

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

C. Victor Pyle, Jr., Circuit Court Judge

 ORIGINAL

RECEIVED

SEP 02 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

ALVIN D. ARNOLD,

APPELLANT

APPELLATE CASE NO. 2013-002511

RECORD ON APPEAL

SUSAN B. HACKETT
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

ALAN WILSON
Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

Attorneys for Respondent

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED NOVEMBER 12-14, 2013	1
PRE-TRIAL MOTIONS	8
JURY VOIR DIRE	13
JURY SELECTION	25
PRE-TRIAL MOTIONS	34
OPENING STATEMENTS BY MS. HODGE	46
OPENING STATEMENTS BY MS. WICKER	52
TESTIMONY	
EMILY GRANT.....	53
KRYSTAL YOUMANS.....	61
HEATHER HUBERT	67
CHRISTINE CARLBERG	83
MARY-FRAN CROSWELL.....	100
MINOR.....	114
ERICA VANWAGNER	135
JEREMY PARSONS	154
ALVIN ARNOLD.....	161
MIA COLLINS.....	183
CLOSING ARGUMENT BY MS. WICKER.....	193
CLOSING ARGUMENT BY MS. HODGE.....	200

CHARGE ON THE LAW	215
VERDICT	227
SENTENCING	229
INDICTMENT	232
CERTIFICATE OF COUNSEL.....	241

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
 -VS-)
)
 ALVIN D. ARNOLD,)
)
 DEFENDANT.)
 _____)

2010-GS-23-10176 - 10178

TRANSCRIPT OF RECORD

NOVEMBER 12 -14 , 2013
GREENVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE C. VICTOR PYLE, JR.

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

ATTORNEY FOR PLAINTIFF:

KRIS HODGE, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

AMANDA WICKER, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEXWITNESSPAGE NO.TUESDAY, NOVEMBER 12, 2013:

JURY SELECTION

WEDNESDAY, NOVEMBER 13, 2013:

OPENING STATEMENTS

MS. HODGE ----- 46

MS. WICKER ----- 52

EMILY GRANT

DIRECT BY MS. HODGE ----- 53

CROSS BY MS. WICKER ----- 60

KRYSTAL YOUMANS

DIRECT BY MS. HODGE ----- 61

CROSS BY MS. WICKER ----- 66

HEATHER HUBERT

DIRECT BY MS. HODGE ----- 67

CROSS BY MS. WICKER ----- 79

CHRISTINE CARLBERG

DIRECT BY MS. HODGE ----- 83

CROSS BY MS. WICKER ----- 97

HEATHER HUBERT

DIRECT BY MS. HODGE ----- 99

MARY-FRAN CROSWELL, M.D.

DIRECT BY MS. HODGE ----- 100

INDEXWITNESSPAGE NO.

MARY-FRAN CROSWELL, M.D.

CROSS BY MS. WICKER ----- 112

REDIRECT BY MS. HODGE ----- 113

Minor

DIRECT BY MS. HODGE ----- 114

CROSS BY MS. WICKER ----- 131

ERICA VANWAGNER

DIRECT BY MS. HODGE ----- 135

CROSS BY MS. WICKER ----- 147

REDIRECT BY MS. HODGE ----- 148

JEREMY PARSONS

DIRECT BY MS. WICKER ----- 154

CROSS BY MS. HODGE ----- 157

ALVIN ARNOLD

DIRECT BY MS. WICKER ----- 161

CROSS BY MS. HODGE ----- 169

REDIRECT BY MS. WICKER ----- 179

RECROSS BY MS. HODGE ----- 180

THURSDAY, NOVEMBER 14, 2013:

MIA COLLINS

DIRECT BY MS. WICKER ----- 183

CROSS BY MS. HODGE ----- 187

INDEXWITNESSPAGE NO.

CLOSING ARGUMENTS

MS. WICKER ----- 193

MS. HODGE ----- 200

CHARGE OF THE COURT ----- 215

VERDICT OF THE JURY ----- 227

SENTENCE OF THE COURT ----- 229

CERTIFICATE OF REPORTER ----- 231

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
S-1	PHOTO -----	75	76
S-2	PHOTO -----	75	76
S-3	PHOTO -----	75	76
S-4	PHOTO -----	75	76
S-5	PHOTO -----	75	76
S-6	PHOTO -----	75	76
S-7	DVD-FORENSIC INTERVIEW ----- (NOT TRANSCRIBED)	87	88
S-8	DRAWING OF FEMALE BODY -----	93	93
S-9	DRAWING OF MALE BODY -----	93	93
C-1	JURY QUESTION -----	225	
C-2	JURY QUESTION -----	226	

* State V. Ulm Arnold *

Greenville County Courthouse

RANDOM STRIKE SHEET

JUDGE NAME : Victor C. Pyle Jr. VALUES (Ret)

Sorted by: Random Nbr

TRIAL TYPE : Civil

PANEL ID : PYLE 11/12/13

DESCRIPTION : PYLE 11/12/13

Trial

COURTROOM CRT3

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
CX 1 Hundley, Bradley M	85	W	M	()	()	()	WM
✓ 2 Culbreth, Bennie L	39	B	M	()	()	()	BM
✓ 3 Santana, Carlos H	149	H	M	()	()	()	HM
✓ 4 Thomason, Margaret G	170	B	F	()	()	()	BF
✓ 5 Rodeghiero, Robin	145	W	F	()	()	()	WF
✓ 6 Atkinson, Nancy H	5	W	F	()	()	()	WF
✓ 7 Garrett, Brent S	59	W	M	()	()	()	WM
✓ 8 Mulvaney, Karolyn R	128	W	F	()	()	()	WF
CX 9 Knowles, David G	96	W	M	()	()	()	WM
✓ 10 Klinge, Carey M	95	W	M	()	()	()	WM
CX 11 Pennington, Mayte B	136	H	F	()	()	()	HF
DX 12 Howell, James S III	190	W	M	()	()	()	WM
DX 13 Seawright, Brittany L	152	W	F	()	()	()	WF
✓ 14 Vest, Gary W	176	W	M	()	()	()	WM
CX 15 Bridges, Brittany N	19	W	F	()	()	()	WF
DX 16 Stewart, Garry N	163	W	M	()	()	()	WM
✓ 17 Tothacer, A J Jr.	173	W	M	()	()	()	WM
✓ 18 Bennett, Hazel B	15	B	F	()	()	()	BF
SX 19 Pennell, Aimee L	146	W	F	()	()	()	WF
✓ 20 Russo, Alexander L	147	W	M	()	()	()	WM
✓ 21 Franklin, Stuart L (A)	56	W	M	()	()	()	WM
C 22 Williams, Kenneth J	183	B	M	()	()	()	BM
23 Benton, Glenn S	16	W	M	()	()	()	

Greenville County Courthouse RANDOM STRIKE SHEET

JUDGE NAME : Victor C. Pyle Jr. VALUES (Ret)

TRIAL TYPE : Civil

PANEL ID : PYLE 11/12/13

COURTROOM CRT3

DESCRIPTION : PYLE 11/12/13

Sorted by: Random Nbr

Trial

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
24 Harris, Frederick	73	B	M	()	()	()	
25 Eskew, Barry S	49	W	M	()	()	()	
26 Suber, Pamela L	164	B	F	()	()	()	
27 Lewis, Synova S	102	B	F	()	()	()	
28 Frazier, Robert A	58	W	M	()	()	()	
29 Mobley, Ronald J	122	W	M	()	()	()	
30 Hallex, Allan L	71	W	M	()	()	()	
ck 31 Born, Lu A	17	W	F	()	()	()	WF
32 Sagger, Christopher J	148	W	M	()	()	()	
33 Douglas, John T	46	W	M	()	()	()	
34 Mccrary, Hozea E	111	B	M	()	()	()	
35 Haskew, Ben	74	W	M	()	()	()	
36 Gilbert, Rhonda Mckinney	62	W	F	()	()	()	
37 Newsome, Tracy L	132	W	M	()	()	()	
38 Bailey, Ted K Jr.	6	W	M	()	()	()	
39 Mccoy, Robert J	109	W	M	()	()	()	
40 Sims, Robert Kevin	155	W	M	()	()	()	

Total Number of Jurors:

40

** END OF REPORT **

1 **THE COURT:** Good morning. Be seated, please. Be
2 seated. All right. Now, I understand there's a motion to
3 continue.

4 **MS. WICKER:** That's correct, Your Honor.

5 **THE COURT:** All right. Let's do that first before ...

6 **MS. WICKER:** Thank you, Your Honor. May it please the
7 Court. Your Honor, just by way of explanation, this case
8 has been transferred to me about the end of June of this
9 year from another attorney.

10 However, our office opened this case on November 24th
11 of 2010. On December 1st of 2010 we filed Rule 5 and Brady
12 motions and served a copy on the Solicitor's Office. We
13 received the discovery in piecemeal fashion, as we often do,
14 in December of 2010, then in August of 2011 and then in June
15 of 2012.

16 On November 1st of this month or of this year, rather,
17 Your Honor, I asked the solicitor to provide copies of the
18 CV's of her expert witnesses. She responded on the 5th that
19 she provided one, was waiting for another one and informed
20 me of a therapist that she intended to call of Erica
21 VanWagner, who is the victim's therapist in this case.

22 On November 11th she told me that she intended to call
23 the therapist and talk about her treatment of the victim and
24 also to call her as an expert in the area of child sexual
25 abuse dynamics and treatment of children of sexual abuse.

1 I'm not sure exactly when the solicitor identified this
2 witness, but there's no mention of her in any of the rest of
3 the note file or any of the discovery that I had received.

4 Also, yesterday, Your Honor, I received supplemental
5 discovery. And it is thirty-four pages of medical documents
6 from this therapist, this expert that she intends to call.
7 It's including some diagnostic tests, Your Honor. It looks
8 like testing for post-traumatic stress disorder and those
9 sorts of things.

10 I'm not an expert. So I can't really decipher all of
11 this. So I would ask for a continuance to review this and
12 particularly speak to an expert witness of my own, determine
13 if it's helpful or harmful to the client's case.

14 I note, Your Honor, that the cover letter states that
15 it was sent to our office on November 6th. I did not get
16 it, Your Honor, until yesterday afternoon. I can't explain
17 the lag-time, but even if it were November 6th, that's three
18 business days from the date of trial, one of which was
19 Veterans Day, a holiday.

20 And, Your Honor, lastly, if this were just a picture of
21 a stolen item from like a shoplifting case, I wouldn't make
22 this motion, but it's thirty-four pages of medical documents
23 from an expert. So I would request a continuance at this
24 time.

25 **THE COURT:** Solicitor.

1 **MS. HODGE:** Your Honor, these, in fact, are not medical
2 documents, these are the therapist's notes and the
3 therapist's documents. The State is not required to provide
4 those under discovery. In fact, they're actually excluded
5 from discovery. That was a professional courtesy that I
6 extended by giving her copies of those because the witness
7 will be referring to her notes throughout her testimony.

8 The case law is solid that at the point when the
9 witness testifies and is cross-examined, then the defense
10 attorney is entitled to the underlying data. I gave it last
11 week, again, as I said, as a courtesy. And there's also not
12 a rule that prescribes me telling her my expert witness
13 names ahead of trial.

14 This case has been going on for three years, Your
15 Honor. There was a Family Court accompanying case. This
16 child's been in therapy since that time. The Defendant has
17 known that the child's been in therapy, who the therapist
18 is. There really - - this is not a surprise to anyone.

19 **THE COURT:** Counselor.

20 **MS. WICKER:** Well, Your Honor, I understand the
21 solicitor's position. The cover letter does specifically
22 say it's being provided pursuant to Rule 5 and they are
23 medical records, thirty-four pages in length. Obviously, I
24 haven't had a meaningful opportunity to plug through them
25 since I received them - - -

1 **THE COURT:** How about that, solicitor?

2 **MS. HODGE:** Your Honor, that would be attributed to my
3 secretary who categorized that as medical records.

4 **THE COURT:** Suppose she is going to have the need for
5 an expert to come in and testify that she doesn't know right
6 now?

7 **MS. HODGE:** Again, my position would be, Your Honor,
8 that this case has been going on for a long time - - -

9 **THE COURT:** Well, I understand that, but it's not her
10 fault that you've produced this late, is it?

11 **MS. HODGE:** It's not her fault, no, but I actually did
12 not have to produce that under the rules and - - -

13 **THE COURT:** Well, I mean, this is a serious case. In
14 all fairness to her, how can she properly represent a client
15 without at least having the chance to do some research and
16 work on it?

17 **MS. HODGE:** Well, I think that she could have reviewed
18 them since I did give them over to her last week. I don't
19 know why her office didn't get them to her, but I did make
20 them available last week.

21 And again, in these kind of cases there are constantly
22 experts being called. It's not a surprise. If she would've
23 wanted to call an expert, she could've done that even if I
24 didn't call an expert.

25 I think that since Your Honor said we can - - we're

1 going to be breaking early today, that would be adequate
2 time for her to look through them since she didn't look
3 through them prior to today.

4 They're not medical diagnostic, they are notes of
5 therapist. And my therapist would not be testifying until
6 tomorrow anyway just as far as scheduling purposes go.

7 **THE COURT:** All right. How long is it going to take to
8 try the case? Can you give her an estimate on that?

9 **MS. HODGE:** I've got approximately seven witnesses. I
10 anticipate finishing tomorrow by lunch. But we could break
11 and start in the morning if that gives more time.

12 **THE COURT:** All right. Right now I'm going to deny
13 your motion. We'll get a jury and start tomorrow morning at
14 9:00. That'll give you some time.

15 **MS. HODGE:** I can also make Ms. VanWagner available to
16 talk to her.

17 **THE COURT:** That's what I was getting ready to say, if
18 you'll do that.

19 **MS. HODGE:** Yes, sir.

20 **THE COURT:** All right. I deny your motion for a
21 continuance.

22 **MS. WICKER:** Thank you, Your Honor.

23 **THE COURT:** And - - yes.

24 **MS. WICKER:** I'm sorry, Your Honor. I don't mean to
25 interrupt. Just - - -

1 **THE COURT:** No problem.

2 **MS. WICKER:** - - - very briefly. My client has
3 informed me today that he has some out-of-state witnesses.
4 I was unaware of them, but he would ask me to request a
5 continuance on his behalf given the fact that we have not,
6 obviously, properly subpoenaed his out-of-state witnesses.

7 **THE COURT:** Well, now, why didn't he inform you of this
8 before? Now, with this case being three years old?

9 **MS. WICKER:** I understand, Your Honor.

10 **THE COURT:** All right. We'll start at 9:00 in the
11 morning, but let's get us a jury.

12 **MS. WICKER:** Thank you, Your Honor.

13 **THE COURT:** All right.

14 (Pause)

15 (Whereupon the jury panel entered the courtroom at
16 11:32 AM)

17 **THE COURT:** Would counsel approach just a minute,
18 please.

19 (Whereupon a bench conference was held off the record
20 in the presence of the jury panel, but out of their hearing)

21 **THE COURT:** Ladies and gentlemen, if I can have your
22 attention, at this time we will select a jury in the case of
23 the State against Alvin Dwayne Arnold. Mr. Arnold, would
24 you stand up and turn around and face the jury panel a
25 moment for me, please, sir. Thank you. You can be seated.

1 Mr. Arnold is indicted on three different cases. He is
2 indicted for criminal sexual conduct with a minor in the
3 first degree. This indictment alleges that between December
4 2008 and August 2010 he committed a sexual battery on S.A.,
5 who was alleged to be less than 11 years of age.

6 He is next indicted for committing a lewd act upon a
7 child. This indictment alleges that between December 2008
8 and 2010 being over the age of 14 years he willfully and
9 lewdly committed or attempted a lewd and lascivious act upon
10 the body of S.A., a child under 16 years of age, with the
11 intent of arousing, appealing to, or gratifying the lusts,
12 passions, sexual desires of himself or the child.

13 And the third indictment alleges that between December
14 2008 and 2010 he had carnal intercourse with S.A., who is
15 alleged to be within the degree of relationship prohibited
16 by section 16-15-20 of our code of laws.

17 Now, potential witnesses in the case will be
18 Investigator Heather Hubert, Investigator Emily Grant, Dr.
19 Mary-Fran Croswell, Christine Carlberg, Erica VanWagner,
20 Gladys Cody, Christopher Gary, Krystal Youmans, Samantha
21 Arnold, Alvin D. Arnold, Mia Collins, Jeremy Parsons, Ethel
22 Bailey and Ricky Dobbins.

23 I would inquire at this time if any member of the jury
24 panel is related by blood or marriage or connected by
25 employment to the Defendant or to any potential witness in

1 the case. Are you sensible or aware of any bias or any
2 prejudice with respect to any party to this action, or the
3 subject-matter of the case, or do you know any reason you
4 could not give all parties to this case a fair trial? If
5 so, please stand and give me your name.

6 (No response)

7 **THE COURT:** Now, Kris Hodge, who is one of the
8 assistant solicitors, represents the State. Amanda L.
9 Wicker with the Public Defender's Office represents the
10 Defendant. Do I have any clients now or formerly of any
11 attorney participating in this case?

12 (No response)

13 **THE COURT:** Walt Wilkins is the Solicitor for the 13th
14 Circuit. Do I have any member of the panel who has any
15 connection; family, business, social or otherwise with him,
16 or as I said, any member of his staff? If so, would you
17 please stand and give me your name.

18 (No response)

19 **THE COURT:** Ladies and gentlemen, I have some
20 additional questions that I will ask at this time. And if
21 any member of the panel would respond to them, I would ask
22 that you come forward so that we can talk with you
23 privately. And I'll read all of the questions first and
24 then give you a chance to respond.

25 Has any member of the jury panel or his or her family

1 been the victim of any assault, battery or any crime similar
2 to the ones I read to you? Has any member of the jury panel
3 or any member of your family been the victim of any sexual
4 assault, improper sexual touching, or lewd conduct or any
5 crime of a like or similar nature?

6 Next, this case involves allegations made by the
7 parties who are related and members of the same family. Is
8 there any member of the jury panel who feels uncomfortable
9 with these allegations or would place any greater
10 reliability upon the allegations because they are made by a
11 family member?

12 Is there any member of the jury panel or any member of
13 your family who has sought assistance from, been employed by
14 or performed volunteer work for any center or program whose
15 primary purpose is treating victims of sexual assault?

16 Would any member of the panel respond to those
17 questions? And if so, if you would come forward so that I
18 can talk with you. All right, counsel, would you please
19 approach. All right. I'm going to take you one at a time.

20 (Whereupon a bench conference was held on the record
21 with jurors)

22 **THE COURT:** All right. And your name?

23 **JUROR:** Brittany Bridges.

24 **THE COURT:** All right.

25 **MS. BRIDGES:** I've been to court before for abuse.

1 **THE COURT:** Would that fact interfere with your ability
2 to be a fair juror on this case?

3 **MS. BRIDGES:** Yes.

4 **THE COURT:** Thank you. I appreciate you telling me
5 that. What's her number?

6 **MADAME CLERK:** 19.

7 **THE COURT:** All right. The next one. Yes, sir. Your
8 name, sir?

9 **JUROR:** My brother is currently serving - - -

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

11 **JUROR:** I'm sorry, Bradley Hundley. My brother is
12 currently serving a fifteen year sentence for the same
13 charges that are being - - right now. And it's - - I'm not
14 - - it bothered me to have to deal with that type of thing.

15 **THE COURT:** Well, my question to you, would that
16 interfere with your ability to be a fair juror on the case?

17 **MR. HUNDLEY:** I think it could.

18 **THE COURT:** All right. And your name again, last name?

19 **MR. HUNDLEY:** Hundley, H-u-n-d-l-e-y.

20 **THE COURT:** Thank you. We would not place you on this
21 jury.

22 **MR. HUNDLEY:** Thank you.

23 **THE COURT:** All right. Next.

24 **THE BAILIFF:** The lady standing up in the rear in the
25 denim jacket didn't hardly hear any of your questions. She

1 could not hear you at all.

2 **THE COURT:** What's her name?

3 **THE BAILIFF:** I'll get her name.

4 **THE COURT:** All right. Come up, please, sir. What's
5 your name?

6 **JUROR:** I'm Ronald Mobley.

7 **THE COURT:** Moge?

8 **MR. MOBLEY:** Mobley.

9 **THE COURT:** Mobley?

10 **MR. MOBLEY:** Yes, sir.

11 **MADAME CLERK:** Juror number 29 on your list.

12 **THE COURT:** Okay.

13 **MR. MOBLEY:** I work for the Children's Residential
14 Program, part of the Marshall Pickens Hospital.

15 **THE COURT:** Okay.

16 **MR. MOBLEY:** We treat kids with severe emotional and
17 behavioral problems a lot and that are suffering from post-
18 traumatic stress disorder resulting from abuse, sexual
19 abuse.

20 **THE COURT:** All right. My question to you, the fact
21 that you do that, would that in any way interfere with your
22 ability to be a fair juror on this case?

23 **MR. MOBLEY:** Well, sir, as you read off the list of
24 witnesses, I'm racking my brain, with all due respect, the
25 confidentiality and everything, I did hear one of the names

1 that sounded familiar.

2 **THE COURT:** My question to you right now, you've heard
3 what I've said about this case.

4 **MR. MOBLEY:** Yes, sir.

5 **THE COURT:** Would that fact in any way interfere with
6 your ability to be a fair and impartial juror on this type
7 case?

8 **MR. MOBLEY:** I don't think so.

9 **THE COURT:** All right.

10 **MR. MOBLEY:** I just wanted to disclose that.

11 **THE COURT:** I appreciate that. Thank you, Mr. Mobley.
12 You're qualified so far for this case. All right, sir.
13 Your name, sir?

14 **JUROR:** James Howell.

15 **THE COURT:** Howell?

16 **MR. HOWELL:** Yes, sir.

17 **THE COURT:** All right, Mr. Howell.

18 **MR. HOWELL:** I was probably 10 to 12, I was molested by
19 an older man in his 70s. He was like a distant family
20 friend. I don't believe -- it wasn't really, really
21 severe, but it was wrong. I don't believe that I bore any
22 lasting issues from it.

23 **THE COURT:** Okay.

24 **MR. HOWELL:** It was just something that the lawyers
25 need to know about. In my twenty-two years as a pastor I've

1 counseled young women who were molested, and I've counseled
2 molesters. And I feel like I do believe I could be
3 objective in this situation, but the lawyers certainly
4 needed to know - - -

5 **THE COURT:** So you're telling me you could be a fair
6 and impartial juror?

7 **MR. HOWELL:** I believe I could.

8 **THE COURT:** I thank you, sir. You're qualified.

9 **MR. HOWELL:** Okay. Thank you.

10 **THE COURT:** I appreciate it. Yes, ma'am. What's your
11 name?

12 **JUROR:** Pamela Suber.

13 **THE COURT:** Suber?

14 **MS. SUBER:** Yes. My - - -

15 **THE COURT:** Wait just a minute, Ms. Suber. Let me find
16 you on my list.

17 **MS. SUBER:** Okay.

18 **THE COURT:** Okay.

19 **MS. SUBER:** My sister-in-law was raped at the age of
20 16.

21 **THE COURT:** Your - - -

22 **MS. SUBER:** My sister-in-law was raped at the age of
23 16.

24 **THE COURT:** Okay. Would that fact in any way interfere
25 with your ability to be a fair juror on this case?

1 **MS. SUBER:** No. I just wanted to let you know that.

2 **THE COURT:** Sure. Thank you, Ms. Suber. You're
3 qualified. Yes, ma'am. Your name, please?

4 **JUROR:** Mayte Pennington.

5 **MADAME CLERK:** Number 11.

6 **THE COURT:** Yes, ma'am?

7 **MS. PENNINGTON:** My mom was sexually assaulted and
8 beaten.

9 **THE COURT:** Your?

10 **MS. PENNINGTON:** My mother - - -

11 **THE COURT:** Your mother?

12 **MS. PENNINGTON:** - - - when she was 20.

13 **THE COURT:** And would that fact interfere with your
14 ability to be a fair and impartial juror on this kind of
15 case?

16 **MS. PENNINGTON:** Yes, sir.

17 **THE COURT:** It would? Okay. Thank you. We would not
18 place you on the jury. Thank you for telling me that.

19 **MS. PENNINGTON:** Okay.

20 **THE COURT:** Yes, sir. Your name, sir?

21 **JUROR:** David Knowles.

22 **THE COURT:** Knowles?

23 **MR. KNOWLES:** Yes, sir. 96.

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

25 **MR. KNOWLES:** My sister-in-law, the wife of my brother,

1 first wife, was brutally murdered and raped. This was just
2 at the time in Gainesville - - it was in Florida. My niece
3 had to step over her body to let people in. The gentleman
4 has just come up for his first parole hearing and was denied
5 and now he's fighting again. And this has really got a lot
6 of emotional - - -

7 **THE COURT:** Sure, I understand that.

8 **MR. KNOWLES:** - - - implications for me.

9 **THE COURT:** So would that in any way interfere with
10 your ability to be a fair juror on this case?

11 **MR. KNOWLES:** Yes.

12 **THE COURT:** I appreciate you telling me that. We would
13 not place you on this case. Thank you, sir.

14 **MR. KNOWLES:** Okay.

15 **THE COURT:** Yes, sir. Come up, please. Your name?

16 **JUROR:** John Douglas.

17 **THE COURT:** Douglas?

18 **MR. DOUGLAS:** Yes.

19 **MADAME CLERK:** He's number 33 on your list.

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

21 **MR. DOUGLAS:** My daughter's ex-boyfriend, within ten
22 years, he was a convicted sex offender.

23 **THE COURT:** Would that fact interfere with your ability
24 to be a fair juror on this case?

25 **MR. DOUGLAS:** No, but I just wanted you to know.

1 **THE COURT:** Sure. Thank you. I appreciate it. You're
2 qualified. Thank you.

3 **MR. DOUGLAS:** Thank you.

4 **THE COURT:** All right. Your name?

5 **JUROR:** Kenneth Williams.

6 **THE COURT:** Last name?

7 **MR. WILLIAMS:** Williams.

8 **THE COURT:** Williams?

9 **MADAME CLERK:** Number 22 on your list.

10 **THE COURT:** All right, sir.

11 **MR. WILLIAMS:** I've got a first cousin, small kids,
12 cousin's been messing with her. So I don't know if it's
13 going to fit the case or not.

14 **THE COURT:** Okay. Would that fact interfere with your
15 ability to be a fair juror on this case?

16 **MR. WILLIAMS:** I guess not.

17 **THE COURT:** Sir?

18 **MR. WILLIAMS:** I guess not. I hope not.

19 **THE COURT:** Well, you have to tell me yes or no,
20 whether it would or would not.

21 **MR. WILLIAMS:** I think so.

22 **THE COURT:** You think so?

23 **MR. WILLIAMS:** (Affirmative nod).

24 **THE COURT:** Thank you. I wouldn't place you on the
25 case. Thank you. You can go back and have your seat. Yes,

1 ma'am, come up. Your name?

2 **JUROR:** Brittany Seawright.

3 **THE COURT:** Last name?

4 **MS. SEAWRIGHT:** Seawright.

5 **MADAME CLERK:** Number 13 on your list.

6 **THE COURT:** Yes ma'am?

7 **MS. SEAWRIGHT:** I was touched as a child. I was less
8 than 5 years old. I don't remember it. I just know the
9 family member went to prison, and he's dead now. So ...

10 **THE COURT:** Would that fact interfere with your ability
11 to be a fair and impartial juror on this case?

12 **MS. SEAWRIGHT:** No.

13 **THE COURT:** It would not?

14 **MS. SEAWRIGHT:** No, sir.

15 **THE COURT:** Thank you. You're qualified.

16 **MS. SEAWRIGHT:** I don't remember it, so ...

17 **THE COURT:** Okay. Thank you. I appreciate it. Yes,
18 ma'am. Is that the one that couldn't - - -

19 **THE BAILIFF:** Yes, sir.

20 **THE COURT:** Would you come up and give me - - -

21 **THE BAILIFF:** Number 17.

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

23 **JUROR:** I'm Lu Ann Born. I've got a hearing problem.

24 **THE COURT:** So you didn't hear - - -

25 **MS. BORN:** I couldn't hear anything. I got bits and

1 pieces, but - - -

2 **THE COURT:** Okay.

3 **MS. BORN:** I'm sorry.

4 **THE COURT:** No, I understand - - -

5 **MS. BORN:** I just couldn't - - I couldn't understand
6 you. I could, you know, hear, but I couldn't understand
7 what you were saying.

8 **THE COURT:** Okay. I would not place you on this case
9 because of your hearing difficulty.

10 **MS. BORN:** Right.

11 **THE COURT:** You would have to pay attention and be able
12 to hear.

13 **MS. BORN:** I know. It just wouldn't be the right
14 thing.

15 **THE COURT:** I appreciate you telling me.

16 **MS. BORN:** Okay.

17 **THE COURT:** Thank you for telling me that.

18 (Whereupon the bench conference was ended)

19 **THE COURT:** All right. Strikes are ten for the
20 Defense, five for the State. Ladies and gentlemen, when
21 your name is called, I would ask that you come forward to
22 the podium up front, turn around and face counsel and await
23 further instructions. Thank you.

24 **MADAME CLERK:** Juror 39, Bennie Culbreth.

25 (Whereupon Bennie Culbreth, a black male, came forward)

1 **MADAME CLERK:** What says the State?

2 **MS. HODGE:** Please present the juror.

3 **MADAME CLERK:** What says the Defendant?

4 **MS. WICKER:** Please swear the juror.

5 **MADAME CLERK:** Mr. Culbreth, if you'll come have a seat
6 in the jury box, please. And if you'll please bring your
7 things with you so you won't have to return to your seat if
8 we're going to put you in the jury box. Juror 149, Carlos
9 Santana.

10 (Whereupon Carlos Santana, an Hispanic male, came
11 forward)

12 **MADAME CLERK:** What says the State?

13 **MS. HODGE:** Please present the juror.

14 **MADAME CLERK:** What says the Defendant?

15 **MS. WICKER:** Please swear the juror.

16 **MADAME CLERK:** Mr. Santana, please have a seat in the
17 jury box. Juror 170, Margaret Thomason.

18 (Whereupon Margaret Thomason, a black female, came
19 forward)

20 **MADAME CLERK:** What says the State?

21 **MS. HODGE:** Please present the juror.

22 **MADAME CLERK:** What says the Defendant?

23 **MS. WICKER:** Please swear the juror.

24 **MADAME CLERK:** All right. Ma'am, please have a seat in
25 the jury box. Juror 145, Robin Rodeghiero.

1 (Whereupon, Robin Rodeghiero, a white female, came
2 forward)

3 **MADAME CLERK:** What says the State?

4 **MS. HODGE:** Please present the juror.

5 **MADAME CLERK:** What says the Defendant?

6 **MS. WICKER:** Please swear the juror.

7 **MADAME CLERK:** All right. Ma'am, please have a seat in
8 the jury box. Juror number 5, Nancy Atkinson.

9 (Whereupon, Nancy Atkinson, a white female, came
10 forward)

11 **MADAME CLERK:** What says the State?

12 **MS. HODGE:** Please present the juror.

13 **MADAME CLERK:** What says the Defendant?

14 **MS. WICKER:** Please swear the juror.

15 **MADAME CLERK:** All right. Ma'am, please have a seat in
16 the jury box. Juror 59, Brent Garrett.

17 (Whereupon, Brent Garrett, a white male, came forward)

18 **MADAME CLERK:** What says the State?

19 **MS. HODGE:** Please present the juror.

20 **MADAME CLERK:** What says the Defendant?

21 **MS. WICKER:** Please swear the juror.

22 **MADAME CLERK:** All right. Sir, please have a seat in
23 the jury box. Juror 128, Karolyn Mulvaney.

24 (Whereupon, Karolyn Mulvaney, a white female, came
25 forward)

1 **MADAME CLERK:** What says the State?

2 **MS. HODGE:** Please present the juror.

3 **MADAME CLERK:** What says the Defendant?

4 **MS. WICKER:** Please swear the juror.

5 **MADAME CLERK:** All right. Ma'am, please have a seat in
6 the jury box. Juror 95, Carey Klinge.

7 (Whereupon, Carey Klinge, a white male, came forward)

8 **MADAME CLERK:** What says the State?

9 **MS. HODGE:** Please present the juror.

10 **MADAME CLERK:** What says the Defendant?

11 **MS. WICKER:** Please swear the juror.

12 **MADAME CLERK:** All right. Sir, please have a seat in
13 the jury box. Juror 190, James Howell.

14 (Whereupon, James Howell, a white male, came forward)

15 **MADAME CLERK:** What says the State?

16 **MS. HODGE:** Please present the juror.

17 **MADAME CLERK:** What says the Defendant?

18 **MS. WICKER:** Please excuse the juror.

19 **MADAME CLERK:** All right. Sir, please be seated back
20 in the gallery. You have been excused from this case.
21 Juror 152, Brittany Seawright.

22 (Whereupon, Brittany Seawright, a white female, came
23 forward)

24 **MADAME CLERK:** What says the State?

25 **MS. HODGE:** Please present the juror.

1 **MADAME CLERK:** What says the Defendant?

2 **MS. WICKER:** Please excuse the juror.

3 **MADAME CLERK:** All right. Ms. Seawright, you may be
4 seated. You have been excused from this case. Juror 176,
5 Gary Vest.

6 (Whereupon, Gary Vest, a white male, came forward)

7 **MADAME CLERK:** What says the State?

8 **MS. HODGE:** Please present the juror.

9 **MADAME CLERK:** What says the Defendant?

10 **MS. WICKER:** Please swear the juror.

11 **MADAME CLERK:** All right. Sir, please be seated in the
12 jury box. Juror 163, Garry Stewart.

