

ORIGINAL

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM GREENWOOD COUNTY

D. Garrison Hill, Circuit Court Judge

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

JAMES CARRIER,

APPELLANT

APPELLATE CASE NO. 2012-212777

RECORD ON APPEAL

KATHRINE H. HUDGINS
Appellate Defender

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

Attorney for Appellant

E. CHARLES GROSE JR.
Chief Circuit Defender
Eight Judicial Circuit
Pro bono counsel

ATTORNEYS FOR APPELLANT

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

(803) 734-3727

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit
Post Office Box 516
Greenwood, SC 29648-0516
(864) 942-8800

Attorneys for Respondent

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State of South Carolina)
vs.) Transcript of Record
James Carrier)
DEFENDANT)

May 16, 2012
Greenwood, South Carolina

B E F O R E:

Honorable J. Cordell Maddox, Judge.

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

Elizabeth White, Assistant Solicitor
Attorney for the State

Charles Grose, Public Defender
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

1 THE COURT: Yes, Ma'am.

2 MS. WHITE: Your Honor, standing before you is James
3 Carrier. He is charged with indictment 2009-GS-24-1146
4 with lewd act upon a minor. He is represented by Charles
5 Grose. Mr. Grose informed me this morning that he wanted
6 to make a speedy trial motion. This case is set for trial
7 either the second week of the June term or the July term
8 depending on Mr. Grose's schedule.

9 THE COURT: Okay, yes sir.

10 MR. GROSE: Actually, Judge, it was originally agreed
11 to that we were going to try it this week. And the reason
12 that it was set for this term of court was because Mr.
13 Carrier has informed me repeatedly that he wants to get
14 this case over with. And it has got some age on it now.
15 It was going to be set in front of you this week partly
16 because they didn't want to try it in front of Judge
17 Hughston. And we have the same scenario in June where
18 Judge Hughston is here the first week and you are here the
19 second week. Now I have to be at the Supreme Court on
20 Wednesday of the second week on another one of those
21 speedy trials, the Solicitor controls the docket cases. I
22 don't think they are going to ask me to argue this time
23 but the Court did call specifically to make certain that I
24 was aware of the dates. So that is one of the things
25 where I think my absence would be noted more than my

1 presence.

2 THE COURT: Sure.

3 MR. GROSE: You know, I have got to go.

4 THE COURT: They note everything.

5 MR. GROSE: That's right. And when we get into July
6 I have sent some money, my personal money today for a
7 seminar for one of the weeks in July and it is actually
8 the, if I can make my calendar flip over to July, I think
9 it is the week, I think it is again the same scenario,
10 Judge Hughston the first week and you the second week but
11 I could be wrong about that. Anyway, what I want to do,
12 that would be the Thursday, Friday of July 12th and 13th
13 that I am going to be out of state for a seminar. What I
14 want to do is, I don't care if you try it, I don't care if
15 Judge Hughston tries it, I don't care if they send another
16 Judge from outside the circuit to try it. I want to get a
17 trial date or have it dismissed because of the age that it
18 is. I don't want to be here in June and July and it be
19 put off for some reason. I was told there was witness
20 problems this week, that there was a preexisting vacation.
21 That is probably true but I don't know which witness it
22 was, I know very little about it. There is, of the ten
23 court days in June I am only not available one day. And I
24 don't know why we can't work it around me going to the
25 Supreme Court. I am happy to do that if that is what they

1 want to do. But I want to leave here today with an order
2 that this case is going to be tried in June and if it is
3 not tried in June I am going to be moving to dismiss it
4 for denial of a speedy trial. The Supreme Court says that
5 that is the only remedy and he is prejudice by continuing
6 to have these charges pending. And, you know, our courts
7 say that the Solicitor controls the docket which I believe
8 is unconstitutional, it is a violation of separation of
9 powers and due process. It is subject to the supervision
10 of the Court and we are asking for, my motion today is
11 that we leave with an order setting it for trial in June
12 and if it is not tried in June then I am going to be back
13 in June for it to be dismissed.

14 THE COURT: What about trying it in June?

15 MS. WHITE: Your Honor, I am perfectly happy to try
16 it that second week in June, of the June term, around him
17 going to the Supreme Court.

18 THE COURT: How long will the trial take?

19 MS. WHITE: It is very, very short, Your Honor.
20 Probably one or two witnesses on the State's side.

21 THE COURT: Let's set it for that second week.

22 MR. GROSE: And I believe that is the week that you
23 are here. So what I would like to do is, I would like to
24 be first for Monday. I don't want to be coming in here
25 and finding out, you know, everything is going on. I like

1 to be first for Monday, I would like to have the jury come
2 in Monday morning. And when the jury is qualified we pick
3 a jury and we start the trial.

4 MS. WHITE: Your Honor, I would rather start the
5 trial on Wednesday. I don't like sending a jury out
6 mid-trial and then bringing them back.

7 THE COURT: Start it on Wednesday?

8 MS. WHITE: Yes, sir.

9 THE COURT: Are you on the morning docket?

10 MR. GROSE: She said they have two witnesses.

11 THE COURT: I know. But are you on the morning
12 docket down at the Supreme Court?

13 MR. GROSE: 10:00 o'clock.

14 MS. WHITE: So if he could be back Tuesday afternoon.

15 THE COURT: You mean Wednesday?

16 MS. WHITE: Excuse me, if he is talking about
17 starting it Monday and then taking a break and coming back
18 Tuesday afternoon if the jury was still deliberating. I
19 just don't like for there to be a long gap potentially,
20 you never know what issues are going to come up, take a
21 day break in a trial. I would rather start it and get it
22 done.

23 THE COURT: She would rather start it Wednesday
24 afternoon.

25 MS. WHITE: Yes, sir.

1 MR. GROSE: If she is worried about it running long
2 then it could run into the weekend. There is two days,
3 Monday and Tuesday and you know it is only two and a half,
4 Wednesday afternoon through the end of the week.

5 MS. WHITE: I thought, are you here Tuesday or
6 Wednesday?

7 THE COURT: Wednesday.

8 MR. GROSE: I believe it is Wednesday.

9 MS. WHITE: Wednesday. Okay, then I have no problem
10 starting it Monday because I think it could be done by
11 Tuesday afternoon.

12 THE COURT: Just to be safe let's start it Monday
13 afternoon and I will tell you so that I can take care
14 whatever comes up Monday morning. So let's put it first
15 up if everybody agrees. I mean I will order it.

16 MS. WHITE: So that would be the week of the 16th?

17 THE COURT: 16th. Monday afternoon we will pull the
18 jury.

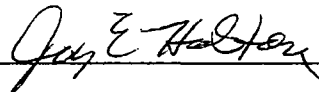
19 MR. GROSE: I will prepare an order and get it to
20 you. You are going to be here this afternoon I assume?

21 THE COURT: I assume. I will be back, yeah, I will
22 do whatever you want to do.

23 MR. GROSE: Thank you, Your Honor.

24 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

25

1 CERTIFICATE OF REPORTER
2
34 State of South Carolina)
5 County of Newberry)
6
78 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Greenwood on the 16th
14 day of May, 2012.15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.
17
1819 September 27, 2012
2021 
2223 Joy E. Holston, Court Reporter
24

25 My Commission expires: March 13, 2016

State of South Carolina)	In the Court of General Sessions
)	Eighth Judicial Circuit
County of Greenwood)	2012-GS-24-1166
	2009-GS-24-1146

State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Transcript of Record
	)	
James Carrier,	)	
	)	
Defendant.	)	
	)	
	)	

June 18-June 19, 2012
Greenwood, South Carolina

B e f o r e:

The Honorable D. Garrison Hill, Judge

A p p e a r a n c e s:

Elizabeth P. White, Esquire
Andrew M. Hodges, Esquire
Attorneys for the Plaintiff

E. Charles Grose, Jr., Esquire
Attorney for the Defendant

Maryann S. Nevers, CVR-M
Circuit Court Reporter

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TRANSCRIPT OF RECORD

DAY ONE

(WHEREUPON, the proceeding was commenced at 3:01 p.m.)

THE COURT: Okay. Yes, sir. Well, let's see. First of all, this is in the case of the *State v. James Carrier*, Indictment No. 2012-GS-24-1166 and 1146, apparently.

MR. GROSE: Well, there's a 2009 indictment number ---

THE COURT: Right.

MR. GROSE: --- and then, a 2012 indictment number. And we're going to have to argue about which case can actually be tried. They're the indictment ---

THE COURT: Okay.

MR. GROSE: --- essentially for the same thing.

THE COURT: 2009 is GS-24-1146, and 2012-GS-24-1166.

MR. GROSE: All right. Your Honor, I'm going to object to your qualifying this panel as it being not a random cross-section of the community.

THE COURT: Okay.

MR. GROSE: It's my understanding that the clerk of court's office ordinarily subpoenas or summons 150 jurors. And 150 jurors are what are summoned for this term of court.

However, after I informed you that we planned on challenging this, I talked with the clerk of court. And by her count, 43 of the jurors have been transferred in from

1 another term into this term. And so that means out of the
2 140 that were summoned, only 107 were selected by the
3 automated juror-selection-and-summoning process.

4 And the -- Section 14-7-140 is what allows for this.
5 And Section -- what's the other one? -- 14-7-1010 is --
6 requires the maintenance of a list of excused or
7 disqualified jurors. Now, Section 140 says: "The Supreme
8 Court shall direct by order the appropriate procedures
9 required to implement the provisions of this section."

10 I've not found an order, but I have found the clerk of
11 court's manual. And one of the things in the clerk of
12 court's manual has to do with the -- let me scroll down to
13 it, Your Honor -- has to do with transfers. It's 4.6.2,
14 Transfers.

15 And what it says is -- at the end there's a note. And
16 it says: "A transferred juror's name is added to the end
17 of the master venire list; i.e., transferred jurors' names
18 appear in addition to those names normally drawn."

19 So what that tells me is -- is that the Supreme Court
20 has established a procedure, pursuant to code, that the
21 clerk summons the normal number of jurors, 150; plus, the
22 transferred jurors. And here the transferred jurors are
23 commingled with the jurors that were on the list, or
24 commingled with the jurors that were summoned by the random
25 automated system so that they all appear in alphabetical

1 order, instead of having the 150; and then, the additional
2 jurors summoned at the end.

3 The -- the -- the problem is -- the prejudice is -- is
4 that we have a disproportionate number of teachers in this
5 panel that have been transferred from other terms to the
6 summer term. I guess this is the first term in the summer
7 that we have court. And so they have all been -- rather
8 than spread them out through the summer, they all have been
9 transferred to this term of court. And that has reduced
10 the number of jurors by 43 that should've been summered --
11 summoned randomly.

12 So this jury venire does not meet the constitutional
13 requirement of having a random cross-section of the
14 community. It doesn't meet the statutory requirement. And
15 it doesn't meet the Supreme Court order on how to summon
16 jurors.

17 Now, they're sitting over there snickering because
18 they know I want a speedy trial and we got a speedy trial.
19 There's a code section that allows you to summon additional
20 jurors. And I'm going to ask that you invoke that and
21 summon additional jurors this week so that we can have a --
22 a -- a random cross-section.

23 Also, because teachers are mandatory reporters of
24 child-sexual abuse and this is -- it's a child-sexual-abuse
25 case, and since they're so disproportionately high, I'm

1 going to move that the number of teachers in the panel be
2 reduced to a -- a -- a reasonable number or excluded
3 altogether. I think we need to decide what that remedy
4 should be.

5 THE COURT: How -- how many teachers are there? I
6 don't know.

7 MR. GROSE: I don't know. It's -- it's a lot. I've
8 got -- just going through this -- and I may be -- be
9 missing some of this. But Carroll Burch is a teacher; it's
10 on the -- the first page.

11 (Whereupon, Mr. Grose conferred with his assistant.)

12 MR. GROSE: I'm sorry. Before that Sharon McGill is
13 District 50, which is the school district. She's some sort
14 of assistant. Elizabeth Harris-Baden [sic] is a retired
15 teacher for District 50. She probably has just retired,
16 looking at -- at her age.

17 Terry -- or -- sorry -- Tracy Reynolds is a school
18 district with -- Ninety Six School District.

19 MR. HODGES: Yes. She was excused.

20 MR. GROSE: Katherine Lawrence is a teacher with
21 Greenwood School District 52; right above that, Michael
22 Kirby with District 50. Sherry McManus is a teacher at
23 District 50. Melissa Moore is an elementary schoolteacher
24 with District 50. Daniel -- I'm not sure how to pronounce
25 this -- M-o-r-v-e-y is a teacher -- well, he's at Piedmont

1 Tech. I believe he might've been the one who's been
2 transferred a number of times that you also transferred
3 this time.

4 There's Adam Newton -- is a math teacher at District
5 50. Kenneth Ray -- he's a guidance counselor at teacher --
6 or at School District 50. Michelle Richards is a teacher
7 with Ninety Six High School, District 52. Carol Snyder is
8 a teacher with District 52. Lynn T-r-a-y-n-h-a-m is a
9 teacher with Ware Shoals, District 51.

10 Meredith Uttley is a professor at Lander, who was
11 probably -- I'm assuming -- could've been transferred as
12 well. I don't know if the mandatory reporting would kick
13 in there, but that's still similar.

14 That -- that's -- just sitting here, listening to it
15 and having tried cases in this county for -- for 13 years,
16 this is a disproportionate number. In fact, this came up
17 in a -- a child-sexual-abuse case in 2009 that we tried in
18 front of Judge Griffith. So this is sort of a -- a
19 recurring summertime problem.

20 THE COURT: So what is that -- how many is that?

21 MR. GROSE: I -- I wasn't counting them, but it's --
22 it's probably a good one ---

23 THE COURT: Fourteen?

24 MR. GROSE: --- I mean, it's probably a good -- I -- I
25 would guess, probably a quarter to a third of this panel

1 ---

2 THE COURT: So ---

3 MR. GROSE: --- of -- of people who are actually here
4 today. Because of the 150 that were summoned, there's --
5 on the list that I have, there's 72. But not every name on
6 the list was called.

7 THE COURT: Well, how many -- I -- my list says 62
8 people.

9 MR. GROSE: All right. And -- and ---

10 THE COURT: But ---

11 MR. GROSE: --- and -- and then, you've excused some.
12 And with the exception of the -- the Lander professor, I --
13 I don't know that any of them were teachers. So I -- I
14 would

15 -- I would venture to say that probably at least a quarter
16 of this panel is -- is schoolteachers. And again, it -- it
17 -- it's not a random panel, so . . .

18 THE COURT: All right. Well ---

19 (Whereupon, the Court conferred with the deputy clerks
20 of court.)

21 THE COURT: All right. Yes, sir, Mr. Hodges.

22 MR. HODGES: Your Honor, just so the record's clear:
23 Number one, Mr. Grose mentioned a number of individuals as
24 being teachers who are on the panel that Your Honor has
25 excused. First off, Juror No. 2, Andrea Adams, was a

1 teacher from District 52. You've excused her from the
2 panel. Juror No. 62, which was a teacher from -- I'm not
3 sure where she was a teacher, but you've excused her.

4 MS. WHITE: Ninety Six.

5 MR. HODGES: From Ninety Six. Juror No. 97, Sherry
6 McManus, was a teacher from District 50; you've excused
7 her. Daniel Morvey, who is a teacher at Piedmont Tech,
8 you've excused him.

9 And Mr. Grose also mentioned Juror No. 142, Meredith
10 Uttley. I believe she is in administration at Lander.
11 She's not here. She -- she was not qualified. So that --
12 that's five out of the list that are already gone.

13 I would also point the Court, Your Honor, to *State v.*
14 *Hill*. That is 394 SC 280. That's a -- I believe a 2011
15 Court of Appeals case. That indicates that: "Where a
16 defendant moves to quash a jury venire or challenges the
17 panel or array, the burden is on him to introduce or to
18 offer strong and convincing evidence in support of his
19 motion, and the failure to prove such contentions is fatal.
20 Further, such a challenge is without merit where it
21 consists solely of an attorney's statements, unsworn and
22 unsupported by any proof or offer of proof."

23 It gives a three-part test. And then, in -- in that
24 particular case, they talk about a -- a -- a large number
25 of women on the panel and a number of individuals who are

1 pastors, chaplains, or attending a seminary school. And
2 they basically talk in there about where's the proof that
3 those individuals don't represent a cross-section of the
4 community. And it would be the state's position, Your
5 Honor, that what's been presented by the defense fails to
6 meet the -- the burden in *State v. Hill* to ---

7 MR. GROSE: The -- the -- I ---

8 MR. HODGES: --- to prove that this panel is -- is not
9 a cross-section of the community.

10 MR. GROSE: Then -- then, I'll call the clerk of court
11 Your Honor, as a witness and take testimony, if that's what
12 they want. I think we can put the clerk's list into the
13 record and identify accurately -- I think you can take
14 judicial notice of -- of the list.

15 But if they want testimony, I -- I -- I would call the
16 -- the clerk of court. I call Ms. Hall, who -- who did the
17 roll call of the jury today and -- and take testimony, if
18 that's what they think we need to make a record of this.

19 THE COURT: Well ---

20 MR. HODGES: My point would be, Your Honor, if even if
21 he were to do that, you know, the -- the case here says
22 there's no evidence that the figures on the number of women
23 and those employed or studying the religious field would
24 not be representative or a cross-section of the community.
25 Well, I mean, who's to say that people who work in the

1 school district aren't representative of a cross-section of
2 the community. I mean, there are -- it -- these folks are
3 not just teachers. I think there were other ---

4 MR. GROSE: Well ---

5 MR. HODGES: --- you know, administrative persons or
6 whatever. But, I mean, just because they work in the
7 school district is not evidence that they're not a cross-
8 section of the community.

9 MR. GROSE: Well, the -- the -- the problem is -- is
10 that this exercise is going to show that the supreme -- or
11 that the -- the procedure of the Supreme Court had not been
12 followed; that they have not subpoenaed -- they have not
13 summoned the ordinary number of jurors that they're
14 supposed to summon. If they had done that and then added a
15 reasonable number of transfers -- not 43 -- to it, we
16 wouldn't be having this issue.

17 THE COURT: All right. Well, it -- by my count there
18 are 11 teachers. And I could be wrong, but let's just say
19 I'm right. And there are 52 or 53 jurors left, okay?

20 MR. GROSE: Okay. So that's 20 percent. That --
21 that's ----

22 THE COURT: Okay.

23 MR. GROSE: --- a -- that's ---

24 THE COURT: So ---

25 MR. GROSE: --- a statistical number that would not

1 happen randomly.

2 THE COURT: All right. So you mentioned earlier about
3 reducing the number. So would it be possible for y'all to
4 come to some kind of compromise on it if -- say, we took
5 out half of the teachers. And then, you got the -- you
6 know, the strike sheet would be -- come from the remaining
7 ---

8 MR. GROSE: Say what, now? I -- I couldn't hear you.

9 THE COURT: I'm sorry.

10 MR. GROSE: No. This -- this courtroom is ---

11 THE COURT: I know. Yeah.

12 MR. GROSE: --- impossible.

13 THE COURT: I'm just asking: Would it be a possible
14 compromise, without getting into the merits of your motion,
15 to reduce the number of teachers that are left to, say,
16 five? And then, we have the random strike out of that
17 number that excludes the six or so other teachers.

18 MR. GROSE: I -- I would -- I would agree to that,
19 Your Honor.

20 MR. HODGES: I -- just working through this in my
21 mind, I mean, don't people have a right to serve as jurors?
22 I mean, what would ---

23 THE COURT: I'm just ---

24 MR. HODGES: --- the Court ---

25 THE COURT: --- asking if it's possible ---

1 MR. HODGES: What ---

2 THE COURT: --- for a compromise.

3 MR. HODGES: Well, I'm just -- I'm wondering what the
4 -- would the Court ---

5 MR. GROSE: So ---

6 MR. HODGES: --- propose to be transferring those
7 folks to another term of court or . . .

8 THE COURT: Well ---

9 MR. HODGES: I mean, that just seems ---

10 THE COURT: --- just let ---

11 MR. HODGES: --- to run ---

12 THE COURT: --- me know. Y'all talk about it. We'll
13 take a brief ---

14 MR. GROSE: I -- I ---

15 THE COURT: --- recess. Y'all talk about it.

16 MR. GROSE: I'll do whatever they want to do, as long
17 as we get them out of this panel. So yeah. A recess is
18 fine so ---

19 THE COURT: All right. Okay. We'll just take a short
20 recess and let y'all talk about it.

21 (Off the record from 3:19 p.m. until 3:37 p.m.)

22 THE COURT: Whenever y'all are ready.

23 MR. HODGES: We've reached an agreement, Your Honor.

24 THE COURT: Okay. Yes, sir.

25 MR. HODGES: There are -- your count was eleven. One

1 of the eleven was a -- is actually a secretary with
2 District 50, so we don't think that really fits with the --
3 the teacher category that the defense has raised.

4 THE COURT: Yes, sir.

5 MR. HODGES: So that leaves ten. And what the parties
6 have agreed to do is to put those ten in a -- a random pick
7 and pick five of them to keep ---

8 THE COURT: Okay.

9 MR. HODGES: --- and transfer the other five to
10 another term of court.

11 MR. GROSE: And -- and I have no preference with what
12 happens to the other five, but I won't object to that.

13 MR. HODGES: I -- I just think, as jurors, they've got
14 a right to serve. I -- and I don't think it's our choice
15 to decide that they don't get to ---

16 MR. GROSE: Okay.

17 MR. HODGES: --- if they're otherwise qualified. So I
18 think those should be transferred to another term of court
19 of some -- some point. Do you want to -- should I put on
20 the record the names that we've agreed to, the -- the ten?

21 THE COURT: Sure.

22 MR. HODGES: It's Jurors No. 16, which is Carroll
23 Burch; Juror No. 56, Elizabeth Harris-Faden; Juror No. 6,
24 Sharon McGill; Juror No. 80, Michael Kirby; Juror No. 82,
25 Katherine Lawrence; Juror No. 110, Adam Newton; Juror No.

1 120, Kenneth Ray; Juror No. 133, Carol Snyder; and Juror --
2 Juror No. 140, Lynn Traynham.

3 MR. GROSE: What -- was Michelle Richards one of them?

4 MR. HODGES: I'm sorry. Did I ---

5 MR. GROSE: I think ---

6 MR. HODGES: --- skip -- yeah.

7 MR. GROSE: I think you just called out nine names.

8 MR. HODGES: Okay. 123, Michelle Richards -- I may
9 have inadvertently skipped that one.

10 DEPUTY CLERK OF COURT: Yeah. That's ten.

11 MR. HODGES: Is that ten?

12 DEPUTY CLERK OF COURT: That's ten names.

13 THE COURT: Okay.

14 MR. GROSE: And that -- that's -- that's our
15 agreement, Your Honor.

16 MR. HODGES: Madam clerk, do you have some ---

17 THE COURT: All right.

18 MR. HODGES: --- way to ---

19 THE COURT: What -- anything else before we bring the
20 jury back in?

21 MS. WHITE: Your Honor, from the state, with regard to
22 voir dire, I've reviewed the defendant's proposed voir
23 dire. I would just also ask -- Nos. 3 and 4, he wants the
24 Court to inquire as to whether any potential juror has been
25 a victim or had a close family member or relative be a

1 victim. I would also ask the Court to inquire whether --
2 of just potential juror or close family member, relative,
3 or friend has been accused.

4 THE COURT: Okay. I'll be glad to do that.

5 MR. GROSE: And -- and since we're about to proceed
6 into that, Your Honor -- and I think we've handled it well
7 so far in the fact that both indictment numbers are on the
8 record. And -- and I don't recall what your practice is,
9 as far as reading the indictment. But I would ask that the
10 time frame of the incident not be read until we determine
11 which indictment it's going to actually go trial on.

12 MS. WHITE: And along those lines, I was not going to
13 read the actual indictment number; I was just going to call
14 *State v. James Carrier*.

15 MR. GROSE: Okay. And I prefer that the Court
16 actually call the case, but whatever.

17 MR. HODGES: Are you doing something?

18 THE COURT: I'll be glad to read it.

19 MR. HODGES: I'm just wondering, as far as the clerk
20 doing the -- the random pick of five, just so we know who's
21 in and who's out would be helpful to ---

22 THE COURT: Oh.

23 DEPUTY CLERK OF COURT: You want ---

24 MR. HODGES: I'm not ---

25 DEPUTY CLERK OF COURT: --- me to go ---

1 MR. HODGES: --- sure what their ---

2 DEPUTY CLERK OF COURT: --- ahead and do ---

3 THE COURT: You want to go ahead and do that?

4 DEPUTY CLERK OF COURT: Is that what you're ---

5 THE COURT: Is that okay?

6 MR. GROSE: That's fine. Yes, sir.

7 THE COURT: Okay.

8 (Whereupon, the Court conferred with the deputy clerks
9 of court.)

10 (Off the record from 3:42 p.m. until 3:47 p.m.)

11 THE COURT: All right. So what's next? Any further
12 issues about the voir dire?

13 MR. GROSE: No, sir.

14 THE COURT: So we can bring them back in?

15 MR. GROSE: Yes, sir.

16 THE COURT: Okay. All right. (To the bailiff) You
17 can bring the jurors back in, sir. Thank you.

18 (Whereupon, the jury panel entered the courtroom at
19 3:48 p.m.)

20 (Off the record from 3:48 p.m. until 3:50 p.m.)

21 THE COURT: All right. Ladies and gentlemen, thank
22 you for your patience. We are going to select the jury in
23 the first case, which is the *State v. James Lloyd Carrier*.
24 And before we get into the actual questions that are
25 specific to this case, I do want to go over some principles

1 DEPUTY CLERK OF COURT: What say the state?

2 MS. WHITE: Please present Ms. Barnes.

3 MR. GROSE: Please seat Ms. Barnes.

4 (Whereupon, the juror came forward into the jury box.)

5 THE COURT: Let me just confer with the lawyers real
6 quickly.

7 (Off the record from 4:31 p.m. until 4:33 p.m.)

8 (Whereupon, a bench conference was held off the record
9 in the presence of the jury, but out of the hearing of
10 the jury.)

11 THE COURT: Okay. Ladies and gentlemen, we're going
12 to -- first of all, is there any objection or motion
13 related to the selection process or the composition of the
14 jury from ---

15 MS. WHITE: None from ---

16 THE COURT: --- the state?

17 MS. WHITE: --- the state, Your Honor.

18 MR. GROSE: No, sir.

19 THE COURT: All right. I find the panel is qualified
20 and the selection process complied with all statutory and
21 constitutional requirements. So I'm just going to ask you
22 to be back tomorrow at two o'clock and report to the jury
23 room at that time. The bailiffs will tell you where to
24 exactly report.

25 Don't talk about the case. Don't do any kind of

1 outside research or investigation. And please don't confer
2 with anyone about your service. There have been a lot of
3 trials that have been -- had to -- that have had to have
4 been declared mistrials because jurors have done things
5 like get on Facebook and talk about the case.

6 And I know none of y'all would -- would do that, but I
7 just want to urge you to keep in mind that you can't talk
8 about the case with anyone or in any way. And, of course,
9 you haven't heard any of the evidence yet, so it certainly
10 would be inappropriate -- and it'll be inappropriate
11 throughout the trial until your -- your jury service is
12 complete -- for you to talk with anyone about the case,
13 except when you're deliberating collectively after you've
14 heard all the evidence and been given the law that you are
15 to apply to the facts of the case.

16 So have a good evening and just be back at two o'clock
17 tomorrow. Thank you very much.

18 (Whereupon, the jury exited the courtroom at 4:35
19 p.m.)

20 (Off the record from 4:35 p.m. until 4:36 p.m.)

21 THE COURT: All right. Those of you who were not
22 chosen, just call back tomorrow night, Tuesday night, after
23 6 at the number you've been given. There are a few of you
24 I need to talk to up here. And those people are Carroll F.
25 Burch, Elizabeth Harris-Faden, Sharon McGill, Kenneth Ray,

1 and Michelle Richards. Everybody else is excused. Thank
2 you for your patience and your cooperation.

3 (Whereupon, the remaining jury panel exited the
4 courtroom at 4:36 p.m.)

5 (Off the record from 4:36 p.m. until 4:41 p.m.)

6 THE COURT: Okay. Yes, sir, Mr. Grose.

7 MR. GROSE: The -- well, one -- one motion that we
8 have -- I guess probably best to start on motion to be
9 tried on the original indictment. And I think we'll need
10 to take testimony on that. If I could -- I haven't filed
11 these, but I'll mark the original as a -- Defense Exhibit
12 No. 1.

13 (Whereupon, Defendant's Exhibit 1 was marked for
14 identification.)

15 MR. GROSE: (To the Court) I have a extra copy ---

16 THE COURT: Thank you ---

17 MR. GROSE: --- there ---

18 THE COURT: --- sir.

19 MR. GROSE: --- for you.

20 THE COURT: Oh.

21 MR. GROSE: What -- what has happened in this case,
22 Your Honor, is Mr. Carrier was -- Mr. Carrier was arrested
23 on Warrant M-075385. And it's dated an incident date on or
24 about January 1st of 2003. This warrant was obtained in
25 May of 2009.

1 And the body of the warrant says that: " . . .
2 approximately six years ago had committed the offense."
3 That -- that time frame of approximately six years ago is
4 consistent with the time frame when the initial reports
5 were made to law enforcement. And the interview of the
6 child was done at the Child's Place; was consistent with
7 that.

8 We had a -- this case has been pending for a long
9 time, over -- well, approximately three years now. And I
10 don't have it handy, but there's a -- an order in the file
11 where, after efforts to schedule this case for trial had
12 failed, we were in front of Judge Maddox during the last
13 term of general-sessions court and asking for a speedy
14 trial. And -- and the trial was scheduled to start this
15 afternoon, which it -- which it has.

16 Subsequent to that, the -- on June 5th, the prosecutor
17 informed me that they were going to reindict the case and
18 expand the time frame to 1999, January 1st of 1999 to
19 December 31st of -- of 2003. Subsequent to that, last
20 Wednesday the prosecutor told me that the alleged victim
21 had been seen for counseling at the Sexual Trauma Center
22 and that that person was going to testify. And she was
23 inquiring about the best way to get the records. And we --
24 we agreed that a consent order would be the way to get it.

25 Now, earlier in that day last Thursday, I had e-mailed

1 Judge Maddox, who was scheduled to be here, regarding some
2 of the pretrial matters that I expected to come up. And
3 one of them was this -- this June 5th disclosure after his
4 order that the time frame was going to be expanded. At
5 that point, when I was writing Judge Maddox on Thursday, I
6 was not aware of any information that took the time frame
7 back as far as 1999. In fact, everything -- while there
8 was some variance, it was minimal variance. And it -- and
9 it was consistent with 2002/2003, six to seven years before
10 the report was made in 2009.

11 Well, later that day, at -- you know, after four
12 o'clock, we got the counseling records from the counselor.
13 And -- and what those revealed -- and -- and some of those
14 are attached to these documents. What -- what some of that
15 revealed, Your Honor, was -- is that Ms. White had taken
16 this case over from another prosecutor when she left the
17 office. And -- and sometime shortly after that, despite
18 Ms. White suggesting that she had just found out the victim
19 had been seeing a counselor, Ms. White and the counselor
20 and the child have been preparing for trial for almost a
21 year now.

22 And the -- see, around July 18th of last year, the --
23 the victim had talked with Ms. White and had gone in to see
24 the counselor and had talked about the conversation with
25 Ms. White. And -- and one issue that's not going to come

1 up in this case but has been in play right up until the eve
2 of trial has been whether or not they were going to try to
3 introduce Mr. Carrier's prior conviction from Kentucky
4 under *State v. Lyle*.

5 And there was discussions between Ms. White and -- and
6 Lindsay, the victim, about how that conviction could be
7 introduced if it was similar. And -- and that was reported
8 to the counselor and is reflected in her notes. This is
9 the same time frame that the counselor, Ms. Bentley, agreed
10 that she would come to court.

11 So she had agreed to come to court almost a year ago,
12 instead of as recently as last Wednesday. And Ms. Bentley
13 called Ms. White, and they confirmed -- Ms. Bentley
14 confirmed with Ms. White that the Kentucky charge could be
15 introduced if the victim from Kentucky would come and if
16 they were similar enough.

17 And, of course, that plays into the rule in *State v.*
18 *Wallace* and the -- the -- the line of cases that led up to
19 *Wallace* and have -- have followed *Wallace*. But I consider
20 *Wallace* to be sort of the -- the watershed case on that.

21 Well, it wasn't until March of this year, where the
22 counseling notes reflect that they were meeting -- the
23 counselor and Lindsay were meeting and discussing her trial
24 testimony, that the 1998-to-1999 time frame came up in the

1 -- in -- in the counseling notes. And one of those
2 meetings -- there was two meetings. It looked like there
3 was a meeting in March and another meeting in June, which
4 coincides with Ms. White telling me that they're changing
5 the time frame of the allegations to go back to 1998 to
6 1999.

7 Now, this is important for a couple of reasons:
8 First, you know, I think there was multiple *Brady*
9 violations that have come to light because of the late
10 disclosure of these counseling records. And under the due
11 process clause and under our -- our state constitution,
12 we're entitled to information that's necessary to prepare a
13 defense. And it's clear that Ms. White -- from this
14 records that Ms. White and the counselor were preparing for
15 trial for approximately a year and that none of this
16 information was provided.

17 The -- the counseling is being paid by the State
18 Office of Victims Assistance. And the counselor -- you
19 heard in chambers that Investigator Haden cannot be here.
20 But Investigator Haden was the one who referred Lindsay to
21 counseling. And -- and the Sexual Trauma Center is the
22 umbrella group -- if you go to their Web site, there's a
23 whole bunch of -- a list of services. And one is the
24 Child's Place, which is where they do the forensic
25 interviews of child-sexual-assault victims.

1 So between payments, referrals, the fact that they are
2 actually a -- a -- an agency that participates in the
3 investigation, we have state action going on with the
4 Sexual Trauma Center. And so -- and I believe we need to
5 call witnesses to -- to -- to put this forward.

6 But what we have is -- is a situation where Judge
7 Maddox, implicit in his order, made a finding that Mr.
8 Carrier would be prejudiced if this case were to continue
9 to linger beyond today, June 18th, 2010, and ordered a
10 speedy trial. And then the state comes in and puts all of
11 this new information into the case that their agents have
12 least -- if not Ms. White directly, their agents have at
13 least known about for a year or more.

14 And the changing the -- well, they -- they -- let me
15 take that back. There's some things that they've known
16 about for two years that should've been disclosed two years
17 ago. And that's the fact that this child was abused by
18 another person. But for them to come in and change the
19 nature of the allegations and put us in a situation where
20 we have to decide to defend the allegations today here in
21 court in order to have this speedy trial or to ask for a
22 continuance in order to be able to prepare is playing off
23 the constitutional rights against each other.

24 And so we think that it would violate due process to
25 be required to go forward on the new indictment. And I

1 should probably throw in at this point that I'm suspicious
2 that the new indictment is not valid on its face because
3 this morning was the first that I've had confirmed that Mr.
4 Haden was not going testify. Mr. Haden is listed as the
5 person who testified before the grand jury during this term
6 of court.

7 And if he was not here -- he certainly is not employed
8 with the Greenwood Sheriff's Office now. If -- if he was
9 not here and he didn't testify in front of the grand jury,
10 then that indictment becomes irregular. And so that's an
11 additional problem that, you know, we may need to -- to
12 take into account.

13 But I also think that the evidence is going to show,
14 when we put it all on the record, that Lindsay changed the
15 nature of the allegations because she knew, from talking
16 with the counselor and talking with Ms. White, that her
17 being younger at the time the abuse supposedly began by Mr.
18 Carrier would be one of the five factors -- make one of the
19 five factors in *Wallace* more similar and, therefore, more
20 likely that that evidence could come in, which is certainly
21 something that they were talking about trying to do a year
22 ago. And even as recently as a couple weeks ago, they were
23 telling Judge Maddox -- it was my understanding; I wasn't
24 there for this conversation -- but they were telling Judge
25 Maddox that the *Lyle* motion, the 404(b) motion, would be

1 the motion that could take a lot of time in getting this
2 case to where were trying it in front of a jury.

3 So with that outline, you know, I'd like to begin
4 calling witnesses.

5 THE COURT: May I ask you a question?

6 MR. GROSE: Yes, sir.

7 THE COURT: All right. As I understand it from what
8 y'all have told me back in chambers, the state is not
9 seeking to introduce the so-called "Lyle evidence"?

10 MR. GROSE: They're -- they're not. But ---

11 THE COURT: But ---

12 MR. GROSE: --- I think ---

13 THE COURT: --- that doesn't change your position?

14 MR. GROSE: That didn't change my position. My -- my
15 position is -- is that how the considerations of whether
16 that evidence would be used in the case has tainted the
17 evidence. And regardless of whether they introduce the
18 Lyle evidence or not, Lindsay's testimony is taint --
19 tainted by that. And at least -- you know, the -- the --
20 her testimony regarding the allegations of abuse starting
21 in 1998 or 1999 at any time prior to six to seven years
22 before the -- the warrant in the case, all of that should
23 be excluded.

24 THE COURT: Okay. All right. Does the state have
25 anything they want to state before we have testimony?

1 MS. WHITE: Just a -- a -- a few clarifications, Your
2 Honor. I informed Mr. Grose that I was going to seek to
3 expand the time frame in the indictment after I met with
4 Ms. Ferqueron at ten o'clock on June the 4th. That was the
5 first time I had ever actually met her face to face and
6 went over -- interviewed her as to the facts of the entire
7 case.

8 And when I spoke with her, that's when I realized --
9 well, she told me that it -- it had begun, she thought,
10 when she was around 5 or 6. She told me today she thinks
11 around first grade. I went and pulled the indictment the
12 next day; realized that we had a problem with the time
13 frame.

14 And -- and going back to the original indictment, the
15 warrant alleges one specific date. And it's a problem
16 we've had in a number of criminal-sexual-conduct cases in
17 the past, where law enforcement only puts one date in the
18 warrant and we have to go back and fix it for a time range.
19 It's always been a time range. And even Mr. Grose would
20 concede: It has always been a -- a date range alleged by
21 the victim.

22 So the -- the indictment was going to have to be
23 amended regardless. And it was after I met with the victim
24 that morning on that -- June -- June the 4th that I
25 realized that it would have to be amended. And I -- I had

1 to go through the records and figure out exactly what dates
2 I needed to use. And as soon as I figured that out is when
3 I informed Mr. Grose that we were changing the date.

4 As far as any trial prep with Ms. Bentley, obviously,
5 we can take testimony on that. I had frankly forgotten
6 that I had spoken with Ms. Bentley. It was, I think, about
7 a year ago that I talked with her on the phone; did not
8 intend to call her as a witness until, I think, very late
9 last week -- Wednesday or Thursday. And it was at that
10 point I decided to get the counseling records, because I
11 felt at that point that Mr. Grose was entitled to them.

12 As -- Your Honor will actually have to order Ms.
13 Bentley to testify today. It's my understanding, based on
14 the ethical guidelines that she has to operate under, that
15 I can't obtain her records without a court order and Mr.
16 Grose couldn't obtain her records without a court order.

17 So to say that she is somehow a state agent, when I --
18 I cannot obtain her records without coming to a circuit
19 judge, I think is a stretch. Furthermore, Your Honor, the
20 -- the allegation that I somehow coached Ms. Ferqueron or
21 Ms. Bentley as to what would be required under Lyle, I --
22 I'm not aware of any prohibition on a prosecutor telling a
23 victim what the law is and -- and what the strengths and
24 weaknesses of her case are.

25 And any conversations we had were frankly just along

1 those lines: "This is what you've got going for you.
2 These are the negatives. If we can get in the fact that
3 he's a convicted sex offender from Kentucky for touching a
4 4-year-old, we will certainly try to do that, but that's
5 something I'm going to have to research." Those were the
6 conversations we had.

7 MR. GROSE: Your Honor, we may could cut this short.
8 Based on all of this, I'm going to call Ms. White as my
9 first witness so that we can get testimony about her
10 conversations with the victim.

11 MS. WHITE: I ---

12 MR. GROSE: And so that ---

13 MS. WHITE: I don't ---

14 MR. GROSE: And so ---

15 MS. WHITE: --- see where it's necessary, since I'm an
16 officer of the Court, but I'm more than happy to take the
17 stand.

18 MR. GROSE: Then, I call Ms. White.

19 THE COURT: All right. Well, just -- all right.

20 ELIZABETH WHITE, having been first duly sworn,
21 testified as follows:

22 DIRECT EXAMINATION

23 BY MR. GROSE:

24 Q When did you first take over responsibility for
25 prosecuting this case?

DIRECT EXAMINATION BY MR. GROSE - ELIZABETH WHITE

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1 A Early summer or late spring of last year. It was --
2 was when Ms. Bolen left.

3 Q Okay. So it would've been when Patricia Bolen left
4 the solicitor's office?

5 A Yes.

6 Q And -- and you basically took over her caseload?

7 A Yes.

8 Q And you said a minute ago that you didn't actually
9 meet with Lindsay until June of this year. When was the
10 first time that you had any contact with her, by telephone
11 or otherwise?

12 A I would have to look at my notes. I think it was
13 probably June of last year. She called on a fairly
14 consistent basis, just to check on the status of the case.

15 Q Okay. How -- how many times do you think that you
16 have talked to her?

17 A Five to ten.

18 Q Okay. And closer to five or closer to ten, or do you
19 know?

20 A I'm not certain. I don't know.

21 Q Would your notes reflect that?

22 A Maybe not with a great deal of accuracy. Sometimes I
23 put things in the system; sometimes I don't.

24 Q Would you like to look at your notes?

25 A I would say -- yeah, I'd like to look at my notes.

1 (Whereupon, the witness briefly exited and reentered
2 the witness stand.)

3 A Are you wanting number of times I've talked to her
4 since taking over prosecution of the case, as documented in
5 PCMS?

6 Q What -- have you talked with her since before you took
7 over the case?

8 A No.

9 Q Okay. Then, how many times does your notes indicate
10 that you've talked with her since taking over the case?

11 A First time I spoke with her directly was May 23rd,
12 2011. Angela Castillo spoke with her on June 15th. I
13 spoke with Lindsay on August 23rd. Angela Castillo spoke
14 with her on October 25th. These are all of 2011.

15 2012 she left -- Lindsay left me a voice mail that her
16 phone number had changed. That was March 12th, 2012. And
17 then, May 21st is when Angela Castillo-Lana called her
18 about the trial date of today.

19 And then I met with her on June the 4th. And like I
20 said, there's probably some phone calls that are not
21 reflected in my records that are mainly: "Has he agreed to
22 plea?" "No, he hasn't agreed to plea. I'll call you" type
23 conversations.

24 Q Okay. So your notes reflect three conversations with
25 her, then? You, not -- not Ms. Castillo, but you.

DIRECT EXAMINATION BY MR. GROSE - ELIZABETH WHITE 61

1 A One -- three before the June 4th meeting.

2 Q Okay. So three before the June 4th meeting?

3 A That are documented in PCMS.

4 Q All right. Do you know how -- the first one was May
5 23rd, I believe.

6 A Yes.

7 Q And -- and do your notes reflect what you talked with
8 her about that day?

9 A Some of this I would consider attorney work product;
10 but basically, talking about the status of the case, my
11 assessment of it, and when I thought it would be resolved.

12 Q Okay. And -- and did you discuss the Kentucky charges
13 at that time?

14 A We did.

15 Q All right. And what did you discuss about the
16 Kentucky charges in May -- on May 23rd of 2011?

17 A The only note I have is that I was going to pull the
18 old conviction and see -- see what it was about.

19 Q Okay. And what do you mean by "pull the old
20 conviction"?

21 A See what the facts were.

22 Q And -- and we -- we know that you had an investigator
23 in your office contact Kentucky and get that information,
24 right?

25 A Yes.

1 Q Okay. Okay. And do you recall -- or do you know when
2 that information came into your office?

3 A I do not show exactly where -- when they came in.
4 Looks like it might've -- they were scanned into the system
5 July of 2011.

6 Q Okay. And so that would've been after you -- after
7 this meeting in -- in May -- or ---

8 A Yes.

9 Q --- this telephone conversation in May?

10 A Yes.

11 Q Okay. And what did you tell her about whether or not
12 that Kentucky conviction could be admissible?

13 A I don't think I told her anything about it until -- I
14 don't show exactly when I told her about it. I know it was
15 relatively late in the process, because I was researching
16 whether or not I thought it would be admissible. And I
17 didn't want to tell her I thought it would be and have it
18 end up not being admissible.

19 And it -- so I don't know exactly when I told her
20 that. Probably -- I -- I -- I wouldn't want to guess. I'm
21 not sure when it was.

22 Q Okay. And you -- you did make efforts to try to get
23 somebody from Kentucky to come to this trial, didn't you?

24 A Absolutely.

25 Q Okay. And that just didn't pan out?

DIRECT EXAMINATION BY MR. GROSE - ELIZABETH WHITE 63

1 A Correct.

2 Q Okay.

3 A However, I -- I did know -- as -- when we met with the
4 victim on June the 4th, we told her we were not going to be
5 able to get anyone from Kentucky. So as -- as early as
6 June the 4th, I knew that probably wasn't going to pan out.
7 We were still trying, but I knew it wasn't going to pan
8 out.

9 Q Okay. Do you -- do your notes reflect when you sent
10 the Kentucky evidence to me?

11 A March -- March the 21st is when I have a note that I
12 e-mailed them to you.

13 Q And that's March the 21st ---

14 A --- of 2012.

15 Q 2012? Okay.

16 The second time you had a phone conversation with
17 Lindsay, was that August 23rd of 2011?

18 A Yes.

19 Q Okay. And what did you and her talk about then?

20 A I have no notes about the substance of the
21 conversation.

22 Q All right. But by then you had the information from
23 Kentucky?

24 A Correct. My note just says: "Telephone call to
25 Lindsay re: status of case."

1 Q Okay. And you recall whether you discussed the
2 Kentucky ---

3 A I ---

4 Q --- information?

5 A I have no independent recollection.

6 Q All right. And after August 23rd, when was the next
7 time that -- that you had contact with her?

8 A The next time I talked to her -- I have a note that
9 she left me a message on March 12th. I don't know if I
10 returned her call or not. I don't show that I did. I -- I
11 don't show another ---

12 Q Okay.

13 A --- conversation where I spoke with her directly.

14 Q Until the June 4th meeting?

15 A Correct.

16 Q Okay.

17 A And now, it's possible I did talk to her, but I didn't
18 put it PCMS if I did.

19 Q All right. Now ---

20 MR. GROSE: Beg the Court's indulgence for a moment.

21 THE COURT: Yes, sir.

22 MR. GROSE: (To the court reporter) Can I mark this
23 as Defendant's Exhibit 2.

24 (Whereupon, Defendant's Exhibit 2 was marked for
25 identification.)

DIRECT EXAMINATION BY MR. GROSE - ELIZABETH WHITE 65

1 Q I'm going to hand you Defendant's Exhibit 2, which is
2 a letter I wrote you on May 23rd. You did receive that
3 letter, didn't you?

4 A Yes.

5 Q And that letter was to summarize the discovery that
6 had been provided?

7 A That's correct.

8 Q Okay. And the first discovery was provided to me by
9 Ms. Bolen when she was handling the case; is that right?

10 A Yes.

11 Q Did I accurately detail that in the letter?

12 A I don't have my complete file in front of me, but it
13 looks accurate.

14 Q Okay. And the second discovery was the Kentucky
15 information that you provided. Did ---

16 A Correct.

17 Q --- I -- did I accurately detail in that -- in the
18 letter?

19 A Appears to be.

20 Q Okay. And, of course, I ask you in that letter to let
21 me know if I made any mistakes.

22 A Yes.

23 Q Okay. And there was -- I asked for some videos, and
24 you did provide the videos?

25 A Correct.

1 Q Okay. Now, you have looked at the counseling records
2 that were disclosed last Thursday afternoon; is that
3 correct? A Yes.

4 Q Okay. In those counseling records, Lindsay is
5 documented as having told Ms. Bentley that you talked with
6 her about the potential admissibility of the Kentucky
7 charges probably around July of last year; is that right?

8 A I'm not sure about the date. I know that it's in
9 there that she discussed that with Ms. Bentley. I
10 obviously have no knowledge.

11 Q Okay.

12 A You'll have to ask Ms. Bentley and Ms. Ferqueron about
13 what they actually discussed.

14 Q Okay. Well, do you agree or disagree with -- with the
15 characterization of your statements to Lindsay on July 18th
16 of 2011 that the Kentucky charges could be admitted if
17 similar?

18 A I agree that I probably told her that. I don't
19 necessarily know what date I told her that.

20 Q Okay. Do -- do you -- would -- do you think you told
21 her that as early as July 18th of 2011?

22 A Possibly. It looks like that's when ---

23 Q Do you ---

24 A Possibly.

25 Q --- you -- you -- you had the Kentucky information by

DIRECT EXAMINATION BY MR. GROSE - ELIZABETH WHITE 67

1 then, didn't you?

2 A No. I didn't have -- well, the -- the note I had
3 about the Kentucky information is that it was in the system
4 on July 27th.

5 Q Okay. So it was about that same time frame ---

6 A It was the ---

7 Q --- roughly?

8 A --- same time frame.

9 Q Okay.

10 A Now, I think I discussed with her, prior to actually
11 obtaining the records, that if it was similar enough, I
12 could possibly use it.

13 Q Okay.

14 A And then, I would have to wait and see what the
15 records reflected.

16 Q Okay. Now, when was the first time that you talked
17 with Ms. Bentley?

18 A According to my notes, she called -- well, my system
19 just went down. I have a note from July 18th of 2011:
20 "Telephone call from Susan Bentley; called her back.
21 Victim has written an impact statement and will get it to
22 us."

23 Q Okay. So by "impact statement," you mean a -- a
24 victim-impact statement?

25 A Yes.

1 Q All right. And do you recall whether you talked with
2 Ms. Bentley about the admissibility of the Kentucky
3 charges?

4 A I don't recall if I did or not. I know that it -- she
5 reflects that in her notes. I'm not saying it didn't
6 happen; I just have no independent recollection.

7 Q Did you talk with Ms. Bentley about the progress of
8 Lindsay's counseling?

9 A Not that I recall. But again, I have no notes about
10 it.

11 Q Do -- do you ever attend -- I don't know what they're
12 called -- but team meetings ---

13 A No.

14 Q Are you invited to those?

15 A I'm invited to them, but I haven't been to one yet.

16 Q Okay. Can you tell me what the purpose of those team
17 meetings ---

18 A I ---

19 Q --- are?

20 A --- I don't know. I haven't been to one.

21 Q You -- you haven't been to one?

22 A I've never been to one.

23 Q All right.

24 A You talking about a staffing?

25 Q Staffing ---

DIRECT EXAMINATION BY MR. GROSE - ELIZABETH WHITE 69

- 1 A No.
- 2 Q --- yeah.
- 3 A I've never been to one.
- 4 Q Who -- who -- who is invited to the staffings?
- 5 A I'm invited; Investigator Chappell is invited.
- 6 Someone from -- I mean, the law enforcement agency is
- 7 invited. Counselors are invited.
- 8 Q When you say the "counselor," you're talking about the
- 9 -- the person providing the counseling services?
- 10 A Correct.
- 11 Q As distinguished from the separate person at the
- 12 Child's Place who conducts the interview?
- 13 A Correct. Now, I'm not sure if forensic interviewers
- 14 are there. I'm not sure. All I know is I've never been to
- 15 one.
- 16 Q Okay.
- 17 A I'm on the invite list, but I -- with court, I've
- 18 never had a chance to go.
- 19 Q All right. What is your understanding that is
- 20 discussed at those meetings?
- 21 A I don't know.
- 22 Q Okay. You don't even know -- and the invitations ---
- 23 A I ---
- 24 Q --- don't even tell you?
- 25 A I -- I don't under -- it's literally a e-mail that

1 says: "We're staffing the following cases on such and such
2 a date."

3 Q All right.

4 A And ---

5 Q Well ---

6 A --- that's all I know.

7 Q --- help me. I don't understand why the counselor
8 would be involved in this staffing if the -- with law
9 enforcement and the prosecutor if the counselor is not
10 somehow involved in preparation of the case for -- to go to
11 ---

12 A I have ---

13 Q --- court?

14 A --- never discussed preparing -- the -- the only time
15 I've discussed preparing Lindsay for trial with Susan
16 Bentley was on June the 4th.

17 Q Okay. And -- and -- and you did discuss with Ms.
18 Bentley preparing her for trial?

19 A On June the 4th.

20 Q And -- and do you see her has having a role in
21 preparing Lindsay for trial?

22 A Once I remembered she was involved and she was there
23 with her on June the 4th, yes. I was not certain if I was
24 going to call her as a witness until last week.

25 Q Okay. Well, do your notes reflect that you had any

DIRECT EXAMINATION BY MR. GROSE - ELIZABETH WHITE 71

1 other conversations -- with her between July and June the
2 4th?

3 A I -- I have nothing else in my notes about a
4 conversation with her.

5 Q Okay. So are -- are you telling us that you -- you
6 forgot that she was involved?

7 A Frankly, yes. It -- that conversation was over a year
8 ago when I started prepping the case for trial.

9 Q Uh-huh.

10 A I didn't remember that she was seeing a counselor
11 until I met with her ---

12 Q All right. But -- but it's ---

13 A --- on June ---

14 Q --- right there ---

15 A --- the 4th.

16 Q --- in your notes?

17 A That's correct.

18 Q All right. And -- and these staffings, do you get
19 invitations to these staffings as a general matter or on a
20 case-by-case basis?

21 A I get them on a general -- I mean, they staff
22 different cases -- I think, four or five -- every couple of
23 weeks.

24 Q Okay.

25 A I get invited to all of them.

DIRECT EXAMINATION BY MR. GROSE - ELIZABETH WHITE 72

1 Q Okay. How -- how often do you know -- how often have
2 you been invited to a staffing for Lindsay's case?

3 A I don't know if I have been.

4 Q How would you -- what would you have to look at to
5 know?

6 A I -- I don't keep any sort of records on being invited
7 ---

8 Q All right. How ---

9 A --- to those.

10 Q Do the invites come by e-mail ---

11 A It's by ---

12 Q -- a phone ---

13 A --- e-mail..

14 Q --- call -- e-mail?

15 A Well, it's actually by fax.

16 Q Okay. And you don't keep those faxes in your file?

17 A No.

18 Q Okay. Okay.

19 MR. GROSE: Beg the Court's indulgence for ---

20 THE COURT: Sure.

21 MR. GROSE: --- a moment. (To the court reporter)

22 Mark this is as No. 3. Just there's -- and it's not going
23 to cover up anything.

24 (Whereupon, Defendant's Exhibit 3 was marked for
25 identification.)

CROSS-EXAMINATION BY MR. HODGES - ELIZABETH WHITE 73

1 Q This is just part of the incident report, but this is
2 Defendant's Exhibit No. 3. Does that appear to be the part
3 of the incident report for Mr. Grogan's involvement in the
4 case?

5 A It's what I received from law enforcement as to -- I
6 -- I can't testify as to anything that Deputy Grogan wrote
7 in here.

8 Q Okay.

9 A It'd all be hearsay to me. But it's the incident
10 report I ---

11 Q I ---

12 A --- received from law enforcement.

13 Q I -- I understand it would be hearsay. But -- but
14 that's something that you received as part of ---

15 A As part ---

16 Q --- prosecuting ---

17 A --- of the case file. Yes.

18 Q All right.

19 MR. GROSE: That -- that's all the questions I have,
20 Your Honor.

21 THE COURT: Mr. Hodges?

22 MR. HODGES: Just a couple follow-up questions, Judge.

23 CROSS-EXAMINATION

24 BY MR. HODGES:

25 Q You mentioned that the -- your first note on this case

1 was May 23rd, 2011?

2 A Yes.

3 Q And is that -- is that around the time that you
4 inherited this case from Ms. Bolen?

5 A That's correct. She -- Ms. Bolen left status notes on
6 all of her cases in PCMS. She -- her status note on this
7 case was around May the 12th, so I think she probably left
8 a few days after that.

