

VOLUME ONE OF TWO

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Pickens County

D. Garrison Hill, Circuit Court Judge

JAN - 5 2015

ROBERT LEE DEAN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-001313

APPENDIX

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INDEX

INDEX	i
TRIAL TRANSCRIPT	1
INDICTMENTS AND SENTENCING SHEETS.....	439
APPLICATION FOR POST-CONVICTION RELIEF	445
RETURN	487
POST-CONVICTION RELIEF HEARING TRANSCRIPT	503
ORDER OF DISMISSAL	542

STATE OF SOUTH CAROLINA
COUNTY OF PICKENS

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)

PLAINTIFF,)

-VS-)

ROBERT LEE DEAN,)

DEFENDANT.)

2007-GS-39-0346, 0347

SEPTEMBER 21, 2009

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

PETER THEM, ESQUIRE
ATTORNEY FOR THE STATE

JOHN DEJONG, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Witness				
In-camera				
Them	60			
DeJong				
Witness				
Them	98		150	
DeJong		122		
Shauna Galloway-Williams - In-camera				
Them	164		180	
DeJong		173		185
Shauna Galloway-Williams				
Them	189			
DeJong		202		
Nicholas W.				
Them	208		229	
DeJong		222		
Carolyn Galluscio				
Them	231			
DeJong		240		
Eugene Galluscio				
Them	245		253	
DeJong		251		
Maria Galluscio				
Them	256		285	
DeJong		272		
Crystal Dean				
DeJong	299		314	
Them		308		
Lisa Dean				
DeJong	315			
Them		323		
Hope Dean				
DeJong	330			
Them		339		
Robert Lee Dean				
DeJong	349			
Them		378		
				PAGE
Opening Statements				
Them				84
DeJong				90
Closing Statements				
DeJong				396
Them				403
Charge				412
Certificate of Reporter				438

State of South Carolina -vs-Robert Lee Dean (2007-GS-39-0346, 0347)
Exhibit List

3

STATE'S EXHIBITS

NO	DESCRIPTION	ID	EV
	(NONE)		

DEFENDANT'S EXHIBITS

D-1	Drawing by defendant	366	366

COURT'S EXHIBITS

C-1	Note from jury	426	426

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

Juror #	Name	Race	Sex	<u>Strikes</u>			Accept
				Court	Plaintiff	Def.	
68	Newton, Maxs E	W	M				x
20	Cunniffe, William P Jr	W	M			x	
54	Kitchens, Ashley B	W	F			x	
24	Day, Tony O	W	M				x
21	Dalton-Clark, Amanda L	W	F			x	
93	Smart, Lewis Jr	W	M				x
108	Trotter, James W	W	M				x
12	McCurry, Darla W	W	F				x
118	Williams, Julie K	W	F			x	
10	Cash, Susan E	W	F				x
25	Demerski, Debra J	W	F				x
81	Proctor, Brenda K	W	F				x
19	Crenshaw, Johnny E	W	M				x
49	Johnson, James M	B	M				x
31	Fortner, Dianne R	W	F			x	
32	Foster, Margaret S	W	F			x	
99	Stewart, Pamela C	W	F				x
66	Moore, Ashley H	W	M				x
65	McKinney, David	B	M				x

State of South Carolina -vs-Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

5

1 (WHEREUPON, Court convened with all parties present
2 and the following proceedings were had.)

3 THE COURT: In the case of Robert Lee Dean,
4 for which we're about to select a jury, I'll be glad to
5 hear any preliminary motions that either side has. Mr.
6 Dejong.

7 JOHN DEJONG: May it please the court, Your
8 Honor. It is my understanding that the state has called
9 for trial the case of the State versus Robert Lee Dean
10 on two indictments. That would be indictment 2007-GS-
11 39-346, an indictment for criminal sexual conduct with a
12 minor in the second degree. Also, indictment 2007-GS-
13 39-347, an indictment for lewd act upon a child.

14 By way of a little bit of history, Your Honor, Mr.
15 Dean was arrested on a warrant which alleged criminal
16 sexual conduct in the second degree and he was arraigned
17 on that charge and he posted bond on that charge. The
18 indictment 2007-GS-39-347, lewd act upon a child, was an
19 indictment that went before the Pickens County Grand
20 Jury as a direct presentment. It appears that the
21 Pickens County Grand Jury did return an indictment on
22 that case. I can barely read the date, but it would
23 appear to be February the 20th of 2007, signed by the
24 foreperson of the Grand Jury, I believe, Vickie - I'm
25 not sure of the middle initial - Malone. Your Honor,

1 with regard to the direct presentment, no action was
2 taken on that case or that indictment with regard to the
3 defendant until this morning. Perhaps to clarify that,
4 when the state obtained the direct presentment, they did
5 not request nor did they receive a bench warrant to pick
6 up Mr. Dean. Mr. Dean has never been arraigned on that
7 charge. Mr. Dean never made bond on that charge.
8 Absolutely, as I said a moment ago, no action was taken
9 on that charge.

10 This morning, Your Honor, at approximately eight
11 forty-five Mr. Them, Mr. Peter F. Them, assistant
12 solicitor for the Thirteenth Judicial Circuit,
13 approached me and asked me if I would accept service on
14 that indictment. That indictment being 347. I shared
15 with Mr. Them I would not accept service on that
16 indictment. Indeed, in retrospect, I don't know that
17 that would have made any difference, but nonetheless,
18 that's what I shared with him.

19 The jury panel was already assembling in the
20 courtroom at that point in time. He asked me to call --
21 Mr. Them asked me to call Mr. Dean to the front of the
22 court. I shared with him I would not do that, I was not
23 comfortable with that in view of the fact that the jury
24 panel was already assembling. Mr. Them took it upon
25 himself to call Mr. Dean to the front of the courtroom,

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

7

1 at which time Mr. Them and Ms. Angela King, who also
2 works for the solicitor's office, were standing at the
3 clerk -- excuse me, the court reporter station. What
4 Mr. Them's intentions were at that point in time, I do
5 not know. But I suggested to him that I was not pleased
6 that he would serve that document, or attempt to serve
7 that documnt, on my client with the jury panel
8 assembling.

9 That is just to give the court a little history.
10 At this point in time, Your Honor, I would move to quash
11 indictment 347, and so the record is clear that is 2007-
12 GS-39-347, lewd act upon a child. I move to quash that
13 indictment or dismiss that indictment on the ground
14 that, in view of this case having been called for trial,
15 to proceed at trial on this case at this point in time
16 would be a direct violation of Mr. Dean's Sixth
17 Amendment right to notice. I did not pull all of the
18 cases in my research, Your Honor. I do have two cases
19 here. Begging the court's pardon, the first is State
20 versus Green. That is a 1977 Supreme Court of South
21 Carolina case. Citation on that is 269 S.C. 657 and
22 secondary site 239 S.E.2d at 485. In that case, Your
23 Honor, not getting involved in necessarily the factual
24 allegations, but it was an issue very similar factually
25 to this issue. I believe that was a case where the

1 defendant was tried in his absence. But in quoting the
2 South Carolina Supreme Court from State versus Green,
3 they say, quote, the Sixth Amendment of the United
4 States Constitution provides that in all criminal
5 prosecution the accused shall enjoy the right to be
6 informed of the nature and cause of the accusations and
7 to be confronted with witnesses against him. Not only
8 are these guaranteed applicable to the state prosecution
9 under the Fourteenth Amendment, they are specifically
10 mandated by our state constitution. They then site the
11 South Carolina Constitution. Moreover, these rights are
12 personal to the accused: It is the accused, not
13 counsel, who must be informed of the nature and cause of
14 the accusations, who must be confronted with the
15 witnesses against him. In this case, still quoting from
16 the South Carolina Supreme Court, the accused was not
17 served with an arrest warrant or indictment. Was not
18 arraigned on the charge for which he was convicted.
19 This was, I believe, a PCR case. Nor was he ever
20 advised by any official or lawful authority of the
21 charges against him. The only notice he could have
22 possibly received was through his attorney which was
23 clearly inadequate. End of quote. That case, Your
24 Honor, is cited with the approval and the more recent
25 case of Magazine, that's M-a-g-a-z-i-n-e, versus State,

1 2004, also a South Carolina Supreme Court case.
2 Citation on that is 361 S.C. 610. Secondary site 606
3 S.E.2d 761. As noted, they cite the Green case with
4 approval. Again, the fact situation on that one was a
5 little bit different. In that case there had been --
6 well, the defendant was initially arrested for criminal
7 sexual conduct. The four indictments, as I understand
8 them, were done by way of direct presentment. The
9 defendant was never notified. But in the Magazine case,
10 what made that a little unique, I think, was that
11 apparently in Magazine, Magazine went to trial on all
12 five of the indictments. And during the course of that
13 trial, he was then put on notice and/or notified by the
14 judge, if nothing else by reading the indictments of the
15 charges against him, and the court -- the Supreme Court
16 doesn't necessarily say there has to be personal
17 service. As I read that case, they kind of waffled
18 around on that issue. Said there had to be notice. And
19 again, they basically quote verbatim what I just read
20 the court. But again, reiterated that notice to counsel
21 does not meet muster for the Sixth Amendment right of
22 being informed of the charges against him.

23 Now, to take that just a little bit further, Your
24 Honor, and backing up to Green, what I note with some
25 interest in that case is the latter part that I quoted,

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

10

1 and not to belabor the point but to try to make the
2 point, the accused was not served with an arrest warrant
3 or indictment, was not arraigned on the charge for which
4 he was convicted, nor was he ever advised by any
5 official or lawful authority of the charges against him.

6

7 Now, at the midnight hour this morning in the case
8 at hand, Mr. Dean was presumptively served by the
9 solicitor's office with a copy of indictment 2007-GS-39-
10 347. I simply submit to the court, Your Honor, that
11 albeit he was served, he was served at the midnight
12 hour, which I suggest is a blatant violation of his
13 Sixth Amendment right. He has never been notified by
14 any public -- legal authority, if you will. Never been
15 arraigned. Never anything on that charge. The state
16 simply says, well, we'll just serve him an hour before
17 we strike the jury for his trial, and that's okay. I
18 submit, Your Honor, it is not okay. The Constitution of
19 this great country is not dead. The Sixth Amendment of
20 the Constitution is alive. And my client is guaranteed
21 and should be afforded the right of that amendment. Not
22 to be notified of something an hour before trial starts.
23 And therefore I respectfully request that the indictment
24 be quashed and/or dismissed, Your Honor.

25

THE COURT: All right. Thank you. Mr. Them.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

11

1 MR. THEM: Your Honor, assuming for the sake
2 of argument, which I do not agree with, that Mr.
3 Dejong's argument about notice and everything are
4 correct, proper remedy would not be quashing or
5 dismissing. The proper remedy would be continuance. I
6 would show it to the court a copy of a plea offer letter
7 I sent directly ---

8 JOHN DEJONG: Your Honor, I'm going to object
9 to this. I will stipulate that I was given copies of
10 the indictment. That is not my argument.

11 THE COURT: Okay. I don't need copies of
12 that.

13 MR. THEM: This is a different document, Your
14 Honor.

15 THE COURT: Well, I don't think there's any
16 question -- any communication you had with Mr. Dejong, I
17 think, is admitted. I don't ---

18 MR. THEM: This is a communication between
19 myself and Mr. Dean, Your Honor. This is a document
20 that I have not spoken about, until I just found it a
21 few moments ago.

22 THE COURT: Okay. Has Mr. Dejong seen that
23 document?

24 MR. THEM: I was trying to show it to him
25 before he went ---

1 JOHN DEJONG: I knew what he was referring to
2 and I still object to it.

3 THE COURT: What's the objection?

4 JOHN DEJONG: The objection, number one, that
5 is an offer, it is a plea offer. It has nothing to do
6 with what we're here about today.

7 THE COURT: How about the notice? Without the
8 content of what the plea offer was - I don't need to
9 know that - but was it notice that he was charged with
10 this offense?

11 JOHN DEJONG: I'm sorry, Your Honor. There
12 was a notice of an indictment. But not -- an
13 indictment, not what he is charged with, when he is
14 charged with the offense, the nature of it and the
15 elements of the allegation. That's not in that letter.
16 And I think that's what the Sixth Amendment is saying.
17 Not just to say, oh, by the way, Mr. Dean, you're
18 charged with lewd act on a minor. That doesn't comply
19 with the Sixth Amendment, Your Honor. I submit it
20 doesn't even come close.

21 THE COURT: What does the letter -- again, I
22 don't need to know what the offer was. What does the
23 letter indicate as to what he's charged with?

24 MR. THEM: It's a letter addressed to Mr. Dean
25 personally, evidently before he had counsel, dated May

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

13

1 2nd, 2007. It says -- it offers him the opportunity to
2 plead to the criminal sexual conduct with a minor
3 charge, and then it says, the state would make - and I'm
4 not going to tell you what the actual plea offer was -
5 but there's a sentence in there that I think is very
6 important. Preprinted it says, the state will make the
7 following sentence recommendations/negotiations. And I
8 quote, multiple indictments to follow on CSC with a
9 minor and lewd act. And then an actual plea offer is
10 made.

11 So he has written notice from a duly authorized
12 person on May the 2nd of 2007 that he's going to be
13 indicted for criminal sexual conduct and lewd act. Then
14 also for purposes of the record, since Mr. Dejong has
15 structured this in the form of a notice argument, I
16 would like to make a -- I would like to make this a copy
17 of the record at some appropriate time. If the court
18 doesn't want to see it, because it contains a plea offer
19 until after sentencing, that's fine. But if the court
20 will take it in a sealed fashion, I think it needs to be
21 a part of the record. I would also like to make a part
22 of the record, a copy of the plea offer sent to Mr.
23 Dejong. And this was sent to Mr. Dejong, not to his
24 client, because at that point in time Mr. Dejong had
25 filed for discovery. In there it says that the

1 defendant is going to be charged with -- I'm sorry.
2 He's already charged with criminal sexual conduct with a
3 minor in the second, as well as it shows an indictment
4 number for the lewd act charge. Again, without getting
5 into the numbers of the potential plea, the state will
6 make the following sentence in recommendation of a
7 negotiation, plead to both counts for blank blank blank
8 with no new indictments to follow.

9 Attached to that, when it went out to Mr. DeJong,
10 but not containing this handwritten material in the
11 upper right hand corner, was a response to his discovery
12 request. In that it says in paragraph -- numbered
13 paragraph number two, indictment number 07-346, 347,
14 those being the two indictments that we are arguing
15 about this morning. I maintain that using the notice
16 argument, that at such point in time that I wrote that
17 letter directly to the defendant that he was on notice
18 that a lewd act indictment was coming.

19 The next point I would make is while notice to Mr.
20 DeJong may not be notice to his client, it has been my
21 experience in the past that Mr. DeJong is famous for
22 making copies of discovery and giving it to his clients
23 and going over it with them.

24 MR. DEJONG: Your Honor, I'm going to object
25 to that. Now if he wants to get into my privileged

1 communications with my clients, we're going to have a
2 cat fight here.

3 MR. THEM: I'm just repeating what he's told
4 this court hundreds of times in front of me, Your Honor.

5 THE COURT: Just get to the issue that we have
6 now, Mr. Them, if you would.

7 MR. THEM: Now I think we're mixing
8 jurisdiction and notice, Your Honor. Jurisdiction is
9 the power of this court to hear a case. That requires
10 the service of the indictment. The notice of the
11 indictment is contained in all of the discussions that
12 I've had with Mr. DeJong. Plus, when we look at the two
13 charges, but for the technicalities of the Blockburger
14 case, a lewd act could arguably be a lesser included of
15 a criminal sexual conduct. And I know there's case law
16 that says it's not. But for notice purposes,
17 realistically the only difference between these two
18 indictments is CSC with a minor and lewd act. The --
19 realistically the only Blockburger difference is that
20 CSC requires actual penetration and a lewd act does not.
21 Lewd act also has the additional element that we have to
22 show that the defendant was fourteen years or older and
23 that the sexual -- well, it's not a sexual battery
24 because there's not a penetration. But that the sexual
25 activity was for the sexual pleasure of the defendant or

1 the victim. So he is on notice to the framework that
2 he's dealing with. He was given copies or his lawyer
3 was given copies of all that in discovery, statements,
4 things of that nature, and he is on notice. He has been
5 on notice. He was on notice.

6 All we accomplished this morning by serving that
7 was did away with the jurisdiction argument. And what
8 possible prejudice could the defendant talk about that
9 he suffered by us not serving that last Friday or last
10 Tuesday or last Thursday or whenever. There's
11 absolutely no prejudice.

12 If it were an indictment charging a murder, to
13 start with, and then at the last moment he was given a
14 direct presentment for criminal sexual conduct, I mean,
15 those would be two entirely different charges. But when
16 you talk in terms of the same general area of the law,
17 the same time period, basically the same acts in the
18 event the jury determines there was penetration, they
19 can find him guilty of criminal sexual conduct. In the
20 event that they determine it was not penetration, they
21 could find him guilty of a lewd act for the same exact
22 act, depending on how the jury decides what actually
23 happened. Or the jury could determine that the, for
24 lack of a better word, foreplay that led up to the
25 criminal sexual conduct was a lewd act that culminated

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

17

1 in a criminal sexual conduct. He's on notice and has
2 suffered absolutely no prejudice whatsoever by being
3 handed that piece of paper this morning. He could not
4 or would not have done anything different. Same actual
5 factual situation, Your Honor.

6 THE COURT: All right. Thank you, sir. Yes,
7 sir, Mr. DeJong.

8 MR. DEJONG: Just very briefly, Your Honor.
9 The state takes the position - I'm not sure if it's
10 marked as a court exhibit or not - a letter which I
11 gather or something that was purportedly sent to Mr.
12 Dean, if I understood that correctly. Number one, I
13 wouldn't say that was notice under Green or the other
14 case that I cited. But even at that, from what I
15 gathered from that, he had not been indicted at that
16 point in time. Now, if the state is conceding a lewd
17 act on a child, lewd act on a minor as a lesser
18 included, I'll fold my tents and go home and we'll take
19 it as a lesser included. But not on two indictments.
20 That would be a matter for a jury charging at the
21 conclusion of the case. So I'm not sure what
22 Blockburger has to do with it.

23 Mr. Them wants to argue prejudice, jurisdiction and
24 kind of fluff this thing away, Your Honor. What we're
25 talking about is a fundamental constitutional right of

1 every citizen in this country. You can't fluff it away.
2 You can't say, oh, it's just jurisdictional. You can't
3 say, oh, we did this and we did that. My client, until
4 this morning, was never even -- if you call that
5 official, and I'm not sure service by the Solicitor's
6 Office, who is a party to the action, is even an
7 official notice. But if that is official, then it's
8 still a violation of this man's Sixth Amendment
9 Constitutional right. Thank you, Your Honor.

10 THE COURT: All right, sir. All right. I'm
11 well aware of the constitutional provision, Mr. DeJong,
12 and I think it's obviously an essential right that all
13 citizens have. In reading Magazine and in reading
14 Green, I think they're distinguishable, however, from
15 the present facts in that Green was a trial in absence.
16 I think that's a significant factor that's not present
17 here. Of course, in Magazine, it was a retrial and
18 maybe that's a little closer for your argument because
19 of the notice being given at the first trial.

20 If we need to arraign your client, then certainly
21 we can do that and put that on the record. I'm going to
22 deny your motion with this caveat. If in anyway, as an
23 officer of the court, as the case develops you find that
24 there is surprise prejudice on information that is
25 alluded to by witnesses that would -- based on the lewd

State of South Carolina -vs-Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

19

1 act, that you would not have had notice of at anytime,
2 you ask for a recess, you present that to me, I will
3 mistrial the case if that motion desires to be made. If
4 you're in anyway surprised by any of this information
5 that's coming forth on this charge, I want to make sure
6 that the solicitor has stated that there is nothing new
7 that has not already been presented to your client and
8 to you.

9 If there is things that develop that are new, you
10 let this court know and -- I am not going to have any
11 trial by surprise in anyway whatsoever. The solicitor's
12 indicated that's not going to take place. And if we
13 need to go through the process of an arraignment of your
14 client for these charges, that's up to you and the
15 solicitor. Yes, sir, Mr. DeJong.

16 MR. DEJONG: Your Honor, I'm not asking for an
17 arraignment, as for that I would have ended my argument.

18 THE COURT: Yes, sir.

19 JOHN DEJONG: I'm not asking for that. And I
20 mean no disrespect to Your Honor, and I understand your
21 ruling and I'm not arguing with your ruling. But that
22 puts me in a difficult position throughout this trial,
23 as well as I understand it. I will accept your ruling
24 that you have denied my motion. And again, I mean no
25 disrespect to Your Honor whatsoever. The following part

1 of your explanation on that I take issue with and
2 exception with simply to preserve my argument on the
3 Sixth Amendment on the record, Your Honor.

4 THE COURT: All right, sir.

5 JOHN DEJONG: And again, I certainly mean no
6 disrespect, Your Honor.

7 THE COURT: I don't want you to be in a bind
8 that way and I know Appellate Courts say you abandon one
9 by raising the other, but I want to give you the
10 opportunity, if you make that strategic decision at any
11 time, then you have that leeway.

12 MR. DEJONG: Thank you, Your Honor.

13 MR. THEM: Now at some later point in time or
14 now, I'd like to enter these two documents, the letter
15 to Mr. Dean from me and the letter to Mr. DeJong, along
16 with the discovery response, and make them a part of the
17 record.

18 THE COURT: You can leave that with the court
19 reporter now or you can put it in at the end of the
20 trial, either way.

21 MR. THEM: I'll put it in at the end of the
22 trial so there will be no mix-up, Your Honor. Thank
23 you.

24 THE COURT: Anything else that we need to do
25 before we select a jury?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

21

1 MR. DEJONG: Your Honor, the only other thing that
2 I'm aware of is that there was some discussion this morning
3 off the record with regard to code section 17-23-175, the
4 admissibility of out of court statement of a child under
5 twelve, determination of trustworthiness notice to adverse
6 party. That's the way that section is titled. It is my
7 understanding that the state stipulates, based on
8 circumstances of this case, the age of the alleged victim and
9 the time of taking the statement and various and sundry other
10 circumstances, that the state stipulates that we are not
11 coming under code section 17-23-175.

12 MR. THEM: I don't know what he actually means by
13 that. But I think I can alleviate the problem. I will
14 stipulate that no forensic interview was done with this child
15 and that nobody will testify about any sort of forensic
16 interview with this child. Now with that in mind, does Mr.
17 DeJong get to explore why one was not done?

18 THE COURT: All right. You got what you need
19 there, Mr. DeJong, that there's not going to be any
20 forensic -- the statute is not going to be applicable in
21 this case. Is that what I understand?

22 MR. THEM: That's correct.

23 MR. DEJONG: That's all I was looking for.

24 THE COURT: All right. So you got what you were
25 looking for. Anything else? Yes, sir, Mr. Them?

1 MR. THEM: Does a sword cut both ways on that
2 statute's not available, that he doesn't get to use it ---

3 THE COURT: We'll cross that bridge when it
4 comes. Okay?

5 MR. THEM: Thank you, sir.

6 THE COURT: All right. If we select a jury now
7 will we be ready to start this case at two.

8 MR. THEM: Yes, sir. We've got a common scheme
9 or plan motion that will require some testimony.

10 THE COURT: All right. So I'll have the jury
11 come back at two thirty then.

12 MR. THEM: I think that would be better.

13 THE COURT: All right. Let's have our jury come
14 in. Strikes are ten and five, one and two. Five and ten,
15 one and two. One alternate enough?

16 MR. THEM: Yes, sir.

17 MR. DEJONG: Yes, sir, Your Honor.

18 THE COURT: Mr. Them, the pronunciation on these
19 witnesses is what? I don't have the list. Galluscio?

20 MR. THEM: Galluscio.

21 (WHEREUPON, the jury panel entered the open court at
22 approximately 11:53 a.m.)

23 THE COURT: Thank you very much, ladies and
24 gentlemen. You've been patient with us. I thought we
25 were going to take a break. We haven't taken a break.

1 I've been working on other matters here. So we are going
2 to get our break in just a few minutes. We're going to go
3 ahead and strike a jury for the next case.

4 Let me again mention to you, I need to ask the same
5 questions that I've asked before. We need to protect the
6 record. We have a court reporter here who's taking down
7 everything that's said. So it's not that I'm forgetful.
8 I just need to ask the same questions again.

9 MR. DEJONG: I apologize, Your Honor. We were
10 discussing some other matters and I didn't hand my voir
11 dire up. This list is for you. I've already furnished
12 the state with a -- that's yours, Madame Clerk. That's
13 for His Honor.

14 THE COURT: This is a case brought by the State
15 of South Carolina against Mr. Robert Lee Dean. Mr. Dean,
16 I have before me two indictments. These are the charging
17 papers that bring this case to this court. The
18 indictment, first indictment, states that here in Pickens
19 County between the dates of August 2001 and November 2005
20 that he did commit an offense known as criminal sexual
21 conduct with a minor in the second degree by committing a
22 battery upon an individual with the initials K.W. who was
23 fourteen years of age or less but at least eleven years of
24 age at the time.

25 There's also a charge that here in Pickens County

1 between those dates of August 2001 and November 2005 the
2 defendant, Mr. Dean, was over the age of fourteen years
3 and he willfully and lewdly committed -- or attempted to
4 commit a lewd and lascivious act upon or with the body
5 parts of K.W., a child under the age sixteen, with the
6 intent of arousing, appealing to or gratifying lusts,
7 passions or sexual desires of himself or of the child.

8 This is the charge to which Mr. Dean has entered a
9 plea of not guilty. The burden is on the state to prove
10 his guilt beyond a reasonable doubt. He's presumed
11 innocent. Every citizen is presumed innocent until the
12 state meets that high burden of proof of convincing a jury
13 of his guilt beyond a reasonable doubt.