13 (Whereupon, Garry Stewart, a white male, came forward)

14 **MADAME CLERK:** What says the State?

15 **MS. HODGE:** Please present the juror.

16 **MADAME CLERK:** What says the Defendant?

17 **MS. WICKER:** Please excuse the juror.

18 **MADAME CLERK:** All right. Sir, please be seated back
19 in the gallery. You have been excused from this case.
20 Juror 173, A.J. Tothacer.

21 (Whereupon, A.J. Tothacer, a white male, came forward)

22 **MADAME CLERK:** What says the State?

23 **MS. HODGE:** Please present the juror.

24 **MADAME CLERK:** What says the Defendant?

25 **MS. WICKER:** Please swear the juror.

1 **MADAME CLERK:** All right. Sir, please have a seat in
2 the jury box. Juror 15, Hazel Bennett..

3 (Whereupon, Hazel Bennett, a black female, came
4 forward)

5 **MADAME CLERK:** What says the State?

6 **MS. HODGE:** Please present the juror.

7 **MADAME CLERK:** What says the Defendant?

8 **MS. WICKER:** Please swear the juror.

9 **MADAME CLERK:** All right. Ma'am, please have a seat in
10 the jury box. Juror 146, Aimee Pennell.

11 (Whereupon, Aimee Pennell, a white female, came
12 forward)

13 **MADAME CLERK:** What says the State?

14 **MS. HODGE:** Please excuse the juror.

15 **MADAME CLERK:** All right. Ma'am, please be seated back
16 in the gallery. You have been excused from this case.
17 Juror 147, Alexander Russo.

18 (Whereupon, Alexander Russo, a white male, came
19 forward)

20 **MADAME CLERK:** What says the State?

21 **MS. HODGE:** Please present the juror.

22 **MADAME CLERK:** What says the Defendant?

23 **MS. WICKER:** Please swear the juror.

24 **MADAME CLERK:** Sir, please be seated in the jury box.

25 **THE COURT:** And one alternate, one for the State, two

1 for the Defense.

2 **MADAME CLERK:** Juror 56, Stuart Franklin.

3 (Whereupon, Stuart Franklin, a white male, came
4 forward)

5 **MADAME CLERK:** What says the State?

6 **MS. HODGE:** Please present the juror.

7 **MADAME CLERK:** What says the Defendant?

8 **MS. WICKER:** Please swear the juror.

9 **MADAME CLERK:** All right. Sir, please be seated in the
10 jury box.

11 **THE COURT:** At this time I'll ask the balance of the
12 panel to report back downstairs to the jury assembly room.
13 Thank you.

14 (Whereupon the remaining jurors exited the courtroom at
15 12:01 PM)

16 **THE COURT:** All right. Would you swear the jury,
17 please.

18 **MADAME CLERK:** Yes, sir. Would you please stand, raise
19 your right hand for the oath in this case. The response is
20 I will. You shall well and truly try the cases 2010-GS-23-
21 10176, the State versus Alvin Dwayne Arnold, indicted for
22 incest, 10177, for lewd act upon a child, and 10178, for
23 criminal sexual conduct with a minor in the first degree and
24 a true verdict rendered according to the law and the
25 evidence so help you God. I will?

1 **THE JURY:** I will.

2 **MADAME CLERK:** Thank you. Please be seated.

3 **THE COURT:** Ladies and gentlemen, there are several
4 matters I need to take up with counsel before we start this
5 case. And insofar as you're concerned, I'm going to release
6 you for the rest of today, and we'll start back tomorrow
7 morning with the case.

8 Before letting you go I need to read to you an order
9 issued by Jean Toal, who is the Chief Justice of our Supreme
10 Court. And I ask that you please give me your close
11 attention while I read this to you.

12 The use of personal communication devices has continued
13 to increase dramatically. Accordingly, I find it necessary
14 to supplement my order of August 25, 2000 related to the use
15 of pagers, cell phones and other personal communication
16 devices in courtrooms to include the following direction to
17 the court; the court shall instruct jurors selected to
18 serve on a jury that until their jury service is complete
19 they shall not (1) or (A) discuss the case with others
20 including other jurors except as otherwise authorized by the
21 court, (B) read or listen to any news reports about the
22 case, (C) use a computer, cellular phone or other electronic
23 device with communication capabilities while in attendance
24 at trial or during deliberation.

25 These devices may be used during lunch breaks, but they

1 are not to be used to obtain or disclose information
2 prohibited in subsection (d) below. And subsection (d)
3 reads; use a computer, cellular phone or other electronic
4 device with communication capabilities or any other method
5 to obtain or disclose information about the case when they
6 are not in court.

7 Information about the case includes, but is not limited
8 to the following; information about a party, witness,
9 attorney, or court officer, news accounts of the case,
10 information collected through juror research on any topics
11 raised, or testimony offered by any witness, and lastly,
12 information collected through juror research on any other
13 topic the juror might think would be helpful in deciding the
14 case.. Notice of the contents of this order shall be given
15 to jurors..

16 Now, at this time I will release you. I ask that you
17 report back to the jury room tomorrow morning. We'll start
18 at 9:00. And I'll ask that you report to the jury room that
19 the bailiffs will show you to.

20 When you leave, please remember, as I said, don't talk
21 about this case among yourselves or with anyone else. This
22 includes any members of your own family. If anybody
23 contacts you or tries to talk to you about the case, get
24 their names and addresses and report that to me.

25 I ask that you keep your badges on when you leave.

1 Have them on when you come back in the morning. I ask that
2 you do this so that everyone involved with this case will
3 know that you are a juror on the case and it would be highly
4 improper for them to talk about or discuss the case in your
5 presence. So please keep your badges on and have them on
6 when you come back in the morning.

7 So with that I will excuse you for today and ask that
8 you be back promptly tomorrow morning at 9:00, 9:00. Thank
9 you. If you'll just follow the bailiffs.

10 (Whereupon the jury exited the courtroom at 12:06 PM)

11 **THE COURT:** All right. What's the first motion?

12 **MS. HODGE:** The first motion, Your Honor, is the
13 State's motion for admission of out-of-court statement of
14 the victim, which is the taped forensic interview. And I've
15 got Ms. Christine Carlberg who's here to testify if Your
16 Honor - - if that's the procedure you take.

17 I know that some judges have taken the stance they
18 don't need testimony, others do. So I'm happy to provide
19 whatever Your Honor would like. And also I've got the video
20 for you.

21 **THE COURT:** Do you need her to testify?

22 **MS. WICKER:** Your Honor, I do not need her to testify
23 about the videotape. And I've looked at it, and I don't
24 believe there's any hearsay or anything contained therein.

25 **THE COURT:** So you ...

1 **MS. WICKER:** I would stipulate that they've met - - -

2 **MS. HODGE:** That it's admissible and that we've met the
3 standard?

4 **MS. WICKER:** Yes.

5 **MS. HODGE:** Awesome.

6 **THE COURT:** All right.

7 **MS. HODGE:** Then you don't even have to look at it, I
8 guess.

9 **THE COURT:** That's good.

10 **MS. HODGE:** We're good with that. Okay.

11 The second motion that the State would have is a motion
12 in limine at this time. Your Honor, this case, just by way
13 of some background to help everybody understand, involves
14 just one child. The Defendant actually has three children.

15 The other children in the family have also alleged
16 sexual abuse by the Defendant. Those cases are not brought
17 today. The State would seek to exclude any questioning or
18 any line of questioning on any of the State's witnesses or
19 any comments in openings and closings regarding those
20 children and their allegations of sexual abuse. That would
21 be one area that I feel would be - - -

22 **THE COURT:** Would you intend to try to do that?

23 **MS. WICKER:** Well, Your Honor, yes, for the limited
24 purpose of showing that the victim in this case had
25 knowledge of sexual abuse from a source other than the

1 Defendant. And I've done some research. I believe it's
2 State versus Groganstein (phonetics) that - - I'm not trying
3 to bring up the allegations in any other sense other than to
4 show that the victim in this case would be aware of sexual
5 acts that would - - that that knowledge would not
6 necessarily have come from this Defendant.

7 **THE COURT:** Solicitor.

8 **MS. HODGE:** Your Honor, those children are not
9 testifying in this case. Those questions would be properly
10 presented to those children, whether they disclosed the
11 abuse to the victim.

12 **THE COURT:** How about that?

13 **MS. WICKER:** Well, Your Honor, I think I should be
14 allowed to ask the victim at least if she knew about that.

15 And also, the children were - - again, as the solicitor
16 said, it's sort of a long case. But the children had been
17 moved from their mother's custody into the Defendant's
18 custody due to sexual acts that the mother's babysitter's
19 friend had committed on them. And that person pled guilty
20 to it.

21 I would argue that I should be allowed to ask the
22 mother at least why were the children moved - - removed from
23 your custody into the Defendant's custody. I'm not
24 intending to get too into the facts, but just to show, Your
25 Honor, that the victim in this case would have knowledge of

1 sexual acts beyond which she alleges the Defendant did to
2 her.

3 **THE COURT:** I don't believe I would admit that. I
4 won't make a ruling on it right now, but I'm telling - - it
5 just sounds to me right now like I will grant - - if you try
6 to do that.

7 **MS. WICKER:** Okay.

8 **THE COURT:** But I won't make a ruling until you try it,
9 okay?

10 **MS. WICKER:** Okay. Your Honor, can I - - I just want
11 to make sure that I understand. So no - - you are ruling
12 that - - well, tentatively ruling that I cannot ask the
13 victim or the mother about the sexual abuse against the
14 other children, is that correct?

15 **THE COURT:** I'm just going to have to wait and - - -

16 **MS. WICKER:** Okay, Your Honor..

17 **THE COURT:** - - - until it's presented - - -

18 **MS. WICKER:** Okay, Your Honor.

19 **THE COURT:** - - - to rule. I need to hear what you're
20 doing.

21 **MS. WICKER:** That's fine, Your Honor. I just wanted to
22 make sure I understood.

23 **THE COURT:** Okay.

24 **MS. HODGE:** I think it would be admissible for her to
25 ask the victim if anyone's told her anything or if she - -

1 something along those lines, the victim herself, did you
2 hear about sex from someone else or hear about these things
3 as your cross examining the child. But to say as to your
4 sister, who was sexually abused by Richard Capps, I think
5 we're getting clearly irrelevant in - - -

6 **MS. WICKER:** Well, I would agree. I would couch it
7 differently. Your Honor, I just wanted to make sure that I
8 was going to abide by what the Court ruled.

9 **THE COURT:** Okay.

10 **MS. HODGE:** And there was actually a Family Court
11 hearing as well on these - - that involved all three of
12 these children. I mean, we intend not to get into anything
13 that happened down in Family Court. We would ask that there
14 be no mention of, again, the children's - - other
15 allegations of abuse regarding other perpetrators and
16 basically what happened down in Family Court.

17 **THE COURT:** All right.

18 **MS. WICKER:** Your Honor, I was not intending to bring
19 up anything regarding any Family Court proceedings. I don't
20 - - I just - - there is some mention in the discovery that I
21 received from the solicitor regarding allegations of
22 physical abuse by this Defendant. Ultimately no warrant was
23 pursued. I'm not sure if the solicitor is referring to that
24 as well or just the Family Court proceedings.

25 **MS. HODGE:** Yes, because that was a DSS open case and

1 it was physical abuse as to the other sibling, not this
2 victim, actually.

3 **THE COURT:** I don't think anything that took place in
4 the Family Court, I don't -- we're not going to get into
5 that.

6 **MS. WICKER:** Well, Your Honor, what about -- there was
7 an investigation by the Sheriff's Office into the physical
8 abuse and no -- the investigator effectively found that
9 there wasn't sufficient evidence to pursue a criminal -- a
10 warrant, essentially. I don't know about the Family Court.
11 I wasn't there, Your Honor, obviously, but ...

12 **MS. HODGE:** I, again, don't think that's relevant.
13 That's a totally separate incident with the other children
14 alleging that --

15 **THE COURT:** I agree with the solicitor on that.

16 **MS. WICKER:** Okay.

17 **THE COURT:** Okay.

18 **MS. HODGE:** That's all I have.

19 **MS. WICKER:** Okay.

20 **MS. HODGE:** You weren't going to go into anything about
21 the other perpetrator, Keith?

22 **MS. WICKER:** No. Your Honor, there's -- the victim
23 had alleged somebody else had touched her when she was 3
24 years old. I had no intention of going there.

25 **THE COURT:** Okay.

1 **MS. WICKER:** And I would anticipate that with the
2 forensic interviewer and the therapist there might be some
3 legal issues that come up as they testify, but I can't -- I
4 don't foresee anything else right now, Your Honor.

5 **THE COURT:** Okay. Thank you.

6 **MS. HODGE:** That would be all that we would have too,
7 Your Honor.

8 **THE COURT:** All right. Anything else we need to take
9 up before we recess?

10 **MS. HODGE:** I don't believe so, Your Honor. I think
11 that's it.

12 **THE COURT:** All right. Then we'll start back at 9:00
13 in the morning.

14 **MS. HODGE:** Yes, sir.

15 (Whereupon court was in recess at 12:14 PM)

1 WEDNESDAY, NOVEMBER 13, 2013:

2 (Whereupon court resumed at 9:11 AM)

3 **THE COURT:** Good morning. Be seated. All right.

4 Subject to the State's objection, I'm going to allow Mr.

5 Mauldin, the Circuit Public Defender, to make a statement

6 concerning an issue of discovery. All right, Mr. Mauldin.

7 **MR. MAULDIN:** Thank you, Your Honor. And I do

8 appreciate the opportunity to make this appearance for two

9 purposes. One, to supplement the record in the State versus

10 Arnold case, but furthermore, to fully inform this Court or

11 I feel like this Court needs to be fully informed of the

12 broad implications that exists in the Arnold case that apply

13 to an awful lot of more clients.

14 Yesterday afternoon after the motion for continuance

15 was initially denied it was brought to my attention that one

16 of the positions that the Prosecution was taking regarding

17 late disclosure was that the information that was provided

18 in what we considered to be a late fashion was not required

19 by the language of Rule 5. But if you take strict

20 interpretation of the Rule 5 disclosure rule, what is at

21 issue in this case is not required to be disclosed.

22 And I have all respect in the world for that. I mean,

23 Rule 5 is pretty clear about what you have to give them.

24 The problem is that for the last seventeen years since Mr.

25 Ariail took over for Joe Watson our office, the Public

1 Defender's Office, has operated under essentially an open
2 file discovery policy.

3 Certainly there would be exceptions, attorney notes,
4 internal documents, workproduct that came out of the
5 preparation of the case have all been excluded. We
6 understand that. But for the most part we had operated, the
7 twenty-five lawyers that work for me, have operated on the
8 concept that what we received from discovery was what was in
9 the State's file with those exceptions.

10 We have relied upon that. We have a reliance upon what
11 we are getting to then prepare the defense of the case. Mr.
12 Wilkins has stated to me - - his quote was when we get it,
13 you get it is the description.

14 Now, I will concede, Your Honor, there's never been any
15 written agreement or formalized agreement, but the question
16 is what are we operating under? And that includes Mr.
17 Arnold. Mr. Arnold is one of those thirty-five hundred who
18 were operating under a reliance that what we are being
19 provided is what's in the State's case.

20 Here, in this situation, in Mr. Arnold's case, we were
21 appointed three years ago. Within a week of that
22 appointment on December the 1st, 2010 we filed a standard
23 Rule 5 request.

24 Subsequently we received three separate packages. And
25 the reason I mention that to you is that's important because

1 we got a package of discovery in December of '10, a package
2 in August of '11 and a package in June of 2012. What that
3 does is it demonstrates that the Prosecution, at least from
4 our - - from the Defense point of view, was supplementing
5 the discovery material as they received additional
6 information.

7 So - - and that happens. That's standard procedure.
8 It happens all the time, we get a supplemental discovery
9 packet. That was - - reinforces our reliance that we are
10 being provided what the State is getting from law
11 enforcement and other sources.

12 The trial docket in this case was published on October
13 the 25th, 2013. And Mr. Arnold is listed as one of the
14 potential trials to be called. Subsequently, and I don't
15 have the dates as to when an email was sent or when a
16 package of material was received, but sometime subsequent to
17 October the 25th the information regarding the State's
18 intention to call an expert witness to testify for the State
19 was provided to the Defendant, which gives him zero
20 opportunity for a meaningful rebuttal of that evidence.
21 He's got no chance to rebut that evidence.

22 I understand that the Court, and we do appreciate, by
23 the way, the Court giving Defense counsel an opportunity to
24 interview the witness, and that interview took place. But
25 even that, it doesn't give a defendant an opportunity to

1 rebut the witness when we're given notice after the
2 publishing of the trial docket and within a week of the
3 trial.

4 We now are told by Ms. Hodge -- and by the way, I have
5 all the respect in the world for Kris Hodge. I mean, she's
6 a great prosecutor. But I'm just saying that if this is the
7 message, we're not necessarily giving you everything, you
8 can think we're giving you everything, but we can't rely on
9 that.

10 They now say they're going to call that witness. Mr.
11 Arnold has no opportunity for a meaningful rebuttal of that
12 witness. And based on essentially what I would phrase as
13 detrimental reliance, he is being denied due process. He's
14 being denied due process of law because this is not the way
15 this is supposed to work, particularly with our
16 understanding we are being provided the State's file in
17 advance and being given supplemental disclosures. Thank
18 you, Your Honor.

19 **THE COURT:** Solicitor, do you wish to add anything to
20 the record?

21 **MS. HODGE:** Your Honor, counselor's and therapist's
22 notes are not in our file. They are not product of law
23 enforcement. Those are things that a prosecutor finds as
24 the case goes to trial. I would not have met with the
25 counselor had this case not been going to trial.

1 And I provided the counselor's notes, as I stated
2 yesterday, which I thought was a professional courtesy,
3 because State versus, excuse me, State versus Trotter and
4 Jaffe versus Redmond, Jaffe was a United States Supreme
5 Court case, stated that counselor's notes do not amount to
6 mental reports or evaluations under Rule 5 and are not
7 subject to disclosure under Rule 5.

8 We are not attempting to hide things, we are attempting
9 to follow what the courts have said, what the rules are and
10 they're - - that's private privileged information between a
11 counselor and a victim. That is not law enforcement
12 product.

13 So the State's position is we are protecting that
14 information until such time we have to turn it over for a
15 fair trial. Technically, the courts have said it would have
16 been okay for me to give that to the Defense after I direct
17 my examination of the counselor. Then they could be
18 entitled to those notes.

19 So that's the State's position. That's what I argued
20 yesterday. It's still my position. If there is a larger
21 issue that Mr. Mauldin and Mr. Wilkins would like to discuss
22 about that, we, of course, will do whatever our superiors
23 tell us to do in regard to that. That's what I was
24 operating under, this case law.

25 **THE COURT:** All right. Thank you. All right. Let me

OPENING STATEMENTS - MS. HODGE

46

1 state for the record that my ruling I made yesterday does
2 not in any way set any precedent. All right.

3 MS. HODGE: Yes, sir.

4 THE COURT: All right. Anything else? You want to
5 make brief opening statements to the jury. No arguing in
6 your opening statement.

7 MS. HODGE: Yes, sir.

8 THE COURT: All right. Anything else, Mr. Mauldin?

9 MR. MAULDIN: So the request for a renewal of the
10 continuance motion is denied?

11 THE COURT: Yes.

12 MR. MAULDIN: All right. Thank you, Your Honor.

13 THE COURT: All right. Bring the jury.

14 (Whereupon the jury entered the courtroom at 9:20 AM)

15 THE COURT: Mr. Garrett, come take this first seat and
16 serve as foreman for me on this case, please, sir. Thank
17 you. All right. Brief opening statements.

18 MS. HODGE: Thank you, Your Honor. May it please the
19 Court. Ladies and gentlemen, good morning. I'd like you to
20 do me a favor. I'd like for you to think back to when you
21 were about 6 or 7 years old. You were probably in the first
22 grade, maybe in the second grade. And you may have been
23 learning how to ride a bike or swing on a swing, something
24 like that.

25 You probably, at school, were learning some real basic

OPENING STATEMENTS - MS. HODGE

47

1 fundamentals. You are probably learning word association
2 with your alphabets, counting to one hundred, having circle
3 time, then read to by your teacher.

4 You were probably, as most 6 or 7 year olds, one
5 hundred percent dependent on your care-giver. Wherever that
6 was, whether it was your parents, grandparents, whomever it
7 may be. You needed them to get you food. You needed them
8 to provide clothing. You needed them to provide a place for
9 you to go to sleep at night.

10 You looked to them for all your love, your support, all
11 your protection, because at 6 or 7 years old you're
12 vulnerable, defenseless and needy. You need that adult to
13 provide the love and protection for you. [Minor] [REDACTED]
14 did not have that in this case. Instead, the man who was
15 supposed to be a father, loving and protecting her, was
16 sexually abusing her.

17 The evidence will show that [Minor] [REDACTED] is the
18 biological daughter of the Defendant, Alvin Dwayne Arnold,
19 and that she and her siblings and some other people lived
20 with her father at 11 Weeping Willow Lane, that's tough to
21 say, Weeping Willow Lane, in Greenville County, and that
22 during December 2008 up to August of 2010 the sexual abuse
23 was taking place when she was 6, 7 years old at the time.

24 The evidence will show that the abuse took place inside
25 the home, in the bathroom when she was supposed be taking a

OPENING STATEMENTS - MS. HODGE

48

1 bath or shower, in her father's bedroom and her bedroom.

2 The evidence will show that it happened on Wednesday nights
3 because on Wednesday nights her older brother and sister got
4 to go to church, but she didn't. She was told she was too
5 little, and he didn't like the preacher and she had to stay
6 home.

7 The evidence will show that the Defendant then used his
8 hand, and fingers, and he touched on and in her vaginal
9 area, her anal area, but he also put his penis in her mouth,
10 that he put his penis on and in her vaginal area and anal
11 area.

12 As a result of that abuse when she had gone to her
13 mother's for weekend visitation she started displaying some
14 sexualized behavior. Her mother noticed it was not
15 appropriate for a 6, 7 year old little girl and questioned
16 her about it. Then and only then was why Samantha decided
17 to tell anyone about what was going on.

18 And as a result of that, the mom called DSS, who in
19 turn called law enforcement and investigations were started.
20 Through the course of investigation the Sheriff's Office
21 charged the Defendant with the criminal sexual conduct with
22 a minor in the first degree, which basically means that
23 there was a sexual battery committed on a child under 11.

24 Sexual battery is defined as any type of penetrating
25 injury to a child into their vaginal, anal or oral cavities

OPENING STATEMENTS - MS. HODGE

49

1 by any part of the body of the perpetrator. It can be a
2 finger, penis, mouth, tongue, whatnot. So a sexual battery
3 committed on an 11 year old is criminal sexual -- child
4 under 11, excuse me, criminal sexual conduct with a minor,
5 first degree.

6 He was also charged with lewd act on a minor. Lewd act
7 is the unlawful touching of a child under the age of 16 with
8 the intent to arouse the lust, or passions or prejudice of
9 the child or the perpetrator. The difference in the two
10 charges is there's no penetrating injury in lewd act. Lewd
11 act is what we typically call a fondling type of charge.

12 And then he's been charged with incest because he is
13 the biological father of Samantha. And it is illegal to
14 have carnal intercourse with your child.

15 The State's going to prove the Defendant is guilty of
16 these crimes through the evidence in the case. Evidence
17 generally comes in two forms. And it doesn't mean one's
18 better than the other, it's just the way the evidence
19 presents itself. There's physical evidence, things that you
20 can see, feel, touch. A lot of times scientific evidence is
21 called physical evidence.

22 And then there's testimonial evidence, witnesses who
23 take the stand, telling you what they saw, what they heard,
24 what they did. Their testimony is evidence. It's the same
25 weight given to that as to any physical evidence.

OPENING STATEMENTS - MS. HODGE

50

1 But let me tell you because I'm laying out a roadmap
2 for you how this case goes, this case is exactly like every
3 other child sex abuse case. There will be no physical
4 evidence. Child sex abuse cases are extremely secretive,
5 extremely manipulative and they're coming from a power
6 differential, a grown-up and a child.

7 Also, the perpetrators don't want to get caught,
8 clearly. And they don't want to lose that source of sexual
9 gratification. So there's rarely physical evidence that's
10 found because of the secrecy and because the child keeps the
11 secret, too. So there's a delay in the disclosure.

12 Because of that, you're not going to find DNA, hair
13 samples, trace analysis, linens that you could collect
14 because it's probably been months, if not years that the
15 abuse has been going on or when the last incident may have
16 occurred. And that type of evidence is very fragile. It's
17 gone within twenty-four to forty-eight hours.

18 In addition there will not be any medical injuries
19 found. Why is that? You're going to get a real education
20 here if you didn't already know these things. But genital
21 areas, vaginal and anal areas, heal very, very quickly. If
22 there is or was any injury, most times when doctors examine
23 children, they're going to have a normal exam. It's the
24 nature of the beast.

25 Also, perpetrators don't really want to hurt the child

OPENING STATEMENTS - MS. HODGE

51

1 because that, of course, would ruin the chances of being
2 able to continue the abuse. So I want you to be clear and
3 understand, don't wait for that final witness to get up and
4 - - -

5 **THE COURT:** Now, solicitor, you're arguing in your
6 opening statement.

7 **MS. HODGE:** Yes, sir.

8 **THE COURT:** Now, move on, please.

9 **MS. HODGE:** There won't be any physical evidence, but
10 there will be testimonial evidence. You will hear from DSS
11 investigator, law enforcement investigator, foster care
12 worker, from a forensic interviewer and you will hear from
13 the child, herself. The Rules of Court require that she
14 will actually have to come and testify to the best of her
15 ability.

16 Finally, you will hear from the child's therapist. And
17 in that testimony will be, obviously, the treatment of the
18 child, but also more things to educate you to help you
19 understand so you can reach a verdict in this case in regard
20 to child sex abuse dynamics and the very unique, awkward,
21 strange things that happen in these kinds of cases.

22 At the close of the State's evidence the Defense has an
23 opportunity to put up evidence if it chooses, but is not
24 required to do so. The burden is on the State to prove its
25 charges.

OPENING STATEMENTS - MS. WICKER

52

1 And at the end of all of the evidence I'll be back in
2 front of you asking you to use your good common sense in
3 reviewing the evidence and at that time submit to you to ask
4 for a verdict that speaks the truth in the case, which would
5 be a verdict of guilty. Thank you.

6 **THE COURT:** Ms. Wicker.

7 **MS. WICKER:** Thank you, Your Honor. May it please the
8 Court. Credibility, whether you believe somebody, if you
9 believe they're truthful, that's really what this case is
10 all about. It's, obviously, a very serious case, very
11 serious allegations. And it can be really difficult to
12 listen to the details of these allegations. But the case
13 really boils down to credibility.

14 Regardless of somebody's age or their profession, it's
15 up to you, as the jury, you alone to decide whether you
16 believe a witness. You can believe all of what they tell
17 you, some of what they tell you or none of what they tell
18 you. It's up to you.

19 You can use a lot of things in making your
20 determination, a witness' demeanor, in how they answer or
21 are unable to answer a question, any biases they might have,
22 any motives they might have, any consistencies or even any
23 inconsistencies. You can even use your common sense, what
24 they're telling you really just doesn't make sense from what
25 you know. You can consider all of that in making your

EMILY GRANT - DIRECT EXAMINATION BY MS. HODGE

53

1 determination as to whether a witness is credible.

2 Trials can be long and very tedious. And sometimes
3 it's easy to lose focus. But I would ask for your patience
4 and your attentiveness as you listen to all the testimony.
5 Thank you.

6 **THE COURT:** All right, solicitor.

7 **MS. HODGE:** Thank you, Your Honor. The State calls
8 Emily Grant.

9 **MADAME CLERK:** Ms. Grant, please come forward. Would
10 you please place your left hand on the Bible and raise your
11 right hand.

12 **Emily Grant,** being duly
13 sworn testifies as follows;

14 **MADAME CLERK:** Thank you. Please be seated. State
15 your name for the record, please.

16 **MS. GRANT:** Emily Grant.

17 **Direct Examination by Ms. Hodge:**

18 Q. Ms. Grant, who do you work for?

19 A. The Greenville County Department of Social Services.

20 Q. And how long have you been with them?

21 A. A little over four years.

22 Q. What are your duties with DSS?

23 A. I'm an investigator. So I investigate allegations of
24 abuse and neglect against children.

25 Q. Were you employed in that same capacity back in August

EMILY GRANT - DIRECT EXAMINATION BY MS. HODGE

54

1 2010?

2 A. Yes, I was.

3 Q. And did you receive a call for service in reference to a
4 family, the last name Arnold or Cody?

5 A. Yes.

6 Q. Tell us why you received the call.

7 A. We received a report of a sexual nature. There were
8 allegations that the father, Alvin Arnold, was sexually
9 abusing the child, Minor [REDACTED]

10 Q. And when did you receive that report?

11 A. It was on or around August 4th of 2010.

12 Q. What did you do once you received the report?

13 A. On August 4th I went to the home of the mother, Ms.
14 Gladys Arnold. I inspected her residence and talked to each
15 of the children separately.

16 Q. And is that part of your protocol that you have to talk
17 to them separate from each other?

18 A. Yes.

19 Q. How many children are there?

20 A. Three.

21 Q. And what were those children's names and ages?

22 A. The oldest is -- was Savannah. At the time she was 13
23 years old. Middle child was Alvin A. [REDACTED] [REDACTED] At that time
24 he was 12 years old. And the youngest was Samantha. And at
25 that time she was 7 years old.

EMILY GRANT - DIRECT EXAMINATION BY MS. HODGE

55

1 Q. And where had they been residing or actually living when
2 you received this call?

3 A. They were living full time with their father. At the
4 time they were on visitation with their mother.

5 Q. And did you speak to Samantha privately?

6 A. Yes.

7 Q. Did Samantha disclose to you that she had been sexually
8 abused?

9 A. Yes.

10 Q. And did she state to you where or when this abuse took
11 place?

12 A. She stated both. She stated it occurred in the bathtub
13 at her father's house. She would be in the bathtub. And
14 she stated it happened ten times on Wednesdays.

15 Q. And at that point did you attempt to - - well, let me
16 back up there. After you interviewed her did you also speak
17 to the mother, I guess, in the case?

18 A. Yes.

19 Q. Okay. And did you speak to anyone else in the home?

20 A. I spoke with the children and the mother.

21 Q. And after you met with them what was your next step in
22 the case?

23 A. The next step was to draft a safety plan, which keeps
24 the kids safe during the investigation.

25 Q. The father had actual custody?

EMILY GRANT - DIRECT EXAMINATION BY MS. HODGE

56

1 A. Correct.

2 Q. The Defendant had custody at the time?

3 A. Yes.

4 Q. Okay. And was that going to be an option once Samantha
5 had stated these things to you?

6 A. No. We needed to draft a safety plan because of the
7 severity of the allegations. An investigation needed to be
8 conducted so that the kids would not be allowed to return
9 with the father in light of the allegations.

10 Q. And what is a safety plan?

11 A. A safety plan is just an agreement between DSS and the
12 custodial parents to keep the kids safe during the
13 investigation. In this case it would require the children
14 not having any contact with the father until the
15 investigation could be completed and a forensic interview
16 can be completed.

17 Q. Did you contact the Defendant in the course of this?

18 A. Yes.

19 Q. And when did you speak to him or see him or how did that
20 come about?

21 A. I spoke with him on the same day, August 4th. He came
22 to the DSS office.

23 Q. And did you explain to him what was going on as far as
24 allegations and what you were presenting as a safety plan?

25 A. Yes.

EMILY GRANT - DIRECT EXAMINATION BY MS. HODGE

57

1 Q. And did you need his agreement or approval on your
2 safety plan?

3 A. Yes. The safety plan is not a legal document. It can't
4 go over what the courts have decided. And since the court
5 had decided that he had custody, he needed to agree to the
6 safety plan in order for it to take effect.

7 Q. And did he do that?

8 A. No.

9 Q. What happened when he did not agree to the safety plan?

10 A. I contacted law enforcement to assess to place the
11 children into emergency protective custody.

12 Q. And part of the safety plan, were you offering an
13 alternative place for the children to stay?

14 A. Yes. We had offered the children to stay with the
15 mother.

16 Q. The mother had had the children for visitation already?

17 A. Right.

18 Q. And that was not a problem previously that you're aware
19 of?

20 A. Correct.

21 Q. But at this point he was not agreeing to that, the
22 children going with the mother?

23 A. Correct.

24 Q. So then what happened?

25 A. I contacted law enforcement. Officer Heather Hubert

EMILY GRANT - DIRECT EXAMINATION BY MS. HODGE

58

1 responded. And she did, in fact, place the children into
2 protective custody. The children were placed into foster
3 care.

4 Q. They had the option of going to the mother's if the
5 Defendant would have agreed to that, is that correct?

6 A. Correct.

7 Q. But he did not?

8 A. Right.

9 Q. And they ended up in foster care?

10 A. Correct.

11 Q. Do you know where they went?

12 A. Savannah went to Pendleton Place. And Samantha and
13 Alvin went to Helping Hands.

14 Q. And where is Helping Hands?

15 A. Helping Hands is located in Central, South Carolina.

16 Q. So they were separated?

17 A. Correct.

18 Q. Did you personally take the children to those locations?

19 A. I did.

20 Q. Do you have any idea how long they'd have to stay?

21 A. They were returned on August - - on or around August
22 11th. So it was about a week.

23 Q. And where did the children go after that?

24 A. They went back to their mother's house.

25 Q. Was there a court hearing or something that permitted

EMILY GRANT - DIRECT EXAMINATION BY MS. HODGE

59

1 that?

2 A. Yes. After children are taken into custody we have a
3 - - what's called a probable cause hearing. And the judge
4 determined that the children could return with their mother.