9 Q All right. And what kind of cases were you handling
10 prior to this transition?

11 A Drug cases.

12 Q Okay. So, I mean, what kind of cases did Ms. Bolen
13 handle in the office?

14 A She handled all the violence against women, child-
15 sexual-assault cases, and adult-sexual-assault cases.

16 Q All right. In what counties?

17 A Greenwood and Abbeville.

18 Q All right. And did you inherit her entire caseload in
19 Greenwood and Abbeville Counties?

20 A That's correct.

21 Q Okay.

22 A Approximately 450 warrants.

23 Q All right. Would it be fair to say, then, it was a
24 rather large transition for you to inherit that many of
25 this type of case?

REDIRECT EXAMINATION BY MR. GROSE - ELIZABETH WHITE

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1 A Yes.

2 MR. HODGES: That's all the questions I have, Your
3 Honor.

4 THE COURT: Any redirect?

5 MR. GROSE: Can -- can I just follow up on one thing?
6 This may be going back.

7 REDIRECT EXAMINATION

8 BY MR. GROSE:

9 Q Did -- did I understand you to say that you had
10 remembered by June 4th that Ms. Bentley was involved in the
11 case?

12 A I remember was -- Ms. Bentley was involved in the case
13 on June the 4th when I was sitting across from Lindsay and
14 she said, "My counselor is coming" -- or -- no. Excuse me.
15 Let me go back on that. I think, when Angela set up the
16 meeting, she might've asked, "Is it okay if my counselor
17 comes?"

18 And that's when I remembered there was a counselor
19 involved. I didn't remember it was specifically Ms.
20 Bentley until she came on June the 4th.

21 Q Okay. Well, when did Ms. Castillo ask -- find out if
22 it was okay that the counselor come to the meeting?

23 A I don't have a note on that. She scheduled the victim
24 to come in at the end of May. But I don't have a note as
25 to whether or not -- when she asked me about that or when

1 the victim asked her about that.

2 Q All right. So ---

3 MR. GROSE: (To the court reporter) Can you mark
4 these as the next exhibit.

5 (Whereupon, Defendant's Exhibit 4 was marked for
6 identification.)

7 Q I'm going to hand you two e-mails. One is the June
8 5th e-mail, when you told me that you were going to expand
9 the time frame of the indictment; is that correct?

10 A Yes.

11 Q And so that followed the June 4th meeting?

12 A Correct.

13 Q Now, Ms. Bentley was at the June 4th meeting, right?

14 A Correct.

15 Q All right. And -- and then, the e-mail about the --
16 obtaining the counseling records didn't come until -- was
17 it June 13th?

18 A That's correct. That's when I decided that Ms.
19 Bentley -- I was going to have her testify. That's the
20 point that I felt that the counseling records became
21 relevant to the case, as I stated earlier. I don't feel
22 that they were in the care, custody, or control of the
23 state. As I stated, I have to get a court order to see
24 those records.

25 Q Right. But -- but you didn't initiate trying to

1 obtain one until last Wednesday afternoon?

2 A Correct. When I knew I was calling the counselor as a
3 witness.

4 Q Okay. Did -- at the June 4th meeting, did y'all
5 discuss Lindsay's treatment?

6 A We discussed how she had opened up: gone from being
7 very withdrawn to being able to talk about the abuse she
8 suffered at Mr. Carrier's hands. But we didn't discuss
9 directly -- I -- I don't think I had much conversation with
10 Ms. Bentley. I -- we did not discuss any sort of
11 diagnosis. We did not discuss any sort of treatment plan.
12 We did not discuss -- I -- I think I just -- I -- but
13 that's basically all we discussed: just how far she had
14 come.

15 Q All right. So Ms. Bentley did discuss the treatment?

16 A She discussed how far Ms. Ferqueron had come from the
17 point she was at.

18 Q Okay. And so -- so how is it that you came upon this
19 decision that you were going call her as a witness?

20 A Because I was debating between the forensic
21 interviewer. And, you know, some of this is attorney work
22 product, but -- my own personal research and decisions.
23 But because I was debating between using the forensic
24 interviewer versus the counselor to -- to get into the
25 dynamics of child-sexual abuse.

1 Q But -- but how would you know what she would say if
2 you didn't know what she and Lindsay had discussed? That's
3 what I'm having a problem with. Oh, I -- I'm ---

4 A Because ---

5 Q --- I'm not ---

6 A --- I know what -- the dynamics of child-sexual abuse.
7 Your -- every counselor from Sexual Trauma is going to have
8 the same basic testimony regarding that.

9 Q Oh. So then -- then -- then, how ---

10 A I did ---

11 Q --- did you ---

12 A --- not discuss what her testimony -- I still -- we've
13 discussed a little bit -- I think it was Friday -- a little
14 bit regarding the substance of her testimony.

15 Q Okay. But -- but how would you know that she would be
16 better than the forensic interviewer if you didn't know
17 anything about what she was going say?

18 A Again, this is a bit of a trial-strategy decision. I
19 would rather not -- suffice it to say, between a counselor
20 and a forensic interview, I -- I would rather use a
21 counselor.

22 Q Okay. Why? Not anything about this trial, just in
23 general, why?

24 A In general? Education, training, and experience.

25 Q Okay. Well, you knew about Ms. Bentley's education,

REDIRECT EXAMINATION BY MR. GROSE - ELIZABETH WHITE 79

1 training, and experience in July of 2011 when you talked to
2 her.

3 A Charles, I have -- as Mr. Hodges just stated, I had
4 just inherited over 450 warrants. Trying this case in July
5 of 2011 was the last thing on my mind.

6 Q All right. But -- but you knew -- and you knew her
7 training, education, and experience then, though, didn't
8 you?

9 A That's correct.

10 Q All right. And when this was -- when you were
11 reminded in May of this year that a counselor was involved,
12 you knew that the counselor had different training,
13 education, and experience than the forensic interviewer,
14 right?

15 A And I still didn't know whether or not I was going to
16 use her. I did not make that decision as the lawyer on the
17 case until last week.

18 Q Right. But -- but that's your general criteria, is
19 the training and education and experience of the counselor.
20 And you knew that in May?

21 A Well, I think you're putting words in my mouth.

22 Q Well, is that your general criteria: the training,
23 education, and experience of the counselor?

24 A It depends. Sometimes. I don't bring in a counselor
25 in every case. I was going back and forth between using a

1 forensic interviewer and using the counselor.

2 Q Well, you've never tried one of these cases, have you?

3 A I've sat on one of these cases.

4 Q Okay. But you've never made the decision yourself,
5 but you're telling us -- what -- what you're telling us is
6 you don't want to tell us any case -- case-specific reason;
7 you're giving us a general reason, which has been constant
8 in the entire 11 months to a year you've been handling this
9 case?

10 A Yes.

11 Q Okay.

12 A That's the reason I decided to use Ms. Bentley, as
13 opposed to Ms. Bell.

14 Q All right.

15 A And it was no nefarious purpose. That was a decision
16 I made last week.

17 Q All right. And the -- the -- the ---

18 A I went to -- actually, I went to Deputy Solicitor
19 Hodges and asked him what he thought about it.

20 Q All right. And -- and -- and disclosing these
21 counseling records has -- has changed a lot of the dynamics
22 of this case?

23 A Correct.

24 Q All right.

25 MR. GROSE: That's all I have.

1 MR. HODGES: Nothing further, Your Honor.

2 THE COURT: All right. Thank you very much.

3 MR. GROSE: I call ---

4 THE COURT: I tell you what: We're going to have to
5 take it up in the morning.

6 MR. GROSE: Okay.

7 THE COURT: So we'll just resume tomorrow at 9:30.
8 All right.

9 MR. GROSE: All right. Thank you, Your Honor.

10 THE COURT: Thank you.

11 MR. GROSE: Your Honor, I ---

12 THE COURT: Yes, sir ---

13 MR. GROSE: --- assume ---

14 THE COURT: --- Mr. Grose?

15 MR. GROSE: --- he's still out on bail?

16 THE COURT: Sir?

17 MR. GROSE: I assume he's still out on bail?

18 THE COURT: What's the state's position on that?

19 MS. WHITE: Your Honor, we'll leave it up to the
20 Court.

21 THE COURT: Okay. Yeah. He -- now, sir -- Mr.
22 Carrier, if you don't come back tomorrow -- and I'm sure
23 you will, but I have to tell everybody this. If you don't
24 come back, the trial is still going to go forward without
25 you. You understand that?

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1 DEFENDANT: I'll be back.

2 THE COURT: And -- and you -- you'd be subject to
3 prosecution for not being here. So we'll see you back in
4 the morning. Thank you.

5 MR. GROSE: All right. And -- and what time did you
6 say to start?

7 THE COURT: I said 9:30.

8 MR. GROSE: Nine-thirty? Okay.

9 (Whereupon, the Court was in recess at 5:29 p.m.)

10 DAY TWO.

11 (Whereupon, the proceedings resumed at 9:51 a.m.)

12 MR. GROSE: Are you -- you ready?

13 THE COURT: Yes, sir.

14 MR. GROSE: Okay. I would -- I would call Deputy
15 Grogan.

16 (Whereupon, the witness came forward.)

17 ROBERT GROGAN, having been first duly sworn, testified
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. GROSE:

21 Q Would you please state your full name for the record?

22 A It's Robert A. Grogan, but everybody knows me as
23 "Bobby."

24 Q All right. And -- and where do you work?

25 A The Greenwood County Sheriff's Office.

1 Q And how long have you worked there?

2 A Few months shy of 22 years.

3 Q All right. And so, then, you would've been working
4 there on March 31st of 2009?

5 A That's correct.

6 Q All right. And I showed you -- well, you -- you have
7 learned what we're up here about in the ---

8 A Yes, sir.

9 Q --- past couple of days. Do ---

10 A Yes, sir.

11 Q --- do you have much memory of that three years later?

12 A Not much, but ---

13 Q Okay. I showed you some incident reports yesterday.

14 A That's right.

15 Q Did that help refresh your memory?

16 A Yes, sir.

17 Q All right. I'm going to hand you what's been marked
18 as Defendant's Exhibit No. 3. That's not the entire
19 incident report, but that's what I take to be your portion
20 of the incident report in this case.

21 A That's correct, the initial report.

22 Q All right. And who is the person who -- well -- and
23 -- and the -- the dispatch date was March 31st of 2009,
24 right?

25 A Let me find out on here real quick. Yes, sir.

1 Q Okay. And -- and who was the first person that you
2 talked to?

3 A Bear with me just a second. Let me read into my
4 narrative here.

5 Q Certainly.

6 A I believe it was Ms. -- Ms. Glenda K. Weaghtington.

7 Q Okay. And now, her -- her name is different now, I
8 think. But what relationship is she to Lindsay?

9 A That's her mom.

10 Q Okay. And what did Ms. Weaghtington tell you?

11 A When -- according to my report, when I got there, she
12 had said her daughter had revealed to her that she'd been
13 molested approximately six to seven years ago by Mr. Jamie
14 Carrier.

15 Q Okay. And if the -- this conversation was taking
16 place on March 31st for 2009, six to seven years ago
17 would've been -- 2003 would be six years ago, and 2002
18 would be seven years ago?

19 A That's right.

20 Q Okay. And did you speak with Lindsay?

21 A I did, according to the report.

22 Q All right. And did she give you any indication about
23 the time frame?

24 A Says here in the report that when I spoke with her,
25 Ms. Lindslay (phonetic) -- and I -- I'm reading off the

DIRECT EXAMINATION BY MR. GROSE - ROBERT GROGAN

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1 report here: "Ms. Lindsay Ferqueron said approximately six
2 to seven years ago is when it happened."

3 Q All right. And so again, six to seven years ago would
4 be consistent with 2002 to 2003, based on this conversation
5 taking place on March 31st, 2009?

6 A Correct.

7 Q All right. After you took this initial report, did
8 you have any other involvement in this case?

9 A No, sir.

10 Q Okay. And -- and that would be typical that as -- as
11 a deputy, you're the first responder?

12 A Right.

13 Q And then you refer it to an investigator?

14 A Right. And, you know, in a situation like that, if
15 it'd been freshly committed, obviously we'd have made
16 arrangements to go to the hospital for what we refer to as
17 a "rape kit," that sort of thing ---

18 Q Right.

19 A --- or an evaluation. But in this case, it was too
20 old.

21 Q All right. So then, it goes on to, in this case,
22 Investigator ---

23 A Investigations. Yes, sir.

24 Q --- Investigator Haden is ---

25 A I did not know that -- till you showed it to me

1 yesterday -- he was the one that took it over.

2 Q But that's what the report would indicate?

3 A Yes, sir.

4 Q And, of course, you don't have any knowledge of what
5 he ---

6 A No, sir.

7 Q --- did or didn't do? All right.

8 A I do not.

9 Q Thank you.

10 MR. GROSE: That's all I have, Your Honor.

11 CROSS-EXAMINATION

12 BY MS. WHITE:

13 Q Sgt. Grogan, do you still have your incident report?

14 A Yes, ma'am. It's still here.

15 Q What date do you have down for your incident date at
16 the top of the report?

17 A The incident date reads: "From May 1st of 2000 until"
18 -- well, it -- it really didn't have a time -- "to
19 September 30th of 2000."

20 Q Okay. And those are dates that you would've received
21 from the victim, correct?

22 A Right.

23 Q And that's 2000?

24 A According to that, yes, ma'am.

25 Q All right. Also, in your report don't you state later

REDIRECT EXAMINATION BY MR. GROSE - ROBERT GROGAN

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1 down the last line on the first page that the victim told
2 you that she could not remember exact dates and times?

3 A Yes. (As read): "She said she cannot remember exact
4 dates and times, but she remembers the weather was warm
5 because she remembers wearing shorts."

6 Q Okay. And what would you describe the victim's
7 demeanor as when you were talking with her?

8 A She -- she's kind of withdrawn. I mean, it's -- it's
9 -- it's not like casual conversation. She wasn't overly
10 volunteering anything, but I had to talk to her -- ask --
11 told her it was going to be difficult questions I had to
12 ask her, so on and so forth.

13 And she answered my questions. But it -- just kind of
14 withdrawn. It's not casual conversation. I don't know how
15 to describe it, but ---

16 Q All right.

17 MS. WHITE: That's all the questions I have.

18 REDIRECT EXAMINATION

19 BY MR. GROSE:

20 Q She asked you about the May 1st to September 30th,
21 2000, dates.

22 A Yes, sir.

23 Q Is there any statement in your report that supports
24 those dates?

25 A No, sir. And not in the body of the report.

1 Q In fact, in the body of the report, it supports 2002
2 to 2003, right?

3 A Right. If you go from the time frame in the body of
4 the report.

5 Q Right. And -- and your practice is to accurately
6 write down a summary of what witnesses tell you?

7 A That's right.

8 Q Okay. And so as far as we know, that year 2000 is --
9 is -- is a mistake?

10 A I wouldn't necessarily say a mistake. I'm not sure.
11 It's been so long ago. I'm not sure how I got it from that
12 point to the point in the body of the report. But -- I
13 don't know if somebody else had told me those dates or
14 what, but ---

15 Q So those could've come from somebody entirely
16 separate?

17 A The only -- I think the only people in the house that
18 day were me, the victim, her mom, and her grandmother.

19 Q Okay. So -- but you don't know who related those
20 dates to you?

21 A I'm assuming the victim.

22 Q Okay.

23 A But I don't -- I can't say for a fact. No.

24 Q But -- but the summary of her statement is six to
25 seven years ago?

REDIRECT EXAMINATION BY MR. GROSE - ROBERT GROGAN

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1 A That's what I -- let me look into it one more time.
2 Okay. It says -- yeah -- "Ms. Lindsay Ferqueron said
3 approximately six to seven years ago, she and her mother
4 lived at [REDACTED]" ---

5 Q All right.

6 A --- "in Greenwood County." And so -- that's it. She
7 said she would play with the children next door at Ms.
8 Mariah Freel's home. And she give me her address.

9 Q And so she was tying it to the place where they lived?

10 A I -- I think so.

11 Q Okay. And ---

12 MR. GROSE: Nothing -- nothing further.

13 THE COURT: Anything further?

14 MS. WHITE: No, sir, Your Honor.

15 THE COURT: All right. Thank you, sir.

16 (Whereupon, the witness exited the witness stand.)

17 MR. GROSE: Your Honor, Mr. Grogan is on both our
18 witness lists. He has other responsibilities. I -- he's
19 given me a phone number. I would ask that he be excused
20 but subject to recall when either side needs him.

21 MS. WHITE: No objection.

22 THE COURT: Okay. All right. Thank you, sir.

23 MR. GROSE: I call Jessica Bell.

24 (Whereupon, the witness came forward.)

25 BAILIFF: (To the witness) Watch your step.

1 JESSICA BELL, having been first duly sworn, testified
2 as follows:

3 DIRECT EXAMINATION

4 BY MR. GROSE:

5 Q Could you state your name for the record?

6 A Jessica Sigrid Bell.

7 Q And where are you employed?

8 A Sexual Trauma and Counseling Center.

9 Q And how long have you been employed there?

10 A About eight years now.

11 Q Okay. And did you see Lindsay?

12 A Uh-huh.

13 Q And ---

14 A Yes, sir.

15 Q --- and when was that?

16 A That was April 14, 2009.

17 Q Okay. Before we get into that, I want you to tell me
18 a little bit about -- well, now, you're -- you're -- you're
19 employed by the Sexual Trauma Center; is ---

20 A Yes, sir.

21 Q --- that right?

22 A Yes, sir.

23 Q The ---

24 MR. GROSE: (To the court reporter) And -- and let's
25 mark this as the next exhibit, please.

DIRECT EXAMINATION BY MR. GROSE - JESSICA BELL

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1 (Whereupon, Defendant's Exhibit 5 was marked for
2 identification.)

3 Q Okay. I want to hand you what's been marked as
4 Defendant's Exhibit No. 5. And that's a -- a 14-page
5 document, but it has a fax cover sheet. Is that your
6 report from the interview that you did with Lindsay?

7 A Yes, sir.

8 Q Okay. Now, on it, it says "The Child's Place."
9 Child's Place is part of the Sexual Trauma Center ---

10 A Yes, sir.

11 Q --- is that ---

12 A The ---

13 Q Okay.

14 A --- Child's Place is a program of Sexual Trauma and
15 Counseling Center.

16 Q All right. And it -- is it a child-advocacy center?

17 A Yes, sir.

18 Q Okay. Can you tell His Honor what a "child-advocacy
19 center" is?

20 A A child-advocacy center is -- it's based on a
21 multidisciplinary approach, which means it brings together
22 all helping agencies, which would be law enforcement, DSS,
23 therapists ---

24 Q Okay. Can -- can we maybe scoot the microphone a
25 little closer to -- it -- it's ---

1 A Is that ---

2 Q --- even right ---

3 A --- good?

4 Q --- here, it's hard to hear over the air conditioning.

5 A Okay. Sorry about that.

6 Q Sorry about ---

7 A That's okay. And we all work together to reach the
8 best interest of the client. And we operate off a child-
9 first principle, which means that the child is our number
10 one priority: making sure they're comfortable and not
11 traumatized by the system.

12 Q Okay. Now, you said "multidisciplinary approach."

13 A Yes, sir.

14 Q What does that mean?

15 A That basically means that we involve other agencies in
16 the investigative process. And we are used as a tool,
17 basically, for them. So we do their forensic interviews
18 and the medical exams that they use as part of their
19 investigation.

20 Q Okay. And -- and -- and when you're -- when you're
21 talking about other agencies, you're talking about law
22 enforcement?

23 A Law enforcement, DSS, guardian ad litem, medical
24 doctors, counselors ---

25 Q Solicitor's office?

- 1 A Solicitor's office, yeah.
- 2 Q Treatment providers?
- 3 A Yeah.
- 4 Q Okay. And -- and the ideal, I believe, is -- is that
- 5 different people -- different professionals have different
- 6 experiences -- training and experiences, right?
- 7 A Yes.
- 8 Q And -- and so it becomes a collaborative effort
- 9 between all of you?
- 10 A Yes.
- 11 Q You were here when Deputy Grogan testified a few
- 12 minutes ago?
- 13 A Yes.
- 14 Q And, you know, he's a first responder for law
- 15 enforcement with certain types of training.
- 16 A Okay.
- 17 Q Right?
- 18 A Uh-huh.
- 19 Q And ---
- 20 A Yeah.
- 21 Q --- I believe that Chris Haden was the -- one of the
- 22 people involved in referring -- setting up for Lindsay to
- 23 -- to see you; is that right?
- 24 A He was.
- 25 Q Okay. And -- and your job -- I -- so -- so I guess,

1 use your all's term for it -- your job is to conduct
2 forensic interviews?

3 A Yes. At that time, yes, it was.

4 Q Okay. At -- at that time?

5 A Yes.

6 Q Right. And -- and -- now, and you've had training for
7 that, right?

8 A Yes, I have.

9 Q And you also have some other professional training,
10 don't you?

11 A Yes, I do.

12 Q And what is that?

13 A I'm a master-level social worker.

14 Q Okay. And the -- the -- the forensic interview is
15 actually considered part of the investigation?

16 A Yes, sir.

17 Q And you're, I guess, familiar with the changes in the
18 law in recent years that allows more statements from the --
19 those to come into evidence in court for children under 12?

20 A Yes. I think it was around 2006 when that happened

21 ---

22 Q Right.

23 A --- when that changed.

24 Q And -- and so that -- that would've been before this
25 interview but ---

1 A Yes.

2 Q --- but not applicable to Lindsay because of ---

3 A Because ----

4 Q --- her age?

5 A --- of her age. Yeah.

6 Q Right. And -- and part of that law sort of recognizes
7 your role as the interviewer as -- as part of the
8 investigation?

9 A Yes.

10 Q Okay. And you -- you -- I think you said something
11 when you were explaining the -- the multidisciplinary
12 approach to Judge Hill. I think you said something about
13 the -- the trauma of going to court.

14 A Yes.

15 Q Okay. What are the considerations there?

16 A It can be traumatic. It just depends on if the client
17 is ready or not for court ---

18 Q Okay. All right.

19 A --- meaning ---

20 Q Well, what does that mean?

21 A If they've dealt enough with the trauma that they can
22 ---

23 Q Uh-huh.

24 A --- think about it without getting very upset and
25 things of that nature.

1 Q Right. Do -- do you provide counseling services ever?

2 A I do now. I ---

3 Q You do ---

4 A --- didn't ---

5 Q --- now?

6 A --- at that time.

7 Q Okay. So obviously, you're familiar with that, then,
8 now?

9 A Yes.

10 Q Okay.

11 A Yes.

12 Q And providing the counseling services has a -- a role
13 in preparing for court, doesn't it?

14 A Yes, it does.

15 Q Okay. And -- and can you tell Judge Hill about that?

16 A Basically, it helps them to talk about it in session
17 so that they -- it's not something that makes them very
18 anxious and upset all the time. The more they talk about
19 it, the better they feel and the better -- you know, the
20 easier it is to think about it without it upsetting them.

21 Q Uh-huh.

22 A So that's kind of the role of therapy in getting them
23 ready for court.

24 Q Okay. Now, going back to this interdisciplinary
25 concept, we heard some brief testimony yesterday about

- 1 staffings.
- 2 A Uh-huh.
- 3 Q Well -- is that a "yes"?
- 4 A Yeah. I -- I ---
- 5 Q Okay.
- 6 A --- heard the testimony where you were ---
- 7 Q All right.
- 8 A --- asking questions about it. Yes.
- 9 Q And -- and let me just tell you this, and we have to
- 10 tell a lot of witnesses this: "Uh-huhs" and "unh-unhs" ---
- 11 A Oh, okay.
- 12 Q --- don't come ---
- 13 A Sorry.
- 14 Q --- across real well. And so "yes" or "nos" help us
- 15 later on if there's a transcript that we have to ---
- 16 A Okay.
- 17 Q --- look at.
- 18 So what -- what are the -- the -- what are the
- 19 staffings?
- 20 A The staffings are where the agencies -- the helping
- 21 agencies get together and share information about the case
- 22 so that everybody's on the same page and we all have the
- 23 same information.
- 24 Q Okay. And -- and that's -- again, is an ideal of a
- 25 team approach, right?

1 A Exactly. Yes.

2 Q It's kind of like there's a quarterback on a football
3 team and a wide receiver?

4 A I have no idea about football, honestly.

5 Q All right. All right. Fair enough. Fair enough.

6 It -- but it gets back to the -- the different
7 experiences that each agency and the different roles that
8 each agency brings to this?

9 A Yes.

10 Q Okay. And -- and again, we're talking about
11 potentially law enforcement, right?

12 A Yes.

13 Q You as a forensic interviewer?

14 A Yes.

15 Q The treatment provider ---

16 A Yes.

17 Q --- that works for Sexual Trauma?

18 A Yes..

19 Q In this case, Ms. Bentley; is that right?

20 A Sometimes she's there; a lot of times she's not there.

21 Q Okay.

22 A It just depends.

23 Q But -- but she's invited? She's considered ---

24 A Yes.

25 Q --- part ---

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- 1 A She is ---
- 2 Q --- of that ---
- 3 A --- invited.
- 4 Q --- that ---
- 5 A Yes.
- 6 Q --- team?
- 7 A Yes.
- 8 Q The solicitor is a part of the team?
- 9 A Yes.
- 10 Q And now, Ms. White testified she's never been to one.
- 11 But Ms. Bolen used to go to those, didn't she?
- 12 A I think she came to a couple of them.
- 13 Q Okay.
- 14 A And I -- I have records of who's attended the
- 15 staffings for Lindsay if you need that information ---
- 16 Q I would love to know that.
- 17 A --- which is nobody. Nobody ---
- 18 Q Nobody?
- 19 A --- showed up for the staffing we had for her.
- 20 Q Nobody showed up?
- 21 A No. Which happens sometimes.
- 22 Q Okay. But even when nobody shows up, there's still
- 23 considered a team approach?
- 24 A Yes. Yeah. I mean, we still interact with people
- 25 over the phone and things like that ---

1 Q Okay.

2 A --- as well.

3 Q And that includes interacting with the solicitor over
4 the phone?

5 A At times, yeah.

6 Q And -- and law enforcement?

7 A Yes ---

8 Q Okay.

9 A --- at times.

10 MR. GROSE: Beg the Court's indulgence for a moment.

11 Q Now, I think we -- we talked a minute ago about your
12 interview as being part of the investigative process.

13 A Yes.

14 Q Okay. Who compensates for the interview?

15 A SOVA, South Carolina -- or State Office of Victims
16 Assistance.

17 Q Okay. And looking at the -- I -- I looked at the Web
18 site for the Sexual Trauma Center. And -- and it's, you
19 know, that -- that -- that's the broader organization that
20 we're talking about, with Child's Place being more
21 specific?

22 A Yes.

23 Q Is it fair to say that the Sexual Trauma Center helps
24 victims who've been abused obtain -- fill out the paperwork
25 so that their counseling can be paid for by the State

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1 Office of Victim Assistance?

2 A Yes.

3 Q Okay. And -- and that's regularly done?

4 A It just depends on the counselor and how they're
5 funded.

6 Q Okay.

7 A So it's not all the time the case, but sometimes it
8 can be. It's ---

9 Q Okay.

10 A --- an option.

11 Q It -- it -- but it's -- it's an option that's
12 regularly available, then?

13 A Yes.

14 Q Okay.

15 A Yes.

16 Q And -- and this is sort of considered part of the --
17 the whole process. You talk about the -- the child-first
18 process. But part of that is -- is -- is also -- includes
19 getting the case to court, right?

20 A If that's what it -- if that's what the other
21 investigative entities decide, then yes.

22 Q Okay. And -- and I believe the Sexual Trauma Center,
23 on its mission statement on its Web page, you know, talks
24 about part of the mission is -- is to have perpetrators of
25 sexual abuse held accountable.

1 A To assist in any way that we can for that to happen.

2 Yes.

3 Q For that to happen?

4 A Yes.

5 Q Okay. All right. Now, this -- Chris Haden --

6 Investigator Haden was the one who set up this interview;

7 is ---

8 A Yes.

9 Q --- that right?

10 A Well, let me double-check. I'm pretty sure he was.

11 Yes, it was Chris Haden.

12 Q Okay. And, in fact, on, I guess, the second page of

13 the -- I don't remember what the exhibit number was --

14 second page of Exhibit 5, which would be, I guess, the

15 first page of your report, it identifies him as an

16 investigator with the Greenwood County Sheriff's Office?

17 A Yes.

18 Q Okay. Early on, if you flip over to page 3 of your

19 report and -- and look at the alleged offender information,

20 early on, on page 3 and 4, actually, there's -- there's two

21 entries talking about Mr. Carrier having committed a

22 similar offense in Kentucky during the 1995/1996 time

23 frame.

24 A Yes.

25 Q Okay. Do you know where that information came from --

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1 who that came from?

2 A That information is provided by the caregiver, which,
3 in this case, is Karen Weaghtington.

4 Q Okay. So that would be the -- the mother?

5 A Yes.

6 Q Okay. And the -- there -- there's a protocol for how
7 y'all conduct these interviews?

8 A Yes, there is.

9 Q And part of that is -- is to ultimately help with the
10 admissibility -- well, two things: to help with getting
11 information; and then, the admissibility in court later on;
12 is that right?

13 A Basically, it's an objective, fact-finding interview.

14 Q Okay.

15 A And we do, you know, try not to do things that, of
16 course, would make it inadmissible.

17 Q All right. The -- the -- the -- the -- the -- the
18 protocol involves you making certain that the person being
19 interviewed understands the importance of being truthful?

20 A Yes. That's part of the protocol.

21 Q All right. And -- and -- and that is to tell only
22 what is true and to tell everything? That's what you would
23 want?

24 A Yeah. I guess I could say ---

25 Q Okay.

1 A --- yes to that.

2 Q And the -- part of the protocol how you're supposed to
3 conduct the interviews is -- is to not use leading
4 questions?

5 A True.

6 Q Okay. And you are familiar with the change in the law
7 in -- in 2006, right?

8 A Yes.

9 Q And so you're familiar with the procedure for
10 admissibility in court, right?

11 A Not 100 percent. I know ---

12 Q Right.

13 A --- it can be, but I don't know what has to be done to
14 make it admissible.

15 Q Well, are you aware that the judge has to review your
16 interview and determine whether or not you asked leading or
17 nonleading questions?

18 A I didn't actually know that. No.

19 Q Okay. But anyway, your protocol takes that into
20 account that you're not supposed to ask leading questions?

21 A True.

22 Q The ideal is -- is that you can get more information
23 that way?

24 A Yes.

25 Q Is that right?

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1 A Yes.

2 Q Okay. Now, on page 5 of your interview, right before
3 No. 6 -- would be page 5 of the interview, page 6 of the
4 exhibit. You have a -- a comment section; is that right?

5 A Yes.

6 Q And what did she tell you -- how old was she when she
7 said the abuse happened?

8 A She said that the thought she was 8 or 9. She knew
9 she was younger, but she wasn't 100 percent sure. But ---

10 Q All right.

11 A --- 8 or 9 was the numbers that came out during the
12 interview.

13 Q And -- and -- and it ended when?

14 A I think she said that it was a year and a half -- a
15 year to a year and half later when it ended.

16 Q All right. In fact, if -- if you look down at the
17 one, two, third paragraph under No. 6, that's what it says:
18 a year and a half to two years; 8 or 9; and it went for a
19 year and a half to two years, right?

20 A Yes.

21 Q And in your comments section, it says: "to when she
22 was 10 years old"; is that right?

23 A Yes.

24 Q Okay. Now, you know, I -- I think, in the copies I've
25 been provided, her birth date is redacted. But it's in the

1 indictment; her birthday is [REDACTED] of 1993; is that
2 right?

3 A Let me check it. Yes, that's correct.

4 Q Okay. So in -- if she was born in 1993, then in
5 February of 2003, she would be 10 years old?

6 A Yes.

7 Q All right. And so in 2000 -- February 2002 she would
8 be 9?

9 A Yes.

10 Q And in February of 2001, she would be 8?

11 A Yes.

12 Q Okay. And you were seeing her after her birthday in
13 2009, so she had turned 16 by then?

14 A Yes.

15 Q Okay. Do you have any information in your forensic
16 interview about this abuse starting -- her telling you that
17 this abuse started at age 4 or 5?

18 A I do not, that I recall.

19 Q Okay. Did you ask her if anybody else had ever
20 touched her inappropriately?

21 A Yes, sir.

22 Q And what did she tell you?

23 A She said no.

24 Q That they had not?

25 A That they had not.

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1 MR. GROSE: Beg the Court's indulgence for a moment.

2 THE COURT: Yes, sir. Take your time.

3 MR. GROSE: That -- that's all I have at this time,
4 Your Honor. Thank you for letting me having a moment.

5 CROSS-EXAMINATION

6 BY MS. WHITE:

7 Q Ms. Bell, when was the first time you and I
8 specifically talked about this case?

9 A That's a good question. Have we ever?

10 Q It was yesterday afternoon ---

11 A Yesterday?

12 Q --- wasn't it?

13 A Okay. Yeah.

14 Q All right.

15 A It was yesterday, then.

16 Q And -- and that was actually after I testified
17 yesterday, wasn't it?

18 A Yeah. I think right before we left.

19 Q Now, Sexual Trauma and the Child's Place are not state
20 agencies, correct?

21 A They are not.

22 Q You're nonprofits funded primarily through grants?

23 A Yes.

24 Q All right. And in order to obtain compensation from
25 the State Office of Victim Assistance, you have to file an

1 application, the same as -- as the hospital would or -- or
2 any other ---

3 A Yes.

4 Q --- provider?

5 A For the forensic interviews, it's a little different.
6 It doesn't require an application.

7 Q Okay.

8 A But for counseling it does require an application that
9 needs to be filed.

10 Q All right. So that would be the same as if Uptown
11 Counseling Services provided ---

12 A Yeah.

13 Q --- provided victims counseling?

14 A Yes.

15 Q All right. Now, you've stated that you're a counselor
16 now with ---

17 A Yes.

18 Q So you're familiar with the concept of continuing
19 disclosure?

20 A Yes.

21 Q And could you tell Judge Hill a little bit about that?

22 A Basically, disclosure is considered a process, not a
23 single event. And over time it sometimes changes. It
24 doesn't -- doesn't mean they're lying; it just means
25 they've become more comfortable and are -- are -- and feel

REDIRECT EXAMINATION BY MR. GROSE - JESSICA BELL

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1 like they're able to give more information about things.

2 So a lot of times -- like, for example, they may only
3 disclose a little bit, just to test the waters. And then,
4 as they get a good response, as far as people don't say
5 it's your fault and that kind of thing, then they start
6 telling more and more as time goes on.

7 Q And your initial interview with Lindsay was very early
8 on in the process, correct, around April of 2009?

9 A Yes, ma'am.

10 Q All right.

11 MS. WHITE: That's all the questions I have.

12 MR. GROSE: I have a few follow-ups, Your Honor.

13 THE COURT: Sure.

14 REDIRECT EXAMINATION

15 BY MR. GROSE:

16 Q Ms. White said that the first time that you and her
17 talked was yesterday afternoon?

18 A Yes.

19 Q She certainly had had the option of talking to you
20 before yesterday afternoon, didn't she?

21 A I wouldn't have, like, not returned a phone call. No.

22 Q You -- so you would've talked to her?

23 A Yeah.

24 Q Okay. And, of course, she's part of the same
25 interdisciplinary team that you are for ---

1 A Yes.

2 Q --- this case?

3 A She's considered -- yeah. She's welcome to come.

4 Q Okay. Grants -- she asked you about grants.

5 A Uh-huh.

6 Q Where do the grants come from?

7 A They come from the Violence Against Women Act and
8 VOCA, which I'm not sure what that acronym even stands for
9 right now.

10 Q Okay. The -- the Violence Against Women Act, that's a
11 congressional act, isn't it? Do you know?

12 A I'm not 100 percent sure. I just know that's the name
13 of the grant.

14 Q But -- but it's a -- it's -- it's pursuant to a law --
15 comes from the federal government, doesn't it?

16 A As far as I know, it does.

17 Q Okay. Ms. White asked you about continuing
18 disclosure. And you said that sometimes things change over
19 time?

20 A It -- sometimes, yes. Yes.

21 Q Okay. And that -- you said that some children will
22 disclose a little bit?

23 A (Moves head up and down.)

24 Q And I believe you used -- you're -- you're nodding.
25 And you also said "test the waters"?

1 A Testing the waters, yeah. That's kind of what they
2 term it.

3 Q All right. Who -- who is "they"?

4 A It just other terms I've heard during education and
5 stuff through the ---

6 Q Okay.

7 A --- RATAC protocol.

8 Q Well -- and -- and -- and what they're doing is
9 they're determining what kind of response they get when
10 they make this disclosure?

11 A Yes.

12 Q And so if -- if they make the disclosure and they get
13 support, that can lead to more disclosure, right?

14 A Yes.

15 Q If they make the disclosure and they don't get
16 support, that can lead to them pulling back?

17 A Yes.

18 Q And even sometimes recanting?

19 A Yes.

20 Q Okay. As part of your interview process, you try to
21 gauge what the parental support is, don't you?

22 A Yes.

23 Q Okay. And if you would go to page -- I guess page 4
24 of the document but page 3 of your report, there's a
25 parental-support-impression safety concerns, right?

1 A Yes.

2 Q And the question under that is -- is: "Does the
3 parent appear to support and believe the child? What risk
4 factors, if any, are present regarding the target child or
5 other children in the home?"

6 A Yes.

7 Q Okay. And what you wrote down is: "Karen
8 Weaghtington, mother, appears to support and believe
9 Lindsay. There are no other identified risk factors at
10 this time."

11 A Yes.

12 Q And that would be safety factors that we're talking
13 about with risk factors?

14 A Yes.

15 Q Okay. And when we're talking about these concerns,
16 the -- the -- the delayed disclosure and the -- the testing
17 the waters, once a child discloses, a lot of strangers come
18 into their life, right?

19 A True, yes.

20 Q Police officers, right?

21 A Yes.

22 Q You?

23 A Yes.

24 Q The counselor?

25 A Yes.

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1 Q The solicitor?

2 A Yes.

3 Q And families sometimes don't like their secrets being
4 shared?

5 A Yes.

6 Q And so that's why the support from the family -- the
7 caregiver can be important ---

8 A Yes.

9 Q --- right?

10 A Yes.

11 Q And sometimes that can be important with regards to
12 the identity of the person who's causing the abuse?

13 A Restate that again.

14 Q All right. Well, if -- if -- if -- if a family member
15 or somebody in a relationship with a family member is the
16 abuser, that can be a -- a factor in the testing of the
17 waters, can't it?

18 A In what way do you mean?

19 Q Well, that the child could be afraid to identify the
20 real abuser because the family member -- a mother, in this
21 case -- might not be supportive?

22 A That's a possibility. It's hard to say for sure if
23 that would be the case or not. But that is a possibility.

24 Q Okay. And if you're not aware, that's fine. But are
25 you aware that Lindsay eventually disclosed in 2010 that a

1 -- an ex-boyfriend of her mother was abusing her?

2 A I was not aware until last week, when I was copying
3 files for your office and for the solicitor's office.

4 Q All right. So you -- you reviewed that?

5 A Yes.

6 Q All right. Do -- do you know who that person is, that
7 person's ---

8 A I don't remember off the top of my head. I ---

9 Q Okay.

10 A --- looked over it really quick, so I don't remember
11 who the person was.

12 Q All right. It -- it doesn't really appear in the
13 notes, I don't think.

14 A Okay.

15 Q Are you aware that the person that we've been told
16 that is, is a registered sex offender?

17 A I was not aware of that.

18 Q Okay. That would be something that could go into the
19 risk factors, couldn't it?

20 A Meaning what?

21 Q That if she was living in the home with somebody who
22 is a sex offender that was abusing her, that would be a
23 risk?

24 A Yes. That would not be a great thing ---

25 Q Okay.

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1 A --- at all.

2 Q Okay. Now, since you reviewed the records, are you
3 aware of Lindsay's mother's reaction to the disclosing that
4 the ex-boyfriend was an abuser?

5 A I don't remember. I don't think I'd be the best
6 person to testify to that.

7 Q Okay. Her reaction to that -- her -- her mother's
8 reaction to that would be important, though, wouldn't it?

9 A Sometimes, yes, that can be important.

10 Q Okay. Because it -- because if -- like, in -- in --
11 in your report, if the mother supports and believes the
12 child, then that can reinforce and -- and lead to the
13 continuing disclosures, right?

14 A It can. Yes.

15 Q It can?

16 A Yeah.

17 Q And if the mother in that scenario is -- is not
18 supportive, then that can lead to the person retracting ---

19 A It can.

20 Q --- and pulling back ---

21 A It can.

22 Q --- right?

23 A Yeah.

24 Q Because again, it -- it's -- the court process; all of
25 these strangers are in people's lives; and when the support

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1 is there, it's easier for them to talk about this?

2 A Yes.

3 MR. GROSE: That's all I have at this time, Your
4 Honor.

5 MS. WHITE: No questions, Your Honor.

6 THE COURT: All right. Thank you, Ms. Bell.

7 THE WITNESS: Thank you.

8 (Whereupon, the witness exited the witness stand.)

9 THE COURT: All right. Mr. Grose, you may call your
10 next witness.

11 MR. GROSE: Your Honor, I would call Susan Bentley.

12 (Whereupon, the witness came forward.)

13 SUSAN BENTLEY, having been first duly sworn, testified
14 as follows:

15 BAILIFF: (To the witness) Watch your step.

16 DIRECT EXAMINATION

17 BY MR. GROSE:

18 Q Can you state your full name for the record.

19 A My name is Susan Shank Bentley.

20 Q Okay. And where are you employed?

21 A Sexual Trauma and Counseling Center ---

22 Q And how ---

23 A --- in Greenwood.

24 Q --- long have you been employed there?

25 A Seven years.

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1 Q And were you Lindsay's counselor in this case?

2 A Yes.

3 Q Okay. Before I get into that, I want to ask you about
4 the Sexual Trauma Counseling Center, okay?

5 THE WITNESS: Oh. First, Your Honor, South Carolina
6 Code Section 40-63-190 will not allow me to disclose
7 information regarding a client of Sexual Trauma and
8 Counseling Center until the Court determines that this is
9 necessary and in the public interest.

10 MR. GROSE: Your Honor, I -- I -- I -- I'm not the one
11 that has proposed her being an expert in this case. And,
12 in fact, I think my motion is ultimately going to end up
13 being that she cannot -- or should not be allowed to
14 testify as an expert, but perhaps could be -- still be a
15 fact witness if there's any inconsistent statements. So if
16 -- if Your Honor chooses not to order her to testify, then
17 that's consistent with what I think I -- I ultimately want.
18 They're the one -- the -- the state's the one that
19 disclosed her as a witness on Thursday afternoon -- or
20 Wednesday afternoon or Wednesday morning sometime.

21 MS. WHITE: Your Honor, her testimony is necessary and
22 in the public interest. She's the counselor; she has
23 information regarding continuing disclosure of this victim,
24 as well as the -- delayed disclosure and as a fact witness.
25 And we're asking that the Court order her to proceed with

1 her testimony.

2 THE COURT: All right. Do -- what -- do you need to
3 get into the statements that the victim gave her for this
4 hearing?

5 MR. GROSE: Yeah. I think I do. I mean ---

6 THE COURT: Okay.

7 MR. GROSE: --- it -- I -- well, I think I ---

8 THE WITNESS: And that's why I read this, because I
9 can't speak about a -- my client ---

10 MR. GROSE: Yeah.

11 THE WITNESS: --- unless the judge orders me to.

12 MR. GROSE: I -- I think what I've done at this point,
13 Your Honor, is I've established -- I don't think there's
14 any dispute that -- that her records weren't disclosed
15 until Thursday afternoon. I think I've established that
16 everything in the discovery up to that point was in the
17 roughly 2002-2003 time frame. I can do that additionally
18 from her records.

19 So -- but if she's going to -- what -- if -- if --
20 well, let me say this: If the state's going call her as a
21 witness, one of the things that we've got to determine is
22 -- is: Is it necessary for her to be a witness, and is --
23 what is the scope of her testimony? And I'm talking about
24 the *Watson v. Ford Motor Company* case. So if they're --
25 they're going to call her, then I think we should probably

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1 just accomplish all of that at -- during one pretrial
2 hearing.

3 MS. WHITE: And, Your Honor, the state is intending
4 her to call -- to call her as an expert in the assessment
5 and treatment and behavior of child-sexual-assault victims.
6 I do need the statements that -- that the victim gave to
7 her in her counseling sessions as part of the -- the
8 testimony, at least for the purposes of this hearing, if
9 not for the purposes of the actual trial. And -- and I do
10 also have a case on that, Your Honor.

11 THE COURT: So it's -- you're saying it's necessary
12 for this hearing?

13 MS. WHITE: Yes, sir ---

14 THE COURT: Okay.

15 MS. WHITE: --- for this hearing. Because what the
16 records are going to reveal, Your Honor, is that the victim
17 actually disclosed to Ms. Bentley in 2010 that she was
18 approximately 5 or 6.

19 MR. GROSE: And -- and I found that this morning, and
20 I'm going ask her about that ---

21 THE COURT: Okay.

22 MR. GROSE: --- just ---

23 THE COURT: Well -- all right. Well, I find that it
24 is necessary and in the public interest that the testimony
25 be allowed. So thank you.

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1 MR. GROSE: All right.

2 DIRECT EXAMINATION BY MR. GROSE CONTINUES.

3 Q I think my -- my last question was asking you to -- to
4 tell me about the Sexual Trauma Center. What is that?

5 A It's a counseling center for sexually abused children,
6 adolescents, and adults. And it -- and it is the umbrella
7 agency for the Child's Place, which is the child's advocacy
8 center.

9 Q All right. And you heard the testimony about the
10 interdisciplinary approach?

11 A Yes.

12 Q All right. And -- and would you consider yourself
13 part of that?

14 A Yes.

15 Q Okay. And again, that's where law enforcement, the
16 prosecutor, the interviewer, you as the counselor,
17 potentially DSS, and other service providers are all part
18 of the same team?

19 A Yes.

20 Q Okay. Now, how is -- how is the Sexual Trauma Center
21 funded?

22 A Through grants.

23 Q All right. Do you know where those grants come from?

24 A Federal grants and some private grants.

25 Q All right. And how much -- do -- how -- what

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1 percentage is the federal grants?

2 A You know, I'm not the person who ---

3 Q Okay.

4 A --- does the money. I don't ---

5 Q All right.

6 A --- really don't know.

7 Q Well, then, I'll move on. How were your counseling
8 services paid for? Were they paid for by SOVA?

9 A Mostly throughout VOCA.

10 Q What is "VOCA"?

11 A Victims of Women -- let's see. Cannot remember at
12 this moment.

13 Q Uh-huh.

14 A Violence Against -- no. It's -- I'm sorry. I don't
15 know ---

16 Q All right.

17 A --- its exact ---

18 Q But it's a federal grant ---

19 A Yes.

20 Q --- I -- I assume? Okay.

21 A Yes.

22 Q All right. Now, let me ---

23 MR. GROSE: (To the court reporter) We'll mark these
24 as the next two exhibits in order.

25 (Whereupon, Defendant's Exhibits 6 and 7 were marked

1 for identification.)

2 Q All right. And I'm going hand you what's been marked
3 as Defendant's Exhibits Nos. 6 and 7. Now, I -- I will
4 tell you, just so you understand, there's a number on the
5 bottom-right-hand corner. My copy machine added that so I
6 would know what order the pages were in. So with the
7 exception of that, are those part of your file in Lindsay's
8 case?

9 A Yes.

10 Q Okay. And the -- the multipage document, I believe
11 that's Exhibit No. 6?

12 A Yes.

13 Q All right. And does that indicate who referred
14 Lindsay to you for your services? And if you -- I'll help
15 you.

16 A Yes.

17 Q On page 2.

18 A Yes. It says that Chris Haden -- Haden of the
19 Greenwood County Sheriff's Office referred her.

20 Q Okay. And the -- the next document is -- is a
21 referral-resource release. What is that?

22 A (No audible response.)

23 Q I mean, what does a "referral-source release" mean?

24 A That means that the client -- and in this case, the
25 client's mother -- gave permission for Chris Haden to be --

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1 to -- for our agency to communicate with Chris Haden about
2 this -- this client.

3 Q Okay. Well, I'm a little confused.

4 A Well, it -- it -- well, it says to let them know I
5 came for my first appointment. Excuse me.

6 Q Okay.

7 A That's what it says.

8 Q All right. But -- but that -- but that gave you
9 permission to give Chris Haden information?

10 A No. It -- it -- I'm sorry. It says just to let him
11 know that I came for my first appointment.

12 Q Okay. But there's other options on there, though,
13 right?

14 A Yes.

15 Q That could've been -- okay. Well, what I'm confused
16 about is -- is the only way that you could disclose
17 information is by court order, but that's not really the
18 case, is it? I mean, Lindsay or her caregiver can provide
19 you with a release to disclose that information, right?

20 A Yes.

21 Q Okay. So then, it is fair to say that information can
22 be shared with other agencies without a court order?

23 A That's correct.

24 Q And that would make sense if there's a
25 interdisciplinary-team approach, right?

1 A Yes.

2 Q At your staffing meetings, that allows you to share
3 information, right?

4 A Yes.

5 Q And if you're having phone conversations with other
6 members of the interdisciplinary team, you can share
7 information with a release?

8 A Yes.

9 Q And, in fact, this exchange of information is exactly
10 what this interdisciplinary-team approach is established to
11 do, isn't it?

12 A Yes.

13 Q Okay. Now, when Lindsay came to you -- well, before
14 we get to that, is the last exhibit still up here, the
15 forensic interview? Ah. My bad. Should've gotten that
16 back. All right. I want to hand you Defendant's Exhibit
17 No. 5, which is the forensic interview that Ms. Bell did
18 and testified about earlier. Did that come to you -- you
19 recognize that document?

20 A I recognize it as a forensic-interview ---

21 Q Okay.

22 A --- document.

23 Q Did -- did that document come to you as part of your
24 -- having Lindsay referred to you by Investigator Haden?

25 A No.

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1 Q Okay. Have you ever seen that document before today?

2 A I don't recall ever ---

3 Q Okay.

4 A --- reading it.

5 MR. GROSE: (To the court reporter) All right. Can
6 you mark that as the next exhibit, please.

7 (Whereupon, Defendant's Exhibit 8 was marked for
8 identification.)

9 Q All right. The ---

10 MR. GROSE: (To the court reporter) Well, let's mark
11 this also. I'm sorry.

12 (Whereupon, Defendant's Exhibit 9 was marked for
13 identification.)

14 Q All right. I've marked two exhibits, Defendant's 8
15 and 9. I'm going hand you No. 9 first. Can you tell the
16 Court what that is?

17 A It's a record of the counseling sessions that Lindsay
18 attended.

19 Q All right. And -- and you, I guess, made a record of
20 that during -- contemporaneous with each visit?

21 A Yes.

22 Q And when does the first time -- when was the first
23 time that you saw Lindsay?

24 A April 29th, 2009.

25 Q Okay. And this is -- Defendant's Exhibit No. 8 is

1 from April 29th, 2009, isn't it?

2 A Yes.

3 MR. GROSE: (To the court reporter) Can we mark that
4 an exhibit also.

5 (Whereupon, Defendant's Exhibit 10 was marked for
6 identification.)

7 Q All right. And I'm going hand you Defendant's Exhibit
8 No. 10 also. And the -- the first note on that is also
9 from April 29th of 2009; is that correct?

10 A Yes.

11 Q Okay. And in both of those notes, how old does it say
12 Lindsay was when the abuse started?

13 A When she was 8 to 9 years old.

14 Q Okay. And when ---

15 A It -- it doesn't ---

16 Q --- you saw ---

17 A --- say it started then, but it said she was abused
18 when she was 8 to 9 years old.

19 Q Okay. Well, if she had told she was abused when she
20 was 5 years old, would you have written that in your notes?

21 A Oh, yes.

22 Q Okay. And it doesn't appear in your notes ---

23 A No.

24 Q --- the first day you saw her, does it?

25 A No. I -- I'm just saying ---

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1 Q Okay.

2 A --- yeah.

3 Q And so she was 16 when you saw her in April of 2009,
4 right?

5 A Yes.

6 Q All right. And so her birthday was in 1993, right,
7 [REDACTED] of 1993?

8 A Sounds right. I'm not exactly sure.

9 Q Okay. Well, if it was [REDACTED] 1993, then she
10 would've been 10 in 2003, right? Is that correct?

11 A If she was -- if she was born in 19 -- don't ask me to
12 do math ---

13 Q All right.

14 A --- up here.

15 Q I -- I won't ask you to do math. Fair enough.

16 MR. GROSE: (To the court reporter) Can you mark that
17 as the -- well, I'm sorry.

18 (Whereupon, Defendant's Exhibit 11 was marked for
19 identification.)

20 Q All right. I'm going hand you what's been marked as
21 Defendant's Exhibit No. 11. That's from July 13th of 2009,
22 correct?

23 A Correct.

24 Q And that's part of your counseling records?

25 A Yes.

1 Q Is that right?

2 A Yes.

3 Q And -- and again, we have that "8 to 9 years of age"
4 figure that appears; is that right?

5 A Yes. That -- that was me trying to compare -- trying
6 to get her to remember herself as an 8- or 9-year-old,
7 which is what she told me -- how old she told -- had told
8 me earlier that she was when the abuse occurred.

9 Q Okay. So at -- at this point on July 13th of 2009,
10 you're continuing to operate under the assumption that the
11 abuse occurred when she was 8 or 9 years old?

12 A Yes.

13 Q Okay.

14 (Whereupon, Defendant's Exhibit 12 was marked for
15 identification.)

16 Q Now, why were you trying to get her to remember what
17 it was like to be 8 or 9 years old?

18 A In this session she was assigning responsibility for
19 the abuse. And she had given herself 10 percent of the
20 responsibility, and I was trying to get her to understand
21 that an 8- or 9-year-old had no responsibility for abuse.

22 Q Okay. Now, if -- if you go back to your activity log,
23 the -- where you were documenting the visits, there was a
24 time, I guess, in 2009 where Lindsay quit coming to
25 counseling?

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1 A That's correct.

2 Q Okay. During the time period in 2009 when she was
3 going to counseling, do you have anything in your notes
4 that indicates anything other than the "8- to 9-year-old"
5 time frame for the abuse in 2009?

6 A No.

7 Q All right. I'm going hand you what's been marked as
8 Defendant's Exhibit No. 12. That's also contained in your
9 records, isn't it?

10 A Yes.

11 Q And what that is, is a e-mail from Lindsay, right?

12 A Yes.

13 Q And what is -- what is she trying to do when she sent
14 that e-mail? What does that e-mail request?

15 A She's requesting to come back to counseling.

16 Q Okay. And she wants to come back without her mother,
17 doesn't she?

18 A Yes.

19 Q All right. And she also is wanting victim assistance
20 to pay for the counseling, right?

21 A Yes.

22 Q Is that correct?

23 A Yes. And -- and in reality, victim assistance never
24 paid for her counseling ---

25 Q All right. Who ---

1 A --- directly.

2 Q Who paid for it?

3 A Nobody. It -- we don't bill our clients who come as
4 -- through Sexual Trauma. We don't ---

5 Q Do -- do ---

6 A --- bill them.

7 Q --- you -- do you -- so you did it for free?

8 A And we don't bill SOVA.

9 Q All right. Did -- was it done for free, or was it
10 done under these federal ---

11 A It was ---

12 Q --- grants?

13 A --- done under federal grants. We get money from SOVA
14 also. Just a -- it's -- it's one of our funding sources.

15 MR. GROSE: (To the court reporter) Here. So let's
16 mark that too.

17 (Whereupon, Defendant's Exhibits 13 and 14 were marked
18 for identification.)

