.'* All right.
2 Well, here's the problem, Detective. This
3 jury has got to determine what the truth is.
4 The judge will tell you that you determine the
5 facts. And since we know that both of the
6 stories couldn't have happened, which one is
7 true? Which high school did I go to? How do
8 you determine it?

9 But they are going to have to ask
10 you to not worry about that, those are
11 butterflies. Butterflies. And it's not
12 butterflies. It's a man on trial for his life
13 and it's evidence.

14 Because here's what you do. When you
15 interview the child after the forensic --
16 because I asked the child if they'd talked to
17 her about the evidence and she said that yes
18 they have. When you do that and that story is
19 not the same, then you go back and do what?
20 You follow up on it, don't you? But you've
21 got to determine why is there a difference.

22 *'When you were talking to her in the forensic*
23 *interview, did you tell her something that was*
24 *wrong? Was there a reason why when you're*
25 *talking to us that -- is there a reason why it*

1 *is not the same?* Did she forget or what was
2 it? You follow up, you do your investigation.
3 You go check the door. You diagram the scene.

4 Where did they go? Where is this
5 house? Is it in a condominium complex? Is
6 it standing out alone, where no one else is
7 around so that a woman (sic) could take
8 advantage of a child?

9 Did they ask her, *'When you went on*
10 *these motorcycle rides, where did you go?'*
11 Did you see that in the forensic interview?
12 Where did you go. *'Did y'all go out by*
13 *yourselves, alone?'* They didn't ask her
14 that.

15 Well, you know, did they follow up?
16 Absolutely not. Why didn't you at least take
17 a statement from the child? From an
18 investigator standpoint, a law enforcement
19 standpoint, ask these questions to give this
20 jury something, you know, to feel comfortable
21 that they've gotten all the information.

22 *'Well, you know, because of the*
23 *child's age.'* Well, if she is old enough to go
24 talk to this lady, I'm assuming she's old
25 enough to talk to you. *'Well, you know, and*

1 *me being a man.* Wait a second? I mean, your
2 own report shows that Amy Tyler was working
3 with you on it. Amy Tyler is a female
4 detective. Did she talk to her? No. No, she
5 didn't. It's not because you're a man, it's
6 not because the child is too young. That's
7 not the reason. They just didn't.

8 And I will tell you why they didn't.
9 They didn't need to. They had an allegation,
10 they had a forensic interview. Case closed.
11 Issue the warrant. Go to court. We're done.

12 Ask yourselves another question.
13 If this was -- this is Gary Lott sitting down
14 there, retired from the Army, working part-
15 time as a DJ, not a whole lot of means, "we're
16 done." If that was Senator Gary Lott, if that
17 was Dr. Gary Lott, Chief of Surgery at
18 Lexington Hospital, do you think that's where
19 that investigation would have stopped?

20 My gosh, how many hundreds of
21 thousands of dollars have we spent trying to
22 determine whether or not one of our U.S.
23 senators hired a prostitute when he was out
24 of the country? I'm not saying that he should
25 have, but -- my gosh, we'll investigate the

1 snot out of that.

2 But when this man is accused of this
3 kind of crime, 'Eeh', it's not worth the time.
4 Not worth the time to drive to the house and
5 look at it.

6 But what's worse than that is to
7 empanel a jury and ask you to find him guilty
8 beyond a reasonable doubt.

9 *'Find the facts, convict him beyond a*
10 *reasonable doubt.*

11 *In doing that, Ladies and Gentlemen,*
12 *it is absolutely not necessary for us to find*
13 *out why her story has changed.*

14 *It is absolutely not necessary for us*
15 *to check the house.*

16 *It's absolutely not necessary for us*
17 *to do any of that. We don't intend to. We've*
18 *got enough.'*

19 Now, that to me is a little bit
20 frightening. When I came to town out of law
21 school, twenty-one years ago, I joined a
22 church here in town and one thing that I've
23 always done is to always volunteered with our
24 youth groups. Always have. Go here, go
25 there.

1 So if somebody comes up and says,
2 *'You know what? Fifteen years ago when we*
3 *were on a youth trip, Mr. Sheek, while we were*
4 *alone, put his hands on me.'* If they go and
5 tell the police that, and if the police would
6 say 'enough for us, here's the warrant, let's
7 go to court' and you don't find out what
8 exactly -- when this trip supposedly happened,
9 where were we, who else was around? Give me
10 something. Let's do some investigation.
11 That's right. That's right.

12 I said, and I know, that you don't
13 want to let a guilty man go free and that you
14 don't want to put an innocent man in prison.
15 I think a lot of times the State will argue
16 in an emotional way to try to scare you about
17 guilty people going free.

18 But let's face it, Ladies and
19 Gentlemen, when you do the job that you've
20 been empaneled to do, they're supposed to
21 bring you the tools. It was within their
22 power. Kayla is sitting here, and I don't
23 know where Brandi and Tequila are. The house
24 is still there, and they could have at least
25 taken the time to drive down there.

1 Some explanation of the change in
2 these stories could have been looked into.
3 But instead of looking into it, they're going
4 to ask you to ignore it. They are going to
5 get up here and they're going to put up a
6 PowerPoint, and it is going to talk about the
7 law, it's going to talk about a lot of things.
8 But it is not going to talk about the problems
9 of the case with the evidence.

10 They are going to accuse me of
11 chasing butterflies. That's interesting.
12 Because when y'all go back and talk about
13 this, I want you to ask yourselves if one of
14 the points that I have raised is chasing a
15 butterfly, or not something that should have
16 been addressed, answered or looked into.

17 I am going to leave this (easel)
18 sitting right here, so that we see really what
19 we've got to do. Now the State can get up
20 and, if they don't want you to look at it,
21 they can move it. They can if they want to,
22 because I don't have any power over them.
23 But I want you to remember that this is where
24 we've got to go. I would love nothing more
25 than to be able to have done that. Just like

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1 every member of this community that could ever
2 sit in that chair, you don't have to do this
3 just because the State has said that you have
4 to do it.

5 I thank you for your time, being
6 here. It's been a fairly short trial. When
7 I got up this morning and looked at CNN, Jodi
8 Arias was still testifying. She has been on
9 the stand, just her, fifteen times as long as
10 this entire trial has taken. But that does
11 not mean that this is not extremely important.
12 Extremely important.

13 I want you to follow your oath. You
14 base your verdict on the evidence presented.

15 One thing in the evidence that the
16 State brought out was a sixteen year old
17 guilty plea that Gary Lott had entered. The
18 reason that that was brought to you is because
19 it is an element of the offense with which he
20 is charged.

21 The judge is going to tell you that
22 that is not proof that he did or didn't do
23 anything, any more than somebody that has a
24 prior DUI. That you can't use that to say,
25 'well, he probably did it, they charged him.'

1 Or the fact that I might have had a disorderly
2 conduct when I was in college, a student,
3 would mean that I would have one today.

4 It's a sixteen year old guilty plea,
5 but it's not evidence that he did or didn't do
6 anything in this case.

7 The only evidence that you have is
8 testimony about the written statements, which
9 were not introduced into evidence, and a
10 forensic interview. That's it.

11 Now, Gary Lott didn't have to get on
12 this stand and explain anything. He did.
13 There wasn't a whole more that he could say
14 other than, *'Yeah, I was there. Yeah, I know*
15 *them. Yeah, I've been with her lots of times*
16 *alone. I didn't touch her.'*

17 And when the State got their chance
18 to test that evidence, what was their
19 response? No questions for this witness.

20 You know why? Because he says that
21 he doesn't matter? Doesn't matter. *'We got*
22 *our statement. Any inconsistencies, we'll*
23 *ignore. What he says doesn't matter. We are*
24 *going to ask you to convict.'*

25 I am going to ask you to follow your

1 oath. Thank you.

2 SOLICITOR STUMBO: "Fix this for
3 me." Those are not my words, folks. That's
4 what Gary Lott says. He comes over to the
5 house, talks to Jamie Baker, tries to force
6 his way in to intimidate this precious little
7 girl, 'tell everybody that it's just a
8 mistake.'

9 'Tell them that it was just a
10 mistake. It'll ruin my relationship, my
11 friendship with your mama.'

12 As Jamie is trying to put his arms
13 around him to force him, you know, that he
14 needs to go, he says 'Fix this for me. This
15 will ruin me.'

16 Are those the words of a man that's
17 done nothing wrong? Since that day, Gary Lott
18 has done nothing but try to fix this, up until
19 this very moment.