5 Q. All right. Did you attempt to ever speak to anyone else
6 in the Defendant's residence or anyone the Defendant was
7 living with at the time of these allegations?

8 A. At the initial meeting when the Defendant responded to
9 the DSS office, he came with his girlfriend at the time,
10 Mia, and someone else who was living in the house, Jessica.
11 During that meeting they were all shouting too much, so I
12 couldn't speak with them one on one.

13 Q. And through DSS do you just investigate and then you
14 pass it off to someone else or how does that work?

15 A. Right. We do the investigation. At the end of the
16 investigation we meet with our supervisor who decides if the
17 case is indicated, if it needs to go on for treatment
18 services. If that is the case, it transfers to a different
19 worker. And then the investigator, myself, has no further
20 interest in the case.

21 Q. Would you have been the person to request a forensic
22 examination or a medical examination of Samantha?

23 A. Yes, that's part of our investigation.

24 Q. And where are you - - where did these things take place?

25 A. At the time I believe it was the Greenville Rape Crisis

EMILY GRANT - CROSS EXAMINATION BY MS. WICKER

60

1 and Child Abuse Center. It's now called the Julie Valentine
2 Center.

3 Q. And are you aware of whether or not Samantha did, in
4 fact, go have the forensic interview and the medical exam?

5 A. She did have a forensic interview. I believe she also
6 had a medical exam, but I'm not a hundred percent sure.

7 Q. And you were not involved in the criminal process at
8 all, is that correct?

9 A. Correct.

10 Q. Thank you. Please answer any of Ms. Wicker's questions.

11 **Cross Examination by Ms. Wicker:**

12 Q. Good morning, Ms. Grant. I just have just a couple of
13 questions for you just to clarify. So you received this
14 report on August 4th of 2010, is that correct?

15 A. It was on or about that day.

16 Q. And that was after the sexual abuse -- alleged sexual
17 abuse had occurred, correct?

18 A. Correct.

19 Q. Okay. And she -- when you spoke to Samantha, she told
20 you that he had -- that the Defendant had touched her ten
21 times in the bathtub, is that correct?

22 A. Yes.

23 Q. Okay. Thank you. I don't have any further questions.

24 **THE COURT:** Thank you. You can step down.

25 **MS. HODGE:** The State would call Krystal Youmans. Can

KRYSTAL YOUNANS - DIRECT EXAMINATION BY MS. HODGE

61

1 she be excused, Your Honor, from - - -

2 **THE COURT:** Any objection?

3 **MS. WICKER:** No objection, Your Honor.

4 **THE COURT:** Thank you. You're excused.

5 **MADAME CLERK:** Ma'am, if you'll place your left hand on
6 the Bible and raise your right hand.

7 **Krystal Youmans,** being
8 duly sworn testifies as follows;

9 **MADAME CLERK:** Thank you. Please be seated. Please
10 state your name for the record.

11 **MS. YOUNANS:** Krystal Youmans.

12 **Direct Examination by Ms. Hodge:**

13 Q. Ms. Youmans, if you'd spell your last name for the court
14 reporter, please.

15 A. Yes. Y-o-u-m-a-n-s.

16 Q. Thank you. And where do you work?

17 A. I work at Helping Hands.

18 Q. And what is Helping Hands?

19 A. We are a temporary shelter for children in placement.

20 Q. And how do children get to Helping Hands?

21 A. For various forms of alleged neglect and/or abuse.

22 Q. Are they referred by the Department of Social Services
23 or - - -

24 A. Yes, ma'am.

25 Q. - - - private entities?

KRYSTAL YOUMANS - DIRECT EXAMINATION BY MS. HODGE

62

1 A. Department of Social Services only.

2 Q. Okay. And when children come there how long do they
3 generally stay in the facility?

4 A. For as long as needed. Approximately about six months,
5 but until alternative long-term care is found.

6 Q. All right. And what are your job responsibilities at
7 Helping Hands?

8 A. At Helping Hands I am a house parent. And we are
9 required to mandate reports, anything that, you know,
10 happens there, children say. We provide basic function,
11 excuse me, needs for children in our care. This is
12 everything from clothing to shelter, food, educational needs
13 as well as medical.

14 Q. All right. And when a child first comes to your
15 facility is there a process or procedure that they must go
16 through?

17 A. Yes, ma'am. When the children come into care after just
18 assuring them of their safety and, you know, introducing
19 ourselves, we do what we call a first report. And this is
20 procedure that is always conducted by two house parents.

21 And what the first report is, we are noting any scars,
22 any bumps, bruises or, you know, anything that is on the
23 outer body for the child. This does require them to strip
24 down to their underwear. And this is just to ensure that
25 any markings that are physically on the child were there

KRYSTAL YOUNG - DIRECT EXAMINATION BY MS. HODGE

63

1 when they came in so that is to ensure, you know, for our
2 protection to ensure that no abuse has occurred while
3 they're in our care.

4 Q. And if there is some injury that you find on the child
5 that needs medical attention, do you then -- is there a
6 process that you request that, are there doctors out there?

7 A. We don't have an in-house doctor. None of us are
8 physicians. But as mandated reporters, once we follow
9 procedure of filling out that first report and then any
10 accident or incident reports that may go along with it, that
11 information is then sent to the office and the guardian of
12 Helping Hands would make the determination of, you know,
13 what further, if any, medical attention is needed.

14 Q. Okay. And if the child came in with a gaping wound, I
15 mean, would you say, hey, they need to go see --

16 A. Oh, certainly. And we do have in-house things that we
17 can treat like band-aids and Neosporin and, you know, things
18 like that, but things that need medical attention outside of
19 what we are able to do, you know, --

20 Q. You know to send them --

21 A. Correct.

22 Q. -- for further services?

23 A. Correct. And if immediate attention or care is needed,
24 then, obviously, a child would get that immediately.

25 Q. Were you working at Helping Hands on August the 4th of

KRYSTAL YOUMANS - DIRECT EXAMINATION BY MS. HODGE

64

1 2010?

2 A. Yes, ma'am.

3 Q. Okay. And did you have an occasion to meet Samantha
4 Arnold on that day?

5 A. Yes, ma'am.

6 Q. All right. And who - - you said there were two people
7 that usually do your first assessment. Who else was with
8 you during that?

9 A. Michelle Collins.

10 Q. And did you do the first assessment that you just
11 described with Samantha?

12 A. Yes, ma'am.

13 Q. Okay. How old was she at that time?

14 A. 7.

15 Q. And did you go ahead and do the overall body assessment?

16 A. Yes, ma'am.

17 Q. And what did you note?

18 A. There was scars and some scratches, a fever blister on
19 the corner of her mouth. There were also bumps on her
20 bottom that we noted.

21 Q. All right. Do you, as part of your assessment, ask them
22 about things that might be going on inside their body,
23 things that you can't see that they may need treatment for?

24 A. We generally don't ask children any questions at all to,
25 you know, pry into anything like that. But if a child

KRYSTAL YOUMANS - DIRECT EXAMINATION BY MS. HODGE

65

1 discloses that something happens, a separate report is
2 required. That's called the incident report. So for
3 accuracy sake a child may be asked to repeat what they
4 already said or we would repeat back to them what they've
5 already disclosed, you know, for accuracy sake.

6 Q. Okay. Did Minor [REDACTED] disclose to you that she had
7 been sexually abused?

8 A. Yes.

9 Q. And in doing that did she also tell you about physical
10 symptoms, problems that she was having?

11 A. Yes. She did say that it itched, her private itched and
12 burned when she peed. She said that twice, actually.

13 Q. Okay. And the connotation of also her saying that she
14 had been sexually abused, is that when this came out?

15 A. Yes, ma'am.

16 Q. Okay. Did she happen to tell you where or when the
17 sexual abuse took place?

18 A. She didn't say a specific place inside of the home, but
19 she did say that it's when she's at his house. He will
20 touch me and hurt my private and then my area will itch and
21 burn. That's what she said.

22 Q. Okay. And would you have noted those things and pass
23 that on to your supervisor in case she needed medical
24 treatment?

25 A. Yes, ma'am.

KRYSTAL YOUMANS - CROSS EXAMINATION BY MS. WICKER

66

1 Q. Okay. After you do the first or the initial assessment
2 and you make that report do you have a lot of contact with
3 the child after that?

4 A. You know, while they're in our care, of course. As far
5 as anything, any medical findings that would or if, you
6 know, that would have been discovered, that's not reported
7 back to us. She was only in our care for approximately
8 eight days. So anything that would have been found during
9 that time would not have been reported back to me.

10 Q. Okay. Thank you.

11 A. You're welcome.

12 Q. Please answer any of Ms. Wicker's questions.

13 **Cross Examination by Ms. Wicker:**

14 Q. Just very briefly for you. You said that you make notes
15 regarding marks you see on the child's body, is that
16 correct?

17 A. Yes, ma'am.

18 Q. And is that just looking at things that you believe need
19 medical attention or do you note anything?

20 A. Anything.

21 Q. Thank you.

22 A. Yes, ma'am.

23 Q. No further questions.

24 **THE COURT:** Thank you. You can step down.

25 **MS. HODGE:** May this witness be excused, Your Honor?

HEATHER HUBERT - DIRECT EXAMINATION BY MS. HODGE

1 **THE COURT:** Any objection?

2 **MS. WICKER:** No objection, Your Honor.

3 **THE COURT:** Thank you. You're excused.

4 **MS. HODGE:** The State calls Investigator Heather
5 Hubert.

6 **MADAME CLERK:** Ma'am, please place your left hand on
7 the Bible and raise your right hand.

8 **Heather Hubert**, being
9 duly sworn testifies as follows;

10 **MADAME CLERK:** Thank you. Please be seated. Please
11 state your name for the record.

12 **MS. HUBERT:** It's Heather Edwards Hubert.

13 Direct Examination by Ms. Hodge:

14 Q. Investigator Hubert, who do you work for?

15 A. The Greenville County Sheriff's Office.

16 Q. How long have you been with them?

17 A. Fifteen years.

18 Q. What are your current duties with the Sheriff's Office?

19 A. I'm an investigator in the Crimes Against Children Unit.
20 We investigate any allegations where a child's a victim, be
21 it sexual abuse, physical abuse, neglect, maltreatment.

22 Q. How long have you been in that position?

23 A. I have been in the Crimes Against Children Unit since
24 its inception in, I believe, late 2010. And prior to that I
25 was a sex crimes investigator since early 2010. I did

HEATHER HUBERT - DIRECT EXAMINATION BY MS. HODGE

68

1 sexual abuse investigations of children and also sexual
2 assault investigations of adults.

3 Q. But the name changed?

4 A. The name changed.

5 Q. The name changed for the unit that you've been doing
6 this for - - -

7 A. Correct.

8 Q. - - - for several years?

9 A. Yes, ma'am.

10 Q. All right. And do you have any specialized training or
11 educational background for your job?

12 A. Yes, ma'am. Education-wise I hold a master's degree.

13 Training, I've been to numerous state, local and national
14 trainings on the subject of child sexual abuse

15 investigation, child maltreatment investigation by the

16 National Child Protection Training Center, the National

17 Children's Advocacy Center, the South Carolina Children's

18 Law Center and, you know, other trainings.

19 Q. Do you keep yourself abreast of those areas? Obviously,
20 this is your - - what you do for a living.

21 A. Yes, ma'am.

22 Q. Okay. And are you also trained in forensic interviewing
23 of children?

24 A. I am. I've been through forensic interviewing and
25 advanced forensic interviewing training.

HEATHER HUBERT - DIRECT EXAMINATION BY MS. HODGE

69

1 Q. Approximately how many child sex abuse cases would you
2 say you've worked in your career?

3 A. Probably about close to three hundred.

4 Q. Now were you employed as a sex crimes
5 investigator/crimes against child investigator back in
6 August of 2010?

7 A. Yes, ma'am, I was.

8 Q. And were you called either in as the investigator or
9 were you an on-call investigator with regard to this case,
10 Mr. Alvin Arnold?

11 A. Yes, ma'am. I received this case for investigation.

12 Q. And tell us what happened when you first received it.

13 A. I initially received it upon contact -- Investigator
14 Emily Grant with the Department of Social Services contacted
15 our agency. And that was forwarded to me.

16 Q. Is that required by law?

17 A. Cross reporting is required by law between DSS and law
18 enforcement.

19 Q. Okay. And once you received that report from her what
20 did you do?

21 A. I actually ended up making immediate contact with her
22 because she was -- she had -- she was attempting to get a
23 safety plan agreement in place to provide for the immediate
24 safety of the children in the case due to allegations that
25 were made. And the Defendant was declining to agree to that

HEATHER HUBERT - DIRECT EXAMINATION BY MS. HODGE

70

1 safety plan. And she needed someone to respond to assess
2 for a possible emergency protective custody action.

3 Q. And is law enforcement the only agency that can conduct
4 or execute emergency protective custody action?

5 A. That is correct, yes, ma'am.

6 Q. DSS could not just take the child, law enforcement has
7 to come and take the children?

8 A. No, ma'am, they can't. It does have to be law
9 enforcement.

10 Q. And did you have to do that in this case?

11 A. Yes, ma'am, I did.

12 Q. Did you attempt to talk to the Defendant at this time?

13 A. I did speak to him regarding the safety plan and trying
14 to reach an agreement for the children to initially - - we
15 were asking for the children to go - - to remain in the
16 mother's care during the investigation just to give an
17 opportunity while they were in a safe - - a known safe
18 location for the investigation to take place so that we
19 could determine if they needed to stay there or not.

20 When I could not get an agreement for that, I offered
21 for - - to consider another suitable adult that he might
22 recommend. And I couldn't get an agreement for that either.
23 So I ultimately had to place the children into emergency
24 protective custody.

25 Q. And he was aware that by those choices they were going

HEATHER HUBERT - DIRECT EXAMINATION BY MS. HODGE

71

1 to end up in a foster care - - -

2 A. Yes, ma'am, I made that explicitly clear.

3 Q. Tell us what happened after that.

4 A. After that the children are turned over to DSS for
5 placement. And I requested a forensic interview of Minor
6 for the investigation and also a medical exam at the
7 Greenville Rape Crisis and Child Abuse Center, which is now
8 the Julie Valentine Center.

9 And later we received a package of information from the
10 Helping Hands where two of the children were placed. I
11 viewed forensic interviews for Samantha as well as her older
12 brother and sister and was provided with information from
13 the medical exam.

14 Q. Okay. Let me stop you there. What - - maybe the jury's
15 not familiar. What is a forensic interview and - - -

16 A. Sure.

17 Q. - - - why would you and DSS want that done?

18 A. A forensic interview is an interview that is conducted
19 generally at a Children's Advocacy Center by someone who's
20 trained in a protocol for non-leading and non-suggestive
21 questioning of children. And it's done in a child friendly
22 environment.

23 It can often be, you know, very intimidating for a
24 child to come in and sit across the table from me or just
25 sit somewhere with somebody that is known to them to be law

HEATHER HUBERT - DIRECT EXAMINATION BY MS. HODGE

72

1 enforcement and to try to talk about these things. And it's
2 an interview that's done, that's videotaped that I can watch
3 and rely on. It's a way of gathering information from the
4 child.

5 Q. And then if you'd been able to have that tool to watch
6 that do you feel the need to go back and interview the child
7 again?

8 A. Most often I do not. I typically try never to interview
9 a child if I'm able to get a forensic interview. If we're
10 able to establish a safe environment for the child to be in,
11 then I typically do not interview a child myself.

12 I am trained in forensic interviewing and advanced
13 forensic interviewing and I will do it in very exigent
14 circumstances where perhaps it's the weekend and, you know,
15 I have to have information in order to get a child out of a
16 home, I'll do an initial interview. But if we can establish
17 a child's safe environment another way and go to a forensic
18 interview, then I prefer to do it that way.

19 If there's not an issue specific that we need to follow
20 up with the child on after the interview, I typically try
21 not to re-interview the child because every time a child's
22 asked about the incident and has to recount details of the
23 incident, it can be traumatic for the child.

24 Q. So it's for the benefit not only of you but for the
25 child as well to not have to keep repeating themselves, I

HEATHER HUBERT - DIRECT EXAMINATION BY MS. HODGE

73

1 guess?

2 A. Yes, ma'am, that is correct.

3 Q. Okay. Do you know the dates that Samantha had her
4 forensic interview and/or her medical exam?

5 A. Yes, ma'am. I believe the forensic interview occurred
6 on August the 16th of 2010. And the medical exam, September
7 the 1st of 2010.

8 Q. And is that unusual that there's that much time lag
9 between - - -

10 A. Not at all.

11 Q. - - - requesting for the appointments?

12 A. Yes, ma'am. That's not an uncommon time-frame to have
13 an appointment set.

14 Q. So are they that busy? Is that part of the problem?

15 A. Unfortunately, yes, ma'am.

16 Q. So after you review the forensics and the medical and
17 Helping Hands information, what was your next step in the
18 case?

19 A. I attempted to speak with the Defendant in a more, you
20 know, formal fashion. I attempted to make telephone contact
21 with him, which was - - he did not respond to my voicemail.
22 I sent a letter requesting that he contact me, and he did
23 not respond to that either.

24 Q. At that time when you were requesting to talk to him via
25 phone and letter was he under arrest at that time?

HEATHER HUBERT - DIRECT EXAMINATION BY MS. HODGE

74

1 A. No, ma'am.

2 Q. Did you have a warrant for his arrest at that time?

3 A. I did not.

4 Q. Okay. And why were you attempting to contact him?

5 A. To gather information from him as part of the

6 investigation.

7 Q. Did you ever get an opportunity to speak to him before
8 an arrest was made?

9 A. No, ma'am.

10 Q. Okay. Were you able to determine if there may be any
11 other witnesses involved in this case?

12 A. Samantha's brother and sister were both interviewed.

13 They had forensic interviews. And I did review those
14 interviews. I watched the videos of those.

15 There were some other adults living in the home, the
16 girlfriend of the Defendant and a couple of family members
17 of hers. I did speak with them briefly and informally at
18 the time that I served a search warrant that I had obtained.
19 We didn't have any information that they had any evidentiary
20 information about what had occurred. And in my brief
21 informal discussion with them, it didn't appear that way.
22 So they were not formally interviewed.

23 Q. All right. So tell us about the search warrant.

24 A. I obtained a search warrant, which was executed on
25 November the 22nd. We took photographs of the residence and

HEATHER HUBERT - DIRECT EXAMINATION BY MS. HODGE

75

1 attempted some - - we did some - - forensic officers did
2 some latent printing, some fingerprinting. And it's just
3 to, you know, see if there was any additional evidence that
4 we could secure from the residence.

5 (Whereupon State's exhibits 1 - 6 were marked for
6 identification)

7 Q. All right. Investigator Hubert, were there some things
8 that you observed or heard in the forensic interview that
9 caused you to want to go out, and you don't have to state
10 what they are, but were there some things in the child's
11 forensic interview that caused you to want to go to the
12 house to see if there was anything you could corroborate?

13 A. Yes, ma'am.

14 Q. Okay. And is - - I'm going to show you what's been
15 marked State's number 1 through number 6 here first. If you
16 can take a look at those and tell us just as a whole what
17 those are.

18 A. These are photographs of the exterior and interior of
19 the residence.

20 Q. Okay. And is this - - whose residence was this?

21 A. The Defendant's residence.

22 Q. And is this the residence that the child, Samantha, had
23 lived in and where the alleged abuse occurred?

24 A. Yes, ma'am.

25 Q. Are these true and accurate depictions of the way the

HEATHER HUBERT - DIRECT EXAMINATION BY MS. HODGE

76

1 residence looked when you went out there?

2 A. Yes, ma'am.

3 Q. Okay. Was this actually, though, several months after
4 the child had been out of the home?

5 A. Yes, ma'am.

6 Q. Okay. So the child had left the home in August or
7 August 3rd of 2010, these were taken - - -

8 A. November 22nd.

9 Q. Okay. So some things possibly could've been different
10 - - -

11 A. Yes, ma'am.

12 Q. - - - from when she lived there?

13 A. That's correct.

14 Q. Okay. But let's look at State's - - -

15 **THE COURT:** Any objection to the photographs?

16 **MS. WICKER:** No, Your Honor.

17 **THE COURT:** Without objection.

18 **MS. HODGE:** Thank you.

19 (Whereupon State's exhibits 1 - 6 were admitted into
20 evidence)

21 Q. States number 1. All right. So what is this?

22 A. That's the exterior of the residence, the front.

23 Q. The main entrance-way?

24 A. Yes, ma'am.

25 Q. Okay. And State's number 2. Do you recall what this

HEATHER HUBERT - DIRECT EXAMINATION BY MS. HODGE

77

1 angle is showing?

2 A. It's kind of like a hallway. I believe that led down to
3 one of the bedrooms and I think maybe a bathroom wall - - a
4 side.

5 Q. Do you know where the child's bedroom was in relation to
6 this or the Defendant's bedroom?

7 A. It's a little dark. I'd have to probably see in that
8 door to tell you which bedroom that was.

9 Q. This is coming from the front door of the residence, do
10 you remember that? And you're standing at the front door of
11 the residence taking a photograph in?

12 A. I didn't take the photographs myself. They were taken
13 by forensics. I don't - - I don't think that would be
14 directly from the front door in. I don't recall - - -

15 Q. Okay. Down - - -

16 A. - - - exactly the way out.

17 Q. - - - the hallway?

18 A. Correct.

19 Q. Okay. Then let me show you what's been marked as
20 State's number 3. Do you - - -

21 A. Yes.

22 Q. - - - recognize this?

23 A. Yes, ma'am. That's the child's bed.

24 Q. Okay. And when you say the child's bed, - - -

25 A. Minor [REDACTED]

HEATHER HUBERT - DIRECT EXAMINATION BY MS. HODGE

78

1 Q. Okay. And it looks like there's more than one bed in
2 there?

3 A. Yes, ma'am. The bed was being -- the bedroom was being
4 used for different individuals at the time of the search
5 warrant and had been pushed together because I believe there
6 was a couple using that -- the beds now.

7 Q. Okay.

8 A. At the time that this was taken.

9 Q. All right. And is there anything significant of why you
10 took pictures of the bed?

11 A. Yes, ma'am. It was the headboard of the bed that I was
12 interested in primarily on the search warrant.

13 Q. Okay. And was there something in the forensic that
14 caused you to want to be interested in that?

15 A. Yes, ma'am.

16 Q. I'm showing you State's number 4, just another angle.
17 Is that the same bedroom?

18 A. Yes, ma'am, it is.

19 Q. Okay. Now you stated that you had forensic officers
20 come out. What do forensic officers do?

21 A. They do a number of things for us. Oftentimes they do
22 photographing. They're, you know, specifically trained in
23 doing evidence photographing and also in doing
24 fingerprinting.

25 Q. And did you attempt to have them fingerprint those --

HEATHER HUBERT - CROSS EXAMINATION BY MS. WICKER

79

1 the bed?

2 A. Yes, ma'am, I did.

3 Q. And were any results obtained?

4 A. They did lift prints, however, they were not of a
5 quality that they were able to be matched.

6 Q. And is it your understanding that the beds had been
7 pushed together after the children had left the home?

8 A. That is correct.

9 Q. All right. So tell me what was your next step in this
10 case.

11 A. I'd obtained warrants for the Defendant's arrest. And
12 he was arrested on November the 22nd, 2010.

13 Q. Okay. And what, if anything, else did you do involving
14 this case?

15 A. Just providing testimony in court.

16 Q. Okay. All right. Please answer any of Ms. Wicker's
17 questions.

18 **THE COURT:** All right. Ms. Wicker.

19 **MS. WICKER:** Thank you, Your Honor.

20 **Cross Examination by Ms. Wicker:**

21 Q. Investigator, I just want to make sure that -- I just
22 want to clarify and make sure I understand correctly.

23 A. Sure.

24 Q. You watched the video of the interview with Samantha, is
25 that correct?

HEATHER HUBERT - CROSS EXAMINATION BY MS. WICKER

80

1 A. That's correct.

2 Q. Did you ever interview her yourself?

3 A. No, ma'am.

4 Q. Okay. So you had no personal interaction with her in
5 terms of an interview as to what happened, is that correct?

6 A. Not in terms of an interview.

7 Q. Okay. Thank you.

8 A. I did meet - - -

9 Q. I'm sorry.

10 A. I did meet her, - - -

11 Q. Right.

12 A. - - - but I did not interview her, correct.

13 Q. Okay. Thank you. I don't have any further questions.

14 **THE COURT:** Thank you. You can step down.

15 **MS. HODGE:** At this time the State would call Christine
16 Carlberg.

17 **MS. WICKER:** Your Honor, I have a legal matter I need
18 to take up - - -

19 **THE COURT:** All right.

20 **MS. WICKER:** - - - prior to this witness.

21 **THE COURT:** Take the jury out, please.

22 (Whereupon the jury exited the courtroom at 10:05 AM)

23 **THE COURT:** Okay.

24 **MS. WICKER:** Thank you, Your Honor. I guess, Your
25 Honor, I would draw the State's attention to the case of

1 State v. Cromer. I don't know if you're familiar with it,
2 but I have a copy if you would like it, Your Honor.

3 **THE COURT:** Yes, let me see it.

4 **MS. WICKER:** Okay. Essentially, Your Honor, it
5 discusses improper bolstering of a victim's statement by a
6 forensic interviewer. It is - - I would specifically draw
7 the Court's attention to footnote four in the case, Your
8 Honor, where the court cannot envision a circumstance for
9 the qualification as an expert would be appropriate.

10 Essentially the sole purpose for calling her, I would
11 argue, Your Honor, is to call her as a witness to reiterate
12 the allegations that have been made by the victim and then
13 to describe how her behavior, how she tells the story, how
14 she answers the questions is consistent with somebody who
15 has been a victim of sexual abuse. I would just argue that
16 it would just be improper bolstering, Your Honor.

17 And I don't - - I've already stipulated that the
18 forensic video meets the elements of trustworthiness to be
19 admitted. So I don't see how this expert - -

20 **THE COURT:** Solicitor.

21 **MS. HODGE:** Your Honor, we would not intend to offer
22 her as an expert. We're very well-versed in Cromer. We
23 understand the courts have come down and said they don't
24 need to be qualified as an expert. She simply will be
25 laying the foundation for a forensic interview and for the

1 introduction of the actual video.

2 I believe the courts have stated they can talk about
3 their qualifications in regard to forensic interviewing of
4 children, what protocol is, did they follow protocol and
5 then produce the interview. That would be essentially what
6 we would offer her for.

7 **THE COURT:** And you're relying on footnote four?

8 **MS. WICKER:** For the basis that she should not be
9 called as an expert.

10 And, Your Honor, I guess my concern is that she might
11 -- not that she's going to come right out and say I believe
12 that this victim is -- that this person's a victim of
13 sexual abuse, but that she's going to say she exhibited this
14 behavior, which is consistent with somebody who is a victim
15 of sexual abuse, Your Honor. And I -- I would argue that
16 it's improper bolstering and her testimony should be
17 excluded.

18 **MS. HODGE:** We don't intend to offer any line of
19 questioning with this witness. That would be more properly
20 in front of the person we tend to qualify as an expert in
21 child sex abuse dynamics, not the forensic interviewer.

22 (Pause)

23 **THE COURT:** All right. I'm going to allow it. Motion
24 denied. All right. Anything before I bring the jury?

25 **MS. HODGE:** Actually, just one slight scheduling issue,

CHRISTINE CARLBERG - DIRECT EXAMINATION BY MS. HODGE

83

1 Your Honor. I'm sorry.

2 **THE COURT:** Sure.

3 **MS. HODGE:** Dr. Croswell was subpoenaed also to be in
4 Union this morning. She's in some plea type thing over
5 there. After Christine, she would be my next witness. And
6 I assume Ms. Carlberg, by the time we publish this, we're
7 probably going to be forty-five minutes down the road.

8 **THE COURT:** Okay.

9 **MS. HODGE:** So, you know, closer to the 11:00 hour. I
10 know that would be a very early time to break, but if it's
11 possible that we could take a slightly earlier lunch to
12 allow her to come back and then we could finish up.

13 **THE COURT:** We can do that.

14 **MS. HODGE:** Okay. Thank you.

15 **THE COURT:** All right. Bring the jury.

16 (Whereupon the jury entered the courtroom at 10:10 AM)

17 **THE COURT:** All right. Solicitor.

18 **MS. HODGE:** Thank you, Your Honor. The State would
19 call Christine Carlberg.

20 **MADAME CLERK:** Ma'am, please place your left hand on
21 the Bible and raise your right hand.

22 **Christine Carlberg,** being
23 duly sworn testifies as follows;

24 **MADAME CLERK:** Thank you. Please be seated. Please
25 state your name for the record.

CHRISTINE CARLBERG - DIRECT EXAMINATION BY MS. HODGE

84

1 **MS. CARLBERG:** Christine Carlberg.

2 **Direct Examination by Ms. Hodge:**

3 Q. Ms. Carlberg, where do you work?

4 A. I'm employed by the Greenville Department of Mental
5 Health and am contracted to work at the Julie Valentine
6 Center.

7 Q. And what do you do?

8 A. I'm a forensic interviewer.

9 Q. All right. And what type of education and training do
10 you have to be a forensic interviewer?

11 A. I have my bachelors of science in rehabilitation
12 services education from the - - with a minor in psychology
13 from Pennsylvania State University. And I have masters of
14 arts in marriage and family therapy from Reformed
15 Theological Seminary in Jackson, Mississippi. And I have
16 since been trained at CornerHouse and Finding Words, which
17 is now called Child First, which are nationally recognized
18 training programs for forensic interviewing.

19 Q. What is - - what is a forensic interview?

20 A. A forensic interview is a non-leading, non-suggestive
21 way, it's developmentally appropriate, just another way of
22 gathering information from a child or sometimes we interview
23 delayed adults to gather information for an investigation.

24 Q. All right. Are you associated in any way with law
25 enforcement or DSS?

CHRISTINE CARLBERG - DIRECT EXAMINATION BY MS. HODGE

85

1 A. I'm not associated with them, no.

2 Q. And tell me, do you have an occasion to have peer-review
3 or anything like that amongst forensic interviewers?

4 A. Yes. We participate in a national peer-review where we
5 review other people's and our own forensic interviews.

6 Q. And do you have a protocol that you're supposed to
7 follow?

8 A. We follow a semi-structural protocol called RATAC, which
9 is a five-stage protocol which stands for rapport, anatomy
10 ID, touch inquiry, abuse scenario and closure.

11 Q. And, let's see, are there journals, articles, research
12 that's been done in this protocol and/or with those types of
13 training methods?

14 A. Yes, ma'am.

15 Q. Is it national?

16 A. Yes, ma'am.

17 Q. Okay. And, if you could, tell us -- did you have an
18 occasion to conduct a forensic interview of Minor [REDACTED]

19 A. Yes, ma'am.

20 Q. Okay. When did you do that?

21 A. I saw her August 16th, 2010.

22 Q. And how was she referred to you for an interview?

23 A. She was referred by the Greenville Department of Social
24 Services, DSS.

25 Q. Is that a requirement? Does someone have to be referred

CHRISTINE CARLBERG - DIRECT EXAMINATION BY MS. HODGE

86

1 before you even can conduct a forensic interview?

2 A. Yes. Children are usually referred by DSS or law
3 enforcement when there's allegations of abuse.

4 Q. Okay. And how old was Samantha when she came to talk to
5 you?

6 A. She was 7.

7 Q. Where did the interview take place?

8 A. It took place in our interview room at the Julie
9 Valentine Center.

10 Q. Can you tell us a little bit about the Julie Valentine
11 Center and the interview rooms? I don't know that anybody's
12 been there.

13 A. The interview rooms are small rooms where it's just me
14 or the interviewer and the child in the room. And there's a
15 closed circuit television where the investigators from DSS
16 or law enforcement can watch the interview take place.

17 Q. So there's an opportunity for police or the DSS
18 investigator to see what you're doing?

19 A. Yes, ma'am.

20 Q. Is there an opportunity for them if they wanted to to
21 send in questions or anything?

22 A. Once I think that I've asked every question that I can
23 think of, I leave the room and go check with anybody
24 observing the interview to see if they have any additional
25 questions or anything they need me to clarify or anything

CHRISTINE CARLBERG - DIRECT EXAMINATION BY MS. HODGE

87

1 like that.

2 Q. And what is the - - what is one of the purposes behind
3 doing a forensic interview as far as it relates to the
4 child's welfare?

5 A. Well, like I said, we do it in a child friendly
6 environment. We are trying to ask developmentally
7 appropriate questions. And the purpose also is to allow the
8 child to hopefully only have to go through one interview so
9 they - - so this interview can be used for law enforcement
10 and for DSS investigations.

11 Q. Can the process of disclosing be traumatic to a child?

12 A. Yes, ma'am.

13 Q. Multiple disclosures can just add to that?

14 A. Yes, ma'am.

15 (Whereupon State's exhibit 7 was marked for
16 identification)

17 Q. Let me show you what's been marked State's number 7.
18 Are you familiar with this?

19 A. Yes. That is a copy of the interview I did with
20 Minor [REDACTED] on August 16th, 2010.

21 Q. All right. And are the originals kept at the Julie
22 Valentine Center?

23 A. They are.

24 Q. And have you viewed State's number 7?

25 A. I have.

CHRISTINE CARLBERG - DIRECT EXAMINATION BY MS. HODGE

88

1 Q. And is State's number 7 a true and accurate copy of your
2 original interview with Samantha?

3 A. It is.

4 MS. HODGE: At this time we would move to admit State's
5 number 7.

6 THE COURT: Any objection?

7 MS. WICKER: No objection, Your Honor.

8 (Whereupon State's exhibit 7 was admitted into
9 evidence)

10 Q. Now, specifically as to Samantha did you follow the
11 RATAC protocol in this interview?

12 A. I did.

13 Q. Can you tell us how that goes?

14 A. Like I said, it's a five stage semistructural protocol.
15 So I usually start out building a rapport with the child
16 usually talking about who lives in her family, school or
17 whatever activity she likes to do.