19 Q I'm going hand you what we've marked as Defendant's
20 Exhibit No. 14 that says "Client Info 2010 Table" on the
21 top. What is that document?

22 A This is part of a -- our computer documentation system
23 for -- for every client.

24 Q Okay. And why would that have been done in 2010?

25 A I don't know. I don't know that it was done ---

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1 Q Okay.

2 A --- in 2010.

3 Q Well, I mean, if -- if -- it has a 2010 date on it.

4 A Oh, 2010. Oh, I'm sorry. It could've been that the
5 -- that the case was closed because she didn't come.

6 Q Okay. Well, and there was a -- a -- a break in
7 counseling, though, wasn't there?

8 A Yes.

9 Q Okay.

10 A Almost a year.

11 Q All right. That document, Exhibit No. 14, that you
12 have in front of you, does it also reflect the age of the
13 victim at the time of the abuse?

14 A I'm -- I'm sorry. The -- I -- I -- just to correct
15 what I said earlier: Now, the -- her case wasn't closed at
16 that time.

17 Q And you're looking at your activity log ---

18 A Yes.

19 Q --- there?

20 In fact, it -- the only time that it notes that her
21 case was close was actually, I believe, for a period in
22 2012?

23 A Yes.

24 Q Okay. All right. But the -- I guess my question I
25 want to get as is -- is on the Exhibit No. 14: The age of

1 the abuse, what does that reflect?

2 A I'm trying to find it. Let's see. Oh, 12 to 17. Is
3 that what you're talking about?

4 Q What I'm looking at is that ---

5 A Oh, age ---

6 Q --- right ---

7 A --- at referral. Okay. I'm sorry. Client is here --
8 yeah -- age 8 to 9.

9 Q Okay. All right. I'm going hand you ---

10 A And -- and that was written probably when she came.

11 Q Probably when she was referred by Investigator ---

12 A Yes.

13 Q --- Haden?

14 A Uh-huh.

15 Q All right. I'm going hand you a one, two, three --
16 four-page document that's marked as Defendant's Exhibit No.
17 3. Now, those are your therapeutic notes from when she
18 returned for services, right?

19 A Yes.

20 Q And the -- the first note on that is July 26th of
21 2010, right?

22 A Yes.

23 Q Okay. How -- when she comes to you in 2010 -- July
24 26th, 2010, how is the relationship with her mother at that
25 point?

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1 A She said that she and her mother were not
2 communicating.

3 Q All right. It's not all that it says, does it?

4 A No. She keeps everything from her mother now. She's
5 given up on the relationship with her mother.

6 Q And how about with her grandmother?

7 A Her grandmother thinks that she should just use
8 willpower to put the abuse behind her.

9 Q Okay. Her -- her father -- there's an entry about her
10 father going to her graduation. It appears he's not much
11 in her life -- much a part of her life; is that ---

12 A That's correct.

13 Q Okay. I want to -- let me see the exhibits for a
14 second. I want to go back to Defendant's Exhibit No. 6 and
15 turn to the family genogram, which is page No. 100 on what
16 I have added. And -- and -- and this would've been from
17 the beginning of the counseling, right?

18 A Yes.

19 Q Okay. There's something about rules of the family
20 there; is that correct?

21 A Yes.

22 Q What are the rules of the family?

23 A (As read): "Got to go to church; can't drink or drug;
24 can't talk about abuse."

25 Q So when it says "can't talk about abuse," that's the

1 abuse that she's seeing you for counseling?

2 A Yes.

3 Q Okay. How -- I mean, it's fair to say that Lindsay's
4 mother was not very supportive of -- of some of the
5 disclosure of the abuse, isn't it?

6 A Yes.

7 Q Okay. Now, Lindsay's having problems when she comes
8 back on July 26th of 2010, right?

9 A Yes.

10 Q I mean, she's not sleeping, correct?

11 A Correct.

12 Q And she's having flashbacks, right?

13 A Yes.

14 Q And we've talked about the relationship problems with
15 her mother, father, and grandmother, right?

16 A Right.

17 Q Huh?

18 A That's right.

19 Q Okay. The next time you see her is on August 4th,
20 2010, right?

21 A Right. Right.

22 Q Okay. And we've had some discussion -- this -- this
23 is where age 5 appears in the records, right?

24 A Yes.

25 Q Okay. Is -- is this the first time it appears in your

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1 records chronologically?

2 A Yes.

3 Q Okay. And -- and it says it continued until 9 years
4 old, right?

5 A Yes.

6 Q Okay. Now, you were talking about assigning guilt
7 again. And we've -- we kind of went through that exercise
8 before about how that's not a young child's fault. But at
9 this point there's -- you're trying to get her to assign
10 some blame to her mother and to Mariah, right?

11 A (No audible response.)

12 Q I'm looking the fourth line up from the bottom.

13 A Well, we were trying to identify everybody that might
14 have some responsibility in the fact that she was abused.

15 Q Right. And it says: "Client reluctantly added her
16 mother and Mariah to the pie chart."

17 A Yes.

18 Q With one-fourth each?

19 A Yes.

20 Q Okay. The next entry note for the next visit -- the
21 -- the August 4th visit continues onto the next page. But
22 then, the next visit is August 11th of 2010, right?

23 A Yes.

24 Q And she made a disclosure that day, didn't she?

25 A Yes.

1 Q What did she disclose to you that day?

2 A She said that she had been sexually abused by someone
3 other than James Carrier.

4 Q Okay. And who did she tell you that that person was?

5 A She -- she did not. She stopped talking at that
6 point.

7 Q Okay. It -- well, in fact, it says: "She became
8 unwilling to tell more," is the next sentence, right?

9 A Yes.

10 Q All right. But then she did talk some more, didn't
11 she?

12 A Yes.

13 Q All right. (As read): "She finally divulged
14 perpetrator was mother's ex-boyfriend," right?

15 A Yes.

16 Q "Occurred three times three to four years ago," right?

17 A Yes.

18 Q "Man threatened that someone would have to pay if he
19 and client's mother broke up because of mother finding
20 out," right?

21 A That's correct.

22 Q "Client told mother after mother broke up with him,
23 and mother said it wasn't worth the trouble of reporting,"
24 right?

25 A Right.

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1 Q Right?

2 A That's right.

3 Q "Grandmother did not believe client and still wants
4 them to get back together," right?

5 A Right.

6 Q "He was too nice to have done that"; is that right?

7 A Correct.

8 Q We're talking about the mother's ex-boyfriend, right?

9 A Yes.

10 Q He's too nice to have done that?

11 A Yes.

12 Q Grandmother wants them to get back together?

13 A Yes.

14 Q "The man also molested his current girlfriend's
15 daughter, and the mother doesn't believe daughter," right?

16 A Correct.

17 Q Okay. By this time Lindsay is 17, right?

18 A Yes.

19 Q Okay. Did -- did this get reported to anybody?

20 A I really didn't have enough information to report it.
21 I didn't know where it happened; I didn't know who it was.

22 Q Well, you knew it -- you knew it was the mother's ex-
23 boyfriend?

24 A Yes. But Lindsay had -- tell me that her mother had a
25 long list of ex-boyfriends.

1 Q Okay. Did -- did you ask her the name?

2 A Yes.

3 Q All right. Now, with Ms. Bell we were talking about
4 people who disclose -- the way disclosure happens and that
5 people will disclose a little bit of information to test
6 the waters, right?

7 A Yes.

8 Q And so you're familiar with -- with that as part of
9 the delayed disclosure -- or continuing disclosure?

10 A Yes.

11 Q Is that right?

12 A Yes.

13 Q All right. And what we talked about with Ms. Bell
14 about family reaction to the disclosure is important with
15 the testing-the-waters part, isn't it?

16 A Yes.

17 Q Okay. Because if somebody who is doing it is -- is
18 close to the person in proximity -- either family
19 relationship or proximity, they could be afraid of that
20 person, right, couldn't they?

21 A The -- the perpetrator? They could be afraid of the
22 perpetrator?

23 Q Yeah.

24 A Yes. But in this case the perpetrator was no longer
25 in the picture.

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1 Q All right. But the perpetrator had threatened that
2 someone would have to pay if -- if that was the reason that
3 he and the mother broke up, right?

4 A But it apparently was not the reason that mother broke
5 up ---

6 Q But -- but -- but that's ---

7 A --- anyway.

8 Q --- what -- that's what the records say, right?

9 A Yes.

10 Q Right?

11 A Yes.

12 Q Okay. And -- and part of this is also the family
13 support when the person discloses how the family reacts to
14 that disclosure, right? Right?

15 A (No audible response.)

16 Q The testing the waters, if the family is supportive
17 ---

18 A Yes.

19 Q --- that can lead to more disclosures?

20 A Yes, it's true.

21 Q If -- if it's -- the family is not supportive, that
22 could lead to retractions, right?

23 A Yes.

24 Q Okay. And what we know from your notes on August
25 11th, 2010, is that Lindsay's mother and grandmother were

1 not supportive, were they?

2 A No.

3 Q They were not supportive, were they?

4 A The -- but -- I mean, yes, that ---

5 Q Okay.

6 A --- that's ---

7 Q Because her mother didn't want to report it, right?

8 A That's right.

9 Q And the grandmother, in August of 2010, still wanted
10 Lindsay's mother to get back together with -- with this
11 perpetrator?

12 A Correct.

13 Q Okay. Now, if you flip the page, the next entry is
14 August 18th of 2010, right?

15 A Yes.

16 Q Okay. The first thing it says is: "The client did
17 not write an account of the abuse by her mother's
18 boyfriend. She tried but kept blanking out. She has had
19 episodes of disassociation at random times."

20 Did you ask her to write an account of the abuse by
21 the boyfriend -- mother's ex-boyfriend?

22 A Yes. Because she wasn't willing to talk about it.

23 Q All right. And part of that unwillingness to talk
24 about it could come from the lack of family support,
25 couldn't it?

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1 A Yes.

2 Q Okay. And what is "disassociation"?

3 A It's when a child's mind separates from their body,
4 usually -- I don't -- well, during abuse -- it happens
5 during abuse. But it can happen after abuse when you --
6 you -- you put yourself somewhere else and forget what's
7 going on in the now.

8 Q Okay.

9 A It happened during the flashback.

10 Q We -- we've already kind of established that when
11 Lindsay came back on July 26th of 2010, she wasn't doing
12 very well, right?

13 A Right.

14 Q Said she wanted to come back without her mother,
15 right?

16 A Right.

17 Q That she has disclosed her mother's boyfriend --
18 boyfriend -- ex-boyfriend abused her, right?

19 A Yes.

20 Q That -- that her mother wasn't supportive, right?

21 A Right.

22 Q And -- and -- and a -- a reasonable conclusion from
23 all of that would be -- is that Lindsay wanted to talk to
24 you about this abuse without her mother knowing about it,
25 right?

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1 MS. WHITE: Objection, Your Honor. He's asking her to
2 speculate.

3 MR. GROSE: If she's going to offer her as an expert
4 later ---

5 THE COURT: All right. I'll allow it for purposes of
6 this hearing.

7 A That is one possibility.

8 Q Okay. And the -- we've not been through every note.
9 And -- and I want to try to -- to get to this. But
10 disassociation, this is the first time that shows up in
11 your records, is on August 18th, 2010, right,
12 chronologically?

13 A Not certain.

14 Q Okay. But when it does show up in here -- whether
15 it's the first time or not, when it does show up here, it
16 shows up when there's a session focused on the abuse by
17 mother's ex-boyfriend, correct?

18 A It showed -- yes. She talked about it then.

19 Q Okay. And the -- if you go down to the end of that
20 note, when you leave that counseling session (as read):
21 "Lindsay will try again to write about the abuse by her
22 mother's boyfriend to bring to the next session," right?

23 A Right.

24 Q All right. After August 18th, 2010, did y'all --
25 y'all -- you and Lindsay -- did you and Lindsay ever talk

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1 about this abuse again?

2 A After which date?

3 Q August 18th, 2010.

4 A Well, I'm -- I'm sure I followed up with it on August
5 the 30th to find out if she had done that. And apparently,
6 she had not.

7 Q Okay. And there's -- there's no note, but ---

8 A No.

9 Q --- but your practice would've been to follow up?

10 A Yes.

11 Q And -- and if she had done that, then you would've
12 noted that, I'm sure?

13 A Yes.

14 Q Okay.

15 MR. GROSE: (To the court reporter) Can you mark that
16 one.

17 (Whereupon, Defendant's Exhibit 15 was marked for
18 identification.)

19 Q I'm going hand you a three -- or three pages that have
20 been marked as Defendant's Exhibit No. 15. Those are from
21 your records also, aren't they?

22 A Yes.

23 Q I guess the -- the first entry is -- is on 4/6. I
24 want to go down to the second entry of 5/5/2011. By -- by
25 this time you and Lindsay were talking about her victim-

1 impact statement, weren't you?

2 A Yes.

3 Q Okay. Now, there's been two solicitors that have been
4 involved in -- in this case. One was Patricia Bolen. Did
5 you ever have any communications with Patricia Bolen?

6 A I don't remember.

7 Q Okay. Now, you -- you -- you talked about -- I mean,
8 you were aware that she was involved, weren't you?

9 A Yes.

10 Q And -- and you were aware that you were helping
11 prepare the -- Lindsay with the -- the victim-impact
12 statement, right?

13 A Yes.

14 Q Okay.

15 A Well, I'm not sure she was aware. I just suggested
16 that she do a victim-impact statement.

17 MR. GROSE: (To the court reporter) Okay. Can you
18 mark those as separate documents.

19 (Whereupon, Defendant's Exhibits 16 and 17 were marked
20 for identification.)

21 Q I'm going hand you -- well, I'm going hand you -- this
22 first -- the first document I'm going hand you is marked as
23 Defendant's Exhibit No. 17. That's from April of 2011,
24 isn't it?

25 A Yes.

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1 Q And that is, I guess, in part preparation for Lindsay
2 to meet with Assistant Solicitor Patricia Bolen; is that
3 right?

4 A Yes.

5 Q And in that information appears about the age of the
6 victim in -- in Mr. Carrier's prior case, right?

7 A Yes.

8 Q Okay. So I take it that that's something that y'all
9 have talked about. Y'all -- let me more clear -- that you
10 and Lindsay had talked about during counseling at some
11 point?

12 A I think that's something she learned from Patricia
13 Bolen.

14 Q Okay.

15 MR. GROSE: (To Ms. White) I think I already showed
16 you this.

17 Q All right. I'm going show you what's marked as
18 Defendant's No. 16. That's not dated. But across the top
19 it says: "For Patricia Bolen." I -- I took that -- and I
20 want you to tell me if I'm wrong. I'm not trying to lead
21 here. I took that to mean that that was information to be
22 given to Ms. Bolen.

23 A Hmm. It was. I think it was -- what I was doing was
24 writing down for her things that she wanted to remember to
25 talk to about Patricia -- to talk with Patricia Bolen

1 about.

2 Q All right. And that's either for the victim-impact
3 statement or for preparing the case, right? Is that right?

4 A It was ---

5 Q Well, it's ---

6 A It was to -- for -- to talk about the -- the court
7 case.

8 Q All right. Well, the -- the -- the first thing is --
9 is that his first conviction for criminal sexual conduct
10 was with a 4-year-old, right? That -- that's No. 1, right?

11 A Yeah. She was -- she was very concerned that he might
12 be abusing other children. And one of the reasons was
13 because she had learned that he had -- had abused a 4-year-
14 old.

15 Q All right. And -- and do you know where she learned
16 that from?

17 A I really think it was from Patricia Bolen.

18 Q Okay. Do -- do you know when that note would've been
19 written?

20 A No. It was around the time that -- right before she
21 went to meet with Patricia Bolen.

22 Q Okay.

23 A And I can probably find the date somewhere.

24 Q Well, if you -- if you look back to -- and I'm getting
25 confused on exhibit numbers. If you look back to the

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1 exhibit that has that page as the first page, it's probably
2 going to be -- probably going be right ---

3 A This one?

4 Q Yes. We're looking at -- if -- if I could see the
5 bottom corner. We're looking at Exhibit No. 15, right?

6 A Yes.

7 Q All right. The -- the -- the 5/5/2011 entry indicates
8 that: "Client met with Solicitor Bolen."

9 A Yes. She did probably a few ---

10 Q Probably -- probably between 4/6 and 5/5?

11 A Yes.

12 Q Just based on how your notes were?

13 A Yes.

14 Q Okay. By July 18th of 2011, another solicitor was
15 involved in the case; is that correct?

16 A That's correct.

17 Q And that was Ms. White; is that right?

18 A Yes.

19 Q Okay. And at -- at this time is when the -- the
20 concept appears in the records about using Mr. Carrier's
21 prior conviction if it's similar; is that correct?

22 A That's correct.

23 Q All right. And Lindsay -- if you flip to what should
24 be the next page, it's got the number 60 as the page number
25 that I -- my office copier added to it. Lindsay wanted you

1 to call and talk with Ms. White, didn't she?

2 A Yes. She -- she wanted me to tell Ms. White that she
3 had -- she had forgotten to give the victim-impact
4 statement to ---

5 Q Okay.

6 A --- the first solicitor.

7 Q And this is also the same entry where it's noted that
8 you agreed to go to court with Lindsay too, isn't it?

9 A Yes.

10 Q All right. Now, you could talk with Ms. White because
11 Lindsay gave you consent to talk to her, right?

12 A (No audible response.)

13 Q She asked you to call her?

14 A Yes, she did.

15 Q And -- and Ms. White's part of that same
16 interdisciplinary team that we talked about earlier, right?

17 A Yes.

18 Q Okay. And you did, in fact, talk with Ms. White on
19 that -- later that same day?

20 A Yes, I did.

21 Q And Ms. White confirmed that if the prior victim is
22 willing to testify and case is similar enough, that it
23 could be used in court?

24 A Yes. That's right.

25 Q Okay. And then, on August 31 of 2011, you met with

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1 Lindsay again, didn't you?

2 A Yes.

3 Q And it says that: "Lindsay feels good about Ms. White
4 -- it looks like it says -- "gaining additional evidence to
5 use in the court case," right?

6 A Yes. So she wouldn't be alone.

7 Q And -- and that's, I guess, the Kentucky ---

8 A Yes.

9 Q All right. Can I see that exhibit one second -- see
10 the one I ---

11 A (Complies.)

12 Q Okay. Now, earlier we talked about when the case was
13 closed and when it was reopened and that sort of thing; is
14 that right?

15 A Yes.

16 Q Do -- do you have that sheet -- it should still be in
17 all of that stack of documents -- your activity log?

18 A Okay. Exhibit 13.

19 Q Okay. And I think we determined that the only time
20 the case was closed was in 2012, earlier this year?

21 A Yes. At ---

22 Q What date -- about when was it closed?

23 A I can't find my sheet. It was closed on February
24 14th, 2012.

25 Q Okay. And when was it reopened?

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1 A March the 6th, 2012.

2 MR. GROSE: (To the court reporter) All right. Can I
3 mark these three separate documents..

4 (Whereupon, Defendant's Exhibits 18, 19, and 20 were
5 marked for identification.)

6 Q I'm going hand you Defendant's Exhibit 18, 19, and 20.
7 Those are part of your records, aren't they?

8 A Yes.

9 Q And at least 18 and 19 are dated for March 6th of
10 2012, right?

11 A Yes.

12 Q And on 18 it talks about you and Lindsay meeting to
13 talk about -- or one of the things that y'all talked about
14 was her testimony; is that right?

15 A On which date?

16 Q I'll show you where I'm looking. On the Exhibit No.
17 18 (as read): "Client reviewed the facts related to
18 who/what/when/where." You see that?

19 A Yeah. Yes, I do.

20 Q All right. And -- and -- and that was with regards to
21 her testimony, wasn't it?

22 A Yes.

23 Q Why did the -- why was the file reopened on March 6th?
24 Was it -- let me ask you this: Was it reopened because
25 court date might be coming up?

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1 A No. I mean, that would be a legitimate reason to
2 reopen it. But it just -- it was closed because there was
3 a gap in service and the secretary actually closed it.

4 Q Okay. What -- why on March the 6th did y'all talk
5 about the court testimony?

6 A Because we -- we knew that a court date might be
7 pending.

8 Q Okay. And -- and Exhibit No. 20 is not dated. But it
9 appears to be the -- the who/what that you were talking
10 about in your -- your note from the 6th, right? If you
11 look -- if you look at what's been marked as Exhibit No.
12 20.

13 A Oh, yes.

14 Q Yeah. I mean, that -- that's got the -- on that first
15 page, it's got the who and what, right?

16 A Right.

17 Q And on the second page, it's got ---

18 A --- when and where.

19 Q --- when and where?

20 A Yes.

21 Q And the -- Exhibit No. 19, which, I believe, is this
22 one right -- no, that's 18. Exhibit No. 19 is also --
23 dates from -- dated March 6th. And -- and it talks about
24 some of the testimony, right?

25 A Yes.

1 Q Okay. And -- and in all three of those exhibits, the
2 -- the age 4 to 5 appears, doesn't it? Is that right?

3 A It says: "for a period of 4 to 5 years."

4 Q Okay. And also, age 4 to 5, I mean ---

5 A No. I don't think it says age ---

6 Q Well ---

7 A --- I don't think I ever heard age 4.

8 Q Okay.

9 A But ---

10 Q Well, let me -- let me ask you this, then: On --
11 well, what it says -- on No. 19, it says "started between 5
12 and 6 when went to age 10," right?

13 A That's what it says.

14 Q Okay. So -- so if -- if -- that -- that's putting it
15 back to age 5, right? Is that correct?

16 A Yes.

17 Q And on the -- the when, it says "from about age 5 or 6
18 through 10," right?

19 A Yes.

20 Q And then, right above it, it has "1988 (verbatim) or
21 1999," right?

22 A Right.

23 Q All right. Now, other than that one note that we
24 talked about from 2010 and those three exhibits there, is
25 there anywhere else in your notes that it appears that the

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1 abuse could've started as far back as 1999?

2 A I believe those are the only times she talked about
3 her age.

4 Q Okay. Now, on the -- I believe it's going to be
5 Exhibit No. 18, the -- the March 6th, 2012, entry. It says
6 that Lindsay asked you to arrange a tour of the courtroom
7 with the advocate of the solicitor's office, Angela
8 Castillo?

9 A Yes.

10 Q Okay. And touring the courthouse and the courtroom is
11 part of the trial preparation that -- that goes on in these
12 cases, right?

13 A Yes.

14 Q And as an employee of the solicitor's office and being
15 a victim advocate, the victims advocate would -- could be
16 considered a part of this interdisciplinary team, right?

17 A Yes.

18 Q And it certainly is a contact that you had with the
19 solicitor's office, right?

20 A Yes.

21 Q And again, you have Lindsay saying it's okay to talk
22 to the solicitor's office about going to trial, right?

23 A Yes.

24 Q Okay. Now, did you meet with Ms. White on or about
25 June 4th of -- of 2012, this month?

1 A Yes. I -- I went with Lindsay to that meeting.

2 Q All right. And, you know, Lindsay wanted you to
3 attend that meeting, I guess, right?

4 A Yes.

5 Q And Lindsay had, in fact, asked you -- and you had
6 agreed in 2011 -- that you would go to court with her,
7 right?

8 A Yes.

9 Q And this meeting was about going to court, right?

10 A Yes.

11 Q And here we are; it's still June. And we're in court,
12 right?

13 A Right.

14 Q All right. And what information was communicated to
15 Ms. White during that meeting about the incident date or
16 the period of time of the abuse?

17 A I'm trying -- I am trying to remember if she
18 communicated to me or I communicated to her ---

19 Q All right. Let ---

20 A --- anything ---

21 Q --- let ---

22 A --- about that.

23 Q All right. Well, let -- let -- let me make sure I
24 understand that statement. Who -- who is "she" and "her"?

25 A Ms. -- Ms. White.

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1 Q Okay. All right. Do you remember what was
2 communicated?

3 A I remember it was briefly discussed that the -- her
4 age -- that there was a discrepancy between what was first
5 reported and what Lindsay was now reporting as her ---

6 Q Who referred to it as a "discrepancy"?

7 A I don't know.

8 Q But everybody understood that that was, quote, a
9 discrepancy?

10 A Yes.

11 Q Okay. Was it discussed at that meeting on June 4th
12 whether or not you would be a witness in this case?

13 A I asked her if I would be called to testify, and she
14 said she didn't know; that she just really didn't know.
15 That was ---

16 Q Okay. So -- so the fact that you could be a witness
17 in the case was in play by June 4th, 2012, right?

18 A I -- yeah. I asked if I was going to be a witness. I
19 wanted to know.

20 Q All right. Had you asked before then?

21 A I don't think so.

22 Q Other than your ---

23 A No.

24 Q --- conversation with Lindsay where you agreed to go
25 to court, had there been any discussions about you being a

1 witness?

2 A No.

3 Q Okay. Was it discussed on June 4th that if you're
4 going to be -- might be a witness, that we might need to
5 get your records so that all the lawyers could review them?

6 A No. It was -- I didn't know anybody wanted my records
7 until Monday -- or -- let's see. I -- I found out last
8 Friday that ---

9 Q Well ---

10 A --- somebody had subpoenaed my records.

11 Q Okay. Well, had -- had anybody asked you for your
12 records?

13 A No.

14 Q Okay. Well, we -- we got your records on Thursday.

15 A Yeah.

16 Q So do you know how we obtained those?

17 A Subpoena.

18 Q Okay. Well, it was actually a court order. But I --
19 I -- I mean, I guess, who would've been the person who
20 provided them? I guess is what ---

21 A I ---

22 Q --- I'm asking.

23 A --- was not in the office that day. So it -- I think
24 it was Jessica Bell.

25 Q Okay. So did you ever tell Ms. White that the records

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1 couldn't be provided without a court order?

2 A No. And we'd never discussed getting the records.

3 Q Okay. Now, if Lindsay had signed a consent, the
4 records could've been released on June 5th -- or June 4th
5 when y'all met, couldn't they?

6 A Could've been released to ---

7 Q --- to the solicitor's ---

8 A Yes.

9 Q --- office? Okay.

10 A Well, it -- well, it -- it would have to -- still,
11 it'd have to be a court order.

12 Q All right. To -- y'all never release records without
13 a court order?

14 A No.

15 Q Okay. Now, I -- I've been told ---

16 A Wait a minute. I'm ---

17 Q --- that ---

18 A --- I'm sorry. I'll -- I'll correct that. We don't
19 release them to -- they -- we can release them with her
20 consent to some people.

21 Q All right. Would that include the solicitor's office?
22 I mean, you can talk to the solicitor's office with her
23 consent.

24 A Yes. But they can't -- they can't be used in court
25 without a court order. Let me just clarify that. But it

1 -- she didn't ask for them.

2 Q She didn't ask for them.

3 The -- I want to shift gears a little bit. I -- I
4 have been told that the prosecution intends to call you as
5 a witness in this case. What is your understanding of your
6 purpose of being called as a witness?

7 MS. WHITE: Objection, Your Honor. He's getting into

8 ---

9 MR. GROSE: Your Honor, this gets into ---

10 MS. WHITE: --- trial strategy.

11 MR. GROSE: Well, this gets into the *Watson v. Ford*
12 *Motor Company*, where you have to determine a -- a --
13 there's three prongs to that case. Under Prong 1 you have
14 to determine if there's a -- a need for her to be qualified
15 as an expert witness. Under Prong 2 you have to determine
16 whether she's qualified. And under Prong 3, as part of
17 your gatekeeping function as the judge with expert
18 testimony, you have to determine whether her testimony is
19 reliable under the *Jones* factors.

20 Now, we can do this now, or we can do this when Ms.
21 White calls her as a witness. But we've got to do it in-
22 camera per the Supreme Court.

23 THE COURT: Well, I don't know if they're going to
24 offer her as an expert. I mean, if you're ---

25 MS. WHITE: Your Honor ---

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1 THE COURT: --- going to ---

2 MS. WHITE: --- I was actually intending, during my
3 cross-examination, to offer her as an expert to get some of
4 her opinions and just -- so we can do that in a few
5 minutes. But I think his question was getting more to what
6 I was going to be asking her -- I -- like ---

7 MR. GROSE: Well ---

8 MS. WHITE: --- was making ---

9 MR. GROSE: --- I'm -- I'm -- I'm ---

10 MS. WHITE: --- his question ---

11 THE COURT: Wait, wait ---

12 MS. WHITE: --- to me ---

13 THE COURT: --- wait, wait, wait, wait.

14 MR. GROSE: Well ---

15 THE COURT: Hold -- hold on.

16 MR. GROSE: I -- I -- maybe I can help.

17 THE COURT: Okay.

18 MR. GROSE: I -- what I want to know is -- is what
19 opinions she's going testify to in court. And Ms. White's
20 going to ask her that in a minute. I -- I -- that's what I
21 want ---

22 MS. WHITE: And -- and ---

23 MR. GROSE: --- to know.

24 MS. WHITE: --- that's ---

25 MR. GROSE: Maybe I ---

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1 MS. WHITE: --- that's fine.

2 MR. GROSE: --- I can ---

3 MS. WHITE: I thought ---

4 MR. GROSE: --- I can ---

5 MS. WHITE: --- he was getting into discussions about
6 trial strategy.

7 MR. GROSE: No. I -- I -- I want to know -- I want to
8 know what opinions she's going testify to. So I -- I think
9 -- I can rephrase the question.

10 THE COURT: Okay. You can rephrase it after our
11 break. I want to take ---

12 MR. GROSE: All right.

13 THE COURT: --- about a five-minute ---

14 MS. WHITE: That's what ---

15 THE COURT: --- break.

16 MS. WHITE: --- I was ---

17 THE COURT: All right. Thank you.

18 (Whereupon, a recess was taken from 11:41 a.m. until
19 11:57 a.m.)

20 THE COURT: Okay. Ms. Bentley, you can come on back
21 up, ma'am.

22 (Whereupon, the witness takes the witness stand.)

23 MR. GROSE: Thank you, Your Honor. May it please the
24 Court.

25 DIRECT EXAMINATION BY MR. GROSE CONTINUES.

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1 Q What -- what I was trying to get at and -- and -- and
2 what I -- I want to know is what opinions that you and the
3 prosecutor are planning for you to testify to during this
4 case.

5 A I'm not exactly sure, but I know ---

6 Q Well, what are your opinions?

7 A What are my opinions on this case?

8 Q Yes, ma'am.

9 A That -- do I believe that she was abused, or what are
10 you talking about? What opinions?

11 Q Well, what -- what have you told the prosecutor that
12 your opinions are?

13 A We have not had a strategy meeting. I have -- I
14 mentioned to her today that -- that changing the time frame
15 of the abuse is -- is common for sexual-abuse victims --
16 very common. So I have told her that, since I'm -- assume
17 she would ask me about that.

18 Q Okay. And why are you going to say that that is very
19 common?

20 A Because sexual-abuse victims are typically very poor
21 historians of the time frame of abuse. And it has -- it
22 relates back to what we were talking about with
23 dissociation. When they're abused, they often dissociate.
24 And it -- that's -- you know, that's when they're -- they
25 separate their mind from what's happening to their body.

1 They repress what's happening. They try not to remember
2 it.

3 And you know for yourself that when you're under
4 stress, you don't remember what happened when a lot of
5 times. And sexual-abuse victims are very much under
6 stress.

7 Q Some of that sounds like it has to do with memory; is
8 that right?

9 A Yes.

10 Q Now, the -- the -- you were talking about
11 disassociation. Does that have to do with the perception
12 of the event, if you disassociate during the event?

13 A It's a coping skill that ---

14 Q Uh-huh.

15 A --- clients use to suffer the least amount of pain
16 during a stressful situation or abusive situation.

17 Q All right. Does it affect their ability to perceive
18 the event?

19 A It registers, but it's often forgotten for a period of
20 time..

21 Q Okay. So the -- the -- the disassociation affects the
22 person's ability to remember the event?

23 A Sometimes, yes.

24 Q All right. Now, do you feel like -- is your opinion
25 -- well, let me rephrase that. In your opinion, did

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1 Lindsay disassociate when she was being abused?

2 A I really don't know. I -- I don't know.

3 Q Okay. Well, can you say that she didn't disassociate?

4 A No.

5 Q Okay. So it's possible that she did?

6 A It's possible.

7 Q And you -- you -- you talked about people being poor
8 historians. And part of that -- does -- does part of that
9 have to do with the disassociation?

10 A Yes. And partly, it's because of that. They -- what
11 do I say? -- they are -- they often remember in segments
12 about time. And for instance, they may -- if -- if they
13 haven't processed the abuse, then they haven't -- they've
14 been -- they've been so busy repressing the memories that
15 they have not really fully recovered the extent of the --
16 of the abuse.

17 And for instance, when they do start processing in
18 counseling, they'll suddenly remember: "Oh, I was in the
19 first grade when this particular event happened. Gosh, it
20 must've been -- it must've been -- you know, younger when
21 it first began."

22 Q But there's -- there's nothing in your notes about
23 Lindsay tying it to an event like that?

24 A Yeah, there is. I ---

25 Q What ---

1 A --- think ---

2 Q --- what?

3 A There was a time when she remembered that she -- it's
4 -- the -- the abuse started when she moved into her
5 mother's house.

6 Q Okay. But does that say that in your notes?

7 A Yeah. I did see it in a note.

8 Q Okay. Now, can you show me where?

9 A I would have to look.

10 Q All right. Well, will you do that for me when we are
11 in a break?

12 A Yes.

13 Q Okay. So if -- if somebody has repressed these
14 memories, then that makes it hard for them to communicate
15 about them intelligently, doesn't it?

16 A Yes.

17 Q Okay. And it -- it -- is -- is -- I -- I mean,
18 obviously -- well, strike obviously. When -- when -- when
19 you and Lindsay and Ms. White met on June 4th, it was
20 discussed that there was a discrepancy in the dates,
21 correct?

22 A Correct.

23 Q And was it discussed that that discrepancy was going
24 to have to be explained?

25 A I don't think that was -- that was said. I ---

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1 Q Okay.

2 A --- just ---

3 Q But -- but that's what we're talking about right ---

4 A Yeah.

5 Q --- now, is ---

6 A Right.

7 Q --- how -- is how that discrepancy is going to be
8 explained, right?

9 A Right.

10 Q And am I understanding that your -- your -- your
11 explanation is -- is -- is going to be that repressed
12 memory?

13 A That -- yes. That's part of it.

14 Q All right. What's the rest of it?

15 A Part of -- just the fact that people are not good --
16 do not remember things that happened to them under stress.
17 So I -- I suppose that is repressed memory.

18 Q Okay. So has Lindsay had problems recalling the
19 events of the abuse?

20 A She's had difficulty talking about it. When she has
21 talked about it, she's -- she seems to -- to remember it.

22 Q Okay. Does she currently have difficulty remember the
23 event? remembering the abuse?

24 A No.

25 Q Okay. Does she have problems -- well, has she had

1 problems communicating about it?

2 A Yes. But she's had problems communicating about a lot
3 of different things. But yes. That's one of the things
4 that was hard for her to talk about.

5 Q All right. Does -- does she still have problems
6 talking about it? communicating about it?

7 A Yes.

8 Q Do you expect her to have problems talking about
9 it/communicating about it during this trial?

10 A I'm sure it will be very difficult for her.

11 Q Is that a "yes"?

12 A Yes.

13 Q Why -- why might she have those problems?

14 A Most sexual-abuse victims have some shame or guilty
15 associated with being abused.

16 Q Okay.

17 A And it's a very personal thing to have to talk about
18 in front of strangers.

19 Q Okay.

20 A She doesn't trust many people.

21 Q And it's fair to say that there's a lot of strangers
22 here?

23 A (Nods head up and down.)

24 Q You're agreeing with that?

25 A I agree.

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1 Q Yeah. If she has problems communicating about it
2 during this trial, is it possible that we wouldn't get
3 completely truthful testimony? And when I say that, you
4 know, you took an oath. I'm just referring to the oath
5 that everybody takes to tell the truth, the whole truth,
6 and nothing but the truth. So there's -- there's a -- a
7 completion aspect to that, as well as just being black and
8 white, honest/not honest. There's the totality of telling
9 everything.

10 Can we expect that she might have problems with that?

11 A Lindsay has always been very truthful, I think, to me.

12 Q Okay.

13 A I don't think ---

14 Q That wasn't my question.

15 A That won't be a problem, I don't think.

16 Q You don't think that'll be a problem?

17 A (Shakes head from side to side.)

18 Q Okay. If it was, how would we be able to identify
19 that?

20 A I don't know. I'm not sure.

21 Q All right. Okay. Have -- have you communicated any
22 other opinions to Ms. White, other than the -- the, I
23 guess, continuing disclosure about the time frame of the
24 event?

25 A I don't remember anything.

1 Q Huh?

2 A I don't remember anything else.

3 Q Okay. Do you have any other opinions, other than
4 that?

5 A Well, of -- of course, I have opinions.

6 Q Well -- well -- well, what are those?

7 A Well, it may help to talk about delayed disclosure,
8 which is something that, a lot of times ---

9 Q Uh-huh.

10 A --- is an issue. Why ---

11 Q All right.

12 A --- why didn't the victim tell earlier?

13 Q All right. And -- and what is your opinion about
14 that, regarding Lindsay?

15 A That that is also a common aspect of child-sexual
16 abuse ---

17 Q Okay.

18 A --- as well as adult-sexual abuse, but especially
19 child-sexual abuse.

20 Q Okay. Is it your opinion that that's what Lindsay did
21 here, the -- the delayed disclosure?

22 A Yes.

23 Q Okay. And you -- you -- you refer to what's common
24 with child-sexual abuse. What do you mean by that?

25 A What the literature on research has shown that is a

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1 common denominator of the reactions to child-sexual abuse.

2 Q All right. So are -- are -- are you proposing that
3 you would want to testify that Lindsay is consistent with
4 other children who've been sexually abused?

5 A Yes. I could testify to that.

6 Q All right. Do you know if that's -- well, you don't
7 know what they want to ask you ---

8 A No ---

9 Q --- do you?

10 A --- I don't.

11 Q Okay. What other opinions do you have?

12 A That -- that she's -- that she has suffered from
13 posttraumatic stress disorder, which is a common malady of
14 sexually abused victims.

15 Q All right. Well, let -- let's talk about that. What
16 are -- what are you going -- what -- what do you say is the
17 cause of the posttraumatic stress disorder?

18 A An event that is perceived as life-threatening or very
19 physically damaging or very -- very traumatic that -- that
20 occurs. And then, the client has recurring memories that
21 are problematic around that event.

22 Q Okay. In Lindsay's situation what do you identify as
23 -- as those events?

24 A The -- well, for one, sexual trauma by ---

25 Q Okay.

1 A --- Mr. Carrier.

2 Q All right. How about sexual trauma by the mother's
3 ex-boyfriend?

4 A Well, I have not -- I have not heard her relate any of
5 her symptoms to that event.

6 Q You've not -- heard her say what, now?

7 A I have not heard her relate any of her symptoms to
8 that event.

9 Q Well ---

10 A To that abuse.

11 Q You -- but you -- but you have, because she -- when
12 you were -- were talking to her about it in July of 2010,
13 that was when the disassociation appears in your notes;
14 isn't that correct?

15 A That was -- yeah. That was her excuse for not being
16 able to write about that event, I think.

17 Q Right. And -- and -- and you requested ---

18 A But ---

19 Q --- twice that she write about that event, right?

20 A Well, I -- I -- I -- numerous -- in numerous
21 occasions, I requested that she write about Mr. Carrier.
22 And she refused to do that also. That was not just about
23 the other one.

24 Q Well, she -- she didn't refuse to write about Mr.
25 Carrier, because we have Defendant's Exhibit No. 20 ---

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1 A Yes.

2 Q --- right?

3 A She did for a long time. And the only reason she --
4 she didn't really write that. I served as her secretary
5 and asked her about the who/what/when/where ---

6 Q Okay.

7 A --- because she had not written about it ---

8 Q All right.

9 A --- in any detail. And her -- her nightmares and her
10 flashbacks that she reported to me were related to Mr.
11 Carrier.

12 Q Well, but -- but you don't know what -- you -- you --
13 you know, from Lindsay's reports in 2010, that the mother's
14 ex-boyfriend abused her, right? Right?

15 A That's what she said.

16 Q And you know that she had a hard time talking about
17 that, don't you?

18 A She didn't want to talk about it. No.

19 Q And that she -- she didn't want to talk about it.

20 And you know that she had a hard time -- or didn't
21 want to write about it, right? Right?

22 A Right.

23 Q All right. Now, these same characteristics that we're
24 talking about, regarding your opinion as it relates to Mr.
25 Carrier, these same factors apply in other cases of sexual

1 abuse, don't they? Don't they?

2 A I'm sorry. What?

3 Q All right. The -- the -- the delayed disclosure
4 applies -- can apply in other cases of sexual abuse; it's
5 not unique to Mr. Carrier that's -- right?

6 A Right.

7 Q Okay. And partial disclosure can be applied in -- in
8 other cases; that's not unique to Mr. Carrier, right?

9 A Right.

10 Q All right. And -- well, we -- we have evidence of
11 that here, though, don't we? Because she didn't want her
12 mother to know that she had come back to counseling in the
13 summer of 2010, correct?

14 A That's right.

15 Q All right. And -- and when she had made that initial
16 disclosure to her mother, she didn't get family support,
17 right? Right?

18 A Right.

19 Q And when you asked her to talk about it, she had
20 difficulty doing that, right? Right?

21 A Right.

22 Q And when you asked her to write about it, she couldn't
23 do that, right?

24 A She didn't. No.

25 Q And this is the first time in your notes that

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1 disassociation appears, right?

2 A Well, she then related it to Mr. Carrier, saying that
3 when she would see the car that he drove, she would -- she
4 would -- and then she was -- when she was driving and saw
5 his car, she was triggered into a flashback and ---

6 Q Well, how do I know -- and how will this jury know --
7 that she's not relating that to the car that Ken -- I can't
8 -- Shamburg drives?

9 A (No audible response.)

10 Q We don't know that, do we?

11 A (No audible response.)

12 Q Do we?

13 A I'm not sure.

14 Q You're not sure?

15 And if the disclosure is -- is a little bit testing
16 the waters, she tested the waters here and -- and the water
17 wasn't comfortable. So she could've pulled back and be
18 repressing the testimony about the ex-boyfriend -- the
19 mother's ex-boyfriend for some of these same reasons that
20 you want to say her allegations against Mr. Carrier are --
21 are -- are more believable; isn't that right?

22 A I don't know. It could be right.

23 Q Huh?

24 A Could be right. I don't know.

25 Q It could be right?

1 It could be that she suffered some pretty severe abuse
2 at the hands of this perpetrator, isn't it?

3 A It's ---

4 Q We don't know?

5 A No. It was not my impression, but ---

6 Q Well ---

7 A --- I don't know. She wouldn't talk about it.

8 Q Your -- your -- your impression was -- how do we know
9 that -- how can you make an impression when she wouldn't
10 talk to you about it?

11 A I just get the feeling that she would have -- she
12 would've talked about something that was more serious than
13 Mr. Carrier's abuse if that -- she would've talked to me
14 about it, if -- if it was something that was severe.

15 Q Well ---

16 A I ---

17 Q --- Mr. -- Mr. -- the original allegations involving
18 Mr. Carrier were -- were -- were just touching the breast
19 over and under the clothes and touching the vagina over the
20 clothes, right?

21 A And any sexual abuse is -- is -- can be very
22 traumatic. It -- I'm ---

23 Q All right.

24 A --- want to just say that.

25 Q And that changed over time, right? What -- what she

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1 claimed about Mr. Carrier, that changed over time, right?

2 A No, it didn't change. I never really got any really
3 detailed information about what he did until this date,
4 when ---

5 Q But ---

6 A --- when -- right before court.

7 Q Exhibit -- Exhibit No. 20 ---

8 A Yeah.

9 Q --- right?

10 A That's when I really got the details.

11 Q Right. And -- and that's about oral sex and touching
12 the genitals and stuff like that, right?

13 A I don't -- no. There was no oral sex.

14 Q (As read): "For a" ---

15 A I was ---

16 Q --- "period of four to five years, James Carrier
17 molested me by touching my genital area and breast with his
18 hands; constantly threatened to make me suck his penis;
19 making me touch his genitals." So maybe there wasn't oral
20 sex, but there was -- there was the ---

21 A --- threat of ---

22 Q --- threat ---

23 A --- oral ---

24 Q --- of oral sex ---

25 A --- oral sex ---

1 Q --- and -- and the touching his penis. And -- and --
2 and that -- you're -- this never occurred -- this -- this
3 never came out in your counseling until y'all were doing
4 this in -- in March of this year?

5 A That's right.

6 Q All right. Well, how do we know that she's not
7 talking about that being the things that Kenneth Shamburg
8 made her do?

9 A Because ---

10 Q We don't, do we?

11 A Yes. Well, we do.

12 Q Well, we know that's what she says, right? But we
13 also know, from your notes, that she had a problem telling
14 you what Kenneth Shamburg did, right?

15 A Yes.

16 Q Okay. And it could be -- it -- it took you three
17 years -- I mean, the initial report in this was March 31st
18 of 2009. And this was early in March of 2012. It took you
19 almost three years to get that information about what she
20 claims Mr. Carrier did, right?

21 A It was -- I had to pull information out of -- out of
22 her about everything.

23 Q So she does have a hard time communicating about this,
24 doesn't she?

25 A Yes, she does.

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1 Q Am I going to have a hard time pulling information out
2 of her on cross-examination during this trial?

3 A I hope not. I think she will be up to the task.

4 Q Well, you've spent a lot of time building a rapport
5 with her, right?

6 A Yes.

7 Q She's never met me, that I know of.

8 A Right.

9 Q All right. How am I going to have an easier time of
10 it than you are?

11 A Because she -- she wants justice to be done, and she
12 has the desire for something to be done about what was --
13 what happened to her.

14 Q All right. Well, but has she not wanted justice to be
15 done before March? I -- I would assume she would want
16 justice to be done the whole time. And -- and that's
17 really not the question. The question is: Is -- is she
18 going have difficulties communicating about that?

19 A I -- I think not.

20 Q Okay. And the question that I have, too, is: Is --
21 is -- isn't it possible that this abuse by Kenneth Shamburg
22 is a source of her posttraumatic stress disorder?

23 A I don't even know that name, Ken -- I don't ---

24 Q All right.

25 A --- know who that is.

1 Q Let me -- let me call him the -- the mother's ex-
2 boyfriend, because you're familiar with that. Is it
3 possible that the abuse by Lindsay's mother's ex-boyfriend
4 is a source of her posttraumatic stress disorder?

5 A Well, I would say she had symptoms of posttraumatic
6 stress before she's alleging that -- you know, that this
7 other abused happened, the time that it happened.

8 Q Well, but you've -- you -- you -- when you saw her,
9 you didn't see her until after this abuse by the mother's
10 ex-boyfriend had happened. She hadn't told you about it.
11 But it happened before you started seeing her?

12 A That's right.

13 Q Okay. And -- and -- and she was not completely
14 forthcoming with you about that until 2010, right?

15 A Right.

16 Q Okay. And so while you can determine that she has
17 symptoms of posttraumatic stress disorder, until you relate
18 that to -- till she tells you about events, you don't know
19 what caused that, do you? Do you?

20 A I'm just saying she had difficulty before ever coming
21 to see me.

22 Q Is it possible -- well, I mean, I think you would have
23 to agree that it's possible, under your theories of delayed
24 disclosure and continuing disclosure, that one day
25 Lindsay's going come forward with more information about

1 her mother's ex-boyfriend abusing her?

2 A She could.

3 Q She could.

4 And that would be consistent with -- with -- with your
5 theories about how children disclose these events, right?
6 Right?

7 A Yes.

8 Q Okay. And it could be possible that the truth about
9 that doesn't come out in this courtroom this week, couldn't
10 it, if she delays disclosing it?

11 A Possible.

12 Q Okay. All right. You -- you've got the -- the --
13 sort of the delayed disclosure as one opinion; the
14 explaining the discrepancy in the time frame as another;
15 the PTSD as a third opinion. Are there any other opinions
16 that you have?

17 A No.

18 Q Okay. Do you -- have -- have you been -- some of your
19 testimony has -- I think, would be fair to say indicates
20 that you believe Lindsay about the allegations she reported
21 to law enforcement and to you about my client, James
22 Carrier, right?

23 A Do I believe it?

24 Q Well, I -- some of the testimony up to now, I think,
25 indicates that you do?

1 A Yeah.

2 Q All right. And -- and you do believe that ---

3 A I do.

4 Q --- I take it?

5 A I do.

6 Q All right. It -- it -- is that something that -- that
7 you're planning to testify about?

8 A If I'm asked.

9 Q Okay.

10 A I -- well, you know, I would -- I generally say it's
11 consistent with ---

12 Q Okay.

13 A --- with ---

14 Q Consistent with what?

15 A Consistent with other -- consistent with
16 characteristics of children who have been abused ---

17 Q Okay.

18 A --- like ---

19 Q So -- and -- and so you're comparing her to the other
20 children ---

21 A Yeah.

22 Q --- that you believe have been sexually abused ---

23 A Yes.

24 Q --- or the researchers believe have been sexually
25 abused?

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1 A Yes.

2 Q Okay.

3 MR. GROSE: Beg the Court's indulgence for a moment.

4 I think I'm about done.

5 Q A minute ago you said that you didn't view the
6 allegations of abuse by the mother's ex-boyfriend as being
7 serious.

8 A I -- I -- I guess I -- I don't have a lot of basis to
9 say that, but -- except for the fact that when she told me
10 about it, she didn't seem -- she -- she -- she -- she
11 almost said it casually.

12 Q Well ---

13 A So I ---

14 Q All right.

15 A --- I ---

16 Q But she didn't say it casually, though. I mean, what
17 your note on August 11th says: "She was more talkative,
18 but after revealing that she was also sexually abused by
19 someone other than James Carrier, she became unwilling to
20 talk -- or tell me more." Right? That's not casual.

21 A Well, what I mean is she didn't -- she acted as if it
22 was not anything she needed to talk about.

23 Q She could've been testing the waters with you, though,
24 couldn't she?

25 A Well ---

1 Q It's part of your theory of how ---

2 A Yes.

3 Q --- this happens.

4 A And I -- and -- and, of course, I -- I followed up and
5 tried to get her to talk to me about it.

6 Q All right. (As read): "And she finally divulged that
7 perpetrator was mother's ex-boyfriend; it occurred three
8 times, three to four years ago." And then, it talks about
9 how the man threatened her; is that right? Is that right?

10 A Yes.

11 Q You would agree, I hope, that a perpetrator of sexual
12 abuse threatening a child is serious?

13 A Yes.

14 MR. GROSE: That's all I have at this time, Your
15 Honor.

16 CROSS-EXAMINATION

17 BY MS. WHITE:

18 Q All right, Ms. Bentley. We're going about this kind
19 of backwards. Tell me a little bit about your education
20 and your training.

21 A Worked with sexual abuse victims for 17 years. Two
22 years as -- with a -- the last five years, I've been
23 counseling, mostly adolescent and adult victims of sexual
24 abuse, about 450 in -- in the last five years. Prior to
25 that I was forensic interviewer; I did approximately 160

1 interviews of children who were suspected of sexual abuse
2 by law enforcement or DSS.

3 I've also worked for the Department of Social
4 Services, where I specialized in sexual-abuse cases for a
5 year. Worked with mental health, where I was assigned to
6 the Lexington County Jail for a year. Many of those
7 inmates were sexual-abuse victims. And for seven years I
8 worked for the Department of Juvenile Justice, where I
9 worked at the Greenwood Center for -- the detention center
10 for girls, or the Greenwood Center, many of whom were
11 victims of sexual abuse. I've led groups and done
12 individual counseling, both.

13 Q Okay. And you have a master's in social work and an
14 undergraduate degree in psychology for education?

15 A Undergraduate degree -- well, minored in psychology.

16 Q And it's ---

17 A So . . .

18 Q Have you attended any trainings in the field of
19 working with sexual-assault victims, counseling sexual-
20 assault victims?

21 A Yes. I have been -- completed the Finding Words
22 course and the advanced Finding Words course, which are --
23 to become accredited to be a -- to become a forensic
24 interviewer. And I have completed -- I have been
25 accredited as a trauma-focused cognitive behavioral

1 therapist after doing 40 hours of training in that
2 protocol. And I have been to numerous other trainings
3 about sexual abuse.

4 Q Okay. Have you ever -- you personally conducted
5 trainings for other people ---

6 A No.

7 Q --- on sexual abuse?

8 MS. WHITE: Your Honor, the state offers Ms. Bentley
9 as an expert in the field of mental health counseling and
10 the assessment and treatment of sexual-abuse victims. And
11 Mr. Grose has been getting experts opinions out of her all
12 morning.

13 MR. GROSE: I don't have a problem with her offered as
14 an expert for this hearing. I don't want anything -- well,
15 the reason I'm getting opinions out of her is so that,
16 well, later on we can discuss whether those opinions are
17 things that are admissible and whether or not she needs to
18 be qualified as an expert in front of the jury. And so I
19 don't want anything that I say now to obligate me to
20 anything later. But I have no problem with her being
21 offered as an expert for the purpose of this hearing.

22 MS. WHITE: I'm kind of confused as to how she can be
23 an expert for the purposes of this hearing and not be
24 similarly an expert in front of the jury ---

25 MR. GROSE: Well ---

1 MS. WHITE: --- on that.

2 MR. GROSE: --- if you look at the *Watson v. Ford*
3 *Motor Company* that cites to the *Douglas* case, *Douglas* case
4 said that a person can be an expert witness but that it'd
5 still be an error for that person to be qualified as an
6 expert witness in front of the jury. Now, they said it was
7 harmless in that case. But the first determination that
8 you have to make is whether or not what she plans to
9 testify to is something that requires, you know, expert
10 testimony.

11 The second thing you have to determine is whether
12 she's qualified. And the third thing that she has to --
13 that -- that the Court has to determine is whether or not
14 it's admissible expert testimony.

15 And I plan to challenge the admission -- the
16 admissibility of the three areas of opinion that she gave
17 here today. So if -- if I prevail on that, then there's no
18 reason to qualify her as an expert. But there still may be
19 factual things that she could testify to, like what the
20 Supreme Court talked about in *Douglas*. I -- that's where
21 I'm coming from to -- to help the Court and -- and Ms.
22 White understand the -- the -- the issues that I perceive.

23 THE COURT: Well, help -- help me out. I -- I thought
24 that's what we were doing all along. I thought you were --
25 you were going to challenge the ---

1 MR. GROSE: That ---

2 THE COURT: --- qualifications and we were going to
3 basically vet ---

4 MR. GROSE: Well, I -- I -- I don't know that I'm
5 going challenge her qualifications. I don't know that I'm
6 going challenge Prong 2. It's -- it -- the -- the -- the
7 majority of the challenges may come on Prong 3, which then
8 has a -- which would affect the admissibility. She still
9 may need to be a witness about some factual information,
10 but that wouldn't involve her being qualified as an expert.

11 THE COURT: Okay. Well -- but I thought right before
12 we broke, you were going to ask her about ---

13 MR. GROSE: Well, I asked her about the opinions that
14 she had ---

15 THE COURT: Right.

16 MR. GROSE: --- which ---

17 THE COURT: I understand that. But I thought right
18 before we broke, you mentioned *Watson v. Ford*, and you were
19 going to go into all that. And I never heard it, other
20 than what her opinions were.

21 So I guess I'm curious as to what we're doing, because
22 if we're using this time to save time later when we have
23 the jury up here, I don't know what else we need to do,
24 other than go into your objections about whatever prongs of
25 the *Watson* test you wish to challenge. I understand what

1 Douglas said, and I'm with you on that. But I don't -- I
2 mean, or -- or -- seems like we were going to into the
3 whole ---

4 MR. GROSE: Well, where -- where -- where we're headed
5 is -- under the third prong of *Watson v. Ford Motor*
6 *Company*, is we're -- we're -- I -- I don't have a Westlaw
7 cite. But we're looking at the *State v. Jennings* case,
8 which is Supreme Court Opinion No. 27043 from September
9 19th, 2011. There's some cases that are -- are cited in
10 *Jennings* about improper vouching or bolstering. And those
11 include the -- the Dawkins case, 297 S.C. 386; and the
12 *Dempsey* case, 340 S.C. 565.