14 Again, we need to select fair jurors, fair and
15 impartial jurors, to hear the facts, to determine what the
16 facts are. I'll be the judge of the law. We want jurors
17 to judge the facts in this case and make a determination
18 upon the evidence that's presented, the testimony of the
19 witnesses, from the witnesses and any documents that are
20 put into evidence.

21 First of all, ladies and gentlemen, is there any
22 member of the panel who has any prior knowledge about this
23 particular incident that's been alleged against Mr. Dean
24 either by media, newspapers, radio, television, living in
25 the neighborhood, hearing about it in any way. If you

State of South Carolina -vs-Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

25.

1 have any prior knowledge first hand, second hand, from any .
2 source about this allegation, would you please stand.

3 (No response.)

4 THE COURT: Thank you. There is no response.

5 Is there any member of the jury panel related by blood or
6 marriage to Mr. Robert Lee Dean? If so, would you please
7 stand?

8 (No response.)

9 THE COURT: Is there a member of the jury panel
10 who has a close business, a social or a personal
11 relationship with Mr. Robert Lee Dean. If so, would you
12 please stand?

13 (No response.)

14 THE COURT: Several witnesses may be called upon
15 to testify in this case, ladies and gentlemen. I need to
16 read you a list of those names. In addition to Robert Lee
17 Dean, Amanda Hope Dean, Crystal Dean, Lisa Dean, Maria
18 Galluscio, Carolyn Galluscio, Eugene Galluscio, Nicholas
19 Wheeler, Witness From the Clemson Police
20 Department, Detective Robert Crooks. Potential witness
21 would be Shauna Galloway-Williams. Is there any member of
22 the jury panel related by blood or marriage to any of
23 these potential witnesses, If so, would you please stand?

24 (No response.)

25 THE COURT: Is there any member of the jury

1 panel who has a close business, a social or a personal
2 relationship with any of these potential witnesses, If so,
3 would you please stand?

4 (No response.)

5 THE COURT: Has any member of the jury panel
6 expressed or formed an opinion in anyway about the facts
7 in this case? If so, would you please stand?

8 (No response.)

9 THE COURT: Is any member of the jury panel
10 aware of any bias or prejudice that would interfere with
11 your abilities to be a fair juror in this case? If so,
12 would you please stand?

13 (No response.)

14 THE COURT: At this time I'll ask the attorneys
15 if you would, please stand and introduce yourself to the
16 jury panel. Mr. Them.

17 MR. THEM: My name is Peter Them. I work at the
18 Solicitor's Office.

19 THE COURT: Mr. DeJong.

20 MR. DEJONG: May it please the court. I am John
21 DeJong. I practice law here in Pickens County. Sitting
22 at the counsel table is my client, Mr. Dean. Also seated
23 at the end of the counsel table is Mr. Johnny Duncan. He
24 is my investigator.

25 THE COURT: All right. Thank you, gentlemen.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Vair Dire

27

1 Is there any member of the jury panel related by blood or
2 marriage to any of these -- either of these attorneys? If
3 so, would you please stand?

4 (No response.)

5 THE COURT: Any member of the panel have a close
6 business, a social or a personal relationship with either
7 of these attorneys? If so, would you please stand?

8 (No response.)

9 THE COURT: Thank you. There's no response. Is
10 there any member of the jury panel or a member of your
11 immediate family ever worked or now working in law
12 enforcement with any law enforcement agency? If so, would
13 you please stand?

14 All right. Those of you who are standing, I just
15 need to first of all get your names please. You on the
16 front row, your name please.

17 DIANNE FORTNER: Dianne Fortner.

18 THE COURT: All right. And what relative do you
19 have working in Law Enforcement?

20 DIANNE FORTNER: I had a son that was employed
21 with Pickens County Sheriff's Department.

22 THE COURT: Is he no longer working there?

23 DIANNE FORTNER: No, sir. He's been gone about
24 two or three years.

25 THE COURT: All right. If you would remain

1 standing just a moment.

2 Your name please, ma'am.

3 CATHY PUTNAM: Cathy Putnam. My husband was a
4 State Constable and worked a lot with Clemson Police
5 Force.

6 THE COURT: He worked where?

7 CATHY PUTNAM: He worked a lot with Clemson
8 Police Force.

9 THE COURT: Does he still work there?

10 CATHY PUTNAM: He's deceased. He died last
11 year.

12 THE COURT: So he worked with the Clemson Police
13 Department before he died?

14 CATHY PUTNAM: As a volunteer, as a State
15 Constable.

16 THE COURT: Okay. Your name, please sir?

17 ANDREW SEITZ: Andrew Seitz. I myself am a
18 former police officer.

19 THE COURT: When did you -- how long have you
20 been out of Law Enforcement?

21 ANDREW SEITZ: Approximately eight years.

22 THE COURT: All right. If you would remain
23 standing, please. Where did you work?

24 ANDREW SEITZ: Liberty Police Department.

25 THE COURT: Liberty. All right, sir. Your

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

29

1 name, please, ma'am?

2 JULIE WILLIAMS: Julie Williams.

3 THE COURT: Ms. Williams, do you have a relative
4 working in Law Enforcement?

5 JULIE WILLIAMS: A brother-in-law, but it's in
6 the state of address

7 THE COURT: In address you have a brother-in-law
8 working? If you would remain standing please. Your name,
9 please?

10 TIA SWAFFORD: Tia Swafford. And my husband is
11 a deputy with Pickens County.

12 THE COURT: A deputy with Pickens County?
13 Your name, please, ma'am?

14 MARGARET FOSTER: Margaret Foster. A brother-
15 in-law in the FBI.

16 THE COURT: You have a brother-in-law who's in
17 the FBI. And where is he assigned?

18 MARGARET FOSTER: Charlotte.

19 THE COURT: In North Carolina? All right.
20 Yes, your name, please?

21 BARBARA MCALISTER: Barbara McAlister. I have a
22 nephew, Shane McAlister, with Greenville.

23 THE COURT: Greenville Police -- City Police or
24 ...

25 BARBARA MCALISTER: City Police.

1 THE COURT: All right. Your name, please.

2 WESLEY KURTH: Wesley Kurth. My great uncle,
3 David Stone, is currently the Sheriff.

4 THE COURT: David Stone is your great uncle?

5 WESLEY KURTH: Yes.

6 THE COURT: All right. Yes, ma'am, your name?

7 ASHLEY KITCHENS: Ashley Kitchens. I have a
8 father who is a Federal Agent in North Carolina.

9 THE COURT: Okay. A father in North Carolina.

10 Yes, ma'am, your name?

11 CATHY PUTNAM: I have an uncle who is with the
12 Sheriff in Spartanburg.

13 THE COURT: In Spartanburg? Okay. And your
14 name please? Again your name, please, ma'am?

15 CATHY PUTNAM: Putnam.

16 THE COURT: Thank you. Now those of you who are
17 standing, one has been in Law Enforcement personally,
18 others have relatives in Law Enforcement. The defendant
19 in this case, the state of South Carolina, desire to have
20 fair jurors to hear this case. The fact that you have Law
21 Enforcement relatives or prior -- been in Law Enforcement
22 yourself, would that interfere with your ability to be a
23 fair juror? Could you set that aside, could you decide a
24 case if you're picked as a juror from what takes place in
25 this courtroom, the witnesses who testifies, judge their

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

31

1 credibility, hear the law that I give you, examine the
2 evidence and weigh the testimony and decide the case on
3 that and that alone? If you believe that because of the
4 relationship you have with family members or prior law
5 enforcement that you could not be, in this particular
6 case, a fair juror, I would ask if you would to please
7 remain standing. If not, you may be seated. Let the
8 record reflect that all the jurors who stood have now been
9 seated.

10 Is there any member of the jury panel who is a
11 contributing member of any organization whose primary
12 concern is the promotion of law enforcement such as MADD,
13 SADD, PARR, CAVE, Sheriff's Association, any organization
14 for which you make contributions? If so, would you please
15 stand?

16 (No response.)

17 THE COURT: Thank you. There's no response.

18 Is there any member of the jury panel or a member of
19 your immediate family who is employed with the Department
20 of Social Services here in Pickens County or any other
21 county in South Carolina? If so, would you please stand?

22 (No response.)

23 THE COURT: Thank you. There is no response.

24 Is there any member of the jury panel or a member of
25 your immediate family who now or in the past has worked

1 for organizations or agencies that investigate or counsel
2 victims of alleged sexual assaults? If any of you have
3 ever worked at such an organization, volunteered, would
4 you please stand?

5 (No response.)

6 THE COURT: Thank you. There's no response.

7 Is there any member of the jury panel or a member of
8 your immediate family ever been the victim of an alleged
9 sexual molestation or is any member of your family or you
10 ever been accused of sexual molestation in any way?

11 All right. Your name please?

12 BARBARA YOUNT: Barbara Yount.

13 THE COURT: And were you a victim?

14 BARBARA YOUNT: No, sir. My son was.

15 THE COURT: Your son was a victim?

16 BARBARA YOUNT: Yes, sir.

17 THE COURT: All right. If you would -- how long
18 ago was that?

19 BARBARA YOUNT: He's forty-two years old. It
20 was when he was younger.

21 THE COURT: All right. Thank you. If you would
22 remain standing.

23 Your name, please, ma'am?

24 BRIANNA KYLE: Brianna Kyle.

25 THE COURT: Okay. Were you the victim or

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

33

1 accused? BRIANNA KYLE: My mother was raped

2 when she was little.

3 THE COURT: Your mother? Okay. And that was
4 years ago. All right. Thank you.

5 Your name, please, ma'am?

6 REBECCA SPRINGFIELD: Rebecca Springfield. My
7 daughter was.

8 THE COURT: Your daughter? And how long ago was
9 that?

10 REBECCA SPRINGFIELD: Ten years ago.

11 THE COURT: All right. Those of you who have
12 had family members who've had a sexual assault, again, I
13 ask you the same question. We need jurors who are fair
14 and impartial to both sides and can make a decision not on
15 what's happened to you or a loved one in the past but what
16 happens in this courtroom, what you hear from the witness
17 stand, the evidence, the law that I give you and that
18 alone. The fact that you've had these occurrences in your
19 family, will that affect your ability to be a fair juror?
20 If you believe that that would interfere with your
21 ability, would you please just remain standing
22 momentarily. Otherwise I'll ask if you'd be seated.

23 You think it would interfere with -- all right. I'm
24 going to excuse the two of you from the trial of this
25 case. If you'd just be seated for right now, I'll excuse

1 you. Thank you very much. Did you get their names.

2 Again would you two state your names again so we'll make
3 sure that you're not on the list.

4 BARBARA YOUNT: Barbara Yount.

5 THE COURT: And your name, please, ma'am.

6 BRIANNA KYLE: Brianna Kyle.

7 THE COURT: Okay. Thank you.

8 I've emphasized, because it's important, the need for
9 a fair and impartial juror. Is there any member of the
10 panel aware of any reason whatsoever that in this case you
11 could not be fair to both the state, to the defendant, Mr.
12 Dean, and render a verdict if you're selected that would
13 speak the truth based solely on the evidence that you
14 hear, the law that I give you and that alone. If for any
15 reason you believe you could not be a fair juror would you
16 please stand?

17 (No response.)

18 THE COURT: Thank you. There's no response.

19 Any other questions from the state.

20 MR. THEM: Nothing on behalf of the state, Your
21 Honor.

22 THE COURT: From the defendant?

23 MR. DEJONG: None on behalf of Mr. Dean, Your
24 Honor.

25 THE COURT: All right. Let's empanel the jury.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

35

1 MISTER CLERK: Again, as I call your name if you
2 would please stand so the attorneys could see who you are.

3 Number 68, Maxs Newton. What says the state?

4 MR. THEM: Present the juror.

5 MISTER CLERK: And the defense.

6 JOHN DEJONG: Please swear the juror.

7 MISTER CLERK: If you would, come forward,
8 please, sir, and have a seat in the jury box.

9 Number 20, William Cunniffe. What says the state?

10 MR. THEM: Present the juror.

11 MISTER CLERK: And the defense.

12 JOHN DEJONG: Please excuse this juror from the
13 trial of this case.

14 MISTER CLERK: Number 54, Ashley Kitchens. What
15 says the state.

16 MR. THEM: Present the juror.

17 MISTER CLERK: And the defense.

18 JOHN DEJONG: Please excuse this juror from the
19 trial of this case.

20 MISTER CLERK: Number 24, Tony Day. What says
21 the state?

22 MR. THEM: Present the juror.

23 MISTER CLERK: And the defense?

24 JOHN DEJONG: Please swear the juror.

25 MISTER CLERK: If you would come forward, Tony.

1 Number 21, Amanda Dalton Clark. What says the state?

2 MR. THEM: Present the juror.

3 MISTER CLERK: And the defense?

4 JOHN DEJONG: Please excuse this juror from the
5 trial of this case.

6 MISTER CLERK: Number 93, Lewis Smart. What
7 says the state?

8 MR. THEM: Present the juror, please.

9 MISTER CLERK: And the defense?

10 JOHN DEJONG: Please swear the juror.

11 MISTER CLERK: If you would come forward,
12 please, sir.

13 Number 108, James Trotter. What says the state?

14 MR. THEM: Present the juror.

15 MISTER CLERK: And the defense?

16 JOHN DEJONG: Please swear the juror.

17 MISTER CLERK: Number 12, Darla McCurry. What
18 says the state?

19 MR. THEM: Present the juror.

20 MISTER CLERK: And the defense?

21 JOHN DEJONG: Please swear the juror.

22 MISTER CLERK: Number 118, Julie Williams. What
23 says the state?

24 MR. THEM: Present the juror.

25 MISTER CLERK: And the defense?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

37

1 JOHN DEJONG: That's 118, Mister Clerk?

2 MISTER CLERK: Yes, sir, 118.

3 JOHN DEJONG: Thank you, sir. Please excuse
4 this juror from the trial of this case.

5 MISTER CLERK: Number 10, Susan Cash. What says
6 the state?

7 MR. THEM: Present the juror.

8 MISTER CLERK: And the defense?

9 JOHN DEJONG: Please swear the juror.

10 MISTER CLERK: Number 25, Debra Demerski. What
11 says the state?

12 MR. THEM: Present the juror.

13 MISTER CLERK: And the defense?

14 JOHN DEJONG: Please swear the juror.

15 MISTER CLERK: If you would come forward,
16 please, ma'am.

17 Number 81, Brenda Proctor. What says the state?

18 MR. THEM: Present the juror.

19 MISTER CLERK: And the defense.

20 JOHN DEJONG: Please swear the juror.

21 MISTER CLERK: Number 19, Johnny Crenshaw. What
22 says the state?

23 MR. THEM: Present the juror.

24 MISTER CLERK: And the defense?

25 JOHN DEJONG: Please swear the juror.

1 MISTER CLERK: If you would come forward,
2 please, sir.

3 Number 49, James Johnson. What says the state?

4 MR. THEM: Present the juror.

5 MISTER CLERK: And the defense?

6 JOHN DEJONG: Please swear the juror.

7 MISTER CLERK: Number 31, Dianne Fortner. What
8 says the state?

9 MR. THEM: Present the juror.

10 MISTER CLERK: And the defense?

11 JOHN DEJONG: Please excuse this juror from the
12 trial of this case.

13 MISTER CLERK: Number 32, Margaret Foster. What
14 says the state?

15 MR. THEM: Present the juror.

16 MISTER CLERK: And the defense?

17 JOHN DEJONG: Please excuse this juror from the
18 trial of this case.

19 MISTER CLERK: Number 99, Pamela Stewart. What
20 says the state?

21 MR. THEM: Present the juror.

22 MISTER CLERK: And the defense?

23 JOHN DEJONG: Please swear the juror.

24 MISTER CLERK: Number 66, Ashley Moore. What
25 says the state?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

39

1 MR. THEM: Present the juror.

2 MISTER CLERK: And the defense?

3 JOHN DEJONG: Please swear the juror.

4 MISTER CLERK: This will be for the alternate.

5 JOHN DEJONG: One alternate as we discussed,

6 Your Honor?

7 THE COURT: One alternate.

8 JOHN DEJONG: Thank you.

9 MISTER CLERK: Number 65, David McKinney. What
10 says the state?

11 MR. THEM: Present the juror.

12 MISTER CLERK: And the defense?

13 JOHN DEJONG: Please swear the juror.

14 MISTER CLERK: If you will come forward, please,
15 sir.

16 THE COURT: Any matters we need to take care of
17 as far as selection of the jury?

18 MR. THEM: Yes, sir.

19 MR. THEM: Excuse me?

20 MR. THEM: We have a matter to take up, Your
21 Honor.

22 THE COURT: All right. Ladies and gentlemen, I
23 need you to go out to the jury room just briefly. Don't
24 discuss the case. We've got one legal matter I need to
25 take care of. If you'll just go back in your jury room

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

40

1 for a brief moment. We'll call you back in just a little
2 bit.

3 (WHEREUPON, the jury exited the open court at
4 approximately 12:28 p.m.)

5 THE COURT: Ladies and gentlemen who were not
6 selected, I need you to step outside just for a few
7 moments. If you'll just make yourself at ease out there.
8 Don't go away. We need to -- we might need you back in
9 just a few minutes. If you'll step outside of the
10 courtroom, please.

11 (WHEREUPON, the jury panel exited the open court at
12 approximately 12:28 p.m.)

13 THE COURT: Yes, sir, Mr. Them.

14 MR. THEM: Your Honor, the victim in this case
15 is now a nineteen year old white female. The allegations
16 are that from the time she was eleven or twelve until she
17 was approximately fifteen or sixteen that she was sexually
18 abused by this white defendant who is her stepfather. In
19 looking at strikes, peremptory strikes, used by the
20 defense, I see that some six of them were used. One was
21 used for a white male middle aged. All of the others were
22 used for white females. Juror number 21 is what I would
23 consider to be a young white female. Juror number 118, I
24 would consider to be a middle aged definitely white
25 female. Juror number 31 is an older white female. Juror

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

41

1 number 32 is a young to middle aged white female. And
2 madame court reporter, did I list number 54? And juror
3 number 54 is a young to middle aged white female. I
4 maintain that that pattern of striking indicates a
5 potential problem with a peculiar group of people, that
6 being females, under JEB versus Alabama. The females that
7 were struck were the same race and sex as the victim in
8 this case. I maintain that that's enough to require the
9 defendant to submit a sex neutral reason why he struck
10 those people, Your Honor.

11 THE COURT: All right. Mr. DeJong, you have a
12 challenge on gender for the strikes that you've made.
13 I'll be glad to hear your articulated reasons.

14 MR. DEJONG: If I may first, Your Honor, I
15 didn't write them down. I've got 21, 118, 31, 32, and 64?
16

17 MISTER CLERK: 54.

18 JOHN DEJONG: 54? 5-4. All right. 5-4. Well
19 at the outset I would note, Your Honor, that by the
20 solicitor's own statement there was no pattern as to age
21 or anything else. It certainly was not the intent, but
22 I'll take them one by one. 118 -- excuse me, 21, juror
23 21. Full time student at Southern Wesleyan University.
24 In the past, as I understood it, worked for the Department
25 of Homeland Security. Don't know what she did for

1 Homeland Security. My understanding that was under the
2 Bush administration, working for the Department of
3 Homeland Security. It's certainly close enough to me for
4 law enforcement to say I don't want law enforcement on my
5 jury. And that is the reason I struck her. Not because
6 she was a white female, young, old or middle aged. 118.
7 Give me a moment to find 118. Julie Williams, as memory
8 serves me, Your Honor, has had or has a brother-in-law
9 that's a police officer in address. That was the basis
10 for striking her. 31, Dianne Fortner. That was another
11 one, Your Honor, as I recall when we were going through
12 voir dire that she had a son that currently or in the past
13 worked for Pickens County Sheriff's Office, as memory
14 serves me. I candidly think that she said he no longer
15 worked there. I don't know that as a fact. But
16 nonetheless that was the basis for striking Ms. Fortner,
17 who was number 31. 32, Margaret Foster. A similar
18 situation, Your Honor. As I recall during voir dire, she
19 stood and said she had a brother-in-law that worked for
20 the FBI in Charlotte, North Carolina. The basis for that
21 was her connection, for want of a better term, to law
22 enforcement. There was no basis on sex or race, Your
23 Honor. Number 54, Ashley Kitchens. Not being able to
24 look at them makes it a little more difficult. She's not
25 one that sent in a return, Your Honor. I'll be very

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

43

1 candid with the court on her, without seeing her, I could
2 not share with you my basis for striking her. Is that all
3 of them. 21, 118, 31, 32 and 54?

4 And I would further submit, Your Honor, that as far
5 as you could look at the jury as seated, I think it's six
6 males and six females, something like that. There's a
7 diversity of ages, both the males and the females, as much
8 of a diverse age as we can get with our panels. So I
9 would submit, Your Honor, there's not been a Batson
10 violation.

11 THE COURT: Mr. Them, anything else you want to
12 add?

13 MR. THEM: Your Honor, I don't think it's a
14 question of who he seated. I think it's a question of who
15 he struck. I mean, clearly it shows a pattern of
16 discriminating against women. Of all the other strikes he
17 used, he only used one against a man. Thank you, sir.

18 THE COURT: I find that under the totality of
19 the facts and circumstances placed on the record that the
20 state has not met its burden of proof. I'll deny your
21 motion, Mr. Them. Anything else before we ...

22 MR. DEJONG: As far as the jury selection, Your
23 Honor, nothing on behalf of Mr. Dean.

24 THE COURT: How long will the pretrial motion
25 take? I didn't know whether to do it before lunch or after

1 lunch.

2 MR. DEJONG: I would respectfully request, Your
3 Honor, if you would hear it -- come back a little earlier
4 but hear it after lunch.

5 THE COURT: Well, the only question I had about
6 that is how little early we're going to need. Sometimes -
7 - I don't want the jury to have to wait on us. If I tell
8 the jury to be back at three is that going to be enough
9 time.

10 MR. THEM: I would anticipate, since she is the
11 major complaining witness, that this hearing would last an
12 hour to an hour and fifteen minutes, Your Honor. Assuming
13 some rather lengthy cross examination.

14 THE COURT: Let's come back at two fifteen then.
15 And I'll have the jury back at -- that gives you an hour
16 and a half to get everything together. And then I'll have
17 the jury come back at three fifteen.

18 MR. DEJONG: Very good, Your Honor. The jury
19 has not been sworn yet; have they.

20 THE COURT: That's correct. Two fifteen, three
21 fifteen. You're going to be back at two fifteen and the
22 jury is going to be back at three fifteen.

23 MR. THEM: Thank you.

24 THE COURT: All right. Let's leave them back
25 there. Have the other jury come in just a moment. Okay?

State of South Carolina -vs- Robert Lee Deon (2007-GS-39-0346, 0347)
Jury Voir Dire

45

1 I've still got to talk to the jury, so y'all assume your
2 seats.

3 (WHEREUPON, the jury panel entered the open court at
4 approximately 12:39 p.m.)

5 THE COURT: Thank you, ladies and gentlemen, for
6 bearing with us. We have matters that we need to take care
7 of. Sometimes they have to be taken care of out of your
8 presence. Hopefully you'll be selected to serve as a juror
9 sometime this week. You'll see the process happening even
10 while you're on the panel itself. I can excuse you for the
11 rest of the day. You've been mighty patient today. I thank
12 you for that. I need you to call back tonight, however,
13 after six o'clock. We never know when cases may end quicker
14 than we think or when other things are taking place. We may
15 have -- Judge Miller might be here tomorrow conducting some
16 trials. And we need you -- don't know if we need you here
17 yet or not, but I need you to call tonight after six
18 o'clock. You heard me tell the jury earlier that they're
19 going to be the selected panel. You're not selected yet.
20 You're going to be the full panel. There'll be a message
21 for you that will say the full panel of jurors either call
22 back tomorrow, come back tomorrow, other instructions for
23 you. You are -- not been selected yet. Hopefully you will.
24 You'll be the full panel, so there'll be a message just for
25 you. You may need to listen to the other one first, but

1 listen until it tells you the full panel instructions to
2 either call back tomorrow, come back tomorrow or call back
3 tomorrow night. What we're trying to do is -- having two
4 juries selected is to minimize your down time so that
5 hopefully you'll be able to go about your other activities.
6 Thank you for being patient with us. You're dismissed at
7 this time. Call back tonight after six o'clock.

8 (WHEREUPON, the jury panel was dismissed and exited the
9 open court at approximately 12:41 p.m.)

10 THE COURT: All right. Let's bring this jury in,
11 please.

12 (WHEREUPON, the jury entered the open court at
13 approximately 12:42 p.m.)

14 THE COURT: Thank you, ladies and gentlemen.
15 You've had a chance to take a break. We haven't yet.
16 We've been busy taking care of some other things. We need
17 to take care of a few other matters. I'll explain to you
18 in more detail. There's legal matters that I'm going to
19 be the judge of. There's going to be factual matters that
20 you're going to be the judge of. Sometimes I have to take
21 care of those matters, and I'll explain that to you in a
22 little more detail later, that do not involve you.
23 Sometimes I have to hear legal cases and arguments made by
24 the attorneys that deal with things that I have to do and
25 things that you don't have any concern with. I want to

State of South Carolina -vs-Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

47

1 make the very best decisions as the law finder, as the
2 judge of the law that I possibly can, and sometimes I need
3 to hear things that would not be properly presented to
4 you. So I hope you understand that sometimes we have
5 hearings that have to take place outside of your presence.
6 So if you have to stay back in the jury room, we'll
7 certainly try to minimize that time.

8 We also have some more preliminary things, hopefully
9 that I'll be able to hear over the lunch hour, that will
10 help us expedite the case so that when it starts before
11 you with the attorneys making their opening statements,
12 we'll be able to run through without other delays. So
13 we're going to be working over that a little bit during
14 the lunch time.