18 And then we would move into - - I usually ask a child
19 if they know why they're here today. And if they do they
20 can just tell me about what they know about being here so we
21 can move - - if they know why they're here, sometimes they
22 would just move right into the abuse scenario. And then
23 we'll also talk - - do anatomy identification and then close
24 the interview.

25 Q. How do you get them to do anatomy identification?

CHRISTINE CARLBERG - DIRECT EXAMINATION BY MS. HODGE

89

1 A. I have a male and female anatomical drawing, which I
2 show them, and they can name the anatomy on each gender. So
3 we use their words throughout the interview for anatomy.

4 Q. Do you ever provide the words to be used?

5 A. I do not.

6 Q. So whatever word they choose is what you go with?

7 A. And sometimes they don't use words. And so then they
8 have the opportunity just to point on the pictures.

9 Q. Okay. And then if the child does not know, after you
10 build a rapport and ask do you know why you're here, if they
11 say, no, they don't know why they're here, what do you do
12 next?

13 A. Then the next - - we would do anatomy ID and touch
14 inquiry, just talking about different kinds of touches and
15 see and then talk about - - for example, I might say are
16 there places on a girl or if I'm interviewing a boy where
17 you should not be touched. And then we can identify where
18 they shouldn't be touched and see if anyone's ever touched
19 them in those places.

20 Q. And then they continue on?

21 A. Yes, ma'am.

22 Q. Okay. And how do you end up - - how do you end the
23 interview or what do you use to close up the interview?

24 A. When I'm closing an interview I want to do a little bit
25 of education, if this ever happens to you again, who could

CHRISTINE CARLBERG - DIRECT EXAMINATION BY MS. HODGE

90

1 you tell, so they have a plan of safe people that they can
2 talk to. And then I also want to end it respectfully just
3 by saying thank you for talking to me today and then they
4 can go back out to the waiting room.

5 Q. Okay. And do you utilize those drawings or those
6 diagrams throughout your interview?

7 A. Yes, ma'am.

8 Q. Okay. And how about are you - - do you use anything
9 called anatomical dolls?

10 A. Yes, ma'am.

11 Q. Tell us about those.

12 A. Anatomical dolls are what they sound like. They're just
13 dolls with all their anatomy on them, both the male and the
14 female. And they're used after a child has given a
15 disclosure to demonstrate what may have happened to them.

16 Q. Okay. Are they instructed that these aren't to play
17 with and things like that?

18 A. Yeah. Before I let them show me what happened I tell
19 them that they're not to play with, they're only to show
20 things that have happened with.

21 Q. Okay. And do you always use dolls in your interviews?

22 A. Not always, no.

23 Q. Does it depend on age and development?

24 A. It depends on age, their development, their disclosure,
25 those kinds of things.

CHRISTINE CARLBERG - DIRECT EXAMINATION BY MS. HODGE

91

1 Q. Okay. And did [Minor] disclose to you that she
2 was sexually abused during the course of your interview?

3 A. Yes, ma'am.

4 Q. And did she tell you where and when she was sexually
5 abused?

6 A. Yes, ma'am.

7 Q. Where and when was that?

8 A. She said that it took place at her home and between the
9 ages of 5 through 7.

10 Q. Did she say if it happened one time or more than one
11 time?

12 A. More than one time.

13 Q. Did she give any specific days or dates of anything?

14 A. Not that I recall.

15 Q. Okay. And was she, in your opinion, was she talking to
16 you very willingly and openly during this interview?

17 A. I think she was a little hesitant to talk. She didn't
18 name any body parts, but she did share what happened.

19 Q. Okay. How many forensic interviews have you done, Ms.
20 Carlberg?

21 A. I've done two thousand, four hundred and thirty
22 interviews.

23 Q. And in all those interviews is there a formula, or a
24 pattern or a normal way that children respond during
25 interviews?

CHRISTINE CARLBERG - DIRECT EXAMINATION BY MS. HODGE

92

1 A. No, every child is different. Every child reacts
2 differently to their possible abuse.

3 Q. And in Samantha's case, did anything that she - - any
4 way that she acted or respond, did that fall in line with
5 what you may or may not have seen in your experience?

6 A. Yes, ma'am.

7 **MS. HODGE:** At this time we would move to publish
8 State's number 7, Your Honor.

9 **THE COURT:** Any objection?

10 **MS. WICKER:** No, Your Honor.

11 **THE COURT:** Without objection.

12 (Whereupon State's exhibit 7 was published to the jury)

13 (Whereupon the video was ended)

14 Q. Ms. Carlberg, there were some drawings, obviously, you
15 and Samantha were using to communicate most of the scenario.
16 Do you have those?

17 A. They're back in my bag.

18 Q. Okay. Let me grab your bag. Were you running up the
19 steps and running in here?

20 A. Yes, ma'am.

21 Q. That's what I thought.

22 A. That's the easel drawing.

23 Q. Okay. This is the easel drawing?

24 A. Um-hum (affirmative). And these are the anatomical
25 drawings.

CHRISTINE CARLBERG - DIRECT EXAMINATION BY MS. HODGE

93

1 Q. Okay.

2 (Whereupon State's exhibits 8 and 9 were marked for
3 identification)

4 Q. I'm showing you State's 8 and 9. And are those the
5 actual drawings that you and Samantha used during the
6 interview?

7 A. Yes, ma'am.

8 Q. All right. Have you made any changes or are there any
9 additions or deletions to these?

10 A. Other than the hole punch to put them in our file, but,
11 no, other than that, no.

12 Q. Okay.

13 **MS. HODGE:** At this time we would move to admit State's
14 8 and 9.

15 **THE COURT:** Any objection?

16 **MS. WICKER:** No objection, Your Honor.

17 (Whereupon State's exhibits 8 and 9 were admitted into
18 evidence)

19 Q. Before I put these on the overhead, I want to talk about
20 those for just a second. The easel, there wasn't much, or
21 correct me if I'm wrong, was there much on here - - -

22 A. Just the - - -

23 Q. - - - in relation ...

24 A. No, just the names of who she identified in her mom's
25 household and her father's household.

CHRISTINE CARLBERG - DIRECT EXAMINATION BY MS. HODGE

94

1 Q. Okay. So this, which I'm not intending to introduce
2 into evidence, is just the drawing that we saw on the board
3 that you were making, your handwriting with family members?

4 A. Yes, ma'am.

5 Q. Okay. And then you taped those pictures onto this page?

6 A. Yes, ma'am.

7 Q. Okay. If you could clarify a couple of things for us
8 because we could not see the glare on there where Samantha
9 was pointing to. And if we can get it to look good on the
10 overhead we'll put it up, otherwise I'll just show you and
11 we'll hold them up for the jury. Okay. I'm showing State's
12 number 8. All right. So tell us what this is and what
13 those circle marks signify.

14 A. That's the female anatomical drawing that I show to
15 children. And she - - when I asked her where she was - - -

16 Q. Let me give you a pointer, a laser pointer. Sorry.

17 A. When I asked her where she had been touched, she - - or
18 asked her in what order she had been touched, she said - -
19 she circled the vaginal area, and the buttocks and the
20 breasts. And then she said she was first touched here, here
21 and then here. And so I labeled 1, 2 and 3.

22 Q. Okay. And how about - - where did the mouth come into
23 play?

24 A. When she - - she was talking about where he had put his
25 penis in her mouth, and she circled the mouth. And that's

CHRISTINE CARLBERG - DIRECT EXAMINATION BY MS. HODGE

95

1 when I said she was using the green marker and she had
2 circled the vaginal area, and the butt and the breasts as
3 well.

4 Q. Okay. And now I'm showing you State's number 9. What
5 is that?

6 A. This is the male anatomical drawing. And she had
7 circled the penis and the buttocks as well and then numbered
8 those. And that green mark on the mouth is what she said
9 she accidentally marked. And then the number 2 - - and
10 there's a number 1 on the female drawing was when she said
11 he first touched her and then made her touch him. And that
12 was the 1 and the 2 she put on there.

13 Q. So she was to touch his - - what she circled because she
14 wouldn't give names for things, but penis and buttocks area
15 also?

16 A. Yes, ma'am.

17 Q. Okay. And going back to State's 8, the female drawing,
18 did she state - - because again, there were some things she
19 was doing up close to the picture. Did she make some kind
20 of hand gesture about what was being done to her vaginal
21 area and/or anal area?

22 A. She did. She - - when she was talking about the vaginal
23 area and the buttocks she made like a rubbing motion to
24 demonstrate what he did. And then when she was talking
25 about the breasts, she also made a rubbing motion and said

CHRISTINE CARLBERG - DIRECT EXAMINATION BY MS. HODGE

96

1 that's what the scrubber thing did.

2 Q. Okay. And as far as any type of penetration, did she
3 show any hand gestures or anything as far as that goes?

4 A. Yeah. When she was talking about what his hand did to
5 her vaginal area she - - she moved her hand for the vaginal
6 area upwards.

7 Q. And how about in relation to area number 2? Anything
8 from that one?

9 A. I don't think so.

10 Q. Okay. And when she brought - - when you brought the
11 dolls out did she - - what did she do with the dolls,
12 because it was a little hard to see, with the hand of the
13 dolls?

14 A. With the hand of the dolls she touched on the vaginal
15 area and the buttocks, but she also said that his finger
16 went in the vaginal area and the buttocks.

17 Q. Okay. Thank you. Once you conducted the forensic
18 interview of the case do you have any other part in any
19 investigating or doing anything like that?

20 A. No, ma'am.

21 Q. You made the report on the interview?

22 A. Yeah. There's a written report that's sent to the
23 investigators.

24 Q. Okay. And are video copies also sent to the
25 investigators?

CHRISTINE CARLBERG - CROSS EXAMINATION BY MS. WICKER

97

1 A. They can get copies, yes.

2 Q. They can request that?

3 A. Um-hum (affirmative).

4 Q. All right. Thank you. Answer any of Ms. Wicker's
5 questions.

6 **THE COURT:** Ms. Wicker.

7 **MS. WICKER:** Thank you, Your Honor.

8 **Cross Examination by Ms. Wicker:**

9 Q. Ms. Carlberg, you said that you followed the RATAC
10 protocol, is that correct?

11 A. Yes, ma'am.

12 Q. Okay. And you ask non-leading, non-suggestive
13 questions?

14 A. Yes, ma'am.

15 Q. And is that because asking - - you ask open-ended
16 questions because leading questions can ask a child to kind
17 of give a response that's suggested by the interviewer, is
18 that correct?

19 A. Yes, ma'am.

20 Q. Okay. Thank you.

21 **MS. WICKER:** I don't have any further questions.

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

23 **MS. HODGE:** May this witness be excused?

24 **THE COURT:** Any objection?

25 **MS. WICKER:** No objection, Your Honor.

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

2 **MS. HODGE:** Your Honor, I believe our witness, we are
3 still waiting on from Union County.

4 **THE COURT:** All right.

5 **MS. HODGE:** I know it's a little early, but if we could
6 possibly take an early break.

7 **THE COURT:** All right. Ladies and gentlemen, we will
8 go ahead and recess for lunch at this time. During the
9 lunch recess, please remember, do not talk about this case
10 among yourselves or with anyone else. If anybody contacts
11 you and tries to talk to you about this case, get their
12 names and addresses and report that to me. Please keep your
13 badges on during the lunch recess.

14 I'll ask that you be back - - it's 11:15, a quarter
15 til one. So an hour and a half, one hour and a half, okay?
16 See you back after lunch. Thank you.

17 (Whereupon the jury exited the courtroom at 11:17 AM)

18 **THE COURT:** All right. Be back at a quarter til one.

19 **MS. HODGE:** Thank you, Your Honor.

20 (Whereupon court was in recess at 11:17 AM)

21 (Whereupon court resumed at 12:52 PM)

22 **THE COURT:** Be seated. Be seated. All right. You
23 ready to go?

24 **MS. HODGE:** Yes, sir.

25 **THE COURT:** All right. Bring our jury, please.

HEATHER HUBERT - DIRECT EXAMINATION BY MS. HODGE

99

1 (Whereupon the jury entered the courtroom at 12:54 PM)

2 **THE COURT:** All right. Solicitor, you may proceed.

3 **MS. HODGE:** Thank you, Your Honor. The State briefly
4 recalls Heather Hubert.

5 **THE COURT:** Come back around. You're still under oath.

6 **Direct Examination by Ms. Hodge:**

7 Q. Investigator Hubert, I neglected to ask you earlier in
8 your direct testimony, what was the incident location of the
9 sexual abuse to have occurred?

10 A. It was [REDACTED] in Piedmont, which is in
11 Greenville County.

12 Q. Okay. So that is in Greenville County?

13 A. Yes, ma'am.

14 Q. And would you be able to investigate it had it been in
15 Anderson County, or Pickens County or anything like that?

16 A. No, ma'am.

17 Q. Okay. Thank you.

18 **MS. HODGE:** That's all I have for this witness.

19 **THE COURT:** Any questions?

20 **MS. WICKER:** No, Your Honor.

21 **THE COURT:** Thank you. You can step down.

22 **MS. HODGE:** The State would call Dr. Mary-Fran
23 Croswell.

24 **MADAME CLERK:** Dr. Croswell, please place your left
25 hand on the Bible and raise your right hand.

MARY-FRAN CROSWELL, M.D. - DIRECT EXAMINATION BY MS. HODGE

100

1 **Mary-Fran Croswell, M.D.,**

2 being duly sworn testifies as follows;

3 **MADAME CLERK:** Thank you. Please be seated. Please
4 state your name for the record.

5 **DR. CROSWELL:** Mary-Fran Ratchford Croswell.

6 **Direct Examination by Ms. Hodge:**

7 Q. Dr. Croswell, what kind of physician are you?

8 A. I'm a child abuse pediatrician.

9 Q. All right. And please tell us where you're currently
10 employed.

11 A. I'm employed by the Children's Hospital of the
12 Greenville Health System.

13 Q. And through your employment with them do you contract to
14 do work with the Julie Valentine Center or is that ...

15 A. Yes. The hospital has an agreement with the Julie
16 Valentine Center for - - to allow me to see my out-patients
17 at the Julie Valentine Center.

18 Q. Please tell us your educational background and your work
19 experience.

20 A. Okay. I received my undergraduate degree from Wake
21 Forest University. I received my medical degree from the
22 University of Louisville School of Medicine. I did a
23 pediatric residency at the Greenville Hospital System.

24 I am board certified in pediatrics and then
25 subsequently was able to become eligible to be board

MARY-FRAN CROSWELL, M.D. - DIRECT EXAMINATION BY MS. HODGE

101

1 certified in child abuse pediatrics. I have worked as a
2 primary care pediatrician in Atlanta, and then since 2006
3 have been employed within the division of forensic
4 pediatrics at the hospital system here in Greenville.

5 Q. All right. And as part of your job duties do you
6 conduct sexual assault exams on children?

7 A. Yes, I do.

8 Q. And in your experience how many sexual assault exams do
9 you believe you've conducted?

10 A. I have conducted probably six to seven hundred exams.

11 Q. And is that since being in Greenville?

12 A. Yes.

13 Q. Since 2006 or 7, I think is what you - - -

14 A. Yes.

15 Q. - - - were stating? All right. And have you been
16 qualified before in a court of law as an expert in the field
17 of pediatric medicine with a subspeciality in child abuse?

18 A. Yes, I have.

19 Q. How many times have you been qualified?

20 A. I would say probably twenty-two to twenty-four times.

21 **MS. HODGE:** At this time, Your Honor, we would move to
22 admit her as an expert in pediatric medicine in addition to
23 child sexual assault exams.

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

25 **MS. WICKER:** No, Your Honor.

MARY-FRAN CROSWELL, M.D. - DIRECT EXAMINATION BY MS. HODGE

102

1 **THE COURT:** She's qualified. Proceed.

2 Q. Did you have an opportunity to do a child sexual assault
3 exam on Minor [REDACTED]

4 A. Yes, I did.

5 Q. When did you conduct that exam?

6 A. It was on September 1st, 2010.

7 Q. And how old was Samantha and what was her date of birth?

8 A. She was 7 years old at the time. Her date of birth is

9 [REDACTED].

10 Q. All right. Where does this exam take place?

11 A. It took place at the Julie Valentine Center.

12 Q. Is there a reason that your exam takes place there as
13 opposed to the hospital?

14 A. When a child doesn't have acute injuries that require
15 hospitalizations, then those are - - children are referred
16 to the Julie Valentine Center. If the sexual abuse has
17 occurred within seventy-two hours of a child's disclosure,
18 we recommend that they be evaluated in the pediatric
19 emergency room.

20 Q. All right. And the disclosure of abuse had fallen
21 outside of the seventy-two hour incident, is that correct?

22 A. That is correct.

23 Q. Okay. And who is present during the examination?

24 A. I have a child life specialist who works with me to help
25 the child be able to understand the evaluation process. And

MARY-FRAN CROSWELL, M.D. - DIRECT EXAMINATION BY MS. HODGE

103

1 then the child is able to choose - - if there's more than
2 one person coming to the exam with him or her, they are able
3 to choose who they want back there with them during the
4 examination.

5 Q. And is this more just for comfort level or ...

6 A. Correct.

7 Q. Okay. And why was Samantha examined by you at the Julie
8 Valentine Center?

9 A. She was referred to me by the Department of Social
10 Services due to allegations of sexual abuse.

11 Q. All right. When a child is brought to the Julie
12 Valentine Center for a sexual assault exam, tell us over
13 all, what are the steps you take, what does this look like?

14 A. So first the child life specialist meets the child and
15 the care-giver in the waiting room, brings them back to the
16 exam room, explains to the child and the care-giver exactly
17 what will happen during the evaluation process.

18 The child life specialist uses an anatomically correct
19 doll to allow the child to know exactly how we do our head
20 to toe physical exam allowing her - - him or her to use the
21 medical equipment to look in the eyes and the ears, listen
22 to the heart and lungs.

23 And then we do have a culpascope, which is a special
24 piece of equipment that we use to visualize the genital
25 area. The child is allowed to manipulate the culpascope so

MARY-FRAN CROSWELL, M.D. - DIRECT EXAMINATION BY MS. HODGE

104

1 that - - to alleviate any concerns or fears about what that
2 piece of equipment might do.

3 After that I take a detailed medical history from the
4 care-giver who has brought the child. Then I ask the care-
5 giver to step out of the room while I take a medical history
6 from the child herself about what may have happened. Then,
7 again, the child gets to choose if they want the care-giver
8 present or not and we proceed to do a head to toe physical
9 examination of the child.

10 Q. Okay. And at the end do you make any findings, or
11 diagnoses or anything else?

12 A. I will order any necessary laboratory studies to assist
13 in the evaluation process and make an assessment, a medical
14 assessment of what I think has happened.

15 Q. Okay. Did you follow that same procedure when you
16 conducted your exam on Minor

17 A. Yes, I did.

18 Q. All right. And what - - let's start with the background
19 information that you gathered. What information did you
20 gather from her mother that was pertinent to your diagnosis
21 and treatment of her?

22 A. Initially the mother just described some sexualized
23 behaviors that she had observed in Samantha that were
24 concerning. She also described some regressive behaviors,
25 the child talking in what she called baby talk. She was

MARY-FRAN CROSWELL, M.D. - DIRECT EXAMINATION BY MS. HODGE

105

1 unable to sleep and waking up frequently, having nightmares.

2 She'd also described some physical symptoms just

3 intermittent pain with urination over the last couple of

4 years.

5 Q. Okay. Are any of these things in and of themselves

6 indicators to you or consistent with child sexual abuse?

7 A. They are in and of themselves not specific diagnostic

8 features of child sexual abuse. It's incorporating the

9 entire evaluation process. So they wouldn't be included as
10 part of my decision-making process.

11 Q. All right. If a child had complained about burning,

12 itching, pain upon urination also while disclosing sexual

13 abuse would that lend any credibility to your - - -

14 A. It would be supportive of the history that she had

15 provided.

16 Q. All right. And what information did you gather from

17 Samantha that was pertinent to your diagnosis and treatment

18 of her?

19 A. She described being touched in her vaginal area,

20 happening on more than one occasion.

21 Q. All right. And did she state what she may have been

22 touched with? Is that part of what you need to be able to

23 treat her properly?

24 A. It is. It's important for me to help guide sexually

25 transmitted infection testing to know what part of the body

MARY-FRAN CROSWELL, M.D. - DIRECT EXAMINATION BY MS. HODGE

106

1 has touched her. She said that she was touched with his
2 nails.

3 Q. Okay. And where was that?

4 A. In the bathtub.

5 Q. Okay. And did she say when that happened?

6 A. Well, she said - - not an actual date, but when I asked
7 how many times it may have happened, she initially said she
8 couldn't remember, and then she added that - - she would say
9 ten hundred times it happened.

10 Q. Okay. And how about - - was this the touching of the
11 vaginal area? Is that where we're talking about?

12 A. Correct.

13 Q. Okay. Let's go through your physical examination of
14 her. Tell us what you do and what, if anything, you found
15 through the physical exam.

16 A. So it is a whole child assessment and just observing the
17 way Samantha - - just kind of general assessment. She was
18 very active in the room. She was moving around the room
19 frequently. She was very clingy to her care-giver, whining
20 and running around the room. And I observed - - noted that
21 just because it was a little bit atypical for a 7 year old
22 behavior in what I typically see in a 7 year old.

23 Checked her eyes and her ears, her nose, her mouth, her
24 throat, everything looked normal. Listened to her heart and
25 her lungs. I felt her stomach. That all looked normal as

MARY-FRAN CROSWELL, M.D. - DIRECT EXAMINATION BY MS. HODGE

107

1 well. Her musculoskeletal exam and her neurologic exam were
2 also normal. And then the last piece is the vaginal and
3 anal examination.

4 Q. And how do you conduct those exams?

5 A. We have the child on an exam table. And they get to
6 choose their positioning of how they allow visualization.
7 And then we use the culpascope, which is a special piece of
8 medical equipment that has a very bright light and has a
9 microscope attached as well as ability to photo document any
10 findings that we may have on the exam.

11 Q. Okay. And what area of the body are you using the
12 culpascope on?

13 A. We are using it on the vaginal area and the anal area.

14 Q. All right. And was there anything unusual in your
15 findings as far as the vaginal or anal area?

16 A. No, there was not.

17 Q. Okay. And due to the fact there was not, did that
18 negate in your mind the allegation of sexual abuse?

19 A. No. The - - with child sexual abuse many - - most often
20 there is no injury left behind to be visualized. In the
21 cases where there is an injury, oftentimes those can heal
22 very quickly. Both the vaginal and anal area are made of
23 what we call mucous, mucoso tissues. And those heal - -
24 like the inside of your mouth, heal very rapidly and don't
25 leave any scars.

MARY-FRAN CROSWELL, M.D. - DIRECT EXAMINATION BY MS. HODGE

108

1 So within a matter of days, any signs that may have
2 been there could - - may no longer be seen. In medical
3 studies, up to eighty-five percent of children who've been
4 sexually abused don't have specific findings to the sexual
5 abuse that they incurred.

6 Q. Okay. So if a child had been penetrated digitally, with
7 the finger, in the vaginal or anal area, would you have
8 expected to find a medical injury there?

9 A. Not from the history provided. She also did not provide
10 a history of seeing any injury or bleeding that would be
11 associated with something that I would be able to visualize
12 on her exam.

13 Q. Okay. And if that injury had occurred at least a week
14 to two weeks prior to your seeing her, well, actually
15 probably longer than that, a month to six weeks prior to
16 your seeing her, if there had been an injury would you
17 expect to have seen it during your exam?

18 A. No, I would not.

19 Q. What if the child disclosed that, in fact, it was penile
20 penetration to her vaginal area or her anal area?

21 A. Again, the perception of penetration can sometimes be
22 difficult in a child because contact can be made in those
23 areas without actually penetrating, you know, the vaginal
24 area. The anal area can expand and contract to accommodate
25 large objects without leaving a sign, or scar or tear.

MARY-FRAN CROSWELL, M.D. - DIRECT EXAMINATION BY MS. HODGE

109

1 Q. Okay. And if it helps at all, is there a thing that
2 maybe you could draw to kind of educate us on what a child
3 may perceive as penetration versus what medically you would
4 consider penetration of the vaginal area?

5 A. Sure.

6 Q. Okay. If you want to use that paper. And here's a
7 couple of - - to try and help your - - marker of choice.

8 MS. HODGE: May she step down?

9 Q. Do you want it to be over here or can you speak loud
10 enough from - - you might want to pull it - - can y'all see
11 this? If you're on the corner here, can you see this?

12 THE JURY: (Affirmative nods).

13 Q. Okay. All right.

14 A. So when you - - the female anatomy is more complex than
15 you really think about. On the outside, the first layer of
16 tissue that you see is the labia majora. And you have to
17 spread those apart to see the next layer of tissue, which is
18 the labia minora and the clitoris.

19 Then deeper to that you have the opening to the vagina.
20 And then above that between the clitoris and the vagina is
21 the urethra, which is the - - where urine comes out. And
22 then back behind that is the anus where bowel movements are
23 passed.

24 The vagina is, again, deep to these other layers of
25 tissues. And it's partially covered by a thin layer of

MARY-FRAN CROSWELL, M.D. - DIRECT EXAMINATION BY MS. HODGE

110

1 tissue called the hymen.

2 So in some cases of child sexual abuse there is penile
3 contact with any of these areas that may be perceived as
4 penetration when it's just penetrating these outer layers of
5 tissue, which would not be expected to leave a physical
6 finding behind on their examination.

7 Q. And during your physical examination you're actually
8 looking towards the hymen? Is that where you're looking for
9 any evidence of - - -

10 A. I'm looking - - -

11 Q. - - - penetration?

12 A. - - - at all of this area. I am looking, you know, in
13 a child - - a girl who has not gone through puberty. This
14 hymen is pretty sensitive and thin and looking specifically
15 to see if there is any irregularity, or tearing or scarring
16 of the hymenal tissue.

17 Q. Okay. And in this case Samantha did not have that, is
18 that correct?

19 A. She did not.

20 Q. Okay. Would the findings that you found, that she did
21 not have any tearing or scarring in the hymen be consistent
22 if the person, the perpetrator, had simply placed his penis
23 in between the labia majora or the labia minora or just
24 right to the surface of the vaginal opening?

25 A. Correct.

MARY-FRAN CROSWELL, M.D. - DIRECT EXAMINATION BY MS. HODGE

111

1 Q. Okay. So that would not have torn the hymen at all?

2 A. No, it would not.

3 Q. Does it take completely penetrating injury to rupture
4 the hymen?

5 A. Yes. It takes some type of penetration of some sort to
6 disrupt the hymen. It takes penetration past the hymenal
7 tissue to cause disruption of the hymenal tissue.

8 Q. Okay. Thank you. I appreciate that. If you want to,
9 you can sit back down.

10 A. Okay.

11 Q. In your experience and research that you, obviously,
12 have to keep abreast on, in your expertise have there been
13 studies and findings that children who actually have had
14 full sexual intercourse and/or been pregnant still have
15 complete hymenal tissue intact?

16 A. Correct. There is a study of adolescent females who are
17 pregnant who have normal hymenal tissue without any scars,
18 or tearing or lacerations.

19 Q. So the fact that Samantha's is intact does not
20 necessarily preclude the fact that someone could have put
21 their penis in her vagina?

22 A. I would say that it would not have been penetrated past
23 the hymenal tissue because the nature of a child who's not
24 gone through puberty is different from a child who has gone
25 through puberty.

MARY-FRAN CROSWELL, M.D. - CROSS EXAMINATION BY MS. WICKER

112

1 Q. But it would not exclude that from happening to her,
2 your findings?

3 A. Correct.

4 Q. Okay. And tell us, did you do a diagnostic work-up on
5 her? Did she have to have any other tests done?

6 A. I did do -- did screen for sexually transmitted
7 infections based on additional information that was obtained
8 from other investigating agencies.

9 Q. So you are privy to some other reports when you make the
10 recommendations for testing - - -

11 A. Correct.

12 Q. - - - for health purposes? Okay. And you asked for STD
13 testing to be done?

14 A. Yes, I did.

15 Q. Okay. Anything else that you recommended for treatment?

16 A. I apologize, I got it out of order. I had recommended
17 that she have counseling. I had recommended that there not
18 be any further contact with the alleged perpetrator at the
19 time and then recommended staffing the case with the
20 multidisciplinary team to make sure that I had all the
21 information that was needed to make a complete assessment.

22 Q. Thank you. Please answer any of Ms. Wicker's questions.

23 **THE COURT:** Ms. Wicker.

24 **Cross Examination by Ms. Wicker:**

25 Q. Good afternoon, doctor.

MARY-FRAN CROSWELL, M.D. - REDIRECT EXAMINATION BY MS. HODGE

113

1 A. Hi.

2 Q. Just a couple of questions to follow up with you. So if
3 somebody came in with burning or - - and complained of
4 burning and itching during urination, it does not
5 necessarily mean that they have experienced a sexual
6 assault, is that correct?

7 A. No, it does not.

8 Q. Even if it's a young person?

9 A. Correct.

10 Q. Okay. And you did perform both a vaginal and anal exam
11 of Samantha?

12 A. Correct.

13 Q. And you didn't see anything irregular?

14 A. Correct.

15 Q. Okay.

16 MS. WICKER: I don't have any further questions of this
17 witness.

18 MS. HODGE: One follow-up, I'm sorry.

19 THE COURT: Okay.

20 **Redirect Examination by Ms. Hodge:**

21 Q. Burning and itching in the vaginal area, when a child
22 says I have been touched down there, does that lend credence
23 to you to say - - -

24 A. It does add support to the history that she has been
25 touched multiple times that may have caused irritation

Minor

- DIRECT EXAMINATION BY MS. HODGE

114

1 resulting in her irritation that she experienced. So it
2 does support the information that she shared with me.

3 Q. Regarding sexual abuse?

4 A. Correct.

5 Q. Okay.

6 **THE COURT:** Thank you. Step down.

7 **MS. HODGE:** May she be excused, Your Honor?

8 **THE COURT:** Any objection?

9 **MS. WICKER:** No objection, Your Honor.

10 **THE COURT:** Thank you. You're excused.

11 **MS. HODGE:** The State would call Minor Your
12 Honor, may I ask that the courtroom be cleared for her
13 testimony?

14 **THE COURT:** Sure.

15 **MS. HODGE:** Okay. This is her therapist. I would ask
16 that she be allowed to stay.

17 **MADAME CLERK:** Samantha, if you'll please stop right
18 here at the end of the bench. If you'd place your left hand
19 on the Bible, please, left hand on the Bible, raise your
20 right hand.

21 Minor being
22 duly sworn testifies as follows;

23 **MADAME CLERK:** Thank you. Please be seated.

24 **Direct Examination by Ms. Hodge:**

25 Q. All right. You can move this or I can move this for

Minor

- DIRECT EXAMINATION BY MS. HODGE

115

- 1 you. What would you like? You want to try?
- 2 A. You can move it.
- 3 Q. Is that good?
- 4 A. (Affirmative nod).
- 5 Q. Okay. Now, Samantha, when we talk and when I ask you
- 6 questions, I need you to give me an answer verbally. Do you
- 7 understand that?
- 8 A. (Affirmative nod). Yes.
- 9 Q. There we go. All right. And that's because this lady
- 10 right here, she's repeating everything you say. And she
- 11 can't say (affirmative nod) into her microphone, okay?
- 12 A. (Affirmative nod).
- 13 Q. Okay?
- 14 A. Yes.
- 15 Q. Yes. Got it. All right. Let's start off with
- 16 something easy. How old are you?
- 17 A. 10.
- 18 Q. All right. And what grade are you in?
- 19 A. Fifth.
- 20 Q. Where do you go to school?
- 21 A. Slater Marietta Elementary School.
- 22 Q. Okay. So is that your last year at Slater Marietta?
- 23 A. Yes.
- 24 Q. And who is your teacher this year?
- 25 A. Ms. Cagle.

- 1 Q. Do you like Ms. Cagle?
- 2 A. Yes.
- 3 Q. Do you switch classes in fifth grade?
- 4 A. No.
- 5 Q. Okay. Will you do that next year?
- 6 A. I don't know.
- 7 Q. Okay. Will you be going to middle school next year?
- 8 A. I think I'm going to home school.
- 9 Q. Okay. All right. And who do you live with right now?
- 10 A. My mom, my step-dad, my sister and my brother.
- 11 Q. Okay. What is your step-dad's name?
- 12 A. Carl.
- 13 Q. What's your mom's name?
- 14 A. Gladys.
- 15 Q. What's your sister's name?
- 16 A. Savannah.
- 17 Q. And how old is Savannah now?
- 18 A. 16.
- 19 Q. Okay. How about your brother?
- 20 A. 15.
- 21 Q. And what's his name?
- 22 A. Alvin.
- 23 Q. All right. And do you guys have any pets?
- 24 A. Two cats and two dogs.
- 25 Q. What are their names?