13 And there's a case from the Court of Appeals that was
14 -- I don't have the cite, but I can -- I can get it for
15 you. It was decided just in the last couple of months.
16 *State v. McKerley*, which was a case from this circuit, that
17 I tried that followed the *Jennings* case and talked about,
18 you know, some of the things that the interviewer -- in
19 that case the forensic interviewer was testifying to was
20 improper bolstering.

21 And so the -- that's where I'm going: that -- the --
22 the three areas that she says she wants to testify about --
23 well, the first two are definitely improper bolstering.
24 And the third one, because we don't have enough information

1 about the abuse by the mother's ex-boyfriend, her opinion
2 about PTSD connected to anything that Mr. Carrier did is --
3 is -- is not -- is not scientifically reliable.

4 THE COURT: All right. So ---

5 MR. GROSE: So that -- that's where I'm going. That's
6 the road map.

7 THE COURT: I understand that it's better to travel
8 than to arrive, but I think we've arrived. So ---

9 MR. GROSE: All right.

10 THE COURT: --- can we ---

11 MR. GROSE: Okay. I want to give them a chance to ask
12 any questions we are. But -- but yeah. I feel like we've
13 arrived.

14 THE COURT: Okay. All right. Does the state agree
15 with that, I mean?

16 MS. WHITE: Your Honor, I'm ready -- well, I haven't
17 had a chance to review these case cites, but I'm prepared
18 to argue ---

19 MR. GROSE: Uh-huh.

20 MS. WHITE: --- that motion once I've had a chance to
21 review the case cites. I mean, I have -- I don't see why
22 we could -- should put it off any -- any longer.

23 THE COURT: Well ---

24 MS. WHITE: And it's ---

25 THE COURT: --- do we ---

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1 MS. WHITE: --- I mean ---

2 THE COURT: --- do we need any more testimony from Ms.
3 Bentley?

4 MS. WHITE: Oh, I have a lot more questions I want to
5 ask her. I just wanted to lay the foundation for her
6 opinions before I started getting them from her.

7 THE COURT: Okay.

8 MS. WHITE: And I -- I don't think specifically -- Mr.
9 Grose already covered a lot of what I intend to get into
10 ---

11 THE COURT: Right.

12 MS. WHITE: --- with her right now. There -- I -- I
13 do have a few additional questions on those areas. But, I
14 mean, I could go on and ask those and then we could ---

15 THE COURT: Well, I'm not trying to limit you. I'm
16 just trying to figure out how to do this as efficiently as
17 possible. I mean, you're -- you're essentially proffering
18 her as an expert in -- in -- in what field, now? You had a
19 ---

20 MS. WHITE: Mental health counseling; specifically,
21 the evaluation and the treatment -- or assessment and
22 treatment of sexual-assault victims -- child-sexual-assault
23 victims.

24 THE COURT: All right. And ---

25 MS. WHITE: And characteristics as well.

1 THE COURT: Okay. So ---

2 MS. WHITE: And I think she testified she has worked
3 with, by my count, over 600 child-sexual-assault victims;
4 has the training and experience. I think -- I don't see
5 that her testimony regarding characteristics of sexual-
6 assault victims regarding delayed disclosure, regarding
7 continuing disclosure -- I don't see how that is not
8 reliable under the test.

9 THE COURT: Well, so just procedurally, do -- do y'all
10 want to -- and I'm just asking. Do y'all want to let the
11 state go ahead and ask whatever questions they want to and
12 then we'll have to argue the factors? Is that how you want
13 to do it, Mr. Grose?

14 MR. GROSE: I -- I'll -- I -- I -- I feel like they
15 should have a chance if that's what they want to do. I
16 don't have a problem with that, if -- if you want to move
17 straight to it. I'm -- I don't have a problem with that
18 either.'

19 MS. WHITE: I'll go on.

20 THE COURT: Okay.

21 MS. WHITE: And, Your Honor, just for clarification,
22 do you want me to go on and ask all of the questions I have
23 of Ms. Bentley and then take up everything at the end, or
24 do you want to me to pause to take up the expert issue?

25 THE COURT: Well, I mean, the issue is just whether

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1 she can be qualified under *Watson*, right?

2 MS. WHITE: Well, I have other questions for her
3 relating to Mr. Grose's original motion on the indictment
4 and ---

5 THE COURT: Oh, okay.

6 MS. WHITE: --- also the motion ---

7 THE COURT: Okay.

8 MS. WHITE: --- he's going to be making on tainted
9 evidence.

10 THE COURT: All right. Well, that's fine. I -- I got
11 to break at one o'clock. But you just can go till then.

12 MS. WHITE: Okay.

13 THE COURT: Or if you need -- if you need that long.
14 All right? Yes, ma'am.

15 MS. WHITE: All right.

16 CROSS-EXAMINATION BY MS. WHITE CONTINUES.

17 Q First of all, Ms. Bentley, in 2009 who did Ms.
18 Ferqueron disclose was her abuser?

19 A Jamie Carrier.

20 Q All right. Has she ever, in the three-plus years
21 you've worked with her, denied or recanted in any way that
22 Mr. Carrier was her abuser?

23 A No.

24 Q All right. And the first indication that this
25 occurred -- well, did you discuss time frames at every

1 single meeting?

2 A Oh, no.

3 Q Okay. Did you discuss what happened at every single
4 meeting?

5 A No.

6 Q And -- and as a matter of fact, you don't -- it would
7 be counterproductive in counseling to go through the
8 details of abuse every single time you met with her?

9 A Right. We -- we talked occasionally about writing an
10 account of the abuse and -- but she -- she -- she didn't do
11 that.

12 Q All right. And is it fair to say that as your
13 sessions with Lindsay progressed, she opened up more and
14 more each time you met with her?

15 A Yes.

16 Q And in 2009 when you first met with her, she was very
17 withdrawn; I think you said you had to pull information out
18 of her; is that correct?

19 A That's correct.

20 Q Did she begin volunteering information more in -- as
21 time progressed?

22 A Yes.

23 Q All right. And is that common with child-sexual-
24 assault victims?

25 A Yes.

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1 Q All right. A -- a child's mind doesn't work the same
2 way an adult's mind works, does it?

3 A No.

4 Q All right. Children don't perceive time; they don't
5 perceive events happening the way that an adult mind --
6 adult's mind works, because they don't tie things to dates,
7 correct?

8 A Right.

9 Q All right. So when you're asking a child -- or -- or
10 someone remembering an event from their childhood, "When
11 did this happen?" you're not going to get "January 1st of
12 2003"; correct?

13 A Correct.

14 Q Is it much more common with a child-sexual-assault
15 victim to give a date range or "it happened when I was in
16 first grade," that kind of response?

17 A Yeah. Rather than specific.

18 Q All right. The release that Mr. Grose handed up --
19 and I don't remember what exhibit number it was -- do you
20 -- oh, here it is right here, Defense Exhibit 7. There's a
21 blank on here where she could've signed "Keep my referral
22 source informed of my progress, treatment, and attendance"?

23 A Yes.

24 Q That blank is not checked, is it?

25 A No.

1 Q The only thing checked is "Let my referral source know
2 I came for my first appointment" ---

3 A Right.

4 Q --- right?

5 Did -- do you recall a conversation you and I had last
6 week by telephone wherein I told you I would have to get
7 the records and you informed me I would need a court order
8 for that and you were going to check on the wording and get
9 back with me? Do you remember that? It would've been last
10 Wednesday.

11 A Yeah. I think so. Yes.

12 Q All right. And is that -- so you didn't just send me
13 the records as soon as I asked for them?

14 A No.

15 Q All right. And I did, in fact, send a court order for
16 the records, correct?

17 A Yes. No. You know, I'm sorry. I don't -- I don't
18 remember you even talking about the records on Wednesday.
19 I don't -- I didn't remember anybody saying anything about
20 the records till Thursday when I -- when Jessica Bell told
21 me that you had asked for them.

22 Q Okay. When is it that -- do you remember when I told
23 you that I had decided to call you as a witness?

24 A Monday morning of this week.

25 Q Of this week?

1 A (Nods head up and down.)

2 Q Wasn't Wednesday of last week?

3 A It -- you said you couldn't -- you -- you didn't know
4 Wednesday. Even Thursday you didn't know. And Monday I --
5 I found out that you did want to me ---

6 Q All right.

7 A --- is what I recall.

8 Q Now, looking back at your notes from all of your
9 sessions, a -- a recurring theme seems to be -- and this is
10 getting into 2010/2011/2012 -- almost terror at the
11 prospect that Lindsay is going to have to see Mr. Carrier;
12 is that fair to say?

13 A Yes.

14 Q So she was -- she was very scared at the fact that she
15 would even have to see him here today, wasn't she?

16 A That's right.

17 Q Did she ever relate any terror at seeing her mother's
18 ex-boyfriend?

19 A No.

20 Q Or potentially seeing him? Did she ever relate any
21 terror or any nightmares about him?

22 A No.

23 Q Our meeting that we had on June the 4th, you got there
24 a little bit late, didn't you?

25 A Yes.

1 Q And I think I had actually already talked to Lindsay
2 about most of the details of the abuse before you came in;
3 is that correct?

4 A I suppose. I don't know.

5 Q All right.

6 MR. GROSE: Objection: speculation.

7 THE COURT: Overruled.

8 MS. WHITE: Thank you, Ms. Bentley.

9 THE COURT: You got any questions, Mr. Grose?

10 MR. GROSE: No -- no further questions ---

11 THE COURT: All right.

12 MR. GROSE: --- Your Honor.

13 THE COURT: Thank you, ma'am.

14 BAILIFF: (To the witness) Watch your step.

15 THE WITNESS: Okay.

16 BAILIFF: Thank you.

17 (Whereupon, the witness exited the witness stand.)

18 THE COURT: All right.

19 MR. GROSE: I -- I think what I want to do, if it
20 pleases the Court, is -- is talk about the motion that the
21 case be tried on the original indictment. I -- I don't --
22 I don't know that I have my copy of the original
23 indictment. But my recollection is -- is that it's on or
24 about a date ---

25 THE COURT: That's ---

1 MR. GROSE: --- in ---

2 THE COURT: This is the current one.

3 MR. GROSE: All right. Well, I wanted to see the --
4 the original one, which I think said on or about -- I don't
5 remember which date ---

6 MS. WHITE: Charles ---

7 MR. GROSE: --- it was, but it ---

8 MS. WHITE: --- there's the original.

9 MR. GROSE: All right. The -- the original indictment
10 says: "On or about the 1st day of January of 2003 . . ."
11 And what I have tried to do, through Deputy Grogan and Ms.
12 Bell, is to talk about what the discovery was that was
13 initially provided. And when Ms. White testified
14 yesterday, I introduced the letter that I had sent,
15 summarizing the -- the discovery. And the main two items
16 in the discovery that talked about when the event took
17 place were the initial incident report and the statements
18 that were made then and in the forensic interview.

19 And the -- consistently -- now, Ms. White pointed out
20 the incident date, but there was no statement
21 substantiating the incident date. Consistently, those
22 documents said that the abuse happened six to seven years
23 ago or started when she was 8 or 9. She would have been 10
24 in February of 2003.

25 The indictment lists her date as February 11th --

1 birth date as February 11th, 1993. So on February 11th,
2 2003, she was 10. You go two years back from that to when
3 she would've turned 8, and so that would've been 2001. And
4 ending when she was 10 would be in 2003.

5 And so if you take -- and -- and Ms. Bell testified
6 that her notes showed that the abuse went on for a year and
7 a half to -- to two years. So if you take -- if -- if --
8 if -- if you take two years, roughly, you know -- well, we
9 don't know when it ended or when she claims it ended when
10 she was 10. She would've been 10 for most of the year
11 2003. She would've been 9 in 2001. She would've been 8
12 for a little over a month of 2001 so -- I mean, of 2002.

13 So the time frame that we're looking at is -- is
14 roughly 2002/2003 time frame. And that's what the
15 indictment reflects. That's what the warrant had reflected
16 that they got based on Mr. Grogan's investigation and Ms.

17 -- Ms. Bell's investigation, you know. The sequence was
18 -- is that her interview took place before the warrant was
19 gotten.

20 So until June 5th of this year, we were operating
21 under the assumption of a two-year time frame around the
22 beginning of 2003, you know, maybe a little bit longer,
23 maybe a little bit before that. But that's -- that was the
24 information that we were -- we had been provided.

25 Now, one of the things that I tried to do today -- and

1 I think that we were successful at -- is the experts talked
2 about the interdisciplinary approach to child-sexual-abuse
3 cases, where you have a team of law enforcement,
4 prosecutors, the forensic interview, treatment people,
5 potentially DSS, potentially victim services, and -- and
6 that sort of thing; and that for the purpose of these
7 experts communicating about their different areas, they
8 have staffings. Now, I can't help it that nobody went to
9 the staffings in this case. I find it a little bit
10 surprising with what we've heard about how troubled this
11 child is, but nobody went to these staffings.

12 They also talked about how there can be communications
13 between them. And -- and it appears that the
14 communications were happening. When Ms. Bolen was handling
15 the case, the -- Ms. Bentley was -- was helping Lindsay
16 prepare what was she going to and talk to Ms. Bolen about,
17 which included the Kentucky allegations.

18 We know that there was phone calls with Ms. White. We
19 know that they arranged for Lindsay to come and have a -- a
20 tour of the courtroom. I don't know whether it took place
21 or not, but certainly that they were arranging it.

22 So if they're going to say and maintain, which
23 apparently they are, that the decision wasn't made to call
24 her -- Ms. Bentley as a witness until last Wednesday,
25 that's a decision of convenience. Because they've known

1 that she's been involved for -- going back to when Ms.
2 Bolen was prosecuting the case. Ms. White knew that she
3 was involved in 2011. The victims advocate knew that she
4 was involved in March of this year when they called to
5 arrange the tour of the courtroom.

6 So her involvement is not a surprise. And the
7 availability of this information has been there all along
8 because of the interdisciplinary approach to it.

9 For -- this is not the case. But for a forensic
10 interviewer to testify under the statute and testify about
11 statements beyond the ordinary -- the ordinary rules of
12 evidence, to be able to expand beyond that, it has to be a
13 testimonial interview. It has to be a part of the
14 investigation.

15 And so by saying, "We're going send you over to this
16 nonprofit that's funded by the federal government -- we're
17 going to refer you over there to this nonprofit for part of
18 the investigation and then everybody participate in this
19 interdisciplinary-team approach," it -- it's -- it's a
20 little, then, I think, disingenuous to say that this is not
21 state action. I think this is all state action going on
22 because they have all bought into this interdisciplinary-
23 team approach of prosecuting these cases.

24 We know a private search by a private citizen can
25 become illegal because of state action. And so we -- the

1 -- that same general concept, I think, you know, applies to
2 this situation. And, Judge ---

3 THE COURT: Well, what ---

4 MR. GROSE: --- what ---

5 THE COURT: --- what would it get -- I mean, where --
6 where does that get you, though? What is ---

7 MR. GROSE: Well ---

8 THE COURT: --- say -- say -- said -- say you're ---

9 MR. GROSE: Well ---

10 THE COURT: --- right. All right.

11 MR. GROSE: --- well -- well, where -- I think where
12 it gets me to is -- is that under the due process. And --
13 and we're not -- we're -- we're not even really to *Brady*
14 yet, although *Brady* is wrapped up in this.

15 But under due process, where the U.S. Supreme Court
16 says that we're entitled to information that's necessary
17 for preparation of the defense and under Rule 5 where we're
18 entitled to that information, the state had knowledge of
19 this expansion in the time frame going back to 2010. Ms.
20 Bentley had it. And that knowledge should be imputed to
21 Ms. White, whether she had actual knowledge or not -- or
22 actually, it would be imputed to Ms. Bolen, the prosecutor
23 at -- at that point.

24 So -- but there's nothing else in the notes about that
25 again until March of this year. And again, for due process

1 purposes with state action, that knowledge should be
2 imputed because of the interdisciplinary-team approach.

3 But regardless of that, Ms. White knew about it on
4 June 4th of 2012, when she met with Lindsay and she met
5 with Ms. Bentley. And there was no confidentiality barring
6 Ms. White from telling us that then. But all she told us
7 was that she was expanding the time frame in the
8 indictment.

9 And in the e-mail that I've attached to the motion,
10 I'm complaining about, you know, having not been provided
11 any statements under *Brady* or Rule 5 that would -- that
12 would justify the expansion in the time frame.

13 THE COURT: May I ask you a question?

14 MR. GROSE: Yes, sir.

15 THE COURT: I thought I heard Ms. Bentley say that the
16 first word about any third party was on August 11th, 2010,
17 when she said there was abuse by someone other than your
18 client.

19 MR. GROSE: Right. She did say that. That's ---

20 THE COURT: So ---

21 MR. GROSE: --- also -- that -- that was *Brady*
22 material, and -- and we didn't find that out until last ---

23 THE COURT: Well, that ---

24 MR. GROSE: --- Thursday.

25 THE COURT: --- was going to be my question: When did

1 you get that?

2 MR. GROSE: Well, I got that last Thursday, when the
3 counseling records were provided. Now, I -- I -- I'm not
4 -- I don't think Ms. White knew about that. I think ---

5 THE COURT: All right.

6 MR. GROSE: --- the knowledge should be imputed, like
7 -- like a *Kyles v. Whitley* ---

8 THE COURT: Right.

9 MR. GROSE: --- *Riddle v. Ozmint* approach. But the --
10 last Thursday is when I found out.

11 THE COURT: So -- but -- but I didn't hear -- unless I
12 missed something, which is entirely possible -- that a
13 specific alleged perpetrator was identified, other than Mr.
14 Carrier, until sometime in 2012, right?

15 MR. GROSE: Well, what -- what -- what -- what
16 happened -- well, the -- the -- the mother's ex-boyfriend
17 was identified as a perpetrator in 2010. And when we got
18 those notes on Thursday, over the weekend I asked Ms. White
19 if she could tell me the name of that person. I e-mailed
20 her on Saturday, and she got back to me on Sunday and told
21 me that that person was Kenneth Shanburg (phonetic). And
22 by just changing one letter in the name, that was when we
23 discovered that Mr. Shamburg, S-h-a-m-b-u-r-g, was a
24 registered sex offender.

25 THE COURT: But -- but I thought -- and again ---

1 MR. GROSE: Yeah.

2 THE COURT: --- my notes just say that Ms. Bentley
3 testified she was later told it was the mother's ex-
4 boyfriend. But you're saying that occurred on 2010?

5 MR. GROSE: Yes, sir. I ---

6 THE COURT: All right.

7 MR. GROSE: --- I can ---

8 THE COURT: But I thought she was reading something --
9 and I haven't seen all the exhibits. But she -- she read
10 something about a -- an interview in 2012, though.

11 MR. GROSE: Yeah. The -- the -- well, this is Exhibit
12 13.

13 THE COURT: All right.

14 MR. GROSE: And on the second page is where it
15 identifies the mother's ex-boyfriend. I -- I'm not sure --
16 we -- we had talked about March of 2012.

17 THE COURT: That's when it was reopened.

18 MR. GROSE: That's when the case was reopened. And
19 that -- that's when there was the preparation of the
20 testimony about the case regarding Mr. Carrier.

21 THE COURT: So I'm just trying to form in my own mind
22 some kind of chronology. Was there any more specificity as
23 to who the person was or any further details that came out
24 after 2010?

25 MR. GROSE: Sunday, day before yesterday ---

1 THE COURT: Right.

2 MR. GROSE: --- and that was in response to my simple
3 question of, "Who is this ex-boyfriend?" And I -- I -- I
4 wasn't involved in the conversation. But apparently, that
5 information was -- was -- was pretty easy to obtain.

6 THE COURT: But I'm talking about from -- from the
7 victim to Ms. Bentley.

8 MR. GROSE: I don't know if that information has ever
9 been communicated from the victim to Ms. Bentley. But it's
10 been communicated from the victim to Ms. White and then to
11 me, is how I understand that took place.

12 THE COURT: All right. We're going have to break
13 right now.

14 MR. GROSE: Okay.

15 THE COURT: But we'll come back and pick up where --
16 where we are. All right. So we'll just come back at two
17 o'clock. Thank you.

18 (Whereupon, a recess was taken from 1:03 p.m. until
19 2:05 p.m.)

20 THE COURT: All right. Yes, sir, Mr. Grose.

21 MR. GROSE: I'm not sure exactly where to -- to pick
22 it up. I think you were asking me some questions before
23 lunch, and I don't know if we had -- had -- had gotten
24 through all that or not.

25 THE COURT: Well, I was just trying to get the

1 chronology straight as to Ms. Bentley's testimony
2 concerning -- I mean, I understand August 11th, 2010. But
3 I don't -- do you -- where are all the exhibits? Are they
4 -- all right. Thank you, sir.

5 MR. GROSE: I -- I think we were trying to figure out
6 when the identity ---

7 THE COURT: Right.

8 MR. GROSE: --- was disclosed and to who it was
9 disclosed, the circumstances around that.

10 THE COURT: Right.

11 MR. GROSE: So -- and -- and I don't know that we ever
12 finished that conversation.

13 THE COURT: Well, I was just trying to isolate a --
14 when this other gentleman was identified. And I know you
15 were -- said you were told on Sunday?

16 MR. GROSE: I -- I was told on Sunday.

17 THE COURT: Okay. So what does the evidence show as
18 to when -- if I recall earlier, you -- you said you didn't
19 know when Ms. Bentley discovered the identity. And maybe
20 she never did; I don't know.

21 MR. GROSE: I -- I ---

22 THE COURT: But ---

23 MR. GROSE: --- I -- I took Ms. Bentley's testimony --
24 is that she never discovered the identity, other than I --
25 I believe she said it was identified as a -- one of the

1 mother's ex-boyfriends and that there was a ---

2 THE COURT: Right.

3 MR. GROSE: --- parade of boyfriends.

4 THE COURT: Right. I remember that.

5 MR. GROSE: Yeah.

6 THE COURT: But I'm trying to figure out -- since
7 you're -- said you just found out on Sunday, I'm trying to
8 figure out -- you -- and you heard -- you found out from
9 Ms. White?

10 MR. GROSE: Right.

11 THE COURT: So what does the evidence show about where
12 her knowledge came from?

13 MR. GROSE: I assume that Ms. White asked Lindsay.
14 That was what I understood from the e-mail.

15 THE COURT: Okay. Got you. That's all I wanted to
16 know.

17 MR. GROSE: Okay.

18 THE COURT: Okay. So ---

19 MR. GROSE: So ---

20 THE COURT: --- you can go on with your argument. I'm
21 sorry to interrupt.

22 MR. GROSE: Well ---

23 THE COURT: But ---

24 MR. GROSE: --- you know, this is one of those things
25 that, has this been disclosed in 2010, we would've asked

1 about the identity back then. And maybe it would've come
2 forward or maybe it wouldn't have come forward, because
3 somehow perhaps this whole ideal of continued
4 disclosure/delayed disclosure is also wrapped up involving
5 this perpetrator.

6 The -- you know, and I'm -- and I'm not really sure
7 where -- where -- where were getting at, but -- which
8 argument we're in the middle of right now. But we've got
9 the issue of which indictment he should be tried on. And
10 that is something that was also known in 2010, perhaps not
11 disclosed until 2012 to the solicitor's office.

12 But I think under a imputed-knowledge theory, since
13 this is an interdisciplinary team, that information was
14 available to the solicitor. It certainly -- the statements
15 that led to this certainly should've been disclosed when
16 they learned about it, because that was stuff that was
17 necessary to prepare a defense on an expanded time frame in
18 the indictment. And that wasn't disclosed until we
19 actually got the records Thursday afternoon.

20 So we -- we've got that issue as to, you know, whether
21 or not it violates due process for them to expand the
22 indictment at this late date. Then, we also have the issue
23 about the -- that statement -- that expansion of time being
24 tainted by, you know, these Kentucky allegations. Because
25 in Ms. Bell's report, they were already talking about --

1 even before Mr. Carrier was arrested, that -- that he had
2 committed a, quote, similar offense in Kentucky.

3 They -- before Ms. White was involved, they were
4 talking about -- the way I interpret those notes -- and you
5 have them there -- it was Lindsay going to the solicitor
6 with information about the facts of the case from Kentucky;
7 the subsequent conversations with Ms. White about, you
8 know, the facts that if it's similar, it -- it all can come
9 in. The only real testimony preparation that I understand
10 from Ms. Bentley was this March 6th testimony.

11 You have three exhibits from that. One is a two-page
12 exhibit where she wrote out her testimony -- or Ms. Bentley
13 helped her write it out -- was the secretary. There was
14 the -- the treatment note. And there was another
15 handwritten note that appears to be on a -- a -- a loose
16 sheet of paper that, you know, talks about the -- the --
17 the similarities -- or -- or -- well, it doesn't talk about
18 similarities, but it talks about the abuse beginning at age
19 5.

20 Now, this -- even though there's that one prior -- one
21 prior entry, Ms. Bentley, I believe, testified that she
22 didn't get into all the details of the abuse until they
23 were having this March 6th counseling session. So, you
24 know, you -- you -- you've -- you've got -- you've got that
25 situation. And -- and again, to draw an analogy from

1 another area of the law on eyewitness identification, I
2 don't know if you've ever read the book or seen people
3 speak or the documentaries on the -- the Ronald Cotton case
4 ---

5 THE COURT: This is ---

6 MR. GROSE: --- it -- it ---

7 THE COURT: --- Dr. Frunnis (phonetic) ---

8 MR. GROSE: Huh?

9 THE COURT: Frunnis -- isn't that her name? Or Loftus
10 -- is it Loftus?

11 MR. GROSE: I'm not -- I don't remember. But the --
12 the -- everybody in that case believed that they were doing
13 the right thing to identify the perpetrator. And it turned
14 out years later, after two trials, that even though
15 everybody had a good-faith belief they were doing the right
16 thing, they had identified the wrong perpetrator. And --
17 and there -- there ---

18 THE COURT: Well, everybody but the victim, who still
19 thought she had ---

20 MR. GROSE: No. The victim now goes around speaking
21 that she made a mistake.

22 THE COURT: Well ---

23 MR. GROSE: She eventually came to -- to -- to that

24 ---

25 THE COURT: But it ---

1 MR. GROSE: --- conclusion.

2 THE COURT: --- seems like, in the documentary, she --
3 she hadn't reached that point yet.

4 MR. GROSE: Well -- well, on the 60 Minutes thing, I
5 -- okay. But anyway -- but anyway, point being is -- is --
6 is that you can -- you can have tainted evidence with
7 everybody who's acting on behalf of the state thinking that
8 they're doing the right thing. And this process -- this
9 interdisciplinary process, you know, kind of lends itself
10 to doing that: that -- that you early on determine that
11 this is the perpetrator and that everything else is done
12 along the line to -- to -- to -- to try to get that case to
13 court.

14 And, you know, we think that that's what's -- we -- we
15 think there a -- a -- a real risk -- a substantial risk, a
16 substantial danger, that that's what's happened here,
17 particularly with the -- them seemingly ignoring this other
18 information about the mom's ex-boyfriend. Because it was
19 only really dealt with in two counseling notes and -- and
20 -- and they moved back to trying to prepare the case for
21 trial against Mr. Carrier.

22 So, you know, we've got some -- we got some problems
23 about them being able to expand the time frame. But then,
24 if -- if -- to get into the next issue about what the
25 expert can testify to, Mr. Carrier doesn't get a fair trial

1 unless, you know, we get a chance to go into all of this
2 stuff if you allow these opinions.

3 If -- if you allow an opinion about delayed
4 disclosure, then we can talk about delayed disclosure on
5 this other victim. If you allow testimony about continuing
6 disclosure, we can talk about continuing disclosure -- I
7 mean, not other victims, other perpetrator. And -- and --
8 and there, I think, is a -- a strong suggestion here that
9 -- that this mother's boyfriend could've been the one that
10 was doing this all along, but she just wouldn't report who
11 really was abusing her because she was afraid -- it's that
12 testing-waters thing that they talked about -- that she
13 wasn't going to be supported by her -- her -- her mother and
14 her grandmother and apparently her therapist.

15 THE COURT: So may I ask you a question?

16 MR. GROSE: Huh?

17 THE COURT: Suppose I agreed with you that it ought to
18 be tried on the original indictment ---

19 MR. GROSE: Okay.

20 THE COURT: --- okay? And that nobody on either side
21 could go into any testimony; could elicit any evidence,
22 directly or indirectly, about this other alleged incident.

23 MR. GROSE: With the -- with mother's boyfriend?

24 THE COURT: Right. What would be your response to
25 that?

1 MR. GROSE: Well, I -- I -- I -- I think if -- if --
2 my response to that would -- would -- would depend upon
3 what you're going to allow him to testify about. Because
4 if it -- you know, if -- if -- if -- if we return this case
5 back to where it was before the reindictment, then we -- we
6 have a -- have a situation where we -- we had originally
7 planned to try this based on prior inconsistent statements
8 and implausibility.

9 And -- but I have this feeling that they're going to
10 counter and say that if I'm going to go into the prior
11 inconsistent statements and the implausibility, then they
12 should be allowed to offer an opinion about continued
13 disclosure and delayed disclosure, which gets us right back
14 into this problem. Because if they're -- if they talk
15 about continued disclosure and delayed disclosure and
16 nobody is allowed to get into this other perpetrator, then
17 we're keeping information from the jury that's relevant to
18 understanding those opinions.

19 THE COURT: Well, let me ---

20 MR. GROSE: So ---

21 THE COURT: --- you this ---

22 MR. GROSE: --- so -- so that gets back to, I guess --
23 if -- if you're going to exclude them from -- for -- from
24 presenting the expert testimony, then I probably would need
25 another minute to think through that. But I -- that --

1 that's the case that we were expecting to try.

2 THE COURT: Well, here's the issue, it seems to me,
3 reduced to its essence: You're -- you're -- you've asked
4 for a speedy trial ---

5 MR. GROSE: Right.

6 THE COURT: --- which you got, essentially. I mean, I
7 don't ---

8 MR. GROSE: I don't know if we can call yesterday and
9 today ---

10 THE COURT: Well, okay.

11 MR. GROSE: --- "speedy" but -- but -- but we got our
12 ---

13 THE COURT: Maybe ---

14 MR. GROSE: --- trial date.

15 THE COURT: I'm not sure anything I do is speedy. But
16 nevertheless ---

17 MR. GROSE: They say ---

18 THE COURT: --- you got ---

19 MR. GROSE: --- the same thing about me.

20 THE COURT: --- you got what you wanted, as far as the
21 trial date.

22 MR. GROSE: Right.

23 THE COURT: But now you are concerned and reasonably
24 so about the expansion of the indictment because you went
25 from basically a two-year window to a four-year window? Is

1 that ---

2 MR. GROSE: Well ---

3 THE COURT: --- about ---

4 MR. GROSE: --- really, a five-year ---

5 THE COURT: Okay.

6 MR. GROSE: --- window, because it takes all of '99
7 and all of 2003. So it's about a day short of a five-year
8 ---

9 THE COURT: Okay.

10 MR. GROSE: --- window.

11 THE COURT: All right. Fair enough.

12 So -- and even though the date is not a material
13 element in a child-sexual-abuse case for reasons that have
14 been alluded to earlier this morning, you -- you obviously
15 may have preparation challenges and some readiness concerns
16 because of the late notice of the expansion of the
17 indictment. And consequently, you've moved for the
18 restriction of the window of the offense date back to the
19 original two years, essentially. I mean, you're ---

20 MR. GROSE: Right.

21 THE COURT: --- asking to go back to the -- back to --
22 back to start.

23 MR. GROSE: Right.

24 THE COURT: So that brings up the issue that if I
25 agreed with you, then you'd still have discovery, albeit

1 allegedly given to you late and not with enough notice to
2 allow you to effectively prepare. But nevertheless, you
3 now have knowledge about a possible third-party
4 perpetrator. So I'm trying to understand how I can give
5 either side a fair trial without letting one side or the
6 other go into that.

7 MR. GROSE: Well, see, you know, the -- that -- that
8 also gets back to their motion. They've got a motion to be
9 able to present all of this and us not be able to go into
10 the third-party perpetrator. So if -- if -- if you were to
11 ultimately grant their motion, we could be trialing --
12 trying this case on the -- the new evidence, but -- but
13 without either side being able to go into the -- the -- the
14 additional perpetrator.

15 THE COURT: I don't -- I mean ---

16 MR. GROSE: I mean, they -- they said it's not
17 admissible under the rape-shield statute. I disagree, but
18 that's what they say.

19 At -- it -- and I guess my problem is -- is all of
20 this interrelates together. If we're going keep some of it
21 out, we probably should keep all of it out and return the
22 case to what it was. But if they're going get to go into
23 -- and -- and we really haven't talked about the bolstering
24 aspect of -- of the -- these two opinions. The -- I mean,
25 you -- testimony, I think, is going have to be done in such

1 a way that it's not bolstering.

2 But the -- you know, if they're going to be allowed to
3 go into the delayed disclosure and the continued
4 disclosure, then to present a defense, we got to be able to
5 get into all of this other. If we never get into any of
6 that other, it could return to just a -- a credibility
7 issue.

8 See, part of the problem is -- is that they want to --
9 as -- I don't think, under those cases that we'd cited
10 before lunch, they can say that her continued and delayed
11 disclosure is consistent with other children of child-
12 sexual abuse. I think that violates the bolstering cases.

13 THE COURT: I agree with you.

14 MR. GROSE: All right. And so all of this is kind of,
15 you know, interrelated. You know, so I -- I don't -- maybe
16 we need to start and work backwards about -- if you're --
17 if we -- we are allowed -- if she -- if -- if -- if -- if
18 Ms. Bentley's allowed to testify as an expert, you know,
19 what -- what can she testify to? If -- if we knock out the
20 continued disclosure and the delayed disclosure and the
21 PTSD can't be testified to without considering all possible
22 traumas, I -- I'm not sure that we get past that part of
23 *Watson v. Ford Motor Company*, that third prong.

24 THE COURT: All right. Well ---

25 MR. GROSE: It's -- what makes these cases so

1 difficult is one problem kind of loops into another.

2 THE COURT: Okay. Well, I'll tell you what: Let's
3 just take a brief recess and I want to talk to y'all back
4 in chambers, just about some scheduling.

5 MR. GROSE: All right.

6 (Whereupon, the Court was in recess from 2:23 p.m.
7 until 3:22 p.m.)

8 THE COURT: Solicitor or Mr. Grose, whoever wants to
9 put it on the record.

10 MR. GROSE: We had talked about whether this case
11 should be continued for an opportunity to conduct an
12 additional investigation into Mr. Shamburg. We also talked
13 about the issue of the Kentucky prior bad act not being
14 available now. And I think what we have done is we have
15 agreed to continue this case to the week of July 16th, when
16 we have a term of general sessions court scheduled; that
17 the state is not going to try to introduce the Kentucky
18 prior bad act at that trial; and that we would request the
19 powers that be at court administration to assign Your Honor
20 to preside over that term of court so that we have
21 continuity, since you've already heard some pretrial
22 testimony.

23 MS. WHITE: That's the state's understanding, Your
24 Honor.

25 THE COURT: All right.

1 MR. GROSE: And -- and -- and I would just add this:
2 There's some case law out there that I don't know that
3 applies in this setting about a new trial being an entirely
4 new trial. I mean, we -- I think we're all -- by doing
5 that, we're agreeing that the testimony we've done this
6 week would be used for -- you know, we wouldn't have to
7 redo that testimony ---

8 THE COURT: Right.

9 MR. GROSE: --- for pretrial matters.

10 THE COURT: Yes, sir.

11 MR. GROSE: And so just so that the record reflects
12 that.

13 MS. WHITE: Yes, sir.

14 THE COURT: Okay. Well, I think that's certainly a
15 reasonable resolution in the interest of justice. So it's
16 so ordered. We'll bring the jury out. If you just bring
17 them out, I'll explain to them. So they need to call back
18 tonight? Is that ---

19 MR. HODGES: (Nods head up and down.)

20 (Whereupon, the jury entered into open court at 3:25
21 p.m.)

22 THE COURT: All right. Ladies and gentlemen, somebody
23 once compared jury duty to waiting in an airport for an
24 unscheduled flight to leave, and I'm sure that's probably
25 how y'all feel right now. And I'm sorry y'all had to stay

CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, OFFICIAL COURT REPORTER
FOR THE EIGHTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH
CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD IN
THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO
APPEAL, IN THE CIRCUIT COURT FOR GREENWOOD COUNTY,
SOUTH CAROLINA, ON THE 18TH AND 19TH DAYS OF JUNE,
2012.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M

COLUMBIA, SOUTH CAROLINA

OCTOBER 26, 2012

State of South Carolina)
County of Greenwood) Court of General Sessions
 2012-GS-24-1166

State of South Carolina)
 vs.) Transcript of Record
James Lloyd Carrier)
 DEFENDANT)

July 17, 2012
Greenwood, South Carolina

B E F O R E:

Honorable D. Garrison Hill, Judge

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

Andrew Hodges, Assistant Solicitor
Matt Swilley, Assistant Solicitor
Attorneys for the State

Charles Grose, Public Defender
Attorney for the Defendant

Joy E. Holston
Official Court Reporter

I N D E X O F W I T N E S S E S

1		
2	(IC) - Denotes In Camera	
3	(DW) - Denotes Defense Witness	
4	(SW) - Denotes State's Witness	
5		
6	<u>(SW) Susan Bentley (IC)</u>	
7	Direct examination by Mr. Hodges:	68
8	Cross-examination by Mr. Grose:	76
9		
10	<u>(SW) Minor</u>	
11	Direct examination by Mr. Swilley:	113
12	Cross-examination by Mr. Grose:	121
13	Redirect examination by Mr. Swilley:	128
14	Recross-examination by Mr. Grose:	129
15		
16	<u>(SW) Carolyn Travis</u>	
17	Direct examination by Mr. Swilley:	130
18	Cross-examination by Mr. Grose:	133
19		
20	<u>(SW) Jessica Bell</u>	
21	Direct examination by Mr. Hodges:	134
22	Cross-examination by Mr. Grose:	136
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1	<u>(SW) Susan Bentley</u>	
2	Direct examination by Mr. Hodges:	138
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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
1	Support Document	X		42
2	Sexual Trauma Center	X		72
3	Sexual Trauma Center	X		72
4	DSM4 Excerpts	X		77

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
1	Jury Note	X		165
2	Jury Response Note from the Court	X		166
3	Jury Note	X		166
4	Jury Note	X		182

1 THE COURT: Is there any voir dire that either side
2 wishes to present?

3 MR. SWILLEY: Not from the State, Your Honor.

4 MR. GROSE: This is a copy of what we had before and
5 I think the witness list.

6 THE COURT: Yes sir, Mr. Hodges.

7 MR. HODGES: Your Honor, regarding the defenses' voir
8 dire. The questions 2, 3 and 4 basically ask about family
9 members that would be a victim of this type of crime, this
10 sort of thing.

11 MR. GROSE: Yes, sir. I don't know if we need to
12 address this now or we need to address this before the
13 jury is sworn. But there still is an issue about which
14 indictment for him to be tried on. I know we heard a lot
15 of that last time. And so the continuance probably
16 resolved most of that but there is still an issue about
17 the new indictment where the witness listed on the Grand
18 Jury has testified to the Grand Jury wasn't in the State
19 of South Carolina when the Grand Jury met. So I think
20 that indictment is defective. And so we still maintain
21 that he should be tried on the first indictment.

22 MR. SWILLEY: You want to see these indictments?

23 THE COURT: Yes, sir. Okay, what is the State's
24 position?

25 MR. SWILLEY: Your Honor, we would like to proceed in

1 the later indictment.

2 MR. GROSE: Their witness wasn't in the State of
3 South Carolina so I don't know how that indictment is
4 valid. We are not allowed, if I had my way, Your Honor,
5 we would have court reporters in the Grand Jury. I have
6 almost been mocked every time I have brought that motion.
7 So now I am left with just looking at their piece of paper
8 and trying to figure out what was presented to the Grand
9 Jury. And that police officer who is listed there doesn't
10 work here anymore. I don't think he testified to the
11 Grand Jury. I don't think he was even in the State of
12 South Carolina.

13 MR. HODGES: Is there case law that says that the
14 person who testifies in front of the Grand Jury has to be
15 listed on the indictment? I wasn't in the Grand Jury
16 either but obviously probable cause was presented to the
17 Grand Jury because they issued an indictment.

18 MR. GROSE: There is case law that if you put
19 something in the indictment, even if it is not required
20 that you put it in the indictment, that you are bound by
21 that. That is what they put in the indictment. And I
22 have to, I don't know what happened in the Grand Jury. I
23 don't know that probable cause was established. The Grand
24 Jury is not the system that came to us from England where
25 it was intended to affect people. The Grand Jury is now

1 an instrument of law enforcement to prosecute cases. And
2 so we have to look at the indictment and if it is
3 irregular, if there is a problem on its face then it is
4 defective and I have to make that motion before the jury
5 is sworn under the Gentry case.

6 THE COURT: Well, what if the Foreman put down,
7 instead of the date of 6/8/12, the Foreman put down
8 6/8/14, would you say the indictment is defective?

9 MR. GROSE: Well if the Grand Jury didn't meet on
10 that day that might be. But that is not the issue. The
11 issue is is that they have an indictment that says that a
12 witness testified who wasn't in the State of South
13 Carolina.

14 THE COURT: Well, isn't the indictment just a notice
15 document, it doesn't have to--

16 MR. GROSE: No, sir.

17 THE COURT: No, it is not?

18 MR. GROSE: No. Well, the, if all that was required
19 to give notice, Your Honor, they could write it down on a
20 piece of paper and hand it to us, we wouldn't have to have
21 a Grand Jury. There has been some recent case law that
22 talks about, you know, that all that Gentry really held us
23 is that the and objections have to be made before the jury
24 is sworn. It also held that it is not subject-matter.
25 Subject-matter is is that this is a lewd act charge, this

1 Court of general sessions has jurisdiction. What Gentry
2 does not address is the presentment. For there to be any
3 meaning to the constitutional provision of our State that
4 entitles Mr. Carrier to have his case presented to the
5 Grand Jury, the presentment has to have some sort of
6 meaning. And here we have an indictment that says the
7 presentment was made by a witness who was not in the State
8 of South Carolina when the Grand Jury met. And I don't
9 think Gentry has anything to do with the presentment.
10 That is an entirely separate issue.

11 THE COURT: Well,--

12 BAILIFF: Judge, when we have the Grand Jury
13 meeting--

14 THE COURT: We don't need that right now, thank you.
15 If the requirements for the indictment include a witness
16 other than the Solicitor which I think the cases say that,
17 don't they? Isn't that what the whole issue was in that
18 case from, I can't remember the name of it, Justice Lewis.

19 MR. GROSE: It was Caps.

20 THE COURT: Caps.

21 MR. GROSE: Well, if you want to talk about Justice
22 Lewis, Justice Lewis wouldn't have wanted an indictment
23 based solely on hearsay anyway. I think Justice Lewis is
24 descending Cap, will eventually completely become the law
25 in South Carolina. So here what we have is is the only

1 witness that is listed on the indictment is a police
2 officer who was not present in the State of South Carolina
3 when the Grand Jury met. I mean Justice Lewis, his
4 dissent actually says Solicitor or other state agent. I
5 don't think the other state agent part has been completely
6 adopted by our Supreme Court. But they have also not been
7 asked to do that yet either.

8 THE COURT: Well, how do we know if, isn't your
9 motion snake bit from the start because of the secrecy of
10 the Grand Jury and the lack of having a recording. We
11 don't have any idea, when they put down witnesses that
12 could mean that they have read an incident report prepared
13 by Mr. Haden. What would be wrong with that?

14 MR. GROSE: Had they read an incident report and is
15 that what happened?

16 THE COURT: I don't know what happened.

17 MR. GROSE: If that is what happened that would not
18 be valid.

19 THE COURT: Tell me why.

20 MR. GROSE: Because I think the Grand Jury has to
21 make a decision based on testimony. And we don't know,
22 since we don't know who was there and we don't know that
23 the Solicitor wasn't a witness, I don't think that is the
24 practice. But we don't know, we don't know if anybody who
25 had, you know, Mr. Haden was the investigator on the case.

1 He didn't testify last year, he wasn't available. And Mr.
2 Grogan was the person who took the initial report. Mr.
3 Haden was the investigator and he would have had some
4 knowledge about the case. I mean, he actually, you know,
5 had at least interaction with the alleged victim, he had
6 talked with Mr. Carrier. So if, what you have to do since
7 the Grand Jury is secret you have to look at the four
8 corners of the indictment. And the four corners of the
9 indictment, if there is a problem with the four corners of
10 the indictment then the indictment is not valid. And I
11 think that is where we are at. I mean, I don't think the
12 State gets the benefit of the courts speculating about all
13 of the possible things that could have been done for it to
14 be done correctly.

15 THE COURT: Why should you get the benefit of the
16 speculation that Mr. Haden wasn't here. I mean, I don't
17 know that.

18 MR. GROSE: They haven't said that Mr. Haden was
19 here. They tried to get Mr. Haden back from West Virginia
20 last month to try this case. This indictment was done on
21 the eve of that trial. I was jumping up and down and
22 complaining about how that indictment, you know, was last
23 then and then. I mean, I am not speculating and they are
24 not saying he was there. They are just saying it doesn't
25 matter.

1 MR. SWILLEY: Your Honor, the indictment has been
2 true billed, it was sent to the Grand Jury. Somebody had
3 to present testimony that convinced the Grand Jury that
4 there was probable cause in this case. I don't see where,
5 I just don't see where it is deficient.

6 THE COURT: What is sufficient.

7 MR. SWILLEY: I don't see where it is deficient, I
8 don't see that.

9 MR. GROSE: There may not be witnesses back there
10 anymore but they are the ones that prepare these
11 indictments, they are the ones that prepare these dockets
12 of what goes back to the Grand Jury. I mean, they are not
13 even telling you, even making an effort to tell you who it
14 really was but they are not denying that it wasn't Mr.
15 Haden.

16 MR. HODGES: Your Honor, you know, that strikes me as
17 superfluous, I don't know that there is even a requirement
18 that, I am not aware of any law that says it has to say
19 that, you know. And the Court is correct that Mr. Haden
20 is a witness in the case. So I don't know how having his
21 name on here, I don't see how his name on the indictment--

22 THE COURT: Mr. Grose, I share with you your concerns
23 about the current status of the Grand Jury practice in our
24 State. However, I don't know any authority that would
25 require me to quash the indictment based on the identity

1 of the witness. The indictment itself sets forth the
2 allegations for listing of a witness on the form, on the
3 back of the indictment. If that is inaccurate, without
4 any further showing would not be sufficient to render the
5 indictment defective. Of course, this all could be
6 avoided if we did have recordings made of the Grand Jury
7 proceedings. Certainly the State Grand Jury, I believe,
8 does that and I know the Federal Courts do it. And there
9 have been many assaults on the Grand Jury system in
10 circuit court other than Justice Lewis' dissent, there has
11 been no holding for amendment to the code that would allow
12 me to grant your motion which I think is a serious motion
13 and well thought out. And I respectfully deny it. Okay.
14 Anything further on the voir dire?

15 MR. GROSE: No, Your Honor.

16 MR. HODGES: Not from the State, Your Honor.

17 THE COURT: Okay, let's bring the jury in, please.

18 (Whereupon, the jury panel came into open court at
19 approximately 11:35 a.m.)

20 THE COURT: We are about to proceed with the jury
21 selection on the first case that we have for this week.
22 This case is entitled the State versus James Lloyd
23 Carrier. And, Mr. Carrier, if you would just stand up so
24 everybody can see you, sir.

25 (Whereupon, Mr. Carrier stands.)

1 (Whereupon, the remaining jury panel was excused from
2 open court.)

3 THE COURT: We will come back at 1:45. If you have
4 any kind of motions.

5 MR. GROSE: And I assume that Mr. Carrier will remain
6 out on bond?

7 THE COURT: Yes, okay, sure.

8 (Whereupon, a lunch break was taken.)

9 THE COURT: Okay. We are back on the record for the
10 State versus Carrier. We have pretrial matters to be
11 taken up at this time. Motion?

12 MR. GROSE: You want to hear from us first or the
13 State?

14 THE COURT: Does the State have anything you want?

15 MR. HODGES: Well, there seems to be a lot of
16 intertwined issues. And one thing kind of may hinge on
17 another. I know Mr. Grose has got an issue with our
18 witnesses being qualified as expert witnesses. We can
19 take that up. I have not gotten reports from Donna
20 Schwartz-Watts and I understand she is, has got a hearing
21 to talk about the case, he was talking about the predator
22 substitution theory. And I was hoping the Court could
23 give us some guidance on boundaries, what may or may not
24 be admissible. I know generally there is a time, there
25 is a place, a limitations on what witnesses can testify to

1 for disclosure. But I don't know what effect, we have got
2 testimony, questioning about predator substitution. That
3 would seem to open things up to an explanation of any
4 prior consistent statements of Mr. Carrier and this other
5 individual. Kind of go hand and hand with the expert
6 witness issue if our expert witness is allowed to testify
7 about the post-traumatic stress disorder. There are
8 specific incidents that she can talk about that relate to
9 Mr. Carrier that are symptomatic of the PTSD. So that
10 would tend to require testimony specific to the victim's
11 statement about Mr. Carrier. I know when we were here
12 last month there was discussions about this other
13 individual, Mr. Shamburg. I am not sure what Mr. Grose
14 intends to get into with regard to that. But it would
15 seem to be, we are getting into that there was an
16 individual living in the house who is on the sex offender
17 registry, without the jury knowing the defendant is on the
18 sex offender registry. The jury is going to see we have
19 the sex offender who had access to the victim and that I
20 think would tend to mislead the jury. With regard to that
21 other individual, Mr. Shamburg, I think that raises the
22 rape shield issues and it is third party guilt issues. I
23 know I am jumping all around and it seems a lot of these
24 things sort of intertwine. I am not sure how the Court
25 would try to untangle it. Those are the kinds of issues I

1 see we have to sort out so we know the playing field.

2 THE COURT: Thank you.

3 MR. GROSE: I might, I hope I can help you untangle
4 that. Mr. Hodges said something that I would like to
5 elaborate on that. When we were here a month ago we were
6 told that they were calling one witness as an expert. And
7 his statement now talks about witnesses, plural. And I
8 took that to mean in the context, experts. And so before
9 I began my presentation I would like to have some idea of
10 if he is planning on just calling a counselor as we were
11 told a month ago or if he is planning on calling the
12 forensic interviewer as well or hypothetically a third
13 person that I have not been aware of.

14 MR. HODGES: We did intend to call both of those
15 witnesses, Your Honor. The forensic interviewer who would
16 be able to testify about the time and place that she got
17 during the interview. I think she would be qualified as
18 an expert to testify about the delayed disclosure,
19 continuing disclosure. And she actually testified about
20 those things during the pretrial hearings last month. I
21 don't think the forensic interviewer would be able to
22 testify too as to post-traumatic stress disorder
23 diagnosis. It may not be necessary to qualify the
24 forensic interviewer as an expert. I think she can
25 probably testify about delayed disclosure and continued

1 disclosure based on her training and experience.

2 MR. GROSE: I was prepared to address one witness but
3 I think my presentation will cover both of that. We have
4 exhibits, before we start, we have exhibits from before.
5 Does the Court want to pick up where we left off or start
6 over.

7 THE COURT: You want to start over, that would
8 probably be best.

9 COURT REPORTER: Yes, sir.

10 (Whereupon, Court Reporter marks exhibits.)

11 MR. GROSE: I am handing you what has been marked as
12 Defendant's exhibit number 1 for identification.

13 (Whereupon, Defendant's Exhibit 1 was marked for
14 identification only.)

15 MR. GROSE: It is, there is two copies, one is for
16 your law clerk if she would like one. This is the
17 document that I emailed last night to you and Mr. Hodges.
18 Not counting the cover page there is 153 pages and what I
19 want to do is try to explain what those are so that I
20 guess the Court can kind of understand what we are dealing
21 with. By way of introduction, when the counselor was
22 testifying a month ago I asked her what opinions that she
23 and the State plan to present. And there was indication
24 at that time that she and the prosecutor had not even
25 discussed her opinions. Nevertheless we asked her what

1 those opinions were and the first one was, is that some of
2 the, well the first one had to do with the delayed
3 disclosure. The second had to do with partial disclosure
4 and the third one had to do with PTSD. And I understand
5 it now Mr. Hodges is going to call the forensic
6 interviewer, Ms. Bell, to talk about the first two, the
7 delayed disclosure and the partial disclosure. I want to
8 deal with the delayed and partial disclosure first and
9 then I will come back and deal with the PTSD because I
10 think the analysis is going to be a little bit different
11 on that. The starting point I think as we discussed last
12 time is the Watson versus Ford Motor Company case that
13 sets forth the procedure that our Supreme Courts adopted
14 for admitting expert testimony. My concerns with the
15 delayed and partial disclosure deal to some extent with
16 the first prong whether to qualify an expert is necessary.
17 That concern has increased now that they are talking about
18 calling Ms. Bell. And to a much greater extent the third
19 prong which is the reliability of the testimony, whether
20 the testimony is something that can come in. I don't
21 think our challenge is going to relate to the
22 qualifications. One of the cases that Mr. Hodges gave to
23 you dealt with, entirely with the qualifications but not a
24 challenge. I think it was the Henry case but not a
25 challenge to the substance of the expert's testimony.