20 Mr. Sheek has spent a few minutes up
21 here trying to fix it for Gary Lott. If he
22 can stand up here long enough and talk about
23 where he went to high school, give this
24 analogy about scaring you into saying why a
25 witness would say anything on the witness

1 stand under oath, if he can scare you talking
2 about someone could accuse his law partner of
3 armed robbery, or if he can scare you talking
4 about somebody accusing him fifteen years ago
5 on a school trip about committing a sex crime,
6 if he can do enough of that then maybe he can
7 fix this for Gary Lott. Just maybe he could
8 scare you folks into believing this.

9 Ladies and Gentlemen, you are going
10 to hear the judge tell you what your burden
11 of proof is and what beyond a reasonable doubt
12 is. It's not that.

13 You won't hear the stair steps, 'not
14 likely, not guilty, maybe, probably', from the
15 judge. He is not going to talk about that.
16 He tells you what a reasonable doubt is. I
17 want you to listen to it. It is proof that
18 leaves you firmly convinced of the defendant's
19 guilt. That's it.

20 Ms. White talked a little bit about
21 it in opening. This is not the unattainable
22 mountain that you have to climb, stair steps.
23 This is not some scientific formula, it's not
24 a mathematical equation but beyond a
25 reasonable doubt. What it is, is are you

25 And what is it? It's Minor Child How

1 much did he talk about Minor Child and what she
2 said from right here on this witness stand?
3 He didn't talk about that. He tried to scare
4 you with deceptions about what "beyond a
5 reasonable doubt" is. He tried to scare you,
6 giving you analogies about people being
7 falsely accused.

8 Listen, nobody in this room wants
9 to see an innocent man go to prison, to be
10 convicted for something that he didn't do.
11 If he can get up here and talk to you, scare
12 you enough, then maybe you won't convict Gary
13 Lott.

14 This young lady sat on this witness
15 stand this week, yesterday. All she had to
16 do was sometime between the time that this
17 happened in October 2011 and today, she could
18 have avoided all of this by saying, 'No, it
19 didn't happen. Did she look like she wanted
20 to be there? To talk to y'all talk about
21 something that embarrassing that happened that
22 night? Something that hurtful? To maintain a
23 lie?

24 That's what Gary Lott wants you to
25 believe. If he can get you to believe 'Oh,

1 *she just made this up. 'She was trying to do*
2 *this because her mama told her that she*
3 *couldn't go play with her friend.'* That is
4 motivation to talk about what Gary Lott did
5 to her? Is that credible? Do y'all believe
6 that?

7 Mr. Sheek is right, I'm going to take
8 this (easel) down because this is not the law
9 of the State of South Carolina. This is not
10 what beyond a reasonable doubt is. It's not.

11 What the judge will tell you is
12 reasonable doubt is proof that leaves you
13 firmly convinced -- let's un muddy the waters,
14 let's clear the air about what the law of this
15 state is and what the elements are of this
16 crime.

17 As I said first, listen for that,
18 folks. I am not going to draw a diagram over
19 here on the board of a stair step or anything
20 else. The two words you're going to hear from
21 Judge Griffith when he instructs you on what
22 the law of this state is, is whether you are
23 firmly convinced that this happened. If
24 you're firmly convinced of the things that
25 Minor Child talked about in the forensic inter-

1 view, when she sat on the stand this week
2 telling you the things that really happened.
3 That is the burden. It's not the un-
4 attainable. Don't be deceived by that.

5 Let's talk about the elements of the
6 crime. The judge is going to instruct you
7 that criminal sexual conduct with a minor,
8 first degree, that the first element is that
9 the defendant committed a sexual battery on
10 the victim. I'll talk a little bit more in
11 a second on what the definition of "sexual
12 battery" is under the law.

13 The victim has to be under the age
14 of sixteen.

15 The last element of this particular
16 crime is that you'd have to have been
17 previously convicted of or pled guilty to an
18 offense under 22-3-430(c), which is the sex
19 offender registry statute, to be ordered to
20 register on the sex offender registry.

21 Element three is uncontroverted here.
22 We have a certified conviction from Saluda
23 County. Gary Lott pled guilty to lewd act on
24 a minor in 1996. Because of this crime that
25 he committed, he was Ordered to be included on

1 the Sex Offender Registry, which is a lifetime
2 registry.

3 So when he did this to Minor Child that
4 night back in October 2011, he was a -- stood
5 as a convicted sex offender. That has not
6 been opposed or contradicted one bit by the
7 defendant. You'll have this conviction,
8 State's Exhibit 3, you'll have it back in the
9 jury room for all of you to look at when it is
10 time for you to deliberate.

11 Minor Child was eleven years old when
12 this happened. She is twelve years old now.
13 Clearly under the age of sixteen.

14 Sexual battery, let's talk a little
15 bit more about that. The law describes sexual
16 battery as any intrusion, however slight, of
17 any part of a person's body or insertion of
18 any object into the genital or anal openings
19 of another persons' body. So however slight
20 the penetration of a female's genitals or anal
21 opening is, that is sexual battery.

22 Here we have what Minor Child says and
23 she said this in the forensic interview and
24 it's consistent, folks. The defense wants you
25 to believe that it is inconsistent, that what

1 she told you from this witness stand was not
2 what she said in her interview. You can
3 listen to it, Ladies and Gentlemen, it is
4 consistent.

5 But what did she say? Minor Child said,
6 'When he touched me, it was on the outside of
7 my skin and inside.' Both outside and inside
8 of her "bad spot", is what she called it.
9 That is how she defined it in this forensic
10 interview, her "bad spot."

11 Folks, there was a sexual battery
12 here. So the three elements:

13 Sexual battery, -- and there is an
14 exception for medically recognized purposes,
15 for obvious reasons, basically by a doctor.

16 There was a prior conviction, which
17 is uncontradicted, a lewd act on a minor in
18 Saluda in 1996. How about the conviction of
19 lewd act on a minor? He also stands under our
20 charges for your consideration in the jury
21 room that he pled guilty to lewd act on a
22 minor. This is not what is called a lesser-
23 included offense of criminal sexual conduct.
24 Both can be committed in the same act.

25 Here, the defendant is over fourteen

1 years of age. Gary Lott is forty-eight years
2 old. The victim is under sixteen.

3 The defendant attempts to commit a
4 lewd or lascivious act upon or with the body
5 of -- and there has to be an intent of
6 arousing or appealing to or gratifying the
7 lust, passion, sexual desires of the defendant
8 himself or the child. I will submit to you,
9 Ladies and Gentlemen, that the intent was
10 clear here of Mr. Lott. When he realized that
11 she was awake, he backed away. He knew that
12 it was wrong. If he thought that what he was
13 doing okay, do you think that he would have
14 pulled back his hand and acted like it didn't
15 happen? Try to get Minor Child to think that she
16 was just dreaming? Was this a mistake?

17 Lewd or lascivious -- here's the
18 America Heritage Dictionary definition,
19 probably terms that you don't hear every day.
20 "Preoccupied with sex, sexual desire.
21 Obscene. Indecent." Again, I will put those
22 up here because those are words that you
23 probably don't hear everyday.

24 The judge will instruct you on what
25 the elements is of the crime. Again the

1 elements of a lewd act:

2 The defendant was over the age of
3 sixteen. He was forty-eight.

4 How about the victim? She was
5 clearly under the age of thirteen, so that
6 element is met.

7 What was the act? She is awakened
8 by him with his hand down her pants, inside
9 her underwear for his sexual gratification.

10 Now, folks, there is another piece of
11 the law that the judge is going to instruct
12 you on. I want you to listen real carefully.
13 He's going to read it to you. These types of
14 crime, the law of the state, our legislature
15 has passed this, that the testimony of the
16 victim need not be corroborated in these types
17 of offenses. Now, why do you think that is?
18 Well, when a child is sexually abused, the
19 legislature went out of their way to pass a
20 law about the fact that testimony need not be
21 corroborated like it has to be in other
22 situations.

23 I will submit to you, Ladies and
24 Gentlemen, that we have corroboration in this
25 case. We have Gary Lott coming over to the

1 house and trying to get them to "fix this."
2 Trying to scare Minor Child into not telling
3 anybody or tell people that she was just
4 dreaming. So there is corroboration here.
5 Don't let the defense deceive you into
6 thinking that there is no corroboration of
7 Minor Child account of what happened, because
8 there is.

9 But even if there wasn't, you as the
10 jury under the law of this state can determine
11 that this child -- if you're firmly convinced
12 that Minor Child got on this stand and told the
13 truth about what happened. If you are firmly
14 convinced, then the law says that he is
15 guilty. If you're firmly convinced of what
16 you heard on that stand from this child is
17 something that actually happened, then you
18 find him Guilty.