Minor

DIRECT EXAMINATION BY MS. HODGE

117

1 A. Roxy, Cookie, Buster and Cinnamon.

2 Q. Now, what do you like to do when you're not at school?

3 Is there anything you like to do particularly?

4 A. Ride my bike.

5 Q. All right. Good. Your parents are not married, is that
6 right? Your mom and your dad? Your biological - - -

7 A. Uh-uh (negative).

8 Q. - - - mom and dad?

9 A. No.

10 Q. All right. And is your dad here in the courtroom today?
11 Your biological dad? Your real dad?

12 A. Yes.

13 Q. Okay. Do you call Carl your dad sometimes?

14 A. Sometimes.

15 Q. Okay. When we talk about dad, I'm speaking of Alvin
16 Arnold, your biological dad, okay?

17 A. (Affirmative nod).

18 Q. So your parents got divorced, is that right?

19 A. Yes.

20 Q. Okay. Do you remember how old you were when they got
21 divorced or what grade you may have been in?

22 A. No.

23 Q. Were you little?

24 A. Yes.

25 Q. Okay. And who did you live with when your mom and dad

1 got divorced? Do you remember?

2 A. My mom.

3 Q. Okay. At some point did you then go and live with your
4 dad after that?

5 A. Yes.

6 Q. Do you remember how old you were?

7 A. 4 or 5.

8 Q. Okay. Were you in school yet when you went to live with
9 him?

10 A. No.

11 Q. All right. Did your brother and sister go with you when
12 you went over to live with your dad?

13 A. Yes.

14 Q. Okay. And were there other people in your dad's house
15 at that time?

16 A. Him, at one point Mia came, and her grammy is all I
17 remember.

18 Q. Okay. And who is Mia?

19 A. His girlfriend at the time.

20 Q. Okay. Did anybody else - - any relative of Mia's or a
21 friend of Mia's live with you guys at some time?

22 A. Yes.

23 Q. Okay. Who was that?

24 A. Her mother.

25 Q. Okay. What did y'all call Mia's mother?

Minor

DIRECT EXAMINATION BY MS. HODGE

119

1 A. Grammy.

2 Q. And how old was grammy?

3 A. I don't know.

4 Q. Okay. Was she pretty old or not that old?

5 A. I don't know.

6 Q. All right. How about anybody else? Did Mia have a son
7 or a daughter or anybody that lived with y'all, too?

8 A. I think she had two or three sons.

9 Q. Okay. Did anybody else named Jeremy live with you?

10 A. Yes.

11 Q. Okay. And who is he?

12 A. Mia's son.

13 Q. And did he have a girlfriend?

14 A. I don't know.

15 Q. Okay. All right. So let's talk about the house that
16 you lived in with your dad. Did you have your own bedroom
17 at that time?

18 A. No.

19 Q. Did you share a bedroom?

20 A. Yes.

21 Q. Who did you share with?

22 A. Savannah.

23 Q. Okay. Tell me what your bedroom looked like on the
24 inside.

25 A. I think it had white walls. There was a red carpet

1 thing that was blocking me from her. That's all I remember.

2 And then we had beds.

3 Q. Did you each have your own bed?

4 A. (Affirmative nod).

5 Q. Okay. And the red thing, was there something separating
6 y'all's space?

7 A. Yeah. It was a red carpet. And it went like this and
8 it went like this.

9 Q. Okay. And did your brother stay in that room, too?

10 A. No.

11 Q. He had his own room?

12 A. Yes.

13 Q. All right. And what about your dad, did he ever stay in
14 that room, too? Did he sleep in that room or did he have
15 his own bedroom?

16 A. He had his own bedroom.

17 Q. All right. Tell me about the - - what you remember - -
18 were there bathrooms in the house? Was there one or more
19 than one bathroom in the house?

20 A. I think there was two.

21 Q. Was there a bathroom that you and your brother and
22 sister would normally have to use?

23 A. Yeah.

24 Q. Okay. And did that bathroom - - did it have a shower or
25 a tub?

Minor

- DIRECT EXAMINATION BY MS. HODGE

121

1 A. It had both.

2 Q. Okay. It had two separate things or one thing that
3 would take a shower and a tub?

4 A. One thing.

5 Q. Okay. And what would you normally do? Would you
6 normally take a tub bath or would you like to take a shower?

7 A. I don't remember.

8 Q. Would you ever do one time a tub and one time a shower?

9 A. Yeah.

10 Q. So it depended - - different - - -

11 A. (Affirmative nod).

12 Q. Okay. Now, can you tell me about a time when you were
13 in the bathroom that your dad came in the bathroom?

14 A. Mia was out getting dinner. Alvin and Savannah were at
15 church. And he walked in there with just boxers on. And he
16 touched my front private part and then he left.

17 Q. Okay. You said Mia was getting dinner. Was that - -
18 would she normally go get dinner for y'all?

19 A. Yes.

20 Q. Okay. And Alvin and Savannah were at church, is that
21 right?

22 A. Yes.

23 Q. Okay. Do you remember what church they went to?

24 A. Tabernacle of Faith.

25 Q. Okay. And do you remember - - was there a certain day

1 of the week it was?

2 A. Every Wednesday.

3 Q. And how come you weren't at church with them?

4 A. Because he said that the preacher was mean.

5 Q. Okay. Who said that?

6 A. My dad.

7 Q. Okay. But he let your sister and brother go, but he
8 wouldn't let you go?

9 A. Yes.

10 Q. Okay. Did you want to go?

11 A. Yes.

12 Q. And you say he came into the bathroom and touched your
13 private. Which private are we talking about?

14 A. Front.

15 Q. Okay. Were you already in the bathtub like washing
16 yourself?

17 A. Yes.

18 Q. Did he have -- you said he had his boxers on. Did he
19 ever take his boxers off in that time?

20 A. No.

21 Q. Okay. Did he ever ask you to do anything to him in the
22 bathroom?

23 A. No.

24 Q. Okay. When he touched your private in the bathroom did
25 he touch on it, or in it or something else?

Minor

DIRECT EXAMINATION BY MS. HODGE

123

1 A. On it.

2 Q. Okay. And can you tell me was there any time that your
3 dad touched you in your private areas other than in that
4 bathroom?

5 A. In his bed.

6 Q. Okay. And can you tell me what happened in his bed?

7 (Pause)

8 Q. I know it's hard. Do you need a sip of water or
9 anything or are you good?

10 A. I'm good.

11 Q. Okay. Well, let me back up a little bit. How would you
12 get into his bedroom? Would you just walk in there yourself
13 or would he call you in or what would happen?

14 A. I don't remember.

15 Q. Okay. And was his bed a bigger bed or a smaller bed?

16 A. It was a big bed.

17 Q. All right. And what would happen when you would go into
18 his bedroom?

19 A. He would ...

20 Q. Would you have your clothes on when you went in there?

21 A. Yes.

22 Q. Okay. Would he have his clothes on when you went in
23 there?

24 A. Yes.

25 Q. Okay. What would happen to your clothes?

Minor

- DIRECT EXAMINATION BY MS. HODGE

124

- 1 A. He would take them off.
- 2 Q. Okay. Which pieces of clothes?
- 3 A. Normally my pants.
- 4 Q. Okay. Would you have a top on?
- 5 A. Shirt? Yes.
- 6 Q. Okay. Would he take that off, too?
- 7 A. No.
- 8 Q. Okay. Just the bottoms?
- 9 A. (Affirmative nod).
- 10 Q. Okay. And would he take his clothes off or leave them
- 11 on or something else?
- 12 A. Sometimes, sometimes not.
- 13 Q. Okay. So what happened when he took your bottoms off?
- 14 A. Normally he would touch my front private part.
- 15 Q. Okay. And what would he touch your front private part
- 16 with?
- 17 A. His finger or his front private part.
- 18 Q. Okay. So his finger and his front private part?
- 19 A. (Affirmative nod).
- 20 Q. Okay. Did he ever touch any other part of your body
- 21 with his finger or front private part?
- 22 A. My back private part.
- 23 Q. Okay. And would it ever go inside your private part or
- 24 on the outside of your private part?
- 25 A. No, not that I remember.

Minor

- DIRECT EXAMINATION BY MS. HODGE

125

1 Q. Okay. And what about - - how about your mouth? Did
2 anything ever happen to your mouth?

3 A. Not that I remember.

4 Q. Did he ever put his private part - - his private part in
5 your mouth?

6 A. Not that I remember.

7 Q. Okay. And how many times do you think he put his
8 private part in or on your front private part?

9 A. Ten times, maybe.

10 Q. Okay. Would it happen once every week or less than that
11 or more than that?

12 A. Probably once a month.

13 Q. Okay. All right. And did you ever say anything to him
14 during any of this time, to stop or not do it?

15 A. Uh-uh (negative). I was scared.

16 Q. Did he ever say anything to you about not telling
17 anybody?

18 A. He said don't tell anybody.

19 Q. Okay. Did he tell you what would happen if you told
20 - - -

21 A. He said he'd hurt me.

22 Q. Did you believe that?

23 A. Yes, at that time.

24 Q. And what made you think that he might hurt you if you
25 told?

- 1 A. I don't remember.
- 2 Q. You just thought that?
- 3 A. I was just scared.
- 4 Q. Did you ever plan on telling anybody about it?
- 5 A. No.
- 6 Q. When your sister and brother would come home from church
- 7 would they ever - - would you ever go to them and try to let
- 8 them know what happened in some way?
- 9 A. Sometimes.
- 10 Q. Do you think that anybody in the house ever knew what
- 11 was going on or did you talk to anybody in the house?
- 12 A. I think Mia knew.
- 13 Q. You think Mia knew? And what makes you think about Mia
- 14 maybe knowing?
- 15 A. I think one time she walked in.
- 16 Q. Okay. What room did she walk into?
- 17 A. His room.
- 18 Q. Were you in there?
- 19 A. Yes.
- 20 Q. Okay. What did - - what did she see?
- 21 A. I don't remember.
- 22 Q. Okay. What makes you think that she might have seen
- 23 something?
- 24 A. 'Cause I heard them two in the bedroom fussing.
- 25 Q. Okay. So let me back up a little bit. After you would

Minor

- DIRECT EXAMINATION BY MS. HODGE

127

1 be in the bedroom and he would take your pants off, how

2 would that end? What would happen at the end?

3 A. He would make me pull my pants up and go to my room.

4 Q. Okay. Was there ever any kind of - - did he ever have
5 you take a towel and wipe off or a - - -

6 A. Sometimes.

7 Q. - - - bath? And was that - - where would that towel or
8 rag go after that?

9 A. I don't remember.

10 Q. Like the dirty clothes? Were you supposed to put it
11 anywhere or did he do it?

12 A. I don't remember.

13 Q. Okay. Did anything ever happen in your own bedroom?

14 A. Not that I remember.

15 Q. Okay. Do you remember anything ever happening on a
16 couch?

17 A. Not that I remember.

18 Q. Okay. And how did he - - how did you come about to tell
19 your mom about this? What happened that made - - -

20 A. 'Cause I didn't want him to do it again.

21 Q. You're okay. Did you need some water or anything?

22 A. Uh-uh (negative).

23 Q. Did you hit your knee?

24 A. Uh-uh (negative).

25 Q. Okay. So you didn't want him to do it again? That's

Minor

DIRECT EXAMINATION BY MS. HODGE

128

1 why you told?

2 A. Uh-huh (affirmative).

3 Q. Okay. Did you have to talk to a lot of people after
4 that about this?

5 A. Just three.

6 Q. Okay. And do you remember having to go to the - - what
7 now we call the Julie Valentine Center and sit in that room,
8 - - -

9 A. Yes.

10 Q. - - - in the interview room?

11 A. Yes.

12 Q. Okay. And did you remember talking to a lady that was
13 - - it was being videotaped and all that?

14 A. Yes.

15 Q. Okay. And she had - - she had a couple of drawings
16 about - - let me show you what's been marked State's number
17 8 and number 9, a couple of drawings with some people on it.
18 Do you remember her marking on those?

19 A. No.

20 Q. Okay. Do you remember how old you were when you went
21 over there?

22 A. No.

23 Q. Were you about 7 years old?

24 A. I don't remember.

25 Q. Okay. And you don't remember making any marks on any of

Minor

DIRECT EXAMINATION BY MS. HODGE

129

1 the pieces of paper?

2 A. No.

3 Q. Okay. All right. And now if at that point you would
4 have said that he had put his private in your mouth, would
5 that have been true at that time?

6 A. No.

7 Q. You don't remember or no?

8 A. I don't remember.

9 Q. Okay. Do you not remember what you said at all to her?

10 A. No.

11 Q. Okay. And were you ever asked to touch your dad's
12 private part with your hand or anything?

13 A. I don't remember.

14 Q. You don't remember? Is it because you don't want to
15 think about it or you just don't remember?

16 A. I don't remember.

17 Q. Okay. All right. Once you did tell your mom what your
18 dad was doing did you have to go into foster care for a
19 little bit?

20 A. Yes.

21 Q. Do you remember that?

22 A. Yes.

23 Q. Okay. And do you remember telling the people there how
24 your private area - - -

25 A. No.

Minor

- DIRECT EXAMINATION BY MS. HODGE

130

1 Q. - - - would burn, or itch or anything like that? Do you
2 remember any of that?

3 A. No.

4 Q. Okay. Do you remember being at the foster care, though?

5 A. Yes.

6 Q. All right. And after that did you get to go back and
7 live with your mom?

8 A. Yes.

9 Q. Okay. Once you told was that the last time you actually
10 saw your dad up until today?

11 A. Yes.

12 Q. So today's the first time you've actually had to see him
13 and look at him since you told?

14 A. Yes.

15 Q. And he's present in the courtroom at the Defense table?

16 A. Yes.

17 Q. Okay. I need you to just answer that one more time a
18 little bit louder.

19 A. Yes.

20 Q. All right. Hang on one second.

21 (Pause)

22 Q. All right. I'm going to ask you to answer any of Ms.
23 Wicker's questions, okay?

24 A. Okay.

25 **THE COURT:** Ms. Wicker.

Minor

CROSS EXAMINATION BY MS. WICKER

131

1 **MS. WICKER:** Thank you, Your Honor.

2 **Cross Examination by Ms. Wicker:**

3 Q. Hi, Samantha. I'm just going to ask you a few
4 questions, okay?

5 A. Okay.

6 Q. So you're living with your mom now, right?

7 A. Yes.

8 Q. Do you like living there?

9 A. Yes.

10 Q. Do you love your mom?

11 A. Yes.

12 Q. Do you want to stay with your mom?

13 A. Yes.

14 Q. Do you remember when you were living with your dad?

15 A. Yes.

16 Q. And your siblings were there, too, right?

17 A. Yes.

18 Q. Do you know why you were living with your dad?

19 A. I don't remember.

20 Q. You don't remember? Do you get along with your
21 siblings?

22 A. Sometimes.

23 Q. Sometimes. Do you talk to them?

24 A. Yes.

25 Q. Okay. Who was the first person you told about your dad

1 touching you? Was it your mom or your sister - - -

2 A. My mom.

3 Q. Your mom? Did you ever tell your sister about it? Did
4 you ever talk to her about it?

5 A. Yes.

6 Q. You did? And how - - was it before or after you talked
7 to your mom?

8 A. Before.

9 Q. Before you talked to your mom you talked to your sister
10 about it?

11 A. (Affirmative nod).

12 Q. Okay. I don't have any further questions. Thank you.

13 **THE COURT:** Anything else, solicitor?

14 **MS. HODGE:** No, sir.

15 **THE COURT:** Thank you. You can step down.

16 **MS. HODGE:** The State would call Erica VanWagner.

17 **MS. WICKER:** Your Honor, I have a legal matter to take
18 up - - -

19 **THE COURT:** Okay.

20 **MS. WICKER:** - - - about this witness.

21 **THE COURT:** Take the jury out, please.

22 (Whereupon the jury exited the courtroom at 1:34 PM)

23 **THE COURT:** Now, can the other people come back in the
24 courtroom now?

25 **MS. HODGE:** Yes, sir.

1 **THE COURT:** All right. Ms. Wicker.

2 **MS. WICKER:** Thank you, Your Honor. May it please the
3 Court. Your Honor, I understand your ruling earlier on the
4 motion for a continuance, but I just wanted to renew it for
5 the record, but - - as it relates to this witness.

6 But, Your Honor, effectively my argument here is that
7 this witness is the functional equivalent of a forensic
8 interviewer, and that would be improper bolstering. One of
9 the things I'm concerned about, she has prepared - - in
10 speaking to her yesterday she's prepared a treatment plan.
11 And I would argue that the takeaway from that is if
12 somebody's prepared a treatment plan, then they believe that
13 the person that they're treating is a victim of sexual
14 abuse.

15 Also, the solicitor informed me that she intends to
16 call this witness to testify as to her treatment of Samantha
17 and also as an expert in the area of sexual - - child sexual
18 abuse. That is, I would argue, Your Honor, the same as a
19 forensic interviewer. She treated the victim. She's going
20 to testify that she exhibited this demeanor, and that
21 demeanor would coincide with somebody who is, in fact, a
22 victim of sexual abuse..

23 And lastly, Your Honor, I would just argue that this
24 doesn't rise to a degree of medical certainty. You can't
25 say just because somebody exhibits this particular symptom,

1 then they are definitely a victim of this offense. And I
2 think that that's asking the jury to speculate, Your Honor.

3 **THE COURT:** Solicitor.

4 **MS. HODGE:** Thank you, Your Honor. The State is
5 calling this witness with the limitations that we know she
6 is not allowed to say that she believes in or that this
7 child has been sexually abused. She's going to testify that
8 she has symptoms or characteristics that are consistent with
9 a person who has been sexually abused.

10 The courts have come down on this clearly in State
11 versus - - -

12 **THE COURT:** I agree with that.

13 **MS. HODGE:** Okay.

14 **THE COURT:** Now, do I understand she's going to testify
15 that she has set up some treatment program or - - -

16 **MS. HODGE:** That usually is as a therapist when someone
17 presents with anxiety or presents with such and such,
18 they'll say we made a treatment plan for her and the
19 treatment plan is breathing techniques and blah, blah. So
20 she would be testifying - - that's her job is to assess the
21 child that ever had a psychological systematic symptom she
22 has, then we have a treatment plan for her symptoms, not for
23 her being sexually abused, but for her, you know, - - -

24 **THE COURT:** I'm not going to allow that part of her
25 testimony.

ERICA VANWAGNER - DIRECT EXAMINATION BY MS. HODGE

135

1 **MS. HODGE:** Advised about a treatment plan?

2 **THE COURT:** No, certainly not.

3 **MS. HODGE:** Okay. All right. That she is treating
4 her, that she has - - she has symptoms that are consistent
5 with and - - -

6 **THE COURT:** You can do that.

7 MS. HODGE: - - - and then we'll go on to the dynamics
8 of sex abuse delay disclosure, things such as that - - -

9 THE COURT: Yes.

10 MS. HODGE: Okay. All right.

11 **THE COURT:** All right. Ready for the jury?

12 **MS. WICKER:** Thank you, Your Honor. Yes, sir.

13 **THE COURT:** All right. Bring the jury.

14 (Whereupon the jury entered the courtroom at 1:39 PM)

15 **THE COURT:** Okay. Solicitor, you may proceed.

16 MS. HODGE: Thank you. The State calls Erica
17 VanWagner.

18 **MADAME CLERK:** Ma'am, if you'd place your left hand on
19 the Bible and raise your right hand.

20 Erica VanWagner, being
21 duly sworn testifies as follows;

22 **MADAME CLERK:** Thank you. Please be seated. Please
23 state your name for the record.

24 **MS. VANWAGNER:** Erica VanWagner.

25 Direct Examination by Ms. Hodge:

ERICA VANWAGNER - DIRECT EXAMINATION BY MS. HODGE

136

1 Q. Ms. VanWagner, what is your occupation?

2 A. I'm a mental health therapist.

3 Q. Who do you work for?

4 A. I work for the Greenville Mental Health Center.

5 Q. What is the focus of your practice?

6 A. I provide individual and family therapy for children and
7 families involved with Department of Social Services.

8 Q. And if Department of Social Services is involved, what
9 type of children's issues are you dealing with?

10 A. Primarily issues relating to physical, sexual abuse
11 and/or neglect, maltreatment of children.

12 Q. What type of educational background do you have?

13 A. I have a bachelor's degree in social work as well as a
14 master's degree in social work.

15 Q. And do you have any licenses?

16 A. I'm a licensed master social worker.

17 Q. Okay. What is your employment experience?

18 A. I'm - - I have been with the Department of Mental Health
19 for or since 2000 and have been working with children in
20 this capacity since 2001.

21 Q. All right. And approximately how many clients do you
22 believe that you have counseled throughout your twelve,
23 thirteen years now?

24 A. Approximately six hundred.

25 Q. Okay. And do you have an occasion to consult with other

ERICA VANWAGNER - DIRECT EXAMINATION BY MS. HODGE

137

1 professionals in your field as it relates to child sexual
2 abuse and the treatment thereof?

3 A. Yes. I participate in multidisciplinary team staffings
4 and our agency staffings. And I've done consultation like
5 peer consultation through MUSC.

6 Q. All right. And do you attend additional trainings at
7 seminars yourself?

8 A. I do. I'm required by my licensure to get at least
9 forty hours every two years. And I typically obtain those
10 hours for continuing education in the area for which I
11 provide treatment.

12 Q. Which is primarily abuse, neglect, sexual abuse - - -

13 A. Correct, trauma.

14 Q. Trauma to children, okay. And are there any - - do you
15 keep up with articles, journals, case studies, reviews to
16 keep you abreast of these issues if you're not in a
17 continuing education class just on a day to day, week to
18 week, month to month?

19 A. I do regularly kind of review articles, child abuse and
20 neglect, the International Journal, child maltreatment.
21 There's several different article, journals that I read.

22 Q. All right. Have you ever been qualified as an expert in
23 a court of law before?

24 A. I have.

25 Q. All right. And how many times has that happened?

ERICA VANWAGNER - DIRECT EXAMINATION BY MS. HODGE

138

1 A. Three times.

2 Q. All right.

3 MS. HODGE: And at this time, Your Honor, we would move
4 to admit Ms. VanWagner as an expert in child sex abuse
5 dynamics and the treatment of children with sex abuse.

6 THE COURT: Any voir dire?

7 MS. WICKER: No, Your Honor.

8 THE COURT: She's qualified. Proceed.

9 MS. HODGE: Thank you.

10 Q. Do you know the victim in this case, Minor [REDACTED]

11 A. I do.

12 Q. And how do you know her?

13 A. I'm her therapist.

14 Q. When did she first come to you for treatment?

15 A. Her case was opened at Greenville Mental Health Center
16 in February of 2011. And she was transferred to me for
17 treatment - - I believe I saw her for the first time October
18 9th of 2012.

19 Q. So approximately a year you have been working with her?

20 A. Correct.

21 Q. Okay. How many sessions have you had with her?

22 A. Approximately twenty to twenty-two sessions at this
23 time.

24 Q. Okay. And is she continuing to see you for therapy or
25 is she completed?

ERICA VANWAGNER - DIRECT EXAMINATION BY MS. HODGE

139

1 A. She is continuing to see me for therapy.

2 Q. Let's talk a little bit about trauma. I think we talked
3 about that's what you specialize in. And tell me, what is
4 the definition of trauma?

5 A. So trauma is basically an event or a series of events
6 that can be physically, emotionally, mentally harmful to a
7 child or a person that can result in long-term effects.

8 Q. All right. And could sexual abuse be a traumatic event
9 for a child?

10 A. Yes, it can.

11 Q. And what symptoms may you see in a child that has been
12 sexually abused?

13 A. Oftentimes there are changes in mood, changes in
14 behavior, there could be changes in their sleep patterns.
15 Sometimes there is regressive behavior where they kind of go
16 back to an earlier stage of development. Oftentimes there's
17 fear, fear of the offender, fear of a specific gender,
18 things like that.

19 Q. Okay. What, if any, trauma symptoms did Samantha
20 present with when you began with her or what has come to
21 your attention while you have been treating her?

22 A. There was initially reports of sexualized behaviors.
23 There was also nightmares, intrusive thoughts or flashbacks,
24 again, like the bad dreams. She expressed fear.

25 One sign or symptom of post traumatic stress disorder

ERICA VANWAGNER - DIRECT EXAMINATION BY MS. HODGE

140

1 is avoidance, which is - - is a classic - - associated with
2 trauma. So avoiding thoughts and feelings, avoiding things
3 that remind them of the trauma, trying to forget aspects of
4 the trauma. And these were some of the reasons that she
5 would be transferred to me for treatment.

6 Q. Okay. And you learned of these things through Samantha
7 and through her mother or care-giver?

8 A. Correct.

9 Q. Okay. And were these symptoms, in your opinion,
10 consistent with a person who had been sexually abused?

11 A. Yes, they were.

12 Q. Were they also consistent with a person who had post
13 traumatic stress disorder?

14 A. Correct. Yes.

15 Q. Okay. And you talked a little bit about those behaviors
16 when you said sexualized behavior. What - - what exactly
17 does that mean?

18 A. Well, it can mean different things. For a kid that is
19 young, that could be kind of sexual knowledge outside of
20 their age or developmental level, engaging in sexual acts
21 for a young child of her age, you know, questions, concerns
22 that didn't appear to be typical for someone her age.

23 Q. Okay. And the avoidance, you said, is a large piece of
24 PTSD.

25 A. Correct. That's one of the clusters of symptoms.

ERICA VANWAGNER - DIRECT EXAMINATION BY MS. HODGE

141

1 Q. Okay. And in your treatment and your times with
2 Samantha, had she been avoidant in discussing anything that
3 related to what she came to see?

4 A. Very much so. That was, as I said, the reason that she
5 was transferred to me was she had been with a previous
6 therapist and that therapist was dealing with a lot of
7 avoidance on her part and asked for me to, again, providing
8 treatment to her to kind of help with that avoidance. But
9 that was a common symptom that she does present with.

10 Q. She doesn't want to talk about it, - - -

11 A. Correct.

12 Q. - - - basically?

13 A. Yes.

14 Q. All right. Let's talk a little bit about child sex
15 abuse dynamics in general. Are you familiar with the term
16 delayed disclosure?

17 A. Yes.

18 Q. Tell the jury, please, what that is.

19 A. So delayed disclosure is basically when the child
20 doesn't immediately disclose any sort of abuse or trauma
21 that they're experiencing.

22 Q. Okay. And in your experience is it common or uncommon
23 for children who've been sexually abused to delay
24 disclosure?

25 A. It's very common for a child to delay disclosure.

ERICA VANWAGNER - DIRECT EXAMINATION BY MS. HODGE

142

1 Q. All right. And what factors might play a role in why
2 they delay disclosing?

3 A. Oftentimes a child may be fearful. They may not be in a
4 safe place to be able to report the abuse. Sometimes their
5 - - the victim's fear, shame, guilt are emotions that they
6 are feeling about that particular experience.

7 Oftentimes the age of the victim is a factor in when
8 they disclose. The severity of the abuse can be a factor in
9 whether they disclose immediately. And any sort of threats,
10 again, that kind of factors into that fear that they may be
11 experiencing.

12 Q. Okay. Would it make a difference if the perpetrator is
13 a family member, whether they would disclose or delay
14 disclosing?

15 A. A victim is typically more likely to delay disclosure if
16 it is a family member.

17 Q. Okay. In your experience is it more often a family
18 member that abuses a child versus a stranger?

19 A. It is more often for a family member or a close family
20 friend to be the perpetrator of abuse.

21 Q. And are there reasons for that?

22 A. Typically someone that is close, they have a previously
23 established trusting relationship with the victim. They
24 have more access to the victim. And, you know, sexual abuse
25 is a - - they have to establish that trust to be able to

ERICA VANWAGNER - DIRECT EXAMINATION BY MS. HODGE

143

1 maintain the secrecy and things involved with childhood
2 sexual abuse.

3 Q. Do children actually internalize any of these things as
4 far as if I tell, you know, it's not going to hurt somebody
5 or is there something like that going on in their mind
6 before they decide to tell people? Breaking up a family or
7 anything - - -

8 A. Oh, absolutely. That, I think, is the emotions that I
9 was speaking to, that fear of the impact of their
10 disclosure, fear of what may happen to them. You know,
11 oftentimes if they are being threatened, fear of what may
12 happen to someone else, you know, if they were to share.

13 Q. If they had witnessed any type of violence, or any kind
14 of domestic violence, or anything like that, would that play
15 into their wanting to stay quiet or be fearful?

16 A. That could potentially make that fear more real if they
17 have seen that person be abusive to someone else and they
18 have been threatened, then they are more likely to believe
19 that threat.

20 Q. Is there actually a stage or a process for disclosure?

21 A. Yes. There - - the disclosing is typically in a
22 process. So it usually begins with denial. Then it leads
23 to more tentative disclosing. And then kids then go into a
24 more active stage of disclosure.

25 Q. Okay. When you say denial, if someone asks, hey, is so

ERICA VANWAGNER - DIRECT EXAMINATION BY MS. HODGE

144

1 and so messing with you, and they say, no, - - -

2 A. Correct.

3 Q. - - - when they really, in fact, are being abused?

4 A. Correct. They'll deny the abuse is taking place.

5 Q. Okay. And then you say there's a tentative piece. Is

6 there something in there along with piecemeal disclosure,

7 too? Can you describe kind of what that is or where that

8 falls in here?

9 A. That would be part of that tentative disclosure. So

10 they may disclose some things in one setting, something

11 different in another setting. They may disclose pieces of

12 that particular trauma in different settings.

13 Usually during that tentative disclosure stage they are

14 tentative to disclose. And so they haven't yet moved into

15 that more active stage. So they are not quite as

16 comfortable in that disclosure.

17 Q. Would they be possibly testing the person that they're

18 telling as well, making sure that's a safe source or - - -

19 A. Correct. You know, to assess the safety of their

20 disclosure, whether they'll be believed, whether they'll be

21 supported, whether they'll be safe after making that

22 disclosure.

23 Oftentimes, too, there's an accidental disclosure. So

24 what happens is, for example, they may exhibit the

25 sexualized behavior, someone sees that behavior and then

ERICA VANWAGNER - DIRECT EXAMINATION BY MS. HODGE

145

1 begins to ask questions, and they are more tentative as they
2 are giving that disclosure.

3 Q. Okay. 'Cause they're not wanting to come right out with
4 it, they're being basically confronted by it?

5 A. Right.

6 Q. Okay. All right. And as far as delayed disclosure, in
7 your experience, are there certain time-frames that that
8 falls in? Have you seen delayed disclosure after a day, a
9 week, a month?

10 A. It varies wildly. I have experience with some that take
11 several weeks to disclose, some that have taken several
12 years, and I even have a case where a grandparent in her 80s
13 has disclosed her childhood sexual abuse and had not
14 previously told anyone.

15 Q. And are there some children that just never tell?

16 A. There are some children that never tell.

17 Q. So would it be common or uncommon in your experience for
18 a child to tell, say, the DSS worker an initial piece of
19 what happened, then tell a forensic interviewer another
20 piece or a separate piece? Is that what we're talking about
21 here?

22 A. Right. That is still part of that tentative disclosure
23 stage that a child may be in.

24 Q. Okay. And in your treating of Samantha, has she moved
25 into the full free disclosure stage?

ERICA VANWAGNER - DIRECT EXAMINATION BY MS. HODGE

146

1 A. She's still very avoidant. She has - - she is much more
2 in the active stage of disclosure and is reporting details
3 of what has happened.

4 As you can imagine, talking about such personal
5 experience and such a difficult experience, it's going to be
6 hard for anybody, much less someone that is a very young
7 age. So I think that also speaks to the - - that piecemeal
8 disclosure that you were asking about that, you know, even
9 though she's directly being asked questions, having to give
10 such significant details is very difficult to do.

11 Q. And is disclosing the abuse traumatic to a child as
12 well?

13 A. Yes, it is.

14 Q. So the abuse itself can be traumatic, but then - - -

15 A. Disclosing it can also be traumatic. You're having to
16 re-experience and relive those memories, those experiences,
17 which were previously traumatic.

18 Q. And is there a time or would there be times in your
19 experience, common or uncommon, for kids to then want to
20 deny that things actually did happen?

21 A. Yes.

22 Q. They want to avoid - - put it out of their brain?

23 A. And just forget that it ever happened, right.

24 Q. All right. Did Samantha disclose to you that she was
25 sexually abused?

ERICA VANWAGNER - CROSS EXAMINATION BY MS. WICKER

147

1 A. She has disclosed.

2 Q. Okay. And did she tell you when or where this abuse
3 took place?

4 A. She did. She reported that it took place between the
5 ages of 5 and 7.

6 Q. Did she tell you where particularly it occurred?

7 A. At her father's home.

8 Q. Did she give any locations in the home to you?

9 A. She identified the bathroom, her bedroom and her
10 father's bedroom.

11 Q. And when Samantha was talking with you did she use age
12 appropriate language to discuss what was happening with her
13 and described - - -

14 A. She did. She used terms as private parts, finger and
15 butt.

16 Q. And will Samantha be needing to come back to you for
17 more therapy?

18 A. She will be continuing treatment after today, yes.

19 Q. Okay. Thank you. Please answer any of Ms. Wicker's
20 questions.

21 **THE COURT:** Ms. Wicker.

22 **MS. WICKER:** Thank you, Your Honor.

23 **Cross Examination by Ms. Wicker:**

24 Q. So, Ms. VanWagner, you began meeting with Samantha in
25 April of 2012?

ERICA VANWAGNER - REDIRECT EXAMINATION BY MS. HODGE

148

1 A. In October of - - -

2 Q. October, excuse me, October of 2012?

3 A. Yes.

4 Q. Had you met with her prior to that time?

5 A. I had not met with her.

6 Q. Okay. You have listed several symptoms that you

7 observed in Samantha including avoidance, fear, and

8 nightmares, and those sorts of things, correct?

9 A. Correct.

10 Q. Could somebody display those behaviors who was not, in
11 fact, a victim of sexual trauma?

12 A. They could, yes.

13 Q. Okay. So it's not conclusive that she suffered such a
14 trauma just because she displays those symptoms, correct?

15 A. Not based on those symptoms alone, no.

16 Q. Okay. Thank you.

17 **MS. WICKER:** I don't have any further questions, Your
18 Honor.