1 Absent them trying to qualify them in some way we don't
2 perceive ours is more of a challenge to the substance of
3 the testimony based upon what we heard when we were here a
4 month ago. The first document in this package is called
5 Finding Words: Half a Nation by 2010, Interviewing
6 Children and Preparing for Court. This is actually a
7 document of the American Prosecutors Research Institute
8 which is a research in training, technical and assistance
9 affiliate of the National District Attorneys Association.
10 And it is actually this group holds as footnote one on
11 page, this word actually, this organization actually has a
12 trademark on the term, Finding Words, which is, in the
13 literature, particularly in the update for the South
14 Carolina Forensics Interviewers by the Children's Law
15 Office, it begins on page 143. Finding Words is the
16 training course for forensic interviewers that they go
17 through which is now called Child First. But it is
18 essentially, it is not essentially, it is the same thing.
19 They just have changed the name of it. Partly what is
20 significant about this document is that I think that this
21 shows a plan by prosecutors for this Finding Words or
22 Child First protocol to be adopted by Half the Nation in
23 2010. And actually as page 20 of the document or 22 of my
24 packet, the numbers is in the top lefthand corner, the
25 numbers that I added with my copier machine. South

1 Carolina has been participating in this since 2001. This
2 idea of delayed disclosure and we are going to see this
3 unfold a little bit more as we go through these documents.
4 But this idea of delayed disclosure or partial disclosure
5 is talking about the manner in which children disclose
6 sexual abuse. And the delayed disclosure seems to be of a
7 pretty big and central concept to it and central to what
8 the prosecutors, not just in this case but in every case,
9 try to present. The document that begins on page 30 is,
10 it is by Ronald C. Summit and it is the Child Sexual Abuse
11 Accommodation Syndrome. And the Child Sexual Abuse
12 Accommodation Syndrome is where the concept of delayed
13 disclosure comes from. Dr. Summit originated this in 1983
14 and this is the basis of the child first training, it is
15 the basis of how the prosecutors have fought to try these
16 cases particularly on the delayed disclosure. And I put
17 that in there not to go through in it in any great detail
18 but to show, you know, where this concept comes from. The
19 next document which is also Dr. Summit's document that
20 begins at page 52 is an article that he wrote in 1992.
21 And the reason that he wrote that in 1992 was, well I
22 think the title of it speaks for itself, abuse of the
23 child, Sexual Abuse Accommodation Syndrome. The way that
24 his theories were being used in court was not how he had
25 intended them to be. They were being used in court as a

1 diagnosis, as a way of trying to prove that sexual abuse
2 took place. And at the bottom of page 52, page 153 of his
3 article it says the following commentary would address the
4 origins of the child sexual abuse accommodation concept
5 and subsequent distortations, excuse me, distortions.
6 Subsequent distortions that court misused as imposed. And
7 that he hoped that a protectual review can serve as a
8 guide towards more accurate understanding among
9 commissions, judges and advocate attorneys. He says in
10 the background that he, he talked about, what he was
11 trying to do in his own work was trying to put together a
12 list of factors which he believed characterized sexual
13 abuse. But what he was not doing was, he was not trying
14 to create a diagnosis, in fact in this material he talked
15 about how the syndrome means one thing in his context and
16 a different thing in court. On page 156 of his article he
17 says the Child Sexual Abuse Accommodation Syndrome
18 originated then not as a laboratory hypothesis or as a
19 design study of the defined population. It emerged as a
20 summary of diverse clinical consulting expertise defined
21 at the interface of paradoxal forensic reaction. It
22 should be understood without apology that the Child Sexual
23 Abuse Accommodation Syndrome is a clinical opinion, not a
24 scientific instrument. And this gets to the gatekeeping
25 function that the Court has to enter under the third prong

1 of the Watson versus Ford Motor Company analysis. It is
2 actually on the next page that he talks about how, you
3 know, the term syndrome has been misunderstood and
4 misused. On page 158 of his article he says that the
5 Child Sexual Abuse Accommodation Syndrome acknowledges
6 that there is no clinical method available to distinguish
7 valid claims from those that should be treated as fantasy
8 or deception. And he gives no guidelines for
9 discrimination. So he is acknowledging that his theory
10 can't lead to a determination that the abuse took place or
11 because it is based on disclosure that the child is
12 telling the truth about the abuse. And then in quote he
13 talks about and I think he is referring back to his old
14 article that the purpose of the paper is to provide a
15 vehicle for more sensitive, more therapeutic response, the
16 legitimate victims of child sexual abuse and not to invite
17 an active more effective clinical advocacy for the child
18 within the family or within the system of the child
19 protection or the criminal justice system. So what he is
20 essentially doing in this article is writing an article to
21 say that the advocates, the prosecutors, the people who
22 work in this cottage industry that is developed around
23 these cases have misused what his original concept was.
24 And that he is also saying it is not a science, it is not
25 scientific and it was not based on any scientific

1 research. So the next article I have, actually the next
2 two--

3 THE COURT: Wait a minute, wait a second. Let me ask
4 you a question.

5 MR. GROSE: Yes, sir.

6 THE COURT: You say it is not based on a scientific
7 theory. Is that what you said?

8 MR. GROSE: Right. Basically it was based on his
9 observations and dealing with people that he has treated
10 in the practice, it was not based on research.

11 THE COURT: Where does he say that?

12 MR. GROSE: If you look on page 53, my number 53 of
13 the document on page 154 of the journal article, at that
14 last paragraph. He says in the summer of 1979 I put
15 together a list of those factors which were both most
16 characteristic of child sexual abuse and most provocative
17 of rejection and the prevailing adult mythology about a
18 victim. The basis of those typical characteristics was my
19 own fraud consulting experience throughout Los Angeles
20 County as well as personal discussions with such national
21 visionaries and then he list some people going on to the
22 next page. So that was not the basis of scientific
23 research. And actually the next two articles get into
24 reviewing what scientific research there has been out
25 there and the shortcomings of that scientific research.

1 And generally speaking they conclude that there is some
2 support of the idea of the delayed disclosure but not
3 really anything else in the theories. That part of the
4 problem is understanding the, you know, just how prevalent
5 the abuse is, whether the delayed disclosed abuse was
6 actually true. But with regard to the information about
7 the delayed disclosure itself they actually say on page 89
8 of the document that, according to these testimonial
9 standards the only component of the Child Sexual Abuse
10 Accommodation Syndrome that has empirical support is that
11 delay of the abuse disclosure is very common. However,
12 the probative value of expert testimony on delayed
13 disclosure, whether for evidentiary or rehabilitative
14 reasons is undermined. Some evidence suggest that
15 knowledge about delay of disclosure is within the jury
16 perhaps therefore obviating the need for expert evidence
17 in the issue of delay. And that goes right to the first
18 prong of Watson versus Ford Motor Company, whether it is
19 the type of testimony that even requires an expert to be
20 qualified.

21 THE COURT: What were you reading from just now?

22 MR. GROSE: I am reading on, from the article London
23 Bruck, Ceci and Shuman. And I am looking on page 89 that
24 I added to it, it is page 220 of the Scholarly Article and
25 it is the first part of that first paragraph.

1 THE COURT: Well, two things that I want to inquire
2 about of Dr. Summit's, he is an MD, was a professor but in
3 his article he says this on page 55 of your numbering
4 system about three-quarters of the way down and third or
5 fourth paragraph, the last sentence it says understood
6 that the CSAAS is a clinical opinion, not a scientific
7 instrument. And then it says, well I can't find where, he
8 says something along the lines of CSAAS is a test that is
9 only relevant when there is a disputed abuse and when that
10 occurs the jury is the trier of the fact and can make
11 decisions. It said something like that, didn't it?

12 MR. GROSE: Yes, he says something to that effect.
13 You know, but he repeatedly says that it is not a
14 diagnosis, it is not something to pick out a disorder.
15 And what I think he is trying to suggest is, is that if
16 the voracity of the victim is called in to question in a
17 disputed case, quite frankly, we would never be in court
18 in front of a jury if we didn't have a disputed case. His
19 theory could give some assistance in helping the jurors to
20 determine, how to view how that particular witness has
21 been challenged in court. You know, there is a couple of
22 problems with that is, is that, you know, depending upon
23 how they call these witnesses, it may be at the stage
24 where the victim has not been questioned that way. In
25 fact, you know, one of the problems that I have with this

1 case is, I have a problem with the delay but my bigger
2 problem is with the, just the nature of the allegations as
3 they were originally made, there would have been
4 eyewitnesses that the State has never brought forward.
5 That there was evidence that should corroborate her
6 testimony that is just not present. So that doesn't
7 really get into the delayed disclosure type thing. But
8 then what really, you know, we are eventually, I want to
9 show you how they plan on using some of this and some of
10 the other documents that I have in here. This is two sets
11 of those cases that I emailed last night. What happens
12 is, is if we get into a situation where the State is
13 trying to put their thumb on the scale and weigh it in
14 their direction by presenting this delayed disclosure
15 evidence under Dr. Summit's theory then we start running
16 into the line of cases that was most recently a case
17 perhaps not so ironically out of this circuit, State
18 versus McCurley, the case before that, State versus
19 Jennings, the case before that was DSS versus Lisa C., the
20 case before that was State versus Dimpsey. And the case
21 before that going back to 1989 was the State versus
22 Dawkins. And what you get into is you get into the
23 bolstering or the vouchering. And the way that that gets
24 into this is in this case is if you flip to, well starting
25 at page 115 the State was kind enough to put their

1 playbook on the internet. So and you can find an entire
2 copy of it at the Children's Law Center Website in
3 Columbia. But if you go to, well since we are dealing
4 with the forensic interview, if you go to page 131, this
5 is out of, the document is called Prosecution of Child
6 Abuse in South Carolina, a manual for the solicitors and
7 investigators, Fifth Edition, December of 2000. If you go
8 to the beginning of page 131 and 132 is the sample of
9 direct examination for the forensic interviewer. Then on
10 page 133 through half down 135 is the direct examination
11 for the psychologist. What they do, if you look on page
12 132 they have a section on delayed reporting. And the
13 first question what is meant by that term. And then their
14 second question is, in your training and experience how
15 common is delayed reporting among the child sexual abuse.
16 So they are comparing that to what other children have
17 told them either through their experience because they do
18 ask them, I think, in their qualifications how many
19 interviews they have done or through literature that they
20 have read. And then they want to know what factors play
21 in a child's delayed reporting. During a forensic
22 interview do children necessarily disclose all details,
23 past reviews, why or why not. So far we are talking other
24 children, we are not talking about the person in the case.
25 And when you get into this you also get into this in the

1 direct examination of the counselor psychologist. And the
2 questions are more detailed. But what they are ultimately
3 wanting to ask is, if you look on page 134 in case
4 specific delayed disclosure, well the first question is
5 they try to relate this case to the broader cases that
6 they have looked at. And then number two, based on your
7 training and experience was the victim's delayed reporting
8 consistent or inconsistent with the history of sexual
9 abuse. And then that question repeated in question number
10 nine on 135 about symptoms of trauma and question four in
11 the other related issues about, is this consistent or
12 inconsistent with the victim's history of child and sexual
13 abuse. Right before that, is the evidence in this case a
14 common reaction or not. And so what this does is this
15 gets us right into this line of cases. You know,
16 beginning with Dawkins and Dimpsey. I forget which case
17 is which but one of the two, Dawkins or Dempsey dealt with
18 a child sexual abuse professional saying that children
19 tell the truth, something absurd like ninety-five percent
20 of the time. And then the other case, you know, dealt
21 with, if I remember right, talking about how, you know,
22 their symptoms compared with other children. If you look
23 at the Lisa C. case which is more recent and of course it
24 was a family court case and you were dealing with actually
25 more relaxed rules for admitting the forensic interview

1 but those rules don't really come into play in this case
2 because the alleged victim is over 12 years old. But if
3 you look at page seven of the Westlaw printout regarding
4 the Lisa C. case they get back to citing Dawkins and
5 Dempsey about believing the children. And they say that
6 there was, you know, one issue was not preserved but, with
7 regard to the one that they did decide that the doctor's
8 testimony that the child gave consistent disclosure about
9 putting a car in her vaginal area, biting her butt and
10 putting a car in her rectum, that this consistent
11 disclosure, just using the word consistent like they are
12 trained to do in their playbook gave problems under this
13 line of cases. And led to the Court of Appeals to say on
14 page eight of the opinion, there is little doubt Dr.
15 Reeves found the child's testimony to be credible and the
16 testimony to the effect, to that effect is inadmissible.
17 The Jennings case dealt with the expert saying there is
18 compelling evidence for child sexual abuse and leading to
19 no other conclusion that the expert believed that the
20 child was telling the truth. The McCurley case which was
21 written by Judge Few out of Court of Appeals which is a
22 case that came out of this circuit, I don't think was
23 really any advance in the law because it picked up with
24 Jennings. But what I think was significant in McCurley
25 was is that they addressed a whole bunch of aspects of the

1 interviewer's testimony about what was not appropriate.
2 And there was all of this testimony in that case about,
3 you know, about their opinion that it was compelling. But
4 there was also on page 4 of that opinion that in forming
5 her opinion as to whether something happened she
6 considered that this child appeared to be giving
7 statements that are similar to in my experience and my
8 training what I have learned similar to what other
9 children with the same experiences may have had. And that
10 type of testimony, by comparing this victim to others and
11 saying it is consistent is bolstering the victim's
12 testimony and vouching for the credibility. And one of
13 the things that the Court of Appeals looked at in
14 reversing McCurley and that is, this goes to the heart of
15 how the prosecution tries to try these cases based on what
16 we heard from the proffered testimony a month ago and what
17 we see in their playbook that they have on the internet
18 about how they intend to question these experts in court.
19 So my contention is number one, that, as London pointed
20 out, the ideal delay doesn't require expert testimony so
21 you have that prong of Watson versus Ford Motor Company.
22 But on the third prong on Watson versus Ford Motor Company
23 you have Dr. Summit saying that this was never how his
24 theory was intended to be used, it wasn't scientific. He
25 does argue for how it could be used but that argument

1 plays right into this long line of cases in South Carolina
2 about vouching for the victim's credibility. And so I
3 don't think that that testimony either from the forensic
4 interviewer or from the counselor should be admissible.
5 And that is our position. I would add just one thing, I
6 think it was the Baker case that the State presented. It
7 dealt more with State versus Douglas. Douglas was one of
8 the cases cited in Watson versus Ford Motor Company where
9 the Supreme Court held the forensic interviewer didn't
10 need to be qualified because all the interview was doing
11 was testifying that, she conducted an interview and
12 recommended the medical exam. Unless it has not disclosed
13 that didn't happen here, there is no recommendation for a
14 medical exam, no medical exam took place. That is not the
15 testimony they are planning to offer. So that case is
16 distinguishable and doesn't really add much to the
17 discussion. So that summarizes our position, if you have
18 any questions I will be glad to try to answer them.

19 THE COURT: Thank you for your argument. I do have a
20 question. How is this different than eyewitness
21 identification testimony which has been routinely admitted
22 because it is the same classic expertise, isn't it? We
23 all know memory plays tricks so why do we need an expert
24 to tell us that?

25 MR. GROSE: Well, you know, I don't have an expert on

1 that. You know, I think that, you know, the only
2 eyewitness testimony in this case is going to be from the
3 alleged victim who is going to predictably probably sit
4 right there and Mr. Hodges and Mr. Swilley is going to
5 say, do you see the perpetrator in the room. She is going
6 to predictably point over to Mr. Carrier and say he is
7 sitting there next to the defense lawyer. That is going
8 to be the only eyewitness testimony in the courtroom. She
9 is actually an eyewitness.

10 THE COURT: I understand. What I am talking about
11 though, is I am talking about is the classic testimony of
12 the cases that say you can bring in, as a defense lawyer,
13 an expert witness to assist the jury and its role as the
14 trier of fact by providing expert testimony that
15 eyewitness identification can be unreliable and the
16 reasons for that.

17 MR. GROSE: Well I think the main difference there
18 and I have heard people like Gary Wells and Saul Kassin
19 speak about eyewitness testimony that the, that research
20 has been documented through various types of studies and
21 various types of experimentation where they had control
22 settings and they have had, you know, determined what is
23 going on with the memory in these very fast eyewitness
24 type scenarios. Where here we have literature from the
25 very person who developed the child sexual abuse

1 accommodation syndrome saying it is not a diagnosis. In
2 fact he says that you are never going to find a child
3 sexual abuse accommodation syndrome in the DSM4 DR or any
4 addition. It is not there now and never will be because
5 it is not a disease, it is not a diagnosis, it is not
6 something that has been vetted and has ended up in this
7 book.

8 THE COURT: That would be the only thing you can't
9 find in there.

10 MR. GROSE: Yeah, I mean, everything else is in the
11 book. And there is a lot of controversy about the next
12 edition that is coming out but that is not going to be in.

13 THE COURT: Well neither is faulty eyewitness
14 identification syndrome. So my question is, what is the
15 difference.

16 MR. GROSE: Well, I will get back to my point that
17 the, what London and Summit are saying, the child sexual
18 abuse accommodation syndrome has not been vetted, it has
19 not stood up to scientific scrutiny where the eyewitness
20 identification stuff by, studies by Dr. Wells, Dr. Kassin
21 has been and withstood the scrutiny. It has been accepted
22 to the extent that changes, states are changing how they
23 allow police officers to do the identification.

24 THE COURT: So the expertise, the delayed disclosure,
25 really that is two different things, isn't it. The

1 delayed disclosure and this accommodation syndrome, right.

2 MR. GROSE: The delayed disclosure, if the first
3 prong of the child sexual abuse accommodation syndrome.

4 THE COURT: All right. So you are telling me that
5 there is no or there is insufficient peer review,
6 publication, there is no other data to support the finding
7 of reliability of the underlined Dawkins and Watson
8 require?

9 MR. GROSE: Well, I am telling you that because Dr.
10 Summit and London tell me that in the research that I have
11 provided to you. I am also telling you that if somehow
12 you get over that hurdle, I don't think we can get over
13 that hurdle. And I think our cases you should look at are
14 actually Council and Jones. But if you can get over that
15 hurdle, I don't think you can but if you can get over that
16 hurdle you land in McCurley and Jenkins and Lisa C. and
17 Dempsey and Dawkins. And to some extent State versus
18 Douglas that is cited in Watson versus Ford Motor. There
19 is really I guess two parts to that argument. The experts
20 don't support it but then our case law doesn't allow it.
21 I think you could actually have a situation, well like,
22 you know polygraph may be a better analysis than
23 comparison and eyewitness identification. I mean there is
24 a lot of people, a lot of experts I guess because law
25 enforcement, solicitors, defense lawyers pay their money

1 to be polygraphed. Science is improved but they are not
2 admissible in court. And even if we were to get to the
3 point where they were accepted scientifically they
4 probably still wouldn't be admissible because it is
5 another witness coming in and saying, you know, the victim
6 or the defendant is telling the truth or not telling the
7 truth. And we are just, I just don't see our court in
8 South Carolina ever allowing, whether it is a polygraph, I
9 haven't been at these arguments but I think like in the
10 Douglas argument that Justice Pleicones, some of this
11 child sexual assault stuff to human polygraphs. They were
12 basically serving that same type of function. Of course,
13 Justice Pleicones was the one who wrote the majority
14 opinion in the Jennings case.

15 THE COURT: A human truth detector.

16 MR. GROSE: Maybe I should let you come down here and
17 you make my argument. That is where I am going, I don't
18 want their human truth detector coming in here and saying
19 that you should believe this victim when she points to Mr.
20 Carrier.

21 THE COURT: All right, I understand your argument.
22 You have made it very well. Okay. Mr. Hodges or Mr.
23 Swilley.

24 MR. HODGES: Your Honor, I would point the Court to
25 the two cases that I have provided. The first one is

1 State versus Henry, it is 329 SC 266. In that case the
2 State offered a witness, an expert psychotherapist with a
3 speciality of child sexual abuse. If you look at the end
4 of 465 to the beginning of 466 the witness Badger
5 testified about delayed disclosure in this particular case
6 and very much on point with what we have got in this
7 situation. Badger testified about delayed disclosure and
8 that phenomenon and then went on to give an expert opinion
9 about posttraumatic stress disorder. The Court goes on to
10 page 469, that psychotherapist with a specialty in child
11 sexual abuse may be qualified to their opinion to a CSC.
12 I point this out now so to point out the fact that in this
13 particular case that it was affirmed on that particular
14 witness testified about delayed disclosure. I will agree
15 with Mr. Grose that the witness can't get up there and
16 vouch for creidilbity of the victim. But I think a
17 witness can assist the trier of fact in providing
18 information that they would not otherwise be necessarily
19 privy to. There may be a question in a juror's mind about
20 why would this victim have waited so long to disclose.
21 And the explanation from the witness about this phenomenon
22 of delayed disclosure, that would help to resolve that
23 much in the juror's mind. If they have got questions
24 about why is the story expand as time went on and the
25 explanation about particular disclosure would resolve a

1 question in the juror's mind. And I think that could be
2 done in a broad sense without commenting specifically on
3 whether they believe this particular victim.

4 THE COURT: Well, I think you are right about that.
5 But how can you do it and square it with Watson. It would
6 have to be, do you agree it would have to be given by an
7 expert.

8 MR. HODGES: Well, we have got two witnesses. One
9 who would certainly intend to qualify as an expert. But I
10 am not certain that you have to have a person qualified as
11 an expert to testify about the continuing disclosure,
12 delayed disclosure. And I point to State versus Baker
13 which is 390 SC 56. In that particular case the expert
14 was qualified as an expert in forensic interview and the
15 Court would say it is really not necessary to qualify as
16 an expert. But I think if they have got sufficient
17 training to be able to provide that information.

18 THE COURT: Doesn't that take it outside the ambient
19 of delayed opinion testimony though if, I mean it sounds
20 to me like it is kind of, as they say you are trying to
21 cook ice and you can't have it both ways. It is either
22 something that is within everyone's kin and if that
23 particular witness just happened to have an opportunity to
24 make an observation. But if it is an observation based on
25 training, education and experience then it has got to be

1 expert testimony. Isn't that what the whole 600 series of
2 rules of evidence is? So how do we get around the issue
3 of whether the underlining science that is reliable of
4 disclosure issue.

5 MR. HODGES: All I would able to provide to you, Your
6 Honor, is State versus Henry where that exact thing is
7 testified to was affirmed.

8 THE COURT: What page is that on.

9 MR. HODGES: On the end of page 465 and beginning of
10 page 466, third sheet of paper on the case that I handed
11 you. It begins with Badger explaining the phenomenon,
12 page 466. It is on the third page of the case. If you
13 look right in the middle of that page, slightly below the
14 middle on page 466.

15 THE COURT: Okay, I have got you, yes sir. I am
16 sorry, refresh my memory, which witness is the counselor?

17 MR. HODGES: The counselor is the one who, Susan
18 Bentley. She is the one who counseled.

19 THE COURT: So she would be testifying, if allowed,
20 as to PTSD.

21 MR. HODGES: Do you recall last month Mr. Grose was
22 cross-examining her and ask what contingents that she
23 would have and she indicated her three, continuing
24 disclosure, delayed disclosure and PTSD.

25 THE COURT: Okay. All right. Thank you. All right,

1 what about that?

2 MR. GROSE: Of course I haven't gotten to the PTSD
3 yet, Judge. But the problem with, the prosecution relied
4 on State versus Henry case. If you look on page 468, the
5 South Carolina site will be on page 277, at the bottom of
6 that page. This is the Court of Appeals and it says,
7 Henry does not challenge the substance of Badger's
8 testimony rather he argues the State failed to present the
9 evidence that she was qualified to give a diagnosis of
10 PTSD. Henry sites for lack of medical degree. And then
11 they go in to talk about training for a witness. Henry
12 deals with prong two of Watson versus Ford Motor Company.
13 I am not even going near prong two. Had Henry made a
14 challenge to the substance of Badger's testimony this case
15 probably would have come out a lot different, probably
16 wouldn't have come out like Jennings did or like Dawkins
17 did or Dempsey or Lisa C. did. But that wasn't raised
18 here, that is the problem.

19 THE COURT: But aren't you essentially attacking the
20 reliability of PTSD?

21 MR. GROSE: Well actually I am not going to attack
22 the reliability of PTSD so far. My problem with PTSD is a
23 little bit different and I will go into that.

24 THE COURT: Isn't delayed disclosure part of PTSD?

25 MR. GROSE: I don't think delayed disclosure is part

1 of PTSD. There is an avoidance part of PTSD. If you want
2 to talk about avoidance the real evidence in avoidance
3 that we had in this case was the alleged victim avoiding
4 talking about Kenneth Shamburg. The problem that I have
5 with the PTSD in this case is not PTSD is a silence, is
6 that they have not done a proper trauma assessment.
7 Because what they want to do and this gets into Mr. Hodges
8 third party guilt and let me stop right here and take a
9 relevant tangent for a second. I am not going to go near
10 Kenneth Shamburg. I am not going to go near third party
11 guilt unless they present somebody who testifies that this
12 child is suffering from posttraumatic stress disorder
13 caused by James Carrier's abuse. And if they go there, if
14 the Court allows them to go there then I am picking up
15 this big book and talking about how you have to go through
16 a trauma assessment and how this witness, Ms. Bentley,
17 basically testified last month that she ignored this stuff
18 about Kenneth Shamburg. She ignored the avoidance that
19 he, that when she asked her to talk about, write down what
20 he had done to her she wouldn't do it, she didn't do it at
21 the second session and then she let it go. The problem
22 with PTSD is, is that you could have for example, somebody
23 who is telling the counselor, well, I was abused as a
24 child growing up and then you have all of these other
25 symptoms of PTSD. Well unless you ask, well, what about

1 that accident where you saw your father killed by a
2 freight train or what about when you were in Iraq and saw
3 your friend get blown up by a mine on the side of the
4 road. Unless you know what all the traumas are and I am
5 told that there is often times more than one trauma.
6 Unless you know what all of those traumas are you can't
7 make that diagnosis. And it is not just the diagnosis, it
8 is almost like a medical malpractice case, an automobile
9 accident with a herniated disc. They are saying not only
10 does she have this but it was proximately caused by James
11 Carrier. So when you add that additional level of the
12 causation that is even more reason to go through this
13 trauma assessment which I don't think they did, there
14 wasn't any testimony. And in fact the whole testimony was
15 is that they ignored Mr. Shamburg. Now I don't want to go
16 there but if that is the witness that they want to call
17 and they want to go into that then we have got a right to
18 confront it. And I think the problem with PTSD is not
19 prong one and not prong two, it is prong three, not that
20 the science isn't reliable but they have not done the
21 reliable evaluation that is required to make that
22 diagnosis and to connect it to James Carrier.

23 THE COURT: Well aren't we really going to have to
24 have Ms. Bentley here to have her proffered as a witness
25 to see if her testimony is admissible. I know she came

1 last month but I know our focus there was more on the
2 timing of the disclosure of Mr. Shamburg.

3 MR. HODGES: And she is here, Your Honor.

4 THE COURT: Okay. Well, my next question then is, do
5 we need to do it today. Is there any reason we can't get
6 the trial started, when is she scheduled to testify in the
7 State's case, if you don't mind.

8 MR. HODGES: We don't have a very long case but she
9 is here in court.

10 THE COURT: I was just wondering if we couldn't go
11 ahead and get the trial started.

12 MR. GROSE: My problem with that is, number one, I
13 think we know what her opinion is from when we proffered
14 her before. I don't know that she needs to be called
15 again. But I am not going to object to that. But it
16 could affect what is said in opening statements.

17 THE COURT: Okay. That is why I asked. I tell you
18 what, let's take a short break and we will come back and
19 finish this motion. I know there is a civil matter I have
20 got here and I believe the lawyers have been here waiting
21 patiently. I want to try to get the opening statements
22 done this afternoon. Okay. Come back at ten after 3:00
23 hopefully.

24 (Whereupon, a short break was taken to hear a civil
25 matter.)

1 THE COURT: You want to go ahead and call Ms.
2 Bentley?

3 MR. HODGES: Susan Bentley.

4 SUSAN BENTLEY, being
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 By Mr. Hodges:

8 MS. BENTLEY: Your Honor, South Carolina code section
9 40-63-190 will not allow me to disclose information
10 regarding a client of sexual trauma and counseling center
11 until the Court determines if this is necessary and in the
12 public interest.

13 THE COURT: All right, then I understand the--

14 MR. GROSE: Your Honor, I don't think it is necessary
15 so I would ask that you not order her to testify.

16 THE COURT: I think I have already ruled in a
17 previous hearing. I certainly understand your position.
18 Thank you.

19 Q Ms. Bentley, you testified last month on
20 cross-examination, Mr. Grose was asking you about what
21 your opinions would be in this case. You indicated at
22 that time one of your opinions was that the victim in this
23 case was suffering from PTSD. Is that correct?

24 A I do believe that, I can't remember what I said last
25 month.

1 Q Would it be fair to say that the victim in this case
2 is suffering from PTSD?

3 A Yes.

4 Q Are you familiar with the Diagnostic and Statistic
5 Manual of Mental Disorders?

6 A Yes.

7 Q I am going to hand that up to you if you need it for
8 any reference. Could you describe or explain for us the
9 diagnostic criteria for a diagnosis of posttraumatic
10 stress disorder?

11 A The essential feature of posttraumatic stress
12 disorder is that the person with PTSD has a development of
13 characteristics in response to exposure to a traumatic
14 stressor. And this stressor may be, a stressor rather
15 that is experienced is an event that involves actual or
16 threatened death or serious injury or other threat to
17 one's physical integrity. The person's response to the
18 event must be one of intense fear, helplessness or
19 hopelessness or horror, excuse me. You see in PTSD with
20 combatants in war and with sexual trauma most
21 predominately. But of course other things can cause PTSD.

22 Q DSM, does it not actually gives an example of
23 children that have suffered sexual abuse, potential
24 stressor for PTSD?

25 A With children the stressor or the sexual abuse for

1 instance that may be causing the trauma does not have to
2 be violent, it can just be, what is it that I want to say,
3 it is just inappropriate sexual tension without threat of
4 violence can constitute a stressor for PTSD.

5 Q Can you relate those criteria to symptoms that you
6 have seen with regard to the victim in this case?

7 A Yes, I can.

8 Q Would you do that for us?

9 A The victim in this case, Minor she has
10 said on numerous occasions that she thinks obsessively
11 about the abuse. She has, right before she reported her
12 abuse in 2009 she said she was thinking about it almost
13 every day. She has reported flashbacks about the abuse on
14 numerous occasions. She said that she has difficulty
15 concentrating, she forgets what she reads and she can't
16 focus on school work. She is very avoidant about talking
17 about the sexual abuse and her feelings in regards to it.
18 In fact her whole affect is blunted, has been, it has
19 certainly improved recently. But when I first began
20 counseling with her she had a very flat affect, totally
21 out of touch with her feelings. She had no eye contact
22 and a complete distrust of almost everybody. She was, the
23 only emotions she was showing at that time was
24 irritability and intense anger that would flair up from
25 time to time. Her emotions were suppressed. She has had

1 a couple of episodes of disassociation which is where she
2 would leave the present and be back into the, sort of like
3 a flashback. She said that she acted out sexually at the
4 age of eight with a little boy nextdoor to her, she
5 attempted to show him how to have sex which is a symptom.
6 She was very anxious around triggers that reminded her of
7 the sexual abuse and she, there were two incidences
8 particularly that showed this anxiety and one of them was
9 in March of, excuse me, November of 2010 when the
10 defendant walked into Kmart and she had such a panic
11 attack that she quit her job and didn't go back. And then
12 in March of 2011 when she found out that the defendant was
13 bonded out of jail she had a severe anxiety attack and
14 spent some time in the emergency room to recover.

15 MR. GROSE: Your Honor, I move that these emergency
16 room records to be, this is the first time I have heard
17 about this. There may be Brady material in there. They
18 have got investigators in their office and can take a
19 court order down there and probably have those by close of
20 business today.

21 MR. HODGES: We can do that, Your Honor, our
22 investigator is sitting right here.

23 THE COURT: Okay. All right.

24 MR. GROSE: Is there any other, I mean we had a
25 speedy trial order to try this case in June. On the eve

1 of that trial we found out that there was relevant
2 material information out there that had not been provided.
3 Now we are finding out that again here today, after we
4 have already backed off of our speedy trial, I want to
5 know if there is anything else.

6 A That was in my records that you have.

7 THE COURT: Hold on a minute.

8 A I am sorry.

9 THE COURT: I think he is talking to me.

10 A I am sorry, I just wanted to tell him that.

11 MR. GROSE: I want to know if there is anything else.

12 I mean these records were given to me on the Thursday
13 afternoon before the trial last time. I barely have had
14 time to go through and review those. In fact, I asked and
15 got today copies of their protocol. I mean part of their
16 protocol, part of their agreement, their interagency
17 agreement, I will mark these as the next two exhibits.
18 Part of their interagency agreement is to try to keep this
19 stuff confidential and try to keep me and my client, this
20 Court and those jurors from finding out about the truth.
21 I am angry about it.

22 (Whereupon, Defendant's Exhibit 2 and 3 was marked
23 for identification only.)

24 THE COURT: Well, Mr. Grose, I understand your, I am
25 not convinced that anybody else in the courtroom knew

1 about it before we and we just heard it. Do you have any
2 knowledge about this?

3 MR. GROSE: She did, she is part of the interagency
4 with them. In fact his name is mentioned in one of the
5 documents, the document from 2009, his name is mentioned
6 as far as responding to records.

7 THE COURT: Okay. Well, did you know anything about
8 this emergency room records?

9 MR. HODGES: As the Court may be aware I got saddled
10 with this case yesterday and trial today.

11 THE COURT: I am aware of that. You can continue
12 your examination.

13 MR. HODGES: Thank you, Your Honor.

14 Q You were talking about symptoms that the victim
15 exhibited as it relates to the PTSD, you can continue with
16 that.

17 A One symptom of PTSD is an inability to recall an
18 important aspect of the trauma. And that's typical of
19 PTSD clients, that they don't remember, they don't
20 remember everything especially all at once. For instance,
21 they may forget that the trauma occurred when it occurred.
22 That might be an issue that, in other words,
23 forgetfulnesses about some of the trauma is common and she
24 had forgotten that it occurred earlier than she had
25 originally thought.

1 Q Does that, in some respects, relate then to the
2 continuing disclosure issue?

3 A Yes.

4 Q She opens up more and remembers more?

5 A Yes, continued. Disclosure is usually a process with
6 victims.

7 Q Is that interrelated with PTSD?

8 A Well, it is because victims try to repress the memory
9 of the events, that is part of PTSD. They don't want the
10 uncomfortable feeling that comes when they remembered what
11 happened. So they try not to think about, they try very
12 consciously not to think about it. And so when you are
13 trying to forget something it is very easy to do that.

14 Q Does that relate then if they are trying to repress
15 and avoid it, does that also relate to the delayed
16 disclosure issues?

17 A Yes, certainly it does. The reluctance to talk about
18 it at all because it causes so much discomfort, emotional
19 discomfort.

20 Q Were there any other symptoms that you did not relay?

21 A Let's see, I believe that is the majority of them.

22 Q Are you able to connect this diagnosis of PTSD to any
23 particular depressor?

24 A She relates her anxiety to thoughts of the abuse by
25 the defendant.

1 Q Did the episodes that you talked about relate as well
2 to the defendant?

3 A Yes. I am sorry, I forgot to say dreams also,
4 nightmares.

5 Q What about nightmares?

6 A She has reported having nightmares also about the
7 abuse by the defendant.

8 Q Specifically about abuse of the defendant?

9 A Yes.

10 Q Is there any way you can differentiate stressors
11 caused by the defendant versus Mr. Shamburg who, I
12 believe, she reported some contact to you later on?

13 A I know that after, she has said that she was abused
14 by the defendant between the ages of about 5 and 10. And
15 she has since that time, she has had the dreams and the
16 anxiety, the sexual acting out. I think all of those
17 things happened before this other abuse that I understand
18 took place when she was 13 or 14.

19 Q So are you indicating that the PTSD has been in place
20 for quite some time?

21 A Yes. And there is also the phenomenon of delayed
22 onset of PTSD which is common too. So all of the symptoms
23 could be related even after the other event, could be
24 related to the first trauma.

25 Q What was her demeanor or affect when she spoke of

1 this other incident, this other individual?

2 A She was not visibly upset when she talked about it.
3 She simply brought it up after she had written about the
4 abuse by Mr. Carrier. And she just said, well, that's not
5 the only abuse that I have had. She mentioned it at that
6 time. And I asked her about that, of course. And she
7 said, well, I don't really want to talk about it.

8 MR. HODGES: Your Honor, I think that is about it
9 regarding PTSD.

10 THE COURT: All right. Mr. Grose, cross-examination.

11 MR. GROSE: Thank you.

12 CROSS-EXAMINATION

13 By Mr. Grose:

14 Q When was the first time that you saw Minor

15 A April 29th of 2009.

16 Q And how old was she at that point?

17 A She was 16.

18 Q And so the first time that you saw her was after the
19 alleged abuse with Mr. Carrier, right?

20 A Yes.

21 Q And it was also after the alleged abuse with Mr.
22 Shamburg, right?

23 A Yeah, I don't know his name but that is, she didn't
24 tell me his name.

25 Q The mother's--

1 A -- ex-boyfriend, yes.

2 Q So both of these abuses before you ever saw her?

3 A That's true.

4 Q Okay. Now, Mr. Hodges handed you the DSM4 report.

5 Just so we know what we are talking about I am going to

6 hand you what has been marked as Defendant's exhibit

7 number 4. Is that part of the DSM4 where the PTSD

8 appears?

9 (Whereupon, Defendant's Exhibit 4 was marked for
10 identification only.)

11 A Yes.

12 Q Well, you want to look through it and make sure the

13 whole thing is there. That is the part we are talking

14 about, right?

15 A Yes.

16 MR. GROSE: Your Honor, I have a couple of extra
17 copies for you and the law clerk.

18 THE COURT: Thank you, sir.

19 Q If you will look, I guess three pages into that, will

20 be page 465 I believe. The section about specific

21 cultural and age features. And that last sentence on that

22 page it talks about and the plural that is specific

23 assessments of traumatic experiences, I am not sure what

24 the next word is, symptoms are needed for such

25 individuals. Is that right?

1 A You are talking about for immigrants?

2 Q Well, let me rephrase the question. If you are going
3 to diagnose somebody with PTSD and try to relate it to
4 events you need to know all of the traumas that they
5 suffered in their life, don't you?

6 A Well, you have to know that there has been at least
7 trauma in their life to diagnose PTSD. It would be
8 helpful to know all the traumas.

9 Q If you are going to relate to an event though, you
10 have got to know all of them, don't you?

11 A Not necessarily.

12 Q Well, if somebody was sexually abused but they also
13 witnessed their best friend being blown up by a roadside
14 bomb in Iraq, you would need to know about both of those
15 events, wouldn't you?

16 A To diagnose them with PTSD?

17 Q If you are going to relate it to an event?

18 A Either one of those incidents could cause PTSD.

19 Q Right. So you need to know about both of them if you
20 are going to relate it to the event, right?

21 A No.

22 Q Well, if you don't know about the friend getting
23 blown up in Vietnam how do you know that that is not the
24 cause of it?

25 A Well, you talk to the client and see which event has

1 been the stressor.

2 Q But part of PTSD is avoidance, right? I mean, if you
3 look over in the diagnostic criteria number C, persistent
4 avoidance, right. So if they are avoiding talking about
5 one of these events that could actually be their big
6 problem with causing the PTSD, right?

7 A I try to, in my counseling I try to find out all the
8 stressors in a person's life, that is routine.

9 Q But you didn't do that here because you don't know
10 what Kenneth Shamburg, the mom's boyfriend did to her.
11 You don't know that, do you?

12 A No, I don't.

13 Q And part of why you don't know that is, is that it
14 only came up in two counseling sessions, right?

15 A I believe it was three.

16 Q Okay, it came up in three?

17 A It is because I brought it up in two sessions
18 following the first one.

19 Q All right, the first time you brought it up you asked
20 her to write down a narrative of what Kenneth Shamburg,
21 the mother's boyfriend did to her, didn't you?

22 A Yes.

23 THE COURT: Hold on just a second. I reluctantly
24 interrupt you, Mr. Grose, because I want this particular
25 hearing to be focused solely on whether or not the expert

1 testimony is admissible.

2 MR. GROSE: If she can't relate this to a specific
3 event because of persistent avoidance of discussing
4 Kenneth Shamburg, we don't know what role Kenneth
5 Shamburg's abuse of Minor played into the PTSD.

6 THE COURT: That doesn't have anything to do with
7 admissibility of the evidence. My point, my intent and my
8 ruling is that you can find your questions at this stage
9 of the proceeding to the criteria for Watson versus Ford
10 and your arguments earlier about why this testimony is not
11 admissible as expert testimony.

12 MR. GROSE: Well, part of my arguments earlier was,
13 is that if they were allowed to connect to PTSD to what
14 James Carrier did which is what Mr. Hodges asked about
15 then I need to be able to sort through and see what
16 Kenneth Shamburg's role in it was. And I am looking at
17 the persistent avoidance. I am, I tell you what. Let me
18 start on the page before, diagnostic criteria for post
19 traumatic stress disorder. Okay. Your Honor, it is not
20 just that she is saying that Minor has PTSD. She is
21 saying that Minor has PTSD caused by James Carrier. And
22 that is where, I would probably be willing to concede that
23 Minor has PTSD. I think Kenneth Shamburg played a big
24 role in that.

25 THE COURT: But your motion that we are taking as

1 proffer to put into context is to disqualify this witness
2 from testifying because it doesn't meet the criteria of
3 Watson v. Ford. Are you telling me that you agree that
4 she is qualified to testify that the testimony about PTSD
5 is reliable?

6 MR. GROSE: Your Honor, I think that PTSD is a
7 reliable diagnosis.

8 THE COURT: Okay. So then what is the point of the
9 proffer then?

10 MR. GROSE: The proffer is that under the third prong
11 of Ford, Watson versus Ford Motor Company you still have
12 to consider the reliability of her testimony. And part of
13 what, she has already testified that you have to know
14 about all the traumas.

15 THE COURT: Well, it is the reliability of the
16 underlining science.

17 MR. GROSE: I think it is the reliability of the
18 testimony, Your Honor. If she didn't apply the science
19 correctly you can exclude it.

20 THE COURT: Well, how does that not go to the weight
21 of the testimony. I don't understand that.

22 MR. GROSE: Well, I mean it also goes to their motion
23 that I not be allowed to ask about Kenneth Shamburg. And
24 so we have got to get through that either now or later. I
25 will be honest, I have a feeling you are going to let this

1 in over my objection. But I have got to be able to show
2 you why I need to bring up Kenneth Shamburg. I don't want
3 to go there.

4 THE COURT: I understand why you have to bring him
5 up. I don't, I mean I will be glad to hear further
6 argument if the State wants to make any. But I have got
7 enough information on which to make a ruling about the
8 Shamburg evidence and the motion you have made to
9 disqualify the expert.

10 MR. GROSE: Let me go through the diagnostic
11 criteria.

12 THE COURT: Okay.

13 Q Under A, there is two things under A. Tell me how
14 that applies to Minor

15 A As I said, it says the person experienced witnessed
16 was confronted with an event or events that involved
17 actual or threatened death or serious injury or a threat
18 to the physical integrity of self or others. And on a
19 earlier page in the diagnostic manual, second page of what
20 you gave me, it says for children sexually traumatic
21 events may include developmentally inappropriate sexual
22 experiences without threatened or actual violence or
23 injury. And that still qualifies as an event, a traumatic
24 event for this diagnosis.

25 Q How does number two apply because they both have to

1 apply, right?

2 A Yes. The person's response involved in intense fear,
3 helplessness or horror. Minor reacted with
4 helplessness. I talk about, usually explain it with
5 flight or freeze, she was in the freeze mode response.
6 And she felt helpless to prevent what Mr. Carrier was
7 doing.

8 Q So we are not talking about delayed onset then? I
9 mean you testified earlier about delayed onset.

10 A Delayed onset of PTSD?

11 Q Yes.

12 A Well, I am saying all kinds of symptoms can show up
13 later. They can show up immediately and they can show up
14 later.

15 Q And B on the next page. Which one of those is
16 present?

17 A Recurrent and intrusive distressing recollections of
18 the event including images, thoughts or perceptions.
19 Recurrent distressing dreams of the event. Acting or
20 feeling as if the traumatic were recurring. Intense
21 psychological distress at exposure to internal or external
22 cues that symbolize or resemble an aspect of the traumatic
23 event. And the physiological reactivity on exposure to
24 internal or external cues that symbolize or resemblance as
25 aspect of the traumatic event.

1 Q Now, are you basing these conclusions on things that
2 you observed yourself or her statements?

3 A I am basing them on her account of how she responded
4 to the stressor.

5 Q Under C, three or more have to be present, which
6 three are present?

7 A Efforts to avoid thoughts, feelings or conversations
8 associated with the trauma. And a very difficult time
9 getting her to talk about the trauma in counseling.
10 Efforts to avoid activities, places or people that arouse
11 recollections of trauma. Inability to recall an important
12 aspect of the trauma. I think I mentioned the time
13 period.

14 Q Well, so she has difficulty recalling the event?

15 A No. She does not have difficulty remembering that
16 she was abused. That has, I don't think she has ever
17 forgotten that she was abused. She just has some
18 difficulty in remembering the time period that it involved
19 which is common.

20 Q What else on this list?

21 A Feeling detached and estranged from others. A huge
22 distrust of everyone almost, a very short list of people
23 that she trust and it took me a long time to get on that
24 list. Restricted range of affect was quite obvious. Had
25 to try to teach her what her feelings, or try to bring it

1 out for her, to help herself identify her own feelings.

2 Q So 1, 2, 3, 5 and 6, right?

3 A And to some degree diminished interest or
4 participation, significant activities. She was pretty
5 socially, what is the word, isolated.

6 Q And D, there has to be two or more of those. Which
7 two or more are present?

8 A The irritability or outburst of anger, difficulty
9 concentrating.

10 Q So 2 and 3?

11 A Yes.

12 Q And B, C and D have to be present more than a month.
13 Do you know when it began?

14 A No, I don't have a timeline when these things began.

15 Q And number F, the disturbance causes clinically
16 significant distress or impairment in social occupation or
17 other important areas of function. Where was she impaired
18 there?

19 A Minor _ could not look at people in the eye. She had
20 a hard time relating to others. And she had a disinterest
21 in really interacting with many people.

22 Q Now, can there be other causes of that?

23 A Yes.

24 Q What are those?

25 A Those are common with low self-esteem, feeling

1 worthlessness, feelings of un-lovability. And all of
2 those are generally associated with sexual abuse but it
3 can be caused by other things.

4 Q Like parents not being supportive?

5 A Could be.

6 Q Do you have some evidence of that in your notes,
7 don't you?

8 A Yes.

9 Q Now, as far as the opinion of relating this to Mr.
10 Carrier, is that based on anything other than Minor
11 statements to you?

12 A No.

13 Q So that is based entirely on her statements to you?

14 A That's right.

15 MR. GROSE: If I can have a moment, Your Honor.

16 THE COURT: Sure.

17 MR. GROSE: That is all I have at the moment but I do
18 want to incorporate all we had before about Mr. Shamburg.
19 You kind of cut me off from going into some of that. But
20 I think that, as the gatekeeping role they are asking you
21 to pick and choose about what her testimony is going to
22 be. If they are going to offer her then I think that we
23 are entitled to a complete cross-examination of the weight
24 of all the evidence at that point. So I incorporate our
25 prior hearing with this witness, Your Honor.

1 THE COURT: All right. You certainly are entitled to
2 fully explore your pretrial motions. But the proffer for
3 reasons of time efficiency doesn't have to be in the
4 matter set on relevance to it.

5 MR. GROSE: I am sorry, I didn't hear you.

6 THE COURT: I said the proffer, part of my
7 gatekeeping functions is also to make sure pretrial
8 proffers don't end up taking all the trial time. So that
9 is what I was trying to avoid unless it were necessary and
10 I concluded that it wasn't necessary. I understand your
11 argument on Mr. Shamburg. Does the State have any further
12 questions of this witness?

13 MR. HODGES: No, Your Honor.

14 THE COURT: Okay. Thank you, Ma'am. Any further
15 argument on the motions?

16 MR. GROSE: Yes sir, Your Honor. Again, this has, to
17 me this is a lot, part of what they are trying to do is a
18 lot like what happened in an injury case. I have a broken
19 bone and you make a determination that I have a broken
20 bone. But now was that caused by the automobile accident
21 or was that caused by me falling off of my bicycle, later
22 in the day after the automobile accident. And that
23 particularly gets complicated when you have, you know,
24 more subtle injuries or injuries come along over time like
25 a herniated disk that develop over time, was that caused

1 by a series of trauma, was it caused by genetics or was it
2 caused by this one traumatic event that somebody is being
3 sued in. And the testimony that we have, gets us right
4 back to Dempsey, Dawkins, Lisa C., Jennings, Douglas and
5 McCurley because all of her testimony about some of these
6 symptoms for the whole category of diagnostic criteria is
7 all based on Minor statements. But even more
8 prejudicial to us and the defense in this case, her entire
9 opinion about Mr. Carrier being the cause of this before
10 we get to the weight, her opinion about Mr. Carrier being
11 the cause of all of this is based exclusively on Linsey's
12 statements. So what the State is essentially going to be
13 doing is, is they are going to be coming in here and
14 offering her as an expert and say, you know, does Minor
15 have this PTSD. Yes, she has PTSD. Well, why? Because
16 James Carrier did X, Y and Z to me at A and B time in the
17 past and therefore that is evidence that Mr. Carrier
18 abused her. Well, that is basically her saying and
19 telling this jury that I interviewed her, I got these
20 statements from her and I believe that she is telling the
21 truth. And in some ways this is more egregious then what
22 was struck down in McCurley. And it certainly gets into
23 what Justice Pleicones and Justice Kittredge were talking
24 about in the Jennings case about how the witness left the
25 jurors and the same with McCurley, the witness left the

1 jurors with the understanding and the belief that the
2 witness believed that the victim was telling the truth.
3 And that is what our Court doesn't allow. And that is a,
4 you know, the third prong of Watson versus Ford Motor
5 Company. Then if you were to allow the State to introduce
6 that without allowing me to then question about Kenneth
7 Shamburg then you would have a situation, I guess maybe
8 like the Blurton case, the CIA case where they argue, the
9 Solicitor argued it to the jury at the end of the case
10 that Mr. Blurton had spent 14 months making up all of this
11 stuff when in fact the evidence that the State had gotten
12 excluded would have shown that he had believed from the
13 time that he was arrested that he had been part of a CIA
14 plan and didn't believe he was committing a crime. And so
15 you can't let the State offer evidence and then exclude
16 the defense evidence that is relevant to the same point.
17 I think it is better that we don't go to any of this
18 stuff. As Judge Kittredge said in Jennings, it was
19 regrettable that the State tried to present that evidence.
20 I think that it is regrettable that they are trying to
21 present it here, Your Honor.

22 THE COURT: All right, Mr. Hodges.

23 MR. HODGES: Your Honor, I would be glad to address
24 the things the Court needs me to.

25 THE COURT: Well, how do you distinguish what is

1 happening here from these, McCurley and Douglas and Lisa
2 C. and all of these other cases. I mean, what is the
3 distinguishing feature here and I guess the bigger
4 question would be, how is the probative value of this
5 testimony outweighing the prejudicial effect of it being
6 some type of vouching?

7 MR. HODGES: This is based on the statements made by
8 the victim to her counselor. But for her to be able to
9 create a set of statements to her counselor that would be
10 tailored to fit PTSD seems unlikely. I mean the expert
11 testimony would be that the things that she has related in
12 total fit with PTSD diagnosis. And fit with this
13 particular stressor. So I think that there is some
14 reliability in that she is examining the statements as a
15 whole in being able to explain that the things she is
16 saying about what she has experienced and felt fit into
17 the diagnosis of PTSD.

18 THE COURT: Let me just ask it this way. What are
19 you trying to prove with her testimony?

20 MR. HODGES: That she has suffered abuse, has a
21 disorder because of it, that she has a diagnosable
22 disorder as a result of abuse. And I think that that
23 diagnosable disorder corroborates the fact that she has
24 been abused. And I think that is different from the
25 witness testifying that she believes her. It is just this

1 witness is saying she has this group of symptoms which
2 makes her diagnosable as having this particular disorder.

3 THE COURT: Well, but the jury isn't going to decide
4 whether or not she has a medical condition, are they?

5 MR. HODGES: No, sir.

6 THE COURT: So how is it really a probative issue.
7 The ultimate issue for the jury which is whether a crime
8 was committed.

9 MR. HODGES: Because she has a disorder that is
10 connected to that incident.

11 THE COURT: Mr. Grose, even though you are no longer
12 pointing and shouting you are standing up.

13 MR. GROSE: Your Honor, I don't want to belabor this
14 point. This could determine the outcome of the case. I
15 look at McCurley, Judge Few's opinion in McCurley. Smith
16 who was the counselor who testified, never testified
17 directly but she believed what the victim stated to her in
18 the interviews for her testimony. McCurley argues however
19 that there is no way to interpret this testimony other
20 than it is her opinion that the victim was telling the
21 truth. And I think the significance, but not just
22 McCurley but of Jennings which is being applied in
23 McCurley, is that it doesn't have to be, oh, I believe the
24 kid is telling the truth ninety-nine percent of the time.
25 Or I believe that this specific kid is telling the truth.

1 It is when you leave the jury with testimony that there is
2 no way to interpret it but that they believe that the
3 victim is telling the truth. That is not admissible. And
4 I think that is where we are here. And I think that is
5 exactly what they are trying to do. Because Mr. Hodges
6 wants to say, well, there is this whole series of
7 statement that you can put together and reach no other
8 conclusion but that she was abused. And not only abused
9 but abused by Mr. Carrier. And that, I don't want to talk
10 about McCurley because I am still Mr. McCurley's lawyer.
11 But in the Jennings case, when they said that there was
12 compelling evidence that she was sexually abused that may
13 very well been a true statement. The fact that that may
14 very well be a true statement wasn't the point. The point
15 was, that statement true or not is not admissible, that is
16 something for the jury to decide.

17 THE COURT: How do you get around State versus Henry.

18 MR. GROSE: How do you get around State versus Henry,
19 because State versus Henry was not a challenge to the
20 subject-matter and the testimony. State versus Henry was
21 prong two. I am not going near prong two.

22 THE COURT: Right.

23 MR. GROSE: I am a little bit at prong one on the
24 delayed partial disclosure and a lot at prong three on
25 everything.

1 THE COURT: And Henry didn't address prong three or
2 Douglas or is it McCurley.

3 MR. GROSE: Douglas and McCurley and Jennings were
4 long after Henry.

5 THE COURT: Okay. Yes sir, Mr. Hodges.

6 MR. HODGES: Just pointing back to Henry. I don't
7 know how you would ever have PTSD testimony, I don't know
8 how you could ever have it admissible in a sexual assault
9 case if you are going with Mr. Grose's argument.

10 THE COURT: Well, that may be his whole point. Why
11 do you need it. I mean, does it make any issue more
12 probable, more less likely in the standard of relevancy
13 because the only issue the jury has got to decide is
14 whether the crime was committed. I don't know, that is
15 why I am asking y'all.

16 MR. HODGES: You can extend the argument and say that
17 any witness that testifies about time and place is
18 bolstering the victim's testimony. Anything that really
19 corroborates what the victim is saying is bolstering her
20 testimony. I mean, I think there is a difference between
21 corroboration and bolstering.

22 THE COURT: Isn't there also the consideration under
23 403 that the entire Shamburg issue could be avoided by
24 excluding the PTSD diagnosis.

25 MR. HODGES: Certainly.

1 MR. GROSE: And just to be clear. I am not going to
2 bring up Mr. Shamburg unless they make me by bringing in
3 this other stuff.

4 THE COURT: Well, that is my ruling. I find that
5 under 403 the probative value of the PTSD diagnosis,
6 delayed disclosure being part of that is vastly outweighed
7 by the danger upon peer prejudice or confusion of the
8 issue because we would inevitably then have to deal with
9 Mr. Shamburg, third party guilt type evidence. And I
10 don't think the testimony of Ms. Bentley is so probative
11 of the ultimate issue before the jury that it should be
12 heard in the expense of the risk of peer prejudice and
13 other consideration under Rule 403 that certainly follow
14 if it were allowed. So that is my ruling.

15 MR. HODGES: Just so I am clear, Your Honor. Limited
16 to the victim's testimony and the time and place.

17 THE COURT: Right, yes sir. Anything else at this
18 time?

19 MR. GROSE: No, sir.

20 THE COURT: Well, let's just take about a five minute
21 break and we will do the opening statements and then wrap
22 it up for the day.

23 (Whereupon, a short break was taken.)

24 THE COURT: Anything before we bring the jury in?

25 MR. HODGES: Not from the State.

1 MR. GROSE: Your Honor, I think we were talking about
2 with regard to the indictment, which indictment he can be
3 tried on.

4 THE COURT: Yes, sir.

5 MR. GROSE: And in quashing this indictment. I think
6 we were talking earlier in terms of Chief Justice Lewis'
7 dissent, I think it was the State versus Anderson case
8 perhaps. I just want the record to reflect that his
9 dissent actually has become the law as far as Solicitors
10 who testify in front of a jury. So there is, you know,
11 some cutback on how the Solicitors can use the Grand Jury.
12 I think the next step in that is what they reported that
13 they did here which was have an agent of State testify in
14 front of the Grand Jury. But of course they don't even
15 report that that happened now because that officer wasn't
16 here. So we would, since the next thing to do is swear
17 the jury, we renew our motion to quash the 2011
18 indictment, and the case to be tried on the original
19 indictment.

20 THE COURT: All right. I respectfully deny the
21 motion. Okay. You can bring the jury.

22 (Whereupon, the jury came into open court at
23 approximately 4:20 p.m.)

24 THE COURT: Ladies and gentlemen, I apologize for the
25 delay in bringing you out here. We had some matters that

1 job is to be neutral and impartial and fair and your job
2 is to listen to the facts of the case and determine
3 whether the State has met its burden of proof. Thank you
4 for your attention to me and at this time we will have the
5 opening statements from the State. Mr. Swilley.