19 Don't let them make you think, 'well,
20 if we talk about the police long enough, the
21 solicitor's office, if we talk about all the
22 things that the did wrong in this case, if we
23 can get their eye off the ball, Minor Child her
24 testimony, her sitting on that stand, if we
25 can get the jury to look away from that long

1 enough maybe we can fix this.'

2 All the State says is that if you're
3 firmly convinced that these things happened to
4 this precious little girl, he's guilty.

5 You can turn that (projector) off.

6 Thank you.

7 The word verdict means -- and I
8 believe that Mr. Sheek even raised this in his
9 opening statement. That's one thing that he
10 says that I will agree with him on. The word
11 verdict means to "speak the truth." It comes
12 from a couple of Greek words, *veris dictum*.
13 Verdict means to speak the truth. That's what
14 our job is. Go in that jury room as twelve
15 citizens from this community, put your minds
16 together and come out with a verdict that
17 speaks the truth.

18 You saw Minor Child on this witness
19 stand. You saw her demeanor. Mr. Sheek
20 doesn't want you to even think about the fact
21 that she was emotional. Now, the judge is
22 going to instruct you that you can observe the
23 demeanor of the witnesses, the way that they
24 express themselves, the way that they testify.
25 That's essential for you to do when you're

1 determining the credibility of the witnesses,
2 how do they testify. What -- not just what
3 they say but how do they say it. What is
4 their demeanor?

5 That is what this case is about,
6 Ladies and Gentlemen. Keep your eye on the
7 ball. This case is about a brave little girl
8 who got up on the stand to talk to you about
9 things that happened to her on October 3rd,
10 2011. Don't let them have you looking
11 everywhere else, because that's what they want
12 you to do.

13 What are some of the inconsistencies
14 that you've heard -- the alleged inconsisten-
15 cies? Talking about the doorknob to the room,
16 whether it locks coming out or coming in.
17 Does that make it any more or less likely that
18 Gary Lott did this to Minor Child that night? It
19 doesn't. Think about it. If he can get you
20 long enough to look at that.

21 Now, a year and a half ago, I can't
22 tell you what I ate for breakfast on October
23 3rd, 2011. I could tell that I probably ate
24 breakfast, because usually I do. I don't miss
25 too many breakfasts, as you can probably tell.

1 But I can't remember that.

2 Now, I could tell you what I ate
3 this morning for breakfast, probably yesterday
4 morning and even the day before that.

5 Mr. Sheek wants you to be that just
6 because of the slight inconsistencies today
7 from what was told in the forensic interview
8 about some of the finer details about what
9 happened after Gary Lott molested Minor Child
10 that because of that you can't believe that
11 it is happened.

12 Smoke and mirrors, Ladies and
13 Gentlemen. If they can get you to look away
14 for long enough, maybe they can fix this for
15 Gary Lott.

16 Mr. Sheek, in his opening and his
17 closing, picked up the scriptures and waived
18 them around to you, quoted from the book of
19 Proverbs. Talked in his closing about where
20 he went to church. That's the only reason
21 that I bring this up now is because there is
22 also a concept in the scripture about light
23 exposing darkness. When the light floods in
24 that the beams of darkness are exposed.

25 That is what is happening in this

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1 courtroom this week, Ladies and Gentlemen.
2 That is what happened when Minor Child was brave
3 enough to tell James, her mom's boyfriend,
4 what happened to her. The deeds done by Gary
5 Lott in the darkness were dragged into the
6 light of day, the truth to be exposed.

7 It is time now to go in that jury
8 room for you all to consider the evidence,
9 consider what you've seen, what you've heard
10 and come out with a verdict that speaks the
11 truth. It is time to fix this. Not fix it
12 in a way that covers the truth and deceives
13 people, but in a way to fix this by doing what
14 is right and expose what happened, expose the
15 truth. The burden to speak the truth in this
16 case, Ladies and Gentlemen, is that Gary Lott
17 is guilty as charged.

18 Thank you for your attention this
19 week. I've watched you all. You all have
20 been very attentive. I know that this is an
21 inconvenience out of your work schedules.
22 That this is not fun, to have to come and sit
23 on jury duty. But what you are doing this
24 week is a privileged function under the
25 criminal justice system. I thank you for that

1 service. Thank you for your attention.

2 I am going to ask you to go back in
3 that jury room and come out with a verdict,
4 that speaks the truth. Gary Lott is guilty of
5 criminal sexual conduct first degree.

6 You're going to have this verdict
7 form. The judge is going to tell you about
8 it. You have two different crimes here that
9 he has been indicted for: criminal sexual
10 conduct with a minor first degree, and lewd
11 act on a minor. I would ask you to consider
12 this case, everything, and speak the truth.
13 Gary Lott is guilty. Thank you.

14 THE COURT: My instruction will
15 take fifteen minutes or so. Would you all
16 like to go on through that now or take a break
17 and come back out and get it? You've been in
18 here a little bit more than an hour. Let's
19 take a quick break. Don't discuss the case
20 yet until you hear my instructions and we give
21 you the evidence.

22 (JURY OUT @ 10:38 A.M.)

23 THE COURT: We will stand at-ease
24 for a few minutes.

25 (BRIEF RECESS 10:38 - 10:50 A.M.)

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1 (DEFENDANT PRESENT)

2 THE COURT: All right. Bring them
3 in.

4 (JURY IN @ 10:50 A.M.)

5 THE COURT: All right. Ms. Moore-
6 head and members of the jury, can you all hear
7 me? My microphone is to my left. Can you all
8 hear?

9 FORELADY: Yes.

10 THE COURT: Very good. The State
11 of South Carolina charges the Defendant, Gary
12 Eugene Lott, with the crime of criminal sexual
13 conduct first degree with a minor and of lewd
14 act on a minor.

15 You, of course, bear in mind that the
16 defendant has pled Not Guilty. By that plea
17 the defendant denies the charges alleged in
18 the indictment, which I showed you at the
19 beginning of the trial.

20 Every defendant comes into every
21 court clothed with the presumption of
22 innocence. This presumption of innocence
23 continues throughout the case and entitles
24 the defendant to a verdict of Not Guilty
25 unless and until it is dispelled by evidence

1 satisfying you, the jury, beyond a reasonable
2 doubt that the defendant is guilty of the
3 offense(s) charged, and that the State has
4 proved each and every element of the alleged
5 crimes beyond a reasonable doubt.

6 Now, the same Constitution and law
7 that makes you, the jury, the finders of the
8 facts in evidence, as I have discussed with
9 you, also makes me, as the judge, the sole and
10 only instructor of the law. You must accept
11 as correct the law as I am instructing it to
12 you, apply it to the evidence that has been
13 introduced in this trial, and to the facts
14 which you find and determine in your delibera-
15 tions and reach a verdict.

16 Now, as I told you in my opening
17 remarks, if I should make an error in the law
18 as I am instructing it to you that there is
19 another time and another place where that
20 error can be considered and, if necessary,
21 corrected.

22 But for the purpose of considering
23 the case presented to you, you must accept the
24 law as I am instructing it to you. In that
25 regard, I will tell you that neither you nor I

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1 should be concerned about what we believe that
2 the law ought to be, what the law may be. We
3 only concern ourselves with the law, as I am
4 instructing it to you, to be currently --
5 right now.

6 Now, in every criminal prosecution,
7 the State has the burden of proof. The
8 defense has no burden whatsoever as the
9 defendant(s) come to court cloaked with the
10 presumption of innocence. In our state,
11 according to our Constitution, prosecutions
12 must prove their cases to the standard of
13 proof called beyond a reasonable doubt before
14 a finding of guilt may occur. If the State
15 fails to meet this high burden, then the
16 defendant is entitled to a verdict of "not
17 guilty."

18 Now, under the Constitution and laws
19 of South Carolina, as I told you, you're the
20 sole fact finders in this case. I'm not
21 allowed to suggest in any way what I think
22 about the guilt or innocence of the defendant.

23 You are the judges of the credibility
24 and the believability of the witnesses who
25 have testified in this case. In passing upon

1 the credibility of any of the witnesses, you
2 may take into consideration anything using
3 your good judgment and common sense dictates.

4 Additionally, you may consider other
5 things, such as:

6 What was the manner and appearance of
7 the witnesses who testified?

8 Was he or she straightforward?

9 Was he or she hesitant in answering?

10 How did the witness come to know the
11 facts that he or she testified to?

12 What was his/her ability to know or
13 understand these facts?

14 Is there some reason a witness would
15 want to give testimony which would help or
16 hurt one side or the other? In other words,
17 were any of the witnesses biased or
18 prejudiced?