15 Let me just make a few comments to you. I'm
16 obviously honored to be working with you. You've seen the
17 selection process of how the attorneys selected you to
18 serve on this jury. You're going to be judges. You may
19 have never served as a juror before and have some
20 apprehension about that title I've just bestowed upon you.
21 But let me assure you, ladies and gentlemen, you have
22 every skill that you need to be judges of the facts in
23 this case, because you bring into this courtroom the
24 everyday experiences that you have in the workforce and
25 your home, social activities. You have the good common

1 sense with which you have been blessed that you're going
2 to need to utilize to be fact finders. You're going to be
3 judging credibility of witnesses and listening as the case
4 develops so that you are able to determine what the truth
5 is. That's what you're going to be seeking, the truth in
6 this case.

7 I know you've made a sacrifice to be here. We're
8 going to do what we can to help the case move along in a
9 prompt fashion so that your time away from the work and
10 the things that you have to do, and your family, will be
11 at a very minimum, to the best of our ability.

12 Cases have different stages. Obviously you might
13 have some knowledge of trials because you've served as a
14 juror before. You may have some knowledge of the
15 courtroom from your favorite TV show or book you like to
16 read, or a movie that you like. It's a slow deliberative
17 process. There's going to be questions asked by lawyers.
18 There's going to be answers given by witnesses. And you
19 will be judging the truth of those comments and testimony
20 given.

21 After the lawyers -- after we break for lunch, the
22 lawyers this afternoon will have a chance to address you
23 in an opening statement. They'll give you an overview of
24 the case. I'll then have an opportunity at the end of the
25 case to give you what the law is on the case. In between

State of South Carolina -vs-Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

49

1 there'll be witnesses who will testify. There'll be
2 lawyers who will be asking those questions. Sometimes
3 lawyers make objections to questions that are asked or
4 evidence that's presented. I'll rule upon those. Often I
5 can do that from the bench here and say overruled or
6 sustained. You've seen already from the audience that
7 sometimes we'll have little private conferences up here
8 with lawyers and try to work out some logistics.
9 Sometimes, as I said, you might have to go back to your
10 jury room while I make those decisions under the law.
11 After all the evidence is in and I've given you the legal
12 instructions, then you'll have the case to determine what
13 the facts are.

14 While the case is in progress it's improper for you
15 to be talking about the case and speculating on what's
16 going to happen. You don't know anything at all about
17 this case yet because you haven't heard any testimony.
18 You've heard me read the indictment which I told you is
19 not evidence. You haven't even heard the opening
20 statements of the attorneys. But as the case develops
21 you'll be coming and going. Going to lunch now. You may
22 have lunch locally. You may go back to work or go home.
23 But wherever you may be, don't discuss the case with
24 anyone. You heard my instructions to the previous jury.
25 That would be an improper comment. I don't suspect in

1 anyway that anyone is going to try to approach you and
2 talk to you about this case. But if that were to happen
3 or if you just overhear some conversations, please excuse
4 yourself as soon as you can. Because you've made a
5 commitment through this selection process to be fair and
6 impartial, to judge the facts on what takes place in this
7 courtroom and that alone. So make sure that -- your
8 family and friends will be curious obviously. But tell
9 them that you are working on the case. That you'll be
10 able to share all of the experiences of this trial with
11 them when it's over and done with. But not while it's
12 going on. So please keep that in mind.

13 Sometimes when you come back or leaving the courtroom
14 you may see these attorneys around. You may find them to
15 be rather unfriendly to you and not want to chit-chat.
16 That's the way they were trained. They know that
17 sometimes if they see you in the hallway coming and going
18 from lunch and they say something to you, might be about a
19 ball game or the weather or the rain or whatever else, it
20 could be misinterpreted. Someone might accuse them of
21 trying to talk with you. So if they seem unfriendly to
22 you, it's just because that's the way they were trained.
23 They are trained to nod and say hello, but move on,
24 because no one wants any appearance of any impropriety
25 whatsoever.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

51

1 I'll give you further instructions as we go along.
2 But we're going to be working on some other matters here
3 during the lunch hour and then we're going to take a short
4 break for us to get a bite to eat. We've tried to
5 estimate how long this might take. And I'm asking if
6 you'll be back in your jury room at three fifteen. That
7 will give you an extended lunch break. We'll do a little
8 work in here and get what we need to do accomplished. And
9 we'll have a bite to eat as well. And then hopefully be
10 ready for you back at three fifteen.

11 The bailiffs will show you where to report back and
12 how to come and go and where to report back. When you get
13 back to your jury room, what I want you to do is select a
14 foreperson from among the first twelve of you that were
15 selected. Mr. McKinney, he'll be the alternate. He's
16 picked just in case something were to happen to one of
17 you. I certainly hope no emergency comes up. But if that
18 happens, he's every bit as much a part of the jury
19 process. He's going to be listening just like everyone
20 else. And if some emergency were to come up, then he can
21 step into the shoes of that one who has to leave. He'll
22 always occupy that seat. But I would like for you to
23 select a foreperson from the twelve of you. What the
24 foreperson will do, will somewhat be the liaison with the
25 court. When you're back in your jury room when you come

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

52

1 back, you may have some needs back there. The temperature
2 might be wrong or the snacks might be stale. I don't
3 know, whatever it may be. Or you may have a question of
4 the court. But if you have such an inquiry or a need or
5 someone needs to make a phone call, then just write -- the
6 foreperson would write that out for the bailiffs, hand it
7 to the bailiffs. The bailiffs who would then get it to
8 Mr. Welborn or to me and we would try to resolve whatever
9 issue you may have.

10 The foreperson would also be the one who, if exhibits
11 were placed into evidence -- sometimes lawyers put in
12 evidence and they might want to pass it around to the
13 jury. They'd show it to the foreperson and let him pass
14 it around or her pass it around to the other jurors.
15 Ultimately when all the evidence is in and you're ready to
16 start your deliberations on the case and I've instructed
17 you on law, your foreperson will be the one who will
18 facilitate that discussion to make sure everyone has their
19 say and everyone gets an opportunity to be heard about
20 what the facts are, and then write out the verdict on
21 behalf of all the jurors for the court. Sort of be the
22 presiding officer if you will. So I want you to select a
23 foreperson. Once you've selected that foreperson, please
24 just write that name down on a piece of paper and give it
25 to the bailiffs and they'll get it back to us. The

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

53

1 foreperson will always occupy a seat, like the alternate
2 always occupies the seat on the back, the foreperson will
3 have the front seat, the one closest to the witness stand
4 here. The rest of you can come and go and sit on the
5 back, sit on the front, wherever you like to sit as you
6 come and go. But those two will always have those
7 particular seats that are designated.

8 Certainly as you have needs back there, these
9 bailiffs will help you with those. We've got several
10 bailiffs here today. You have already met some of them,
11 Mr. Smith and Mr. Wilson back in the door. Mr. Evans, Mr.
12 Bridges, over here. If you have a need of any kind you
13 let them know. By further introduction you've been
14 introduced to the attorneys already. You've met Mr.
15 Welborn, I'm sure already, your fine clerk of court. With
16 him is Ms. Garrett, who's been helping us with the jury
17 selection. Seated in front of me is Danette Hanks. She's
18 the court recorder. As I have mentioned earlier, she's
19 taking down a record of everything that's said during the
20 course of the trial. And she'll be doing that. Marking
21 any exhibits or anything that needs to be marked as
22 evidence. The young lady behind me is Anna Lake. She's a
23 recent law school graduate and she'll be helping me a a
24 good bit up here, a valuable asset. You may see her
25 coming and going to take care of matters at the office.

1 But those are the ones that you'll need to call upon.

2 Anybody will certainly help you if you have a special
3 need.

4 With that I want to dismiss you now. I'll ask you to
5 be back at three fifteen. We'll be ready, hopefully, at
6 that time to start with the trial of the case. Have a
7 good lunch, ladies and gentlemen. If you'll go with Mr.
8 Evans and Mr. Bridges now, they'll show you where to
9 report back.

10 (WHEREUPON, the jury exited the open court at
11 approximately 12:54 p.m.)

12 THE COURT: We'll be at ease until two fifteen.
13 Be ready to start back then with the preliminary hearing.

14 (WHEREUPON, Court stood at recess for a lunch break.)

15 THE COURT: All right. Mr. Them, do you have
16 any testimony to offer on your motion?

17 MR. THEM: Yes, sir. I wonder if we might
18 address two very preliminary matters prior to that?

19 THE COURT: Yes, sir.

20 MR. THEM: I wouldn't profess to speak for Mr.
21 DeJong, but he and I have discussed an order of
22 sequestration. I would move for an order of
23 sequestration, Your Honor. This case has no physical
24 evidence. It's purely a testimonial case. And I think it
25 would be advantageous to both sides if the witnesses were

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

55

1 sequestered. And I would so move.

2 MR. DEJONG: I have no particular objection to
3 that, Your Honor, as long as we're in agreement that the
4 only two parties the state may have in a witness -- in the
5 courtroom would be their chief investigating officer and
6 the alleged victim.

7 MR. THEM: That would be fine. The victim will
8 only be in the courtroom when she is testifying.

9 THE COURT: Okay. They have the right to be
10 here otherwise.

11 MR. THEM: Yes, sir. Secondly, Your Honor, ---

12 THE COURT: All right. The motion to sequester
13 is granted. Yes, sir.

14 MR. THEM: Secondly, because of the nature of
15 the testimony we're about to get into, I would ask the
16 court to seal the courtroom. Anybody that's in here that
17 is not in violation of the sequestration order for the
18 state and that people would not be coming and going.
19 Because this is a very tough time for this young lady.
20 She's very emotional about this and very scared. And I
21 just don't want a lot of movement if we can avoid it, Your
22 Honor.

23 THE COURT: Everybody in the courtroom that
24 needs to be here? Mr. Duncan, do you need him back in?

25 JOHN DEJONG: I might need Mr. Duncan.

1 MR. THEM: I would not have an objection to him
2 coming back in.

3 MR. DEJONG: Usually he comes in the back door.

4 THE COURT: All right. Just -- how long is this
5 testimony going to take?

6 MR. THEM: Probably a half hour for me, Your
7 Honor.

8 THE COURT: All right. Let's ---

9 MR. DEJONG: Your Honor, before we start that, I
10 guess I'm getting old and obtuse, the best I can figure.
11 But what I gather is Mr. Them is asking the court to do a
12 rules of evidence 404(b) hearing. Before we get into
13 that, Your Honor, and I'm sure you already have, but with
14 all due respect, I would ask the court to review the
15 indictments as presented by the state. Because I submit,
16 Your Honor, if you review the indictment handed down by
17 the grand jury that the state is moving forward on, how in
18 the world am I to tell what is the prior bad act? Now I
19 know the state doesn't have any duty to disclose that,
20 unlike federal rule, but I gather he's talking about acts
21 that happened allegedly between August of 2001 and
22 November of 2005. Now there is no specific date or act
23 alleged in the indictment. So I'm at a loss as to what
24 we're talking about. Mr. Them can correct me if I'm
25 wrong, if it's something outside of August 2001 and

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Jury Voir Dire

57

1 November of 2005, but I think that is either the tenor of
2 rule 404(b) -- and I very hurriedly reviewed the cases
3 that Mr. Them attached to his brief on common scheme or
4 plan. Those cases don't help me out on the quandary I'm
5 in. Now they talk about offenses allegedly occurred prior
6 to the offense charged. Well, if the state's taking that
7 position, then I want to know what offense they're
8 charging. I have no way of knowing that.

9 THE COURT: Mr. Them.

10 MR. THEM: Your Honor, in the discovery given to
11 Mr. DeJong is the statement from the victim talking about
12 what happened, as well as in the incident report and some
13 statements from other witnesses, we're talking about the
14 specific acts that are alleged. We're not going to go
15 outside of those specific acts that are alleged. I would
16 also point out to the court that in addition to doing
17 prior bad acts, we're also moving for the court to
18 consider bad acts that occurred after the crime. Because
19 the crime, according to the terms of the indictment, would
20 have had to have been committed prior to this child's
21 fifteenth birthday. Because it says between eleven and
22 fourteen. There are some acts that occurred after her
23 fifteenth birthday that I maintain are admissible and I
24 have case laws here if the court has any questions about
25 that. We're going to be limited to what we have told him

1 about in discovery. Now, in discovery, I think it's a
2 statement that he touched my breasts. We're going to get
3 into whether or not he touched them outside the clothes,
4 inside the clothes, under the underwear or not. I mean,
5 it's going to go like that. But it's not going to be just
6 wide open. I mean, I'm somewhat limited by that, I
7 believe.

8 THE COURT: Yes, sir.

9 MR. DEJONG: Well, I'm still puzzled. They gave
10 me a statement. The statement is somewhat ambivalent
11 about the time frame, but alleges, from what I gather, is
12 this period of time that they alleged in the indictment.
13 Now acts subsequent to, I know nothing about that, Your
14 Honor. Of that I have no knowledge. I don't even have a
15 clue what the solicitor is talking about on that. But
16 again, the common scheme or plan or the prior bad act, I'm
17 at a loss on that. I just don't see where the prior bad
18 acts are coming in unless he's going to say, on this day
19 this happened and everything else is a prior bad act or a
20 subsequent act. I can deal with that. But for right now
21 I'm shooting at a fish in a barrel. I don't know what he
22 is talking about.

23 THE COURT: Well, that might be the benefit to
24 everybody to hear this in-camera rather than before a
25 jury. We'll see how the testimony develops and perhaps

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Witness - In-Camera Direct Examination by Mr. Them

59

1 you can ---

2 MR. THEM: I'm going to break the testimony into
3 the fifteenth birthday backwards. Some of that would be
4 prior bad acts. The victim cannot give a specific date
5 because she didn't write it down or create some sort of
6 entry in a document that she can produce. I mean, there's
7 case law that says within a two year period is more than
8 satisfactory. Because this is not a time sensitive crime.
9 If it was a crime that had to have some sort of time
10 factor in it about a certain day and time or something
11 like that -- this is a fact sensitive. He either did or
12 he didn't. I mean, I don't know what difference it would
13 make if we said he did it on October the 13th or on or
14 about October the 13th or 15th unless he had some alibi
15 that he was in the hospital or out of the country or
16 something like that. But I'm not required to do that
17 under the case law, Your Honor.

18 THE COURT: Well, let's hear the testimony.

19 MR. THEM: Okay.

20 THE COURT: Swear her in, Pat. If you would,
21 place your left hand on the bible and raise your right
22 hand.

23 MISTER CLERK: Do you solemnly swear or affirm
24 the testimony you're about to give in this case to be the
25 truth, the whole truth and nothing but the truth, so help

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - In-Camera Direct Examination by Mr. Them

60

1 you God?

2 MS. WHEELER: I do.

3 MISTER CLERK: State your name for the record,
4 please.

5 MS. WHEELER: Witness

6 Witness

7 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

8 IN-CAMERA DIRECT EXAMINATION

9 BY MR. THEM:

10 Q. Are your initials K.W.?

11 A. Yes, sir.

12 Q. Are you the K.W. that is talked about in these two
13 indictments?

14 A. Yes, sir.

15 Q. When these indictments were returned on or about
16 February 20th, 2007, February 20th, 2007, how old would
17 you have been?

18 A. 2007, seventeen.

19 Q. Okay. Now, what is your birth date?

20 A. child's
birth date.

21 Q. Okay.

22 MR. DEJONG: Your Honor, I apologize. Could we
23 maybe turn the sound up just a little or get the witness a
24 little closer to the microphone?

25 MR. THEM: Could you slide a little closer in?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - In-Camera Direct Examination by Mr. Them

61

1 A little closer still if you can. Okay.

2 MR. DEJONG: Start over with her birth date,
3 please, Mr. Them.

4 Q. Would you tell us one more time, and speak loudly.

5 I'm going to step back over here so I will be far away
6 from you so you'll feel like you need to speak louder.

7 Okay?

8 A. Yes, sir.

9 Q. Tell us your birth date please?

10 A. child's
11 birth date.

11 Q. Okay. And your mother's name?

12 A. Maria Dean. Or Galluscio now.

13 Q. Your father's name?

14 A. Gary Wheeler.

15 Q. Okay. Are your biological mother and father still
16 married?

17 A. No.

18 Q. Okay. At any point in time was your mother married
19 to Robert Lee Dean?

20 A. Yes, sir.

21 Q. Okay. You remember how old you were when your mother
22 started seeing Mr. Dean?

23 A. I'm not exactly sure how old I was.

24 Q. Give me your best remembrance, if you would?

25 A. Maybe around nine or ten.

1 Q. Okay. At some later point in time did they get

2 married?

3 A. Yes, sir.

4 Q. Do you remember when they got married?

5 A. When I was eleven.

6 Q. Okay. Had you just turned eleven, you were like

7 eleven and a half or just before twelve, when in that

8 year?

9 A. Maybe when I just turned eleven.

10 Q. Okay. Did your mother and Mr. Dean ever live

11 together prior to actually marrying?

12 A. Yes, sir.

13 Q. And did you live with them?

14 A. Yes, sir.

15 Q. Who else lived with you at that time?

16 A. My mother, my brother and Mr. Dean's kids.

17 Q. Okay. Your brother, what is his first name?

18 A. Nick.

19 Q. And how old is Nick?

20 A. He is seventeen now.

21 Q. Okay. Now, when Mr. Dean first came into your life

22 as part of seeing your mother socially or romantically,

23 did y'all get along with each other?

24 A. Yes, sir.

25 Q. At or about the time they got married, did y'all get

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourinzy Wheeler - In-Camera Direct Examination by Mr. Them

63

1 along with each other?

2 A. Yes, sir.

3 Q. At some later point in time did that change?

4 A. Yes, sir.

5 Q. When did that change as best you can recollect?

6 A. When he started molesting me.

7 Q. Okay. And when was that?

8 A. Around the age of eleven or twelve.

9 Q. Okay. And would you tell me where that happened?

10 A. In my bedroom in my mother's house.

11 Q. And is that house here in Pickens County?

12 A. No, sir -- yes, sir.

13 Q. Okay. Is it over in Clemson?

14 A. Yes, sir.

15 Q. All right. Tell me the -- over what period of time

16 -- let me back up. You said when he started molesting

17 you. Did he molest you for any period of time?

18 A. Until I was sixteen.

19 Q. Okay. How often?

20 A. I can't give you an estimated time. It was repeated
21 times.

22 Q. Once a year, twice a year, once a month, what, when?

23 A. Weekly.

24 Q. Weekly. Okay. How did the molestation start out?

25 What was the first thing that you remember him doing that

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Witness - In-Camera Direct Examination by Mr. Them

64

1 you now understand, or at least from your point of view,
2 was molestation?

3 A. When he started to play with my breasts.

4 Q. Okay. And how old were you?

5 A. I was eleven and twelve.

6 Q. Were you already physically developed as far as your
7 breasts at that point in time?

8 A. Yes, sir.

9 Q. Okay. Tell me what he did when he started playing
10 with your breasts?

11 A. He -- first he started out on top of the clothes just
12 massaging them, playing with them. Eventually it led to
13 where he would remove the clothes and start kissing and
14 licking them.

15 Q. Okay. And how long did that go on?

16 A. I would say about a year and a half.

17 Q. Okay. Did he ever go any further?

18 A. Yes, sir.

19 Q. What did he do then?

20 A. He then started removing my clothes.

21 Q. Okay. And what would he do when he removed your
22 clothes?

23 A. He would still play with my breasts and start kissing
24 down my stomach.

25 Q. Okay. And how long did that go on?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - In-Camera Direct Examination by Mr. Them

65

- 1 A. For a few months.
- 2 Q. Did it go any further after that?
- 3 A. Yes, he did.
- 4 Q. Where?
- 5 A. To where he would start massaging and licking me
- 6 between the lips of my vagina.
- 7 Q. Okay. And how old were you at the time that he was
- 8 performing cunnilingus on you?
- 9 A. Before the age of fifteen.
- 10 Q. Okay. And on how many different occasions did he
- 11 lick you in your private parts?
- 12 A. Several.
- 13 Q. Can you be anymore specific than several?
- 14 A. Too many that I can count.
- 15 Q. How many?
- 16 A. Too many that I can count.
- 17 Q. Okay. Up until this point in time did he ever
- 18 penetrate your body with anything else other than his
- 19 tongue?
- 20 A. No.
- 21 Q. Okay. Later on did he ever penetrate your body with
- 22 anything other than his tongue?
- 23 A. Yes, sir.
- 24 Q. Did he continue to lick you after your fifteenth
- 25 birthday?

1 A. Yes, sir.

2 Q. How often?

3 A. I can't give you a specific amount of times.

4 Whenever -- I mean, every time afterwards.

5 Q. Was it frequent?

6 A. Yes, sir.

7 Q. Did he ever penetrate your body with anything else

8 ---

9 A. Yes, sir.

10 Q. -- after your fifteenth birthday?

11 A. Yes, sir.

12 Q. What?

13 A. His finger.

14 Q. What part of your body did he penetrate?

15 A. My vagina.

16 Q. Had he ever penetrated your vaginal area with his
17 finger before your fifteenth birthday?

18 A. No, sir.

19 Q. Okay. And how old were you when your mother and Mr.
20 Dean separated?

21 A. Sixteen.

22 Q. Okay. You say sixteen. Just barely sixteen?

23 A. Just barely sixteen.

24 Q. Just barely sixteen. Okay. On how many different
25 occasions did Mr. Dean molest you either by touching and

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Witness - In-Camera Direct Examination by Mr. Them

67

1 rubbing your breasts, other parts of your body, your
2 vaginal area, licking you between you legs, kissing your
3 breasts, digitally penetrating you, over the time period
4 that he lived with you? How many separate occasions were
5 there to the best of your recollection?

6 A. There's too many for me to give a number to. I never
7 really counted.

8 Q. Okay. Was there anything common about the times that
9 he would molest you? In other words, what was going on at
10 the house at the time when he would molest you?

11 A. Mother.

12 Q. Okay. Where would your mother be?

13 A. She would be at work.

14 Q. What kind of work did your mother do?

15 A. Third shift.

16 Q. Third shift what?

17 A. A nurse.

18 Q. Okay. And what time did she go to work generally?

19 A. She went to work at seven and then it also became a
20 time when she went at ten.

21 Q. Okay. And would she work all night?

22 A. Yes, sir.

23 Q. Who would be in the house with you?

24 A. Robert's children and my brother.

25 Q. Okay. And on your fifteenth birthday how old would

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Witness - In-Camera Direct Examination by Mr. Them

68

1 your brother have been?

2 A. Thirteen.

3 Q. Thirteen. Just barely thirteen, half thirteen or
4 approaching fourteen, where?

5 A. Just barely thirteen.

6 Q. Okay. Where would he be when Mr. Dean was molesting
7 you?

8 A. In bed.

9 Q. What time of night did this happen?

10 A. Whenever he -- whenever everything was clear, when my
11 brother was in bed, which he normally got sent to bed
12 early.

13 Q. What time did he send your brother to bed?

14 A. It ranged from seven to sometimes he would let him
15 stay up later.

16 Q. A thirteen year old would go to bed at seven o'clock?

17 A. Yes, sir.

18 Q. Did you ever see any connection between your brother
19 being sent to bed early and you being molested?

20 A. Yes, sir.

21 Q. Where was your brother's bedroom in relation to the
22 bedroom that you said you were molested in?

23 A. It was next to him.

24 Q. Okay. Could you hear things between the walls?

25 A. No, sir.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - In-Camera Direct Examination by Mr. Them

69

1 Q. Okay. The bedroom that you were in when you were
2 molested, did it have a door?

3 A. Yes, sir.

4 Q. Would the door be open or closed?

5 A. Open.

6 Q. Okay. How would you and Mr. Dean end up in the
7 bedroom together? I mean, walk me through what happened?

8 A. I would be sent to my room, whether it would be for
9 homework or for bedtime.

10 Q. Okay.

11 A. And then whenever it was clear, my brother was in bed
12 or he had the chance, he would just come in my room.

13 Q. When you say ---

14 MR. DEJONG: Your Honor, I know we're doing an
15 in-camera hearing. Where are we going? Where are the
16 prior bad acts? I'm still hung up on that. What he is
17 doing under the guise of prior bad acts is trying to use a
18 shotgun approach. I'm still looking for an act. What
19 act, what prior bad acts, what subsequent bad acts? All
20 I'm hearing is some grandiose shotgun approach that he
21 wants to use under the guise of prior bad acts.

22 THE COURT: All right. You going to tie it all
23 in?

24 MR. THEM: Yes, sir. She has told us that he
25 was licking her in her vaginal area before her fifteenth

State of South Carolina -vs-Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - In-Camera Direct Examination by Mr. Them

70

1 birthday, which would fall in line with the time of the
2 indictment. That is the crime that he's move -- that
3 we're moving forward on for the criminal sexual conduct.
4 All of the other things that led up to that -- because he
5 didn't just run out and start molesting her. He
6 cultivated, he groomed, he tested, he tried, he
7 progressed. That's the plan, Your Honor. All these
8 things we're talking about up until the time she talked
9 about digital penetration after she turned fifteen, those
10 are the prior bad acts that led up to the oral sex just
11 before her fifteenth birthday.

12 MR. DEJONG: But now I don't agree with what Mr.
13 Them is saying. I hear what he is saying. But now he's
14 also got this indictment for lewd act out there and it's
15 still a shotgun approach on that. And he wants to say,
16 oh, I'm hanging my hat on what happened prior to her
17 fifteenth birthday. Okay. That's under the CSC. We've
18 still got this underlying lewd act here, but the same
19 thing. What act? I don't know. What prior bad acts are
20 we talking about?