6 MR. SWILLEY: Thank you, Your Honor, if it please the
7 Court. Good afternoon, ladies and gentlemen, as I stated
8 before my name is Matt Swilley and I am a Solicitor in the
9 Eighth Circuit Solicitors office and am here with Mr.
10 Hodges. We represent the State of South Carolina in this
11 matter. Mr. Grose over here is the defense attorney, he
12 represents his client, Mr. Carrier. Ladies and gentlemen,
13 this case is about stolen innocence, stolen innocence. In
14 this case James Carrier stole the innocence of Minor
15 Ferqueron, she is a child. You see, ladies and gentlemen,
16 when Minor was a child she lived on South 25, Highway 25
17 here in Greenwood County. She would go over to a friend's
18 house, Marie Freel's mother. She had three sons, Chris,
19 Ben and Matt who she played with when she was a child, she
20 was about eight, nine, ten years old. While she was over
21 there and played they did normal stuff that kids would do,
22 play video games, play outside, play in the dirt. During
23 that time Mr. Carrier came over, Mr. Carrier would come
24 over. When no one was looking he would touch her breast,
25 touch her vagina. Ladies and gentlemen, during the course

1 of this case there are going to be some things that you
2 don't like to hear. That is something that I am going to
3 ask you jurors to listen to the evidence and decide this
4 case based on the facts. Like Judge Hill said, y'all are
5 the finders of the facts, y'all are the judge of the
6 facts, y'all say what the facts are and Judge Hill will
7 say what the law is. Y'all say what the facts are. Let
8 me tell you something else, I will ask you to listen to
9 this case. And you see me walk back and forth using my
10 notes. I am not Perry Mason or anything like that. I
11 can't think about a lot of stuff and just go off without
12 having a notepad to go on. I am not going to pretend that
13 I am smarter than I am. But, ladies and gentlemen, Mr.
14 Carrier here is charged with a crime. He is charged with
15 committing a lewd act upon a minor under the age of 16.
16 Okay. And with that crime means he did something, he did
17 an act upon or on the body of somebody else under the age
18 of 16 while over the age of 14 and to gratify the lust or
19 sexual desire of that person or himself. Any kind of
20 physical act and in this case he grabbed the private parts
21 of Minor Now, my job and Mr. Hodges job
22 today is to seek justice. Okay. It is not to get a bunch
23 of convictions or get convictions, it is to seek justice.
24 Ladies and gentlemen, our job today and tomorrow and
25 throughout the course of this case is to prove Mr. Carrier

1 is guilty beyond a reasonable doubt. There are two things
2 that you need to decide the facts of this case. One is to
3 collect your common sense. All of y'all are different
4 ages and background and you all are going to have to pull
5 together all of your common sense of what you have gone
6 throughout life and know what makes sense and what doesn't
7 make sense, what is the truth and what is not the truth.
8 Also I need your attention, it is very important that you
9 pay attention to everything that happens, it is not an
10 easy task to do. When you use those two things then in
11 this case you will find Mr. Carrier guilty beyond a
12 reasonable doubt. Ladies and gentlemen, this is a very
13 important case. Not just for Mr. Carrier but it is for
14 society as a whole, it is important that justice is
15 carried out appropriately. That is what makes America
16 such a great country, we have the fairest justice system
17 there is, criminal and civil. This is a criminal case as
18 you know. If you will keep those things in mind
19 throughout the course of this trial. Thank you.

20 THE COURT: Thank you. Mr. Grose.

21 MR. GROSE: May it please the Court, Your Honor. The
22 Judge talked about three things a minute ago. He talked
23 about John Adams and the jury trial being the heart of our
24 democracy. He talked about believability and credibility
25 and he talked about keeping an open mind and being

1 neutral. These are some of the concepts that give you a
2 guide as to what the trial is because a trial is a
3 process. And you will hear more about that when the Judge
4 charges you about what the law is. There is two parts of
5 the charge. The first part which is the general law and
6 the process and how you work through the case and the
7 credibility and the believability is part of that. And
8 there is this specific charge about the crime that is
9 charged. But one of the things he is going to tell you
10 probably before you leave here today is to keep an open
11 mind, that you have to listen to all the evidence, you
12 have to make a determination based on all of the evidence.
13 How many times in our life have we ever thought, oh, so
14 and so did this and we are confronted with more
15 information and realize that things were not as they first
16 appeared. I want to take an issue with one of the things
17 that the prosecutor said in his opening statement. He
18 said that you all get to say what the facts are. That is
19 not exactly true and if you listen to what Judge Hill says
20 at the end of the case, he is going to tell you again that
21 you are the judge of the facts. And as he told you
22 before, as you judge the facts that is fine, that is
23 forever. When you hear about appeals, appeals are not
24 about facts. But your determination of the facts is
25 final, it will last forever. It is something that

1 everybody in this courtroom, particularly Mr. Carrier,
2 will have to live with for the rest of their life. You
3 will hear when you listen to the charge and you listened
4 to the process is, is that James Carrier is presumed
5 innocent. He sits here today as an innocent man. The
6 Judge told you the indictment is just how he gets here,
7 just saying something doesn't make it so. Saying
8 something no matter how many times you say it doesn't make
9 it true. Saying something no matter how convincing you
10 try to make it sound doesn't make it true. So Mr. Carrier
11 is presumed innocent and the burden is always on the State
12 of South Carolina because they are the party that brought
13 the charges, they are the party that brought this case to
14 Court, they are the party that is making the allegations.
15 The burden is always on them to prove the case beyond a
16 reasonable doubt. So you are not saying what the facts
17 are as Mr. Swilley said. Yes, you are the judges of the
18 facts like the Judge said but what you are judging is is
19 whether or not the people at this table and the witnesses
20 that they call and the evidence that they present have
21 proved the case, have proved the charge, have proved the
22 allegations in the indictment beyond a reasonable doubt.
23 Because that gets back to what the Judge was talking about
24 with John Adams and the heart of our democracy. Before
25 somebody's liberty can be taken away they have to be given

1 due process of all. That is what it is, a jury trial, the
2 heart of democracy. And part of the heart of that
3 democracy is holding the State to their burden of proof.
4 And when the Judge tells you about the general law, the
5 process that guides you to judging the facts as he already
6 indicated part of that is about the believability and the
7 credibility because it is really serious to come in here
8 and come in here like Mr. Swilley did, just did and talk
9 about someone's innocence. That is serious business.
10 What he told you was that Minor would go and play with
11 her friends. You heard some of their names listed when
12 the Judge was asking about the witnesses in the case. And
13 that this is where at the Freel's house, Minor friends
14 house, this is where this stolen innocence, this lewd act
15 on a minor, this horrible crime that they want to take Mr.
16 Carrier's liberty away, supposedly took place. But
17 believability and credibility, the other things that the
18 Judge talked about, that is the part of the roadmap of how
19 you judge the facts and the process of this case. Because
20 when you hear this evidence, this testimony you are going
21 to hear that if these allegations were true then wouldn't
22 they be witnessed by other people. They would have been
23 witnessed by these young children, in the rooms that they
24 were, these young children, at the Freel's house, if the
25 allegations are true, if the allegations were believable,

1 if the allegations were credible they would have been
2 witnessed by these children. And just as I am standing
3 here right now you are not going to hear one of those
4 children or their mother come in here and testify that
5 they can corroborate, confirm and support the fact that
6 those allegations took place. And let's talk about common
7 sense, we know sometimes things happen. You heard the
8 saying if a tree falls in the woods does it really make a
9 noise. Well, if nobody is there to hear it it still fell.
10 Sometimes things happen and they are not corroborated.
11 But that is different from the situation when somebody
12 says something happened, it happened in another person's
13 home, when other children were present. And you expect
14 and you think that that is corroboration, that will
15 confirm, that will make it where it is credible to me and
16 I can believe it beyond a reasonable doubt, the highest
17 standard of proof we have in the law, is required before
18 you make somebody's freedom. That level of believability
19 and credibility. And when the facts suggest that
20 corroboration is present you have got to keep an open
21 mind, you have got to judge the facts and you have got to
22 look at this witness stand and those prosecutors and the
23 witnesses that they call to provide that corroboration.
24 Because when it should be there, when common sense tells
25 you these are the statements and the corroboration should

1 be there and it is not that is a reasonable doubt, the
2 doubt that you can give a reason to, with a reasonable
3 doubt. And it means that the State has failed to meet
4 their burden of proof. It means that the judges of the
5 facts, you don't say these are the facts, you say they
6 didn't prove their case and the proper verdict, the just
7 verdict, the verdict we are going to ask you is not
8 guilty.

9 THE COURT: Thank you, Mr. Grose. Ladies and
10 gentlemen, we are going to go ahead and recess for the
11 day. We will start back in the morning at 9:30 and we
12 will start with the testimony at that time. Don't talk
13 about the case, as I said keep an open mind. You haven't
14 heard the evidence yet and please don't do any kind of
15 outside investigation or outside research. Thank you and
16 be back at 9:30 in the morning.

17 (Whereupon, the jury was excused from open court for
18 the day.)

19 THE COURT: Anything before we adjourn?

20 MR. HODGES: Not from the State, Your Honor.

21 MR. GROSE: No, sir.

22 THE COURT: See you in the morning.

23 (Whereupon, the trial of the case will resume the
24 next morning at 9:30 a.m.)

25 July 18, 2012.

1 THE COURT: Anything before we bring the jury in?

2 MR. GROSE: No, Your Honor.

3 MR. HODGES: Not from the State.

4 THE COURT: Bring the jury in, please.

5 (Whereupon, the jury came into open court at
6 approximately 9:30 a.m.)

7 THE COURT: All right, ladies and gentlemen, we are
8 going to begin the presentation of evidence in the case of
9 the State versus James L. Carrier. Yes sir, you may call
10 your first witness, Solicitor.

11 MR. SWILLEY: The State calls Minor

12 Minor being

13 first duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 By Mr. Swilley:

16 Q State your name for the record, please.

17 A Minor

18 Q Minor how old are you?

19 A 19.

20 Q What is your birthdate?

21 A [REDACTED].

22 Q Minor where are you from?

23 A Greenwood.

24 Q Where were you born?

25 A Greenwood.

- 1 Q And growing up who did you live with?
- 2 A My mom.
- 3 Q And who else?
- 4 A My brother.
- 5 Q When you were a child what was your address?
- 6 A [REDACTED].
- 7 Q Is that in Greenwood County?
- 8 A Yes, sir.
- 9 Q When you were a child who were your friends in the
- 10 neighborhood?
- 11 A We had a neighbor and she had three kids, Matt, Chris
- 12 and Ben and me and my brother played with them.
- 13 Q And speak up a little bit, please. What were the
- 14 last names of those, who were those people you just named
- 15 and what is their last name?
- 16 A Matt, Chris and Ben Freel.
- 17 Q Who is the mom?
- 18 A Mariah Freel.
- 19 Q And where do they live in relation to your house at
- 20 that time?
- 21 A Right to the left of us, right beside us.
- 22 Q Next door?
- 23 A Yes.
- 24 Q Would you go over there?
- 25 A Pretty much every day.

- 1 Q For what reason did you go over there?
- 2 A To play with the kids.
- 3 Q And how old were you at that time?
- 4 A We grew up together, from the time I was itty bitty.
- 5 Q What age do you recall being over there, can you give
- 6 me a timeframe?
- 7 A Probably around five.
- 8 Q Until when?
- 9 A When we moved out I was 16, or 15 or 16.
- 10 Q That is when you moved from the house you were living
- 11 in?
- 12 A Yes.
- 13 Q And you said you went over to the Freel's house and
- 14 played?
- 15 A Yes.
- 16 Q When y'all were there, when you would go over the
- 17 Freel's house how would y'all play, what kind of stuff
- 18 would y'all do?
- 19 A We had video games and they had like a little
- 20 basketball court in the backyard and dirt, bikes.
- 21 Q Minor when you go over to play with the Freel's
- 22 who would come over?
- 23 A James Carrier.
- 24 Q And I need you to tell me about what age do you
- 25 recall Mr. Carrier coming over there when you were there?

- 1 A Around 7, 6 or 7.
- 2 Q Until when?
- 3 A I was 11 the last time I seen him.
- 4 Q While you were at the Freel's?
- 5 A Yes.
- 6 Q Minor I need you to tell me what would Mr. Carrier
7 do when you would come over? Take your time.
- 8 A Me and the kids would be playing and he would make me
9 touch him and he would touch me on my breast and vagina
10 and make me kiss him and make me rub his penis.
- 11 Q Okay. How often did this go on?
- 12 A Just whenever he was there, pretty much every time he
13 was there.
- 14 Q And, Minor did this go on, tell me about where in
15 the house this would go on?
- 16 A In the parent's bedroom, the kids bedroom and even on
17 the couch.
- 18 Q Okay. Minor do you recall, what would Mr. Carrier
19 say to you when he would do these things.
- 20 A Not to worry about it, that it was okay because he
21 loved me.
- 22 Q Okay. Did that go on while he was touching you?
- 23 A Yes, sir.
- 24 Q Who else would be in the house when this would go on?
- 25 A Me and all the three boys and their mom usually.

- 1 Q Would be there in the room sometimes when this was
2 going on?
- 3 A Sometimes.
- 4 Q What would they be doing while you were doing this?
- 5 A Playing, usually distracted, not paying attention.
- 6 Q Okay. Did Mr. Carrier ever pass you a note?
- 7 A Yes.
- 8 Q Tell me how old were you at this time?
- 9 A I don't know.
- 10 Q Were you a child?
- 11 A Yes.
- 12 Q When you would go to the Freel's?
- 13 A Yes.
- 14 Q Tell me what the note said?
- 15 A That when I turned 16 he would come to get me because
16 I would be old enough and nobody could do anything about
17 it.
- 18 Q And while as a child, when you recall, when was the
19 last time you saw Mr. Carrier as a child?
- 20 A I was 11.
- 21 Q And did you ever tell anybody about this at the time?
- 22 A No.
- 23 Q Okay. Why is that?
- 24 A I was scared.
- 25 Q Okay. Let's go back a couple of years until 2009.

1 Who was the first person that you told about this?

2 A Carolyn Travis.

3 Q And for what reason did you tell this to Ms. Travis?

4 A It was two weeks before my 16th birthday and I had
5 started having dreams and it scared the crap out of me.

6 Q You started having dreams about what?

7 A About Jamie.

8 Q What kinds of dreams were these?

9 A There is one particular one that made me tell. That
10 he actually did come back and it all started all over.

11 Q Where were you in 2009, in May of 2009 how old were
12 you?

13 A 16.

14 Q Okay. Were you working at that time?

15 A No.

16 Q Were you in school?

17 A Yes.

18 MR. SWILLEY: I beg the Court's indulgence.

19 Q Let me back up, back to the time you were a small
20 child at the Freel's. Is there a specific incident that
21 you recall where one of the Freel's were playing video
22 games?

23 A Yes.

24 Q Where were you at this time?

25 A In the bedroom with them sitting on their mom's bed

- 1 while they were playing the game.
- 2 Q On the bed and who else?
- 3 A Me and all three of the boys.
- 4 Q Who else?
- 5 A James Carrier come in.
- 6 Q Tell me what you did at this time?
- 7 A When he first walked in he just kind of leaned up
- 8 against the door and was watching the kids play and he
- 9 just kept scooting closer until he was beside me and I
- 10 would try to scoot away and he would just keep coming.
- 11 And then finally we ended up on the bed and he went under
- 12 my clothes and touched my vagina.
- 13 Q Okay. Did he touch anything else?
- 14 A My breast.
- 15 Q Over your clothes or under?
- 16 A Under.
- 17 Q Okay. Minor do you see that man in this courtroom
- 18 today?
- 19 A Yes.
- 20 Q Would you point him out for me.
- 21 A (The witness points.)
- 22 MR. SWILLEY: Your Honor, please let the record
- 23 reflect the witness has identified the defendant.
- 24 Q Minor let's go back to 2009, you say you told Ms.
- 25 Travis, right?

1 A Yes, sir.

2 Q And tell me what and what was the reason you told Ms.
3 Travis?

4 A It was two weeks before my 16th birthday and I
5 started having dreams and it scared me.

6 Q What relationship is Ms. Travis to you?

7 A Well, she goes to my church.

8 Q Okay. How long have you known her. Are you related
9 by blood to her?

10 A No.

11 Q How do you know her from church?

12 A She was our youth director and children's director.

13 Q Okay. And were you part of the youth at your church?

14 A Yes.

15 Q Minor after you told Ms. Travis, what happened
16 after that?

17 A Nothing at the time. I told my mama at the end of
18 March and we went to the police enforcement.

19 Q Who called the police initially?

20 A My mom.

21 Q Okay. And when approximately was that when your
22 mother called the police?

23 A March 31st of '09.

24 Q All right. Thank you, Minor please answer any
25 questions Mr. Grose may have.

1 THE COURT: Cross-examination.

2 MR. GROSE: Thank you, Your Honor, may it please the
3 Court.

4 CROSS-EXAMINATION

5 By Mr. Grose:

6 Q One of the questions that Mr. Swilley asked you was
7 about a particular incident when everybody was playing
8 video games. Do you remember that question?

9 A Yes.

10 Q And you said that was in one of the bedrooms in Ms.
11 Freel's house?

12 A Yes.

13 Q Was it her bedroom or the kids?

14 A The parent's.

15 Q The parent's bedroom?

16 A Yes.

17 Q Did the kids share a bedroom or did they have their
18 bedroom?

19 A They had their own bedroom but their bed was in their
20 parent's bedroom.

21 Q Okay. I believe what you told Mr. Swilley, is that
22 the four of you were in bed playing video games?

23 A Yes.

24 Q And by the four of you we mean, Ben Freel, right?

25 A Yes.

- 1 Q Chris I think is one of the brothers?
- 2 A Yes.
- 3 Q And Matt Freel?
- 4 A Yes.
- 5 Q And while the four of you were in the room was when
- 6 you say that my client, James Carrier, came in and did
- 7 these things to you, right?
- 8 A Yes.
- 9 Q Isn't that right?
- 10 A Yes.
- 11 Q In fact, I think that you told Mr. Swilley that
- 12 whenever this happened that these other four people were
- 13 always there, right?
- 14 A Yes.
- 15 Q In the house, right?
- 16 A Yes.
- 17 Q Ben Freel, Chris Freel, Matt Freel, right?
- 18 A Yes.
- 19 Q And their mother, Mariah Freel?
- 20 A Yes.
- 21 Q In fact as I understand you and the Freel's were
- 22 nextdoor neighbors, right?
- 23 A Yes.
- 24 Q And so you would play with her children in the
- 25 afternoon, right?

1 A Yes.

2 Q And this was at her house where she was providing
3 adult supervision, right?

4 A Yes.

5 Q And you said that, Mr. Swilley was asking you about
6 what happened in 2009. And I think you said the first
7 person that you told was Carolyn Travis, right?

8 A Yes.

9 Q And she is a member of your church?

10 A Yes.

11 Q A mentor to you?

12 A Yes.

13 Q When you told her she didn't call the police, right?

14 A No.

15 Q The first person who called the police was your
16 mother, right?

17 A Yes.

18 Q Who was the second person you talked to?

19 A I told my grandmother at the same time.

20 Q You told your grandmother and your mother at the same
21 time?

22 A Yes.

23 Q And your mother called the police?

24 A Yes.

25 Q And when the police were called you talked to a

1 deputy, right?

2 A Yes.

3 Q And you remember that his name was Bobby Grogan?

4 A Yes.

5 Q And he interviewed you, right?

6 A Yes.

7 Q And he wanted to know about what happened, right?

8 A Yes.

9 Q And he wanted to know where it happened?

10 A Yes.

11 Q And you told him it had happened in the Freel's
12 house?

13 A Yes.

14 Q And that Ben, Matt and Chris were the people that you
15 played with?

16 A Yes.

17 Q And essentially you told them there was four
18 potential witnesses, right?

19 A Yes.

20 Q And you had told him that all of this had happened
21 about six or seven years earlier, is the timeframe you
22 gave him?

23 A Yes.

24 Q And so after you talked with Mr. Grogan, Deputy
25 Grogan there was some other people that you talked with,

1 right?

2 A Yes.

3 Q And one of the people that you talked to was Ms.
4 Jessica Bell who is sitting back here.

5 MR. GROSE: Just raise your hand.

6 A Yes.

7 Q And you, the purpose of talking with her was part of
8 the official police investigation, right?

9 A Yes.

10 Q And she interviewed you, right?

11 A Yes.

12 Q And she asked you about what had happened, right?

13 A Yes.

14 Q And you had also told her about six or seven years
15 before 2009?

16 A Yes.

17 Q Right?

18 A Yes.

19 Q So that would have been when you were about nine or
20 ten?

21 A Yes.

22 Q And not five?

23 A Right. No, that is not when it happened. But, yes,
24 that is what I told her.

25 Q Okay. You saying you told her something different

1 than what happened?

2 A Yes.

3 Q What you told her was it was about the time you were
4 nine or ten, right?

5 A Yes.

6 Q And she was also asking you about, you know,
7 incidences, right?

8 A Yes.

9 Q And you told her about this incident that you
10 testified to, right?

11 A Yes.

12 Q Where you were playing video games, right?

13 A Yes.

14 Q And Matt and Chris and Ben were in the room?

15 A Yes.

16 Q And so she knew from that interview that there were
17 three potential witnesses?

18 A Yes.

19 MR. SWILLEY: Objection, Your Honor.

20 MR. GROSE: I will rephrase the question.

21 Q You told her at that interview that there were three
22 potential witnesses?

23 A Yes.

24 Q And that Ms. Freel, Mariah Freel was present in the
25 house all the time?

- 1 A No, not all the time.
- 2 Q But it happened in her house when she was present?
- 3 A Yes.
- 4 Q And you also, after you talked with Ms. Bell you also
- 5 talked with Ms. Susan Bentley, right?
- 6 A Yes.
- 7 Q And she is sitting right next to Ms. Bell?
- 8 A Yes.
- 9 Q And at one point you had told, I believe it was May
- 10 5th of 2011 but you specifically told her that Ben Freel
- 11 was a witness, didn't you?
- 12 A I told her that he told me that he did see something.
- 13 Q Okay. And you are aware that the Solicitor's office
- 14 interviewed Ben Freel?
- 15 A Yes.
- 16 Q And Ben Freel is not here today, is he?
- 17 A No.
- 18 Q And one other question or maybe two. You told Mr.
- 19 Swilley about a note, right?
- 20 A Yes.
- 21 Q You don't have that note?
- 22 A No, he took it and kept it.
- 23 Q So that note is not here for anybody?
- 24 A No.
- 25 Q That is all I have.

1 THE COURT: Redirect?

2 REDIRECT EXAMINATION

3 By Mr. Swilley:

4 Q Minor first let me talk about when Mr. Carrier was
5 touching under your clothes. Can you be a little more
6 specific this, whereabouts is the TV, bed.

7 A When you walked in the door the TV was sitting on a
8 little table right to the left. And there was a dresser
9 that was behind the door. And they had bunk beds in there
10 for the kids that was on the right and then their bed on
11 the left closest to the window.

12 Q And what bed were you in?

13 A The parent's.

14 Q And where in the room were the boys?

15 A I was sitting on the floor in front of the TV and I
16 was sitting on the corner of the bed beyond them.

17 Q You were sitting on the floor you say?

18 A Yes.

19 Q Are these controllers, were the controllers to the
20 video game console connected to the console?

21 A Yes.

22 Q What direction were the boys facing?

23 A They were towards the TV facing away from me toward
24 the wall.

25 Q Were their backs turned to you?

1 A Yes.

2 Q And to your knowledge what is the relationship
3 between Mr. Carrier and the Freel family?

4 A As far as I know they were just friends. Mariah was
5 friends with his aunt.

6 Q Okay. And do you know where Mr. Carrier, to your
7 knowledge, where he was living at this time?

8 A No.

9 Q That is all.

10 RECROSS-EXAMINATION

11 By Mr. Grose:

12 Q Mr. Swilley asked you about the room, the TV and the
13 bed, right?

14 A Yes.

15 Q And this room is, this house is actually a trailer,
16 right?

17 A Yes.

18 Q It is about a 14' by 70' trailer?

19 A I don't know.

20 Q But it is a trailer and it is pretty small?

21 A Yes.

22 Q It is pretty small room, right?

23 A Yes.

24 Q That is all I have.

25 THE COURT: Thank you, Ma'am. You can step down.

1 Call your next witness.

2 MR. SWILLEY: The State calls Carolyn Travis.

3 CAROLYN TRAVIS, being

4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 By Mr. Swilley:

7 Q State your name for the record?

8 A My name is Carolyn Travis.

9 Q Ms. Travis, where do you live?

10 A I live on Bucklevel Road in Greenwood.

11 Q What do you do for a living?

12 A I am a teacher's assistant at Greenwood School

13 District 50 and I am also the children and youth director
14 at New Life Baptist Church.

15 Q And how is it that you know Ms. Ferqueron here?

16 A I was her youth director and children's director at
17 our church.

18 Q And so as youth director and she was in the youth
19 group?

20 A Yes.

21 Q So how often would you, when did you see Minor

22 A I usually see them every Sunday mornings, Sunday
23 night and Wednesday night and then there was a couple
24 times during the week that we would meet and do different
25 things.

1 Q How many kids would you have in the youth group about
2 that time?

3 A At that time there was probably about twenty
4 something.

5 Q Okay. And about how old was Minor when she joined
6 the youth group?

7 A I am going to guess around nine.

8 Q You don't have to guess, I mean to your recollection
9 how old was she, if you remember?

10 A Eight or nine.

11 Q And you do youth group for all ages?

12 A Yes.

13 Q And so how long was Minor in your youth group for?

14 A For twelve years until today.

15 Q Now, Ms. Travis, did Minor in 2009 did Minor
16 approach you pertaining to the abuse she suffered?

17 A Yes.

18 MR. GROSE: Your Honor, I object to the Solicitor
19 characterizing as abuse that was suffered. That is an
20 issue in dispute, Your Honor.

21 THE COURT: Just rephrase your question, Mr. Swilley.

22 Q Did Minor approach you pertaining to the incidents
23 with Mr. Carrier?

24 MR. GROSE: Your Honor, that is improper, asking
25 about identity. The limitation is on time and place and I

1 move for a mistrial, that is improper.

2 THE COURT: Overruled, go ahead.

3 Q When did she tell you?

4 A It was approximately two weeks before her 16th
5 birthday.

6 Q Okay.

7 MR. SWILLEY: I beg the Court's indulgence.

8 Q Where were you when you talked to her?

9 A The first time we were in my car.

10 Q What was her demeanor?

11 A She was very quiet which was not like Minor She
12 was very talkative but this particular day she was very
13 quiet and I asked her what was wrong. And she said she
14 had something that she needed to talk to me about but that
15 she didn't want to talk to me right then.

16 Q Now, when did she talk to you later?

17 A Two days later.

18 Q When did she say the incident happened to her?

19 A When we talked two days later she said she would tell
20 me then what had happened when she was around five or six.

21 MR. GROSE: Your Honor, I object to the questioning
22 going beyond the scope. And I object to them continuing
23 to ask questions that go beyond the scope of what the
24 rules clearly allow.

25 MR. SWILLEY: Your Honor, I think it falls within the

1 time and place the incident happened.

2 MR. GROSE: But that wasn't the answer.

3 THE COURT: All right, overruled, go ahead.

4 Q Ms. Travis, where did she say it happened?

5 A She said it happened at a neighbor's house.

6 Q Okay.

7 A The neighbor's name was Mariah.

8 Q Okay. Ms. Travis, one last question. When you were
9 informed of this why didn't you go directly to law
10 enforcement.

11 A Because I had, she had asked me, made me promise
12 before she told me that I would not say anything to anyone
13 which was a rule in my youth group, they could tell me
14 anything and unless they were going to hurt themselves or
15 hurt someone else I would not say anything. And I had
16 promised her I would not and I encouraged her to tell her
17 parents or her mother.

18 Q Thank you and please answer any questions Mr. Grose
19 has.

20 THE COURT: Cross-examination.

21 CROSS-EXAMINATION

22 By Mr. Grose:

23 Q Did I understand that right, that you are a leader at
24 the youth church?

25 A Yes.

1 Q And people tell you about allegations like this and
2 you don't call the police?

3 A Right.

4 Q Solicitor asked you about where Minor _ said it
5 happened and you said that it happened, she told you it
6 happened at a neighbor's house, right?

7 A Correct.

8 Q Mariah's house?

9 A Yes.

10 Q And you know if that is Mariah Freel?

11 A I am presuming.

12 Q That's all I have. Thank you.

13 THE COURT: Redirect?

14 MR. SWILLEY: No redirect, Your Honor.

15 THE COURT: You may step down. You may call your
16 next witness.

17 MR. HODGES: The State calls Jessica Bell.

18 JESSICA BELL, being
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 By Mr. Hodges:

22 Q Please introduce yourself to the jury.

23 A I am Jessica Bell. At this time I was a forensic
24 interviewer, I am currently the director of clinical
25 services at sexual trauma and counseling center.

1 Q What is sexual counseling and trauma center?

2 A It is a rape crises center as well as a children's
3 advocacy center that provides services to adult and child
4 victims of sexual abuse.

5 Q And you mentioned forensic interview, what is that?

6 A Those are interviews that are requested by law
7 enforcement or DSS when you have an active investigation
8 of child sexual abuse allegations.

9 Q And what is your role as a forensic interviewer?

10 A As a forensic interviewer I ask the children
11 questions. It is a facts finding interview to get
12 information about what happened.

13 Q Do you have certain protocols that you follow to do a
14 forensic interview?

15 A Yes, we use the RATAC protocol.

16 MR. GROSE: Your Honor, we need to approach.

17 THE COURT: Yes, sir.

18 (Whereupon, a bench conference was held in the
19 presence of the jury but out of the hearing of the
20 jury.)

21 Q As part of your employment in this field, forensic
22 interviewer, did you have an opportunity to meet Minor
23 and talk with her?

24 A I did.

25 Q All right. And when you talked to her did she

1 disclose to you certain time periods during her life when
2 she indicated she had suffered some abuse?

3 A She did.

4 Q What time period did she disclose to you that that
5 happened?

6 A Around 2000 to 2001.

7 Q And did she also indicate, first off an address or a
8 location where she indicated that this had happened?

9 A She did.

10 Q Where was that?

11 A It was at the neighbor's house, Mariah was the name
12 she gave me.

13 Q And did she give you more specifically where at the
14 house these events occurred?

15 A She said the incidents occurred in the parent's
16 bedroom and then a back bedroom.

17 Q When was it that you had occasion to speak with her
18 about this?

19 A Let me double check the date. April 14th of 2009.

20 Q Will you please answer any questions Mr. Grose may
21 have.

22 THE COURT: Cross-examination.

23 CROSS-EXAMINATION

24 By Mr. Grose:

25 Q I believe you said that this April 14th, 2009

1 interview was part of the official police investigation?

2 A It was.

3 Q And people refer to you by law enforcement?

4 A Yes, sir.

5 Q And you said that the time of the alleged abuse was
6 2000 to 2001?

7 A Yes, that is when it started.

8 Q And according to your report it would have been when
9 Minor was eight or nine years old?

10 A Yes, sir.

11 Q And the location was Ms. Mariah Freel's house?

12 A Yes, sir.

13 Q And rooms inside the house?

14 A Yes, sir.

15 Q That is all the questions that I have.

16 THE COURT: Any redirect?

17 MR. HODGES: No questions, Your Honor.

18 THE COURT: You may step down. You can call your
19 next witness.

20 MR. HODGES: May we approach?

21 THE COURT: Yes.

22 (Whereupon, a bench conference was held in the
23 presence of the jury but out of the hearing of the
24 jury.)

25 THE COURT: Call your next witness.

1 MR. HODGES: The State calls Susan Bentley.

2 SUSAN BENTLEY, being

3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 By Mr. Hodges:

6 Q State your name for the record.

7 A Susan Bentley.

8 Q Ms. Bentley, what do you do for a living?

9 A I am a Counselor for the Sexual Trauma Counseling
10 Center.

11 Q What is the Sexual Trauma Counseling Center?

12 A It is a center for adults and children for victims of
13 abuse and child abuse.

14 Q Can you speak up, the Court Reporter is having a hard
15 time hearing you. Do you know Minor in this
16 case?

17 A (Inaudible).

18 Q Speak up, please.

19 A Yes, I do.

20 Q How do you know Minor

21 A I was her counselor, (inaudible.)

22 Q When was the first time you saw her?

23 A I saw her on April 29th, 2009.

24 Q How old was she when you saw her?

25 A 16.

1 Q What did she tell you when you counseled her?

2 A Minor _ came to me and disclosed to me sexual
3 assault. This happened at a neighbor's house. The
4 neighbor's name is Carrie and Mariah Freel.

5 Q What time period did she disclose that this had
6 happened?

7 A In 2000 and 2001.

8 Q Did she mention anyone else that was in the house
9 when the sexual assault occurred?

10 A She mentioned this happened at a neighbor's house and
11 there were Matt, Ben and Chris Freel that she played with
12 during her visits--

13 Q Can you speak up, please.

14 A Matt, Ben and Chris Freel.

15 Q Thank you, please answer any questions that Mr. Grose
16 has.

17 THE COURT: Cross-examination.

18 CROSS-EXAMINATION

19 By Mr. Grose:
Co:

20 Q Okay. The location was the Freel's house?

21 A (Inaudible).

22 Q Can't hear--

23 A Right.

24 Q And I believe you said there was Carrie and Mariah's
25 Freel home, right?

1 A Yes.

2 Q Correct?

3 A Yes.

4 Q And that the other people she told you that there was
5 Matt, Ben and Chris?

6 A I guess she gave me those names at one time or
7 another.

8 Q She specifically told you about Ben, didn't she?

9 A Yes, I do remember Ben.

10 Q That is all I have. Thank you, Your Honor.

11 THE COURT: Any redirect?

12 MR. HODGES: No, Your Honor.

13 THE COURT: You may call your next witness.

14 MR. HODGES: Your Honor, it is my understanding that
15 the defense is willing to stipulate to the defendant's
16 date of birth.

17 MR. GROSE: [REDACTED] [REDACTED]?

18 MR. HODGES: That is what our records indicate.

19 THE COURT: All right. Ladies and gentlemen, I have
20 told you at the outset that evidence consisted of two
21 primary sources, sworn witness testimony and exhibits.
22 There is also another form of evidence that you have just
23 heard and that is a stipulation. A stipulation is just an
24 agreement by the parties to a fact and if parties
25 stipulate to a fact it means no further proof is required

1 and you may accept it. So with that, Solicitor, you may
2 call your next witness.

3 MR. HODGES: Your Honor, the State rests.

4 THE COURT: The State has rested. That means they
5 have completed their presentation of evidence and at this
6 time I will take up a matter of law with the lawyers and
7 ask that you go back to the jury room and not to discuss
8 the case with anyone and continue to keep an open mind.
9 Thank you.

10 (Whereupon, the jury was excused from open court.)

11 THE COURT: Any motions or matters at this time?

12 MR. GROSE: Your Honor, at this time on behalf of Mr.
13 Carrier I would move for a directed verdict of acquittal
14 based on the State's failure to present substantial,
15 direct and circumstantial evidence beyond which a jury
16 could convict Mr. Carrier.

17 THE COURT: All right, thank you, Mr. Grose. Of
18 course, I can't weigh the evidence but I do find there is
19 sufficient evidence in the record that would allow the
20 State to survive a motion to dismiss and I respectfully
21 deny it. And viewing the record in the light most
22 favorable to the State, of course, construing all
23 inferences in their favor I think there is sufficient
24 evidence as to the elements of the crime that if believed
25 the jury could find the defendant guilty. Do you know how

1 many witnesses you intend to have, sir?

2 MR. GROSE: I would like to have a brief recess, I
3 expect that we are going to rest our case.

4 THE COURT: Let me ask you, have you questioned Mr.
5 Carrier and I am going to ask the Clerk to swear you in
6 and you can stay right where you are but I need to advise
7 you about your right to testify.

8 JAMES CARRIER, being
9 first duly sworn, testified as

10 THE COURT: Mr. Carrier, are you under the influence
11 of any alcohol, drugs or medication today?

12 MR. CARRIER: No, sir.

13 THE COURT: And I am going to ask you some questions
14 to insure you understand the right you have to testify or
15 not testify. And I am sure Mr. Grose has already gone
16 over this with you. Nevertheless I will ask you the
17 questions here today. If at any time I ask you a question
18 and you don't understand it or if I am not making sense to
19 you or you can't hear me or you want me to repeat
20 something just let me know and I will be glad to do that.
21 And if you need to stop and talk to Mr. Grose at any time
22 certainly you have a right to as well. Is that all right
23 with you, sir?

24 MR. CARRIER: Yes, sir.

25 THE COURT: And you understand you have the right to

1 take the stand and testify as part of your defense that
2 you may wish to raise. You would be able to tell your
3 version of the events and tell the jury any relevance
4 about the case. You also however will be subject to be
5 cross-examining just as your lawyers is cross-examining
6 the State's witnesses. And that means that the State can
7 ask you about anything that might be relevant to the case
8 and anything that might bear on your credibility. Does
9 the State have any kind of record that you seek to impeach
10 him with?

11 MR. HODGES: I beg the Court's indulgence.

12 THE COURT: All right.

13 MR. GROSE: I know he has a conviction from Kentucky
14 and I imagine that they would want to ask about that.

15 MR. HODGES: Probably the nature of it, probably
16 would be appropriate just to ask the prior felony
17 conviction.

18 MR. GROSE: Or exclude it all together. And we
19 factored in what the record is. And also there is an
20 error on his most recent rap sheet. We have factored in
21 the prior record and the arguments that we could make to
22 exclude or limit it and also discussed other things.

23 THE COURT: All right.

24 MR. GROSE: I can tell you I think his decision not
25 to testify, I know you want to ask him questions.

1 THE COURT: Well, I just want to make sure and thank
2 you, Mr. Grose. You understand if you did testify, it
3 appears there may be prior convictions that the jury would
4 learn about that are felonies. And if you didn't testify
5 the jury would not learn about that. Do you understand
6 that, sir?

7 MR. CARRIER: Yes.

8 THE COURT: And if you choose not to testify do you
9 understand that I will tell the jury at the end of the
10 case that you don't have any burden of proof, as I have
11 already told them, and you don't have to produce any
12 evidence and you have the absolute right to remain silent.
13 And that is guaranteed by the constitution. And they
14 cannot hold it against you or take it into account or even
15 discuss the fact that you didn't testify in their
16 deliberations in making their decision as to the verdict.
17 Do you understand that, sir?

18 MR. CARRIER: Yes, sir.

19 THE COURT: Now, understanding all of those things, I
20 know you want to have time to talk to Mr. Grose, have you
21 understood all of my questions, sir?

22 MR. CARRIER: Yes, sir.

23 THE COURT: Do you have any questions of me about
24 your right to testify or not to testify?

25 MR. CARRIER: No, sir.

1 THE COURT: All right. Thank you very much. We will
2 take about a ten minute break.

3 (Whereupon, a short break was taken.)

4 THE COURT: Yes sir, Mr. Grose.

5 MR. GROSE: We are going to rest.

6 THE COURT: Okay. Do y'all have any proposed charges
7 you want to present.

8 MR. GROSE: I just want to object to stuff but if you
9 are not going to give it I don't know that, I have a
10 concern and I don't think it is going to happen and you
11 didn't do what some Judge's do in opening which is talk
12 about truth seeking. And I know that there is that
13 opening instruction that the Chief Justice commissioned in
14 my opinion is mistakenly approved for criminal cases that
15 we have had issues with in other cases, that the jury's
16 function is to seek the truth.

17 THE COURT: Oh, yes.

18 MR. GROSE: I don't want any arguments about that
19 either. Because Mr. Swilley talked about his role, it is
20 true his job is to seek justice but he did that in a way
21 and talked about this trial being important for the
22 community. And I don't want any truth seeking or golden
23 rule kind of argument.

24 MR. HODGES: I am not going to mention that.

25 MR. GROSE: The second thing is and I hesitate to

1 bring it up but there is that, section 16-3-657, I wanted
2 to make sure that you don't intend to charge that, it is
3 actually not applicable by the terms of the statute.

4 THE COURT: Is that the corroboration, not needed. I
5 am not going to charge that.

6 MR. GROSE: That doesn't apply here. So I am just
7 assuming a general charge and lewd act.

8 THE COURT: I haven't heard from the State yet but
9 Mr. Hodges.

10 MR. HODGES: I didn't have a specific request. I am
11 just curious as to your reasonable doubt charge, is it the
12 firmly convinced or hesitate to act.

13 THE COURT: I will be glad to give it to you. Okay,
14 anything else?

15 MR. GROSE: No, sir.

16 MR. HODGES: Nothing from the State.

17 THE COURT: Let's bring the jury in, please.

18 (Whereupon, the jury came into open court at
19 approximately 10:40 a.m.)

20 THE COURT: Yes sir, Mr. Grose.

21 MR. GROSE: Actually, I think Mr. Hodges goes first.
22 I am sorry, we do rest. I didn't understand what you were
23 asking. I apologize.

24 THE COURT: No problem. Ladies and gentlemen, the
25 defense has rested and that means all of the evidence has

1 been submitted and it is now the time to have the closing
2 arguments of the lawyers and I will give you the
3 instruction on the law. So, yes sir, Mr. Hodges.

4 MR. HODGES: Thank you, Your Honor. A tree falls in
5 the woods and nobody hears it. Do you remember Mr. Grose
6 talking about that in opening statements yesterday. The
7 tree falls in the wood and nobody hears it. Well, just
8 because nobody hears it fall, sees it falls, doesn't mean
9 it didn't fall. You know, trees fall at random. But what
10 happened in this case was not random. These were not
11 random acts, they were intentional acts. And Mr. Carrier,
12 he is in control of this situation, not little Minor
13 Mr. Carrier. He is a predator in this situation. If you
14 think about out in Africa, a lion stalking a Bazelle. A
15 predator like a lion is looking for opportunities,
16 opportunities to strike. And that is what happened in
17 this case. You have to imagine that Mr. Carrier was
18 discreet about this, sly about this, he didn't want to get
19 caught doing what he was doing, preying on this young
20 little girl, stealing her innocence. Mr. Carrier is
21 charged with lewd act upon a child and there is a number
22 of things that the State has to prove to prove him guilty.
23 Number one, we have to prove that he was over the age of
24 14 years. You heard the stipulation between the State and
25 the defense about his date of birth. He is over 14 when

1 these events occurred. We have to prove that little
2 Minor _ was under the age of 16. And you heard that she
3 actually disclosed about two weeks before her 16th
4 birthday that this had happened a number of years before
5 when she was living at this house on Highway 25 South.
6 Now, I am somewhat of a disadvantage because I have to go
7 first and then you will hear from Mr. Grose. So I have to
8 sort of anticipate to what he may talk to you about, try
9 to respond to it before it is said. I would anticipate
10 that he will probably talk about the timeframe that this
11 happened. You have to remember, this happened to a child,
12 you know, she is grown up now, this happened when she was
13 little. And you have got to think about, what is the mind
14 of a child, how does a child remember events. You know,
15 every child has little victories, little defeats, things
16 that stand out in their mind. You know, every day,
17 day-to-day school stuff. Yeah, you remember going to
18 school but do you remember what happens specifically every
19 day. You know, when you won the Pinewood Derby or you
20 played on the soccer team or whatever you were doing as a
21 child, do you remember was I eight when I did that, was I
22 ten. I think kids tend to tie that to other events and
23 the locations. You know, I was in this place when this
24 happened and thinking back maybe you can kind of narrow it
25 down to a time, I know I lived in that house at this time

1 period. I know I was getting ready to go into the second
2 grade so it must have been the summer before. When you
3 have got memories as a child I think that is how you
4 perceive things, you know it happened to you, you know you
5 went through that experience. But being able to pin it
6 down to a particular day or a particular month is very,
7 very difficult to a child. And so I think you need to use
8 your common sense when you think about, you know, she has
9 done the best she can to reconstruct her memory of these
10 awful events which understandably she doesn't want to
11 think about. But she has done the best she can to tell
12 you what happened to her, when it happened to her and you
13 know it happened before she was 16. The other thing to
14 think about is what is her motivation in this situation.
15 Why did she come forward. Well, she told you that he had
16 given her this note saying, when you turn 16 and you get
17 to be the age of consent I am coming back for you. And
18 two weeks before her 16th birthday she starts having
19 nightmares about it, starts to become fearful that this
20 man who she hasn't seen in five or six years is going to
21 come back. You know, why five years later, she has moved
22 away, not from the same house anymore, hasn't seen this
23 man since she was 11 years old, he is out of her life,
24 some friend of the neighbor. I mean it is not a relative,
25 it is not somebody she circles with, it is some guy that

1 used to visit their neighbor in a house that she used to
2 visit. What is her motivation to make this up, why would
3 she suddenly two weeks before her 16th birthday come
4 forward and make up a story about something that James
5 Carrier had done to her five years before. You have got
6 to use your common sense, there is no reason for her to
7 come into this courtroom and lie about such a serious
8 thing. What is her motivation. Well, she is having these
9 nightmares, she is remembering about this note and she
10 goes to this woman at her church looking for support and
11 what does she do, she says I need to talk to you about
12 something, please don't tell anybody. I don't want you to
13 tell anybody, she just needed somebody to share this with
14 to give her some support. And she is encouraged, you need
15 to tell your mother about it and come forward and she
16 opens up and does that, this whole process starts rolling.
17 The police get involved and you heard she had to do a
18 forensic interview and she goes to the counselor and goes
19 to the counselor I think she said three years. And then
20 she has to come into this courtroom and testify about what
21 happened to her. And the Judge is going to tell you that
22 you can and should consider the demeanor and the
23 credibility and the believability of the witnesses. I
24 want you to think back to her testimony when it got to the
25 point where she had to talk about what was done to her.

1 How hard it was for her to tell you what happened.
2 Everything that she had gone through to get to this point
3 today and tell you what happened to her, to tell you about
4 the abuse that she suffered at his hands. I submit to
5 you, ladies and gentlemen, he stole her innocence and that
6 cannot be restored but justice can be served and I ask you
7 to find him guilty of a lewd act. Thank you.

8 THE COURT: Thank you, Mr. Hodges. Mr. Grose.

9 MR. GROSE: May it please the Court. The prosecutor
10 just told you that Minor just came in here and told you
11 about the abuse but that is not really what happened. At
12 some point she said it happened for five years but she
13 gave one example where there should have been three
14 witnesses. That is the only example she gave you. We are
15 going to come back and talk about that in a minute but
16 before we do that I am going to take strong issue with
17 something that Mr. Hodges said at the beginning of his
18 opening statement because it is downright despicable to
19 treat other human beings that way. What prosecutors do,
20 what people do when they want to dehumanize somebody is
21 they compare to an animal, they compare them to an animal.
22 Mr. Hodges called James Carrier a predator and compared
23 him to a lion. He picked a lion because a lion is mean
24 and attacks things. And he picked a lion because a lion
25 would scare you. And throughout our history when

1 countries have gone to war they dehumanize their enemy.
2 When countries want to impress people they dehumanize the
3 people that they want to impress and they call them
4 animals and he did that because he wants you to hate a man
5 that you have never met before and to judge him as an
6 animal and not as a human being. That is not how we do
7 things in America. Remember what the Judge told you
8 yesterday about John Adams and the jury trial and it being
9 the heart of the democracy. That is because people are
10 human beings, people in this country have rights. Thomas
11 Jefferson said that the jury trial is the strongest anchor
12 to keep the government in check. We don't come into court
13 and treat people as animals and view them that way and
14 make decisions based on emotions like that. We do it
15 based on the evidence that is presented in the court. The
16 Judge told you that the evidence would be mostly in the
17 form of testimony or exhibits. Well, there are no
18 exhibits in this matter. And stipulations, a stipulation
19 of how old James Carrier is and there is the testimony of
20 the witnesses who was there. That is how the Judge told
21 you that you make decisions. So there is a process in
22 this court, there is a presumption of innocence and that
23 is why the Judge keeps telling you to keep an open mind.
24 When we took a break this morning, before we came back for
25 closings he reminded you to keep an open mind. And the

1 reason for that is because the presumption of innocence
2 and the burden of proof is on prosecutors to prove their
3 case. That is the highest burden that we have in the law.
4 There has been some reference to civil trials, some of you
5 may have set on jury's in civil trials. Typically the
6 proof in those cases is by a preponderance of the
7 evidence, one side slightly tips in favor of that side and
8 that is the proof. I said typically because in some cases
9 the proof in civil cases like in fraud, to prove somebody
10 has committed fraud is by clear and convincing evidence.
11 That sounds like a pretty strong burden. Beyond a
12 reasonable doubt is even a stronger heavier burden because
13 it is that deeper on the government, it is the heart of
14 the criminal justice system, it is the heart of democracy
15 like John Adams and Thomas Jefferson talked about. What
16 is a reasonable doubt. A reasonable doubt is what would
17 make reasonable people hesitate to ask, hesitate to act,
18 to ask questions. Are there still unanswered questions
19 when you get to the end of this case. One of the
20 questions that she should have from what we talked about a
21 minute ago and what Mr. Hodges said because this was
22 Minor opportunity to come into court and talk about
23 it. She told you that she had originally told the police
24 that she was ten years old and then she later said it
25 happened when she was five to ten years old. Did it

1 happen over a one to two year period or over a five year
2 period. But when they asked her to give an example, Mr.
3 Swilley said can you give an example, she talks about the
4 time that they were supposedly in the room playing video
5 games. This is just not any room, this is a trailer, we
6 know that trailers that are small and we know that the
7 rooms inside the trailer are small. And she told you
8 there was a set of bunk beds and then an adult bed and
9 then a TV in this room. And she told you that Mariah
10 Freel had three children, Ben and Chris and Matt and that
11 all three of those children were in the room when this
12 took place, all three of them in this room with the bunk
13 bed and the adult bed and the TV. So in order to believe
14 her about this one incident, never told you about any of
15 these others that supposedly happened. In order to
16 believe her about this one incident you have to believe
17 that there was three witnesses. What I talked about in
18 the beginning, I think the Judge is going to tell you that
19 when you decide a case, when you decide the believability
20 and credibility, that one of the things that you can look
21 to is whether a witness' testimony, statements were
22 corroborated or not corroborated. Now sometimes things
23 aren't corroborated. But when the witness who tells you
24 that the one example she gives you was witnessed by not
25 one, not two, by three people you should look to that for

1 corroboration. She told Deputy Grogan, we didn't hear
2 from him but she told him the location and that the
3 children lived in the house with Mariah Freel. She told
4 Jessica Bell the same information and she specifically
5 told Susan Bentley about Ben. And the Solicitor's office
6 went and interviewed her and I asked, Minor was Ben
7 here today and he is not. She knew he wasn't going to be
8 here, I told you yesterday he wasn't going to be here.
9 You have got to ask yourself if there was anything that
10 Ben would say to corroborate that allegation, that
11 incident or any of this other stuff that supposedly
12 happened for five years that you never heard about, they
13 would have called him in here to testify about that. And
14 that is a reasonable doubt. That is a reasonable doubt
15 because all of this, talking to Grogan, talking to Ms.
16 Bell who did an interview for law enforcement is all about
17 looking for evidence, looking for proof and trying to find
18 out whether there is a corroboration. I told you
19 yesterday that y'all don't decide what the facts are
20 because none of us were there. What you decide is, is you
21 decide whether or not the State has met their burden of
22 proof of proving the case beyond a reasonable doubt. And
23 whether there is a reasonable doubt, if there is a
24 reasonable doubt that causes you to hesitate then the
25 verdict is suppose to be not guilty because that is what

1 the jury trials do for us, that is why the jury trials are
2 the heart of democracy. And I don't think there is any
3 way in this case that you can get past the fact that the
4 one example they chose to give you should have been
5 supportive by corroborating testimony. That is a
6 reasonable doubt, that is why we told you yesterday that
7 we were going to ask you today to find James Carrier not
8 guilty because they have not proven their case.

9 THE COURT: Thank you, Mr. Grose. Ladies and
10 gentlemen, you have now heard all the evidence you are
11 going to hear in the case and it is now my duty to
12 instruct you on the law that applies to this case. And it
13 is your duty to find the facts from the evidence that you
14 have heard and to those facts you must apply the law as I
15 give it to you and you should not be concerned with what
16 the law should be but with what it is. and that means you
17 must not be influenced in this case about any personal
18 likes or dislikes or opinions or prejudices or undue
19 sympathy and that means you must decide the case slowly on
20 the evidence and according to the law. And you recall
21 that you took an oath to do just that when we began this
22 case. Now, ladies and gentlemen, in following my
23 instructions you must follow them all and not single out
24 some and ignore others because they are equally important
25 and please do not read into these instructions or to

1 anything that I may have said or done during this trial as
2 any suggestion as to what I think your verdict should be
3 or what I think the facts are because as I have told you
4 at the outset that is your exclusive prerogative to
5 determine what the facts are. And I am certainly not
6 going to intrude on your right that our constitution gives
7 you to determine the facts exclusively just as I know you
8 are not going to intrude on my right to tell you what the
9 law is that applies in this case. So remember that you
10 and you alone are the judges of what the facts are and you
11 determine what the facts are by evaluating and weighing
12 the evidence you have heard in this case. It is a mental
13 process, it is certainly not a physical process, I am not
14 going to give you a set of scales to go back and conduct
15 experiments with to weigh the evidence. It is instead
16 something you do mentally and you weigh and evaluate
17 evidence simply by using your good common sense and your
18 sense of logic and reason and your life experiences and
19 you bring those things to bear on what you have heard in
20 the form of evidence in this case. I told you at the
21 beginning that evidence consists of only a few things.
22 The first is sworn witness testimony, the second is
23 exhibit and in this case we have also had a stipulation
24 which I described to you earlier. Everything else is not
25 evidence. What the lawyers say, although important is not

1 evidence because they are not witnesses. So if your
2 memory of what the testimony was differs from the lawyers
3 your memory controls. Likewise anything you may have seen
4 or heard when court is not in session is not evidence.

5 Now, there are also two types of evidence that
6 sometimes occur during trials and what I am talking about
7 is direct evidence and circumstantial evidence. Direct
8 evidence is the testimony of someone who claims to have
9 actual and direct knowledge of a fact such as an
10 eyewitness. It is evidence that if believed immediately
11 establishes a fact. Circumstantial evidence is indirect
12 evidence or put another way, circumstantial evidence is
13 proof of a chain of facts and circumstances from which you
14 could find that another fact exists even though it has not
15 been proven to you directly. You are entitled to consider
16 both direct and circumstantial evidence and there is not a
17 greater degree of certainty required of one over the
18 other. Now, ladies and gentlemen, you as the judge of the
19 facts will also be the exclusive judge of the credibility
20 of all of the evidence and I told you about that at the
21 outset. And I am not going to repeat it to you now
22 because I know you heard me the first time. But I will
23 tell you this, as the judge of credibility, in the case of
24 a witness who testifies, you can believe everything a
25 witness says or you can believe nothing a witness says.