19 Was the testimony of one witness
20 strengthened or weakened by testimony or other
21 evidence?

22 You, the jury, may believe as much
23 or as little of each witness' testimony as you
24 deem appropriate and proper.

25 You may believe the testimony of a

1 single witness against that of many, or just
2 the opposite.

3 You may believe a part of a witness'
4 testimony and disbelieve the rest.

5 The fact that testimony is not
6 controverted does not mean that you must
7 accept it as true and undisputed. You must
8 still gauge the credibility of the witnesses
9 who have testified to determine the
10 believability or the truth of the facts
11 offered through this testimony.

12 Now, as the sole fact finders, I
13 instructed you early on to listen carefully.
14 I have observed you listening carefully.
15 You must then utilize what you've heard in the
16 evidence and weigh the evidence. Weighing the
17 evidence is entirely a mental process. You
18 must weigh the evidence using your good
19 judgment and common sense.

20 In this proceeding and in most cases
21 there are two types of evidence that are
22 presented for juries to consider: direct
23 evidence and circumstantial evidence.

24 Direct evidence is testimony of a
25 person who asserts or claims to have actual

1 knowledge of certain facts, such as an
2 eyewitness.

3 Circumstantial evidence, on the other
4 hand, is proof of a chain of facts and
5 circumstances indicating the existence of a
6 fact. Our law makes absolutely no distinction
7 between the weight or value to be given to
8 either direct or circumstantial evidence. Nor
9 is a greater degree of proof required of
10 circumstantial evidence than of direct
11 evidence. You should weigh all the evidence
12 in this case.

13 And after weighing all the evidence,
14 if you're not firmly convinced of the guilt of
15 the defendant beyond a reasonable doubt, you
16 must find the defendant not guilty.

17 Now, we used the term reasonable
18 doubt. What is a reasonable doubt? It is
19 simply this, a reasonable doubt is the kind of
20 doubt that would cause a person to hesitate to
21 act. Reasonable doubt may arise from evidence
22 which is in the case or from the lack or
23 absence of evidence in the case. Proof beyond
24 a reasonable doubt is proof that leaves you
25 firmly convinced of the defendant's guilt. It

1 is a doubt for which one can assign a reason,
2 if the assignment can be done reasonably,
3 firmly and convincingly. Reasonable doubt
4 is the kind of doubt that would make a
5 reasonable, conscientious and honest person
6 hesitate to act in a manner important to their
7 own affairs.

8 Now, I charge you that the defendant
9 in this case is entitled to every reasonable
10 doubt which may arise in this case. What this
11 simply means is that if you've had a doubt
12 about anything during the trial, you would be
13 required to resolve that doubt in favor of the
14 defendant.

15 Now, I also instruct you that the
16 very fact that you engage in a full and free
17 discussion on the issue of guilt or nonguilt
18 does not automatically mean that a reasonable
19 doubt exists in this case. You, the jury,
20 must make the determination of whether or not
21 a reasonable doubt exists as to the guilt of
22 the defendant on each of these charges.

23 If you find that the State has not
24 met its burden of proof beyond a reasonable
25 doubt, then he would be entitled to a verdict

1 of not guilty.

2 Now, one of the necessary elements to
3 every crime is criminal intent. The State has
4 to prove criminal intent beyond a reasonable
5 doubt. It is always a matter which must be
6 determined by the jury from the circumstances
7 surrounding the situation. There is no way to
8 prove intent to a mathematical certainty.
9 There is no way medical science can dissect a
10 person's brain and determine what he or she
11 had in mind. So the law states that criminal
12 intent may be inferred from the circumstances
13 shown to have existed both before and after
14 the fact. This is how you, the jury, make a
15 determination of whether or not the element
16 requiring intent was present.

17 Now, in this case the defendant is
18 charged with two crimes.

19 The first is criminal sexual conduct
20 first with a minor. Our statute -- it used
21 to be on the bookcase right here. It is now
22 in this room, but those statutes read that a
23 person is guilty of first degree criminal
24 sexual conduct with a minor if, one, engages
25 in sexual battery with a victim who is less

1 than -- sorry. I need to read this carefully.
2 A person is guilty of criminal sexual conduct
3 with a minor in the first degree if he engages
4 in sexual battery with a victim who is less
5 than eleven or the actor engages with sexual
6 battery with a victim who is less than
7 sixteen, and the actor has previously been
8 convicted of, pled guilty to or adjudicated
9 delinquent for an offense listed in Section
10 23-3-430 or has been Ordered to be included on
11 the Sex Offender Registry, pursuant to 23-3-
12 430(d).

13 I instruct you that in order for the
14 State to sustain a conviction of this offense,
15 the State must prove beyond a reasonable doubt
16 that the defendant, Gary Lott, engaged in a
17 sexual battery with the victim.

18 "Sexual battery" is defined as sexual
19 intercourse, anal intercourse or any
20 intrusion, however slight, of any part of a
21 person's body or of any object into the
22 genital or anal openings of another person's
23 body, except when intrusion is accomplished
24 for medically recognized treatment or
25 diagnostic purposes.

1 The State must then prove beyond a
2 reasonable doubt either that the victim was
3 less than eleven years at the time of the
4 battery or the State must prove that the
5 defendant has a prior conviction to a crime
6 enumerated in the code section read above.

7 The State is introducing as evidence
8 a sentencing sheet that shows that Mr. Lott
9 pled guilty to a crime enumerated in this code
10 section, which required him to register as a
11 sex offender.

12 You are to restrict your considera-
13 tion of his guilt or innocence to the evidence
14 presented in this trial. You are to limit
15 your consideration of this evidence of his
16 prior conviction for the purpose of proving
17 the elements of the offense charged herein.

18 I instruct you further that consent,
19 willingness, indifference, ignorance on the
20 part of the minor, if any, as to what was
21 taking place does not in any way affect the
22 charge of criminal sexual conduct with a
23 minor. Because an unmarried woman under the
24 age of fourteen cannot legally consent to any
25 sexual activity.

b₁

1 The defendant is also charged in this
2 case with committing a lewd act upon a minor.

3 A "minor" is a person under the age
4 of eighteen. The State must prove beyond a
5 reasonable doubt that the defendant was over
6 the age of fourteen.

7 Next, the State must prove that the
8 defendant willfully and lewdly committed, or
9 attempted a lewd or lascivious act upon or
10 with the body or its parts of a child under
11 the age of sixteen with the intent to arouse,
12 appeal to, gratify the lust, passions or
13 sexual desires of the defendant or the child.

14 "Willfully" means voluntarily and
15 intentionally, which is the intent to do
16 something which the law forbids.

17 "Lewd" means obscene, lustful,
18 indecent.

19 "Lascivious" means intending to
20 incite lust, lewd, indecent, or tending to
21 deprave the morals and respect of sexual
22 relations.

23 I also instruct you that under our
24 law, Code Section 16-3-657 reads that the
25 testimony of the victim need not be

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1 corroborated in prosecutions for crimes
2 charged such as 16-3-655, which is the code
3 section which the defendant is charged herein.

4 Ms. Moorehead and members of the
5 jury, as you retire to begin your delibera-
6 tions in the jury room, I wish to express the
7 hope that each of you will be mindful of the
8 importance of your responsibility in this
9 trial. You are not called upon to serve
10 jurors very often. You and I are both active
11 in this community and this state and is why we
12 must see to it that this trial is fair and
13 that the verdict is just.

14 It's been my responsibility as the
15 judge in this case to see that every person
16 that is tried in every case that I preside
17 over receives fair and impartial justice.

18 I am not trying to tell you how you
19 should decide the case, because I have already
20 told you that under the law of the state of
21 South Carolina that you, the jury are the
22 judges and determiners of the questions of
23 fact. It would be highly improper for me to
24 try to influence you in the performance of
25 your duties. So I am not trying to tell you

1 which verdict you should reach.

2 But as the presiding officer, I am
3 vitally convinced that whatever verdict you
4 find will be the result of going into the jury
5 room and confining your consideration to the
6 evidence presented, the law as you have heard
7 it instructed to you, weighing the evidence,
8 determining facts, weighing the evidence and
9 determining the facts fairly and impartially.

10 Your verdict must be unanimous. I
11 am convinced and confident that you will reach
12 a fair and just verdict.

13 Now, as I told you, the verdict form
14 -- which I will give to you, Ms. Moorehead, --
15 will come in the jury room along with the
16 evidence which has been introduced.

17 If you have any questions, put them
18 in writing, give them to Mr. Willingham.
19 We'll try to answer questions, perhaps in
20 writing. Or if any instruction on any of the
21 law is necessary, we will bring y'all back in
22 here and I will reinstruct you.