21 MR. THEM: Touching of the breasts, rubbing,
22 things of that nature, Your Honor. Those are lewd acts.

23 MR. DEJONG: And my position is, Your Honor,
24 that is a shotgun approach he's using. It's not bad acts.
25 It's not prior bad acts. He hasn't alleged an act.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - In-Camera Direct Examination by Mr. Them

71

1 There's no act for me to defend to say whether or not
2 these prior bad acts are of such a nature that I can argue
3 that the prejudicial value outweighs the probative value.
4 There's no way I can do that. It's impossible to argue.

5 MR. THEM: Let me see if I can tie it up a
6 little bit.

7 THE COURT: All right, sir.

8 Q. Do you remember the last time that Mr. Dean licked
9 you between your legs before your fifteenth birthday?

10 A. Not specifically.

11 Q. Tell me what he would do when he -- tell me what he
12 would do to lead up to licking you between your legs?

13 A. He would come in my room and if I was reading or
14 whatever, he would lay down on top of me and then just
15 start massaging my breasts and then moved to taking off my
16 clothes and licking and kissing his way down.

17 Q. Okay. Now would he do similar behavior every time he
18 licked you between your legs?

19 MR. DEJONG: Your Honor, again I know we're in
20 an in-camera. I haven't been objecting to leading
21 obviously because we're in-camera. But I don't want Mr.
22 Them to think because he's doing it now he can do it in
23 the trial.

24 THE COURT: Your objection is noted. He'll note
25 that as well.

1 JOHN DEJONG: Thank you, Your Honor.

2 Q. Now, where would his children be when this was going
3 on?

4 A. They wouldn't be in the house.

5 Q. Where would they be?

6 A. They would be with their mother, they would be
7 shopping, he would send them to see a movie.

8 Q. On how many different occasions would he send them
9 off and just have you and your brother at home?

10 A. It would be different occasions. Sometimes they
11 weren't living in the house at the time.

12 Q. Did he ever send your brother off to be alone with
13 you at home?

14 A. No.

15 Q. Okay. Now did he ever say anything to you by way of
16 words about why he was doing what he was doing?

17 A. He made a statement to me once when we were on our
18 way to the store, and he stated that he hopes I didn't
19 think he was molesting me, that it was something that I
20 wanted.

21 Q. Had he already licked you between your legs prior to
22 that statement?

23 A. Yes, sir.

24 Q. How old were you when that statement was made?

25 A. Soon before he moved out of the house. So I'd say

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Witness - In-Camera Direct Examination by Mr. Them

73

1 about fifteen, sixteen.

2 Q. Okay. And the person that you're talking about, is
3 he in the courtroom today?

4 A. Yes, sir.

5 Q. Would you point him out to me, please.

6 A. (Indicating.)

7 MR. THEM: Let the record reflect the witness is
8 pointing at the defendant. Just one second please. If
9 you would, answer any questions that Mr. DeJong might
10 have.

11 MR. DEJONG: Your Honor, I don't have any
12 questions at this point in time. But I certainly reserve
13 my right for cross-examination in the case, Your Honor.

14 THE COURT: Thank you. You may step down, Ms.
15 Wheeler.

16 MR. THEM: Brief oral argument, Your Honor.

17 THE COURT: All right, Mr. Them.

18 MR. THEM: Your Honor, in the cases that I have
19 cited in the brief that I handed up to you is a case named
20 Edwards. If you look at the facts in Edwards, and I've
21 attached the whole case to the brief, you can almost cross
22 out the name Edwards and write the name Dean. Because it
23 talked about a long continuing chronic problem where Mr.
24 Edwards would sexual molest these children, excuse me, the
25 child over a long period of time just as Mr. Dean did in

1 this case, according to the testimony. The very chronic
2 nature of it, the escalation of abuse and the continuous
3 pattern of abuse shows the existence of a common scheme or
4 plan. The first thing he would do was get everybody out
5 of the way. Then he would start with minor abuse, working
6 to medium abuse, working to major abuse, building up,
7 testing the waters as it were. It's the chronic elicit
8 behavior that establishes the pattern in and of itself.
9 The cases say that. We maintain that we have established
10 that there was a continuous course of elicit behavior with
11 this defendant on this child and that that constitutes a
12 common scheme or plan and we should be allowed to talk
13 about that during the trial.

14 THE COURT: Mr. DeJong, I'd be glad to hear from
15 you, sir.

16 MR. DEJONG: Thank you, Your Honor. And I'm
17 sorry to sound like a broken record. I still don't know
18 what conduct I've got to compare the prior bad acts to.
19 Now, in Edwards, what jumps out and screams at me is, and
20 I'm not good at this pagination on these things, but on
21 the computer printout on page six of eleven, I believe
22 that's Edwards, and in the last paragraph, the bottom of
23 the last paragraph says, the court admitted evidence of
24 these earlier assaults on the victim where all three were
25 attempted in the same manner and under similar

State of South Carolina -vs-Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - In-Camera Direct Examination by Mr. Them

75

1 circumstances. And then they go on to say, overall the
2 three prior incidents of sexual misconduct show the same
3 elicit conduct with the victim over the course of the nine
4 months prior to the date of the charged incident. Well,
5 again I submit, Your Honor, that the state is doing
6 nothing more under this guise of prior bad acts of using a
7 shotgun approach to try to show character traits of my
8 client that, whatever the bad acts are compared to the act
9 I still don't know, but that he was prone to this conduct.
10 Now that's, that's all I can argue at this point in time,
11 Your Honor.

12 THE COURT: Well, I've had a chance to review
13 Edwards and other cases as well. As I understand from the
14 examination of the witness, the cunnilingus that -- is the
15 thrust of the case that's being made on the criminal
16 sexual conduct second degree with a minor. Edwards
17 certainly is similar, but the recent case of State versus
18 Gaines and the older case of State versus Fletcher, I
19 think also have insight into this. And obviously I've got
20 to determine if there is a logical relevance to the
21 offenses or the prior bad acts that are sought to be
22 introduced, whether they have a logical relevance to the
23 crime alleged.

24 The prior bad acts, of course, have to be shown by
25 clear and convincing evidence. And even if these other.

1 offenses are admissible under the rule, I must decide
2 whether or not the probative value is substantially
3 outweighed by unfair prejudice to the defendant.

4 There's many cases that analyze the different
5 weights, the cases cited by the state. Even the Tuten
6 case gives a good analogy in which Lyle was well
7 interpreted. And even there the court found that it
8 wasn't a common scheme or plan.

9 I've tried to listen carefully to the testimony that
10 has been offered. Tried to analyze it in light of the
11 cases. I find the State should be allowed to use this to
12 show the common scheme and plan based upon the -- all the
13 cases I've mentioned and lots of others, as well, that are
14 in the line of cases. Because of the nature of this
15 offense and the similarity that's required, I find there
16 has been a close degree of similarity and connection to
17 support the admissibility under the rule. I will allow
18 the state to offer this evidence on that offense. I think
19 the similar acts certainly would be appropriate. Anything
20 else we need to take care of?

21 MR. THEM: Just for the record, Your Honor, are
22 you making those findings based on a standard of clear and
23 convincing evidence?

24 THE COURT: I think I said that. I meant to say
25 that if I didn't.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - In-Camera Direct Examination by Mr. Them

77

1 MR. THEM: And have you made a clear
2 determination on the record that the probative value
3 outweighs the prejudicial value?

4 THE COURT: I think I said that too. But if I
5 didn't, I'm doing that now. That I've tried to analyze
6 all the appropriate steps. And that's my finding. Yes,
7 sir.

8 MR. DEJONG: I'm not arguing with your finding,
9 Your Honor, just want a clarification. There are two
10 indictments. Indictment 346, which I believe is criminal
11 sexual conduct in the second degree with a minor. And
12 indictment 347, I believe, which is a lewd act on a child.
13 The analysis you just went through, is that as to both
14 indictments?

15 THE COURT: It is as to both. Thinking of the
16 elements of each offense and what I heard, it applies to
17 both. Yes, sir.

18 MR. DEJONG: One other side note, Your Honor.
19 I'm not abandoning my Sixth Amendment argument I made
20 earlier this morning. But you asked me to share with you
21 as we move through this trial if there is anything I heard
22 that is the first time I heard it. Well, I heard
23 something. That statement that the alleged victim
24 testified that my defendant allegedly having made was, I
25 believe, the first time I've heard that one. Mr. Them is

1 going to correct me if I'm wrong.

2 MR. THEM: I'm looking for the discovery
3 material, is what I'm doing, Your Honor.

4 THE COURT: Let's take about a five minute break
5 while you're looking for that.

6 MR. THEM: Thank you, sir.

7 THE COURT: We'll be ready to start back.

8 MR. DEJONG: Am I able to leave the courtroom
9 just long enough to run down that hallway? I'm not going
10 to go smoke. I ---

11 THE COURT: Yes, sir. We're going to take a
12 five minute break.

13 (WHEREUPON, Court stood at recess for a short break.)

14 THE COURT: Okay. We need to swear them in.

15 MR. THEM: Excuse me, one other evidentiary
16 matter, Your Honor.

17 THE COURT: Wait. If so, minute. Yes, sir.

18 MR. THEM: I found in the grandfather's
19 statement where he was repeating what was told to him by
20 the child to the grandmother sufficient data, I think, to
21 satisfy Mr. DeJong's objection. Do you agree, Mr. DeJong?

22 MR. DEJONG: I don't want to say I'm satisfied.
23 But what was pointed out to me in the discovery statement
24 that was made by the alleged victim's grandfather, that
25 the alleged victim told him was that -- if I can read it.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Witness *- In-Camera Direct Examination by Mr. Them*

79

1 Additionally she said, and this is the grandfather's
2 statement, that Robert told Kourtney that what he,
3 something, was her fault because what -- it was what she
4 wanted him to do. That's not exactly what I heard on the
5 witness stand. But I guess -- well, I'm not going to
6 guess. The solicitor is obviously interpreting that as
7 the statement she made on the witness stand. I don't
8 think it's the same thing by any stretch of the
9 imagination.

10 MR. THEM: Moving on to another issue ---

11 THE COURT: Well, let's resolve this now.

12 MR. THEM: I'm sorry.

13 MR. DEJONG: I'm sorry, Your Honor.

14 THE COURT: Let's resolve this one. In other
15 words, the statement I understood what the witness said,
16 that the defendant said, this is something that you, the
17 witness, want. And that's what the grandfather's
18 statement says basically.

19 MR. DEJONG: The grandfather's statement says
20 that's what she said the defendant said.

21 THE COURT: All right. I think that's -- and
22 you have the grandfather's statement?

23 MR. DEJONG: Right here, Your Honor.

24 THE COURT: All right. I think that's close
25 enough.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Witness - In-Camera Direct Examination by Mr. Them

80

1 MR. THEM: One final problem before we get into
2 the testimony. When I asked her why -- she talked in her
3 statement about she didn't report it because she was
4 afraid of him. When I asked her why she was afraid of
5 him, she said, because she thought he was suicidal. And I
6 would like to get that testimony out and I just want some
7 ruling from the court. Because I've discussed it with Mr.
8 DeJong, and I don't know that he agrees with me.

9 MR. DEJONG: Do you want to keep it out?

10 MR. THEM: No. I want to keep it in.

11 MR. DEJONG: Oh, okay. Well, that changes the
12 tenor of the thing. For her to say that my client was
13 suicidal was, at best, speculative on her part. I don't
14 think there would be any basis for her to say that. And I
15 think it would be purely conjecture, speculation and
16 everything else that she would say that, Your Honor. I
17 don't think that's proper and I don't think it's
18 appropriate. I think it's prejudicial. I'm not sure how
19 you exactly get that into the fear realm. But again, I
20 just don't think it would be proper under the
21 circumstances. She's certainly not a doctor, there's no
22 foundation that's going to be laid for that, that I'm
23 aware of. I don't think that would be proper at all.
24 MR. THEM: I'm not trying to prove that he was
25 suicidal, Your Honor. I'm trying to prove that this was

State of South Carolina -vs-Robert Lee Dean (2007-GS-39-0346, 0347)
Kourney Wheeler - In-Camera Direct Examination by Mr. Them

81

1 the young lady's state of mind. And I have foundation
2 that I could lay. I don't plan on laying it unless I have
3 to. But the foundation would be that the mother -- the
4 child would testify that he on one or more occasions
5 talked about suicide and that they were in the car and
6 that the children heard it. Again, I'm not trying to
7 prove that he was suicidal. I'm trying to prove that the
8 child thought he was and that increased her fear level
9 about not telling people, because she was afraid that he
10 might hurt her or someone else.

11 THE COURT: What's the prejudice, Mr. DeJong,
12 for that coming in?

13 MR. DEJONG: I'm sorry, Your Honor?

14 THE COURT: What would be the prejudice to the
15 defendant for that coming in?

16 MR. DEJONG: Well, I think that's a two prong
17 prejudice. It goes to -- it certainly could lead the jury
18 to speculate that my client has some sort of mental
19 issues. It's -- I guess Mr. Them wants to put in his
20 client's state of mind or my client's state of mind, which
21 without anything more than that, I just -- I think it is
22 prejudicial because of the mental health issues, Your
23 Honor.

24 THE COURT: All right. I'm going to allow her
25 to testify that she was afraid to report it but not the

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - In-Camera Direct Examination by Mr. Them

82

1 reason for the -- I was just afraid. Not to go into what
2 his mental state was or her view of his mental state. She
3 can say that she was afraid to report it. And again that
4 will not be any -- that'll just be that she was afraid.

5 MR. DEJONG: That ---

6 THE COURT: Hang on just a minute.

7 MR. DEJONG: Your Honor, I've got to think about
8 that for just a second. I'm not trying to delay here. If
9 that is the case then when I do cross-examination, I've
10 either got to limit my cross-examination or I'm going to
11 -- I can hear Mr. Them jumping up out of that chair even
12 as I speak to say that I have opened the door to let it
13 in. Because if she can say that she is afraid, but if I
14 start doing any cross-examination whatsoever in that
15 arena, then I fully suspect, and I don't know how Your
16 Honor would rule on it, but I fully suspect my learned
17 colleague here would be saying that I opened the door and
18 now he can get it in. So that's a bit of a quandary. I
19 think it's more than a quandary, it's a quagmire. If I
20 understand Your Honor's ruling.

21 THE COURT: Well, I think it's relevant for the
22 witness to say why she didn't report it. I think that's
23 relevant testimony that a jury is entitled to have. You
24 objected to the basis of her stating as to why she was
25 afraid to tell this to anyone. I sustained your objection

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Opening Statement by Mr. Them

83

1 to that. I guess all we can do then is go down the path
2 and see what happens.

3 MR. DEJONG: I appreciate Your Honor's ruling,
4 but I guess we'll have to trudge down the path.

5 THE COURT: Okay. I'll be glad to hear any
6 objections that either side makes. But that's my ruling.
7 Let her -- I think it's relevant for a jury to hear from
8 her as to why she did not report it, that she was afraid
9 to.

10 JOHN DEJONG: Very well.

11 THE COURT: Anything else before the jury comes
12 in?

13 MR. THEM: Nothing further, Your Honor.

14 JOHN DEJONG: I can't think of anything at the
15 moment, Your Honor.

16 THE COURT: All right. Let's have our jury come
17 in. We'll be ready for your opening statements after
18 they're sworn.

19 (WHEREUPON, the jury entered the open court at
20 approximately 3:40 p.m.)

21 THE COURT: Thank you very much, ladies and
22 gentlemen. We're now ready to proceed with the trial of
23 the case. At this time I'm going to ask your fine clerk
24 to administer an oath to you. After that the attorneys
25 will have an opportunity to make an opening statement to

1 you. The statements that the attorneys make in their
2 opening and in their closing, it's not evidence. Even
3 though it's not evidence for your consideration, I urge
4 you to listen carefully as these attorneys address you.
5 They'll, I'm confident, give you some insights to help you
6 as the case develops so that you can be alert to the
7 unfolding of the case to help you hopefully analyze the
8 evidence that you hear. At this time I'll ask Mr. Welborn
9 to administer the oath.

10 MISTER CLERK: If you would please stand. After
11 the oath is administered please answer by saying I will.
12 Raise your right hand. You shall well and truly try the
13 issue joined in this case of the State versus Robert Lee
14 Dean, and a true verdict render, according to the law and
15 evidence, so help you God.

16 JURORS: I will.

17 MISTER CLERK: Thank you.

18 (WHEREUPON, the jury was duly sworn.)

19 THE COURT: Solicitor, you may address the jury.

20 OPENING STATEMENT

21 BY MR. THEM:

22 Thank you, sir. Your Honor, Mr. DeJong. The
23 defendant in this case is charged with two separate
24 crimes. The first crime is the most serious of those
25 crimes. Criminal sexual conduct with a minor in the

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Opening Statement by Mr. Them

85

1 second degree. The criminal sexual conduct laws have a
2 first degree, second degree and third degree. And which
3 degree it is, is concerned with the age of the victim in
4 the case. Because of the age of the victim in this case
5 it's second degree.

6 Now, to be able to consider a vote of guilty, you
7 will have to satisfy yourself beyond a reasonable doubt as
8 to whether or not the defendant, Mr. Dean, committed what
9 is known as a sexual battery on this child. Sexual
10 battery is basically, without going into a lot of detail
11 at this point, some sort of sexual penetration of the
12 child's body. It can be any kind of sex act that you can
13 imagine that would penetrate a body. We will specifically
14 talk about one in particular here, oral sex that he
15 allegedly performed on this child. It requires proof of
16 penetration, however slight. He does not have to
17 penetrate the child completely or deeply. The slightest
18 penetration in this situation could be construed, if you
19 found it to be true, to be a sexual battery. And that it
20 was not accomplished for any sort of recognized medical
21 purpose.

22 The second crime that he is charged with is
23 committing a lewd act on a child. The major difference
24 between the two of them is criminal sexual conduct
25 requires absolute proof of penetration. You have to be

1 satisfied beyond a reasonable doubt that somebody
2 penetrated somebody. A lewd act on the other hand does
3 not require proof of penetration and if it was penetration
4 it would be criminal sexual conduct. A lewd act could be
5 deep kissing, fondling, feeling, rubbing, touching. It's
6 short of penetration. In addition, a lewd act requires
7 that the person who's accused of doing it be over fourteen
8 years of age. It also requires proof that the act was
9 done to incite the lusts and passions of the child or to
10 satisfy the lusts and passions of the person who committed
11 the crime. So the major distinction is the issue of
12 penetration.

13 After you hear the evidence and the judge advises you
14 on the law, he can be guilty of one and not guilty of the
15 other, vice versa. He can be guilty of both. Or he could
16 be not guilty of both. That's a decision that you will
17 have to make.

18 Now, for the first hundred and fifty, two hundred
19 years of our country, cases that were tried in courts all
20 over the land were decided by what was said by a witness
21 in a chair just like this. We didn't have all the
22 technology that we have today. Cases were decided on
23 verbal or oral testimony. Do you believe the person that
24 is testifying is telling the truth? It was not until
25 about the twenties that we got fingerprints and then later

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Opening Statement by Mr. Them

87

1 on into the fifties and sixties we got into blood typing.
2 Then we got into fiber analysis, shoe prints, all kind of
3 firearms and stuff. And in the nineties we got into DNA.
4 This is an old fashioned case. There is no physical
5 evidence whatsoever. No shoe prints, no hair follicles,
6 none of that stuff. Because the place where the crime is
7 alleged to have been committed was not susceptible to a
8 crime scene investigation. Had a crime scene investigator
9 been called over there two minutes after this happened,
10 what would they have found? They wouldn't have found the
11 defendant's fingerprints all over. They might have found
12 hairs that fell from his head that they could DNA test to
13 prove to be his. They would have found a toothbrush that
14 had his DNA. They might have found his fingerprints or
15 his footprints in the carpet. His clothing. Well of
16 course they would have found that stuff. Because this
17 crime is alleged to have happened at the defendant's home
18 where he lived with this child who was his stepdaughter.
19 You're not going to see at some critical point in this
20 trial somebody come through that door in a set of blue
21 coveralls and orange glasses carrying the magic aluminum
22 briefcase that has all the powders and potions and things
23 that will tell you what color of socks the person was
24 wearing when they committed the crime. No.
25 This case is going to rise and fall on the testimony

1 of the child. She's a woman now. She's going to testify
2 about what happened to her from the time she was eleven or
3 twelve until she was about sixteen. She is nineteen years
4 old now. She will explain to you why the case took so
5 long to get brought. She will explain to you why she did
6 not immediately report what happened.

7 If I walked over there and punch this gentleman, he
8 would probably call the police right away. But if I
9 punched him and he didn't report it for six or eight
10 months, he'd have to give some sort of reason for that.
11 There would have to be some logical reason why someone
12 would not report a crime. You will hear from this child,
13 this woman child's mouth why she did not report what
14 happened. You will hear from other witnesses' testimony
15 that will support why this child didn't tell what
16 happened.

17 The case arose in an unusual kind of situation.
18 Grandma and grandpa are retired and they live down in
19 Florida. They live down in Florida with other members of
20 the family in a little family enclave. So the two kids,
21 the victim in this case and her younger brother, would go
22 down to Florida every summer. And over the years they
23 developed an extremely close relationship with grandma and
24 grandpa. Because mom, the mother of the victim, worked as
25 a registered nurse and worked at night. They told grandma

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Opening Statement by Mr. DeJong

89

1 what happened. Grandma and grandpa talked about it.
2 Grandpa talked to the child and came up here and the
3 matter was reported to the police some probably eight,
4 nine, maybe ten months after the last incident.

5 You notice I said the last incident. This is not a
6 one time crime. This child is going to tell you about a
7 long history of escalating, growing, more serious abuse,
8 as the defendant cultivated her or groomed her, as we say
9 in the business. Testing the limits to see what he can
10 do.

11 This case can be solved with one very simple
12 question. Is this young lady telling the truth? But like
13 all simple questions, the answer gets complicated. You've
14 got to look into her eyes and hopefully see into her heart
15 and soul and determine whether or not she's telling the
16 truth. And you have to determine whether or not she's
17 telling the truth beyond a reasonable doubt. Not
18 probably, maybe. Beyond a reasonable doubt. You'll hear
19 that a lot in this courtroom because that's a standard by
20 which we use.

21 And finally when this case is over and you retire to
22 the jury room, you have no one to reward. You have no one
23 to punish. You only have to satisfy one person. That's
24 that person you looked at this morning when you shaved or
25 brushed your teeth or put on your make-up and combed your

1 hair. Because this has to be your verdict. And if, at
2 the conclusion of this case, you are not satisfied beyond
3 a reasonable doubt as to the defendant's guilt, vote him
4 not guilty and let him be free to pursue his life. If on
5 the other hand you determine, based on the testimony you
6 hear, that the defendant is guilty, vote him guilty and
7 let him be held accountable to the law.

8 One final note. You may have some concerns as to
9 whether or not you've had the training and the skills or
10 the wherewithal to just be able to listen to people talk
11 and decide whether or not they are telling the truth.
12 Well, folks, y'all do it every day. You listen to your
13 children tell the stories about why they were late and
14 whether or not they have homework. Who broke the window.
15 Who ate the cookies. All of those things. You do these
16 things every day. Just do the best job that you can in
17 honoring your oath, and that's all anybody can ask of you.
18 Thank you very much.

19 THE COURT: Mr. DeJong, you may address the
20 jury.

21 **OPENING STATEMENT**

22 **BY MR. DEJONG:**

23 Thank you, Your Honor. May it please the court. Mr.
24 Them. Criminal sexual conduct in the second degree with a
25 minor. Horrible thoughts. Lewd act on a child. The mere

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Opening Statement by Mr. DeJong

91

1 words make your skin crawl like fingernails on a chalk
2 board. They are charges. And I ask you, ladies and
3 gentlemen, not to let this case, not to let those words
4 get in the way of the oath that you took.

5 A few hours ago we introduced ourselves. And I
6 shared with you at that time and the whole panel that I
7 represented Robert Lee Dean. Now, I would like to
8 reintroduce Mr. Dean to you and my representation. I
9 represent the innocent Robert Lee Dean. And certainly a
10 question could come to mind, wasn't Mr. Dean arrested for
11 these charges? But you see, ladies and gentlemen, we
12 could take those arrest warrants and tear them up and
13 throw them away, for at this point in the trial they serve
14 absolutely no value whatsoever. Because the arrest
15 warrant is not proof, it is not evidence. And the fact
16 that Mr. Dean was arrested is not proof, it is not
17 evidence. You could say, well, okay, we'll do that, but
18 His Honor read two indictments before we were selected to
19 serve on this jury. Was Mr. Dean not indicted by the
20 Pickens County Grand Jury? Sure was. But you see, ladies
21 and gentlemen, we could also tear up the indictments.
22 Because what we are about right now, those indictments
23 serve no purpose for us whatsoever. They are not proof.
24 They are not evidence.

25 So that is two reasons that I can say that I have the

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Opening Statement by Mr. DeJong

92

1 pleasure today of representing the innocent Robert Lee
2 Dean.

3 Now there's a third. Those two are important, but
4 the third I'm getting ready to share with you is of
5 greater importance. I believe His Honor touched on it in
6 his preliminary remarks to you, I think, before we broke
7 for lunch. And he shared with you something about
8 presumption of innocence.

9 Now, presumption of innocence, ladies and gentlemen,
10 is not a legal theory. It is not lawyer mumbo jumbo. It
11 is not words of -- I guess they do tumble glibly over our
12 lips but they certainly should not. Because that
13 presumption of innocence, ladies and gentlemen, is a
14 substantial right afforded every citizen of Pickens
15 County, the state of South Carolina, the United States of
16 America. And that presumption of innocence is in part
17 what I just shared with you, that the warrant and the
18 indictment in this case are not evidence against Mr. Dean.
19 And that presumption of innocence, that substantial right,
20 ladies and gentlemen, is with a person charged for a crime
21 throughout the trial. It doesn't end when I sit down here
22 in a few moments, which hopefully it will be brief but
23 nonetheless I want to speak with you. It doesn't end when
24 I sit down. It doesn't end when the first witness gets on
25 the witness stand or gets off the witness stand. Or the

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Opening Statement by Mr. DeJong

93

1 last. Indeed that presumption of innocence follows Mr.
2 Dean back into the jury room when you ultimately go back
3 to deliberate on this case.