1 You can believe parts of a witnesses testimony and
2 disbelieve other parts. You may believe one witness over
3 several or several over one. Now, ladies and gentlemen,
4 the mere fact that Mr. Carrier was charged and indicted in
5 this case is not evidence. And the indictment cannot be
6 considered by you as evidence of guilt. It doesn't even
7 create a suspicion of guilt. The indictment, as I have
8 instructed you before, is simply the formal written
9 instrument that contains the charges made against Mr.
10 Carrier and it is the way the government notifies a
11 citizen of what they are charged with. Mr. Carrier plead
12 not guilty to the indictment and that put the burden of
13 proof on the State and a person charged with committing a
14 crime, no matter what the charge may be, is always
15 presumed innocent and is never required to prove himself
16 innocent or prove himself not guilty. It is a fundamental
17 and important rule of criminal law that a defendant will
18 always be presumed to be innocent of the crime for which
19 the indictment was issued unless and until guilt has been
20 proven by evidence satisfying you of that guilt beyond a
21 reasonable doubt. This presumption of innocence does not
22 end when your deliberations begin but it accompanies the
23 defendant throughout the trial and stays with him unless
24 and until you reach a verdict of guilt based on the
25 evidence satisfying you of guilt beyond a reasonable

1 doubt. The presumption of innocence is not some legal
2 technicality, it is a substantial and fundamental right to
3 which everyone is entitled to. And I also told you a
4 little bit about reasonable doubt. And I want to define
5 that phrase for you in terms of what the law defines it
6 has. A reasonable doubt is the kind of doubt that would
7 cause a reasonable, sincere, honest and conscientious
8 person to hesitate to act in an important matter in their
9 own affairs. Proof beyond a reasonable doubt is proof
10 that leaves you firmly convinced of the defendant's guilt.
11 Of course, there are few things that we know with absolute
12 certainty and in criminal cases the law does not require
13 proof that overcomes every possible doubt. If based on
14 your view of the evidence you are firmly convinced that
15 Mr. Carrier is guilty of the crime charged you must find
16 him guilty. If on the other hand you think there is a
17 reasonable possibility that the defendant is not guilty
18 you must give him the benefit of that doubt and find him
19 not guilty. A reasonable doubt may arise from the
20 evidence or from a lack of evidence. A defendant is
21 entitled to every reasonable doubt that may arise in the
22 case and that simply means that if upon any issue of fact
23 that is essential to a finding of guilt you have a
24 reasonable doubt as to how that issue should be resolved,
25 it is your duty to resolve that doubt in favor of the

1 defendant, Mr. Carrier.

2 Now, ladies and gentlemen, the constitution of our
3 State and of the United States grants us all the right to
4 remain silent. The fact that a defendant does not testify
5 is not something that you can consider in determining your
6 verdict. A defendant has the right to remain silent and
7 he cannot be punished for exercising that right. And this
8 is an important and fundamental criminal law as well and
9 that is that the mere fact that someone does not testify
10 is not something you can consider, taking into account or
11 even discuss in the jury room. The burden of proof is
12 always on the State and as I have explained to you the
13 defendant has no burden to produce evidence or offer any
14 explanation or evidence whatsoever. He can only be
15 convicted if you are convinced unanimously the State has
16 proven each and every element of the crime beyond a
17 reasonable doubt.

18 Now, Mr. Carrier is charged with the offense of lewd
19 act on a child. In order to convict Mr. Carrier of this
20 offense the State must prove beyond a reasonable doubt
21 first that the defendant was over the age of 14. Second
22 the State must prove beyond a reasonable doubt that the
23 defendant willfully and lewdly committed or attempted a
24 lewd or lascivious act on or with the body or its parts of
25 a child under the age of 16 years with the intent to

1 arouse, appeal to or gratify the lust, passions or sexual
2 desires of the defendant or the child. Willfully means
3 voluntarily and intentionally with the specific intent to
4 do something the law forbids. Lewd means obscene,
5 lustful, indecent or lecherous. Lascivious means
6 intending to incite the lust, lewd, indecent, obscene or
7 intending to deprave the morals and respect to sexual
8 relations. So those are the elements of the crime.

9 And a few words in closing as to your deliberations.
10 You weren't chosen to be jurors in this case to be a
11 partisan or advocate for either the State or for Mr.
12 Carrier. You were chosen because both sides believed you
13 could be fair and impartial and you could decide this case
14 without any kind of biased or prejudiced or preconceived
15 ideas. So you are judges, judges of the facts and what
16 you will do in your deliberations is to consider, weigh
17 and evaluate the evidence, determine the facts of the
18 case, apply the law that I just gave you to those facts
19 and then you will reach a verdict. If you looked up the
20 word, jury, you would see it came from an old term that
21 meant a company of people sworn to render a verdict. So
22 that is what your task is and the genius of our jury
23 system is that it allows twelve people from different
24 backgrounds and life experiences and perspectives to come
25 together, view the evidence, weigh it and ultimately reach

1 a verdict. So consider each other's points and points of
2 view and remember that your vote is exactly that, it is
3 your vote and no one else's. If the discussion persuades
4 that you should change your mind, if you have differing
5 views then don't be afraid to do so but don't give up a
6 conscientiously held belief simply to get the case over
7 with or to reach a unanimous verdict. Because as I have
8 already indicated and as you know this case is very
9 important to both the State and Mr. Carrier. Now, I did
10 not appoint a foreperson so what I am going to do is let
11 y'all go back and select someone to be the foreperson and
12 let the bailiff know who it is. And that person will
13 preside over deliberations and will sign this verdict form
14 when you reach a unanimous verdict. And the verdict form
15 is very straightforward. All I ask is, as to the charge
16 of lewd act upon a child, we the jury unanimously find the
17 defendant, James Carrier, guilty or not guilty. Don't
18 attach any significance as to which options I put first, I
19 just had to put one first and it certainly doesn't mean
20 anything. So don't read anything into that. And as I
21 said, the foreperson is the one who is authorized to sign
22 the verdict when the verdict is unanimous. So at this
23 time I am going to ask you to go back to the jury room,
24 select someone to be the foreperson and write their name
25 down and give it to Mr. Willingham and once we have that I

1 will send back the verdict form and any exhibits and then
2 the case will be in your hands for a decision. Thank you
3 very much for your cooperation and attention during the
4 trial. The record is now closed, there is not going to be
5 any more witnesses and there is not going to be further
6 evidence so you will have to decide the case on what you
7 have right now. The alternates, if you will stay back
8 while the regular jurors go in the jury room and I will
9 talk to y'all separately. Thank you.

10 (Whereupon, the jury was excused from open court at
11 approximately 11:11 a.m.)

12 THE COURT: All right, Ms. Carroll and Mr.
13 Westmorland, the law doesn't allow you to go back to the
14 jury room at this time so I will excuse you at this time.
15 Thank you for your service and you can call back after
16 6:00. Thank you.

17 (Whereupon, the alternate jurors were excused from
18 the trial of the case.)

19 THE COURT: All right, any objections from the State?

20 MR. HODGES: Not from the State, Your Honor.

21 THE COURT: From the defense?

22 MR. GROSE: No, sir.

23 THE COURT: All right, we don't have any exhibits.
24 Send the verdict form back and they can start
25 deliberating.

1 (Whereupon, the jury started deliberations at
2 approximately 11:15 a.m.)

3 THE COURT: We have a note from the jury. I will
4 read the note, you are certainly invited to inspect it but
5 it asked four questions. How old was the defendant at the
6 time, how old were the three children in the room, when
7 was the note supposingly given. I am reading it, this is
8 what it says. When was the note supposingly given,
9 (date). Where was the mother at the time and father? So
10 we will make that part of the record.

11 (Whereupon, Court's Exhibit 1 was marked for
12 identification only.)

13 THE COURT: I don't know of any way to answer the
14 questions.

15 MR. GROSE: I don't think you can answer those
16 questions. In fact, most of those questions aren't
17 answered by the State. And I would love it if you would
18 tell them that the State didn't answer those questions and
19 that should weigh heavily by not guilty. But I think the
20 best thing to do is just tell them that all the evidence
21 is in and they have to base their decision on that.

22 MR. HODGES: I do think that you can provide that the
23 information in our stipulation is response to question one
24 as to the date for the defendant.

25 THE COURT: What about that, Mr. Grose.

1 MR. GROSE: That was a stipulation. I still think
2 the best answer to do is to tell them all the evidence is
3 in and they have to decide based on the evidence.

4 THE COURT: March 11, 1974?

5 MR. GROSE: Yes, sir.

6 THE COURT: You want to look at this and see my
7 proposed response?

8 MR. GROSE: Yes, sir.

9 MR. HODGES: Yes, sir.

10 THE COURT: We will make this as Court's exhibit 2
11 and submit it to them. Just tell them not to throw it
12 away.

13 (Whereupon, Court's Exhibit 2 was marked for
14 identification only.)

15 THE COURT: We will be at ease until we hear
16 something else. Thank you.

17 (Whereupon, the jury had lunch brought in to them.

18 The Court takes a lunch break from 12:45 to 2:00.)

19 THE COURT: We have a note from the jury that says we
20 have a hung jury? Undecided at this time! Which I will
21 make a Court's exhibit.

22 (Whereupon, Court's Exhibit 3 was marked for
23 identification only.)

24 THE COURT: My inclination is to go ahead and give
25 them an Alan Charge. Is there any objection to that?

1 MR. HODGES: Not from the State, Your Honor.

2 MR. GROSE: It is a little odd but, yes. Because you
3 have actually already given them an Alan Charge as part of
4 your general instruction. When you talked about listening
5 to other people and if they persuade you to change your
6 mind and not let your conscious to be violated. I think
7 they have followed those instructions and have now, you
8 know, they deliberated longer than it took to try the
9 case, almost doubled that amount of time. So I think it
10 would be appropriate to declare a mistrial at this point
11 because this would essentially be a second Alan Charge and
12 a second Alan Charge is prohibited.

13 THE COURT: Well, it is not prohibited until they
14 indicate to me that they can't reach a verdict and unless
15 you have some contrary authority.

16 MR. GROSE: Well I think that note indicates that
17 they can't reach a verdict.

18 THE COURT: I understand that but all the statute
19 says if they indicate they can't reach a verdict, and I
20 will just have to find it right here.

21 MR. GROSE: Well, it says that, you know, it is
22 14-7-1330 I think is what you are looking for. It says
23 when a jury, after due and thorough deliberations upon any
24 cause, returns into court without having agreed upon a
25 verdict the Court may state anew the evidence or any part

1 of it and explain to it anew the law applicable to the
2 case and send them out for further deliberation. It shall
3 not be sent out again without its own consent unless it
4 shall ask from the Court with some further explanation of
5 the law. Even the first Alan charge, I think, is
6 discretionary. But our position is that they have already
7 received that information.

8 THE COURT: I understand your position. I don't
9 think it is supported by the statute. They have not
10 returned to court without an agreed upon verdict. The
11 Court is sending them this note.

12 MR. GROSE: I am sorry, I can't hear you.

13 THE COURT: 14-7-1330 talks about the procedure with
14 a jury during deliberations and returns into court without
15 a verdict. And the note would be equivalent to a return
16 to court. So the statute then says if that happens the
17 Court may send the jury out for further deliberation and
18 then if they come back without a verdict, they can't be
19 sent out again without their consent unless it asks for
20 the law. Further explanation of the law. So the
21 procedure that, the Court said, described in State versus
22 Robinson, 360 SC 187 is that if I give an Alan charge they
23 further note of the deadlock the only thing I can do is
24 require them more time and whether they have further
25 instruction on the law. And if they say no to that then

1 it is the end of this trial. But I can give them this, on
2 this stage based on the statute of the law. Anything
3 further for the Court?

4 MR. HODGES: Not from the State.

5 THE COURT: Okay. Yes, sir.

6 BAILIFF: They said give them two minutes.

7 THE COURT: What?

8 BAILIFF: They are asking for two minutes.

9 THE COURT: Oh, okay.

10 (Whereupon, a break was taken until the jury reaches
11 a verdict.)

12 BAILIFF: They have a verdict, Your Honor.

13 THE COURT: All right. Okay.

14 (Whereupon, the jury came into open court with a
15 verdict at approximately 2:35 p.m.)

16 THE COURT: Okay, ladies and gentlemen, have you
17 reached a unanimous verdict, Mr. Foreman?

18 MR. FOREMAN: Yes, sir.

19 THE COURT: Okay, if you will hand that to the
20 bailiff. All right.

21 CLERK OF COURT: The State of South Carolina, the
22 County of Greenwood, the Court of General Sessions,
23 indictment number 2012-GS-24-1166. The State of South
24 Carolina versus James Lloyd Carrier. As to the charge of
25 lewd act upon a child, we the jury unanimously find the

1 defendant, James Lloyd Carrier, guilty. Signed
2 Foreperson, Christopher Tucker.

3 Ladies and gentlemen of the jury, if this is still
4 your verdict will you please raise your right hand.

5 (Whereupon, all jurors raised their hand.)

6 CLERK OF COURT: All jurors have raised their right
7 hand. Thank you.

8 MR. GROSE: We request the jury to be polled, Your
9 Honor.

10 THE COURT: All right. Madam Clerk, if you can poll
11 the jury.

12 THE CLERK: Christopher Tucker, is this your verdict?

13 JUROR: Yes, ma'am.

14 THE CLERK: Is it still your verdict?

15 JUROR: Yes, ma'am.

16 THE CLERK: Ruth Rimsky, is this your verdict?

17 JUROR: It is.

18 THE CLERK: Is it still your verdict?

19 JUROR: Yes.

20 THE CLERK: James Gray, is this your verdict?

21 JUROR: Yes.

22 THE CLERK: Is it still your verdict?

23 JUROR: Yes.

24 THE CLERK: Bettye Johnson, is this your verdict?

25 JUROR: Yes.

1 THE CLERK: Is it still your verdict?
2 JUROR: Yes.
3 THE CLERK: Laura Riddle, is this your verdict?
4 JUROR: Yes.
5 THE CLERK: Is it still your verdict?
6 JUROR: Yes.
7 THE CLERK: Ruby Sullivan, is this your verdict?
8 Juror: Yes.
9 THE CLERK: Is it still your verdict?
10 JUROR: Yes.
11 THE CLERK: David Yingling, is this your verdict?
12 JUROR: Yes.
13 THE CLERK: Is it still your verdict?
14 JUROR: Yes.
15 THE CLERK: Wallace Bowie, is this your verdict?
16 JUROR: Yes.
17 THE CLERK: Is it still your verdict?
18 JUROR: Yes.
19 THE CLERK: Michael Smith, is this your verdict?
20 JUROR: Yes.
21 THE CLERK: Is it still your verdict?
22 JUROR: Yes.
23 THE CLERK: Dorothy Robertson, is this your verdict?
24 JUROR: Yes.
25 THE CLERK: Is it still your verdict?

1 JUROR: Yes.

2 THE CLERK: Emily Reed, is this your verdict?

3 JUROR: Yes.

4 THE CLERK: Is it still your verdict?

5 JUROR: Yes.

6 THE CLERK: Bettye Smoot, is this your verdict?

7 JUROR: Yes.

8 THE CLERK: Is it still your verdict?

9 JUROR: Yes.

10 THE CLERK: The jury has been polled, Your Honor.

11 THE COURT: Any matters or motions before the jury is

12 discharged, from the State?

13 MR. HODGES: Not from the State, Your Honor.

14 THE COURT: From the defense?

15 MR. GROSE: Not at this time, Your Honor.

16 THE COURT: All right, ladies and gentlemen, thank

17 you for your service. Just call back after 6:00 o'clock

18 tonight and there will be further instructions and we

19 appreciate your cooperation and patience. Thank you.

20 (Whereupon, the jury was excused from open court at

21 approximately 2:40 p.m.)

22 THE COURT: Okay, any motions?

23 MR. GROSE: Your Honor, I would like to take the ten

24 days allowed to file pretrial motions. I think the rule

25 grants that.

1 THE COURT: What is the State's position?

2 MR. HODGES: I never researched that particular
3 issue.

4 THE COURT: What rule is that.

5 MR. GROSE: If you give me a second I will get my
6 rules. Judge, it is Rule 29 of the South Carolina Rules
7 of Criminal Procedure, paragraph A. Except for motions
8 for a new trial based on after discovered evidence
9 posttrial motions shall be made within ten days after the
10 imposition of the sentence. That rules stays the time of
11 appeal until you rule on them and you have discretion too,
12 have a hearing or decide on the motions.

13 THE COURT: Okay, you are talking about after I
14 sentence him?

15 MR. GROSE: Right.

16 THE COURT: Okay. I thought you meant before I
17 sentenced him.

18 MR. GROSE: Well, I want to talk to you about that
19 too. I thought you were calling for posttrial motions. I
20 was going to suggest you get a presentencing form before
21 you impose sentencing.

22 THE COURT: Why are you suggesting that. What is
23 there that would make it up.

24 MR. GROSE: Well, I think it would be appropriate
25 because then you would have more information about Mr.

1 Carrier that is resulted from, you know, by probation and
2 parole. The problem that we have here, a problem is going
3 to be extraordinarily and I think you are going to be
4 under a lot of pressure to impose a very harsh sentence
5 after they talk about his prior record. But I think even
6 when a maximum sentence is being considered, the Court
7 needs to have as much information as possible. I am not
8 in the position that I can stand up here and tell you that
9 Mr. Carrier has been working and doing good things in his
10 job because he can't get a job because he is on the sex
11 offender registry. So I think it would be appropriate for
12 the Court to, you know, have that kind of in depth
13 background information that comes with a presentencing
14 investigation.

15 THE COURT: Well, I understand your position and I
16 have ordered this when I felt I needed more information
17 and I certainly respect your opinion about that. But I
18 think I would like to hear from the State and what their
19 position is.

20 MR. HODGES: Your Honor, it would be our preference
21 to go ahead and sentence him today, certainly our
22 preference.

23 MR. GROSE: It wasn't their preference to conclude
24 the matter for three years. If you are going to decide it
25 I don't think you should decide based on their preference

1 to conclude the matter when they delayed it for so long.

2 THE COURT: All right. I am going to do what I think
3 is fair and right. So I would like to hear the State's
4 position on the sentencing at this time.

5 MR. HODGES: As Mr. Grose mentioned, Your Honor, Mr.
6 Carrier is currently on the sex offender registry for a
7 conviction out of the State of Kentucky for charges, it
8 appears to be sexual abuse, first degree. Certainly being
9 convicted of a lewd act in this State after having already
10 previously being convicted of a sexual offense and being
11 on the sexual offender registry it would be the State's
12 position, Your Honor, that a maximum sentence would be
13 appropriate in this case. It is also my understanding
14 that based on the law in this State that Mr. Carrier would
15 be required to have a lifetime GPS monitoring as part of
16 his sex offender registry. And I don't know if the victim
17 wishes to address the Court regarding sentencing if you
18 would like to hear from the victim.

19 MR. SWILLEY: Your Honor, I believe she does wish to
20 address the Court if you are ready to hear that.

21 MR. HODGES: Your Honor, she would like to address
22 the Court.

23 THE COURT: All right. Yes, ma'am.

24 MS. FERQUERON: Your Honor, this man has made my life
25 terrible. I feel he should get the max.

1 THE COURT: All right, thank you, ma'am. Does he
2 have any other record?

3 MR. HODGES: Not aware of any other convictions, Your
4 Honor.

5 THE COURT: What was the sentence on the Kentucky
6 issue?

7 MR. SWILLEY: Your Honor, it was one year according
8 to his rap sheet.

9 THE COURT: When was that imposed?

10 MR. SWILLEY: I beg the Court's indulgence. The
11 incident in Kentucky occurred on April the 22nd of 1995.

12 THE COURT: When was the sentence imposed, is what I
13 was asking. Did he actually serve the time or was it
14 probation?

15 MR. SWILLEY: His rap sheet indicates that he did, he
16 was sentenced to one year and didn't make any kind of
17 reference as to if he received a probationary sentence, it
18 just said one year.

19 THE COURT: And that was imposed in 1995?

20 MR. SWILLEY: That is what it appears, Your Honor.
21 His criminal history indicates the arrest date.

22 THE COURT: Okay. Anything further from the State?

23 MR. HODGES: Not from the State, Your Honor.

24 THE COURT: And Mr. Grose?

25 MR. GROSE: Your Honor, I was trying to look for and

1 I can't find it, it is my understanding and I assume and
2 it should have and I can't place my hands on it right now.
3 It is my understanding and I have seen, I don't know where
4 it is, it has got to be in a file over there across the
5 street, but that Mr. Carrier is not required to register
6 as a sex offender by Kentucky any more. That most states
7 have, I don't know if I can say most, but I can say a lot
8 of states have a different approach of the sex offender
9 registry than South Carolina does. And South Carolina, it
10 is mandatory for, it is mandatory for life, for everybody
11 regardless of the offense or the severity of the offense.
12 So I think that that is a reason, more reason as to why,
13 you know, it might be appropriate to inquire into a
14 presentencing report if the Court is going to take into
15 account something from, you know, from 1995 without really
16 knowing what it is and without really knowing what
17 Kentucky's treatment of it is compared to how South
18 Carolina treats those types of matters. The other thing
19 that, you know, the State had provided me with incident
20 reports from that other incident and those are in my
21 office, once we realized we weren't going to be, having to
22 deal with the prior bad act type evidence in the trial.
23 The allegations there do not involve any more than what
24 the allegations here would involve and now it is a one
25 time event and it is actually, you know, in some respect

1 it is kind of a minimal type incident. And when they put
2 it on an incident report and talk about it as sexual abuse
3 or however they read it out, it sounds like a lot more
4 horrific than it really is.

5 THE COURT: Well, I am not inclined to do the
6 presentence report so is there anything further from your
7 client. I will certainly give him an opportunity to
8 speak.

9 MR. GROSE: On a legal matter, and I will probably
10 will address this also in the posttrial motion. In the
11 legal matter the State has already brought up a lifetime
12 electronic monitoring. Our Supreme Court has recently cut
13 back on that. I can't think of the case but it was
14 procedurally in a different posture, it was a case out of
15 your circuit, out of Greenville where the defendant was
16 convicted of a lewd act prior to the monitoring was
17 required to have taken place and was on probation and
18 violated probation. The Court was required after finding
19 a violation of probation to order life with GPS
20 monitoring. And I have seen the briefs in that case, our
21 Supreme Court did not address a number of issues in that
22 that were actually raised. And one of the issues is, sort
23 of a due process issue, just a general whether GPS is
24 imposed without some kind of specific determination. This
25 is an issue I think the US Supreme Court had left open in

1 some of the earlier challenges of sex offender registry in
2 general. And so what I would request is that following
3 what our Court did in the recent case where they said
4 there would have to be a hearing to determine whether
5 lifetime monitoring would apply beyond the sentence,
6 before the Court could impose, if the GPS would be
7 mandatory part of the sentence and I would ask the Court
8 to require that before it could be extended beyond the
9 length of the sentence that is imposed that there be a
10 hearing at that time to determine whether or not it should
11 be continually not. Because for lewd act it is lifetime.
12 Other provisions of the monitoring allow for that to be
13 reviewed every ten years but it can't be reviewed for lewd
14 act. So we are asking the Court to do what the Supreme
15 Court has just done in a case out of Greenville which is
16 to provide a mechanism for that for it to be extended
17 beyond whatever sentence that you impose.

18 THE COURT: All right, does your client, Mr. Carrier,
19 want to say anything?

20 MR. GROSE: He probably does.

21 MR. CARRIER: All I want to say, Judge, it doesn't
22 seem right to me to come with a hung jury and wait for
23 them to come back with a guilty verdict.

24 THE COURT: Okay.

25 MR. CARRIER: To me I am getting hooted. That is the

1 only way I can explain it without going into any further
2 details.

3 THE COURT: Yes sir, thank you.

4 MR. GROSE: Your Honor, I can just, to followup on
5 what I said a minute ago. Mr. Carrier is, he has not been
6 able to be employed because of the sex offender registry.
7 I have found him to be a reliable and conscientious
8 person. Mr. Carrier has always been available, I have
9 needed him and met with him, beyond that is taking
10 initiative on a regular basis to be able to contact me.
11 His mother and father and aunt are here, he has a large
12 amount of family support. They have come to meet with
13 him, they have been available to answer questions. And I
14 would just request that the Court go beyond the facts that
15 were presented in the case.

16 THE COURT: All right, anything further?

17 MR. GROSE: Not at this point, Your Honor.

18 THE COURT: Anything further from the State?

19 MR. HODGES: Not from the State, Your Honor.

20 THE COURT: Does anybody have the GPS statute.

21 MR. GROSE: Your Honor, it is going to be
22 23-3-540(c). The case I was talking about out of
23 Greenville County was State versus Jennifer Dykes,
24 D-Y-K-E-S. It is opinion number 27124. And we probably
25 are going to look at that because I know that the, our

1 legislature has just codified or have just repealed lewd
2 act but made essentially the same thing on criminal sexual
3 conduct with a minor, third.

4 THE COURT: Does the State have any position about
5 that?

6 MR. HODGES: I know on this crime bill there was a
7 savings clause that indicated that if someone was
8 convicted under the law that they were charged with that
9 that was the law that applied to their particular case. I
10 have to look to see if there was a similar savings clause
11 in this amendment.

12 THE COURT: All right. Well, okay, Mr. Carrier, if
13 you can come on around here for sentencing.

14 MR. GROSE: Just in response to that, what he just
15 said. Sex offense registry is not supposed to be
16 construed and just glancing at it it does not look like it
17 was even required. I need to study it more but it does
18 not look like it requires with CSC with a minor, third.
19 So our argument is it shouldn't be required now
20 particularly since it is from lewd act, since the sex
21 offender registry is not cumulative or at least that is
22 what the government always tells us.

23 THE COURT: Mr. Carrier, your lawyer has done an
24 outstanding job for you and made compelling arguments
25 throughout the case and even just now about the sentence.

1 But the statutes limit what I can do and based on the fact
2 of your prior conviction and circumstances of this case
3 and what the legislature has made the law to be, the
4 sentence is that you be committed to the Department of
5 Corrections for a period of 15 years and have the
6 electronic monitoring, GPS, as prescribed by the statute.
7 Thank you.

8 MR. SWILLEY: Thank you, Your Honor.

9 (Whereupon, Court's Exhibit 4 was marked for
10 identification only.)

11 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

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1 CERTIFICATE OF REPORTER

2

3

4 State of South Carolina)
5 County of Newberry)

6

7

8 I, Joy E. Holston, Official Court Reporter for the
9 Eighth Judicial Circuit of the State of South Carolina, do
10 hereby certify that the foregoing is a true, accurate and
11 complete transcript of record of the proceedings had and
12 evidence introduced in the trial of the captioned case,
13 relative to appeal, in the County of Greenwood, South
14 Carolina on the 17th day of July, 2012.

15 I do further certify that I am neither of kin,
16 counsel nor interest to any party hereto.

17

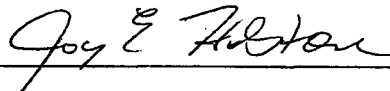
18

April 29, 2013

19

20

21



22

Joy E. Holston, Court Reporter

23

My Commission expires: March 13, 2016

24

25

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF GREENWOOD	)	
	)	
THE STATE	)	Cases No: 2009-GS-24-1146 & 2012-GS-24-1166
	)	
	)	
	)	
James L. Carrier,	)	Motion for Court to Try Defendant on the
Defendant	)	Original Indictment

To: The Honorable D. Garrison Hill, Presiding Judge, Eighth Judicial Circuit

The Defendant, James Carrier, moves the Court to order him tried on the original indictment from 2009.

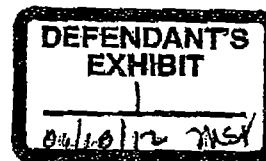
Procedural and Factual Background

Over a quarter century ago, noting "the need for preserving public trust in the proceedings of the grand jury," Chief Justice Lewis warned of the dangers of the grand jury becoming a "mere plaything of prosecutors."¹ The drama of last Thursday afternoon and Friday morning² ultimately revealed how the prosecution manipulated the discovery process and used the grand jury as its "plaything" in hopes of gaining a tactical advantage over Mr. Carrier.

The prosecution's strategy began to come to light in two seemingly unrelated emails. On June 5, 2012, the Assistant Solicitor wrote Mr. Carrier's Counsel:

¹ *State v. Capps*, 276 S.C. 59, 67, 275 S.E.2d 872, 875 (1981) (Lewis, C.J., dissenting). Chief Justice Lewis was complaining about the practice of prosecutors being the only witness before the Grand Jury. Our Supreme Court barred this practice in *State v. Anderson*, 312 S.C. 185, 439 S.E.2d 835 (1993).

² The disclosure of the alleged victim's counseling records on the afternoon of Thursday, June 14, 2012 required an emergency consultation with a expert witness by Mr. Carrier's counsel and a subsequent request for Court Administration to re-assign judges so that this case could continue to trial on Monday, June 18, 2012 as ordered by the Honorable J. Cordell Maddox on May 16, 2012. App. 4.



I am having Mr. Carrier re-indicted for Lewd Act because there is an error in the original indictment. It should read "between the 1st day of January 1999 and the 31st day of December 2003."

A copy of this e-mail is attached in the appendix (hereinafter "App."), p. 1. The second e-mail from the prosecutor, dated June 13, 2012 stated:

I found out that the victim has been seeing a counselor at Sexual Trauma. I intend to have the counselor testify. She won't/can't release her records without a Court order, so I propose having her come over some time [sic] this week so Judge Hughston can order her to produce her file. Thoughts?

App. 2. This e-mail created the impression that the prosecution learned about this witness for the first time on the eve of trial. The Honorable Thomas L. Hughston, Jr., who happened to be presiding over a term of General Sessions Court in Greenwood, signed an order on June 14, 2012. These records were disclosed Mr. Carrier's counsel later that day at 4:41 p.m. App. 3.

Earlier in the day of June 14th, Mr. Carrier's defense counsel sent an e-mail to the Honorable J. Cordell Maddox, Jr., who was originally assigned to preside over this case, to update the trial court on recent developments and scheduling matters. Counsel stated, in part:

[O]n June 5th, the State informed me that Mr. Carrier would be re-indicted. This re-indictment significantly expands the time frame of the allegations. I have not been provided with any additional statements under Rule 5 or *Brady* that justify or explain this change. Therefore, I will ask the Court to inquire about the existence of any Rule 5 and *Brady* material that has not been produced. I also plan to move that Mr. Carrier be tried on the original indictment.

App. 5.

Contrary to the prosecutor's suggestion she was surprised to learn the alleged victim (hereinafter "the child")³ was seeing a counselor, the records disclosed on Thursday afternoon reveled the counselor, Ms. Susan Bentley, and the prosecutor had been planning for trial for

³ The alleged victim is an adult now, but she is referred to as a child in pleadings because the charge allegedly occurred when she was a child.

almost a year. A counseling note dated July 18, 2011 documented the child had "talked to another prosecutor, Elizabeth White."⁴ The Child "asked [Ms. Bentley] to call Elizabeth White regarding [the child's] victim impact statement." Ms. Bentley "left a message for Ms. White." Later in the day, Ms. Bentley "spoke to Elizabeth White. In addition to discussing the child's victim impact statement, the two discussed the trial strategy of trying to introduce Mr. Carrier's conviction from Kentucky. App. 7-8. See memorandum in opposition to State's motion to admit evidence of prior bad acts.

July 18, 2011 is also the date Ms. Bentley "agreed to go to court [with the child]". App. 8 (emphasis added).

Ms. Bentley helped the child prepare her testimony for trial. On March 6, 2012, she and the child "reviewed the facts related to who, what, when, where and [Ms. Bentley] recommended [the child] write down whatever she remembered so she will be prepared to testify." The child asked Ms. Bentley "to arrange a tour of the courtroom with the advocate at the Solicitor's Office." Ms. Bentley contacted the advocate as requested. App. 10.

March 6th is also the date that allegations first appear dating as far back as 1988 or 1999. Ms. Bentley's notes allege the abuse "started between 5 & 6 when went to live with [mother]. Age 10 stopped."⁵ App. 9. All the information provided in discovery up to this point placed the incident date sometime in 2002 and 2003, when the child would have been nine or ten years old.

The child also saw Ms. Bentley on June 5, 2012, the very day the prosecution declared the time frame of the indictment would be expanded to January 1999 to December 2003. Ms.

⁴ Ms. White took over the prosecution of this case in 2011 after the original prosecutor left the Solicitor's Office for private practice.

⁵ According to both indictments, the child's date of birth is February 11, 1993.

Bentley's notes, which appear to have been made on this date, reflect, "When: From about age 5 or 6, '98 or '99, through age ten." App. 11-12.

Argument

As a threshold matter, this Court should view the expanded timeframe with suspicion. According to Ms. Brantley's notes, by July 18, 2011, Ms. White had told the child, "If Jarney's last conviction is *similar* to [the child's] case, it can be used in court." That same day, Ms. Brantley confirmed with Ms. White, "Prior conviction can be brought up in court if prior victim is willing to testify and case is *similar enough*." App. 7-8 (emphasis added). See *State v. Wallace*, 384 S.C. 428, 683 S.E.2d 275 (2009) (charged offense and defendant's prior bad act of sexually abusing victim's sister were *sufficiently similar* for evidence of the bad act to be admissible under Rule 404(b) to show common scheme or plan).

The Court should not allow the prosecution to proceed to trial based on the re-indictment for three reasons.

First, by written order dated May 16, 2012, the Honorable J. Cordell Maddox, Jr. ordered the original indictment proceed to "trial to begin on the afternoon of Monday, June 18, 2012."

These are the allegations the prosecution notified Mr. Carrier he should be prepared to defend.

Second, contrary to her representation to counsel on June 14th, the prosecutor was aware that the child was seeing a counselor as early as July 18, 2011. The counseling records indicate the prosecutor and counselor were working together to prepare for trial. The allegation that the alleged abuse could have started as early as 1999 appeared in the counselor's notes on March 6, 2012, over two months before Judge Maddox ordered a trial of the 2009 indictment. The prosecutor, therefore, had at least constructive notice of these allegations prior to Judge Maddox's order. Because the counseling started based on the referral of Greenwood County

Sheriff Office Investigator Chris Haden, App. 13-14, Ms. Brantley is a state agent. Ms. Brantley additionally helped prepare the child's testimony. App. 8, 10. For due process considerations, Ms. Brantley's knowledge is imputed to the prosecutor. *Kyles v. Whitley*, 514 U.S. 419, (1995); *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006).

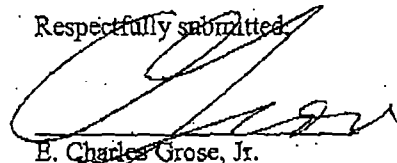
Third, the prosecutor's handling of the matter has adversely impacted Mr. Carrier's due process right to be fully informed about the allegations against him. S.C. Const Art. I, §§ 3, 14; U.S. Const. Am. 5, 14; *Roviaro v. U.S.*, 353 U.S. 53, 61 (1957) (due process requires an accused to have access to information necessary to prepare a defense). Rule 5(a)(1)(C), SCRCrimP requires the prosecution to disclose information "which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial." The prosecution has a continuing duty to "promptly notify the other party or his attorney or the court of the existence of the additional evidence or material." Rule 5(c), SCRCrimP. The prosecution has not met these obligations.

Conclusion

This Court, therefore, should order this case proceed to trial based on the original indictment from 2009.

IT IS SO MOVED.

Respectfully submitted,



E. Charles Grose, Jr.
Circuit Defender, Eighth Judicial Circuit
Suite 208, Park Plaza
600 Monument Street, Box P-133
Greenwood, SC 29646
(864) 229-9505

June 18, 2012
Greenwood, South Carolina

Appendix

The page number for each document in the appendix is found on the top, right corner of each document.⁶ E.g. <1>.

E-mail from Ms. White to Mr. Grose, dated June 5, 2012	1
E-mail from Ms. White to Mr. Grose, dated June 13, 2012	2
E-mail from Ms. White to Mr. Grose, dated June 14, 2012 disclosing records	3
E-mails dated June 14, 2012 between counsel, Judge Maddox and Judge Addy	4-6
From counseling records of Ms. Bentley disclosed on June 14, 2012:	
5/5/2011 – the child met with Ms. White but forgot impact statement	7
7/18/2011 – discussion about trial between the child, Ms. Bentley, Ms. White	7-8
3/6/2012 – preparation for court and expansion of timeframe of allegations	9-10
6/5/2012 – expansion of timeframe of allegations	11-12
Referral to counseling by Investigator Chris Haden	13-14

⁶ The page number on the bottom, right corner of the counseling records was added by defense counsel to correspond the page number of the 104 page PDF file of counseling records disclosed by e-mail on June 14, 2012. See App. 3.

<1>

Charles Grose

n: Elizabeth White [ewhite@greenwoodsc.gov]
t: Tuesday, June 05, 2012 11:39 AM
Charles Grose
ject: James Carrier

Charles-

Having Mr. Carrier re-indicted for Lewd Act because there is an error in the original indictment. It should read between the 1st day of January 1999 and the 31st day of December 2003."

Thanks,

Elizabeth

<2>

Charles Grose

n: Elizabeth White [ewhite@greenwoodsc.gov]
t: Wednesday, June 13, 2012 2:36 PM
Subject: Charles Grose
James Carrier

Charles -

Find out that the victim has been seeing a counselor at Sexual Trauma. I intend to have the counselor testify. She
14/can't release her records without a Court order, so I propose having her come over some time this week so Judge
ghston can order her to produce her file. Thoughts?

Thanks,

Elizabeth

<3>

Charles Grose

m: Elizabeth White [ewhite@greenwoodsc.gov]
it: Thursday, June 14, 2012 4:21 PM
Charles Grose
sject: 1 unseling records
achments: Counseling records (redacted).pdf

358

<4>

Charles Grose

m: Charles Grose [cgrose@pdgreenwood.com]
it: Thursday, June 14, 2012 4:47 PM
Maddox, J. Cordell; 'Addy, Frank R.'
'Elizabeth White'; Andrew Hodges (ahodges@greenwoodsc.gov)
Subject: RE: State v. James Carrier

Dear Judge Maddox,

Following up on my email from earlier, the State has provided the counseling records. I have reviewed only part of the records, but they contain *Brady* material that should have been produced years ago. Specifically, the alleged victim revealed that she was sexually abused by one of her mother's boyfriends (a person other than my client) prior to making the allegations against Mr. Carrier.

This shocking disclosure is evidence I very likely will want to present a trial, along with having my own expert witness. I have contacted Dr. Donna Schwartz-Watts about reviewing these records over the weekend. She is available to testify next week. I do not know of another expert I can get on such short notice. I realize this presents a conflict for Your Honor. Mr. Carrier and I also will not agree to a continuance. Therefore, I am requesting that another judge be assigned to preside over this trial next week.

My copy of this e-mail to Judge Addy, our Chief Administrative Judge, I am advising him of this request.

Thank you for your attention to this matter.

Best,
Charles

3. Charles Grose, Jr.
Circuit Defender, Eighth Judicial Circuit
Suite 208, Park Plaza
500 Monument Street, Box P-133
Greenwood, SC 29646
864.229.9505
864.227.1104 (fax)
E-mail: cgrose@pdgreenwood.com

From: Charles Grose [mailto:cgrose@pdgreenwood.com]
Sent: Thursday, June 14, 2012 11:47 AM
To: Maddox, J. Cordell
Cc: 'Elizabeth White'; Andrew Hodges (ahodges@greenwoodsc.gov)
Subject: State v. James Carrier

Dear Judge Maddox,

This is the case you ordered be tried beginning next Monday afternoon. This e-mail is to update you on recent developments and scheduling matters.

I understand that Mr. Hodges contacted you last week while his office and mine were meeting to plan for the court term. I also understand Mr. Hodges told you the state's request to admit a prior bad act from Kentucky was the only motion he anticipated being time-consuming. I am still working on Mr. Carrier's memorandum in opposition to

roducing this evidence. In order to give you some idea of what to expect, the following is an outline of our
ments:

< 5 >

- 1) The evidence does not meet a traditional exception to Lyle/Rule 404(b);
- 2) The evidence is does not meet an exception under the recent interpretations of Lyle/Rule 404(b) that deviate from the traditional interpretation;
- 3) If you determine that the evidence meets an exception to Lyle/Rule 404(b), then it should still be excluded under Rule 403; and
- 4) If you determine the evidence is admissible under Lyle/Rule 404(b) and Rule 403, then Mr. Carrier will contend that South Carolina's rule for admitting prior bad acts in child sex abuse cases violates due process and equal protection.

believe these motions should be heard before we select a jury. If you determine the prior bad act in Kentucky is
missible, then I plan to move for the Court to provide additional instructions and conduct additional voir dire to
sure the potential jurors can decide the case based on whether the state can prove the elements of the crime charged
eyond a reasonable.

nce the hearing when you ordered this case tried, two issues have arisen.

rst, on June 5th, the State informed me that Mr. Carrier would be re-indicted. This re-indictment significantly expands
ie time frame of the allegations. I have not been provided with any additional statements under Rule 5 or *Brady* that
istify or explain this change. Therefore, I will ask the Court to inquire about the existence of any Rule 5 and *Brady*
aterial that has not been produced. I also plan to move that Mr. Carrier be tried on the original indictment.

second, yesterday, the prosecutor informed me she had found out the alleged victim had been seeing a counselor the
tate intendeds to call as a witness and inquiring about the best way to have the counselor release her records. The
arties have had Judge Hughston sign a consent order for the release of these records, and it is my hope that both sides
will have them latter today. The late disclosure of this witness and evidence presents two issues:

- 1) Mr. Carrier will not seek a continuance. However, if this new evidence requires additional investigation or
expert services, then Mr. Carrier will move that the witness and evidence be excluded because it was
disclosed too late to be of any assistance in preparing a defense.
- 2) If the State calls the counselor, then Mr. Carrier will request the court convene an *in camera* hearing to
determine the admissibility of the evidence pursuant to *Watson v. Ford Motor Co.*, 389 S.C. 434, 699 S.E.2d
169 (2010).

I wanted to call these matters to your attention because, since the hearing on setting a trial date, the State has made
this case much more complicated, potentially requiring multiple *in camera* hearings on the admissibility of evidence.
The current complexity of this case should be considered for scheduling purposes.

Finally, as we discussed during the hearing setting the trail date, I want to remind everyone I will be at the Supreme
Court on Wednesday.

Thank you for your attention to this matter.

Best,
Charles

E. Charles Grose, Jr.
Circuit Defender, Eighth Judicial Circuit
Suite 208, Park Plaza

360

0 Monument Street, Box P-133
Greenwood, SC 29646
4.229.9505
4.227.1104 (fax)
mail: cgrose@pdgreenwood.com

<6>

<7>

Client:

Rapist: Susan Bentley, LMSW

Date: 4/6/11

CL reports she and friend went to movie instead of drinking but CL did not tell her friend she is now abstaining. Discussed assertiveness techniques. CL denies need for AA or Cornerstone. She will take Nana to meeting w/ Solicitor along w/ victim impact letter.

Susan Bentley LMSW

Date: 5/05/11

CL met w/ Solicitor but forgot impact statement. Her friend Ben who she gave as witness told Solicitor he saw nothing which angered CL. Helped her identify reasons for his denial. CL realized she is angry at Ben's (M) for letting her be exposed to child molester. CL's relationship w/ (M) is improving and CL will live alone in (M)'s house when (M) marries. CL brainstormed ways to maintain sobriety when living w/o rules. CL will inform Jennifer there will be no alcohol (or shoes) in the house. CL will consider sending impact statement to Solicitor - address given. CL is considering cases as Child Protective Worker.

Susan Bentley LMSW

Date: 7/18/11

CL has talked to another Solicitor, Elizabeth White, could go to court end of summer. If Gama's last conviction is similar to CL's case, it can be used in court. CL still willing to testify but scared. CL has not been to cosmetology school in 4 wks. Denies alcohol is a problem but still drinks. Not abusing. CL considering starting school to do freebodying, surgical tech, CPS worker, counselor.

<8>

Client:

Therapist: Susan Bentley, LMSW

Date:

7/18/11

for alcohol/drug abuse or sexual abuse. CL admits putting her life on hold until case is tried. If innocent verdict "I'll run home + crawl under the bed. It will have been a waste of time and effort." Helped her identify how much she's accomplished by disclosing + how heroic that was. Discussed importance of self-talk and not running from ~~the~~ problems; i.e. not avoiding class by drinking, etc. CL asked me to call Elizabeth White regarding CL's Victim Impact Statement. Left message for Mrs. White. Agreed to go to court w/ victim. Helped her w/ Wonder Woman Visual.

Susan Bentley, LMSW

Date: 7/18/11

Spoke to Elizabeth White. Can mail impact statement to her or fax to 942-8830 or ewhite@greenwoodsc.gov. Prior conviction can be brought up in court if prior victim is willing to testify and case is similar enough. Called CL who will email impact statement to Mrs. White.

Susan Bentley, LMSW

Date: 8/31/11

CL has started Phlebotomist program at Piedmont Tech and likes it better than cosmetology. Also plans to pursue CNA certification, Surgical Tech certification and career at Child Protective Services/DSS. She has new job at Walmart and has decided not to let perpetrator Gammy make her leave job if he walks in. CL will ask Solicitor for copy of restraining order to use if that happens. CL is still scared of Gammy but feels good about Mrs. White gaining additional evidence to use in the court case.

<9>

3/06/12

Elizabeth - Dee

Going to court

Elizabeth White

#4

Afraid hell walk

Don't want to see him

Forensic interview in 09 (16)

Started between 5 & 6 when went to

Age 10 stopped

live w/ (m)

3824 Hwy 25 S.

Greenwood

(m) not supportive

(m) stopped driving trucks

Happened at neighbor's house

Terry & Mariah Friel's home

3822 Hwy 25 S.

Angeles Castillo - land

942-8818

No alcohol since Aug.

Works out at gym - punching bags

On weight watchers

<10>

Client

apist: Susan Bentley, LMSW

Date: 3/06/12

CL has lost weight w/ gym workouts / weight watchers
 Will complete Probation Certification in Dec.
 more confident / at ease. She has been told case
 against her perp. will be held soon - 4th on
 docket. CL's greatest concern is that "Alec walk"
 CL also still nervous about seeing Gamen. She
 said she was always afraid of him and told
 Dates when she ^{was} about to turn 16 b/c he wrote her
 a note that he would come back and get her
 when she turned 16 b/c no one could stop
 him then. CL reviewed the facts related to
 who, what, when where and I recommended
 she write down whatever she remembered so
 she will be prepared to testify. CL asked
 me to arrange a tour of the courtroom with
 Dates the advocate at Solicitors Office, Angela
 Castillo-Lomas. Left message for Angela.
 CL is handling her stress using the punching
 bag at her gym. Commended CL for
 health, coping and progress.

Susan Bentley LMSW

Date: 5/22/12

CL has been notified by Sol. Elizabeth White
 that her perp James Carrier will be prosecuted
 w/ of June 18th. CL is somewhat anxious
 but is happy Sol. will meet w/ her prior to
 court to explain procedure in court. Reviewed
 CL's progress since beginning counseling 3 yrs
 ago. CL says she still needs to work on trusting
 others. Still only trusts Carolyn, friend Jennifer
 and myself. Relations w/ W. (GW) and aunt
 have improved. CL feels ready to testify.

Susan Bentley LMSW

<11>

Client:

Therapist: Susan Bentley, LMSW

Date: 6/5/12

Seen w/ friend Carolyn.
CL reports some nightmares about abuse recently
and has been having headache/neck pains for
which she has undergone testing at doctor's office.
CL discussed fears of being in court w/ perp.
worry about having panic attack. Discussed support
she will have, his fear of her as greater and her
courage in speaking out as big step in healing.

Date:

Susan Bentley, LMSW

Date:

Date:

<12>

at 01/13

When: From about age 5 or 6 thru age 10

Where: At the home of Terry and Mariah
Freel either in the Freels' bedroom,
the children's bedroom or the couch.
Mariah Freel was usually in the
house but abuse occurred out of
her sight... sometimes under
covers on bed.

<13>

REFERRAL SOURCE RELEASE

IF YOU WERE REFERRED HERE BY ANOTHER AGENCY OR PROFESSIONAL:

IT IS THE POLICY OF THE SEXUAL TRAUMA & COUNSELING CENTER TO CONTACT THE
REFERRAL SOURCES OF OUR CLIENTS.

You have my permission to contact:

☒ My referral source, only to let them know that I came for my first appointment.Referral source: Chris Hayden, SC Detective☐ My referral source and keep them informed of my progress, treatment, and
attendance.

Referral source: _____

☐ DO NOT CONTACT MY REFERRAL SOURCE.☐ Please contact the professional/agency/person below:_____

Client Signature

Karen Weir
Parent/Legal Guardian (client is under 18)4-29-09

Date

4-29-09

Date

Witness

Date

<14>

(1A)

INTAKE INFORMATION

Today's Date: 4-14-09 Person doing intake: Jo PooleReferred by: Chris Hadden Phone #: _____Agency Name/Location: Greenwood Sheriff OfficeName of person being referred: _____ Age: 16SS#: [REDACTED] DOB: [REDACTED]Name of parent/guardian: Glenda WeaghtingtonHome Phone #: 2 Work/Other: _____Address: Greenwood, SC 29649

Reason for Referral:

Disclosed that another
known person fondled her and kissed her.
Also, that when she turned sixteen he would
come find her.

Scheduled with (name of therapist): SusanDate and time of IA: Wed. April 29th @ 2pm

Charles Grose

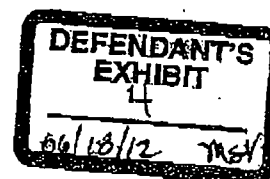
From: Elizabeth White [ewhite@greenwoodsc.gov]
Sent: Tuesday, June 05, 2012 11:39 AM
To: Charles Grose
Subject: James Carrier

Charles-

I am having Mr. Carrier re-indicted for Lewd Act because there is an error in the original indictment. It should read between the 1st day of January 1999 and the 31st day of December 2003."

Thanks,

Elizabeth



Charles Grose

From: Elizabeth White [ewhite@greenwoodsc.gov]
Sent: Wednesday, June 13, 2012 2:36 PM
To: Charles Grose
Subject: James Carrier

Charles-

found out that the victim has been seeing a counselor at Sexual Trauma. I intend to have the counselor testify. She won't/can't release her records without a Court order, so I propose having her come over some time this week so Judge Hughston can order her to produce her file. Thoughts?

Thanks,

Elizabeth

Client:

Therapist: Susan Bentley, LMSW

Date: 4/6/11

CL reports she and friend went to movie instead of drinking but CL did not tell her friend she is now abstaining. Discussed assertiveness techniques. CL denies need for AA or Cornerstone. She will take Nana to meeting w/ Solicitor along w/ victim impact letter.

Susan Bentley LMSW

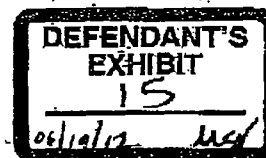
Date: 5/05/11

CL met w/ Solicitor but forgot impact statement. Her friend Ben who she gave as witness told Solicitor he saw nothing which angered CL. Helped her identify reasons for his denial. CL realized she is angry at Ben's (M) for letting her be exposed to child molester. CL's relationship w/ (M) is improving and CL will live alone in (M)'s house when (M) marries. CL brainstormed ways to maintain sobriety when living w/o rules. CL will inform Jennifer there will be no alcohol (or shoes) in the house. CL will consider sending impact statement to Solicitor - address given. CL is considering cases as Child Protective Worker.

Susan Bentley LMSW

Date: 7/18/11

CL has talked to another solicitor, Elizabeth White. Could go to court end of summer. If Jamaica's last conviction is similar to CL's case, it can be used in court. CL still willing to testify but scared. CL has not been to cosmetology school in 4 wks. Denies alcohol is a problem but still drinks. Not abusing. CL considering starting school to do freebodying, Surgical tech, CPS worker, counselor



Client: _____ Therapist: Susan Bentley, LMSW

Date: 7/18/11

for alcohol/drug abuse or sexual abuse. CL admits putting her life on hold until case is tried. If innocent verdict "I'll run home & crawl under the bed. It will have been a waste of time and effort." Helped her identify how much she's accomplished by disclosing & how heroic that was. Discussed importance of self-talk and not running from ~~some~~ problems, i.e. not avoiding class by drinking, etc. CL asked me to call Elizabeth White regarding CL's victim impact statement. Left message for Ms. White. Agreed to go to court w/ victim. Helped her w/ Wonder Woman Visual.

Susan Bentley (msw)

Date: 7/18/11

Spoke to Elizabeth White. Lindsay can mail impact statement to her or fax to 942-8830 or ewhite@greenwoodsc.gov. Prior conviction can be brought up in court if prior victim is willing to testify and case is similar enough. Called CL who will email impact statement to Ms. White.

Susan Bentley (msw)

Date: 8/31/11

CL has started phlebotomist program at Piedmont Tech and likes it better than cosmetology. Also plans to pursue CNA certification, Surgical Tech certification and career at Child Protective Services/DSS. She has new job at Walmart and has decided not to let perpetrator Gorney make her leave job if he walks in. CL will ask Solicitor for copy of restraining order to use if that happens. CL is still scared of Gorney but feels good about Ms. White gaining additional evidence to use in the court case.

Client:

= Therapist:

Date: 8/31/11 (cont)

CL did an inventory of which losses from her abuse she has regained. CL still trusts few people - but now 5 - Nana, Jennifer, Shawn, Ben and myself. She still has not recovered memories at her home before age 11. CL will continue reading book about court process. She will think about Jarney feeling scared of her rather than fearing him. J. Bentley men

Date: 9/26/11

CL's (F) died last week. (F) abandoned (M) when she became pregnant and CL always wondered why he raised his next daughter but ignored her. She has forgiven him and misses him now. CL is using his liver disease as a catalyst to stay off alcohol. CL still not much in touch w/ her feelings. "I don't do sad" Relies on sense of humor. Commended her coping. Encouraged her to practice feeling happy by acknowledging gratitude for little and big things in her life. CL wishes trial would occur and has strategy for any contact w/ perpetrator.

Susan Bentley (new)

Date:

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

THE STATE

v.

James L. Carrier

IN THE COURT OF GENERAL SESSION
FOR THE EIGHTH JUDICIAL CIRCUIT

Case Number: 2009-GS-24-1146

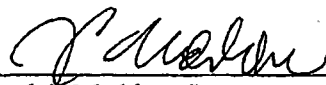
Order

FILED GENERAL SESSION
8TH JUDICIAL CIRCUIT
GREENWOOD, SC
2012 MAY 16 PM 12:49

This matter came before the Court on the speedy trial motion of the defendant, James L. Carrier, seeking an order requiring the State to try his case in June 2012. The State charges Mr. Carrier with committing or attempting to commit a lewd act on a child under the age of sixteen. The Court finds Mr. Carrier's case should be set for trial to begin on the afternoon of Monday, June 18, 2012.

Therefore, it is ordered that Mr. Carrier's case is set for trial to begin on the afternoon of Monday, June 18, 2012.

IT IS SO ORDERED.


 J. Cordell Maddox, Jr.
 Presiding Judge, Eighth Judicial Circuit

5/16, 2012
 Greenwood, South Carolina

375

ARREST WARRANT

M-075385 09-1146

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenwood

THE STATE
against

James L Carrier

Address:

Honea Path, SC 29654-

Phone: _____ SSN: _____
 Sex: M Race: W Height: 6 Weight: 135
 DL State: SC DL #: _____
 DOB: _____ Agency ORI #: SC0240000

Prosecuting Agency: Greenwood County SheriffProsecuting Officer: Chris Haden - 0074Offense: Lewd Act Upon a Child under 16Offense Code: 2468Code/Ordinance Sec: 16-15-0140This warrant is **CERTIFIED FOR SERVICE** in the☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
 defendant James Carrier
 on 6-23-09

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
 528 Monument Street
 Room 114
 Greenwood, SC 296462623

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenwood

Personally appeared before me the affiant Chris Haden whobeing duly sworn deposes and says that defendant James L Carrierdid within this county and state on or about 01/01/2003

violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenwood)

in the following particulars:

DESCRIPTION OF OFFENSE Lewd Act Upon a Child under 16

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

In that James Lloyd Carrier did in the County of Greenwood approximately six years ago commit the offense of lewd act on a
 minor by inappropriately touching a female juvenile about the breast and vagina area. A forensic interview was completed at
 The Child's Place on 4-14-2009 of the female juvenile that was substantiated. This incident occurred at the residence of 3824
 Hwy 25 South within Greenwood County.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenwood

Affiant's Address 528 Edgefield Street
Greenwood, SC 29646-

Affiant's Telephone (864)942-8600

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 1/1/2003 defendant James L Carrier

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Greenwood) as set forth below:DESCRIPTION OF OFFENSE: Lewd Act Upon a Child under 16

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

on 05/11/2009

(L.S.)