23 As I told you, I've been doing this
24 for a long time, I'm used to the language, the
25 words and the definitions, whatnot. If you

1 need any other instructions on any aspect of
2 the law as I instructed it to you, I'll be
3 happy to reinstruct you on that. So let me
4 know. 'We're unclear of the code section
5 defining' either of the offenses or 'we'd like
6 to hear testimony' of any witness. We'd ask
7 the court reporter to find that on one of her
8 recording devices, to try to find that
9 testimony.

10 If you want to view the video of the
11 little girl, I'd like to -- I'd like to have a
12 video player so that you can view it in the
13 jury room, but I can't find that today so we'd
14 have to bring you back and play it in here.
15 But we can do that, and you can look at it as
16 much as you like.

17 Now I need to ask the lawyers whether
18 they have any questions, additions or
19 suggestions, additional instructions or
20 clarifications to my instructions to you.
21 Once I ask them that, if they have no
22 suggestions, then I will submit the verdict
23 form and the evidence to you. At that time
24 you begin your deliberations.

25 Now, once you begin, all twelve of

1 you have to be in the room. So if you work
2 for thirty or fifty-five minutes and you need
3 a break, want to step outside, smoke a
4 cigarette, then stop, take a break. When
5 everybody gets back, you can -- everybody gets
6 a break. You can't deliberate without every-
7 body in there. So if everybody is there, you
8 can talk. If everybody is not there, you
9 stop. You work at your time, your pace, as
10 you like. When you reach a determination,
11 just tell us and we'll bring you back.

12 With that in mind, y'all step in the
13 jury room. I will either bring you back out
14 here for additional instructions or I will
15 submit the evidence to you and y'all can
16 start.

17 (JURY OUT @ 11:06 A.M.)

18 THE COURT: All right. There is
19 only three pieces of evidence: the video, the
20 picture (diagram) and the sentencing sheet?

21 COURT REPORTER: Yes.

22 SOLICITOR STUMBO: That's correct,
23 Your Honor.

24 THE COURT: All right. Any
25 additions or deletions or suggestions to the

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1 instructions given by the court, from the
2 State or the defense?

3 SOLICITOR STUMBO: Not from the
4 State, Your Honor.

5 MR. SHEEK: None from the defense,
6 Your Honor.

7 THE COURT: Very good. I figured
8 y'all might say that. I worked on it this
9 morning about 5:00 a.m., for about an hour,
10 trying to make it flow a little bit. That
11 helped. All right. Hearing none -- and you
12 have examined the verdict form and are okay
13 with it?

14 SOLICITOR STUMBO: Yes, sir.

15 MR. SHEEK: Yes, sir.

16 THE COURT: Mr. Higginbottom, you
17 may give them the evidence and the verdict
18 form. It is 11:08 when they start
19 deliberations.

20 (JURY IN DELIBERATION @ 11:08 A.M.)

21 (NOTIFIED OF JURY QUESTIONS @ 11:50 A.M.)

22 (DEFENDANT PRESENT)

23 (SO ENTERED AS COURT'S EXHIBITS)

24 THE COURT: All right, we have a
25 request from the jury that they want to view

1 the video again. Bring them in and we will do
2 that.

3 (JURY IN @ 11:57 A.M.)

4 THE COURT: Ms. Moorehead, I
5 understand that you want to see the video of
6 the forensic interview again. I don't know
7 where y'all -- I don't want to ask you what
8 question that you have, so we'll start playing
9 the video. If y'all see enough, let me know,
10 and we will cut it off. Or we can play the
11 whole thing. That would be one benefit, to
12 start and stop, if you could have it back
13 there. But if you need us to back it up, we
14 can do that. Just let the videographer know
15 that you want to back it up and he will back
16 it up. We'll sit here and listen to it with
17 you.

18 (WHEREUPON JURY REVIEWS VIDEOTAPE)

19 THE COURT: Okay. Now, y'all want
20 to her the testimony? Remember during the
21 testimony, we took a break. So since we did
22 that, give Ms. Cross a little bit of leniency
23 so she can cue it up. She's going to put it
24 together for us. Okay.

25 (TESTIMONY OF Minor Child REPLAYED

1 IN ITS ENTIRETY)

2 THE COURT: All right. Ms. Moore-
3 head, I will be brief on the definitions of
4 the two crimes.

5 I am going to read that portion of my
6 instructions, (reading): "In order to sustain
7 a conviction on the offense of criminal sexual
8 conduct first with a minor, the State must
9 prove beyond a reasonable doubt that a sexual
10 battery, which is defined as sexual inter-
11 course, anal intercourse or any intrusion,
12 however slight, of any part of a person's body
13 or of any object into the genital or anal
14 openings of another person's body, except when
15 intrusion is accomplished for medically
16 recognized treatment or diagnostic purposes.

17 The State must then prove beyond a
18 reasonable doubt either that the victim was
19 less than eleven years at the time of the
20 battery or the State must prove that the
21 defendant has a prior conviction to a crime
22 enumerated in the code section 16-3-655.

23 The State is introducing as evidence
24 a sentencing sheet that shows that Mr. Lott
25 pled guilty to a crime enumerated in this code

1 section, which required him to register as a
2 sex offender.

3 You are to restrict your considera-
4 tion of Mr. Lott's guilt or innocence to the
5 evidence presented in this trial. You are to
6 limit your consideration of this evidence of
7 the prior conviction for the purpose of
8 proving the elements of the offense charged
9 herein.

10 I instruct you further that consent,
11 willingness, indifference, ignorance on the
12 part of the minor, if any, as to what was
13 taking place does not in any way affect the
14 charge of criminal sexual conduct with a
15 minor. Because an unmarried woman under the
16 age of fourteen cannot legally consent to any
17 kind of sexual activity.

18 A "minor" is a person under the age
19 of eighteen. The State must prove beyond a
20 reasonable doubt that the defendant was over
21 the age of fourteen.

22 Next, the State must prove that the
23 defendant willfully and lewdly committed, or
24 attempted a lewd or lascivious act upon or
25 with the body or its parts of a child under

1 the age of sixteen with the intent to arouse,
2 appeal to, gratify the lust, passions or
3 sexual desires of the defendant or the child.

4 "Willfully" means voluntarily and
5 intentionally, which is the intent to do
6 something which the law forbids.

7 "Lewd" means obscene, lustful,
8 indecent.

9 "Lascivious" means intending to
10 incite lust, lewd, indent or tending to
11 deprave the morals and respect of sexual
12 relations.

13 In regards to the sentencing sheet
14 and your request for a definition of what the
15 lewd act was in 1996, you're not to consider
16 that case or its definition under the law in
17 regard to this. That is a conviction for the
18 purpose of whether or not the State proved the
19 element of having a prior conviction. It is
20 limited to that purpose only.

21 Now, I believe that we have played
22 the testimony and the video that you wanted
23 and redefined the two charges herein. I told
24 you that I wouldn't answer the third question
25 about the 1996 conviction.

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1 So with those abbreviated re-
2 instructions and testimony, return to the jury
3 room. I think your food is here, so we'll get
4 it into you. Y'all can take a break, then you
5 can begin your deliberations again with the
6 restrictions that you all have to be there.
7 So if somebody wants to step out, you -- y'all
8 can eat and then deliberate or deliberate and
9 then eat. It's your time. All right.

10 (JURY OUT @ 1:13 P.M.)

11 (NOTIFIED OF JURY REQUEST @ 1:50
12 TO PROVIDE DEFINITIONS IN WRITING)

13 THE COURT: Okay, I've got the
14 jury's request asking about the definitions.
15 I am just going to print this and send it back
16 to them. Any objection to that? From the
17 State?

18 SOLICITOR STUMBO: No, Your
19 Honor.

20 THE COURT: Mr. Skeen?

21 MR. SHEEK: No objection, Your
22 Honor.

23 (SO ENTERED AS COURT'S EXHIBIT)

24 (NOTIFIED OF JURY QUESTION @ 2:06 P.M.)

25 THE COURT: Okay. I am going to

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1 tell them -- did you see the little note?

2 SOLICITOR STUMBO: I did not but
3 that's fine.

4 THE COURT: It says 'we cannot
5 reach a decision, something along that line.'
6 I'm telling them that they can continue to
7 deliberate. If they come back again, then I
8 will give them the *Allen* charge.

9 (JURY IN DELIBERATION)

10 (NOTIFIED OF VERDICT @ 4:15 P.M.)

11 (DEFENDANT PRESENT)

12 THE COURT: Bring them in jury.

13 (JURY ENTERS @ 4:17 P.M.)