4 There is a principle of law, especially in criminal
5 law. You may have served on other juries where the proof
6 is different. But in criminal law the burden of proof is
7 on the state to prove the defendant guilty beyond a
8 reasonable doubt. And we will talk more about reasonable
9 doubt at the end of this trial. Mr. Dean comes into this
10 courtroom today and shares absolutely -- or has no burden
11 to prove his innocence. He has no burden to prove
12 anything, or to you. Because the burden of proof in this
13 case, ladies and gentlemen, rests solely on this table.
14 And this table is the State of South Carolina. They have
15 the burden of proof solely.

16 Now as I have shared with you a moment ago that --
17 excuse me one moment, please -- that that presumption of
18 innocence will follow Mr. Dean back into the jury room.
19 And sometimes when we talk about that presumption of
20 innocence the law will sometimes say that that presumption
21 of innocence is likened to a cloak of righteousness
22 draped about the shoulders of the person charged with the
23 crime. And it stays there until or unless the state can
24 strip that cloak of righteousness, that presumption of
25 innocence, from the defendant and prove his guilt beyond a

1 reasonable doubt.

2 Now as far as the facts go in this case, ladies and
3 gentlemen, I am not going to stand here this evening and
4 talk to you about the facts of this case. We're going to
5 go through this trial together. We will listen. And when
6 this case is over, we will come back and talk about what
7 we have seen and heard. We'll get another shot at you
8 then.

9 So I would ask that you remember those principles of
10 law that I've shared with as you go through this trial.
11 They are extremely, extremely fundamental and extremely,
12 extremely important.

13 On behalf of Mr. Dean, I would like to thank you for
14 being here. There are probably a thousand and one places
15 shortly after four o'clock on a Monday afternoon that you
16 think you -- not that you think you would rather be, you
17 would rather be. And we understand that. But you see,
18 ladies and gentlemen, the cornerstone, the foundation of
19 our system is on your side of the rail. Without you
20 today, under our system, there would certainly be no need
21 for me and there would be no need for Mr. Them, and
22 meaning no disrespect to His Honor, but there would be no
23 need for him. Because you, ladies and gentlemen, are the
24 cornerstone, the foundation. The great Winston Churchill
25 was attributed with saying, there's no greater service

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Opening Statement by Mr. DeJong

95

1 that a citizen can perform for their country in peace time
2 other than jury duty. We are not exactly at peace time,
3 but certainly it is still a high, high service that you
4 provide for your community and your state. And we do
5 appreciate your being here. You have been more attentive
6 up to this point in time. I appreciate your
7 attentiveness. I ask you to remain attentive throughout
8 the trial and listen. And after you have heard it all and
9 heard us the lawyers speak yet one more time, and listened
10 to the charge on the law from His Honor, I ask you to tell
11 the state, Mr. Dean still has that rope of righteousness
12 draped around about his shoulders, you have not removed
13 it, and find Mr. Dean not guilty on both indictments.
14 Thank you.

15 MR. THEM: May we approach, Your Honor?

16 THE COURT: Yes, sir.

17 (WHEREUPON, Mr. Them and Mr. Dejong approached the
18 bar.)

19 THE COURT: Mr. Foreman, ladies and gentlemen,
20 we need to take a very short break. I'll ask you to go
21 back to your jury room. Don't discuss the case, of
22 course. We'll take a short break and we'll call you back
23 in just a few moments.

24 (WHEREUPON, the jury exited the open court at
25 approximately 4:06 p.m.)

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Opening Statement by Mr. DeJong

96

1 THE COURT: All right. Mr. DeJong, yes, sir,
2 you may be excused to take a short break. We'll take
3 about a five, ten minute break. Let us know how you're
4 feeling. Yes, sir.

5 (WHEREUPON, Court stood at recess for a short break.)

6 THE COURT: Yes, sir.

7 MR. DEJONG: Your Honor, I do have a point of
8 clarification after I heard Mr. Them's opening statement,
9 realizing that is not evidence, but I believe we are bound
10 by our statements. In his opening statement when he was
11 talking about criminal sexual conduct, if I understood and
12 heard him correctly, he was talking about cunnilingus.
13 Then he said cunnilingus and he said penetration however
14 slight. He did not refer to digital penetration.

15 So now I'm kind of going back to this argument we had
16 an hour or so ago on prior subsequent bad acts. If that
17 is what he said on the opening statement then I would take
18 the position that on indictment 2007-GS-39-346, criminal
19 sexual conduct in the second degree with a minor, that's
20 what the state would be proving, or have to prove beyond a
21 reasonable doubt, cunnilingus with penetration however
22 slight. The question I have is when we were arguing about
23 the prior or subsequent bad acts, if there was digital
24 penetration, and I think, Your Honor, the alleged victim
25 testified as to that, and Your Honor said that you were

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Direct Examination by Mr. Them

97

1 going to let it in. But then am I to gather, if what I'm
2 saying is halfway correct, that the digital penetration is
3 either a prior or subsequent bad act.

4 THE COURT: Yes, sir, Mr. Them.

5 MR. THEM: The way the testimony is going to
6 develop is I'm going to try to prove cunnilingus or
7 criminal sexual conduct in the second degree. The digital
8 penetration is a subsequent bad act because she testified
9 it happened after she was fifteen years old. And the
10 indictment talks about eleven to fourteen. So it's a
11 subsequent bad act. Does that clarify my position?

12 MR. DEJONG: It clarifies your position and
13 that's part of what I was fighting when we had that whole
14 argument. I couldn't grasp that part. I didn't know if
15 he was going with digital penetration or the cunnilingus.
16 But I think now, Your Honor, that that throws a different
17 light. I know Your Honor's ruled, and just for the record
18 I did then I think, and I certainly do now, take exception
19 to Your Honor's ruling, with all due respect. I'm not
20 going to reopen that door and reargue it, Your Honor. But
21 I think -- I don't know -- I won't stand here and waste
22 the court's time while I'm trying to think something a
23 little further down the road. I'll try to think about
24 that tonight, Your Honor. What I am thinking of, I know
25 is a jury charge. But right now that's not jelling in my

1 mind. So I'll have to think about it. Thank you, Your
2 Honor.

3 THE COURT: All right. Ready to proceed?

4 MR. THEM: Yes, sir.

5 THE COURT: All right. Let's call our jury back
6 in.

7 (WHEREUPON, the jury entered the open court at
8 approximately 4:25 p.m.)

9 THE COURT: You may call your first witness,
10 solicitor.

11 MR. THEM: Call Witness

12 MISTER CLERK: Place your left hand on the bible
13 and raise your right hand. Do you solemnly swear or
14 affirm the testimony you're about to give in this case to
15 be the truth, the whole truth and nothing but the truth,
16 so help you God?

17 MS. WHEELER: I do.

18 MISTER CLERK: If you would, state your name for
19 the record.

20 MS. WHEELER: Witness

21 Witness

22 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION

24 BY MR. THEM:

25 Q. Ms. Wheeler, are your initials K. W.?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Direct Examination by Mr. Them

99

- 1 A. Yes, sir.
- 2 Q. Are you the child talked about in these indictments,
3 where they talk about K. W.?
- 4 A. Yes, sir.
- 5 Q. How old are you now?
- 6 A. Nineteen.
- 7 Q. Okay. What was your date of birth?
- 8 A. child's
birth date.
- 9 Q. Okay. And in -- between August 2001 and November
10 2005, where did you live?
- 11 A. With my mother.
- 12 Q. Where?
- 13 A. In Clemson.
- 14 Q. Okay. Could you give us an address?
- 15 A. address Drive.
- 16 Q. Is that in Pickens County?
- 17 A. Yes, sir.
- 18 Q. All right. Do you have any brothers and sisters?
- 19 A. Yes, sir.
- 20 Q. Okay. Tell us about that.
- 21 A. A brother.
- 22 Q. And how old is he?
- 23 A. Seventeen.
- 24 Q. So how old is he in relation to you? Can you
25 separate it in terms of months?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Direct Examination by Mr. Them

100

- 1 A. Two years younger.
- 2 Q. Okay. And where does your biological father live?
- 3 A. In Seneca.
- 4 Q. Okay. When did your biological and your biological
- 5 mother separate?
- 6 A. When I was really little.
- 7 Q. They're divorced now?
- 8 A. Yes, sir.
- 9 Q. All right. At some point in time did your mother
- 10 ever introduce you to a man named Dean?
- 11 A. Yes, sir.
- 12 Q. Was your mother dating him?
- 13 A. Yes, sir.
- 14 Q. How old were you when you first met Mr. Dean?
- 15 A. About nine or ten.
- 16 Q. Okay. And what did you think about him at that time?
- 17 A. He seemed okay.
- 18 Q. Huh?
- 19 A. He seemed okay.
- 20 Q. Okay. And did his relationship with your mother
- 21 begin to get more serious?
- 22 A. Yes, sir.
- 23 Q. At some point in time did he ever move in with y'all?
- 24 A. Yes, sir.
- 25 Q. Do you remember when he moved in with y'all?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Direct Examination by Mr. Them

101

- 1 A. I don't remember the year.
- 2 Q. Do you remember how old you were or what grade you
3 were in or anything like that?
- 4 A. I was about nine or ten.
- 5 Q. I'm sorry.
- 6 A. I was about nine or ten.
- 7 Q. Nine or ten. Okay. And when Mr. Dean moved in with
8 y'all did you still get along with him?
- 9 A. Yes, sir.
- 10 Q. Did you like him?
- 11 A. Yes, sir.
- 12 Q. Okay. In the beginning was he a pretty good step
13 dad?
- 14 A. Yes, sir.
- 15 Q. Anything ever happen to change that?
- 16 A. Yes, sir.
- 17 Q. What?
- 18 A. He molested me.
- 19 Q. He molested you?
- 20 A. Yes, sir.
- 21 Q. When did he start molesting you?
- 22 A. When I was about eleven or twelve.
- 23 Q. Okay. And where were you when this happened?
- 24 A. Living with my mother.
- 25 Q. Living with your mother. Was your brother also

1 living there?

2 A. Yes, sir.

3 Q. Is this the house you talked about in Clemson?

4 A. Yes, sir.

5 Q. Okay. And did Mr. Dean live with y'all at the time?

6 A. Yes, sir.

7 Q. Okay. Anybody else living with y'all at that time?

8 A. Yes, sir.

9 Q. Who?

10 A. His children.

11 Q. Okay. Tell me about these children. Give me their
12 first names if you would.

13 A. Lisa, Hope, Crystal and Lee.

14 Q. Okay. If you would give me their first names and
15 their ages now. Ages now if you can or if you can take it
16 back to when they first moved in. Let's do it back when
17 they first moved in. How old were they then,
18 approximately, if you know?

19 A. I'm not quite sure, but I think that Hope is the
20 youngest so she was in her teens. Then it's Lisa. I
21 would assume she was also in her teens.

22 Q. Was she older or younger?

23 A. She's older than Hope.

24 Q. Older?

25 A. After Lisa there was Lee. Well, Lee before her, who

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Direct Examination by Mr. Them

103

1 I would assume, because they were all in high school when
2 I -- when they got married, moved on to college, so I was
3 in ---

4 Q. Okay. And you would have been in what grade when
5 they got together?

6 A. Fifth.

7 Q. Fifth, okay. So all of these kids are of high school
8 age and you're in the fifth and your brother is two years
9 younger than you?

10 A. Yes, sir.

11 Q. Okay. Now, would you discuss with us the living
12 arrangements in that house. Who slept where?

13 A. Hope and I shared a room.

14 Q. That was the youngest child?

15 A. Yes, sir.

16 Q. Okay.

17 A. Crystal and Lisa were the older two girls. And then
18 my brother and Lee shared a room.

19 Q. And were there enough bedrooms to go around?

20 A. We had to turn an old living room into a bedroom.

21 Q. Okay. Now, did Mr. Dean molest you on more than one
22 occasion?

23 A. Yes, sir.

24 Q. Let's talk about the first occasion that you
25 remember. Tell me about that, please.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Witness - Direct Examination by Mr. Tham

104

- 1 A. He just started by -- I mean it didn't start out
- 2 fully, he just ---
- 3 Q. Keep your voice up, please.
- 4 A. He just slowly progressed.
- 5 Q. Tell me what he did to start.
- 6 A. He just started off by massaging my back.
- 7 Q. Okay. And how old were you at this time?
- 8 A. About eleven or twelve.
- 9 Q. Okay. These are embarrassing questions, but were you
- 10 physically developed at that time?
- 11 A. Yes, sir.
- 12 Q. Okay. He'd start out rubbing your back. Would you
- 13 have your clothes on?
- 14 A. Yes, sir.
- 15 Q. A brazier?
- 16 A. Yes, sir.
- 17 Q. Okay. And how long did that go on?
- 18 A. For about a year, year and a half.
- 19 Q. Okay. Anything more serious than that happen in the
- 20 first year, year and a half?
- 21 A. Yes, sir.
- 22 Q. Tell us what happened next.
- 23 A. He started playing with my breasts, massaging them.
- 24 Q. Through your clothes or under your clothes?
- 25 A. Through my clothes.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Direct Examination by Mr. Tham

105

- 1 Q. Okay. How long did that go on?
- 2 A. About a few months.
- 3 Q. Okay. Did he go any further than that?
- 4 A. Yes, sir.
- 5 Q. What happened next?
- 6 A. He eventually started taking my clothes off.
- 7 Q. Okay. How much of your clothes would he take off?
- 8 A. It just started with my shirt at first.
- 9 Q. Okay. And what would he do when he took your shirt
- 10 off?
- 11 A. He would then start playing with my breasts.
- 12 Q. Okay. Did it ever go any further than that?
- 13 A. Yes, sir.
- 14 Q. What happened next?
- 15 A. He would then start just licking and kissing on my
- 16 breasts and moving down my stomach.
- 17 Q. How often would this sort of stuff happen?
- 18 A. Weekly.
- 19 Q. From what age?
- 20 A. Eleven or twelve.
- 21 Q. Until what age?
- 22 A. Sixteen.
- 23 Q. That entire time period, it would happen on a weekly
- 24 basis?
- 25 A. Yes, sir.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Direct Examination by Mr. Them

106

- 1 Q. Okay. What happened next?
- 2 A. He then just started massaging my vaginal area.
- 3 Q. Okay.
- 4 A. Eventually he moved further into my pants and
- 5 underpants.
- 6 Q. Okay.
- 7 A. And then began to, then began to lick me between the
- 8 lips of my vagina.
- 9 Q. Okay. How old were you when he was licking you
- 10 between the lips of your vagina?
- 11 A. Fourteen, fifteen.
- 12 Q. Okay. Fourteen -- you'll have to tell me what you
- 13 mean fourteen, fifteen?
- 14 A. It was when I was fourteen.
- 15 Q. Okay. Did it carry over ---
- 16 A. Yes, it did.
- 17 Q. -- into when you were fifteen? Okay. How long did
- 18 that go on?
- 19 A. For about a year.
- 20 Q. How often?
- 21 A. Weekly.
- 22 Q. Anything happen after that?
- 23 A. Yes, sir.
- 24 Q. What?
- 25 A. He started to use his finger.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Direct Examination by Mr. Them

107

1 Q. I have to ask you to tell me what he did?

2 A. He would just stick part of his finger in my vagina.

3 Q. How long did that go on?

4 A. Not very long.

5 Q. Why?

6 A. Eventually he moved out.

7 Q. Okay. When he moved out did he ever return to live
8 there?

9 A. No, sir.

10 Q. Where was your little brother while this was going
11 on?

12 A. Sleeping.

13 Q. Okay. Where was his bedroom in relation to your
14 bedroom?

15 A. It was next to mine.

16 Q. Was there sound insulation between them or could you
17 hear what was going on?

18 A. There was a bathroom between them, but you couldn't
19 really hear anything.

20 Q. What time would your brother go to bed?

21 A. It would vary between seven to, I'd say eleven at the
22 latest.

23 Q. Okay. Well, what would determine whether it was
24 seven and what would determine whether it was eleven?

25 A. How he behaved.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Direct Examination by Mr. Them

108

1 Q. Okay. Who controlled what time your brother went to
2 bed?

3 A. Mr. Dean.

4 Q. Where was your mama?

5 A. She was either getting ready for work or leaving for
6 work.

7 Q. Okay. And what kind of work did she do?

8 A. She was a third shift nurse.

9 Q. Okay. Where?

10 A. At Anderson Hospital.

11 Q. Okay. During the whole time she was living with Mr.
12 Dean, was she working as a nurse?

13 A. Yes, sir.

14 Q. What time of day -- let me back up. Was there a set
15 time of day that Mr. Dean would molest you?

16 A. Nighttime.

17 Q. Why nighttime?

18 A. Because there was time. My mom was gone, my brother
19 was in bed.

20 Q. Okay. Did you notice any connection between being
21 molested and what time your brother went to bed?

22 A. Yes, sir.

23 MR. DEJONG: Objection, Your Honor, he's
24 leading.

25 THE COURT: Sustain the objection. Rephrase the

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Direct Examination by Mr. Them

109

1 question.

2 Q. Was there any connection?

3 A. Yes, sir.

4 Q. Tell me what the connection was.

5 A. If my brother, if my brother misbehaved and he was
6 sent to bed early, I pretty much assumed that later on
7 that night I would be getting a visit.

8 Q. Okay. Where were Mr. Dean's daughters when this was
9 going on?

10 A. Sometimes they weren't living with us, but others
11 they'd be visiting their mom or going shopping or to see a
12 movie.

13 Q. When you were fourteen years old -- let's take it
14 right up to your fifteenth birthday. The day before your
15 fifteenth birthday, how many of his children still living
16 there?

17 A. I can't -- they moved in and out. I'm really not
18 sure.

19 Q. Okay. Were all four of them living there?

20 A. At certain points, yes.

21 Q. Okay. They were, you said, how much -- the youngest
22 one was how much older than you?

23 A. She was in her teens. I'm not exactly sure. I'd say
24 maybe sixteen or seventeen.

25 Q. Okay. When you were how old?

1 A. Eleven or twelve.

2 Q. Okay. So when you got up to just before fifteen, the
3 youngest one would have been what, eighteen, nineteen,
4 something like that?

5 A. In her twenties, yeah.

6 Q. Were they working?

7 A. Yes, sir. Some of them had jobs.

8 Q. Okay. Did they go out at night?

9 A. Yes, sir.

10 Q. Did Mr. Dean ever use any tricks to get them out of
11 the house?

12 MR. DEJONG: Objection, Your Honor.

13 THE COURT: What's your objection?

14 MR. DEJONG: Calls for speculation on the part
15 of the witness. She couldn't know what Mr. Dean's
16 intentions were when he did anything.

17 THE COURT: All right. I sustain the objection.
18 as the question is asked. You may rephrase your question.

19 Q. Were there ever any times that Mr. Dean would be
20 responsible for the other children going out?

21 A. Yes, sir.

22 Q. What kind of things?

23 A. Grocery runs. If we needed groceries for the house
24 he would give them money and send them to the store.

25 Q. Did he ever molest you when any of his children were

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourney Wheeler - Direct Examination by Mr. Them

111

1 there?

2 A. No, sir.

3 Q. Were there periods of time in this time period that
4 we're talking about that none of his children were there?

5 A. Yes, sir.

6 Q. What percentage of the time would you say none of the
7 children were there?

8 A. It was a very short period of time.

9 Q. Okay. When -- did his children eventually move away?

10 A. Yes, sir.

11 Q. Did they ever return?

12 A. They did on several occasions, but the last time they
13 didn't.

14 Q. Okay. How many times would -- well, let's talk about
15 the youngest child. How many times did she move in and
16 out while y'all were living together?

17 A. Maybe two.

18 Q. Okay. And how long would she be gone for?

19 A. Maybe a few months.

20 Q. Okay. The next oldest child, her name is what?

21 A. Lisa.

22 Q. Did Lisa ever move out while y'all were living there?

23 A. She did.

24 Q. On how many different occasions?

25 A. Same time, her and Hope both moved out together.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Witness - Direct Examination by Mr. Tham

112

1 Q. Were the two of them -- oh, they were living
2 together?

3 A. Yes, sir.

4 Q. Were they both working at this time?

5 A. Yes, sir.

6 Q. Okay. And the second child, did she return when the
7 youngest child came back?

8 A. Yes, sir.

9 Q. And did she leave when the youngest child left again?

10 A. Yes, sir.

11 Q. Do you know where they went?

12 A. No, sir. I think they got an apartment, but I'm not
13 positive.

14 Q. Did either one of those two girls ever come back
15 after the second time they moved out?

16 A. Yes, sir.

17 Q. To live?

18 A. Yes, sir.

19 Q. Okay. And how long would they stay before they left?

20 A. Not very long, just a few months.

21 Q. Okay. Were they living there when Mr. Dean and your
22 mother separated, those two?

23 A. No, sir.

24 Q. Okay. The third child, what was her name?

25 A. It was a male, Lee.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Direct Examination by Mr. Them

113

1 Q. Lee, I'm sorry. And Lee was how old compared to the
2 other two girls?

3 A. He was older than the other two.

4 Q. Okay. Did there come a time when he moved away?

5 A. Yes, sir.

6 Q. Did he come back?

7 A. No, sir.

8 Q. Okay. How old were you when Lee moved away?

9 A. He moved away when he graduated, which was maybe a
10 year or two after they got married.

11 Q. Year or two after what?

12 A. My mom and Mr. Dean got married.

13 Q. Okay. A year or two after your mom and Mr. Dean got
14 married he moved away?

15 A. I think so, yes, sir.

16 Q. And didn't come back?

17 A. Yes, sir.

18 Q. All right. The fourth child, how much time was --
19 was that a lady?

20 A. Yes, sir.

21 Q. How much time was she there during the time you were
22 there?

23 A. She was there the majority of the time.

24 Q. Okay. Did you ever see any connection between

25 getting molested and Mr. Dean sending his children off?

1 A. No, sir. Some nights he would send them out and he
2 wouldn't do anything.

3 Q. Okay. But did he ever molest you when they were
4 home?

5 A. No, sir.

6 Q. Okay. Let's go back in point in time, if we can,
7 okay, way back. How long has your mother been a nurse?

8 A. A little over twenty years.

9 Q. Okay. Your whole life?

10 A. Yes, sir.

11 Q. Okay. And has she always worked that third shift,
12 that night shift?

13 A. Yes, sir.

14 Q. Who provided daycare for you and your brother when
15 she was working? I mean, you know, babysat you, for lack
16 of a better word?

17 A. My grandparents.

18 Q. You say your grandparents. These would be your
19 father's mother or your mother's mother.

20 A. My mother's mother.

21 Q. Did you develop a close relationship with them?

22 A. Yes, sir.

23 Q. How many years did they provide that daycare for you?

24 A. I used to live with them when I was -- after my
25 parents got a divorce.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Direct Examination by Mr. Them

115

1 Q. Okay.

2 A. And ever since every summer we've been visiting.

3 Q. Well, before you -- before your parents -- when you
4 say your parents, now, you mean your biological dad and
5 your biological mom?

6 A. Yes, sir.

7 Q. Or your mom and Mr. Dean?

8 A. My biological parents.

9 Q. Okay. How often would they provide daycare for you
10 when your mother was married to your biological father?

11 A. Very often. I was living with them the majority of
12 the time.

13 Q. And did they basically move away?

14 A. Yes, they did.

15 Q. Where did they move to?

16 A. Florida.

17 Q. Okay. When they moved to Florida were there any
18 other relatives down there of y'all's?

19 A. Yes, sir.

20 Q. Who?

21 A. My uncle and my aunt and their children.

22 Q. Were you friendly with the children?

23 A. Yes, sir.

24 Q. Were y'all anywhere near the same age?

25 A. There's a few years but ...

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Direct Examination by Mr. Them

116

1 Q. Okay. During the time Mr. Dean lived with your mom,
2 did you go to Florida in the summers?

3 A. Yes, sir.

4 Q. When would you leave and when would you get back? I
5 mean, was it a pattern or ...

6 A. Yes, sir. It was within the last few days of school.
7 After the school ended we would go to Florida. And as
8 long as we could stay, we stayed.

9 Q. Why would y'all go to Florida every summer?

10 A. To spend time with my grandparents and my cousins.

11 Q. Did your mother have anybody to care for you in the
12 daytime? Or did Mr. Dean work?

13 A. They both worked. And my mom slept and he worked.

14 Q. When did your mom sleep?

15 A. During the day.

16 Q. Okay. Did your brother always go down there with you
17 to Florida?

18 A. Yes, sir.

19 Q. Did your relationship with your grandparents grow
20 stronger?

21 A. Yes, sir.

22 Q. And you said at some point in time -- I'm sorry. At
23 some point in time, did you actually move down there to
24 live with them?