19 **THE COURT:** Anything in reply?

20 **MS. HODGE:** I'm sorry, just one.

21 **Redirect Examination by Ms. Hodge:**

22 Q. Those symptoms would be a result of trauma, would that
23 be correct?

24 A. Correct. And they are consistent with child sexual
25 abuse.

ERICA VANWAGNER - REDIRECT EXAMINATION BY MS. HODGE

149

1 Q. Okay. Thank you.

2 THE COURT: Thank you. Step down.

3 MS. HODGE: Thank you, Your Honor. The State would
4 rest.

5 THE COURT: Okay. Take the jury out, please.

6 (Whereupon the jury exited the courtroom at 1:56 PM)

7 THE COURT: Okay. Any motions?

8 MS. WICKER: Yes, Your Honor. For the record, I make a
9 motion for a directed verdict based on the evidence merely
10 raising a suspicion as to Mr. Arnold's guilt.

11 THE COURT: And I'd have to deny that motion.

12 MS. WICKER: Thank you, Your Honor.

13 THE COURT: All right. You'll have some testimony?

14 MS. WICKER: I do, Your Honor. And just for scheduling
15 purposes there is - - one of our witnesses is in class
16 today.

17 THE COURT: Okay.

18 MS. WICKER: She will not be available until 8:30 in
19 the morning. I have Mr. Arnold and Jeremy Parsons who would
20 be testifying. If she - - Mia Collins would be the other
21 witness I would want to call. She's the one that's in court
22 - - -

23 THE COURT: All right. So we can get some testimony in
24 today and the last one tomorrow?

25 MS. WICKER: Yes, Your Honor, if that's agreeable to

1 you.

2 **THE COURT:** That's fine.

3 **MS. WICKER:** Okay.

4 **THE COURT:** That's fine.

5 **MS. WICKER:** And one thing I just want to clarify, Your
6 Honor. I know that we had talked about not getting into the
7 prior sexual abuse and prior accusations of physical abuse.
8 A couple of the State's witnesses have brought up that Mr.
9 Arnold wanted his children in emergency protective custody
10 rather than with their mother. I would like to be able to
11 have him explain why, but the basis of that is that they had
12 been - - there's an allegation of sexual abuse in her home.
13 That's why he got custody of them. And I don't know if
14 there's a way that I could ...

15 **THE COURT:** Solicitor.

16 **MS. HODGE:** I believe the way it's actually stated in
17 the - - what he responded to Investigator Hubert was that he
18 did not - - he would rather have them in foster care, he did
19 not want his children to remain with the mother. And I
20 thought it was in the DSS report, something to the effect
21 that they were - - she was putting ideas and their head was
22 basically what I thought his response was.

23 He does have the children because of the previous
24 allegation of abuse by a babysitter, but he's been letting
25 the mother have visitation for over a year. So I don't know

1 that it's because she was part of an investigation that two
2 of his other children were sexually abused. I think that
3 would get irrelevant, outside the scope and would cause a
4 lot of confusion to the jury about who's doing what and
5 what's happening here.

6 **THE COURT:** Well, you're the one that brought out the
7 fact that - - why he or that he refused to - - -

8 **MS. HODGE:** He refused to let them go with the mom.

9 **THE COURT:** Well, doesn't he have a right to explain
10 why?

11 **MS. HODGE:** I think he can explain that there was a - -
12 maybe he could explain there's a prior DSS case, and she
13 wasn't to be trusted, or she didn't take care, or something
14 about the mom, but getting into the other - - -

15 **THE COURT:** How far do you want to go with that?

16 **MS. WICKER:** Well, I mean, obviously, I do believe,
17 Your Honor, I would like to be able to bring up that there
18 was an allegation of sexual abuse while the children were in
19 the mother's custody. You know, he has a right to - - we
20 have a right to present a complete defense. I think he has
21 a right to explain, otherwise, it just sounds like he just
22 didn't, you know, he'd rather have his kids in foster care
23 - - -

24 **THE COURT:** All right. I believe I agree with you that
25 he has a right to explain so far what you've told me.

1 MS. WICKER: Okay.

2 THE COURT: But now going beyond that, - - -

3 MS. WICKER: I understand. I will certainly inform him
4 that that is as far as we go - - -

5 THE COURT: I think he's got a right to do that.

6 MS. HODGE: Okay. I guess my - - and I understand your
7 ruling. My position or suggestion would have been that mom
8 was - - this was about mom's failure to protect. I don't
9 know that the basis for why mom failed to protect is going
10 to be anything more than prejudicial and it's going to throw
11 - - -

12 THE COURT: All right.

13 MS. HODGE: - - - throw confusion out there. But - -
14 and this child, this victim was not one of those children.

15 THE COURT: Okay. I'm going to let her do - - -

16 MS. HODGE: Okay.

17 THE COURT: Go so far as she said.

18 MS. HODGE: Okay.

19 MS. WICKER: Okay. Thank you, Your Honor.

20 THE COURT: All right. We'll take a short recess.

21 MS. WICKER: Thank you, Your Honor.

22 (Whereupon court was in recess at 2:01 PM)

23 (Whereupon court resumed at 2:12 PM)

24 THE COURT: Would counsel approach just a minute?

25 (Whereupon a bench conference was held off the record)

1 **MS. WICKER:** Judge, in speaking to Mr. Arnold, if there
2 is - - if you are willing to let him testify tomorrow, he
3 would prefer to do that. I do have one witness, and I don't
4 - - it should be fairly brief. I don't know if you want to
5 - - I mean, he can testify right now if that's what you want
6 him to do, but he just asks respectfully that - - -

7 **THE COURT:** No, we're going to get as much testimony in
8 - - -

9 **MS. WICKER:** Okay.

10 **THE COURT:** - - - today as we can.

11 **MS. WICKER:** Okay.

12 **THE COURT:** I'm kind of reluctant to go until tomorrow,
13 but - - -

14 **MS. WICKER:** I know. I appreciate it, Your Honor.

15 **THE COURT:** Okay.

16 **MS. HODGE:** Are you going to advise him of his rights
17 or do you not need to do that as far as testifying or not
18 testifying? Did he - - -

19 **MS. WICKER:** He will be testifying, Your Honor, if you
20 want to go ahead and do that.

21 **THE COURT:** No, I don't - - if you want me to, I will,
22 but...

23 (No response)

24 **THE COURT:** Okay. Bring them on.

25 (Whereupon the jury entered the courtroom at 2:14 PM)

25 Q. Okay. When you lived with them did Mr. Arnold have

JEREMY PARSONS - DIRECT EXAMINATION BY MS. WICKER

155

1 custody of his children?

2 A. He did.

3 Q. Did you ever interact with the children?

4 A. On a daily basis.

5 Q. Okay. Did you observe anything about their behavior,
6 how they acted?

7 A. For the most part they were just normal kids running
8 around. They all -- it just depends like on the weekends
9 it did change. They would leave and go to their mother's
10 house. Everything seemed to be fine. When they came back
11 they were like they were vampires. They didn't want to come
12 out of their room. Usually they would want to wrestle with
13 me and stuff of that nature. They didn't want anything to
14 do with me at all.

15 Q. Okay. Did you ever work with Alvin Arnold?

16 A. I did. He got me my job.

17 Q. Okay. Where was that?

18 A. Greenville News.

19 Q. What were y'all doing for the Greenville News?

20 A. We were printing the newspapers.

21 Q. Were you both printing the newspapers?

22 A. Correct.

23 Q. What kind of work schedule did y'all have together?

24 A. It varied. When I first got my job, he went in before I
25 did. I would come in at like ten at night. We figured out

JEREMY PARSONS - DIRECT EXAMINATION BY MS. WICKER

156

1 that that was really hard for me because it was hard for me
2 to find a ride because I did not have a car at the time.

3 Q. Okay. What time was he going in?

4 A. It depends on what day.

5 Q. Okay. Would it be - - would he be working a night shift
6 or - - -

7 A. Night shift.

8 Q. Night shift?

9 A. Yeah.

10 Q. Do you know - - how about on Wednesdays, when would he
11 go in to work?

12 A. Wednesdays was the prepack day. He typically had to be
13 at work at five.

14 Q. Okay. So what time would he leave the house?

15 A. Around 3:30 because he likes to sit there and get
16 affiliated with everything and drink coffee.

17 Q. So how long after you had started at Greenville News did
18 you start working the same shift as - - -

19 A. Within probably two weeks.

20 Q. So what time would you then go in on Wednesdays?

21 A. I would go in with him at 3:30. I didn't like it, but,
22 you know, when you ain't got a ride, you've just got to go
23 when they do.

24 Q. Okay. What time would you get off from work typically?

25 A. Typically it would be two to three in the morning

JEREMY PARSONS - CROSS EXAMINATION BY MS. HODGE

157

1 depending on if we finished at that time. If we did not,
2 we'd stay until six in the morning.

3 Q. Okay. To your knowledge did Mr. Arnold work every day?

4 A. He did. I believe he had one day off, which I was off
5 with him.

6 Q. To your knowledge was Mr. Arnold ever at home alone with
7 Samantha?

8 A. To my knowledge, no.

9 Q. Okay. To your knowledge did he ever bathe her?

10 A. No, no one did.

11 Q. To your knowledge did he ever put her to bed?

12 A. No. He would tell her to go to bed, but he wouldn't
13 actually put her to bed.

14 Q. To your knowledge did he ever touch her in any sort of
15 sexual manner?

16 A. No, ma'am.

17 Q. To your knowledge did he ask her to touch him in any
18 sort of sexual manner?

19 A. No, ma'am.

20 Q. Okay. Thank you, Mr. Parsons. I don't have any further
21 questions. Just answer whatever Ms. Hodge has for you.

22 **THE COURT:** All right. Solicitor.

23 **MS. HODGE:** Okay.

24 **Cross Examination by Ms. Hodge:**

25 Q. And you started working for the paper when?

JEREMY PARSONS - CROSS EXAMINATION BY MS. HODGE

158

1 A. Roughly three to four years ago.

2 Q. When exactly?

3 A. I would say that would be 2010, 2009, somewhere in that
4 area.

5 Q. Okay. So December 2008 you were not working for the
6 paper?

7 A. I was not. I was unemployed and I was living with them
8 in their livingroom.

9 Q. Okay. In December of 2008?

10 A. Yes.

11 Q. Okay. And you didn't start working until possibly 2010?

12 A. Somewhere around there. It wasn't -- it wasn't a big
13 gap between when I actually started working.

14 Q. Okay. So you're just living with your mom's boyfriend?

15 A. Him and my mother and the children.

16 Q. Right.

17 A. That's the reason why I stayed in the livingroom.

18 Q. Okay. And you stayed in the livingroom?

19 A. That's correct.

20 Q. You were not in the bedroom area of the --

21 A. No.

22 Q. -- children or the Defendant?

23 A. No.

24 Q. Okay. And you're saying that the 6 year old -- the 5
25 and 6 year old child, Samantha, was just told to put herself

JEREMY PARSONS - CROSS EXAMINATION BY MS. HODGE

159

1 to bed at night?

2 A. She would be -- she would be told to go to wash up
3 after they ate, asked if she had any kind of homework or
4 anything like that. And I believe she was in kindergarten
5 at the time. So it was mainly coloring. And then she was
6 put to bed by my mother, if anybody put her to bed. But
7 most the time he would tell her to go to bed, and that was
8 at 8:00 is what time she had to be in bed because --

9 Q. Why wouldn't her own father put her to bed?

10 A. He was actually kind of a scrooge towards them as far as
11 -- he was really, really strict about the type of clothes
12 they could wear, nothing revealing whatsoever. It was not
13 allowed just for the simple fact of what's going on right
14 now.

15 Q. Um-hum (affirmative). Well, here's my question.

16 A. Um-hum (affirmative).

17 Q. Why couldn't a child's own father put the child who's 5
18 or 6 years old to bed when their biological mother lived
19 somewhere else? What -- there was no problem with him
20 putting her to bed, right?

21 A. There wouldn't have been no problem, but it's kind of
22 hard to do if you're at work at 8:00.

23 Q. Okay. But how would he tell her to go to bed if he's at
24 work?

25 A. On his day off. We did have at least a day off.

JEREMY PARSONS - CROSS EXAMINATION BY MS. HODGE

160

1 Q. Okay. So the one day he had at home he wouldn't even
2 put her - - -

3 A. He would be mainly - - -

4 Q. - - - to bed himself?

5 A. He would be the one in control of them. And, no, he
6 would not put her to bed himself.

7 Q. And he would never be alone with his daughter?

8 A. As far as my knowledge.

9 Q. From what you know he was never - - -

10 A. That's correct.

11 Q. - - - alone with his own daughter?

12 A. Me and him did associate a lot with each other, we did
13 work together, we did do a lot of things together. I'm not
14 sitting here saying that I was around him 24/7 because I'm
15 not his parent..

16 Q. Right. You don't really know what he did when you
17 weren't around, do you?

18 A. I do know that there was people in the house because my
19 grandmother also stayed there.

20 Q. That's not my question to you. My question is you don't
21 know what he did when you weren't - - -

22 A. When I am not there, no, I could not say what he did.

23 Q. And you have no idea? And you are his wife's son?

24 A. That's correct.

25 Q. All right. That's all I have.

ALVIN ARNOLD - DIRECT EXAMINATION BY MS. WICKER

161

1 **THE COURT:** Anything in reply?

2 MS. WICKER: No, Your Honor.

3 **THE COURT:** Thank you. You can step down.

4 A. Yes, sir.

5 THE COURT: Okay.

6 **MS. WICKER:** Thank you, Your Honor. The Defense calls
7 Alvin Arnold to the stand.

8 **MADAME CLERK:** Sir, please place your left hand on the
9 Bible and raise your right hand.

10 **Alvin Arnold**, being duly
11 sworn testifies as follows;

12 **MADAME CLERK:** Thank you. Please be seated. Please
13 state your name for the record.

14 MR. ARNOLD: Alvin D. Arnold.

15 Direct Examination by Ms. Wicker:

16 Q. Mr. Arnold, how old are you?

17 A. I am 37 now.

18 Q. What kind of work have you done in the past?

19 A. I've done mill work, I've done carpenter work, I've done
20 all different types of metal work. I worked in - - -

21 Q. Where was the last place that you worked?

22 A. The last place I worked?

23 Q. Um-hum (affirmative).

24 A. It was a metal place.

25 Q. Okay. How many kids do you have?

ALVIN ARNOLD - DIRECT EXAMINATION BY MS. WICKER

162

1 A. I have three.

2 Q. Are you - - I know you were divorced, but are you
3 remarried now?

4 A. Yes.

5 Q. Okay. To whom?

6 A. To Mia Arnold that was Mia Collins.

7 Q. Okay. Let me ask you a little bit about how would you
8 describe how your divorce went from your ex-wife?

9 A. It did not went [sic] good.

10 Q. Okay. Would you say it was an amicable thing,
11 contentious?

12 A. Nah, it was a battle, that's what I would say, between
13 each other.

14 Q. Okay.

15 A. Concerning the kids.

16 Q. Okay. Who initially had custody of - - -

17 A. She did.

18 Q. Okay. When - - do you know approximately when you were
19 awarded custody?

20 A. Not offhand I don't. I don't know the exact date. It's
21 not in front of me. But ...

22 Q. That's okay.

23 A. I can't - - -

24 Q. Let me ask you this. So we've heard a lot of testimony
25 about how when you were approached by law enforcement and

ALVIN ARNOLD - DIRECT EXAMINATION BY MS. WICKER

163

1 DSS that you didn't want your children going into - - going
2 with their mother, you wanted them going into emergency
3 protective custody. Why was that?

4 A. Because that was court ordered by me by the other court
5 ordered case. And let me see how I can explain this. They
6 was - - the other two - - the other two was sexually
7 assaulted. So I was - - I just didn't want - - -

8 Q. Okay.

9 A. - - - without - - and they was in her - - -

10 Q. Okay. Just because there was an allegation of - - -

11 A. Yeah.

12 Q. - - - sexual abuse within the mother's household?

13 A. Yes.

14 Q. Okay. So at your house how many people were living in
15 the home?

16 A. There was me, my wife, three kids, my step-son, his wife
17 or girlfriend at that time, now it is getting ready to be
18 his wife, and her mama, - - -

19 Q. Okay.

20 A. - - - Ethel Bailey.

21 Q. Okay. How would you describe yourself as a parent?

22 A. I'm a strict parent.

23 Q. Okay. What was your observation of the children's
24 desire to live with you as a parent?

25 A. When I talked to them?

ALVIN ARNOLD - DIRECT EXAMINATION BY MS. WICKER

164

1 Q. Um-hum (affirmative).

2 A. There's one that wanted to and the other two that wanted
3 to live with their mother.

4 Q. Okay. What - - did you observe any distinctive
5 behaviors - - -

6 A. Okay. Yes, I know what you're talking about now. I'm
7 sorry. I didn't understand the question. Let me rephrase
8 my answer to that question - - my answers to that question.

9 They was fine when they was with me for the two weeks.
10 They played around, we had fun, we went swimming, we done
11 whatever. Then when they went and seen the mama over the
12 weekend, they would come back and be afraid of me.

13 I would like walk down the hall and they would start
14 flinching at me like I was doing something to them. And I
15 asked them why are you doing that now? I knew why they was
16 doing that, but I wanted them to tell me, but they never
17 would.

18 Q. How often did you observe that behavior?

19 A. Every time they come back from their mama's house.

20 Q. So we've heard testimony that everyone but you and
21 Samantha would leave the home on Wednesdays. Were you ever
22 home alone with her on Wednesdays?

23 A. Was I ever alone at home?

24 Q. Um-hum (affirmative).

25 A. If I said no I would be lying. Yes, I would. There are

ALVIN ARNOLD - DIRECT EXAMINATION BY MS. WICKER

165

1 times that I would be at home, probably once every six
2 months there home alone with her.

3 Q. Okay. Well, let me ask you about the church. Who would
4 go to church on Wednesday evenings?

5 A. I would let my older two go to church.

6 Q. Would you let Samantha go to church?

7 A. No.

8 Q. Okay. Why not?

9 A. The reason was is she was in pre K-4, - - -

10 Q. Okay.

11 A. - - - which a teacher sent me an interview to come talk
12 to her. And she said since Samantha was not paying
13 attention in school, she was acting out - - -

14 **MS. HODGE:** I'm going to object to anything that a
15 teacher is saying - - -

16 **THE COURT:** Yeah, I sustain the objection.

17 A. Okay. How can I phrase that?

18 Q. It's okay. So why couldn't she be at church?

19 A. Because it was ordered to me to make sure she went to
20 bed by 7:00.

21 Q. Okay. Well, how long was the church program?

22 A. It started from six to nine or something like that,
23 seven to nine. The bus come and picked them up and dropped
24 them back home.

25 Q. Okay. Let me ask you also, how many bathrooms are in

ALVIN ARNOLD - DIRECT EXAMINATION BY MS. WICKER

166

- 1 your home?
- 2 A. In that home that I lived in?
- 3 Q. Um-hum (affirmative).
- 4 A. There was two.
- 5 Q. There were two? Which one would Samantha bathe in?
- 6 A. She would bathe in the one that they bathed in in the
- 7 hallway that you see on the pictures.
- 8 Q. So it's in the hallway?
- 9 A. Yes.
- 10 Q. Where's the other one?
- 11 A. It's in my master room in the back of the house to the
- 12 right hand side.
- 13 Q. Do you have to go through the master bedroom to get to
- 14 that other bathroom?
- 15 A. Yes.
- 16 Q. Okay. Would anybody - - well, let me ask you, did you
- 17 ever help her bathe?
- 18 A. No, I have not.
- 19 Q. Okay. Would anybody?
- 20 A. I did help her bathe when she was 4. When she turned 5,
- 21 I didn't.
- 22 Q. Okay. Would anybody bathe her - - -
- 23 A. Yes. If she - - at 5 years old I asked Mia, her mama,
- 24 or I asked Jeremy's wife to do it.
- 25 Q. Okay. Where did Samantha sleep?

ALVIN ARNOLD - DIRECT EXAMINATION BY MS. WICKER

167

1 A. She slept in her bed in her room.

2 Q. Did she share a room with anybody?

3 A. Yes, she shared a room with her sister.

4 Q. Would they sleep in the same room most nights?

5 A. Every night.

6 Q. Every night? Who would put Samantha to bed?

7 A. I would tell her to go to bed. I would walk to the

8 door, she would get in bed. I would call through the night

9 and tell them - - both of them, good night, I love you, I'll

10 see you in the morning. And that would be far as I would

11 go. Would I physically put her in bed? No.

12 Q. Okay.

13 A. Because at that age, she did it herself. She is a smart

14 girl.

15 Q. Okay. So you - - she - - told her to go to bed because

16 she could do it herself?

17 A. Yes.

18 Q. Okay. Now, let me ask you about working at the

19 Greenville News, okay?

20 A. Um-hum (affirmative).

21 Q. When did you start working for the Greenville News? Do

22 you remember?

23 A. It was - - I worked at BMW, left BMW, no, I worked

24 Greenville then went to BMW. It was in that time period.

25 When I - - I had to stop Greenville News to find another job

ALVIN ARNOLD - DIRECT EXAMINATION BY MS. WICKER

168

1 that would work around the schedule. But I think it was two
2 to three years ago, four years ago.

3 Q. Okay.

4 A. Way before this. About five - - five at the most that I
5 can think. I can't give you a certain date because - - -

6 Q. That's okay. What kind of work did you do for the
7 Greenville News?

8 A. Oh, I set up - - set up for the papers to run through to
9 put inserts in them.

10 Q. Okay. What were your work hours? Were they consistent
11 or inconsistent?

12 A. Mondays, inconsistence [sic]. On Mondays and Tuesday,
13 we would go in at six to set up.

14 Q. Okay.

15 A. Wednesday was like he was telling you, is a - - we had
16 to do a prepack - - -

17 Q. Okay.

18 A. - - - before I started. So I had to set up for prepack
19 where the prepack could come in and set up for the run.

20 Q. But when you say 6:00, do you mean in the morning or in
21 the evening?

22 A. In the evenings, yes. Always from four to six in the
23 evenings where I showed up at work.

24 Q. Okay.

25 A. No later.

ALVIN ARNOLD - CROSS EXAMINATION BY MS. HODGE

169

1 Q. What time would you get off of work?

2 A. Sometimes at 2:30 in the morning, sometimes it wouldn't
3 be until 6:00 in the morning. Just depended on when we got
4 it out on the trucks so the trucks could deliver it.

5 Q. Okay. Let me just ask you, Mr. Arnold, did you ever
6 touch Samantha in a sexual manner?

7 A. No, ma'am.

8 Q. Okay. Did you ever force her to touch you in any sort
9 of sexual - - -

10 A. No, ma'am.

11 Q. Okay. Would you answer any questions that Ms. Hodge has
12 for - - -

13 A. Yes, I would, to my best of my knowledge.

14 **Cross Examination by Ms. Hodge:**

15 Q. Mr. Arnold, so you are - - you are agreeing that your
16 older children would go to Tabernacle Church, is that
17 correct, on Wednesday evenings?

18 A. Yes, ma'am, I'm agreeing with you.

19 Q. Okay. And they would be there from about six to nine, I
20 think, is that what you said?

21 A. Around that time, yeah.

22 Q. Okay. But Samantha could not go, she was younger, she
23 could not go?

24 A. No, she couldn't.

25 Q. Okay. And you say you're a pretty strict parent. Do

ALVIN ARNOLD - CROSS EXAMINATION BY MS. HODGE

170

1 you believe in corporal punishment, spanking them if they do
2 something wrong or anything like that?

3 A. I believe in - - let me see how I can say this. If the
4 kids do something wrong, I was taught to pick out
5 punishments or make them pick out the punishments. But that
6 would be my last result, to spank them.

7 Q. To spank them, okay. But you have spanked - - -

8 A. Yes, I have spanked them.

9 Q. Okay. And you were talking about your previous
10 relationship with your wife and that your kids came to you
11 after there were some issues with her failing to protect or
12 alleging failing to protect back in 2007, correct? That was
13 about - - -

14 A. Yeah, I think it was about - - -

15 Q. - - - 2007?

16 A. I think that's right. You've got the dates in front of
17 you. I don't keep up - - -

18 Q. Okay. Something - - -

19 A. - - - with dates.

20 Q. And DSS became involved in your life when the kids came
21 to - - at your house, is that correct?

22 A. I had to go up to the courthouse one time because they
23 - - one of the kids said that - - something was said and I
24 had to go up there. Then they took them and they - - I
25 think it was the lady asked me would they be at her best

ALVIN ARNOLD - CROSS EXAMINATION BY MS. HODGE

171

1 - - be in her best - - in my wife's - - I said I would
2 prefer y'all to do an investigation before you put her in
3 there. But they was already in her custody, so ...

4 Q. Okay. But DSS had been involved from - - coming to your
5 house doing well checks and that kind of stuff for maybe
6 about a year after you got your kids - - -

7 A. Oh, yes. They'd come - - they had like - - we still had
8 a welfare worker for - - caseworker for a year, yes.

9 Q. Right. And she stopped coming around abouts maybe
10 December of '08, January of '09, somewhere in there. Would
11 you agree with me on that time-frame?

12 A. I don't know the time-frame. I know it was a year after
13 the kids was ordered - - I got custody of the kids.

14 Q. Okay. So about a year later that - - -

15 A. I mean, when she lost all custody when they made that
16 final hearing, the DS worker still came for a year after
17 that.

18 Q. Okay. And that case involved your two older kids,
19 correct?

20 A. It involved all three of them.

21 Q. Well, the two older kids - - -

22 A. The two that's showing on the paperwork, yes.

23 Q. Right. And that anything happened to was the two older
24 kids?

25 A. Oh, yes.

ALVIN ARNOLD - CROSS EXAMINATION BY MS. HODGE

172

1 Q. Okay. All right. And you got Samantha when she was
2 like about 4 years old, that's right? Is that right?
3 Living with you?

4 A. No, she was 5 years old, getting ready to go to
5 preschool when I got her.

6 Q. Okay. And you would help her take a bath until age 5
7 and after that no more?

8 A. Yeah, I stopped doing that for a reason.

9 Q. Okay. Did you not trust yourself to give her a bath
10 - - -

11 A. No, because - - -

12 Q. - - - when she - - -

13 A. - - - one of my kids came up to me and - - like you
14 said, I can't say it because I'll be - - hearsay. One of my
15 kids told me - - -

16 Q. Well, you can't tell me what your kids said, but - - -

17 A. That's what I'm saying. I was told that I needed to
18 watch out what I'm doing because my ex-wife is looking to
19 get back at me.

20 Q. Okay. So this is all about your ex-wife getting back at
21 you, is that right?

22 A. That's what I think it is.

23 Q. Right. I mean, that's basically what you've said in a
24 nutshell. Okay. But you - - so you wouldn't even put your
25 own child to bed or bathe your own child because you think

ALVIN ARNOLD - CROSS EXAMINATION BY MS. HODGE

173

1 your wife's trying to get back at you?

2 A. How are you trying to put that? Yes, I had - - if I had
3 females at my house, I'd let my - - I wouldn't say I
4 wouldn't bathe my child, but as long as I got females at my
5 house, they can bathe my children.

6 Q. So you missed out on some child rearing experiences by
7 putting your own kid to bed, or sharing - - -

8 A. No, I did - - -

9 Q. I'm still talking.. You agreed not to do those things
10 because you thought maybe your wife might get back at you,
11 ex-wife?

12 A. Did I watch out for stuff like that? Yes.

13 Q. Okay. So you would not put yourself in any position
14 that this could be possible?

15 A. I thought I didn't.

16 Q. Do you have - - you worked at Greenville News in
17 December 2008? Is that what you're saying?

18 A. December - - I can't tell you the dates. I know I
19 worked there for like a year and a half, then I worked
20 somewhere else.

21 Q. Okay. Well, this is a pretty big part of your defense,
22 that you worked on Wednesdays at Greenville News. You don't
23 know when that was, though?

24 A. Oh, I worked about every Wednesday, but I did have
25 Wednesdays off and normally it was Thursdays.

ALVIN ARNOLD - CROSS EXAMINATION BY MS. HODGE

174

1 Q. Okay. So you had Wednesdays off?

2 A. Yes, I have had Wednesdays off.

3 Q. Okay. Still, being part of your defense that you're
4 presenting here, do you have any time cards, any records of
5 anything to show that you were working there and you'd be
6 working on these Wednesdays?

7 A. I did.

8 Q. Do you today in your - - -

9 A. No, I do - - -

10 Q. - - - trial today?

11 A. - - - not have it on me today, no.

12 Q. Okay.

13 A. But could I get it? But it ain't - - as far as trial,
14 no.

15 Q. But you - - this case has been going on for three years,
16 has it not?

17 A. It's been going on for three years and it's been put off
18 for three years. And I've got two different lawyers
19 instead.

20 Q. That's right, you've had - - -

21 A. Yes.

22 Q. - - - lots of time, correct? Three years, correct?

23 A. My first lawyer told me, do not worry about - - -

24 Q. No, don't tell me anything your lawyer said.

25 A. I mean, I - - -

ALVIN ARNOLD - CROSS EXAMINATION BY MS. HODGE

175

1 Q. This case - - -

2 A. - - - was told - - -

3 Q. - - - has been going on - - -

4 A. I'm sorry.

5 Q. - - - three years - - -

6 A. I'm sorry.

7 Q. No, not even - - - you can't say I was told. That
8 doesn't make it right. This case has been active for three
9 years. You've had three years to prepare your defense,
10 correct?

11 A. Uh, - - -

12 Q. You've - - -

13 A. - - - I would say yes to you as far as that, but I'll
14 say no because I was listening to attorneys.

15 Q. Okay. Now, let's go back to when you went and put your
16 kids in foster care instead of let them be with their
17 mother, which was when your daughter alleged that you'd been
18 sexually abusing her, Samantha. So your choice, what you
19 thought was good to do, was to say, just go be in a foster
20 care home, that's the best thing for them, is that correct?

21 A. No, that's not what I was trying to say.

22 Q. That's what you did, though. And you were explained the
23 options, correct?

24 A. No, I - - let me see, how can I explain this? I was
25 told that they needed to go with their mama or they would be

ALVIN ARNOLD - CROSS EXAMINATION BY MS. HODGE

176

1 put in foster care at that time that I was talking to the
2 two - - the two young ladies.

3 Q. Okay. So, let's see here. You talked to Emily Grant on
4 - - it was August the 4th of 2010. And she wanted to know,
5 because she couldn't force the kids to go to the mother, you
6 had to agree to it. You would not agree for that, correct?

7 A. She - - -

8 Q. You would not agree for your kids to go live with their
9 mom?

10 A. At that point in time, no.

11 Q. Okay. And they explained to you that if you don't let
12 them go live with an alternate care-giver, then they're
13 going to go in foster care, correct?

14 A. They said they would go in foster care, yes.

15 Q. Yes. So you were advised and you knew what would happen
16 to your kids, correct?

17 A. Yes.

18 Q. Okay. And then they asked you is there any other
19 suitable adult that we could place them with, correct?

20 A. At that point in time, no.

21 Q. Okay. So you, instead of letting them go with their
22 mom, said, fine, put them in foster care?

23 A. No, I did not say it like that. But, yes, if that's how
24 you put it, yes.

25 Q. Okay. You knew where they were going when you said, no,

ALVIN ARNOLD - CROSS EXAMINATION BY MS. HODGE

177

1 they could not go with - - -

2 A. No, I did not know where they was going. I was told
3 they could go with their mama or they would take care of it.

4 Q. You're saying that you were told they could live with
5 their mom or they would just take care of it?

6 A. No, they would put them in foster care.

7 Q. Okay. That's my point. You know where your kids were
8 going when you said they cannot go live with their mother?

9 You knew they were going to foster care?

10 A. Yes. Okay, if you want to put it that way, yes.

11 Q. Yes. Your 7 year old, your 12 year old and your 13 year
12 old, it was okay for you, it was all right by you to have
13 them go to foster care instead of being with their mother?

14 A. Yes.

15 Q. And they had been with their mother on visitations,
16 correct?

17 A. Yes.

18 Q. And you had the ability to go back to Family Court and
19 you could have revisited any issues as far as visitation
20 goes if you thought she was somehow harming them or not
21 going to protect them or keep them safe, correct?

22 A. I don't understand what you mean by that.

23 Q. You were allowing your kids to go for visitation, court
24 ordered visitation to the mother, right?

25 A. That would - - -

ALVIN ARNOLD - CROSS EXAMINATION BY MS. HODGE

178

1 Q. Prior to - - -

2 A. - - - be an order.

3 Q. - - - this?

4 A. Yes, yes, yes, yes, yes, yes.

5 Q. Prior to this.

6 A. Okay. Now - - -

7 Q. And I'm sorry if I'm not clear about that.

8 A. - - - I understand.

9 Q. Yes.

10 A. Okay. Yes.

11 Q. Prior to this - - when Samantha said you were abusing
12 her, okay, let's go prior. She had been with her mom during
13 normal visitation, correct?

14 A. Yes.

15 Q. Okay. And all that was fine. And then she comes out
16 and says that you've abused her and now, well, can't go to
17 mom's. Not allowed to go to mom's anymore, correct?

18 A. Not correct, no. No. I don't agree with the way you
19 putting that. I don't understand. Could you re-say that
20 one more time so I can understand - - -

21 Q. Okay. Well, here's how I'll say it. Isn't it true that
22 you told your children if they ever told anything bad on you
23 they would go to foster care and foster care is mean?

24 A. Have I ever said that?

25 Q. Yes.

ALVIN ARNOLD - REDIRECT EXAMINATION BY MS. WICKER

179

1 A. No.

2 Q. Isn't it true that's what you told to Alvin, Jr., If he
3 ever told DSS anything mean about you, he would go to foster
4 care? They would go to foster care?