14 THE COURT: Ms. Moorehead, have you
15 all reached a verdict?

16 FORELADY: Yes, Your Honor.

17 THE COURT: If you would, hand the
18 verdict to Mr. Willingham.

19 FORELADY: (Complies)

20 THE COURT: Publish the verdict.

21 CLERK: This is the State of
22 South Carolina, County of Greenwood, in the
23 Court of General Sessions, Indictment 2012-GS-
24 24-47(sic) and 12-GS-24-474 (sic), (reading):
25 As to the charge of criminal sexual

1 conduct with a minor in the first degree,
2 "We, the jury, find the Defendant, Gary Eugene
3 Lott, not guilty."

7 "I certify that this decision was
8 unaniously the decision of the jury." Signed
9 by the foreperson, Michelle Moorehead.

12 MR. SHEEK: Nothing else for the
13 jury, Your Honor.

19 MR. SHEEK: That's fine, Your
20 Honor.

24 (JURY DISMISSED)

25 (JUDGE TO JURY ROOM TO EXCUSE JURY)

State of South Carolina v Gary Eugene Lott
Case No. 13-GS-24-0101 *et al*
Jury Trial of February 25-28, 2013
before The Honorable Eugene C. Griffith, Jr.

1 CLERK: Melissa, why are these
2 indictment numbers different than what he's
3 got on here?

4 CLERK (MELISSA): It's 101 and 305.

5 COURT REPORTER: It's 101 and 305?

6 CLERK (MELISSA): Yeah. Did you read
7 it wrong? It is supposed to be 101 and 305.

8 SOLICITOR STUMBO: Right.

9 THE COURT: All right. Solicitor,
10 are you ready to proceed with sentencing?

11 SOLICITOR STUMBO: We are, Your
12 Honor.

13 THE COURT: Mr. Sheek?

14 MR. SHEEK: We're ready, Your
15 Honor.

16 THE COURT: All right. Come on
17 around.

18 SOLICITOR STUMBO: Your Honor, do you
19 need the sentencing range on the sentence, or
20 do you ---

21 THE COURT: Put it on there.

22 SOLICITOR STUMBO: Okay.

23 THE COURT: All right, Solicitor?

24 SOLICITOR STUMBO: Thank you,
25 Your Honor, may it please the Court, -- Your

1 Honor, the man who stands before you has just
2 been convicted of lewd act on a minor. We do
3 respect the jury's decision of the split
4 verdict in this case, based on the facts.

5 But, Your Honor, there is a history
6 with this man. We know that already from the
7 1996 conviction in Saluda. That particular
8 charge, we couldn't get in the particulars or
9 the specific facts in that case but it
10 involved a seven-year-old girl down in Saluda,
11 which this defendant digitally penetrated in
12 the night; just like in this case, Your Honor,
13 a very similar course of conduct pattern. It
14 was with a lady that was a friend of his, her
15 daughter. So there again a very similar
16 course of conduct to this case here.

17 Judge, in addition to that, he has a
18 malicious injury to real property conviction
19 from 1994. He had a probation violation on
20 this lewd act, for which he initially was not
21 sentenced to any jail time. He violated his
22 probation on that and was sentenced to a year,
23 in 1999.

24 Your Honor, I know that you can't
25 take any nonconvictions into account,

1 obviously. But in this case he was found not
2 guilty on a CSC charge by ---

3 MR. SHEEK: I do object to that,
4 Your Honor.

5 SOLICITOR STUMBO: --- a jury
6 trial in 2008. So, obviously, Your Honor, I
7 know that you can't take that into account but
8 this man has a history of molesting kids.

9 It is our position that we have to
10 protect our children, Your Honor. We would
11 ask that the you listen to Ms. Kayla Allen,
12 **Minor Child** mother. She would like to address
13 Your Honor at this time.

14 THE COURT: Okay. Be glad to hear
15 from her. Tell me your name, Ms. Allen.

16 KAYLA ALLEN: It is Kayla Ann
17 Allen. I am the mother of five. I was a
18 single mother for a long time, I did work a
19 lot and I relied on my family and my friends.
20 One of those friends that I thought I could
21 rely on was Mr. Lott. He took advantage of me
22 and my kindness and did this to my daughter,
23 something that I thought would never come from
24 him because he spoke of the Lord so highly.
25 It just shows me that I can't trust anybody.

1 Minor Child has missed school, I've
2 missed work. This is the worst thing that I
3 could ever, ever go through with my child.
4 I don't wish it upon anybody.

5 Thank you. Thank you, Your Honor.

6 THE COURT: Yes, ma'am.

7 SOLICITOR STUMBO: Your Honor,
8 the defendant is facing up to fifteen years on
9 this charge based on his criminal history.
10 Our desire in this case is to protect
11 children, particularly Minor Child and we would
12 ask for the maximum sentence, Judge.

13 That's all from the State.

14 THE COURT: All right. Mr. Sheek,
15 I'll be glad to hear from you, Mr. Lott or
16 anyone else.

17 MR. SHEEK: Thank you, Your Honor.
18 Gary Lott is fifty years old. As he testified
19 in trial, he's got roughly seventeen years of
20 military service for our country. He was
21 discharged and is currently on disability for
22 major depressive disorder as well as some back
23 issues as well as with post-traumatic stress.
24 He has worked from time to time as he could
25 while he was on that disability.

1 He is with many of his family members
2 in court. If I could, I would invite anyone
3 that wants to address the court to come on up.

4 To give you some sense of the person
5 that you're dealing with, because in the ten
6 minutes of testimony that we had, you don't
7 really get a sense of Mr. Lott. I would also
8 ask the court, of course, to consider -- the
9 prior conviction, I understand, but not to
10 consider any prior nonconvictions, since it is
11 obviously not proper for consideration by the
12 court because it was a nonconviction.

13 That being said, Your Honor, he pled
14 guilty in 1996 as part of a plea negotiation
15 to a probationary sentence, unrepresented.
16 He tells me that he felt like it was some-
17 thing that he had to do because they were
18 threatening him with jail time. He regretted
19 making that decision, because they required
20 him to register. Since then, he says, that
21 obviously he's a marked man as far as people
22 having this registry. That being said, you've
23 heard the evidence, the testimony that was
24 presented.

25 Standing here beside him is his

State of South Carolina v. Gary Eugene Lott
Case No. 13-GS-24-0101 *et al*
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before The Honorable Eugene C. Griffith, Jr.

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1 sister. Also in court with him is his mother
2 and another sister, his pastor, who have
3 supported him throughout this ordeal. I would
4 like her -- and Mr. Lott -- to feel free to
5 say whatever they would want to. Ms. Lott?

6 JESSIE LOTT: Yes, sir. To Your
7 Honor, ---

8 MR. SHEEK: First give your name,
9 if you would, for the court reporter.

10 JESSIE LOTT: My name is Jessie
11 Lott. I am the sister of the defendant, Gary
12 Lott. I would first like to say to Your
13 Honor, and to the jurors, that we thank you
14 very much for the endurance of the trial.

15 On behalf of myself, I can only speak
16 for myself, Your Honor, and to the jurors, is
17 that -- umm, I would just like to say that,
18 uh, knowing my brother, I've been a sibling of
19 his for forty-nine years and I do know that,
20 uh, our upbringing, my mother and my father
21 brought us up to the best of their ability.
22 We had a great childhood. Also, too, that,
23 you know, if you'd have mercy -- we're asking
24 for the mercy -- I just do believe that
25 everybody deserves a second chance.

1 Sometimes, you know, you have to face things
2 in our lives that would teach us. We might be
3 going in the wrong direction sometimes but we
4 -- after sometimes we face failure, we learn
5 from them and we get up. If we fall, we get
6 up and we can go ahead. So we're asking for
7 the mercy of the Greenwood County Court here
8 today, Your Honor. Thank you.

9 THE COURT: Mr. Lott?

10 DEFENDANT: Yes, Your Honor.

11 To the family, to the jury, (emotional), to
12 everyone, I did not do this to that precious
13 child.

14 However, the jury has spoke. I thank
15 you all for your verdict, I thank you all for
16 your time. Mister Solicitor, Deputy
17 Solicitor, I am not upset or angry. I am just
18 hurt.

19 Years ago I took a plea on something
20 that was hid. When you find yourself, after
21 thirty-one years of your life being around
22 countless children, throughout the military
23 and everywhere else, Your Honor, you don't
24 know what to do. I was married at the time.
25 I had two lovely daughters myself.