25 A. Yes, sir.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Witness *- Direct Examination by Mr. Them*

117

- 1 Q. Do you live with them now?
- 2 A. Yes, sir.
- 3 Q. When did you move down there to live with them?
- 4 A. Last May.
- 5 Q. And you started school down there then?
- 6 A. Yes, sir.
- 7 Q. College?
- 8 A. Yes, sir.
- 9 Q. Okay. This is an important question. Who was the
- 10 first person you told, if anyone, about what was going on
- 11 with you and Mr. Dean?
- 12 A. My little brother.
- 13 Q. When did you tell him?
- 14 A. The summer, the summer after Mr. Dean moved out.
- 15 Q. The summer after what?
- 16 A. Mr. Dean moved out.
- 17 Q. Okay. What did you tell him, as best you can recall?
- 18 A. I just told him what had been happening and that I'd
- 19 been molested.
- 20 Q. Did you go into any detail about what exactly had
- 21 happened?
- 22 A. No, I didn't.
- 23 Q. Okay. You can't tell me what your brother told you.
- 24 Okay? But as a result of what your brother told you did
- 25 you follow his advice?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Direct Examination by Mr. Them

118

1 A. Yes, I did.

2 Q. What did you do?

3 A. I went and told my grandmother.

4 Q. Okay. Can you tell me what you told her as best you
5 remember?

6 A. I just told her the same thing, that I had been being
7 molested.

8 Q. What was your emotional state at that time?

9 A. I was nervous. I didn't know exactly how to say it
10 other than just to come out with it.

11 Q. Okay. Did your grandfather get involved too?

12 A. He did.

13 Q. Did you talk to him?

14 A. My grandmother did.

15 Q. What happened next?

16 A. As a result, we came home early for the summer and my
17 grandfather told my mom.

18 Q. Why didn't you tell her?

19 A. Because I didn't know how to. I wasn't sure how
20 she'd react or ...

21 Q. Were you scared?

22 A. I was.

23 Q. You've told us -- let me back up. When did your
24 mother and Mr. Dean separate, as best you remember?

25 A. I was sixteen, so I would say the summer of '06 or

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Witness - Direct Examination by Mr. Them

119

1 November '05, '06.

2 Q. November?

3 A. I think so.

4 Q. Of '05 or '06?

5 A. Yes, sir. I'm not exactly sure which year.

6 Q. Now the summer that you told your grandparents that
7 something happened, was it the summer after your mother
8 and Mr. Dean separated, or when?

9 A. It was the summer after they separated.

10 Q. Okay. Now, why didn't you tell someone what was
11 going on so they could help you?

12 A. I didn't know how to. I didn't know how they would
13 react or how to say it. I was afraid of the reaction.

14 Q. Was there anything else that you were afraid of?

15 A. I didn't know what to say. I was just afraid I would
16 be judged for it.

17 Q. Okay. Did you ever have a conversation with Mr. Dean
18 about what was going on about why?

19 A. It wasn't really a conversation, but a few statements
20 were made.

21 Q. Would you tell me -- that person that made those
22 statements was who?

23 A. Mr. Dean.

24 Q. Tell me what he told you?

25 A. He just said that he wanted to make sure -- make

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtnay Wheeler - Direct Examination by Mr. Them

120

1 things clear that he wasn't molesting me, it was just
2 something that I wanted.

3 Q. Something that you wanted?

4 A. Yes, sir.

5 Q. Okay. Now, were you afraid of Mr. Dean?

6 A. Yes, sir.

7 Q. Why?

8 MR. DEJONG: Objection, Your Honor, leading.

9 THE COURT: Overruled.

10 Q. Were you afraid of Mr. Dean?

11 A. Yes, sir.

12 Q. Why?

13 A. I just -- because of what had been happening.

14 Q. What kind of fears did you have? Tell me what you
15 were afraid of. You told me you were afraid, but I want
16 to know what you were afraid of?

17 A. I was just afraid that if I came out with it and he
18 figured it out, I'd just -- he'd hurt me.

19 Q. Okay. You ever tell any girlfriends before you told
20 your brother?

21 A. I did not.

22 Q. No family members?

23 A. Nobody.

24 Q. Any guidance counselor at school or anybody?

25 A. No, sir.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Direct Examination by Mr. Them

121

1 Q. Your brother was the first person you told?

2 A. The very first.

3 Q. On how many different occasions, from the first time

4 Mr. Dean molested you to the last time he molested you,

5 did he molest you?

6 A. There's too many times to count. There was so many

7 different occasions.

8 Q. The person that you've described as molesting you and

9 touching you and doing things like that, is he in this

10 courtroom?

11 A. Yes, sir.

12 Q. Would you point him out to me, please?

13 A. (Indicating.)

14 Q. The heavy set gentlemen in the blue shirt?

15 A. Yes, sir.

16 MR. THEM: Let the record reflect that the

17 witness is pointing at the defendant, Mr. Dean.

18 Q. At any point in time did Mr. Dean ever ask you to do

19 things to him?

20 A. No, sir.

21 Q. Okay. At any point in time did he ever have

22 intercourse with you, where he put his penis in your

23 vaginal area?

24 A. No, sir.

25 Q. Never happened?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Cross Examination by Mr. DeJong

122

1 A. No, sir.

2 Q. Okay. Just one second, please. Thank you very much.

3 Would you answer any questions Mr. DeJong has for you?

4 THE COURT: You may cross examine the witness,

5 Mr. DeJong.

6 MR. DEJONG: Thank you, Your Honor. May it
7 please the court.

8 CROSS EXAMINATION

9 BY MR. DEJONG:

10 Q. This address where you say this happened, Ms.

11 Wheeler, where was that?

12 A. In Clemson.

13 Q. All right. And how long did you live at that
14 address?

15 A. Until I graduated.

16 Q. When was that?

17 A. In '08.

18 Q. '08?

19 A. '08.

20 Q. So have you lived at that address in Clemson all your
21 life?

22 A. Yes, sir.

23 Q. Until you graduated?

24 A. Yes, sir.

25 Q. And after you graduated you moved to Florida with

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Cross Examination by Mr. DeJong

123

1 your grandparents?

2 A. Yes, sir.

3 Q. Now, when did your grandparents move to Florida?

4 A. Around the same time my mother and Mr. Dean got

5 married.

6 Q. Got married?

7 A. Yes, sir. Or moved into the house.

8 Q. Okay. Do you remember what year that was?

9 A. '99.

10 Q. Okay. Now let's talk about this house just a little

11 bit. It was a house?

12 A. Yes, sir.

13 Q. Okay. And how many bedrooms were in the house?

14 A. It was a three bedroom house.

15 Q. A three bedroom house?

16 A. Yes, sir.

17 Q. How many baths?

18 A. Two baths.

19 Q. Two baths. Two full baths?

20 A. Yes, sir.

21 Q. All right. In 1999 when you say Mr. Dean moved in

22 with your mother or they got married or whatever, was his

23 daughters with him then?

24 A. Yes, sir.

25 Q. Okay. And I believe there was also a son; right?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kouriney Wheeler - Cross Examination by Mr. DeJong

124

1 A. Yes, sir.

2 Q. So in 1999 there would have been eight of y'all
3 living in that house?

4 A. Yes, sir.

5 Q. Okay. And how long were the eight of them -- eight
6 of y'all living in that house?

7 A. I would say about a year, maybe two.

8 Q. Okay. So up into 2001 sometime?

9 A. A little after.

10 Q. A little after?

11 A. Yes, sir.

12 Q. So maybe even up into 2002?

13 A. Yes, sir.

14 Q. I see. Now, how old were you in 2002?

15 A. I was twelve.

16 Q. Twelve. Okay. Now in 2002 who moved out of the
17 house?

18 A. I think it was just his son.

19 Q. So his son moved out of the house, so that I'm clear?

20 A. Yes, sir.

21 Q. So now we're down to seven in the house?

22 A. Yes, sir.

23 Q. All right. And how long were there seven of you in
24 the house?

25 A. Maybe a few months. I'm not exactly sure when they

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Cross Examination by Mr. DeJong

125

1 all moved out.

2 Q. Did all of them ever move out at any one given time?

3 A. No, sir.

4 Q. So there were always -- through the whole time until
5 your mother and Mr. Dean separated, there was always some
6 of his daughters living in the house.

7 A. No, sir. There was a time when there was none of
8 them.

9 Q. Do you remember what time that was?

10 A. I'm not exactly sure.

11 Q. Do you remember how old you were?

12 A. I'm not sure.

13 Q. Okay. How long of a period of time was that?

14 A. Just a few months.

15 Q. All right. So now again, jumping to the back end of
16 what you allege happened, you're not sure when Mr. Dean
17 and your mother separated?

18 A. It was when I was sixteen because the summer is when
19 I told them.

20 Q. All right. When you were sixteen?

21 A. Yes, sir.

22 Q. Okay. So your birthday is child's birthdate ;
23 right?

24 A. Yes, sir.

25 Q. So for you to have been sixteen that would have had

1 to been sometime after January of 2006?

2 A. Yes, sir.

3 Q. That's your recollection; right?

4 A. Yes, sir.

5 Q. All right. Now when Mr. Dean's children lived there,
6 and specifically his three daughters, you shared a bedroom
7 with one of his daughters?

8 A. Yes, sir.

9 Q. And that was, I believe you said, Hope?

10 A. Yes, sir.

11 Q. Okay. Was Hope the first to move out or the last to
12 move out or where did she fit in to moving in and moving
13 out?

14 A. She moved in and out with Lisa.

15 Q. Okay. Well, if two moved out that still left five in
16 the house; right?

17 A. Lee never came back.

18 Q. Pardon me?

19 A. As far as including my parents, my mom and Mr. Dean?
20 Yes, sir.

21 Q. Right. So if Lisa and Crystal moved out, did
22 somebody else move into your bedroom?

23 A. No, sir.

24 Q. Well, the configuration with the bedrooms in that
25 house, Ms. Wheeler, were they all more or less on one end

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Cross Examination by Mr. DeJong

127

1 of the house?

2 A. Yes, sir.

3 Q. Okay. So you like have -- was there a hallway going
4 down there?

5 A. Yes, sir.

6 Q. Okay. The hallway, would it be correct to say two
7 bedrooms on the left and two bedrooms on the right?

8 A. Just one bedroom on the right.

9 Q. One bedroom on the right. Did Mr. Dean and your
10 mother share a bedroom?

11 A. They did.

12 Q. Okay. And how about the bathrooms, were the
13 bathrooms all shared or did the children use one bathroom,
14 or how did that work?

15 A. The girls shared one. His three kids and me shared
16 one. And then Lee, my brother, and my parents -- or my
17 mom and Mr. Dean shared one.

18 Q. Okay. And so I am clear when Mr. Dean's children,
19 his girls lived there, there was movement all the time;
20 was there not?

21 A. Yes, sir.

22 Q. People in and out?

23 A. Yes, sir.

24 Q. They were in and out? Did they have an assigned
25 bedroom?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Witness - Cross Examination by Mr. DeJong

128

1 A. No, sir.

2 Q. And they certainly didn't all -- every time they left
3 all three of them go together; did they?

4 A. No, sir.

5 Q. And sometimes you went with them?

6 A. Sometimes.

7 Q. And sometimes your brother went with them?

8 A. I don't ever remember him going with them.

9 Q. Or sometimes you and your brother both went?

10 A. No, sir.

11 Q. Well, when you went out with them, did you go make
12 grocery runs with them?

13 A. We would go to see a movie.

14 Q. Go see a movie?

15 A. Or maybe go to the mall.

16 Q. To go shopping?

17 A. That's about it.

18 Q. Pardon me?

19 A. That was about it.

20 Q. Would you see a movie?

21 A. That or to the mall.

22 Q. Okay. And that happened regularly, did it not?

23 A. I wasn't allowed to go most of the time.

24 Q. Okay. Now your mother did live in this house; didn't
25 she?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Cross Examination by Mr. DeJong

129

- 1 A. She did.
- 2 Q. And she worked; right?
- 3 A. Yes, sir.
- 4 Q. But she was home during the day, was she not?
- 5 A. Yes, sir.
- 6 Q. And you were home during the day?
- 7 A. Yes, sir.
- 8 Q. And did Mr. Dean work?
- 9 A. Yes, sir, he did.
- 10 Q. What hours did he work?
- 11 A. During the day.
- 12 Q. What time did -- would he get home?
- 13 A. Maybe around six thirty, seven.
- 14 Q. Okay. What time would your mother get home?
- 15 A. Early in the morning.
- 16 Q. Well, during the school year when you left for
- 17 school, was your mother up?
- 18 A. She wasn't home. By the time I got up and got ready
- 19 for school, she wasn't home yet.
- 20 Q. So you left for school before five thirty in the
- 21 morning?
- 22 A. At six forty-five.
- 23 Q. Okay. Well, when you came home in the afternoon was
- 24 your mother home?
- 25 A. She was.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Cross Examination by Mr. DeJong

130

- 1 Q. And she didn't leave for work until what, seven?
- 2 A. Seven, yes, sir.
- 3 Q. Okay. And certainly there were -- when you came home
- 4 from school, Mr. Dean wasn't there; was he?
- 5 A. No, sir.
- 6 Q. Do you have good a relationship with your mother?
- 7 A. It's okay.
- 8 Q. Do you have a better relationship with your
- 9 grandparents?
- 10 A. I do.
- 11 Q. And so that I'm clear now, your mother lived in this
- 12 house this whole period of time you're talking about;
- 13 right?
- 14 A. Yes, sir.
- 15 Q. Okay. You tell us that Mr. Dean massaged your back?
- 16 A. Yes, sir.
- 17 Q. Now, in massaging your back, your clothes were on;
- 18 right?
- 19 A. Yes, sir.
- 20 Q. He massage your back, he rubbed your back?
- 21 A. Yes, sir.
- 22 Q. There was nothing sexual about that?
- 23 A. No, sir.
- 24 Q. And you say that went on for a year or two?
- 25 A. Yes, sir.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Witness - Cross Examination by Mr. DeJong

131

1 Q. And for that entire year or two there was nothing
2 sexual about it; was there?

3 A. No, sir.

4 Q. Well, when do you say that started?

5 A. I would assume -- the sexual acts? I'm not sure
6 exactly what you're asking.

7 Q. No. This massaging your back that you've been
8 telling this jury about?

9 A. It started when I was eleven or twelve.

10 Q. Pardon me?

11 A. When I was eleven or twelve.

12 Q. Well, would that have been 1999 or 2000, 2001, 2002?

13 A. 2001.

14 Q. 2001?

15 A. 2002.

16 Q. Okay. And that, according to you, went all the way
17 then up into 2002 or 2003?

18 A. Yes, sir.

19 Q. Okay. Then you say he started taking your clothes
20 off?

21 A. Yes, sir.

22 Q. Well, where did that occur in the house, according to
23 you?

24 A. My bedroom.

25 Q. Now was that the bedroom you shared with Lisa?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Cross Examination by Mr. DeJong

132

- 1 A. I shared with Hope.
- 2 Q. Hope. I'm sorry. And at that point in time was Hope
- 3 living there?
- 4 A. Yes, sir.
- 5 Q. Okay. And how old was Hope?
- 6 A. I'm not exactly sure. She was in high school.
- 7 Q. Did you and Hope have a good relationship?
- 8 A. It was okay.
- 9 Q. How about you and Lisa?
- 10 A. All the relationships were okay.
- 11 Q. Were okay. Y'all talk?
- 12 A. We had our good times and we had our arguments.
- 13 Q. Yes, ma'am. Simply pretty much like anybody does;
- 14 right?
- 15 A. Yes, sir.
- 16 Q. All right. So when you say Mr. Dean started taking
- 17 your clothes off, you were still sharing a bedroom with
- 18 Hope?
- 19 A. Yes, sir.
- 20 Q. Well, how long after you say this started occurring
- 21 was Hope there?
- 22 A. She was there for a while. Like I said, I'm not
- 23 exactly sure when. She moved in and out.
- 24 Q. Well, while you say this was going on did she move
- 25 out and then move back in?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourney Wheeler - Cross Examination by Mr. DeJong

133

1 A. She moved in and out, like I said, a few times. Once
2 or twice.

3 Q. Well, when we say in and out were you talking about
4 moving away for some period of time and then coming back?

5 A. Yes, sir.

6 Q. But even when you shared that bedroom, she would be
7 gone and she would come in; right?

8 A. She would be out of the house.

9 Q. Yes, ma'am, I understand. There was no schedule when
10 she was in the house or out of the house; was there?

11 A. No, sir.

12 Q. She pretty much came and went as young people come
13 and go; right?

14 A. Yes, sir.

15 Q. You don't always leave a note on the refrigerator for
16 daddy where you are and what time you're coming home; do
17 you?

18 A. No, sir.

19 Q. And they didn't either; did they?

20 A. No, sir.

21 Q. Did Hope attend school? I mean -- yeah, Hope. Did
22 Hope attend school?

23 A. She did.

24 Q. Okay. You and she go to the same school?

25 A. No.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Witness - Cross Examination by Mr. DeJong

134

1 Q. So now you say he started taking your clothes off.

2 And how long -- that would have been, I think we said,

3 2002 or 2003. How long did you say -- do you say that

4 went on?

5 A. Just a few months.

6 Q. Well, let me ask you this. Where were your

7 grandparents living at this point in time?

8 A. They were in Florida.

9 Q. And what, to the best of your recollection, what year
10 did they move to Florida?

11 A. When we moved in the house which would have been in
12 1999.

13 Q. Okay. I'm a little confused now. I apologize. I
14 thought you said you have lived at this address pretty
15 much all your life?

16 A. I lived in Greenwood with my biological parents when
17 they were married.

18 Q. Okay. So when did you move into this house where you
19 say this happened?

20 A. In '99.

21 Q. '99. What were you feeling when your grandparents
22 moved to Florida?

23 A. I was sad.

24 Q. Did you want to go with them?

25 A. I did.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Cross Examination by Mr. DeJong

135

1 Q. Did you express that to your mother?

2 A. No, sir.

3 Q. Did you express it to your grandparents?

4 A. No, sir.

5 Q. You just wanted to go with them?

6 A. Yes, sir.

7 MR. THEM: Excuse me, Your Honor, could you ask

8 Mr. DeJong to speak up. I'm having a hard time hearing

9 him.

10 MR. DEJONG: I'll try to do better, Mr. Them.

11 MR. THEM: Thank you.

12 Q. So when they moved to Florida, you wanted to move to

13 Florida with them?

14 A. Yes, sir.

15 Q. And that desire to move to Florida and live with

16 them, that went on for a good while; didn't it?

17 A. Yes, sir.

18 Q. As a matter of fact it never left; did it?

19 A. No, sir.

20 Q. Now, starting -- okay. I'm not trying to belabor the

21 point, but the house you say this happened in you moved in

22 1999?

23 A. Yes, sir.

24 Q. Around then?

25 A. Yes, sir.

1 Q. And that would have been about the same time that
2 your parents moved - excuse me - your grandparents moved
3 to Florida?

4 A. Yes, sir.

5 Q. Okay. What was the first summer that you went down
6 to visit your grandparents in Florida?

7 A. That was the summer -- first summer after they moved.

8 Q. So that would have been the summer of 1999 or the
9 summer of 2000; right?

10 A. Yes, sir.

11 Q. All right. And each and every summer after that from
12 2000 -- let's say 2000 through 2006, you went down there
13 for the summer?

14 A. I did.

15 Q. All right. And did your brother go with you?

16 A. He did.

17 Q. Well, on the -- during the summer of 2006 when you
18 say you shared this with your grandparents, was your
19 brother with you then?

20 A. He was.

21 Q. Okay. So every summer 2000 through at least 2006,
22 you and your brother went to visit your grandparents?

23 A. Yes, sir.

24 Q. Now, backing up here again a little bit. You say
25 that at some point, your allegation is that Mr. Dean

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Cross Examination by Mr. DeJong

137

1 started taking your clothes off and that lasted for a few
2 months?

3 A. Yes, sir.

4 Q. So that would have, according to you, have been '03,
5 '04?

6 A. I would assume so. I would say more of '03.

7 Q. '03? Okay. And Hope was still living there; right?

8 A. Yes, sir.

9 Q. Crystal?

10 A. I think so.

11 Q. Lisa?

12 A. Maybe. I'm not exactly sure.

13 Q. Well, Lisa and Crystal shared a bedroom; right?

14 A. They did.

15 Q. And in relationship to the bedroom that you and Hope
16 shared, where was the bedroom that Crystal and Lisa
17 shared?

18 A. It was right next to mine.

19 Q. Right next to yours. Was that separated by a
20 bathroom or right next to yours?

21 A. It was separated by a bathroom.

22 Q. When we say separated by a bathroom was there a door
23 that came off of each bedroom into the bathroom?

24 A. Yes, sir.

25 Q. Okay. All right. And then you say and you alleged

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Witness - Cross Examination by Mr. DeJong

138

1 that, if I understand you correctly, that Mr. Dean started
2 massaging your vaginal area; right?

3 A. Yes, sir.

4 Q. Okay. How long did that go on, according to you?

5 A. Several months.

6 Q. I'm sorry?

7 A. Several months.

8 Q. Okay. So are we in 2004 now?

9 A. Yes, sir.

10 Q. Okay. Well, who is living there in 2004?

11 A. Like I've said before, I'm not exactly sure when they
12 were there and when they weren't there.

13 Q. Well, were any of Mr. Dean's daughters living there
14 in 2004?

15 A. I think that was the time where they had moved out.

16 I'm not exactly sure.

17 Q. But your mother was still living there?

18 A. Yes.

19 Q. Well, when you say that Mr. Dean was massaging your
20 vaginal area, was that in the wintertime, springtime,
21 summertime, fall time?

22 A. I can't give a specific season.

23 Q. Well, when you say Mr. Dean was doing this to you,
24 did you go to Florida?

25 A. During the summers, yes.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Cross Examination by Mr. DeJong

139

1 Q. Okay. Well, I beg your pardon. When you say he
2 would rubbing your vaginal area, during that time as
3 according to your testimony, did you go to Florida?

4 A. I'm not exactly sure what you're asking.

5 Q. All right. You're saying and you're alleging that
6 Mr. Dean started massaging your back, then it was I
7 believe you -- according to you, fondling your breasts and
8 then started removing your clothes; right?

9 A. Yes, sir.

10 Q. And then you say he started massaging your vagina, I
11 think as you put it?

12 A. Yes, sir.

13 Q. Now, that took place, if I understand your testimony
14 correctly, over several months?

15 A. Yes, sir.

16 Q. The taking off your clothes and to where -- the point
17 where you said he massaged your vagina; right?

18 A. Yes, sir.

19 Q. Would that have been more than twelve months?

20 A. No, sir.

21 Q. Okay. Nine months?

22 A. No, it wasn't that long.

23 Q. Well, the point of that is, before you say that he
24 licked your vagina, did you go to Florida?

25 A. I went to Florida every summer.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Witness Cross Examination by Mr. DeJong

140

- 1 Q. And you had a good relationship with your
- 2 grandparents?
- 3 A. I did.
- 4 Q. Excellent; right?
- 5 A. Uh-huh (affirmative).
- 6 Q. Better than with your mother?
- 7 A. Yes.
- 8 Q. Now, if I said Mr. Dean moved out in November of '05,
- 9 you couldn't really say that was inaccurate; could you?
- 10 A. I'm not exactly sure which year.
- 11 Q. Okay. But it was in the summer of '06 when you say
- 12 you finally reported this to your grandma; correct?
- 13 A. Yes, sir.
- 14 Q. Only to your grandmother; right?
- 15 A. I reported it to my brother first.
- 16 Q. Your brother. Okay. That was in the summer of '06;
- 17 correct?
- 18 A. Yes, sir.
- 19 Q. Now, the summer of '06 would you have gone to Florida
- 20 -- I think you said you normally went a few days after
- 21 school was out?
- 22 A. Yes, sir.
- 23 Q. And you would come back sometime in August; right?
- 24 A. Yes, sir. Right before school started.
- 25 Q. All right. And when you ultimately, as you say

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Cross Examination by Mr. DeJong

141

1 reported it to your grandmother, that was right before you
2 were coming back to South Carolina; wasn't it?

3 A. Yes, sir.

4 Q. Now is it my understanding that you never talked to
5 your grandfather about this?

6 A. My grandmother did.

7 Q. Okay. But you never did?

8 A. No.

9 Q. Okay. Now, did you talked to your brother about this
10 before you went to Florida?

11 A. No.

12 Q. While you were at -- in Florida?

13 A. Yes, sir.

14 Q. I see. Okay. And was it still your desire at that
15 point in time to live with your grandparents?

16 A. Yes, sir.

17 Q. The -- well, after your mother and Mr. Dean
18 separated, your mother still lived in the house?

19 A. Yes, sir.

20 Q. And you still lived there?

21 A. Yes, sir.

22 Q. And how old were you then?

23 A. Sixteen.

24 Q. So who -- did you run the household then while your
25 mother was gone?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Witness - Cross Examination by Mr. DeJong

142

1 A. Yes, sir.

2 Q. Did anybody else come in after Mr. Dean left the
3 house?

4 A. No, sir.

5 Q. You shared with Mr. Them that when -- that your
6 brother went to bed sometimes early; correct?

7 A. Yes, sir.

8 Q. Certainly not every night; right?

9 A. Yes, sir.

10 Q. Pardon?

11 A. Yes, sir.

12 Q. Now I believe you shared with Mr. Them that at the
13 time you went to bed was determined by your behavior;
14 right?

15 A. By my brother's behavior.

16 Q. Your brother's behavior. All right. So the point of
17 him going to bed at seven o'clock at night was not
18 necessarily determined by Mr. Dean; was it?