5 A. I just now said the answer to that, no.

6 Q. All right. And isn't it true you're just making good on
7 that promise when you sent those kids off to foster care
8 because they told on you?

9 A. If - - if I said no to the first one, it's still no.

10 Q. All right. And you were hoping that, in fact, if these
11 kids had to go to foster care, maybe they would back off of
12 their answers, back off their allegations, say it never
13 happened?

14 A. No, ma'am.

15 MS. HODGE: That's all the questions I have.

16 THE COURT: Any redirect?

17 MS. WICKER: Just briefly, Your Honor.

18 **Redirect Examination by Ms. Wicker:**

19 Q. Mr. Arnold, why did you feel that foster care was a
20 better alternative for your children than being with their
21 mother?

22 A. Because of the allegations that were brought against
23 her.

24 Q. Okay. And what were the allegations?

25 A. Of putting child endangerment or putting kids in harm's

ALVIN ARNOLD - RECROSS EXAMINATION BY MS. HODGE

180

1 way.

2 Q. What kind of danger? Sexual?

3 A. Sexual.

4 Q. Okay. And so that allegation had been made, right?

5 A. Yes.

6 Q. Okay. And that's why you had gotten custody of them
7 originally?

8 A. Yes.

9 Q. So it's fair to say that you just felt like they would
10 be safer if they were in foster care - - -

11 A. Yes, - - -

12 Q. - - - than with their mother - - -

13 A. - - - that was my - - -

14 Q. - - - even though - - -

15 A. - - - intention of - - -

16 Q. - - - the allegations - - -

17 A. - - - saying it, yes,

18 Q. Okay. Thank you.

19 **MS. WICKER:** No further questions, Your Honor.

20 **Recross Examination by Ms. Hodge:**

21 Q. But your children had been living or staying with their
22 mother for visitation through all this time after that case,
23 correct?

24 A. As far as visitation every two weeks or - - -

25 Q. Two weeks and - - -

ALVIN ARNOLD - RECROSS EXAMINATION BY MS. HODGE

181

1 A. - - - once a month.

2 Q. - - - more weeks they would visit her, correct?

3 A. Yeah, visitations, yes.

4 Q. Yes. Okay. So it's not that you were worried that mom
5 wasn't going to protect them because mom had been caring for
6 them, it was purely to make good on your promise that's
7 where they were going if they told on you?

8 A. No, ma'am.

9 **THE COURT:** Thank you. You can step down.

10 A. Thank you.

11 **THE COURT:** All right. Now, ladies and gentlemen, Ms.
12 Wicker has told me that she has another witness to present
13 and that person will not be available until tomorrow
14 morning. So insofar as you're concerned we will suspend for
15 today with the testimony and pick back up tomorrow morning
16 at 9:00.

17 Now, when you leave, please remember, that you do not
18 talk about this case among yourselves or with anyone else.
19 If anybody contacts you and tries to talk to you about this
20 case, get their names and addresses and report that to me.

21 And please remember the other admonitions that I read
22 to you by the Chief Justice of our Supreme Court. Please
23 leave your badges on, have them on when you come back.
24 Please be back promptly at 9:00 in the morning. Thank you.

25 (Whereupon the jury exited the courtroom at 2:42 PM)

1 **THE COURT:** Okay. Now I understand you have one more
2 witness?

3 **MS. WICKER:** Just one, Your Honor.

4 **THE COURT:** And at this time do you know if you're
5 going to have any reply?

6 **MS. HODGE:** I don't believe so, Your Honor.

7 **THE COURT:** All right. Kris, I'm looking at the docket
8 tomorrow.

9 **MS. HODGE:** Yes, sir.

10 **THE COURT:** If you'll let Lucas know, I guess surely
11 we'll have this to the jury certainly by eleven.

12 **MS. HODGE:** Probably so.

13 **MS. WICKER:** I would think for sure eleven.

14 **THE COURT:** So if he wants to get something else ready.

15 **MS. HODGE:** Yes, sir.

16 **THE COURT:** All right. See you in the morning.

17 **MS. HODGE:** Okay.

18 **MS. WICKER:** Thank you, Your Honor.

19 (Whereupon court was in recess at 2:43 PM)

MIA COLLINS - DIRECT EXAMINATION BY MS. WICKER

183

1 **THURSDAY, NOVEMBER 14, 2013:**

2 (Whereupon court resumed at 9:02 AM)

3 **THE COURT:** All right. Are we ready to proceed?

4 **MS. WICKER:** Yes, Your Honor.

5 **THE COURT:** All right. Bring our jury, please.

6 (Whereupon the jury entered the courtroom at 9:03 AM)

7 **THE COURT:** All right. Ms. Wicker, you may proceed.

8 **MS. WICKER:** Thank you, Your Honor. Your Honor, the
9 Defense calls Mia Collins to the stand.

10 **Mia Collins,** being duly
11 sworn testifies as follows;

12 **MADAME CLERK:** Please state your name for the record.

13 **MS. COLLINS:** Mia Haynes Collins.

14 **MADAME CLERK:** Thank you. You may be seated.

15 **Direct Examination by Ms. Wicker:**

16 Q. Mia, how long have you known Alvin Arnold?

17 A. Since September of 2007.

18 Q. Are y'all married now?

19 A. Yes, we are.

20 Q. Were you with him when he got custody of the children?

21 A. Yes.

22 Q. Okay. Can you describe what kind of parents the two of
23 you were to those kids?

24 A. I would say strict, but fair.

25 Q. Okay. How was Samantha's behavior when she lived with

MIA COLLINS - DIRECT EXAMINATION BY MS. WICKER

184

1 y'all?

2 A. It depended on the day.

3 Q. What do you mean by that? Can you explain?

4 A. When she would come back from mom's house she would be
5 skittish, not want to be around anybody, go straight to her
6 room, kind of like hibernate. By Monday or Tuesday, she
7 would be her normal 6 year old self running through the
8 house playing, screaming, hollering.

9 Q. To your knowledge was Alvin ever home alone with
10 Samantha?

11 A. Not to my knowledge, no.

12 Q. Do you know if Alvin was working during the time of this
13 allegation? I know it's been over two years, but - - -

14 A. It has been quite a while, but, yeah, he worked at
15 Greenville News.

16 Q. Okay. Do you know what kind of work schedule he had?
17 Was it flexible, was it - - -

18 A. It - - -

19 Q. - - - pretty consistent?

20 A. He would go in normally between four, 5:00 in the
21 afternoon.

22 Q. Okay.

23 A. Sometimes he'd get off at three in the morning.

24 Sometimes he wouldn't get off till 6:30 or later in the
25 morning.

MIA COLLINS - DIRECT EXAMINATION BY MS. WICKER

185

1 Q. Was it a pretty typical schedule most days of the week?

2 A. Most days of the week.

3 Q. Okay.

4 A. Usually from Wednesday through the weekend.

5 Q. To your knowledge did Alvin typically give Samantha a

6 bath?

7 A. No.

8 Q. How did she bathe? Did somebody tell her? Did somebody

9 bathe her - - -

10 A. I would tell her, you know, Sam, it's time to go get in

11 the bath. She'd go in there, I'd go in and check the water.

12 She'd go in and take a bath. You know, you've got to go in

13 and check on them to make sure they're washing. I'd lay her

14 down and wash her hair.

15 Q. Okay. Which bathroom did she use?

16 A. The one in the hallway.

17 Q. Is there another bathroom in the home?

18 A. There was another bathroom in our bedroom, in the master

19 bedroom, but the kids weren't allowed to go in there.

20 Q. Who put Samantha to bed?

21 A. Samantha put herself to bed.

22 Q. Did she share a bed with anybody?

23 A. Her sister.

24 Q. Was her sister ever locked out of that room?

25 A. No. There's no locks on the doors. There wasn't even a

MIA COLLINS - DIRECT EXAMINATION BY MS. WICKER

186

1 lock on my bedroom door.

2 Q. Okay. To your knowledge did Alvin Arnold ever touch
3 Samantha in any sort of sexual manner?

4 A. No.

5 Q. Or have her touch him in any sexual manner?

6 A. No.

7 Q. Did you ever walk in on them doing this?

8 A. No.

9 Q. All right. We heard that Alvin wanted his children
10 placed in emergency protective custody rather than live with
11 their mother, but that the investigator had said that there
12 was - - had offered up another suitable adult. Why didn't
13 he offer up you to look after the kids?

14 A. They wouldn't allow that because we lived in the house
15 together. He had no place else to go.

16 Q. Okay. So they wouldn't let - - -

17 A. They wouldn't let me - - -

18 Q. - - - the children stay in that house?

19 A. Right, because they said he would just come back when
20 they weren't there. And there would be nobody to say that
21 he wasn't there, you know, as far as the law is concerned.

22 Q. Did he have any other adult relatives that you were
23 aware of?

24 A. His mother, but she was in very, very poor health. She
25 had lung cancer. She's recently passed.

MIA COLLINS - CROSS EXAMINATION BY MS. HODGE

187

1 Q. Okay. Thank you. I don't have any further questions.

2 Would you please answer any questions Ms. Hodge has for you.

3 A. Sure.

4 **THE COURT:** Solicitor.

5 **Cross Examination by Ms. Hodge:**

6 Q. Okay. Ms. Collins, do you know Ricky Dobbins?

7 A. Yes, I do.

8 Q. Okay. That was the Defendant's step-dad?

9 A. Yes.

10 Q. Okay. You were actually Ricky Dobbins girlfriend when
11 you met the Defendant, correct?

12 A. No.

13 Q. No? Were you and Ricky Dobbins friends back in 2007?

14 A. When I met Alvin? After I met Alvin, he took me to meet
15 his mom and dad.

16 Q. Okay. And did you talk to Investigator Cheryl Cromartie
17 about some stuff involving Alvin's kids back in 2007?

18 A. I really couldn't tell you. I don't remember people's
19 names.

20 Q. Okay. And would it be fair to say that at that time you
21 presented yourself as the girlfriend?

22 A. Of Alvin Arnold.

23 Q. Okay. Where it says here Dobbins stated that his
24 girlfriend, Mia Collins, was present to talk to the children

25 - - -

MIA COLLINS - CROSS EXAMINATION BY MS. HODGE

188

- 1 A. He meant Alvin's girlfriend.
- 2 Q. Okay. Because it clearly states that it's Mr. Dobbins,
- 3 but you're saying - - -
- 4 A. No, - - -
- 5 Q. - - - that's not correct?
- 6 A. - - - that's not correct.
- 7 Q. Okay. All right. And you were with the Defendant - -
- 8 were y'all married when he got custody of the children in
- 9 2008, 2007?
- 10 A. No.
- 11 Q. Okay. So y'all were boyfriend/girlfriend at the time?
- 12 A. Right.
- 13 Q. Okay. And that was - - that was concluded?
- 14 A. Yes.
- 15 Q. He got custody in October of 2008, is that correct?
- 16 A. Um-hum (affirmative).
- 17 Q. Okay. So there was no custody battle ongoing August of
- 18 2010, correct?
- 19 A. Right.
- 20 Q. That was a done deal and settled?
- 21 A. Yes.
- 22 Q. Okay. And the kids were allowed to go to their mother's
- 23 house during the court ordered visitation time - - -
- 24 A. Right.
- 25 Q. - - - during that time-frame? Okay. They would go

MIA COLLINS - CROSS EXAMINATION BY MS. HODGE

189

1 every other weekend - - -

2 A. Every other weekend and some time in the summertime,
3 holidays, you know.

4 Q. Okay.

5 A. Alternating.

6 Q. All right. And - - so at the time that the Defendant
7 was asked where the kids could go, they could have gone to
8 the mother, correct?

9 A. They could have, but with the other kids coming back and
10 saying mom's doing this, mom's doing that, he didn't really
11 want them to - - -

12 Q. To go to the mom's?

13 A. - - - be with mom.

14 Q. But there was a choice? It wasn't that there was no
15 choice, there was a choice?

16 A. There was a choice, but it wasn't a preferred choice.
17 And they - - -

18 Q. Even - - -

19 A. - - - said a preferred choice.

20 Q. Okay.

21 A. So ...

22 Q. The preferred choice in his eyes was just to send them
23 to foster care?

24 A. Yes.

25 Q. Okay. Now, Samantha and the other children had been

MIA COLLINS - CROSS EXAMINATION BY MS. HODGE

190

1 living with Ms. Cody ever since August 2010, correct?

2 A. Yes.

3 Q. And that case has been concluded by the Family Court and
4 that's a settled issue, correct?

5 A. Yes.

6 Q. So she has custody of them and has for this entire time,
7 correct?

8 A. Since 2010, yes.

9 Q. Since 2010. Okay. Now, you decided to marry the
10 Defendant even after these allegations came out?

11 A. Yes, I did.

12 Q. Okay. And certainly you don't want to believe that he
13 would ever do anything to any of his children - - -

14 A. I don't believe he would. If you knew him as a person,
15 you would know that that's not something he would do. He
16 wouldn't allow them to run around in just a T-shirt and
17 panties at nighttime.

18 He wouldn't allow them to just sit on anybody they
19 knew, you know. Because you know how kids will run up to a
20 friend of the family and they'll want to jump on their lap.
21 He's like, uh-uh (negative), no, no, you don't do that. You

22 - - -

23 Q. He was - - -

24 A. - - - sit next to people.

25 Q. - - - very protective?

MIA COLLINS - CROSS EXAMINATION BY MS. HODGE

191

1 A. Very protective.

2 Q. Wanted to keep them close.

3 A. No, he didn't want them close to him. They could sit
4 next to him on the - - but they could not sit on his lap.

5 Q. Okay. And he never would give his daughter a bath?

6 A. No.

7 Q. And he would never put his daughter to bed?

8 A. No. And he would never let them go spend the night
9 unless he met the parents of who they were going to spend
10 the night. And he actually had to physically go to the
11 house and talk to them.

12 Q. Okay. But if he's not doing anything wrong as far as
13 this child's concerned, - - -

14 A. Right.

15 Q. - - - why is he not putting her to bed?

16 A. Because she had been - - -

17 Q. That's the best part of the day.

18 A. Because he would be at work when it was her bedtime. So
19 how could he put her to bed?

20 Q. Oh, so now he's never even home, is that the story - - -

21 A. No, I didn't say he was never home. He went to work at
22 four in the afternoon, her bedtime was at eight PM. He's
23 not there.

24 Q. And he was never there, not one night to put his child
25 to bed - - -

MIA COLLINS - CROSS EXAMINATION BY MS. HODGE

192

1 A. Not normally, no. Usually on his days off, they were at
2 their mom's.

3 Q. Okay. Thank you.

4 THE COURT: Any redirect?

5 MS. WICKER: No, Your Honor.

6 THE COURT: Thank you. You can step down. Okay.

7 MS. WICKER: Your Honor, at this time the Defense
8 rests.

9 THE COURT: Anything in reply, solicitor?

10 MS. HODGE: No, sir.

11 THE COURT: All right. Take the jury out, please.

12 (Whereupon the jury exited the courtroom at 9:13 AM)

13 THE COURT: All right. Any motions, Ms. Wicker?

14 MS. WICKER: Not right now, Your Honor.

15 MS. HODGE: Your Honor, actually the State intends to
16 withdraw the incest charge. I do not believe the evidence
17 in the case supported the incest charge. I was trying to
18 find some research. There's not a lot that describes carnal
19 intercourse in the case law.

20 What I found was some older case law that it seemed to
21 imply that there has to be penile/vaginal penetration to
22 qualify as intercourse. I do not believe that we have that
23 in the State's case. We have digital and oral, but we don't
24 have vaginal/penile in the State's case. So the State would
25 withdraw the incest indictment.

CLOSING ARGUMENTS - MS. WICKER

193

1 **THE COURT:** All right. Okay. You waive opening
2 argument?

3 **MS. HODGE:** Yes, sir.

4 **THE COURT:** You ready to talk to the jury?

5 **MS. WICKER:** I am, Your Honor.

6 **THE COURT:** All right. If they're ready, bring them
7 on.

8 (Whereupon the jury entered the courtroom at 9:15 AM)

9 **THE COURT:** All right. Ladies and gentlemen, the
10 testimony in this case is complete. The time has arrived
11 for the attorneys to make their closing arguments to you.
12 And when they have concluded their arguments, then I'll
13 charge you the law with respect to the case. Ms. Wicker.

14 **MS. WICKER:** Thank you, Your Honor. May it please the
15 Court. I told you at the beginning that this case hinges on
16 credibility, whether you believe what a witness has told you
17 or not. And regardless of somebody's age or their
18 profession, it's totally up to you to decide whether you
19 believe them.

20 The State provided us with multiple witnesses. You
21 heard from DSS, law enforcement, we heard from the
22 interviewer, we heard from the medical doctor, we heard from
23 the therapist and we heard from Samantha herself. So in a
24 nutshell, let's just kind of review what it is that they
25 told us.

CLOSING ARGUMENTS - MS. WICKER

194

1 Emily Grant from DSS told us that she responded because
2 of an allegation of sexual abuse. Samantha told her that
3 her dad had touched her ten times in the bathtub. And that
4 is the bathtub that's in the bathroom in the hallway, not
5 the bathroom off the master bedroom, a more private
6 bathroom.

7 We heard from Krystal Youmans, the social worker. And
8 she told us that she noticed some scratches on Samantha, I
9 think most active 7 year olds would have bumps and
10 scratches, and that Samantha had said that it burned and
11 itched when she went to the bathroom. There's a variety of
12 reasons why that might have happened.

13 We also heard from Investigator Hubert. She didn't
14 speak to Samantha about the allegations, but she did watch
15 the video and she did talk to Alvin about where he wanted
16 the children placed. And he said he didn't want the
17 children going back with the mother, he wanted them in
18 emergency protective custody.

19 Why? It's not because of some threat of repercussion
20 that the kids were going to go to foster care if they told,
21 it's because he knew his children would be safer in
22 emergency protective custody than with their mother, than in
23 the home where sexual abuse was alleged to have happened.
24 That's why he had custody of the kids.

25 He didn't have another adult that he could turn to to

CLOSING ARGUMENTS - MS. WICKER

195

1 place the kids with them that he trusted, where he felt that
2 they would be safe. He wanted them safe. He wanted them in
3 emergency protective custody. That was his only
4 alternative.

5 We also heard from Christine Carlberg. We all watched
6 that video. And on the video we hear Samantha answer
7 Christine Carlberg's questions. And she says that her dad
8 touched her in the bathtub in her vaginal and buttocks
9 region and her breasts while she bathed.

10 She also says that he grabbed her hand and made her
11 touch his penis and his buttocks, that he put his penis in
12 her mouth while she was lying on the couch watching TV and
13 she says while she was lying on the bed, when he was lying
14 on top of her. She said this happened every Wednesday. She
15 says it happened every day.

16 I'm not going to rehash the entire video. We watched
17 it. You'll be able to take it back to the jury room and to
18 watch it again if you want. But you saw how she answered
19 the questions, how when she's prompted by Ms. Carlberg her
20 answers can change a little bit.

21 You saw how when I questioned her and I said who did
22 you tell first? My mom. Okay. Did you tell your sister
23 before or after your mom? Before.

24 We heard from Dr. Croswell. She examined Samantha.
25 She said that she didn't see anything, but that doesn't mean

CLOSING ARGUMENTS - MS. WICKER

196

1 that it didn't happen. It doesn't mean that it did happen.

2 We heard from Samantha's therapist, Ms. VanWagner. And
3 she listed several symptoms that Samantha had, fear,
4 nightmares, sexualized behavior, intrusive thoughts and
5 avoidance. All of these can be and are displayed in people
6 who were not victims of sexual abuse.

7 Ms. VanWagner said that those symptoms are consistent
8 with somebody who claims to have been sexually abused.
9 Okay. I have a black eye and I tell you my husband got
10 really mad and he punched me, that's consistent with what
11 I'm telling you. That black eye's consistent with that.

12 But I could also tell you I am such a klutz. I was at
13 the grocery store, and I was reaching up for the detergent
14 on the top shelf, and it fell and hit me in the eye. That's
15 consistent with that, too. There's just no way to know.

16 Ms. VanWagner didn't start treating Samantha until
17 October of 2012. She'd never met her before that. We don't
18 know what her behavior was like prior to that time.

19 We know that she was removed from her mother's house
20 where there's alleged sexual abuse occurring. We don't know
21 when these behaviors began. There's just no way to know
22 with any degree of certainty when she began exhibiting these
23 behaviors, particularly when we have no medical evidence to
24 back it up.

25 And lastly we heard from Samantha. What did she tell

CLOSING ARGUMENTS - MS. WICKER

197

1 us yesterday? That her dad touched her ten times, maybe
2 once a month, that he walked in and touched her front part
3 and then he left. His clothes were sometimes on, sometimes
4 off, that she never touched her dad. He never put his penis
5 in her mouth. And this happened in his bedroom.

6 Samantha's therapist discussed with us delayed
7 disclosure and how sometimes allegations can kind of come in
8 piecemeal. But this isn't piecemeal allegations. And it's
9 not disclosing new details, more exact details at the time.
10 These are just changing allegations about what happened.

11 This is alleged to have occurred over the course of two
12 years. No one knows who they were with or where they were
13 every second of every minute of every day over the last two
14 years.

15 But Alvin knows that he was rarely home with Samantha
16 alone. It was a full house, it's impossible. He worked in
17 the evenings, he wasn't home until late.

18 No, he doesn't have his time cards to show us when he
19 worked at the Greenville News. But Jeremy and Mia told us,
20 yeah, he did work at the Greenville News. No, he didn't
21 work every single day, but he worked most evenings and go in
22 around four most of the time and he wouldn't get home until
23 very early in the morning.

24 The older children went to church on Wednesdays. And
25 Samantha didn't go because church got out late. She's

CLOSING ARGUMENTS - MS. WICKER

198

1 younger. She had an earlier bedtime.

2 And Alvin typically had a female help with Samantha's
3 bath, Mia. Well, I think a lot of moms help with their
4 baths. My mom always helped with my bath and with my
5 brothers' baths. That was just typically something my mom
6 did.

7 And Samantha tucked herself in. Somebody told her it
8 was time for you to go to bed, she went to bed, the bed in
9 their room that she shared with Savannah.

10 What Alvin does know is in those times that he was at
11 home alone with Samantha, he never touched her in a sexual
12 manner. He never asked her to touch him in any sexual
13 manner.

14 So why would she say this? Why would she possibly say
15 something like this? It's obviously the big question on
16 everybody's mind.

17 Alvin told you that he was afraid that something like
18 this might happen, a pretty nasty contentious divorce. And
19 he believed his ex-wife put the kids up to something like
20 this. And Samantha says she really wants to live with her
21 mom. She loves her mom. And Alvin was a really strict
22 parent, it's a strict household.

23 Kids knew if an allegation of sexual abuse was made
24 they would go to the other parent's house. That was the
25 direct consequence of the last time that allegation was

CLOSING ARGUMENTS - MS. WICKER

199

1 made. When the allegation of sexual abuse was made at the
2 mother's house, they went to go live with dad. They wanted
3 to live with mom, maybe not understanding the consequences
4 of saying something like that, they wanted to go to mom's
5 house instead of being with dad.

6 Crimes against children are terrible, sexual crimes
7 against children are abhorrent. And we should absolutely
8 not tolerate them. They should be prosecuted to the fullest
9 extent. But even the staunchest among us who want this
10 prosecution wants to have some degree of certainty that what
11 is alleged to have happened actually did happen, not that it
12 could've happened, not that it probably happened, but
13 certainty that it did happen.

14 This case comes down to credibility. The State has put
15 up a lot of witnesses to show that -- not to show that it
16 did happen, but to say that there's nothing to say that it
17 didn't happen and that that paired with the allegation is
18 enough, but it's not.

19 We have got a balding allegation from Samantha, lots of
20 changes, lots of differences over time. And there's no
21 witnesses and there's no evidence to support this
22 allegation. If you're thinking to yourself, well, it could
23 have happened or if you're thinking to yourself, well, it
24 probably happened, that's not enough to convict Alvin Arnold
25 of these offenses. That's not our standard.

CLOSING ARGUMENTS - MS. HODGE

200

1 Reasonable doubt is our standard. It's the highest
2 standard we have. There needs to be a degree of certainty
3 that he committed these acts. And there is no degree of
4 certainty here. And I'm going to ask that you return a
5 verdict of not guilty. Thank you.

6 **THE COURT:** Solicitor.

7 **MS. HODGE:** Thank you, Your Honor. Well, ladies and
8 gentlemen, you're about to do the job that you were selected
9 to do three days ago now, kind of chopped up in our
10 schedule, probably should have happened sometime yesterday.

11 But your job is to reach a verdict in this case. And
12 just like any job you're going to need some tools. If you
13 were planning your garden, you need tools, changing a tire,
14 you need tools. To reach the verdict in this case, you need
15 tools.

16 The first tool is going to come from the Judge. When I
17 finish talking the Judge is going to tell you what the law
18 is in South Carolina. He's going to tell you about criminal
19 sexual conduct with a minor, first-degree, and that you must
20 find a sexual battery on a child under 11. And he's going
21 to define a sexual battery as any penetrating injury. And I
22 think we briefly talked about that in opening. And he will
23 further discuss that.

24 Part of the reason that I had the doctor make the chart
25 out for you guys yesterday as far as vaginal area, I know

CLOSING ARGUMENTS - MS. HODGE

201

1 - - let me just back up here and say you probably got a lot
2 more than you bargained for when you saw your jury duty
3 summons and you got called on this case. You probably
4 weren't thinking you were going to go into a lot of sexual
5 history talk or anatomy talk.

6 But as you hear the charge from the Judge, thinking
7 back to that, intrusion, however slight, into a vaginal or
8 anal opening of a child is a sexual battery as well as any
9 oral copulation, okay. So that was the point of the diagram
10 with the doctor. However slight of an intrusion in
11 Samantha's vaginal area, if you find that fact, then that
12 qualifies as a sexual battery.

13 You're going to have also lewd act on a minor. Lewd
14 act is basically the same thing, touching a child, however,
15 without penetration. More of a fondling, or a rubbing, or a
16 touching of the genital areas.

17 Once the Judge has given you the law, your next tool
18 that you need, you need the facts. You need to decide what
19 happened and did what happen fit with the law? Has the law
20 been broken?

21 So how are you to determine what happened in this case?
22 Clearly you have the child telling you she was sexually
23 abused and the Defendant telling you, no, I didn't do it.
24 So you have to use your third tool, your common sense.

25 Your common sense is what guides you every day to make

CLOSING ARGUMENTS - MS. HODGE

202

1 decisions. You make big decisions based on your common
2 sense. You decide who to marry, or if to marry, or who to
3 divorce, or if you want to divorce, what medical treatments
4 you might have or not have, where to live, what kind of job,
5 what house to buy, cars to buy. You make a lot of big
6 decisions with your common sense. That's what you're going
7 to use today, your common sense.

8 And when you make those decisions in life, you make
9 them not with one hundred percent certainty. You don't
10 know, if you are married now, you didn't know one hundred
11 percent this is the person, one hundred percent absolutely,
12 I'm going to marry him, and I'm convinced. You were firmly
13 convinced, I'm sure.

14 But you probably also had some conflicting information.
15 So your common sense processed that for you. Someone may
16 have said - - told you something negative about your
17 potential spouse. Other people told you positive. You had
18 your own experiences. You had to marry those up, no pun
19 intended, but you had to marry those up and be firmly
20 convinced about your decision.

21 Or maybe it was a medical treatment, you got some
22 information, yes, you should do this treatment, no, you
23 shouldn't do this treatment, you had to make that decision
24 with your common sense. And that's just what you're going
25 to do today.

CLOSING ARGUMENTS - MS. HODGE

203

1 So you're going to go back through the evidence, State
2 and the Defense has presented, use your common sense to see
3 what the truth really is. In doing that we all have a
4 little mental checklist, I think, that we go through because
5 certainly we have been lied to before in our life and we've
6 had the truth told to us. We have a couple of steps that we
7 go through.

8 Number one, we look at the content of what's being told
9 to us. Does it make sense? Minor [REDACTED] is telling you
10 that she has been sexually abused by her father. Is that
11 possible, probable? Does it happen? The content itself,
12 yes, it happens. It happens, and it can happen and it did
13 happen in this case.

14 How do we know that? He, the Defendant, wants you to
15 take the stance and believe that he was never, ever, ever
16 around his child alone, never. Is that probable, likely,
17 plausible, realistic? No.

18 Because why would that be? Why would you not be around
19 your own baby child? This is your third, your youngest.
20 Obviously, they had a, you know, rough life growing up. Why
21 would you keep your kid at arms length?

22 I submit because that's not true, that's not what
23 happened. But that's what he needs to say in here to try to
24 make you think that he didn't do this. But that content is
25 not realistic or plausible.

CLOSING ARGUMENTS - MS. HODGE

204

1 You do not tell a 5, 6 and 7 year old to go put
2 yourself to bed. I mean, I have an 8 year old. And you
3 probably have children. If you don't have children, as I
4 said earlier, remember back to when you were a child. Use
5 your experiences, your common sense.

6 Do you do that with kids? Do you put them in a tub,
7 bathe yourself? No. If you love them, and you care for
8 them, and you're a normal parent who's not trying to hurt
9 them, you're helping them. You're in there, you're doing
10 it.

11 And if you are coming from a posture where you're
12 always worried about someone accusing you of sexual abuse,
13 that sends up a red flag to me, too. A little bit of smoke,
14 where there's smoke, maybe there's fire.

15 So what Samantha is telling you is absolutely possible,
16 that she was at home on Wednesdays because the older kids
17 went to church and there was that nice window of time when
18 she was alone with him.

19 His own testimony from his witnesses is completely
20 inconsistent. Was he working on Wednesdays or not? Jeremy
21 says, oh, absolutely, every Wednesday he worked. We put
22 those inserts in.

23 Well, let's see, when did you work with him, Jeremy?
24 2010. Okay, well, that's nice, but this abuse started in
25 2008 and 2009. So that doesn't really cover what we're

CLOSING ARGUMENTS - MS. HODGE

205

1 talking about.

2 We have Defendant taking the stand. Did you work on
3 Wednesdays, every Wednesday? No, actually I didn't work on
4 every Wednesday. I was home on some Wednesdays. Wait a
5 minute, I thought that was your defense that you were never
6 home on Wednesdays. No, I was home on Wednesdays sometimes.

7 Then they bring in Mia. No, he was never home on
8 Wednesdays. They don't even have their story straight.
9 Why? Because it didn't happen like that. He was home.
10 There was opportunity. There was the ability for what
11 Samantha says happened to have happened. So our content is
12 possible, yes, it could have happened.

13 Consistency, that's the second thing we go through in
14 our mental checklist and what Ms. Wicker touched on. She
15 says there's not consistency. I beg to differ on that.

16 Consistency in this case is what Samantha has done.
17 She has consistently stated her dad sexually abused her.
18 She has consistently stated it was at his home after she was
19 ordered to live there, that it happened during December of
20 2008 to August of 2010 when she was 5 to 7, that it happened
21 in the bathroom or the bedroom, and that he touched her
22 vaginal area.

23 Now, she told that to DSS. She told that to the lady
24 at the Helping Hands place where she also added the fact
25 that she had a physical symptom from being touched there,

CLOSING ARGUMENTS - MS. HODGE

206

1 the burning, urinating, pain feeling. She told that to the
2 forensic interviewer, but I'm going to come back to that.
3 And she told that to the medical doctor.

4 All but the forensic interviewer are people that are
5 taking her in for a brief answer, tell me what happened.
6 What happened? What did he do?

7 And I submit to you that Samantha, by nature of her and
8 how she coped and dealt with things, is that she was a
9 reluctant, avoidant, I wouldn't say stonewall, if you will,
10 but she didn't want to talk about these things. And she was
11 going to tell the bare minimum to get that person to stop
12 asking her questions.

13 Because as her therapist said, she had symptoms of
14 flashback, she has symptoms, obviously, of regression, she
15 talked more like a baby, she had fears, she had fear of her
16 dad, she had fear of men. So she didn't want to talk about
17 this.

18 DSS, the foster care worker, the doctor, they're not
19 making her talk anymore than was absolutely necessary. And
20 she consistently maintains that her father touched her
21 vaginal area with his hand to those people.

22 Now, she comes to court, she comes to court and she has
23 you all staring at her, people at our table, the Judge,
24 court personnel, she's back on autopilot because what else
25 is here that has not ever been here before for her? The

CLOSING ARGUMENTS - MS. HODGE

207

1 Defendant.

2 So she's got her father, who I'm sure there's still
3 some love in there. This is her father for goodness sakes.
4 She's got her dad staring at her disapprovingly,
5 disappointing, making her feel guilty, making her want to
6 stop thinking about it. Now, I'm just submitting these
7 things to you for consideration. Obviously, I don't know
8 what's in her head, but that's what it appeared to be.

9 I don't know if you heard this, I assume some of you
10 did hear this, but when we called her as a witness, and I'm
11 bringing her from the bar up she had kind of wild eyes and
12 she looked at me and she said, I'm scared. I said, that's
13 okay, come on.

14 She sat there and her eyes immediately went to her dad.
15 Can you imagine the thoughts, the fears, the guilt, the
16 shame to have to sit here and say that in front of a bunch
17 of strangers and to the person that did it to you, to the
18 person that threatened you, to the person you truly were
19 afraid would hurt you if you told? Is it any surprise that
20 she shut it down with the basics? He touched me, she was
21 done.

22 That scenario, ladies and gentlemen, is exactly why the
23 courts and the law allows for forensic interviews. That's
24 why we have a neutral person, Christine Carlberg, interview
25 thousands of children, as you've heard, she's done over

CLOSING ARGUMENTS - MS. HODGE

208

1 twenty-four hundred or something like that, interviews of
2 children, in a child friendly neutral place because kids are
3 more comfortable there.