1 And when you don't have no money, I
2 didn't have no money because I was going
3 through a divorce at the time, to afford an
4 attorney. At that time The Honorable Marc
5 Westbrook, who is now deceased, and Thomas
6 Mims, who was my public defender, took me in
7 his chambers and told me, 'You can't make me
8 believe that a man just goes through thirty-
9 one years of his life and just all of a sudden
10 molests a child. Let me put you on probation
11 and you get on with your life.'

12 I didn't have -- I felt like I had no
13 other choice. I went to attorneys that I knew
14 in Columbia, I went to everywhere trying to
15 work a deal. I couldn't find the ten thousand
16 or the twenty thousand that they wanted for my
17 case.

18 So when he come back and told me to
19 go with probation, five years probations, a
20 fifteen-year sentence, I went with that, not
21 knowing that I had to register as a sex
22 offender until the judge brought me back out
23 into the courtroom and asked me if anybody had
24 promised me anything -- I didn't know what the
25 sex offender registry was about.

1 But when you have it hanging over
2 your head, I don't care who you are, -- if
3 you've got AIDS you don't walk up and say,
4 'Hey, how are you going? I'm Gary Lott and
5 I've got AIDS.' 'Hey, I'm Gary Lott. I'm a
6 registered sex offender.' You try your best
7 to just go on. You try to live your life as
8 honest and decent as you possibly can.

9 I think my family, as well as Kayla
10 and Jamie Baker, know -- I've known him for
11 ten-plus years. I'd bend over backwards and
12 do anything for him. I certainly would not
13 harm that precious child.

14 But Mr. Sheek gave me a chance, when
15 I went to see him on this particular case and
16 he asked me, 'How much can you afford per
17 month?' That's all he asked me, and I told
18 him. Because he believed in me.

19 So I'm not here -- I don't go out in
20 the community and just molest kids and all of
21 that stuff. No, you don't do that.

22 So when you get -- you know, I had a
23 hard time on probation, Your Honor. I really
24 did. It was something that was hard because
25 I'd never got in trouble in my life. When you

1 don't know, you just don't know the law, I
2 didn't know that I could fire my attorney and
3 get another -- ask for another attorney. I
4 didn't know that at the time.

5 But as serious as the charge was,
6 lewd act with a minor, I went ahead and went
7 with the probation. Here we are today and
8 I've been convicted of it again. So please
9 have mercy. I beg you. Assign me to
10 counseling or whatever.

11 Kayla, Jamie, ---

12 SOLICITOR STUMBO: Your Honor, I
13 would ask that he not address the victims
14 directly.

15 THE COURT: Please don't do that.

16 DEFENDANT: I would say to the
17 family that I am so sorry that they lost
18 credibility in me for thinking that I done
19 that to that precious child. And I think this
20 court and the jurors saw during her testimony
21 what a sweet child she is.

22 In the many times that we had been
23 out, I've never ever attempted to harm that
24 child in any way, shape, form or fashion.
25 Never.

1 I ask Your Honor to, please, have
2 mercy. Please. I thank the people of
3 Greenwood. Thank you so much. That's all
4 that I can say.

5 THE COURT: Mr. Sheek?

6 JESSE LOTT: This is our pastor.

7 THE COURT: Give me your name,
8 please.

9 HENRY WATSON: Henry Watson.
10 I'm Pete's pastor as well as his cousin and
11 I thank Your Honor, thank all of you. We're
12 sorry about the situation. We really are.

13 Once again, with the evidence that
14 was given, a decision was made and, of course,
15 we can't go back on that. I've known Gary for
16 like thirty-four years now. He spent count-
17 less time with my daughter working her science
18 projects. Them alone. I mean, his talent
19 with his hands is really amazing. And I never
20 once even thought about him being that type
21 person.

22 But, then, once again -- once again,
23 the decision has been made so of course we
24 can't do anything about that. But, Your
25 Honor, I would ask that you -- ask that you

State of South Carolina v. Gary Eugene Lott
Case No. 13-GS-24-0101 *et al*
Jury Trial of February 25-28, 2013
before The Honorable Eugene C. Griffith, Jr

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1 would just consider, if not Gary, his mother,
2 who just lost her husband about three years
3 ago. And Pete, to them, was the man in the
4 family. If he is gone away, then of course
5 that is going to leave a bigger void in their
6 lives. So if you could consider that, I would
7 appreciate it, sir. Thank you.

8 THE COURT: Mr. Sheek?

9 MR. SHEEK: Thank you.

10 THE COURT: How many days does he
11 have in credit?

12 MR. SHEEK: Your Honor, he was
13 taken into custody October the 7th, 2011.

14 THE COURT: All right. Considering
15 what has been presented to me, the verdict of
16 the jury, the presentation made by both sides,
17 the sentence of the Court is that you shall be
18 confined to the Department of Corrections for
19 fifteen (15) years. You get credit for days
20 served since October 7th, 2011.

21 SOLICITOR STUMBO: Thank you,
22 Judge.

23 (DEFENDANT IN CUSTODY)

24 SIDEBAR:

25 CLERK: Your Honor, we told the

1 Solicitor that these numbers aren't right.

2 THE COURT: That's all that
3 we've got to have, the indictments.

4 CLERK: Okay, that's fine. I
5 mean, I just ---

6 THE COURT: This is just for
7 purposes of the record.

8 CLERK: It's 101 and 305.

9 SOLICITOR STUMBO: Yeah,
10 305.

11 (SIDEBAR CONCLUDED)

12 (TRIAL CONCLUDED)

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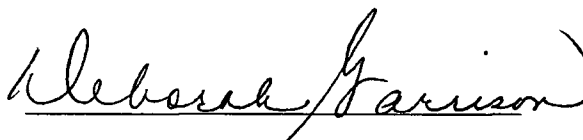
24

25

CERTIFICATE OF REPORTER

I, the undersigned, Deborah Garrison,
official court reporter for the 9th Judicial
Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true,
accurate and complete transcript of the
hearing held before The Honorable Eugene C.
Griffith, Jr., on February 25-28, 2013, as
prepared from the audio notes of Vivian Cross,
Court Reporter;

I further certify that I am neither kin
nor counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison

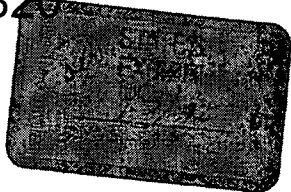
Circuit Court Reporter

9th Judicial Circuit

Charleston, South Carolina

September 25, 2013

320



SENTENCE

Case NO. B-GS-41-399

WARRANT NO. D362163

INDICTMENT FOR

PLED TO:

Sewd Act.
With a minor

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

The defendant Gary Holt is committed to the State Department of Corrections/~~County~~ for a term of 15 (months) (years) (and)(or) to pay a fine of \$ —; provided upon the service of — (months)(years) (and)(or) payment of \$ 1,000¹⁰, plus (pay)(waive) costs and assessments as applicable*, the balance suspended with probation for 5 (months) (years).

Restitution

For physical injury \$ —

Yes/No

property damage \$ —

to be paid —

ATTEST A TRUE COPY

Angela Woodhurst

ANGELA WOODHURST

CCCP AND GS

GREENWOOD COUNTY

To Clerk for —

Other conditions

Counseling - 4 Register as
sex offender -

Date

10/22/96

Presiding Judge

*Costs and Assessments

Fine	\$ <u>1000.00</u>
Restitution	\$ <u>—</u>
3%	\$ <u>—</u>
Police Academy	\$ <u>—</u>
Hall of Fame	\$ <u>—</u>
Comm. Corr.	\$ <u>—</u>
Local Corr.	\$ <u>—</u>
Chemical Test	\$ <u>—</u>
Gen. Sess. Fee	\$ <u>—</u>
Indigent Def.	\$ <u>—</u>
TOTAL	\$ <u>1620.00</u>

Clerk of Court

Attorney for Defendant:

Theresa Munn

**Pay to Victim's Comp. Fund if subrogated.

White: Clerk Canary: Probation Pink: LEC
Goldenrod: Defendant

ATTEST TRUE COPY

Clerk of Court
Saluda, S.C.

COURT'S
 EXHIBIT NO. 2
 IDENTIFICATION/EVIDENCE
 DKT # 13-65-24-0161
 DATE: 2-26-13

SENTENCE

NO. 95-GS-41-3219

WARRANT NO. D362163

INDICTMENT FOR

Criminal Sexual
Conduct w/a
minor

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

PLED TO:

Sexual Act.
With a minor

The defendant Glary Holt is committed to the State Department of Corrections/~~County~~ for a term of 15 (months) (years) (and) (or) to pay a fine of \$; provided upon the service of (months) (years) (and) (or) payment of \$ 1,000 plus (pay) (waive) costs and assessments as applicable*, the balance suspended with probation for 5 (months) (years).