19 A. My -- Mr. Dean used to get on my brother for
20 everything. So he was in trouble a lot.

21 Q. Okay. But now this brother we're talking about, his
22 name I think is Nick. He's your biological brother?

23 A. He is.

24 Q. Okay. And obviously -- well, maybe not obviously.
25 Do you love him?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kouriney Wheeler - Cross Examination by Mr. DeJong

143

- 1 A. I do.
- 2 Q. And did you then?
- 3 A. Yes, sir.
- 4 Q. Did your mother set rules in this house?
- 5 A. She had a few.
- 6 Q. Pardon me?
- 7 A. She had a few.
- 8 Q. Had a few. Well, the going to bed thing, was that
- 9 your mother's rule?
- 10 A. No, sir.
- 11 Q. All right. That was Mr. Dean's rule?
- 12 A. Yes, sir.
- 13 Q. All right. But nonetheless that would be determined
- 14 by behavior?
- 15 A. Yes, sir.
- 16 Q. After Mr. Dean moved out in November of '05, did you
- 17 continue to see him?
- 18 A. He occasionally came over to get his mail.
- 19 Q. Did your mother see him?
- 20 A. If she wasn't sleeping she did.
- 21 Q. Did y'all ever go out to eat?
- 22 A. No.
- 23 Q. Okay. Do you recall going out to eat on your
- 24 sixteenth birthday?
- 25 A. Not that I recall. I don't really remember my

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Cross Examination by Mr. DeJong

144

1 sixteenth birthday.

2 Q. Well, after you came back from Florida in '06, did
3 your grandparents drive you back?

4 A. Yes, sir.

5 Q. And let's back up a little further than that. Before
6 you left Florida, how many discussions did you and your
7 grandmother have regarding what you allege happened?

8 A. I didn't tell anybody before my brother.

9 Q. Pardon me?

10 A. I didn't tell anybody before my brother.

11 Q. I realize you didn't tell anybody before your
12 brother. But after you say you told your grandmother, how
13 many times did you and your grandmother talk about it?

14 A. We didn't.

15 Q. Pardon?

16 A. We didn't.

17 Q. Never again?

18 A. No, sir.

19 Q. I see. And what part of Florida do you live in?

20 A. Melbourne.

21 Q. How many hours does that take to drive from Florida
22 to Greenville?

23 A. Eight to ten.

24 Q. Eight to ten. And when you say you told your
25 grandmother, did you leave for Greenville the next day, or

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Witness Cross Examination by Mr. DeJong

145

1 when was it?

2 A. It was about a week or two later.

3 Q. All right. And all that time this was never

4 discussed with your grandmother again?

5 A. It was not discussed again.

6 Q. So then when you came back from -- let me back up a

7 little bit. So you say you shared this with your

8 grandmother and then it was another week or two before you

9 came back to Greenville?

10 A. It was.

11 Q. Well, when you came back to Greenville did you go

12 back to your house in Clemson?

13 A. Yes, sir.

14 Q. Is that still the same house?

15 A. Yes, sir.

16 Q. That was the house that your mother and Mr. Dean

17 lived in; right?

18 A. Yes, sir.

19 Q. And what time of day or night did you get home? Do

20 you remember?

21 A. I'm not exactly sure.

22 Q. Okay. Well, after you got home, then what happened?

23 A. Normally we would go out to eat. My grandparents

24 would take us out to eat.

25 Q. This is when you got back to Greenville?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Cross Examination by Mr. DeJong

146

1 A. Yes, sir.

2 Q. In '06?

3 A. Yes, sir.

4 Q. Okay. So y'all went out to eat. How long did your
5 grandparents stay with you?

6 A. My grandfather stayed for a few days to a week.

7 Q. Stayed for a what?

8 A. A few days to a week.

9 Q. Did your grandmother come too?

10 A. She did not.

11 Q. All right. So did your mother ever come to Florida
12 in '06?

13 A. No, sir.

14 Q. So when you got back to Greenville, y'all just went
15 out to eat and everything was normal, okay; right?

16 A. While we were eating, yes, sir.

17 Q. And then at some point in time I guess something
18 changed?

19 A. Yes, sir.

20 Q. Did you talk to the police about this?

21 A. I did.

22 Q. How many times?

23 A. Just when I made my statement.

24 Q. Is it true you talked to them another time, Ms.

25 Wheeler, at least one time?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Cross Examination by Mr. DeJong

147

1 A. I'm not exactly sure. I may have.

2 Q. When you talked to the police did your mother go with
3 you?

4 A. She did.

5 Q. And did you and your mother both talk to the police
6 at the same time?

7 A. No, sir.

8 Q. You talked to them separately?

9 A. Yes, sir.

10 Q. So they took you in a room by yourself?

11 A. Yes, sir.

12 Q. And you never talked with your mother -- in your
13 mother's presence about this?

14 A. I may have, but it never went any -- into any detail.

15 Q. Well, certainly you and your mother talked about your
16 allegations; did you not?

17 A. No, sir.

18 Q. Never did?

19 A. No, sir.

20 Q. Not even before you went to the police?

21 A. No, sir.

22 Q. Well, I'm sure your mother took you to the police;
23 right?

24 A. Yes, sir.

25 Q. Not your grandfather?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Witness *Cross Examination by Mr. DeJong*

148

1 A. They both did.

2 Q. They both did. Was your grandfather present when you
3 were talking to the police?

4 A. No, sir.

5 Q. Okay. How many police officers were there that you
6 talked to?

7 A. I talked to two people.

8 Q. Pardon me?

9 A. I talked to two people.

10 Q. Okay. Do you remember their name?

11 A. Crooks. And then I talked to a lady with the last
12 name of Walker.

13 Q. Do you have a television in your home?

14 A. I do.

15 Q. Well, when you were nine, ten or eleven years old,
16 did you have a television in your home?

17 A. Yes, sir.

18 Q. Did you watch television?

19 A. Yes, sir.

20 Q. And you went to school?

21 A. Yes, sir.

22 Q. And certainly there were teachers at school?

23 A. Yes, sir.

24 Q. I imagine -- don't let me imagine. Certainly there
25 were guidance counselors available to you; were there not?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Cross Examination by Mr. DeJong

149

1 A. Yes, sir.

2 Q. Okay. And various and sundry other people that were
3 available to you; correct?

4 A. Yes, sir.

5 Q. Including your grandparents every summer?

6 A. Yes, sir.

7 Q. And you said you didn't report this because you
8 didn't know what to say?

9 A. Yes, sir.

10 Q. Did Mr. Dean ever spank your brother?

11 A. Yes, sir.

12 Q. Isn't it a fact that it was his rule to spank and
13 your mother's rule to send to bed?

14 A. I mean my mother agreed with the sending to bed.

15 JOHN DEJONG: One moment please, Your Honor.

16 THE COURT: Yes, sir.

17 Q. After your mother and Mr. Dean separated did your
18 mother have friends over to the house?

19 A. She's not -- she doesn't have a lot of friends.

20 Q. Did she have friends over to the house?

21 A. There was one guy, but I wouldn't call him her
22 friend.

23 Q. Where did this guy live?

24 A. He was our neighbor.

25 Q. Thank you, Ms. Wheeler.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Redirect Examination by Mr. Them

150

1 THE COURT: Any redirect?

2 MR. THEM: Briefly, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. THEM:

5 Q. Did you want to stay in Florida bad enough that you
6 would make up this story?

7 A. No, sir.

8 Q. Were there ever times that you saw your brother sent
9 to bed early that he didn't do anything?

10 A. Yes, sir.

11 Q. And were you abused on those nights?

12 A. Yes, sir.

13 Q. Every one of those nights that he ---

14 JOHN DEJONG: Objection, Your Honor.

15 MR. THEM: I take back ---

16 MR. DEJONG: Leading.

17 MR. THEM: I took it back.

18 THE COURT: All right. Sustained.

19 Q. Just so I understand, after Mr. Dean and your mom
20 separated, did you ever go any place with him, go out with
21 him?

22 A. Not that I remember. We may have gone out to eat,
23 but I'm not sure.

24 Q. You say we, who would we be?

25 A. Just my mother and my brother.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Witness - Redirect Examination by Mr. Them

151

1 Q. Okay. When you came back from Florida with your
2 grandfather, was your grandmother with him?

3 A. No, sir.

4 Q. Did you tell your mother what happened?

5 A. No, sir.

6 Q. Who did?

7 A. My grandfather.

8 Q. Why didn't you tell your mom?

9 A. Because I didn't know how to tell her. I didn't know
10 what reaction I would get.

11 Q. Did you feel that you had done anything wrong?

12 A. Yes, sir.

13 MR. DEJONG: Objection, Your Honor.

14 THE COURT: What's your objection?

15 MR. DEJONG: Did you feel like you had done
16 anything wrong. I think that's just -- it's just an
17 improper question.

18 THE COURT: I'll overrule the objection.

19 Q. Did you feel like you'd done anything wrong is why
20 you couldn't tell your mother what happened?

21 A. Yes, sir.

22 Q. Where did you get that feeling?

23 A. Just from Mr. Dean and not telling.

24 Q. You said something to Mr. DeJong about Mr. Dean
25 coming back to the house and getting like mail?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Witness - Redirect Examination by Mr. Them

152

1 A. Yes, sir.

2 Q. How often did that happen after he left?

3 A. Maybe every two weeks.

4 Q. Okay. Did you still fear him after he had left?

5 A. Yes, sir.

6 Q. Did him coming back every two weeks have anything to
7 do with that fear?

8 A. Yes, sir.

9 Q. Just one second. I have nothing further. Thank you
10 very much, Kourtney.

11 THE COURT: All right. Thank you, ma'am. You
12 may step down from the witness stand.

13 Mr. Foreman, ladies and gentlemen, I think we've
14 reached a good time to break for the evening. I've
15 noticed that a juror has been taking notes and there is
16 nothing impermissible by that. Let me remind you, though,
17 by taking notes -- and if anybody needs -- wants to take
18 notes we'll certainly provide you with a pad and pencil.
19 Your notes, of course, will just be for your benefit.
20 They'll need to be collected by the bailiff when you leave
21 and kept here. You can write your name on them. Leave
22 them with them. They'll give them back to you at another
23 time, a pad or whatever you use.

24 Let me remind you though, while it's permissible to
25 take notes, I don't want you to be so involved in note

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Redirect Examination by Mr. Them

153

1 taking that you miss the trial. There's lots of other
2 things happening, the demeanor of the witnesses that you
3 need to be observant to, to watch what's taking place
4 here. And remember that the fact that you take notes or
5 anyone wishes to take notes, that doesn't change the fact
6 of the recollection. That's what's important for the
7 individual jurors. That's just as reliable as any notes.
8 Notes aren't evidence. Notes can be in error too,
9 sometimes. We all know that that can take place. So
10 notes should not be given any greater weight than the
11 personal recollection of each juror. But if you desire to
12 take notes, just let the bailiffs know tomorrow. They'll
13 certainly give you pen and paper. Those of you who do
14 take notes, remember that you need to leave them with the
15 bailiffs. They'll give them back to you the next day.

16 We're going to break for the evening. Let me again
17 remind you of what I've told you earlier, not to discuss
18 this case with anyone. I would not suspect this would be
19 a case that would have any media coverage. But if that
20 were to happen you should refrain from reading anything in
21 the paper or watching anything on television. You've made
22 a commitment, ladies and gentlemen, to these parties to
23 decide this case on what takes place in this courtroom.
24 Not what takes place somewhere else. So you shouldn't
25 discuss it with anyone. As I told you earlier you will

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Redirect Examination by Mr. Them

154

1 have an opportunity to share your experiences with your
2 family and friends, but not while the case is going on.

3 Let me remind you also that -- and I give you this
4 instruction not to tempt you in any way but to show you
5 the importance. Sometimes we get curious and we want to
6 do some independent research and check on words or look
7 things up and so forth. That would be improper, ladies
8 and gentlemen. You've committed to these parties that you
9 are going to decide this case on what takes place in this
10 courtroom, what these fine attorneys present to you, and
11 that alone. So that would be improper for you to do any
12 kind of independent research or checking on anything.
13 They'll have everything that you need and that's your
14 commitment to these parties and your commitment to the
15 court, to be the judges of the facts on what facts are
16 presented here, not any other source whatsoever. So
17 you're not to do any of that. You're not to discuss it
18 with anyone.

19 I apologize again on the time frame that we have.
20 Sometimes I miss those times. I do know of an appointment
21 that I have tomorrow that I have to be at in Greenville
22 for a judicial matter that I have to take care of over
23 there. I believe I'll be able to be back here by ten
24 thirty. We're going to start at ten thirty. Normally
25 we'd start about nine o'clock, we'd go to about now, five

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtnay Wheeler - Redirect Examination by Mr. Them

155

1 thirty or five o'clock in the afternoons. But tomorrow we
2 will not be able to start until ten thirty.

3 You, ladies and gentlemen, don't need to call in
4 tonight. We've got several messages going on with
5 different panels. Your instruction is to be back at ten
6 thirty in the morning. You'll just report back to the
7 bailiffs. They'll show you as you came back from lunch
8 where to report. As soon as I get here we'll be ready to
9 start. And if you're here a little early and we can start
10 early, if I get back, that will be fine too. But we'll
11 certainly be prepared to start by ten thirty tomorrow.
12 Have a good evening, ladies and gentlemen. I look forward
13 to seeing you back tomorrow.

14 (WHEREUPON, the jury exited the open court at
15 approximately 5:33 p.m.)

16 THE COURT: Yes, sir, Mr. DeJong?

17 MR. DEJONG: Your Honor, I think you are aware
18 that my client is out on bond, and has been out on bond
19 for almost, almost the get-go. I have shared with him of
20 course that his bond ceased to exist when the jury was
21 sworn. However, I'm going to ask Your Honor not to take
22 him into custody. He's been to court every time. He has
23 had a bond card. There has never been an issue with that.
24 He has been to my office every time I have asked him to
25 come into my office. And probably a couple of times when

1 I didn't ask him to come into my office. But the boy's
2 been extremely cooperative with me. And I would ask the
3 court not to take him into custody, Your Honor.

4 THE COURT: Does the state have a position?

5 MR. THEM: I'm not asking you to take him into
6 custody. What Mr. DeJong says about him showing up is
7 correct.

8 THE COURT: Mr. Dean, let me just explain to
9 you, we've started a trial. We're going to continue to
10 have a trial..

11 DEFENDANT: Yes, sir.

12 THE COURT: You certainly need to be here. If
13 you're not here the trial is going to proceed in your
14 absence. I hope you understand that. And I certainly
15 wouldn't recommend that to you. That certainly puts your
16 attorney in a real bind. But you understand that at ten
17 thirty tomorrow we're going to proceed with this trial?

18 DEFENDANT: Yes, sir. I'll be here, I'll be
19 here.

20 THE COURT: All right. Thank you very much.
21 We'll be at ease until ten thirty in the morning.

22 (WHEREUPON, court adjourned for the day at
23 approximately 5:35 p.m.)

24 9/22/09

25 (WHEREUPON, court convened with all parties present

State of South Carolina -vs-Robert Lee Dean (2007-GS-39-0346, 0347)
Witness - Redirect Examination by Mr. Them

157

1 and the following proceedings were had.)

2 THE COURT: Anything we need to take care of
3 before the jury comes back in?

4 MR. DEJONG: If Your Honor please. This
5 morning, Your Honor, prior to Your Honor coming into the
6 courtroom, my investigator was walk -- Mr. Johnny Duncan
7 was walking down the hallway. He did not converse with
8 the juror. However, he did overhear a conversation
9 between the juror and a bailiff. I'm not sure which
10 bailiff. The information that I have, the best I can
11 determine, we're speaking of juror number 108. That would
12 be Mr. James W. Trotter. I'm not a hundred percent sure
13 of that, but I believe I'm correct. The tenor of the
14 conversation that was overheard by Mr. Duncan between the
15 juror and the bailiff is -- was -- I guess is that that
16 particular juror had apparently applied for a job with
17 Pickens County Sheriff Office and that that juror will be
18 going to work for the Pickens County Sheriff's Office
19 starting one day late this week. As memory serves me,
20 Your Honor, you -- well, I had handed up as defendant's
21 request for voir dire number one, which I believe Your
22 Honor gave to the jury, and that is, is any member of the
23 jury panel or their immediate family associated with or
24 related by blood or marriage to anyone who is employed by
25 the Clemson Police Department. You did not specifically

1 say Clemson Police Department. I believe you just said
2 any law enforcement agency. I would contend, Your Honor,
3 that that -- the juror was less than candid in responding
4 to that question.

5 Obviously, that juror I would submit, has had
6 association with the law enforcement agency prior to the
7 voir dire of that jury panel yesterday morning. He failed
8 to disclose that. Had I known that, Your Honor, I would
9 not have accepted that juror. Indeed after Mr. Them
10 challenged my strikes, I believe it was pretty apparent
11 that all of my strikes -- not all. One of them -- two of
12 them I could not -- one wasn't challenged. One I couldn't
13 remember. But four out of the five that Mr. Them was
14 challenging was because, and what I shared with the court,
15 I struck them because of some affiliation - some of them
16 removed, I warrant you - but nonetheless, it was any
17 affiliation with law enforcement. I don't know if Your
18 Honor recalls or not, out of the ten strikes that I had
19 available, I used six. I certainly had other strikes
20 available to me. And even if I had not, I certainly could
21 have made a challenge for cause. However, by not
22 divulging that information, I did not have the opportunity
23 to do either. I would therefore respectfully request that
24 if it is indeed juror number 108, that juror number 108 be
25 removed from the jury and the alternate placed in his

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Witness - Redirect Examination by Mr. Them

159

1 seat. Thank you.

2 THE COURT: The state have a position?

3 MR. THEM: Yes, sir. When Mr. DeJong started
4 this motion that was the first I heard of that. I don't
5 doubt for a moment the honesty of the reporting by Mr.
6 Duncan. I don't know who did what, but we're too far into
7 this process, I think, to take a chance on a problem. So
8 I find myself in the unusual position of agreeing with Mr.
9 DeJong, out of an abundance of caution.

10 THE COURT: All right. Mr. Lewis, if you would
11 ask the foreman to come out, please, just the foreman.
12 Not the full jury, just the foreman, and ask him to please
13 come forward.

14 MR. LEWIS: Mr. Trotter?

15 THE COURT: Mr. Trotter.

16 (WHEREUPON, Mr. Trotter, entered the open court.)

17 THE COURT: Mr. Trotter, you can just stand
18 right there. I just wanted to verify that there was some
19 conversation that perhaps you're going to start work for
20 the Pickens County Sheriff's Office in the near future?

21 MR. TROTTER: Yes, sir. I was interviewed this
22 morning. I'll start Sunday.

23 THE COURT: All right. Well, obviously
24 yesterday when I qualified you, I didn't ask that
25 question, if anybody was going to work.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Redirect Examination by Mr. Them

160

1 MR. TROTTER: I didn't know I was until this
2 morning. I knew I had an interview, but I couldn't, I
3 couldn't answer ---

4 THE COURT: Okay. And I didn't ask those
5 questions. I don't want to put you in an awkward position
6 and I think that might very well do that, so I'm going to
7 just excuse you from this trial. I need you back at one
8 o'clock today. We're going to select another jury at one
9 o'clock today.

10 MR. TROTTER: All right.

11 THE COURT: So if you would be back ---

12 MR. TROTTER: Here?

13 THE COURT: I guess -- yeah. They'll probably
14 be outside or you can come on in, I guess, since you --
15 but most of the jurors will be outside until we finish
16 this. Then we're going to select another jury either to
17 start this afternoon or in the morning. I don't know
18 which. But if you'll be here at one o'clock. And I'll
19 explain to your fellow jurors, you know, what happened.

20 And I appreciate you bringing this to our attention.
21 I'll look forward to seeing you at one today. Okay?

22 MR. TROTTER: Okay.

23 THE COURT: I certainly don't want to put you in
24 an awkward position with that now. And then we'll know
25 that in the qualification. Okay. Thank you very much,

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Redirect Examination by Mr. Them

161

1 Mr. Trotter.

2 (WHEREUPON, Mr. Trotter was dismissed from service on
3 this jury panel.)

4 THE COURT: Anything else?

5 MR. DEJONG: Your Honor, Mr. Them has graciously
6 shared with me that his next witness that he is going to
7 be calling will be number seven on his witness list, Ms.
8 Shauna Galloway-Williams. I am not -- I am familiar with
9 Ms. Galloway-Williams. We have had the opportunity to
10 share experiences in the courtroom before. I am not --
11 and I might be a little premature, but I wanted to go
12 ahead and address it before you brought the jury in
13 anyway. I am not sure what Mr. Them is offering Ms.
14 Galloway-Williams for. Apparently at some -- in some area
15 of expertise. And again, like I said, I might be
16 premature at this point in time. I may have to wait and
17 I'll have to object again. But I'm going to object to Ms.
18 Galloway-Williams' testimony. I just want to put the
19 court on notice of that. If you want it to be heard
20 further perhaps Mr. Them can elucidate on what he intends
21 to show through this witness if he cares to.

22 THE COURT: Yes, sir.

23 MR. THEM: I would very much like to do that so
24 we can resolve it on the front end. I remember the
25 agreement or the order of the court - regardless of which

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Witness - Redirect Examination by Mr. Them

162

1 it is, it's the law of this case, that there's no forensic
2 interview testimony involving the victim in this case.

3 Ms. Shauna Galloway-Williams is the executive
4 director of the Greenville Rape Crisis and Child Abuse
5 Center. She has a long history of treating and evaluating
6 children who are thought to have been sexually abused, and
7 I think will testify, I'm not positive as to the numbers
8 but they're large, I think she's going to testify that
9 some four or five hundred children that she's interviewed
10 over time, both as a counselor. Then she's also going to
11 talk about that she has done forensic interviews on some
12 couple of hundred children. She has never, ever seen the
13 victim in this case, looked at a file or, to my knowledge,
14 even knows the name of the victim. She's going to be
15 testifying as a blind expert as to, based on her extensive
16 experience, why children are afraid to report --
17 correction. If children are generally afraid to report,
18 why they are afraid to report and is there, in her
19 experience, any delay factor bringing into issue by
20 reporting what happened, what types of things cause
21 children to do it and how long those would be. She would
22 then talk about her experience as a forensic interviewer,
23 what she has got from those children. I think we're going
24 to end up in the situation that she's going to talk about
25 some five to six hundred children that she's interviewed

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Kourtney Wheeler - Redirect Examination by Mr. Them

163

1 in those two capacities and will talk about delayed
2 reporting and the reasons for fears for reporting.

3 THE COURT: All right. Mr. DeJong, your
4 objection to the testimony, is it on the lack of expertise
5 of the witness - and again I'll be glad to let you voir
6 dire her now - or on the relevancy of the testimony.

7 MR. DEJONG: Both, Your Honor.

8 THE COURT: Both. All right. Let's call the
9 witness and let him voir dire her now as to both of those
10 issues. You can come around and be sworn, Ms. Williams.

11 MR. THEM: Just so I understand, I'm doing her
12 credentials or do you want me to get into her testimony so
13 he'll have the opportunity to ...

14 THE COURT: We're going to do the credentials
15 first. I'm going to give him the opportunity to cross
16 examine her on that. And then we'll see where we go from
17 there.

18 MR. THEM: Okay.

19 MISTER CLERK: Do you solemnly swear or affirm
20 the testimony you're about to give in this case be the
21 truth, the whole truth and nothing but the truth, so help
22 you God?

23 MS. GALLOWAY-WILLIAMS: Yes.

24 SHAUNA GALLOWAY-WILLIAMS,

25 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

1 IN-CAMERA DIRECT EXAMINATION

2 BY MR. THEM:

3 Q. Would you spell your name for the court reporter,
4 please?

5 A. Shauna, S-h-a-u-n-a, Galloway, G-a-l-l-o-w-a-y,
6 hyphen, Williams, W-I-l-l-I-a-m-s.

7 Q. And where are you employed Ms. Galloway-Williams?

8 A. I am the executive director of the Greenville Rape
9 Crisis and Child Abuse Center.

10 Q. Okay. How long have you been the executive ---

11 THE COURT: Hang on just a minute.

12 MR. DEJONG: Mr. Them, could you get the
13 microphone turned towards the witness, please.

14 MR. THEM: I'm sorry.

15 Q. How long have you been the executive director?

16 A. I was interim executive director from February until
17 June and officially named as executive director in June of
18 this year.

19 Q. So that would be February of this year until the
20 summer you were interim and then -- okay.

21 A. Yes.

22 Q. Would you tell me something about your academic
23 background from your college degree forward?

24 A. I have a bachelor's degree in psychology, a
25 bachelor's degree in counseling and I'm a licensed

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - In-Camera Direct Examination by Mr. Them

165

1 professional counselor in the state of South Carolina.

2 Q. Okay. And would you tell me something about your
3 work history from college forward?

4 A. Sure. Presently I'm the executive director of the
5 Rape Crisis and Child Abuse Center. And prior to taking
6 on that role I served as clinical director for the center.

7 Q. For how long now?

8 A. For -- as clinical director was from May 2007 until I
9 took on the interim role.

10 Q. Okay.

11 A. As clinical director I supervised the clinical staff.
12 That includes the counselors, the licensed counselors on
13 staff, as well as the forensic interview program and
14 conducted forensic interviews and counseling. I also
15 operated a private practice called The Counseling Center
16 and conducted individual family therapy out of that center
17 and also conducted workshops for various private schools,
18 Montessori schools. I worked as a mental health counselor
19 for the Greenville Mental Health Center from July 2001
20 until May 2007. And as part of my experience there, I
21 began conducting forensic interviews. I also provided
22 therapy to children and families.

23 Q. You say you provided therapy to children. What was
24 the identified complaint for which these children were
25 receiving counseling?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - In-Camera Direct Examination by Mr. Them

166

1 A. Well, at the mental health center we saw children for
2 general mental health issues. I saw children that may
3 have had issues with ADHD, behavior problems, mood
4 disorders. But many of the children on my case load also
5 had diagnoses of physical abuse, sexual abuse or there
6 were suspicion of those things having occurred.

7 Q. All right. Does that carry us back to your first
8 job?

9 A. That's -- well, I did have some jobs prior to that.

10 Q. If they're of any length and have any relevance to
11 what we're doing, would you tell us about them?

12 A. Prior to that I mainly worked with adults with
13 chronic mental illness.

14 Q. Okay. Now, in your time at mental health, your time
15 at rape crisis and the other places you've talked about,
16 how many children have you had the opportunity to provide
17 services for in the way of counseling, assisting and
18 diagnosis, identifying problems that were thought to have
19 been sexually abused?