4 There's not a police officer with a gun standing there
5 saying tell me what happened, tell the truth, you'd better
6 tell me the truth. They don't have mom standing there.
7 They don't have dad standing there. They don't have a DSS
8 worker who's about to pull them out of the house or put them
9 in foster care.

10 They're in a completely neutral environment where they
11 are being asked what happened with respect and dignity and
12 patience. And as you watched the video, I submit to you
13 that is the truth in this case. What she told Christine in
14 that video is really what happened to her.

15 How do we know that? Some things to think about. In
16 the video, clearly she's avoidant as well. She does not
17 want to talk about this, which brings me to a totally
18 separate topic.

19 If it's just a lie, if mom cooked this up and said,
20 hey, go in there and tell them that your dad's been messing
21 with you so you can come home and live with me, that should
22 have been easy as pie because it has no emotion attached to
23 it, it has no real feeling attached to it, it has no
24 flashback attached to it. Walk in and say, yeah, my dad
25 touched me, my dad messed with me and be done with it. Why

CLOSING ARGUMENTS - MS. HODGE

209

1 would it be so hard? Why would it hurt so much? It
2 wouldn't.

3 So we go back to the forensic. She doesn't want to
4 talk, but finally Christine gets her to come a little bit
5 out of her shell just by asking that basic question again,
6 what happened? What happened?

7 And they have diagrams that they go through. And not
8 only does she verbalize, but you'll have diagrams back
9 there, she marks on the diagrams. Christine didn't mark the
10 diagrams, she did it. She chose the places.

11 And I submit to you, ladies and gentlemen, if the
12 mother just concocted this whole thing and put it in the
13 child's head, wouldn't just touching the vaginal area
14 probably be enough for a 7 year old just to come in to say
15 that piece, that's easy enough to say?

16 What kind of disturbed person would say, hey, tell them
17 also that he stuck his finger in your behind and his penis
18 in your mouth? Go ahead and say all of that. Who would do
19 that?

20 If you just want to get your lie out there and get DSS
21 to swoop in, the easiest thing is to say, yeah, daddy
22 touched me in my private. That's the easiest lie to
23 maintain, that's pretty believable, it doesn't require much
24 detail. But this was a lot more detail. How would she have
25 this detailed information if it didn't personally happened

CLOSING ARGUMENTS - MS. HODGE

210

1 to her?

2 Remember in my opening I asked you to think back to
3 when you were 6 or 7 or if you have children that age,
4 what's their level of sexual knowledge? Very minimum.

5 Even today with all the stuff on TV, you know. You see
6 all kinds of things and obviously sex sells everything, but
7 you don't see people putting fingers in private parts or
8 penises in mouths. You don't see that.

9 And she denied ever seeing any pornography. She knows
10 it because it happened to her. That's why she knows it.
11 Because she was very clear about what happened, though she
12 didn't want to say.

13 The second thing she did in the forensic, which again I
14 submit to you is the truth of what happened here, is she
15 gave a very descriptive re-enactment, if you will.
16 Interesting. When it came to the part about the father
17 placing penis in her mouth, she said he does like this, he
18 grabs these and he does like this.

19 Where would she get that from? Did her mom make that
20 up for her? This was an extremely contentious divorce,
21 these people do not like each other. That mom would not be
22 in that child's bedroom and go, ah ha, you know what, she's
23 got a bed that has bars just like that. Hey, Samantha, let
24 me tell you what to say. When they ask you, pretend like
25 you're grabbing the bars on the bed.

CLOSING ARGUMENTS - MS. HODGE

211

1 Again, you're talking about a 7 year old child. How
2 would she know that? You see in the video, she lays herself
3 down, she flips herself over as being the Defendant and
4 leans up and she does the bar motion. That's pretty
5 creative for a 7 year old if it didn't really happen to her.

6 In addition, so Christine could be clear and so this
7 child could get the full disclosure out, they bring out the
8 anatomically correct dolls. And you can't see the dolls as
9 well on the video as far as what their parts look like, but
10 everybody knows, they're anatomically correct.

11 So she demonstrates with the dolls exactly what
12 happened to her. And you can recall that from the video,
13 she took all the clothes off and placed the penis in the
14 mouth of the female doll. And then when it came time to
15 what happened with the hands, took the hand and pushed it up
16 and flipped the doll over and pushed it up. Again, a lot of
17 detail that a 6, 7 year old should not know about if it
18 didn't actually happen to her.

19 I submit to you that this child is consistent,
20 consistently maintained her father has abused her, but that
21 in the situation he placed her in and who you place her
22 around, she's going to give the minimum. Does that mean
23 she's lying? No. No.

24 Here's a great example -- well, I think it's a great
25 example. I shouldn't say -- here's an example of something

CLOSING ARGUMENTS - MS. HODGE

212

1 so minute, but it's what the Defense wants you to do with
2 this information.

3 Say you guys got to leave yesterday and everybody
4 probably had dinner last night. Let's say you came back to
5 the jury room this morning and a couple of you were talking
6 and somebody says, oh, what did you do last night? Let's
7 pretend I'm the juror. And I'll say, oh, you know, just
8 went and grabbed a bite to eat. Okay.

9 And then another juror comes over and starts talking,
10 oh, yeah, well, I made some soup for dinner. What did you
11 do? Oh, I say, oh, I went to Chick-fil-A. I really love
12 Chick-fil-A spicy chicken sandwiches.

13 And somebody else walks up and says, oh, yeah, I was at
14 Chick-fil-A, I didn't see you. Oh, my goodness, yeah, I got
15 their milkshake, and their french fries and their sandwich.
16 Oh, I was so stuffed. I felt so terrible when I got home
17 last night, I was so full.

18 Wait a minute, when the first person asked me all I
19 said was I went and had dinner. Am I a liar? The second
20 person I told I actually had the chicken sandwich. So did I
21 lie to number one? No. The third person I told I had a
22 milkshake and french fries and chicken sandwich. So did I
23 lie to number two? So should we just throw the whole thing
24 out because I'm not consistent? No.

25 All of that is ways we communicate. We tell some

CLOSING ARGUMENTS - MS. HODGE

213

1 people some things. And if we just don't feel like talking
2 we just say, not much, had dinner and went home. Does that
3 mean you're lying? Does that mean you didn't go to Chick-
4 fil-A and you didn't have all those items of food? No.

5 Same kind of concept here. This is the real world.
6 Court is not some random place where we exact strange rules
7 and place them on people. It's just using our common sense
8 to weed through the facts. And I submit to you when you do
9 that, when you use your common sense you will see that her
10 content is clear, her disclosure is consistent, that the
11 forensic interview is really what happened.

12 And the third thing that you will use to determine
13 truth or not truth is motivation. Just like Ms. Wicker
14 said, why would she make this up? I submit to you that
15 child had no reason to make this up. Nothing positive has
16 happened to that little girl because of this. Nothing.

17 Who has all the motivation in the world? The
18 Defendant. Whose life will change because of your verdict?
19 The Defendant. Who has the most reason to lie to you? The
20 Defendant.

21 Samantha's life is not going to be different. She's
22 going to be in therapy for a long time, probably. She's
23 living with her mother, yes. But she had to go into foster
24 care because her dad didn't want her to be with her mom,
25 this evil, terrible mom, he wanted her and her siblings to

CLOSING ARGUMENTS - MS. HODGE

214

1 be separated and taken away all because he said mom was
2 involved in a case a couple of years ago that really, in
3 fact, that wasn't the facts of the case, the older children
4 were abused by a babysitter outside of the home, because I
5 prosecuted that case.

6 And this little girl had nothing to do with that. She
7 just got scooped up along in that ride and had to go to
8 dad's house. She got nothing but foster care. She got
9 nothing but scrutinization, interviews, medical exams, more
10 questioning, coming to court. She got no bonus, no great
11 thing. Why would she lie and make something up so big?

12 And I tell you the foster care piece of it is important
13 in my opinion and something for you to think about because
14 if this was a lie, whoa, that's where the rubber would have
15 met the road, when DSS came and got me, I'm 7 and they're
16 coming and going, okay, honey, we'll see you later, you're
17 coming with us. I'd be like, whoa, whoa, whoa, whoa, whoa,
18 whoa, no, he didn't do it, he didn't do it, don't make me
19 go, don't make me leave. And you got brother and sister
20 doing the same thing. If I was lying, that would have been
21 the end of that.

22 And that's what he was hoping. That is why he put
23 those kids in foster care. Because he wanted them to deny
24 what happened. Recant, take it back and to punish them. If
25 you tell on me, this is what you get. A person that's

CHARGE OF THE COURT

215

1 sexually abusing their child is not really a nice person.
2 They don't really care if their kids go into foster care or
3 not.

4 Ladies and gentlemen, if you use your common sense, you
5 look at the content, the consistency and the motivation of
6 the evidence that you have heard, I submit that you're going
7 to be firmly convinced in your hearts and in your minds of
8 the Defendant's guilt. And I ask that you return verdicts
9 that speak the truth in this case, which is guilty as to
10 both counts. Thank you.

11 **THE COURT:** All right. Ladies and gentlemen, no one in
12 or out of the courtroom during the course of my charge. So
13 if anyone needs to leave, now is the time to do it.

14 (Pause)

15 **THE COURT:** Mr. Foreman, ladies and gentlemen of the
16 jury, I told you at the beginning of this trial that there
17 were three indictments, one of which was for incest. The
18 State has withdrawn that charge. So at this time you are
19 concerned with the remaining two indictments for criminal
20 sexual conduct with a minor and for committing a lewd act on
21 a child.

22 Now, with respect to the first indictment, that being
23 criminal sexual conduct with a minor, I charge you that some
24 number of years ago our Legislature enacted - - brought into
25 one package or under an umbrella all of the laws dealing

CHARGE OF THE COURT

216

1 with sexual battery with respect to minors. And that is
2 known, as I told you, criminal sexual conduct. Now, it's
3 broken down into first, second and third degree.

4 Ladies and gentlemen, a sexual battery is accomplished
5 in one of three ways, either with the use of force, which
6 constitutes criminal sexual conduct in the first degree, or
7 secondly, with a threat of the use of force, which would
8 constitute criminal sexual conduct in the second degree, or
9 third, when the alleged victim is in some fashion
10 incapacitated. And as I've told you, the indictment in this
11 case charges the Defendant with criminal sexual conduct in
12 the first degree.

13 Now, ladies and gentlemen, with respect to the
14 indictment in this case you are not concerned with whether
15 or not force was used, with whether or not there was any
16 threat of the use of force, or whether or not the alleged
17 victim in this case was in some fashion incapacitated.

18 With respect to this case, ladies and gentlemen, I
19 charge you that section 16-3-655 provides in part as
20 follows; a person is guilty of criminal sexual conduct with
21 a minor in the first degree if the actor engages in sexual
22 battery with a victim who is less than 11 years of age, a
23 person is guilty of - - less than 11 years of age. That is
24 first degree criminal sexual conduct.

25 Now, under the statute, ladies and gentlemen, our code

CHARGE OF THE COURT

217

1 defines actor as a person accused of criminal sexual
2 conduct. And it defines the victim as the person alleging
3 to have been subjected to the criminal sexual conduct.

4 Now, under the statute that I read to you, ladies and
5 gentlemen, I charge you that a sexual battery means, among
6 other things, sexual intercourse, cunnilingus, fellatio or
7 any intrusion, however slight, of any part of a person's
8 body or with any object into the genital or anal openings of
9 another person's body except when such intrusion is
10 accomplished for medically recognized treatment or
11 diagnosis.

12 Ladies and gentlemen, with respect to the term
13 fellatio, I charge you that it is an act committed with the
14 male sex organ and the mouth of another. With respect to
15 sexual battery and with respect to fellatio, I charge you
16 that -- or intercourse, sexual intercourse, it means the
17 completed act.

18 Therefore, there must have been some degree of
19 intrusion or penetration of the victim's mouth by the
20 Defendant's penis, but any intrusion of any part of a
21 person's body, ladies and gentlemen, however slight, is all
22 that is necessary. And it is not necessary to prove
23 ejaculation or emissions.

24 So with respect to this indictment I charge you that
25 the elements which the State must prove, first of all, that

CHARGE OF THE COURT

218

1 the victim was 11 or less years of age, and secondly, that
2 this Defendant engaged in sexual battery as I have defined
3 that term to you.

4 Ladies and gentlemen, I charge you with respect to the
5 charge against this Defendant that consent is not a defense
6 to the commission of the alleged crime.

7 I further charge you, ladies and gentlemen, that
8 pursuant to section 16-3-657 it reads as follows; the
9 testimony of the victim need not be corroborated in
10 prosecution under section 16-3-652 through 658. And this
11 indictment is included within that section.

12 Now, the Defendant is next indicted, as I've told you,
13 for committing a lewd or lascivious act upon a minor. This
14 too is a statutory offence. And section 16-15-140 of the
15 code provides as follows; it is unlawful for a person over
16 the age of 14 years to wilfully and lewdly commit or attempt
17 a lewd or lascivious act upon or with the body or its parts
18 of a child under the age of 16 years with the intent of
19 arousing, appealing to, or gratifying the lusts or passions
20 of the - - or sexual desires of the person or of the child.

21 Now, ladies and gentlemen, with respect to the statute,
22 I charge you that the term wilfully means that something is
23 done intentionally and not by accident. It implies that the
24 act is done knowingly and with an evil intent. Lewdly
25 designates a form of immorality which has a relation to

CHARGE OF THE COURT

219

1 sexual impurity. To commit means to do, to accomplish or to
2 perpetrate an offense or a crime.

3 The word attempt means an intent to do a particular
4 criminal thing combined with an act which falls short of the
5 thing intended. A lewd act is an obscene, indecent,
6 lustful, unchaste or licentious act and as used in the
7 statute must be in relation to a sexual act. A lascivious
8 act is synonymous with lewd with the additional connotation
9 of expressing lust or being wanton.

10 Now, the act must have been upon the body of a child
11 under the age of 16 years. There must have been an intent
12 of arousing, appealing to or gratifying the lusts, or
13 passions or sexual desires of this Defendant or those of the
14 child.

15 Ladies and gentlemen, the purpose of the statutes that
16 I have read to you provide for societal protection for
17 minors in the area of sexual conduct. Therefore, I again
18 charge you that consent is not an issue in the prosecution
19 of these offenses since under our law a person under the age
20 of 16 years is incapable of giving consent to sexual acts.

21 Now, ladies and gentlemen, as jurors in this case you
22 have a function or a responsibility that is entirely
23 separate and distinct from my function as the trial judge.
24 The Constitution of our State does not allow me to discuss
25 the facts of this case with you, or to charge you on the

CHARGE OF THE COURT

220

1 facts of this case or in any way or manner let you know what
2 my personal feelings, if any, are about this case. That's
3 because you and you alone are the judges of the facts.

4 Therefore, if during the course of this trial or if
5 during the course of my charge you have a feeling or you
6 have been left with the impression that I have a personal
7 feeling about this case one way or another, then you
8 disregard that feeling or that impression. You and you
9 alone are the judges of the facts.

10 Now, it's your duty and your duty alone to weigh the
11 testimony and the evidence in this case and to pass upon the
12 credibility or the believability of the witnesses you've
13 heard testify. In this case you have the right to believe
14 all that a witness told you or you can disbelieve all a
15 witness told you. You can believe a part of what a witness
16 told you and disbelieve a part of what a witness told you.

17 You can believe one witness as against several or you
18 can believe several as against one. You also have the right
19 to take into consideration any bias, or prejudice or
20 sympathy you feel a witness in the case might have.

21 As I told you, I'm the judge of the law in this case.
22 And I am required to charge you the law applicable to the
23 facts in the case. It's not a question of what you feel the
24 law might be or what it should be. It is not necessarily
25 what the lawyers may have told you it is because under your

CHARGE OF THE COURT

221

1 oath you are required to take the law as I give it to you,
2 apply that law to the facts as you determine those facts to
3 be and to write your verdict accordingly.

4 Ladies and gentlemen, in this case as in all criminal
5 cases this Defendant comes into the courtroom presumed to be
6 innocent. And this presumption continues and carries
7 through the entire trial until and unless the State proves
8 beyond a reasonable doubt that this Defendant is guilty as
9 charged.

10 Now, proof beyond a reasonable doubt, ladies and
11 gentlemen, is proof that leaves you firmly convinced of this
12 Defendant's guilt. There are very few things in this world
13 that we know with certainty. And in criminal cases our law
14 does not require proof that overcomes every possible doubt.

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

21 Ladies and gentlemen, under the oath you took in this
22 case you swore to try the case based only and solely on the
23 testimony and the evidence presented in this case. I charge
24 you to - - it is your duty to lay aside all outside
25 opinions, bias, prejudice or sympathy you may have in

CHARGE OF THE COURT

222

1 reaching your verdict.

2 The word verdict is taken from the Latin word veredicto
3 that means to speak the truth. Now, you have no friends to
4 reward in this case or enemies to punish. I charge you to
5 abide by your oath and return verdicts that speak the truth.

6 Now, you'll have in the jury room with you the two
7 indictments in this case. They do not constitute evidence.
8 They simply set forth the allegations by the State. These
9 indictments are the legal documents which bring this case
10 into the courtroom and presents it to you for your
11 determination.

12 Now, with respect to each indictment there are one of
13 two possible verdicts, guilty or not guilty. And whatever
14 those verdicts are, they must be unanimous. That is all
15 twelve of you must agree.

16 Now, Mr. Foreman, you'll find a place on the back of
17 the indictments where the word verdict is printed. Whatever
18 the unanimous verdict is on each indictment, guilty or not
19 guilty, then write it out in that space and sign your name
20 on the line where it says foreperson of the petit jury.

21 Ladies and gentlemen, at this time I am required to
22 suspend and go over my charge with the lawyers. I need you
23 to go back into your jury room, but don't begin deliberating
24 until I send word in for you to do so. Thank you.

25 (Whereupon the jury exited the courtroom at 10:04 AM)

1 **THE COURT:** Anything further from the State?

2 **MS. HODGE:** Nothing from the State, Your Honor.

3 **THE COURT:** From the Defense?

4 **MS. WICKER:** No, Your Honor.

5 **THE COURT:** All right. Do we have all of the exhibits
6 together?

7 (Pause)

8 **THE COURT:** All right. Tell them to deliberate and
9 bring my alternate, Mr. Franklin, in.

10 (Whereupon the jury began deliberating at 10:05 AM)

11 (Whereupon the alternate entered the courtroom at 10:07
12 AM)

13 **THE COURT:** This will conclude your service on this
14 case. I'm not sure what the balance of the day holds for
15 you. And what I need for you to do at this time is to
16 report downstairs to the jury assembly room and Judy will
17 let you know what - - what that is.

18 **MR. FRANKLIN:** Okay.

19 **THE COURT:** Thank you so much.

20 **MR. FRANKLIN:** If it's possible to stay and hear the
21 verdict, I'd like to.

22 **THE COURT:** Sure. You can do that.

23 **MR. FRANKLIN:** Okay.

24 **THE COURT:** Certainly. How about, if you'll do this,
25 if you'll go report in to Judy. And then tell her you want

1 to come back up, that I've allowed that.

2 **MR. FRANKLIN:** Okay.

3 **THE COURT:** Okay.

4 **MR. FRANKLIN:** Thank you.

5 **THE COURT:** All right. Be at ease, please.

6 (Whereupon court was in recess at 10:08 AM)

7 (Whereupon court resumed at 11:19 AM)

8 **THE COURT:** Okay. The jury has sent in this question.

9 They want to know why the other charge was removed. I don't
10 believe why it was removed is anything for the jury to
11 consider. I don't know anything other than to tell them
12 that they're not concerned with that. Anything to add?

13 **MS. WICKER:** Nothing that I can think of, Your Honor.

14 I don't think that's just really for them to consider.

15 **THE COURT:** All right. Bring this other jury.

16 (Whereupon the jury entered the courtroom at 11:21 AM)

17 **THE COURT:** Ladies and gentlemen, you have sent in this
18 question asking why was the other charge removed. That is a
19 question that I cannot answer for you. That is not an issue
20 of fact in this case, and you're not concerned with that.

21 That's a matter of law for the Court. And for that reason,
22 I'm sorry that I cannot answer that question for you. So I
23 need for you to return to your jury room now and continue
24 with your deliberations. Thank you so much.

25 (Whereupon the jury exited the courtroom at 11:22 AM)

1 (Whereupon Court's exhibit 1 was marked)

2 **THE COURT:** All right. Be at ease, please.

3 (Whereupon court was in recess at 11:22 AM)

4 (Whereupon court resumed at 12:58 PM)

5 **THE COURT:** Be seated, be seated. All right. Bring
6 this jury. You ready to go with the tape?

7 **MS. HODGE:** Yes, sir. You want them to watch it in
8 here?

9 **THE COURT:** Yep.

10 **MS. HODGE:** Okay.

11 **THE COURT:** Okay. Bring them on.

12 (Whereupon the jury entered the courtroom at 12:59 PM)

13 **THE COURT:** All right. Ladies and gentlemen, you've
14 sent in this question, may we watch the DVD, State exhibit
15 7, again? We may have questions we would like to discuss
16 during the video among ourselves.

17 We're going to play back the video for you at this
18 time. Of course, you can't discuss this during the course
19 of the video. Once you've seen the video, then you'll go
20 back to your jury room and continue with your deliberations,
21 okay? All right.

22 (Pause)

23 **THE COURT:** Can we fast-forward it to when it starts?

24 (Whereupon the DVD, State's exhibit 7, was played for
25 the jury)

1 (Whereupon Court's exhibit 2 was marked)

2 (Whereupon the DVD was ended)

3 **THE COURT:** Okay. Now, before - - ladies and
4 gentlemen, if you'll now retire and continue with your
5 deliberations. Is their lunch here yet, Don?

6 **THE BAILIFF:** Yes, sir. It just got here.

7 **THE COURT:** All right. If you'd like to take a break
8 and have your lunch, that's fine. If you want to have your
9 lunch and continue your deliberations, that's fine. Just
10 whatever you wish to do, okay? Thank you so much. Please
11 retire and continue with your deliberations.

12 (Whereupon the jury exited the courtroom at 1:47 PM)

13 **THE COURT:** All right. We'll stand at ease for the
14 time being. Please don't leave the courtroom, I mean, the
15 courthouse.

16 (Whereupon court was in recess at 1:47 PM)

17 (Whereupon court resumed at 2:32 PM)

18 **THE COURT:** Be seated, be seated. All right. Anything
19 before I bring the jury?

20 **MS. HODGE:** Nothing from the State, Your Honor.

21 **THE COURT:** All right. Bring them on, please. Ladies
22 and gentlemen, we don't know what this verdict is, but I
23 want everybody to understand that whatever the verdict is, I
24 will not permit or condone any kind of displays of emotion
25 or outbursts of any kind. And should there be any, that'll

VERDICT OF THE JURY

227

1 constitute contempt of court, and I'll punish accordingly,
2 okay?

3 (Whereupon the jury entered the courtroom at 2:33 PM)

4 **THE COURT:** Mr. Foreman, if you've reached a verdict,
5 would you hand it to the bailiff, please, sir.

6 **MR. FOREMAN:** Yes, sir.

7 **THE COURT:** All right. Would you please publish the
8 verdicts.

9 **MADAME CLERK:** Your Honor, in the case of 2010-GS-23-
10 10178, excuse me, 10178, the State versus Alvin Dwayne
11 Arnold, as to the criminal sexual conduct with a minor in
12 the first degree, the verdict is guilty.

13 In the case of 2010-GS-23-10177, again, the State
14 versus Alvin Dwayne Arnold, as to the indictment of lewd act
15 upon a child, the verdict is guilty.

16 Ladies and gentlemen, if you agree these are the
17 verdicts you reached in your deliberation room, would you
18 please raise your right hand.

19 (Whereupon all jurors raised their right hand)

20 **MADAME CLERK:** Thank you.

21 **THE COURT:** Anything further from the jury, counsel?

22 **MS. HODGE:** Nothing from the State, Your Honor.

23 **MS. WICKER:** Nothing for the Defense.

24 **THE COURT:** Thank you, ladies and gentlemen, for your
25 service on this case. And insofar as you're concerned,

SENTENCE OF THE COURT

228

1 you're through for the week. You don't have to come back.

2 And let me take this opportunity to thank you for
3 coming and serving. I want you to know I'm well aware of
4 the fact that jury service is a burden to you. And I know
5 that it's difficult for you to take time off from your jobs
6 and families and spend it with us on jury duty.

7 But I do hope you understand the importance of being
8 here this week for without your work, we could not get off
9 from our docket the cases that we do. I appreciate so much
10 your service. You're free to go.

11 If you'll report downstairs to the jury assembly room,
12 Judy will have a voucher for you. Attached to that will be
13 a slip for you to give to your employer if you need that.
14 Anyone have a question I can try to answer for you before
15 going?

16 (No response)

17 **THE COURT:** Okay. Thank you so much.

18 (Whereupon the jury exited the courtroom at 2:36 PM)

19 **THE COURT:** Any motions?

20 **MS. WICKER:** Your Honor, just to renew my prior
21 motions.

22 **THE COURT:** And I would have to deny the motions.

23 **MS. WICKER:** Thank you, Your Honor.

24 **THE COURT:** All right. Solicitor, anything?

25 **MS. HODGE:** Just the sentencing sheets, Your Honor.

SENTENCE OF THE COURT

229

1 Your Honor, Ms. Cody informs me that she did not wish to
2 address the Court and, obviously, whatever Your Honor
3 decides, leave it to your discretion.

4 **THE COURT:** All right. Anything before I sentence?

5 **MS. WICKER:** Your Honor, I think, you know, we
6 understand the jury's spoken and, you know, he has a
7 supportive family. I'd just ask for as much leniency as
8 possible.

9 **THE COURT:** All right. Come around and I'll let you
10 speak. Now, Mr. Arnold, anything that you have to say now
11 before I sentence you?

12 **MR. ARNOLD:** What can I say? I know I'm innocent.
13 So ...

14 **THE COURT:** All right. Anything further, Ms Wicker?

15 **MS. WICKER:** No, Your Honor.

16 **THE COURT:** Solicitor, anything?

17 **MS. HODGE:** No, Your Honor.

18 (Pause)

19 **THE COURT:** All right. Mr. Arnold, on the indictment
20 for criminal sexual conduct with a minor, first degree, the
21 sentence of the Court is you be committed to the Department
22 of Corrections for a period of twenty years. And on the
23 indictment for committing a lewd act, ten years.

24 **MS. HODGE:** Your Honor, I believe it's twenty-five to
25 life, - - -

1 THE COURT: Is it?

2 MS. HODGE: - - - mandatory minimum, yes, sir, on CSC,
3 first.

4 **THE COURT:** All right. Twenty-five years.

5 **MS. HODGE:** Thank you, Your Honor.

6 THE COURT: It's amended to that.

7 **MS. HODGE:** Thank you, Your Honor.

8 (Hearing ended at 2:39 PM)

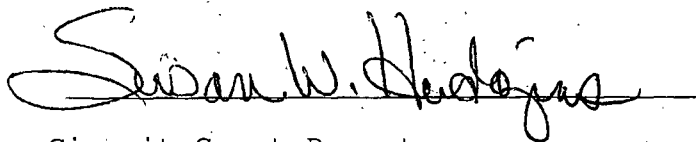
9 (End of requested transcript of record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Greenville County, South Carolina, on the 12th - 14th day of November 2013.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 3, 2014

A handwritten signature in cursive script, reading "Susan W. Hudgins", written in black ink. The signature is fluid and stylized, with a long horizontal line extending from the end of the name.

Circuit Court Reporter

232

WITNESSES

H E Hubert

Greenville County Sheriffs Office

11/22/2010

ARREST WARRANT NUMBER

1484347

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

person of Grand Jury

VERDICT

Guilty

Person of Petit Jury

Date:

11-14-13

DOCKET NO. 2010-GS-23-

BSD

010178

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2010

11-14-13

THE STATE

vs.

ALVIN DWAYNE ARNOLD

Indictment for

0385

**CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE**

VIOLATION § 16-03-0655 (A)(1)

RECEIVED

DEC 23 2010

**Clerk of Court
Greenville County**

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE) INDICTMENT FOR
) CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE

At a Court of General Sessions, convened on JUL 31 2012 the Grand Jurors of Greenville
County present upon their oath:

That ALVIN DWAYNE ARNOLD did in Greenville County, between December, 2008 and August,
2010, commit a sexual battery on S.A., who was less than eleven years of age. This is in violation of
§16-3-655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended

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

Wynne S. Seay
SOLICITOR

234
STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Alvin Dwayne Arnold

AKA:

Race: [REDACTED] Sex: [REDACTED] Age: 37

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: Piedmont, SC 29673-8100

DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor - victim under 11 yrs of age - First degree

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

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

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

ATTEST:

Hodge, Kris

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

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

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

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

 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

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

\$ paid to Public Defender Fund

Other:

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

Clerk of Court/ Deputy Clerk

Paul B. Wickens

Court Reporter:

S. Higgins

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

2070

Sentence Date:

11-14-13

WITNESSES

H E Hubert *HEH*

Greenville County Sheriffs Office

11/22/2010

ARREST WARRANT NUMBER

1484348

ACTION OF GRAND JURY

TRUE BILL

Jonathan P. [Signature]
FOREMAN GRAND JURY

eperson of Grand Jury

VERDICT

Guilty

[Signature]
Foreperson of Petit Jury

Date: 11-14-13

DOCKET NO. 2010-GS-23-

BSD

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

2012
TERM 2010

11-14-13

THE STATE

vs.

ALVIN DWAYNE ARNOLD

Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

010177

235

RECEIVED

DEC 23 2010

**Clerk of Court
Greenville County**

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on

JUL 31 2012

the Grand Jurors of Greenville

County present upon their oath:

That ALVIN DWAYNE ARNOLD did in Greenville County, between December, 2008 and August, 2010, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of S.A., a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina Code of Laws (1976) as amended.

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

Christina S. Seay
SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

237

COUNTY OF Greenville
STATE VS.Alvin Dwayne Arnold

AKA:

Race: Sex: M Age: 37DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Piedmont, SC 29673-8100DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

INDICTMENT/CASE#: 2010GS2310177A/W#: 1484348Date of Offense: 12/17/2008S.C. Code §: 16-15-140CDR Code #: 2468

SENTENCE SHEET

☒ CONVICTED OF or ☒ PLEADSin violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☒ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kris HodgeSC Bar# 8245

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

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

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

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

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

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/Deputy Clerk

Paul B. Wickersham

Court Reporter:

S. Hudgins

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

2070

Sentence Date:

11-14-13

238

WITNESSES

H E Hubert

Greenville County Sheriffs Office

11/22/2010

ARREST WARRANT NUMBER

1484349

ACTION OF GRAND JURY

TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010-GS-23-

BSD

010176

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

July

TERM 2010

THE STATE

vs.

ALVIN DWAYNE ARNOLD

Indictment for

0090

INCEST

VIOLATION § 16-15-0020

RECEIVED

DEC 23 2010

**Clerk of Court
Greenville County**

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
INCEST

At a Court of General Sessions, convened on **JUL 31 2012** the Grand Jurors of Greenville
County present upon their oath:

That ALVIN DWAYNE ARNOLD did in Greenville County, between December, 2008 and August, 2010, have
carnal intercourse with S.A., who is within the degree of relationship prohibited by §16-15-20 (1) or (2). This is
in violation of §16-15-20 of the South Carolina Code of Laws (1976) as amended.

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

Quynia S. Gray
SOLICITOR

GENERAL SESSIONS DOCKET TRACKING SHEET

Name: ALVIN DWAYNE ARNOLDIndictment #: 2010GS2310176Address: [REDACTED]Warrant/Ticket # 1484349City: Piedmont State: SC ZIP: 29673-8100

No Warrant: _____

SS#: [REDACTED] Sex: M Race: WOffense Code: 0090Date of Birth: [REDACTED]Offense Name: Sex / IncestState: SC Driver's License #: [REDACTED]Date of Arrest: November 22, 2010DATE OF DISPOSITION: 0.011/14/13**FILED**

NOV 15 2013

Clerk of Court
Greenville County

DISPOSITION:

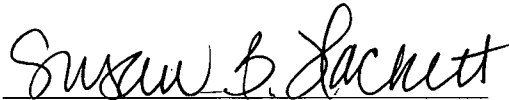
☐ 1. Guilty Plea* ☐ 7. Remanded☐ 2. Trial (Guilty)☐ 8. Dismissed at Prelim☐ 3. Trial (Not Guilty)☐ 8. No Bill* ☒ 4. Dism/Nol Pros/Pros Ended* ☐ 9. Failure to Appear* ☐ 5. Judicial Commitment* ☐ 10. Other☐ 6. Judicial Dismissal* Explain: Legal issue prevents prosecutionJudge: PyleCt. Reporter: HudginsDefense Attorney: WICKER, AMANDASolicitor: Kris Hodge WATBar #: 8245Offense Code: 0090Offense Name: Sex / Incest

Sentence: _____

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 2, 2014

A handwritten signature in cursive script, reading "Susan B. Hackett", is written over a horizontal line.

Susan B. Hackett
Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Greenville County

C. Victor Pyle, Jr., Circuit Court Judge

RECEIVED

SEP 02 2014

THE STATE,

SC Court of Appeals
RESPONDENT,

V.

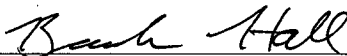
ALVIN D. ARNOLD,

APPELLANT

APPELLATE CASE NO. 2013-002511

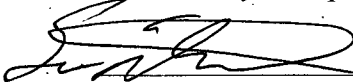
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 2nd day of September, 2014.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 2nd day of September, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 30, 2022