Restitution

For physical injury \$

Yes/No

property damage \$

to be paid.

ATTEST A TRUE COPY
ANCEL C. CUDHURST
 CLERK AND GS
 GREENWOOD COUNTY

To Clerk for

Other conditions

Counseling - 4 Register as
Sex offender

Date

10/22/96

Presiding Judge

***Costs and Assessments**

Fine	\$ <u>1000.00</u>
Restitution	\$ <u> </u>
3%	\$ <u> </u>
Police Academy	\$ <u> </u>
Hall of Fame	\$ <u> </u>
Comm. Corr.	\$ <u> </u>
Local Corr.	\$ <u> </u>
Chemical Test	\$ <u> </u>
Gen. Sess. Fee	\$ <u> </u>
Indigent Def.	\$ <u> </u>
TOTAL	\$ <u>1620.00</u>

Clerk of Court

Attorney for Defendant: Thomas Miers

**Pay to Victim's Comp. Fund if subrogated.

White: Clerk Canary: Probation Pink: LEC
 Goldenrod: Defendant

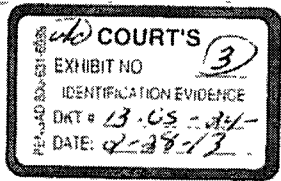
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Clerk of Court
 Saluda, S. C.

Watch video

Hear Allissa's testimony

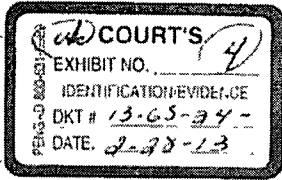
Can we take break while video is
being setup?



ATTEST A TRUE COPY
Angela B. Woodhurst
ANGELA WOODHURST
CLERK OF COURT
GREENWOOD COUNTY
S.C.

323

We would like the description of
Lewal Act on a Minor in writing -
preferably 12 copies.



701 + 305

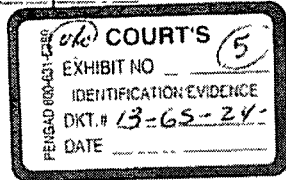
ATTEST A TRUE COPY

Angela Woodhurst
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S.C.

Definition of Lewd Act with a minor in 1996

Definition of Criminal Sexual Conduct with a
minor in the 1st degree 2013

Definition of Lewd Act on a Minor 2013

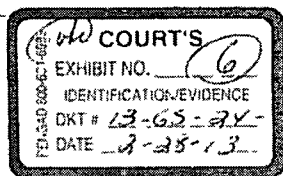


ALLIES A TRUE COPY
- Angela Woodhurst
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
SIC

325

May we have a written definition
of Criminal Sexual Conduct with a
Minor in the First Degree?

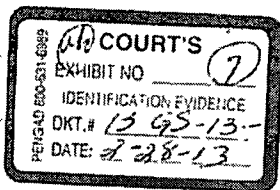
12 copies



ATTEST A TRUE COPY
- Angela Woodhurst
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S.C.

Can we get a detailed definition
of slight penetration?

12 copies please

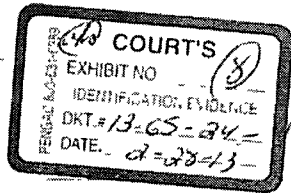


ATTEST A TRUE COPY
Angela Woodhurst
ANGELA WOODHURST
CLERK AND GS
GREENWOOD COUNTY
S.C.

327

What happens if we cannot
make a decision on either charge?

Please try to reach a decision. If
you would like an additional instruction
let me know SCJf.



ATTES A TRUE COPY
Angela Woodhurst
ANGELA WOODHURST
CCCP AND GS
GREENWOOD COUNTY
S C

WITNESSES

Jeff Scott
Greenwood County Sheriff

WARRANT NUMBER

2012D2400100059
DIRECT INDICTMENT

John B. ...
Jay W. ...
Foreman of the Grand Jury
Date 1/22/13

VERDICT

Guilty
Michelle J. ...
Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

January Term, 2013
Indictment # 13GS24-101

THE STATE

VS
Gary Eugene Lott

INDICTMENT FOR

CRIMINAL SEXUAL CONDUCT
WITH A MINOR - ~~THIRD DEGREE~~ 8C-7
16-03-0655(C)
16-15-140

328
ANGELA WOODHURST
CLERK AND GS
GREENWOOD COUNTY
S.C.

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

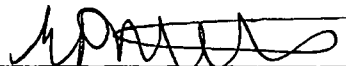
COUNTY OF GREENWODO

CRIMINAL SEXUAL CONDUCT
WITH A MINOR - ~~THIRD DEGREE~~ *ECY*~~16-03-0655(E)~~
16-13-140

At a Court of General Sessions, convened on the 22nd day of January, 2013 the Grand Jurors of Greenwood County present upon their oath

That Gary Eugene Lott, did in Greenwood County, state aforesaid, on or about the 3rd day of October, 2011 being over the age of fourteen (14) years, the said defendant did unlawfully, willfully and lewdly commit or attempt to commit a lewd or lascivious act upon or with the body, or its parts, of a child under the age of sixteen years, to wit ^{Minor Child} [REDACTED], date of birth [REDACTED], with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of the said defendant, or of the said child, ^{Minor Child} [REDACTED], in violation of Section ~~16-3-655(E)~~ of the South Carolina Code of Laws, 1976, as amended *16-13-140 ECY*

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



Assistant Solicitor

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Greenwood

VS.

Gary Eugene Lott

AKA

Race AA Sex: M Age 50

DOB [REDACTED] SS#: [REDACTED]

Address [REDACTED]

City, State, Zip: Saluda SC

DL#: [REDACTED] SID# [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO Lewd Act on Child under 16 (up to 15 yrs)

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)The plea is ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST

White, Elizabeth

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☒ County Detention Centerfor a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$: provided that upon the service of days/months/years and/or payment

of \$, plus costs and assessments as applicable*, the balance is suspended with probation for

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on☒ The Defendant is to be given credit for time served pursuant to S C Code § 24-13-40 to be calculated and applied by the State Department of Corrections Since Oct 7, 2011☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S C Code §17-25-135

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def Waives Hearing ☐ Ordered

Total: \$ plus 20% fee. \$

Payment Terms

☐ Set by SCDPPPS

Recipient

*Fine:

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

Clerk of Court/ Deputy Clerk

Court Reporter

SCCA/217 (03/2011)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE# 13GS24-0101

A/W# 2012D2400100059 on info

Date of Offense: 10/3/2011

S C Code § : 16-15-140

CDR Code # 2468

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

Up to 15 years

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)The plea is ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST

White, Elizabeth

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☒ County Detention Centerfor a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$: provided that upon the service of days/months/years and/or payment

of \$, plus costs and assessments as applicable*, the balance is suspended with probation for

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on☒ The Defendant is to be given credit for time served pursuant to S C Code § 24-13-40 to be calculated and applied by the State Department of Corrections Since Oct 7, 2011☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S C Code §17-25-135

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def Waives Hearing ☐ Ordered

Total: \$ plus 20% fee. \$

Payment Terms

☐ Set by SCDPPPS

Recipient

*Fine:

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

Clerk of Court/ Deputy Clerk

Court Reporter

SCCA/217 (03/2011)

PTUP ATTEST A TRUE COPY

days/hours Public Service Employment

Obtain GED ☐ NIGELA WOODHURSTAttend Voc Rehab or Job Corp ☐ CCCP AND GSMay serve W/E beginning ☐ GREENWOOD COUNTYSubstance Abuse Counseling ☐ S.C.Random Drug/Alcohol testing ☐

Fine may be pd in equal, consecutive weekly/monthly

pmts of \$ beginning

\$ paid to Public Defender Fund

Other

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

Presiding Judge

Judge Code

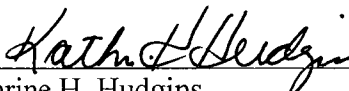
Sentence Date:

J. A. H. 2154
2-28-13

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 5th, 2014


Kathrine H. Hudgins
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

RECEIVED
SEP 05 2014
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Greenwood County

Eugene C. Griffith, Jr., Circuit Court Judge

RECEIVED
SEP 05 2014
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

GARY EUGENE LOTT,

APPELLANT

APPELLATE CASE NO. 2013-000494

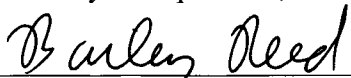
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 5th day of September, 2014



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 5th day of September, 2014.

 (L.S.)

Notary Public for South Carolina

My Commission Expires: October 24, 2021.