Signature of Issuing Judge
 C. Ryan Johnson

Judge Code: 7129

Judge's Address Greenwood County Courthouse
Greenwood, SC 29646-2634

Judge's Telephone (864)942-8655Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 518

AFFIDAVIT

FILED GENERAL SESSIONS
 8TH JUDICIAL CIRCUIT
 GREENWOOD, SC
 009 JUN 26 PM 2 36

BAIL set by
Judge W. J. [Signature]
on 06-23-29
Type and Amount: \$50,000.00 4/3
Name of Surety: _____

PRELIMINARY HEARING held by

Judge _____
on _____
Defendant Attorney: _____

Decision: _____

DISPOSITION before

Judge _____
on _____
by _____
(indicate jury trial, bench trial, plea, nol. pros., etc.)

Disposition: _____

Sentence: _____

JURORS

WITNESSES

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

Name: _____
Address: _____
Telephone: _____

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Address: _____
Telephone: _____

CODEFENDANTS

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF GREENWOOD) FOR THE EIGHTH JUDICIAL CIRCUIT
THE STATE)
Cases Number: 2012-GS-24-1166
Re-indictment of 2009-GS-24-1146
James L. Carrier,)
Defendant)
Motions for New Trial or, in the alternative
to Reconsider the Sentence

FILED
8TH JUDICIAL CIRCUIT
GREENWOOD, SC
2012 JUL 30 PM 7:17

To: The Honorable D. Garrison Hill, Presiding Judge, Eighth Judicial Circuit

The defendant, James L. Carrier, moves the Court for a new trial. In the alternative, Carrier moves the Court to reconsider the sentence.

I. Factual and Procedural Background.

On March 31, 2009, the mother of the alleged victim (hereinafter "the child") contacted the Greenwood County Sheriff's Office. Deputy Robert A. ("Bobby") Grogan responded. The child alleged that Carrier had sexually abused her six to seven years earlier at the home of her neighbor, Mariah Freel. Six to seven years earlier would have placed the incident date(s) in 2002 or 2003. The child was sixteen when she talked to Grogan and would have been nine or ten at the time of the alleged incident(s).

Grogan filed an incident report and turned the investigation over to Investigator Chris Hadden. Hadden arranged for Jessica Bell to interview the child at The Child's Place, which is the statutorily mandated child advocacy center¹ and a division of the Sexual Trauma Center. The interview took place on April 14, 2009. The child's allegation to Bell about the time and place of the incident was consistent with what she

¹ See S.C. Code §63-11-310.

had told Grogan. Bell referred the child to Susan Bentley, also of the Sexual Trauma Center, for counseling. The interviewers and counselors at the Sexual Trauma Center are part of an interdisciplinary team, including law enforcement and solicitors, organized to prosecute child sexual abuse cases.

Hadden obtained an arrest warrant charging Carrier with committing a lewd act on a minor. Based on the child's allegations, the warrant alleged the incident took place on or about January 1, 2003. Hadden arrested Carrier on June 23, 2009.

The Greenwood County Grand Jury true-billed indictment number 2009-GS-24-1146 (hereinafter "2009 indictment") on October 2, 2009. Consistent with the arrest warrant, this indictment alleged the incident occurred on or about January 1, 2003.

On October 16, 2012, the Circuit Court reduced Carrier's bond from \$150,000.00 to \$35,000.00. Carrier posted bond and was released from jail on October 16, 2012.

On Carrier's motion, the Honorable Cordell Maddox ordered the 2009 indictment to be called to trial before a jury on June 16, 2012.

On June 5, 2012, Assistant Solicitor Elizabeth P. White wrote Carrier's Counsel:

I am having Mr. Carrier re-indicted for Lewd Act because there is an error in the original indictment. It should read "between the 1st day of January 1999 and the 31st day of December 2003."

At the time, White offered no other explanation for the expanded time frame. The Greenwood County Grand Jury subsequently true-billed indictment number 2012-GS-24-1166 (hereinafter "2012 indictment") on June 8, 2012.

White sent another e-mail on June 13, 2012 stating:

I found out that the victim has been seeing a counselor at Sexual Trauma. I intend to have the counselor testify. She won't/can't release her records without a Court order, so I

propose having her come over some time [sic] this week so Judge Hughston can order her to produce her file. Thoughts?

This e-mail created the impression that the prosecution learned about this witness for the first time on the eve of trial.

The Honorable Thomas L. Hughston, Jr., who happened to be presiding over a term of General Sessions Court in Greenwood, signed an order on June 14, 2012. These records were disclosed to Carrier's counsel later that day at 4:41 p.m. These records revealed that White and Bentley had been preparing for trial for over a year. On July 18, 2011, Bentley "agreed to go to court" with the child and called White. Soon thereafter, Bentley spoke with White by phone, and the two discussed trial strategy.

This Court called Carrier's case to trial on June 16, 2012. The State wanted to proceed to trial on the 2012 indictment. Carrier moved to be tried on the 2009 indictment.

During pre-trial motions on June 16 and 17, 2012, a close scrutiny of Bentley's records ultimately revealed the State was well aware of the expanded timeframe of the allegations but failed to disclose the inconsistent statements to Carrier until the eve of trial. This Court ultimately continued Carrier's case so Carrier could investigate another *Brady*² violation (the State's failure to disclose the child's allegations that she was sexually abused by one of her mother's boyfriends, Kenneth Shamburg).³

² *Brady v. Maryland*, 373 U.S. 83 (1963).

³ These allegations were reported to Bentley. Although the prosecution tried to distance itself from the counselor, Bentley's counseling services are mandated by statute. S.C. Code §63-11-310(A)(4). *Brady* information known to Bentley is imputed to the Solicitor's Office. *Kyles v. Whitley*, 514 U.S. 419, (1995); *Riddle v. Ozmint*, 369 S.C. 39, 631 S.E.2d 70 (2006).

On July 17, 2012, Carrier again moved to quash the 2012 indictment and be tried on the 2009 indictment. This Court denied the motion and called the 2012 indictment to trial. The jurors found Carrier guilty on July 18, 2012. The Court immediately convened a sentencing hearing and sentenced Carrier to fifteen years imprisonment: the maximum possible penalty for this offense.

Carrier informed the Court he would take the ten days allowed by Rule 29, SCRCrimP to make his new trial motions.

II. New Trial Based on Pre-Trial Objection to the Defective Indictment.⁴

The Court should order a new trial because of the defective 2012 indictment and grant his motion to be tried on the 2009 indictment.

Additional Facts.

According to the indictment, Investigator Hadden testified before the Greenwood County Grand Jury on June 6, 2012. Hadden, who is no longer employed by the Greenwood Sheriff, was not even in South Carolina on June 6, 2012. In fact, prior to the original, court-ordered trial date of June 16, 2012, the State tried unsuccessfully to get Hadden to return from West Virginia to be a witness at trial.

Prior to the Court swearing the jurors,⁵ Carrier moved to quash the 2012 indictment and to be tried on the 2009 indictment. The State did not dispute that it was

⁴ “No person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed.” S.C. Const. Art. I, §11. *See also* S.C. Code §17-19-10.

⁵ “Every objection to any indictment for any defect apparent on the face thereof shall be taken by demurrer or on motion to quash such indictment before the jury shall be sworn and not afterwards.” S.C. Code §17-19-90. *See State v. Gentry*, 363 S.C. 93, 610

impossible for Hadden to have presented the case to the Grand Jury. The Solicitor's Office, which is responsible for preparing indictments for presentment to the Grand Jury pursuant to Rule 3(c), SCRCrimP, did not offer any evidence of the ordinary Grand Jury process or of the identity of the witness actually testifying before the Grand Jury. In fact, the State did not even offer evidence that anyone actually testified during the presentment of the 2012 indictment.

The Court denied the motion to quash. The Court, however, agreed with Carrier that South Carolina's failure to require county Grand Jury proceedings⁶ to be recorded is a problematic procedure.

Argument.

Proceedings before the grand jury are presumed to be regular unless there is clear evidence to the contrary. Speculation about "potential" abuse of grand jury proceedings cannot substitute for evidence of *actual* abuse as grounds for quashing an otherwise lawful indictment. In saying this, we yield to no one in our zeal to insure that the grand jury continues to perform its historic function as a shield between the accused and abuse of the prosecutorial power of the State. The courts of South Carolina stand guard to see that the grand jury is not reduced to a "mere plaything of prosecutors."

State v. Thompson, 305 S.C. 496, 501-2, 409 S.E.2d 420, 424 (Ct. App. 1991) (internal citations omitted) (emphasis original).

S.E.2d 494 (2005); *Bayly v. State*, 397 S.C. 290, 300, (fn. 6), 724 S.E.2d 182, 187 (fn. 6) (2012) ("Gentry merely concerned the appropriate time to raise a challenge to the sufficiency of an indictment.").

⁶ The Court, however, observed that State Grand Jury proceedings are recorded. See *State v. Thrift*, 312 S.C. 282, 440 S.E.2d 341 (1994) ("given the nature of State Grand Jury proceedings, there is a complete record available for analysis").

In zealously guarding the integrity of the grand jury process, our appellate courts have a long history of scrutinizing the identity of the witnesses who testify before the Grand Jury. For example, the South Carolina Supreme Court consistently warned, “The practice of using a solicitor or other officer of the State, as the sole witness before the grand jury, to provide only a summary of the evidence could be abused and we strongly suggest it be abandoned unless no alternative is available.” *State v. Capps*, 276 S.C. 59, 62, 275 S.E.2d 872, 873 (1981) (emphasis added). See *State v. Whitted*, 279 S.C. 260, 305 S.E.2d 245 (1983) *overruled on other grounds by State v. Collins*, 329 S.C. 23, 495 S.E.2d 202 (1998); *State v. Williams*, 280 S.C. 305, 312 S.E.2d 555 (1984) (C.J. Lewis dissenting); and *State v. Dawkins*, 297 S.C. 386, 377 S.E.2d 298 (1989). Because prosecutors continued to ignore this admonition, the Supreme Court “explicitly prohibit[ed] the practice of prosecutors appearing as the sole witness before the grand jury.” *State v. Anderson*, 312 S.C. 185, 187, 439 S.E.2d 835, 836 (1993).

Obviously, enforcement of the *Capps/Anderson*⁷ rule requires candid disclosure by the State of the identity of witnesses testifying before the Grand Jury. Otherwise, the solicitor could be the sole witness before the Grand Jury in defiance of the Supreme Court without any accountability.

The face of the 2012 indictment raises two issues. First, it declares the sole witness before the Grand Jury was the chief investigating office. Our Supreme Court frowns upon this practice. *Capps, Anderson, supra*. The second issue, which is the subject of the motion, is that it is undisputed that Hadden was not in South Carolina and

⁷ The Court and counsel discussed the *Capps/Anderson* rule during the hearing on the motion to quash the indictment and proceed to trial on the 2009 indictment.

did not testify during the presentment of the 2012 indictment. At trial, the State contended it did not have to present any evidence whatsoever about the procedures surrounding the Grand Jury presentment or the identity of the testifying witness.⁸ This position is contrary the settled practice of taking testimony during an evidentiary hearing. *E.g. State v. Grim*, 341 S.C. 63, 67, 533 S.E.2d 329, 330-31 (2000) ("The court may conduct an evidentiary hearing to determine whether the indictment was true billed; or resubmit the indictment for grand jury consideration; or effect a waiver of presentment of the indictment to the grand jury and, again, entertain the defendant's plea; or simply allow withdrawal of the plea and proceed anew."); *Pringle v. State*, 287 S.C. 409, 411, 339 S.E.2d 127, 128 (1986) ("Here, there was testimony by the foreman of the grand jury that indicted petitioner that the regular procedure was to have the clerk publish the indictment in open court after the grand jury returned a true bill."); *State v. Bultron*, 318 S.C. 323, 329, 457 S.E.2d 616, 619-20 (Ct. App. 1995) ("During the hearing on [the] motion to quash the subject indictment, the State presented testimony from a Greenville County investigator whose employment duties include serving as 'docket coordinator' for the grand jury and assisting the grand jury in every meeting. The investigator testified the grand jury's regular procedure was to deliberate on the indictments presented to them and then publish their findings in open court."). The State, accordingly, could have called as a witness the foreperson of the Grand Jury or the person who actually testified before the Grand Jury.

⁸ The State could not possibly claim surprise by this motion. Although the June 2012 motion to be tried on the 2009 indictment centered on the State's *Brady* violations and untimely disclosure of the changed timeframe of the allegations, defense counsel called attention to the impossibility that Hadden was the testifying witness. The prosecution, therefore, had a month to prepare for this motion.

Because Investigator Hadden did not testify before the Grand Jury, the 2012 indictment is irregular on its face, revealing “actual abuse” of the Grand Jury process. *Thompson*, 305 S.C. at 502, 409 S.E.2d at 424 (emphasis original). The State’s complete failure to present any evidence of what actually transpired during the Grand Jury presentment is fatal. See *Anderson v. State*, 338 S.C. 629, 633, 527 S.E.2d 398, 400 (Ct. App. 2000) (“[T]he document bears no indications of whether the grand jury ‘true billed’ or ‘no billed’ it. Nor do we have any additional evidence before us . . . as to what action the grand jury took.”). The Court, therefore, should order a new trial.

III. New Trial Motions Based on Error During Trial.⁹

Carrier moves for a new trial because of (a) repeated violations of the time and place exception to the hearsay rule, (b) improper testimony about identity, (c) the trial court’s failure to declare a hung jury, and (d) the insufficiency of the evidence. Each motion is discussed below.

A. Repeated violations of time and place exception to hearsay evidence were so prejudicial as to mandate a new trial.

The Court should order a new trial because the State repeatedly elicited improper testimony from corroborative witnesses Carolyn Travis, Jessica Bell, and Susan Bentley that violated the time and place exception to hearsay evidence admissibility in criminal sexual misconduct cases.

⁹ The trial judge has broad “discretion to grant or deny a motion for a new trial” when improperly admitted evidence prejudices a defendant. *State v. Johnson*, 376 S.C. 8, 11, 654 S.E.2d 835, 836 (2007) (“The trial judge found that Marion’s statement about a polygraph test prejudiced Johnson. Because the case against Johnson essentially consisted of witness testimony, the credibility of each witness was crucial to the verdict. Marion’s statement created an inference that bolstered the credibility of the State’s witnesses. The jury could have believed that the State made each witness pass a polygraph test before they were able to testify at trial as part of their individual plea bargains. The trial judge did not abuse his discretion by granting a new trial.”).

Additional Facts.

During pre-trial motions on June 16 and 17, 2012, the State announced its intention to qualify Jessica Bell, a forensic interviewer at The Child's Place, and Susan Bentley, a therapist at the Sexual Trauma Center, as expert witnesses and use their testimony to explain the child's prior inconsistent statements.

Specifically, Bell testified that young children will often employ "delayed disclosure" as a defense mechanism to "test the waters" to see how people will respond to the initial disclosure. Additionally, Bentley, on defense counsel's cross, revealed that she believed the child suffered from Child Sexual Abuse Accommodation Syndrome ("CSAAS") and Post-Traumatic Stress Disorder ("PTSD"), which would explain the delayed disclosure tactics in Bell's testimony. Bentley also stated that she knew about the indecent incidents between the child and Kenneth Shamburg but felt that they were not serious enough to report or treat in her sessions, despite Shamburg's threat that he would kill the child if she reported the abuse.

After the trial reconvened on July 17, 2012, Carrier moved to exclude any testimony on delayed disclosure, "CSAAS," and "PTSD" based on the theories' lack of scientific authority as diagnosing instruments. The Court granted this motion and limited the State's corroborative witnesses to time and place of the alleged incidents. Throughout its direct examination, the State repeatedly led witnesses to testify outside the scope of time and place. Defense counsel objected to each instance of improper testimony, but the State continued to elicit these statements and allowed the jury to hear these violations of the hearsay limitation over ten times during the direct of Carolyn Travis, Jessica Bell, and Susan Bentley.

The State violated the Court's date and time limitation on hearsay evidence by leading witnesses Carolyn Travis, Jessica Bell, and Susan Bentley to testify outside the scope of admissibility, prejudicing Mr. Carrier by repeatedly bolstering the child's testimony in front of the jury. Pursuant to Rule 801(d)(1)(D), S.C.R.E., the child's prior consistent statements limited to the time and place of the incident are permitted as an exception to hearsay evidence admissibility if the alleged victim testifies at trial and is subject to cross-examination. *See also Simpkins v. State*, 303 S.C. 364, 401 S.E.2d 142 (1991) (corroborative statements of criminal sexual conduct victims that are limited to time and place of the incident are a "well-settled" exception to the rule against admitting hearsay testimony). Such testimony must exclude "details or particulars." *See State v. Schumpert*, 312 S.C. 502, 506, 435 S.E.2d 859, 861 (1993).

Carolyn Travis, the child's Youth Group Leader, testified about the child's drastic behavioral changes several days before disclosing information about the alleged incident. Over Carrier's objection, she elaborated that the child was very quiet, reserved, and withdrawn, which was very "unusual," so she knew that something was wrong. By illustrating the child's demeanor, Travis indicated to the jury that she felt the child's statements were true.

Furthermore, Jessica Bell, the forensic interviewer assigned to the child, testified that she was a "fact-finder" using the RATAC method to discover what events actually occurred and that this method is very effective. However, Bell failed to mention that she is *not* trying to "find facts" but merely gathering as many details as possible from the child for the State. She does not engage in a true, scientific, fact-finding procedure, but instead *assumes that the child is truthful*. By presenting herself as a "fact-finder," Bell

suggested that she had *found the facts*, which is the job of the jury, and implied that the child's testimony was the truth.

Finally, Susan Bentley, a therapist at the Sexual Trauma Counseling Center, repeatedly testified that the child was abused in the affirmative, revealing to the jury that she believed victim's testimony.

Argument.

Repeated improper testimony in front of the jury bolstered child's credibility and prejudiced Mr. Carrier. Improper admission of hearsay constitutes reversible error only if its admission is prejudicial. *See State v. Mitchell*, 286 S.C. 572, 336 S.E.2d 150 (1985). Defendant seeking reversal on admission of evidence has the burden of showing error was prejudicial. *See State v. McElveen*, 280 S.C. 325, 313 S.E.2d 298 (1984). The error is considered harmless if "it could not have reasonably affected the result of trial." *See State v. Key*, 256 S.C. 90, 180 S.E.2d 888 (1971). In *Mitchell*, the victim testified that her attacker was wearing a dark jacket. At trial, a police officer testified, over objection, that he was unable to locate a dark jacket in Mitchell's home, but that his wife said he owned one. The Court found this to be inadmissible hearsay evidence but held that there was enough evidence in the record for the jury to find Mitchell guilty, even excluding the hearsay testimony. *See Mitchell*, 286 S.C. at 573, 313 S.E.2d at 150. Unlike *Mitchell*, the State did not have an arsenal of alternate evidence that indicated Mr. Carrier was the perpetrator. The child's testimony was the only evidence presented by the State at trial, and the entire case depended upon her credibility in the eyes of the jury. By allowing witness hearsay evidence to be admitted, the Court permitted the prejudicial bolstering of the child's credibility to the jury, which resulted in prejudice to Carrier.

B. Improper testimony about identity.

The Court should order a new trial because of improper testimony by State's witnesses about Carrier's identity.

Additional Facts.

Carolyn Travis, the child's church youth group leader, testified the child told her the crimes were *perpetrated by James Carrier*. Additionally, either Jessica Bell or Susan Bentley testified that the child told her about the abuse *perpetrated by James Carrier*.

Argument.

It is always improper for a witness, including an expert witness, to testify about the identity of the alleged perpetrator. *State v. Brown*, 286 S.C. 445, 334 S.E.2d 816 (1985) ("The perpetrator's identity would rarely, if ever, be a factor upon which the doctor relied in diagnosing or treating the victim. A doctor's testimony as to history should include only those facts related to him by the victim upon which he relied in reaching his medical conclusions. The doctor's testimony should never be used as a tool to prove facts properly proved by other witnesses").

In this case, the Court granted Carrier's motion that these witnesses not be qualified as experts. The witnesses' testimony, accordingly, was limited to time and place. See Rule 801(d)(1)(c)&(d). Identifying Carrier as the alleged perpetrator exceeded this limited purpose. In fact, prosecutors and professional prosecution witnesses are trained that it is improper for this type of witness to testify about the perpetrator's identity. See Documents in Support of Motion to Exclude Expert Testimony, *Prosecution of Child Abuse in South Carolina: A Manual for Solicitors and Investigators*, Direct Examination of Counselor or Psychologist, p. 133. Additionally,

State v. Jeffcoat, 565 S.E.2d
Sanchez v. State, 569 S.E.2d
 321
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even though these witnesses were not testifying as experts, it was clear to the jurors that these witnesses came into contact with the child in their professional capacities. The only possible conclusion the jurors could draw from this testimony is that witnesses believed the child was telling the truth about Carrier being the perpetrator.

Carrier was prejudiced by this improper testimony. The prosecution did not present any evidence to corroborate the child's testimony. Determining her credibility was the only issue for the jurors. *E.g. State v. Douglas*, 380 S.C. 499, 671 S.E.2d 606 (2009) (Pleicones, J., dissenting) ("As in many CSC cases, this case turned primarily on the veracity of the victim. In the instant case, while physical evidence indicated that the victim had been abused, no physical evidence other than the testimony of the victim connected Petitioner to the crime."). The child acknowledged prior inconsistent statements, and Carrier called attention to the implausible nature of the allegations. The jurors deliberated for longer than it took to present them the evidence and sent the Court questions indicating they were scrutinizing the credibility of the allegations. Court's Ex. 1-3. Recognizing the child's credibility was the central issue to the case, Carrier structured his pre-trial motions to limit improper vouching and bolstering testimony.¹⁰ The prosecution evaded the Court's rulings by exceeding the limitations of Rule 801(d). This unfair advantage impermissibly influenced the jurors' verdict.

C. The Court should have declared a hung jury.

¹⁰ Carrier relied on *State v. McKerley*, 397 S.C. 461, 466, 725 S.E.2d 139, 142 (Ct. App. 2012); *State v. Jennings*, 394 S.C. 473, 480, 716 S.E.2d 91, 94-95 (2011); *South Carolina Dept. of Social Services v. Lisa C.*, 380 S.C. 406, 669 S.E.2d 647 (Ct. App. 2008); *State v. Dempsey*, 340 S.C. 565, 571, 532 S.E.2d 306, 309 (Ct. App. 2000); and *State v. Dawkins*, 297 S.C. 386, 393, 377 S.E.2d 298, 302 (1989).

The Court should order a new trial because the judge failed to declare a hung jury after jurors had indicated their inability to reach a verdict, and he imposed an improper deadline on continued deliberations.

Additional Facts.

During jury deliberations, the jurors sent the judge two sets of questions, relating to certain facts that were integral to deciding Mr. Carrier's guilt. The first set of questions were (copied exactly from record):

1. How old was defendant at the time?
2. How old were the 3 children in the room?
3. When was the note supposedly given (date)
4. Where was the Mother at the time and father?

Court's Ex. 1. After conferring with counsel, the judge responded:

The parties stipulated that the Defendant James L. Carrier's date of birth is [REDACTED]. As to your questions, you must rely on the evidence that was presented. The record is closed.

Court's Ex. 2. The jury continued to deliberate for over an hour before sending the judge the following question:

From the testimony: We want clarification whether or not Ms. Frill was in the home? During any incident?

Court's Ex. 3. The judge responded that he again could not respond to any questions and that the jury would have to rely on its memories. Several more hours passed, and the Court broke for lunch. Upon return, the jury continued deliberations for another hour before sending a note that they had a "hung jury." Court Ex. 4. The judge intended to give the jury an *Allen* charge over Carrier's objection. Before the jury could be called to the courtroom, shouting could be heard in the jury room and the Bailiff announced that two more minutes were needed, which the judge granted. After several minutes, the jury

returned to the courtroom with its verdict.

Argument.

The judge should have declared a hung jury once the jury was deadlocked because the jury's repeated questions indicated discord on essential facts, causing deliberation to continue longer than the trial.

When a jury, after due and thorough deliberation upon any cause, returns into court without having agreed upon a verdict, the court may state anew the evidence or any part of it and explain to it anew the law applicable to the case and may send it out for further deliberation. But if it returns a second time without having agreed upon a verdict, it shall not be sent out again without its own consent unless it shall ask from the court some further explanation of the law

S.C. Code Ann. § 14-7-1330. "The court has considerable discretion and is in the best position to gauge whether a jury is deadlocked or able to proceed further with its deliberations." See *U.S. v. Seeright*, 978 F.2d 842, 850. In *Seeright*, after a week of deliberations, the jury notified the judge that they needed "further guidance" to reach a verdict on one defendant. The judge gave them a second modified *Allen* charge, over Defense's objection, and sent them back for further deliberations. *Id.* The Court said this was not an abuse of discretion because the jury had not indicated that it was deadlocked. In Carrier's case, the jury asked the judge questions several times regarding undisclosed facts, to which he responded that they must decide the issue on the facts presented. These questions indicated general confusion about factual issues vital in determining Mr. Carrier's guilt. After this response, the jury indicated that it was deadlocked and unable to reach a verdict. Unlike *Seeright*, the jury did not ask for "further guidance" regarding the law but was demonstrating its uncertainty regarding facts and testimony. *Id.* at 849. No further guidance by the judge was needed; the jury was deadlocked.

The judge should have declared a hung jury instead of imposing an improper time limit on deliberations. After the jury declared itself deadlocked, the judge prepared to give an *Allen* charge, over Defense's objection, when the jury requested a few more moments to make a decision, which he granted. A jury cannot be given a rigid timeline deadline. See *U.S. v. Lansdown*, 460 F.2d 164, 169 (fn. 3) (4th Cir. 1972) ("The government contends that had the district court given the jury an additional 10 minutes as requested by one juror, it would have committed error"). Imposing such a deadline on the jury causes jurors to feel pressured to reach a unanimous decision, even if that decision is against the true feelings of several jurors. During the time granted by the judge, loud shouting began to come from the jury room. These heated arguments continued for several minutes before the jury declared that it had reached a verdict. By allowing the jury these extra moments, the judge gave a strict deadline to jurors to make a decision, which facilitated the intimidation of dissenting opinions. Here, the additional minutes were asked for, after hours of deliberation, and the jurors caved to the pressure caused by the deadline, leading to prejudice against Carrier.

D. Insufficiency of the Evidence.

The trial court should order a new trial because the State failed to present substantial direct or circumstantial evidence based upon which reasonable jurors could convict beyond a reasonable doubt.

IV. Motions to Reconsider Sentence.

Defense counsel requested a pre-sentence investigation to assist the Court in determining the appropriate sentence. Counsel pointed out the inherent difficulty in sentencing someone already ostracized from society because of his prior record. The trial court denied this motion and immediately proceeded to sentencing. Carrier was still stunned by the guilty verdict, especially after it came minutes after the jurors declared themselves deadlocked. Court's Ex. 4. The Court imposed the maximum sentence, stating the sentence was based on the nature of the charge and Carrier's prior record.

The Court should vacate the sentence and order a pre-sentence investigation. In the alternative, the Court should reconsider and reduce the sentence.

A. Pre-sentencing Report.

South Carolina's post-trial sentencing practice is so far out of line with national norms that this state's practices violate due process. U.S. Const. Am. V & XIV; S.C. Const. Art. I, §3.

South Carolina's Lack of Sentencing Procedures

State law imposes no limitations on trial court sentences as long as the sentence "is within the limits prescribed by law for the discretion of the trial judge, and is not the result of partiality, prejudice, oppression, or corrupt motive." *State v. Steadman*, 216 S.C. 579, 607, 59 S.E.2d 168, 182 (1950). This standard offers no guidance to trial courts regarding the proper exercise of sentencing discretion.

Trial court sentences are not subjected to judicial review. Appellate courts have "no jurisdiction on appeal to correct a sentence alleged to be excessive." *State v. Goodall*, 221 S.C. 175, 178, 69 S.E.2d 915, 916 (1952). The lack of sentencing standards

and absence of judicial review remain. Our Supreme Court, in fact, considers itself powerless to address unfair trial court sentences. *E.g. Edwards v. State*, 392 S.C. 449, 454 (fn. 1), 710 S.E.2d 60, 63 (fn. 1) (2011) (“Although we are troubled by the disparate sentences these co-defendants received from the same circuit judge, we have no power to address that disparity.”).

Due Process & Effective Assistance of Counsel

[T]he sentencing process . . . must satisfy the requirements of the Due Process Clause. Even though the defendant has no substantive right to a particular sentence within the range authorized by statute, the sentencing is a critical stage of the criminal proceeding at which he is entitled to the effective assistance of counsel. The defendant has a legitimate interest in the character of the procedure which leads to the imposition of sentence even if he may have no right to object to a particular result of the sentencing process.

Gardner v. Florida, 430 U.S. 349, 358 (1977) (internal citations omitted).

The American Bar Association offers guidance on appropriate sentencing procedures.

A.B.A. Criminal Justice Sentencing Standards

The American Bar Association’s Criminal Justice Standards are evidence of the prevailing professional standards. *E.g. Padilla v. Kentucky*, 130 S.Ct. 1473, 1482 (2010); *Missouri v. Frye*, 132 S.Ct. 1399, 1408 (2012). The Association’s standards for sentencing (hereinafter “Sentencing Standards”) ¹¹ “deals with sentencing of adult individuals or organizations convicted of felonies.” Sentencing Standard 18-1.1(a). “The function of sentencing courts is to impose a sentence upon each offender that is

¹¹ http://www.americanbar.org/publications/criminal_justice_section_archive/crim_just_standards_sentencing_toc.html (last viewed July 29, 2012).

appropriate to the offense and the offender.” Appellate courts have an important function in sentencing. “The highest court of the state, if authorized to promulgate rules of criminal procedure,¹² should establish rules for presentence and sentencing proceedings.” Further, “[r]eview of sentences imposed by sentencing courts is a judicial function to be performed by appellate courts.” Sentencing Standard 18-1.4.

System accountability regarding sentencing is important. “[B]asic information is collected on all cases in which sentences are imposed to enable monitoring and evaluation of the operation of the sentencing system.” Again appellate courts occupy a critical role. “The highest state court should ensure that regular educational programs are conducted to inform sentencing courts and members of the bar about community or statewide programs and facilities that may be utilized in sentences of offenders.” Sentencing Standard 18-5.1.

Pre-sentencing investigations and reports are the centerpiece of constitutionally acceptable sentencing practices. “The rules of procedure should require such investigation and report in all cases except” in very limited circumstances. Sentencing Standard 18-5.2. “The rules of procedure should require that agencies preparing presentence reports adhere to standards . . . relating to the contents, preparation, and substantiation of presentence reports.” The sentencing court should be allowed “to vary the scope of reports in accordance with the court’s determination of the information it needs to perform its sentencing responsibilities.” Among other things, a proper pre-sentencing report should contain information about the aggravating and mitigating

¹² Our Supreme Court has the Proposed South Carolina Criminal Rules under advisement. The Supreme Court has also established a Docket Management Task Force to make recommendations on how to improve the state’s docket management system.

circumstances of the offense, a description of any prior criminal history, "a description of personal characteristics of an individual offender, even though not material to the offender's culpability, that may be taken into account in determination of the sentence," and "information about programs or resources . . . that might be incorporated in an individual offender's sentence." Sentencing Standard 18-5.4(b).

"The rules of procedure should provide that a presentence investigation must not be initiated until there has been a determination of guilt." Sentencing Standard 18-5.5(a). "If guilt was determined after a trial, the judge who presided at the trial should preside in sentencing proceedings unless there are compelling reasons in a specific case to provide otherwise." Sentencing Standard 18-5.13(i). "The rules of procedure should ensure that sentencing proceedings take place as soon as practicable following determinations of guilt." Sentencing Standard 18-5.14(a).

"The rules of procedure should provide that counsel for both parties, the offender, and the victim have the opportunity to present submissions material to the sentence to the sentencing court." Sentencing Standard 18-5.17(a). "[T]he sentencing court [should] resolve issues of fact material to the sentence to be imposed." The standard of proof should be by preponderance of the evidence. The "sentencing court [should] make express findings on all disputed issues of fact material to the determination of the sentence imposed. Sentencing Standard 18-5.18.

Sentences should be imposed in open court. The sentencing court "should state or summarize the court's findings of fact, should state with care the precise terms of the sentence imposed, and should state the reasons for selection of the type of sanction and the level of severity of the sanction in the sentence." Sentencing Standard 18-5.19.

There should be appellate review of sentences, including to “develop a body of rational and just principles regarding sentences and sentencing procedures.” Sentencing Standard 18-8.2.

Prejudice

Carrier was prejudiced by South Carolina’s lack of sentencing procedures and immediate imposition of sentence. By declining to consider a pre-sentence investigation, the Court signaled an unwillingness to consider mitigation. This unwillingness to consider mitigation is an abuse of discretion. South Carolina’s complete failure to provide guidance to judges regarding sentencing and absence of appellate review violates due process.

A pre-sentencing investigation would provide the Court with information about Carrier’s individual characteristics. More importantly, a proper presenting report would provide the Court with sentencing recommendations that would allow meaningful considerations of rehabilitation.

B. Reduction in Sentence.

Attached to this motion are affidavits of people who know and respect Carrier. Based on this information, the trial court should reconsider and reduce the sentence.

C. Credit for Time Served.

The Court’s sentence does not reflect credit for time served. The South Carolina Department of Corrections (SCDC) should automatically apply this credit. However, SCDC might not recognize this credit because the pre-trial incarceration was served on the 2009 indictment. To ensure that Carrier receives this credit, the Court should expressly order it. S.C. Code §24-13-40.

**V. Motion to Declare Lifetime GPS Monitoring
(S.C. Code §23-3-540) Unconstitutional.**

During its sentencing presentation, the State pointed out that S.C. Code §23-3-540 requires mandatory lifetime GPS monitoring. Carrier objected to imposing this condition. The Court ordered the lifetime monitoring. The Court should reconsider the sentence and declare lifetime GPS monitoring unconstitutional.

Lifetime GPS Monitoring is Punitive.

Although sex offender registration requirements traditionally are considered non-punitive,¹³ GPS bears striking resemblance to branding and a ball and chain, making the requirement punitive.

Branding, which is mutilation, is no longer allowed as punishment. *See State v. Brown*, 284 S.C. 407, 411, 326 S.E.2d 410, 412 (1985) (“Castration, a form of mutilation, is prohibited by [S.C. Const.] Article I, §15). An offender subjected to lifetime GPS monitoring is forced to wear an ankle bracelet for the rest of his life. Emperor Constantine had any Roman subjects who had been condemned to the arena or to the

¹³ See e.g. *Connecticut Dept. of Public Safety v. Doe*, 538 U.S. 1 (2003); *Smith v. Doe*, 538 U.S. 84 (2003); *State v. Walls*, 348 S.C. 26, 31, 558 S.E.2d 524, 526 (2002) (“[T]he General Assembly . . . intended to protect the public from those sex offenders who may re-offend and to aid law enforcement in solving sex crimes. Hence, the language indicates the General Assembly's intention to create a non-punitive act.”); *Hendrix v. Taylor*, 353 S.C. 542, 579 S.E.2d 320 (2003) (since sex offender registration is non-punitive, no liberty interest is implicated regardless of the length of time registration is required); and *In re Ronnie A.*, 355 S.C. 407, 410, 585 S.E.2d 311, 312 (2003) (held requiring a juvenile to register as a sex offender does not violate due process, at least in situations where the juvenile's “registry information will not be made available to the public because of appellant's age at the time of his adjudication.”).

mines branded on the hands and lower legs.¹⁴ The monitor will always be visible as a “scarlet letter.” Nathaniel Hawthorne’s 1850 novel *The Scarlet Letter* describes how people who were found guilty of adultery were forced to wear a scarlet letter “A” on their clothing. The effect was to shame the adulterer and invite prejudice and scorn. See *The Scarlet Letter*, Nathaniel Hawthorne, 1850; *Husband v. Wife*, 301 S.C. 531, 532, fn.1, 392 S.E.2d 811 (fn.1) (Ct. App. 1990). In this case the GPS monitoring device will invite similar scorn and shame upon Carrier. In *Husband v. Wife* the court recognized the inherent prejudice in being branded with such a scarlet letter. 301 S.C. at 532.

The GPS monitor is the modern ball and chain. The device had to be charged. The standard charge time is three hours, but as the batteries age, the offender has to charge them more often. The State, not the offender, sets the charging schedule. See testimony of S.C. Dept. of Probation, Parole & Pardon Services Agent Jeff Sorrow in *State v. Anthony Nation*, Case No. 2001-GS-24-1076, a copy of which is attached (hereinafter “Sorrow Testimony”), Appendix pp. 6-8.¹⁵ This weight is far heavier than the historical ball and chain. If Carrier does not submit, then he faces indictment, prosecution and imprisonment. There is simply no other context, *other than punishment*, in which the State seeks to physically attach something to a person, without consent, and without consideration of individual circumstances, that may never be removed without facing severe criminal sanctions. The wearing of the ankle monitor, the

¹⁴ *The Theodosian Code and Novels and the Sirmondian Constitutions: A Translation with Commentary, Glossary, and Bibliography*, by Clyde Pharr with Theresa Sherrer Davidson. The Lawbook Exchange, Union, New Jersey 2001, p. 255.

¹⁵ “A court can take judicial notice of its own records, files and proceedings for all proper purposes including facts established in its records.” *Freeman v. McBee*, 280 S.C. 490, 494, 313 S.E.2d 325, 327 (Ct. App. 1984); Rule 201, SCRE.

forced reporting to several offices, and public exposure of his isolated incident represent an ongoing humiliation and ongoing control over Carrier's life.

Due Process.

Recently in *State v. Dykes*, Shearouse Adv. Sheet No. 16 (S.C.S.Ct. Op. No. 27124) (Filed May 9, 2012),¹⁶ a copy of which is attached, our Supreme Court held that a statutory provision that mandates lifetime satellite monitoring of certain child sex offenders without judicial review related to an assessment of an individual's risk of reoffending violates the Due Process Clause. The Court was divided over whether South Carolina's requirement violated the strict scrutiny or the less stringent rational basis test. Carrier contends this requirement cannot meet either test.

Cruel and Unusual Punishment

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. U.S. Const., S.C. Const. Am. VIII;¹⁷ Art. I, §15. The cruel and unusual punishment clause requires that the duration of a sentence not be grossly disproportionate with the severity of the crime. *State v. McKnight*, 352 S.C. 635, 652, 576 S.E.2d 168, 177 (2003). The same clause also prevents inhuman and barbarous penalties. *Stockton v. Leeke*, 269 S.C. 459, 462 (1977). For example, in the seminal case on this issue, imprisonment of 12 to 20 years for falsifying a public document was held to constitute cruel and unusual punishment. *Weens v. United States*, 217 U.S. 349, 54 L.Ed.2d 793, 30 S.Ct. 544 (1910). Similarly, a sentence of life imprisonment without

¹⁶ Counsel is informed and believes that the Supreme Court has granted rehearing of this case.

¹⁷ The Eighth Amendment to the United States Constitution is applicable to the states by reason of the Fourteenth Amendment. *Robinson v. U.S.*, 370 U.S. 660, 8 L.Ed.2d 758, 82 S.Ct. 1417 (1962).

possibility of parole for the crime of forcible rape has also been held unconstitutional as to juvenile defendants. *Workman v. Commonwealth*, 429 S.W.2d 374 (Ky. 1968). The “proportionality” bedrock of Eighth Amendment jurisprudence is an equally important a principle to “evolving standards of decency” when determining whether a sentence constitutes cruel and unusual punishment. *State v. Pittman*, 373 S.C. 527, 647 S.E.2d 144 (2007) (upholding 30-yr sentence for 12-year-old who killed his grandparents with shotgun, then lied about it, after finding other courts had given similar sentences).

“Although there are decisions to the effect that the provision against cruel and unusual punishment is applicable solely to the kind of punishment, and not to its amount or duration, according to the weight of authority, the punishment for a crime, while not cruel and unusual in kind, may be so severe as to fall within the meaning of this provision.” *State v. Kimbrough*, 212 S.C. 348, 46 S.E.2d 273, 275 (1948).

Furthermore, the Eighth Amendment prohibition against cruel and unusual punishment should be read as placing a limit on the retributive aspects of punishment. Lifetime GPS and Residency Restrictions are effectively retributive punishments (because they serve hardly any other purpose) and are so retributive and disproportionate to the crime that they amount to cruel and unusual punishment. See “The Constitutional Right Against Cruel and Unusual Punishment” by Youngjae Lee, New York University Public Law and Legal Theory Working Papers. 3-15-2005.

The Court noted the test used in its previous opinions on Eighth Amendment challenges to penalties in *Solem v. Helm*, 463 U.S. 277, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983) and *Harmelin v. Michigan*, 501 U.S. 957, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991). This test first involves a comparison of the gravity of the offense with the severity of the

sentence. *Harmelin* at 1005. When this comparison “leads to an inference of gross disproportionality,” the court should then compare sentences imposed for the same crime in other jurisdictions to see if that comparison “validate[s] an initial judgment that [the] sentence is grossly disproportionate.” *Id.*

In a fifty state survey approximately ten (10) states have provisions for mandatory lifetime monitoring for sex offenders. However, of those ten states only two have provided for lifetime monitoring for a crime fitting Carrier’s conviction. S.C. Code (Ann.) §23-3-540, Kansas §22-3717(u) (An inmate sentenced to imprisonment pursuant to K.S.A. 21-4643, and amendments thereto, for crimes committed on or after July 1, 2006, shall be placed on parole for life and shall not be discharged from supervision by the Kansas parole board. When the board orders the parole of an inmate pursuant to this subsection, the board shall order as a condition of parole that the inmate be electronically monitored for the duration of the inmate's natural life.).

The other states will not require lifetime GPS monitoring in Carrier’s case. Florida Code § 775.082(3)(a)(4)(lifetime probation or community control¹⁸ for offenders convicted of offense against those 11 or younger); Georgia Code § 42-1-14 ((e) Any *sexually dangerous predator* shall be required to wear an electronic monitoring system); Indiana Code § 11-13-3-4(J)(1)((j) As a condition of parole, the parole board:(1) shall require a parolee who is a *sexually violent predator* under IC 35-38-1-7.5; to wear a monitoring device (as described in IC 35-38-2.5-3) that can transmit information twenty-four (24) hours each day regarding a person's precise location, subject to the amount appropriated to the department for a monitoring program as a condition of parole.); Louisiana Code §§

¹⁸ Florida Code 775.082(3)(a)(4) does not specify use of GPS monitoring.

14:78.01(d)(3)(lifetime monitoring for offender convicted of aggravated incest on victim younger than 13), 14:81.2(E)(2)(offender convicted of molestation on victim less than 13 years old), 14:81.1(E)(3)(offender convicted of pornography involving victim under 13 years old), 14:43.1(C)(3)(offender convicted of sexual battery on victim less than 13 years old is to be monitored for life), Michigan Code §750.520n (offender convicted of criminal sexual conduct on victim younger than 13 to be monitored for life); Missouri §217.735 (mandatory lifetime monitoring for offender convicted of prior sex offense and convicted of sex offense against victim less than 14 years old); Montana Code §§ 45-5-503(4)(lifetime monitoring for offender convicted of sex without consent on victim less than 12 years old), 45-5-625(lifetime monitoring for conviction of sexual abuse of child under 12 where offender is over 18 years old), 45-5-507 (offender to be monitored for life when convicted of incest where victim is 12 years old or younger and offender is over 18 years old), 46-18-222 (a safety valve that allows a judge to suspend mandatory minimums (arguably including lifetime monitoring)); North Carolina §14-27.4A(Offender convicted of sex offense on victim less than 13 years old), 14-208.40 (Offender designated sexually violent predator); Oregon §144.103 (lifetime monitoring for sex offenses involving a victim less than 12 years old (and other circumstances not at issue in this case)); Rhode Island §11-37-8.2.1 (lifetime monitoring for offender convicted of molesting child 12 years old or younger and for persons designated sexually violent predators); Wisconsin Code §301.48(2)(m) (offender can step down to passive tracking after completing sentence), 301.48(6)(providing for petition to be relieved of tracking), 301.48(6)(b)(2)(a person may not petition for relief from tracking if offender committed another crime while being tracked).

However, the inquiry is not complete by simply considering the gravity of the offense as compared with the punishment or at comparing the penalties of other jurisdictions. The Eighth Amendment is also violated when the penalty imposed for a particular offense is greater than a sentence that could be imposed for a more serious crime. For example, in Oregon, a defendant sentenced to life imprisonment for assault with intent to rape successfully argued that the penalty constituted cruel and unusual punishment when the maximum punishment for statutory or forcible rape was 20 years imprisonment. *Cannon v. Gladden*, 203 Or. 629, 81 P.2d 233 (1955). Courts in additional states have also held penalties to violate the Eighth Amendment when they were greater than penalties for more serious crimes. See *State v. Blackmon*, 260 N.C. 352, 132 S.E.2d 880 (1963) (holding a penalty of 20 to 30 years for possession of burglary tools was unconstitutional as it provided for a time of imprisonment three times as long as the penalty that could be imposed for the crime of housebreaking); *Roberts v. Collins*, 404 F.Supp. 119 (D.C. Md. 1975) (finding 20-year sentences for the lesser-included offense of simple assault unconstitutional when the maximum penalty for the more aggravated offense of assault with intent to murder was 15 years); *People v. Schueren*, 10 Cal.3d 553, 111 Cal. Rptr. 129, 516 P.2d 833 (1973) (finding a term of six months to life, which could exceed 14 years, for assault with a deadly weapon unconstitutional when the charge of assault with a deadly weapon with intent to commit murder carried a term of one to 14 years); *Buchanan v. State*, 68 S.W.3d 136 (Tex. App. 2001) ("a prohibition against grossly disproportionate punishment survives under the Eighth Amendment apart from any consideration of whether the punishment assessed is within the range established by the legislature").

In this case CSC with a Minor 2nd degree, which requires proof a sexual battery, carries more potential prison time yet does not require lifetime monitoring. SC Code 16-3-653; SC Code 23-3-540(G)(1)(b).

Where the judge has no discretion to hear evidence about offender's individual circumstances, the mandatory lifetime electronic monitoring requirement, with no means to petition the court for release from the monitoring requirement, is unconstitutional. When the legislature takes away a judge's discretion in such a highly subjective area with a highly burdensome punishment, an unbalanced and unstable justice system results. *State v. Kimbrough*, 212 S.C. 348, 357 (1948) (Trial judge's sound judgment on sentencing "vitally affects the stability of free institutions"). While electronic monitoring itself may not be considered cruel and unusual, the duration of lifetime electronic monitoring for Carrier is so severe as to constitute a violation of the prohibition against cruel and unusual punishment under the Eighth Amendment of the United States Constitution and Article I, § 15 of the South Carolina Constitution. A lifetime of probation is a severe penalty, a lifetime of probation is more than the legislature allows. Given the isolated nature of the incident and the strong potential for rehabilitation among offenders, a lifetime punishment is disproportionate to the severity of the crime.

1) Lifetime GPS monitoring is a punishment that is disproportionate to the severity of the crime.

As established above, lifetime GPS monitoring is a punishment. Lewd Act on a Minor carries a maximum penalty of fifteen years and a fine in the discretion of the court. S.C. Code §16-15-140. The General Assembly has limited the maximum amount of time a person can serve on probation to 5 years in South Carolina. S.C. Code 24-21-440. Lifetime GPS monitoring puts a person on probation for the rest of their lives without any way to

have the necessity of monitoring reviewed or terminated. A punishment that lasts for the rest of the life of the offender, even where not cruel and unusual in kind, is cruel and unusual in duration.'

2) Twenty Dollars Per Month for the Rest of Carrier's life is Cruel and Unusual Punishment.

Prior to sentencing, counsel informed the Court that Carrier has difficulty finding employment because of his prior record. When he is released from prison, it will remain difficult for Carrier to find employment. The State charges the offender \$20.00 per week for the GPS monitoring. Sorrow Testimony, Appendix pp. 8, 12-13. Twenty dollars a week is \$1,040.00 every year. If Carrier lives for thirty years after completing his sentence, then he will owe South Carolina \$31,200.00 for this electronic monitoring.

Summary

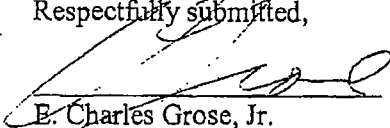
The Court should declare lifetime electronic monitoring is unconstitutional and delete that provision from Carrier's sentence. In the alternative, the Court should order a hearing at the conclusion of Carrier's sentence to determine whether electronic monitoring is appropriate in his case and, if electronic monitoring is subsequently ordered, that it be subjected to periodic review.

VI. Conclusion.

The Court should order Carrier receive a new trial. In the alternative, the Court should reconsider the sentence.

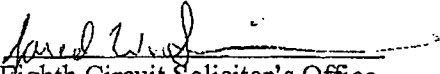
IT IS SO MOVED.

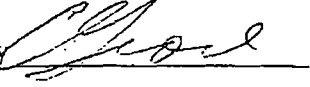
Respectfully submitted,


E. Charles Grose, Jr.
Circuit Defender, Eighth Judicial Circuit¹⁹
Suite 208, Park Plaza
600 Monument Street, Box P-133
Greenwood, SC 29646
(864) 229-9505

July 30, 2012
Greenwood, South Carolina

Acceptance of Service:

By 
Eighth Circuit Solicitor's Office

Served by 

Date 7/30/2012

¹⁹ The undersigned will be leaving the Public Defenders Office at the conclusion of his term as Circuit Public Defender and entering private practice in Greenwood, South Carolina. The undersigned, however, will continue his representation of Mr. Carrier *pro bono* until these motions are resolved.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	FOR THE EIGHTH JUDICIAL CIRCUIT
COUNTY OF GREENWOOD	)	
	)	
THE STATE	)	Cases Number: 2012-GS-24-1166
	)	Re-indictment of 2009-GS-24-1146
	)	
	)	
James L. Carrier,	)	Motions for New Trial or, in the alternative
Defendant	)	to Reconsider the Sentence
	)	

Appendix

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Affidavit of Benji Holder	31
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OCT/08/2013/TUE 02:34 PM Greenwood Cnty Clerk

FAX No. 864C428693

P. 001/00

STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

State of South Carolina,

v.

James L. Carrier,

Defendant.

IN THE COURT OF GENERAL SESSIONS

EIGHTH JUDICIAL CIRCUIT

Indictment No.: 2012-GS-24-1166

ORDER DENYING DEFENDANT'S
MOTION FOR NEW TRIAL OR, IN THE
ALTERNATIVE, TO RECONSIDER
SENTENCE

FILED GENERAL SESSIONS
8TH JUDICIAL CIRCUIT
GREENWOOD, SC
2012 AUG 14 PM 2:34

The court has carefully reviewed Defendant's Motion for New Trial or, in the Alternative, to Reconsider the Sentence imposed on July 19, 2012. The court finds these motions are without merit, and therefore they are respectfully **DENIED**.

To be clear, the court never imposed a timeline on the jury's deliberations. After advising the court that they were deadlocked (but before the jury could be returned to the courtroom for an Allen charge), the jury requested via the bailiff additional time to deliberate. The court allowed them to continue, but never imposed a deadline. Nor does the court recall any shouting emanating from the jury room.

Defendant is given credit for time served while held in jail on the original indictment (Indictment No. 2009-GS-24-1146).

IT IS SO ORDERED.



D. Garrison Hill
Circuit Judge

August 9, 2012
Greenville, South Carolina

WITNESSES

Cris Haden
Greenwood County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

October Term, 2009

Indictment # 09GS24-1146

WARRANT NUMBER

M075385

THE STATE

Vs.

James Lloyd Carrier

Don Bonell

Foreman of the Grand Jury

Date: *Oct 2, 2009*

NP [Signature] 7-18-12

VERDICT

True Bill

Foreman

INDICTMENT FOR

LEWD ACT
16-15-0140

CNWB

09 GSDH-1146

STATE OF SOUTH CAROLINA

INDICTMENT FOR

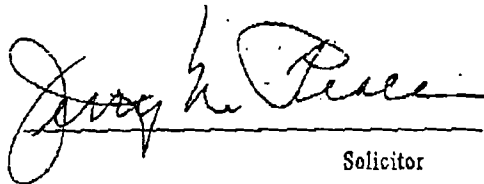
COUNTY OF GREENWOOD

**LEWD ACT
16-15-0140**

At a Court of General Sessions, convened on the 2nd day of October, 2009 the Grand Jurors of Greenwood County present upon their oath:

That James Lloyd Carrier, did in Greenwood County, state aforesaid, on or about the 1st day of January, 2003-being over the age of fourteen (14) years, the said defendant did unlawfully, willfully and wdtly 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 [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 [REDACTED], in violation of Section 16-15-140 of the South Carolina Code of Laws, 1976, as amended.

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


Solicitor

WITNESSES

Chris Haden
Greenwood County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

June Term, 2012

Indictment # 12GS24-1166

WARRANT NUMBER

2012GS2401166
DIRECT INDICTMENT

THE STATE

VS.

James Lloyd Carrier

True Bill

DF

Foreman of the Grand Jury

Date: *4/8/12*

INDICTMENT FOR

LEWD ACT
16-15-0140

VERDICT

Guilty

Christopher J. Stecher

Foreman

126524-116

THE STATE OF SOUTH CAROLINA

INDICTMENT FOR

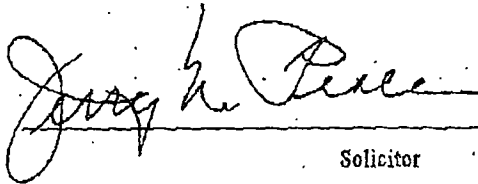
COUNTY OF GREENWOOD

LEWD ACT
16-15-0140

At a Court of General Sessions, convened on the 8th day of June, 2012 the Grand Jurors of Greenwood County present upon their oath:

That James Lloyd Carrier, did in Greenwood County, state aforesaid, between the 1st day of January, 1999, and the 31st day of December, 2003, 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 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, in violation of Section 16-15-140 of the South Carolina Code of Laws, 1976, as amended.

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


Solicitor

F SOUTH CAROLINA

OF Greenwood

VS.

James Lloyd Carrier

JAU Sex: M Age: 38

SS#: [REDACTED]

Zip: Honea Path, SC

007393080 SID#:

is ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

ition of the said indictment comes now the Defendant who was

/ Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1

ion of § 16-15-0140

of the S.C. Code of Laws, bearing CDR Code # 2468

N-VIOLENT

☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☒ Mandatory GPS(CSC☐ §17-25-45

w/minor 1st or Lewd Act)

ge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.F. Matthew S. [REDACTED] 78750

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

BEFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,terminate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

_____ ; plus costs and assessments as applicable*; the balance is suspended with probation for _____

s/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of

ion, which are incorporated by reference.

ONCURREN or ☐ CONSECUTIVE to sentence on:

he Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied

State Department of Corrections.

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

uant 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

atic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

STITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

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

_____ days/hours Public Service Employment

ent Terms: _____

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

set by SCDPPPS _____

May serve W/B beginning _____

pient: _____

Substance Abuse Counseling ☐

e: _____

Random Drug/Alcohol testing ☐

-1-206 (Assessments 107.5 %)

\$

-1-211(A)(1) (Conv. Surcharge)

\$100

\$

-1-211(A)(2) (DUI Surcharge)

\$100

\$

-6-5-2995 (DUI Assessment)

\$12

\$

-6-1-286 (DUI Breath Test)

\$25

\$

-viso 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

\$

-6-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

-viso 90.5 (SCCA Surcharge)

\$5

\$

-6 to County (if paid in installments)

\$

OTAL

\$

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

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: GPS monitoringper S.C. Code § 23-3-540.☐ Appointed PD or appointed other counsel,
47.12 requires \$500 be paid to Clerk
during probation.

lerk of Court/ Deputy Clerk

ourt Reporter:

CCA/217 (03/2011)

Presiding Judge

Judge Code:

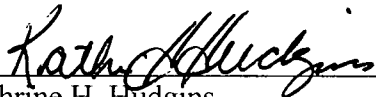
Sentence Date:

Man / in21387-18-12

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and 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."

May 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