20 A. I've conducted more than four hundred and fifty
21 forensic interviews. And of course in a forensic
22 interview, a referral comes in. Some of those are for
23 sexual abuse, some can be ---

24 Q. Excuse me, I'm sorry. I'm focusing more on your
25 counseling background. I'm going to get to the forensic

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - In-Camera Direct Examination by Mr. Them

167

1 interviewing stuff in a second. Talk to me in terms of

2 the numbers not including the forensic interviews?

3 A. Okay. For counseling?

4 Q. Thank you. I'm sorry. I didn't ask that well.

5 A. During my tenure at the Greenville Mental Health

6 Center, I carried a case load of anywhere from eighty to a

7 hundred and twenty cases at one time. I would see those

8 children generally for six months to a year. So if you

9 estimate that I carried on the low end, I guess a case

10 load of eighty for approximately six years, that's what,

11 four hundred and eighty, maybe five hundred children, and

12 I would say probably the majority of those had some sort

13 of abuse or neglect history.

14 Q. What about a sexual abuse history or suspicion of

15 those approximately five hundred?

16 A. Again, you know, I would say a large majority of

17 those. I don't have an exact percentage.

18 Q. Okay. Now, that's at mental health. Let's move on

19 to your counseling experience at -- you went from mental

20 health to rape crisis?

21 A. Yes. Well, I ---

22 Q. Did you ever talk about -- I'm sorry?

23 A. I was at mental health while also operating a part

24 time private practice and then working at the Rape Crisis

25 and Child Abuse Center.

1 Q. Let's talk about your private practice. What sort of
2 -- in your private practice did you have the occasion to
3 provide counseling for children who were thought to have
4 been sexually abused?

5 A. Yes. My primary service was to children who had been
6 sexually abused.

7 Q. How long were you in that practice?

8 A. I operated that practice from 2005 until 2008.

9 Q. And how many children would you have seen in that
10 time period that were thought to have been sexually
11 abused?

12 A. I don't have an exact number in mind, but I would
13 carry a case load of maybe five to seven children at a
14 time.

15 Q. Okay.

16 A. So if we estimated, again, five to six months to a
17 year for four years, that's I'd say about thirty, thirty-
18 five children, at that particular practice.

19 Q. Let's get to your counseling experience at Rape
20 Crisis. You did that from -- for what period of time now,
21 again?

22 A. At the Rape Crisis Center I've primarily been
23 responsible for conducting forensic interviews and
24 supervising the clinical staff.

25 Q. When you supervised the clinical staff tell me what

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - In-Camera Direct Examination by Mr. Tham

169

1 that entails as far as supervising counselors who may be

2 seeing children who are thought to be sexual abused?

3 A. When I supervise the clinicians, their case loads are

4 comprised of children who are thought to have been

5 sexually abused or physically abused or experienced some

6 sort of trauma. And part of my role with them is they

7 staff their cases with me. They come to me with any

8 questions or concerns about how to manage the treatment of

9 these cases. And basically direct supervision of what

10 they are doing with those cases.

11 Q. During that time period how many children would you

12 have been responsible for supervising the care of who were

13 thought to have been sexually abused?

14 A. There are generally anywhere from thirty to fifty

15 active cases on their caseloads, and I've been in that

16 role since 2007.

17 Q. Thirty to fifty. And how many -- is that per person

18 or for the entire group?

19 A. It's per person.

20 Q. And how many persons were involved?

21 A. Two part-time staff.

22 Q. Okay. So that would be two times thirty or

23 approximately thirty?

24 A. I'd say anywhere from thirty to sixty cases.

25 Q. All right. Now, let's move into the forensic

1 interviewing portion of your work. Okay? Now, what sort
2 of training do you have, formal training, as a forensic
3 interviewer?

4 A. I've attended two nationally recognized schools of
5 training for forensic interviewing. One is what's
6 formally called, Finding Words, it's now called Child
7 First. And also the National Children's Advocacy Center
8 forensic interview training. And each of those trainings
9 are thirty hours in length and they're skills based
10 training in how to conduct forensic interviewing, how to
11 conduct forensic interviews.

12 Q. And from time to time have you attended various
13 workshops and periods of shorter training?

14 A. Yes. Overall I've received over a hundred and fifty
15 hours of training and/or continuing education specific to
16 forensic interviewing. And in addition to that I've
17 received training in the treatment of children who have
18 been sexually abused.

19 Q. Now, I think you told us, but to get us where we are,
20 how many forensic interviews did you estimate that you've
21 done?

22 A. More than four hundred and fifty.

23 Q. In a forensic interview, would the subject of the
24 timing of disclosure in relation to when the event
25 happened, be brought up?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - In-Camera Direct Examination by Mr. Them

171

1 A. Yes.

2 Q. Okay. Is it always brought up?

3 A. It may not be brought up in the actual interview, but
4 it's one of those pieces of information that I do try to
5 gather either from the child, the care giver, referral
6 source, somewhere.

7 Q. When you conduct forensic interviews do you discuss
8 with children why they did not report immediately when
9 something happened?

10 A. I generally ask the child, you know, why they didn't
11 tell or how come they waited to tell. I assess for that
12 in some way. It may not be a direct question to them.

13 Q. Switching subjects. Have you ever been qualified as
14 an expert witness in the field of counseling in the state
15 courts of South Carolina?

16 A. Yes.

17 Q. On how many different occasions?

18 A. In just counseling or ---

19 Q. Just counseling first?

20 A. In counseling -- in general sessions or family court?

21 Q. In the courts of the state of South Carolina?

22 A. Okay. In family court I've been qualified as a
23 counselor and forensic interviewer many times.

24 Q. How many is many? If you could give us your best
25 estimate?

1 A. I've testified in family court more than twenty,
2 twenty-five times.

3 Q. Okay. In general sessions court or civil court?

4 A. In general sessions I've been qualified as an expert
5 in forensic interviewing ---

6 Q. No, just counseling right now?

7 A. Just counseling. One time.

8 Q. Okay. Now, as a forensic interviewer how many times
9 -- have you ever been qualified as an expert in the field
10 of forensic interviewing?

11 A. Yes.

12 Q. On how many different occasions have you been
13 qualified as a forensic -- as an expert in the field of
14 forensic interviewing in the state courts of South
15 Carolina?

16 A. Again in family court more than twenty times. In
17 general sessions five times.

18 Q. Okay. Last question. Have you ever met the victim
19 in this case?

20 A. Not that I know of.

21 Q. Have you ever looked at any records on the victim in
22 this case?

23 A. No.

24 Q. Thank you very much.

25 MR. THEM: I have no further questions. Would

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - In-Camera Cross Examination by Mr. DeJong

173

1 offer her for voir dire.

2 THE COURT: Mr. DeJong, you may examine the
3 witness.

4 MR. DEJONG: Thank you, Your Honor. May it
5 please the court.

6 IN-CAMERA CROSS EXAMINATION

7 BY MR. DEJONG:

8 Q. Ms. Galloway-Williams, you are a licensed counselor
9 in the state of South Carolina?

10 A. That's correct.

11 Q. And are there -- when you're a licensed counselor are
12 there fields in licensed counseling or if I counsel
13 geriatric people is that -- am I a licensed counselor?

14 A. There is specific criteria that we have to meet to
15 become a licensed counselor. But there are not
16 specializations within that.

17 Q. Well, counseling is a therapeutic thing; is it not?

18 A. Therapeutic?

19 Q. Yes.

20 A. Yes. There's also a diagnostic component to it as
21 well.

22 Q. I understand. And -- well, who licenses you to be a
23 forensic interviewer?

24 A. I'm not licensed as a forensic interviewer. There's
25 not a particular licensing agency that does that.

1 Q. So as far as interviewing technique or results there
2 is no peer review?

3 A. There is peer review.

4 Q. By whom?

5 A. Well, for our specific interviews we have internal
6 peer review. And we also have just recently started an
7 upstate peer review where we review our interviews with
8 other children's advocacy centers. The Spartanburg
9 Children's Advocacy Center and the Anderson or Foothill
10 Children's Advocacy Center.

11 Q. Is there any national organization that reviews
12 forensic interviews?

13 A. There is a national peer review organization that you
14 can participate in. Unfortunately, we're unable to afford
15 that right now. It's expensive.

16 Q. All right. Well, is there any national organization
17 that sets forth the criteria as to counselors and/or
18 forensic interviewers?

19 A. Both of the training centers that I've attended are
20 nationally recognized and they set forth protocol or
21 criteria that we, once we completed the training, we are
22 to follow. And the American Professional Society on
23 Abusive Children also sets protocol and criteria for how
24 interviews are to be conducted and how multi disciplinary
25 teams conduct investigations.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - In-Camera Cross Examination by Mr. DeJong

175

1 Q. Well, do you go through any type of periodic review

2 by any of the latter organization that you mentioned?

3 A. I'm sorry. Can you repeat that?

4 Q. Pardon me?

5 A. I'm sorry. Could you repeat that question?

6 Q. I said, do you go through a periodic review of any

7 kind from the latter organization that you mentioned?

8 A. From the American Professional Society on Abusive?

9 Q Yes, ma'am.

10 A. No. We don't go through any review with them.

11 Q. Well, when you talk about -- as I understand what

12 you're here to talk about is late reporting; correct?

13 A. Yes.

14 Q. What is the criteria for making some determination as

15 to the validity of that late reporting?

16 A. Let me make sure I understand what you're asking me.

17 Q. All right. I can come and tell you anything. All

18 right. I can tell you the moon's made of green cheese?

19 A. Yes.

20 Q. Right? What is the criteria for determining whether

21 I'm telling you the truth or not?

22 A. So you're asking me how we determine the validity of

23 a child's statement if they were to come to us for a

24 forensic interview?

25 Q. Yes, ma'am.

1 A. Okay. We're obviously not evaluating whether the
2 statement is true or false. We are determining whether
3 that statement is compelling. Whether it holds internal
4 coherence. You know, does it make sense? Does it have
5 components of a beginning, middle and end? We evaluate it
6 next to other statements the child has made, and
7 essentially looking at the different pieces of their
8 disclosure. And all of that is based on what we know
9 about how children disclose abuse, how abuse is reported
10 and how children make those kinds of statements.

11 Q. And each of those cases would vary factually?

12 A. Each of the ...

13 Q. Each case that you evaluate, the way you say you've
14 been evaluating, would vary?

15 A. Each case is case specific. But there are certain
16 things that we're looking at and there are some
17 characteristics of how children disclose and the process
18 of disclosure that are considered typical for children.

19 Q. Well, what peer review do you have as to the accuracy
20 of your evaluation of each case and evaluating them?

21 A. What type of peer review do I have specifically?

22 Q. Yes, ma'am. In that limited area, what peer review
23 do you have?

24 A. Internally we generally have another staff member or
25 the referring agency observing the interview while it's

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - In-Camera Cross Examination by Mr. DeJong

177

1 taking place. And we also staff our cases with a team.

2 And the team consists of members of law enforcement, DSS,

3 Guardian Ad Litem's office, other therapists. And some

4 are directly related to the case that's being staffed and

5 other times they are there as an active member of that

6 team.

7 Q. Which would be the greatest majority of those cases

8 that somebody sits in that they have active involvement or

9 they don't have active involvement?

10 A. The majority of the participants have an involvement

11 in the case that's being staffed or either they are sent

12 as a representative from their agency to participate in

13 the staff meeting.

14 Q. Because of involvement in the case or potential

15 involvement in the case?

16 A. Because of their involvement in the team, the multi

17 disciplinary team. And so we have standing members that

18 are on that team or that committee that are present during

19 that team meeting.

20 Q. Well, and that's what you're calling the peer review

21 or the internal review; right?

22 A. I'm not necessarily calling it peer review, but it is

23 a way of reviewing and staffing and it's sort of the

24 internal check and balance with the -- that we're doing

25 what we're supposed to be doing as a team and as ...

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - In-Camera Cross Examination by Mr. DeJong

178

1 Q. Well, this team, this is not a set team. This team
2 can vary based on the case again, can it not?

3 A. Well, the team is made up of representatives from
4 DSS, law enforcement, the children's advocacy center,
5 Guardian Ad Litem's office and therapists. And we'd like
6 to have at least one member of each -- and the solicitors
7 office. We also like to have at least one member of that
8 team available for the staff meeting, but that's not
9 always possible.

10 Q. You've mentioned a number of agencies?

11 A. Yes.

12 Q. Same person doesn't show up every time; do they?

13 A. No. In most cases there are different team members.

14 Q. And even though there may be a person from that
15 agency on the team, those persons do not necessarily have
16 any training in counseling or forensic interviewing; do
17 they?

18 A. They may or may not.

19 Q. Yes, ma'am. So that being the case, what you're
20 calling internal check or balance is not really peer
21 review of your work; is it?

22 A. Well, if one of the other forensic interviewers or
23 one of the other team members is directly observing the
24 interviews ...

25 MR. THEM: Excuse me. Objection, Your Honor. I

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - In-Camera Cross Examination by Mr. DeJong

179

1 think we're getting way afield ---

2 THE COURT: I think we've been afield on the
3 direct examination and the cross examination. Let me make
4 sure I understand. This witness is -- you've qualified
5 her as an expert and her testimony is going to be on late
6 reporting and what she has observed. I haven't heard any
7 testimony on that whatsoever.

8 MR. THEM: Well, when I asked you ...

9 THE COURT: Well, you've gone into everything
10 else about that. Is this -- is the peer review of the
11 forensic interviewing an issue for this?

12 MR. DEJONG: It is not, Your Honor, but the
13 point I am trying to make, and what she is going to
14 testify to, is case specific based on her testimony. She
15 is going to testify, as I understand it, based on her
16 experience but has had no peer review on late reporting.
17 And I'm saying that is not a field of expertise. I am
18 saying she is coming in testifying on her own subjective
19 evaluation on case specific instances that she has dealt
20 with that may or may not have anything to do with this
21 case. Now, I simply submit it as not an area of
22 expertise.

23 THE COURT: Well, I haven't heard the opinion
24 yet that she is going to render to know whether or not
25 it's helpful for the jury in making an interpretation.

1 MR. DEJONG: And I understand that, Your Honor.

2 But unlike Mr. Them, I'm only dealing with the area of
3 expertise and whether or not she is to be qualified as an
4 expert witness. I'm pretty much done anyway. But I'm
5 just simply stating that I don't think that is an area of
6 expertise that she's qualified to testify on.

7 THE COURT: But the focus is on the forensic
8 interviewing, not only on her counseling abilities;
9 correct?

10 MR. DEJONG: Well, I think what I just brought
11 out, Your Honor, on what -- when we were talking, I didn't
12 mean to interrupt you, but when we were talking about
13 delayed interviewing that's when -- excuse me, late
14 reporting. When I was talking about peer review, who peer
15 reviewed, who did that. And basically what it boiled down
16 to, there isn't any.

17 THE COURT: All right. What specifically do you
18 intend to have this witness testify to as an opinion, Mr.
19 Them?

20 MR. THEM: I'll be happy to go into that if you
21 want me to.

22 THE COURT: Yes, sir.

23 IN-CAMERA REDIRECT EXAMINATION

24 BY MR. THEM:

25 Q. Based -- and again I want to differentiate the

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - In-Camera Redirect Examination by Mr. Them

181

1 counseling experience and the forensic interview
2 experience and then the scholarly literature in your field
3 experience. Okay? Let's talk about the counseling first.
4 Have you detected trends or coming out -- or common
5 factors in the reporting time when children report
6 evidence -- excuse me -- when reporting incidents of
7 abuse?

8 A. It's hard to separate out the experience and the
9 training because they kind of go hand in hand. Through
10 both my experience and my training, children often delay
11 reporting abuse incidents.

12 Q. When you say often, can you put that in fractions or
13 percentages or based on your experience, first?

14 A. Based on my experience, I'd say more than fifty to
15 seventy-five percent of children do not disclose
16 immediately after an event occurs.

17 Q. Could you break it into time periods by percentages.
18 Like would report in a month, would report in three
19 months, a year, two years, etcetera?

20 A. I really can't break it up that way. You know, what
21 the research shows is that often seventy percent or more
22 do not disclose right after it happens. And generally
23 it's anywhere from a month to a year or two later before
24 they disclose. And some adults never disclose.

25 Q. Okay. Based on your experience as a counselor, what

1 sort of reasons are there for children not immediately
2 reporting what happened?

3 A. Again, it's hard to kind of separate out that
4 counseling and forensic interviewing experience.

5 Q. Okay. Let's combine the two of them, if that will
6 help?

7 A. Because the majority of cases, majority of children
8 and what the research shows is that the number one reason
9 for not disclosing immediately is fear. And whether that
10 is actual fear or sort of a perceived threat, fear that
11 something will happen to themselves, fear that something
12 will happen to someone that they love. That's the number
13 one reason that's reported in both the research and in my
14 experience, is being afraid.

15 Q. Are there any other fears that you have detected in
16 significant numbers or that the research by scholarly
17 academic scientific type people who have published have
18 indicated?

19 A. Well, there's the fear that harm would come to
20 themselves. The fear that harm would come to someone they
21 love or something that they love. The fear of what would
22 happen to the family as a whole if it's, you know,
23 familial abuse. There is the fear, just generalized fear,
24 about the experience. Lots of reasons for being fearful.
25 Children just in general are fearful of adults, you know.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - In-Camera Redirect Examination by Mr. Them

183

1 They're taught to -- we teach our children to respect
2 adults and to do what they tell us. And so they're
3 fearful about whether they're going to be believed.
4 Whether, you know, they're going to be thought to be
5 liars.

6 Q. Now, getting away from your experience as a counselor
7 and your experience as a forensic interviewer. Are you
8 generally familiar with the prevailing thoughts and
9 theories within your profession by way of scholarly or
10 academic research?

11 A. Yes.

12 Q. Are there certain publications in your field that are
13 thought to be, by members of your field, as preeminent?

14 A. Sure. There are journals and articles that are
15 thought to be the authoritative research in our field.

16 Q. Are these journals and articles and periodicals that
17 you're talking about peer reviewed prior to publishing?

18 A. Yes, they are.

19 Q. Okay. And from your study -- let me back up. How
20 long have you been following this academic scientific
21 research in this area?

22 A. Pretty much since I've been a counselor and been
23 working with children and adolescents.

24 Q. What does that research indicate to you about other
25 people's scientific experience and academic research about

1 delays in children reporting?

2 A. Ask me that again.

3 Q. Does the materials that you've read in these
4 magazines, journals and periodicals, does it support or
5 does it conflict with what you have found in your personal
6 experience through counseling and forensic interviews?

7 A. It supports what I have found in my own personal
8 experience.

9 Q. Is your sample, the number of cases that you've seen,
10 larger, smaller or about the same as the samples that are
11 used in this research by other people?

12 A. Well, it depends on the researcher and it depends on
13 the particular study. But in some of the studies, my
14 sample is a little bit larger. In one of the sort of
15 prevailing articles the data was obtained from two hundred
16 and eighteen child abuse victims. So it just kind of
17 depends on what the sample sizes were with that particular
18 study.

19 Q. Does that research also give any indication to you of
20 what children fear that causes delays in reporting?

21 A. Well, in the research it cites many of the same
22 things that I had just noted as fears that children have.
23 Fear of harm to themselves or others. Fear of what
24 happens to their family, their situation. Generalized
25 fear.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - In-Camera Recross Examination by Mr. DeJong

185

1 Q. Okay. In your experience would a delay of some nine
2 or ten months be unusual?

3 A. No. That would not be unusual for a child to wait
4 nine or ten months to disclose.

5 Q. Thank you very much. I have no further questions.

6 THE COURT: Do you have follow-up questions, Mr.
7 DeJong?

8 **IN-CAMERA RECROSS EXAMINATION**

9 **BY MR. DEJONG:**

10 Q. How about a delay of five years?

11 A. I'm sorry?

12 Q. How about a delay of five years?

13 A. Again, that wouldn't be that unusual either. In some
14 of the research studies where they have -- they conducted
15 these studies where they interviewed adults who have been
16 sexually abused as children. And many of them are
17 reporting for the first time in those interviews. So
18 these are adults who would have been abused as children
19 and are disclosing for the first time as research
20 participants in a study. So it wouldn't be unusual for
21 five years.

22 Q. You said, I believe when Mr. Them was asking you
23 questions, fifty to seventy-five percent do not disclose;
24 correct?

25 A. I think I said fifty to seventy-five percent of my

1 case load had delayed disclosures.

2 Q. Okay. Can you break that down by age?

3 A. I really can't. I don't have that statistic
4 available.

5 Q. Okay. Now, in the research there is also conflicting
6 research in the area that you are talking about; is there
7 not?

8 A. Conflicting research in the area of delayed
9 disclosure?

10 Q. Abuse, reporting, all of those areas?

11 A. There may be conflicting research in specific parts
12 of it. The prevailing research and what is thought to be
13 the best known evidence based research supports the idea
14 of delayed disclosure.

15 Q. Have you looked at the conflicting research?

16 A. Some of it and some of it's noted in a few of the
17 articles that I have brought here. I'd be glad to review
18 some articles if you have them.

19 Q. Now, what you look at is those articles and what you
20 say is the research would support your theory; right?

21 A. I read the articles and in many of these articles
22 they cite some of the conflicting research and point out
23 some of the caveats to what, you know, their research and
24 the other research that's presented. So it is an attempt
25 to provide a more balanced approach to looking at it and

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - In-Camera Recross Examination by Mr. DeJong

187

1 evaluating it.

2 Q. But to bring this to an end, but certainly even all
3 the experts in this field do not agree; do they?

4 A. All the experts don't agree on everything.

5 Q. Yes, ma'am. Thank you.

6 THE COURT: All right. Thank you, ma'am. You
7 may step down, Ms. Galloway-Williams.

8 You're offering this as an expert witness in the
9 field of counseling?

10 MR. THEM: Counseling and forensic interviewing
11 since she got her data from both sources.

12 THE COURT: All right. I believe she is
13 qualified as an expert under the counsel standards. I've
14 heard enough, I think. And I believe the evidence -- I
15 don't know how far you're going to go and certainly with
16 the limitations of -- I gather that the primary thrust of
17 her testimony was to be delayed reporting. I believe that
18 evidence would assist the fact finders and tryers of fact.
19 I also believe under 403 that the probative value is not
20 outweighed by any prejudicial effect. Again for the
21 limited purpose of helping the jury to find the facts on
22 this particular issue and controversy. So I will allow
23 her to testify as an expert. You certainly can make your
24 objections, again, if you wish to, Mr. DeJong. Your
25 objection is noted now. If you would like to object

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - Direct Examination by Mr. Them

188

1 later, I'll certainly give you that opportunity.

2 MR. DEJONG: I'm not sure that I have to, but
3 I'm also not sure that out of an abundance of caution I
4 will object again when she takes the stand.

5 THE COURT: All right. I'll state over the
6 objection. All right.

7 Are we ready for the jury now?

8 MR. THEM: Yes, sir.

9 THE COURT: All right. Let's have our jury
10 come in, Mr. Lewis.

11 (WHEREUPON, the jury entered the open court at
12 approximately 11:29 a.m.)

13 THE COURT: Again, ladies and gentlemen, I
14 mentioned to you that we have some delays that are
15 unforeseen, and we had one today. I apologize for keeping
16 you waiting. Your foreman had a conflict come up. We
17 talked about it and felt it was in everyone's best
18 interest if he be recuse from this case. We now have a
19 full panel of twelve people and we're ready to proceed
20 with the trial of the case at this time. So, solicitor,
21 you may call your next witness.

22 MR. THEM: Thank you very much, sir. I call
23 Shauna Galloway-Williams.

24 THE COURT: Come around and be sworn please.

25 MISTER CLERK: Do you solemnly swear that the

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - Direct Examination by Mr. Them

189

1 testimony you're about to give in this case be the truth,
2 the whole truth and nothing but the truth, so help you
3 God?

4 MS. GALLOWAY-WILLIAMS: Yes.

5 MISTER CLERK: If you would, state your name,
6 please.

7 MS. GALLOWAY-WILLIAMS: Shauna Galloway-
8 Williams.

9 SHAUNA GALLOWAY-WILLIAMS,

10 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. THEM:

13 Q. And where are you employed, Ms. Galloway-Williams?

14 A. I'm the executive director of the Greenville Rape
15 Crisis and Child Abuse Center.

16 Q. And how long have you held that title?

17 A. I've held the title of executive director since June
18 of this year. I was interim executive director from
19 February until then. And prior to that I was the clinical
20 director at the Greenville Rape Crisis and Child Abuse
21 Center.

22 Q. Would you tell us something about your college degree
23 forward as far as formal education?

24 A. I have a bachelor's degree in psychology, a master's
25 degree in counseling and I'm licensed as a professional

1 counselor in the state of South Carolina.

2 Q. How long have you been licensed as a professional
3 counselor in the state of South Carolina?

4 A. I've been licensed since 2004.

5 Q. Okay. Now, in addition to those college degrees have
6 you participated in other specialized training?

7 A. Yes.

8 Q. Tell us about that, please.

9 A. I have specialized training in the area of forensic
10 interviewing. I have completed two nationally recognized
11 trainings in forensic interviewing, the National
12 Children's Advocacy Center, as well as Child First or
13 Finding Words. In addition to that I've had over a
14 hundred and fifty hours of training and/or continuing
15 education specific to forensic interviewing. And training
16 additionally in child abuse and sexual abuse.

17 Q. The two nationally recognized places that you
18 attended for training on forensic interviewing, how long
19 was that training?

20 A. Each of those were thirty hours of training and those
21 are skills based training courses.

22 Q. What is a forensic interview?

23 A. A forensic interview is a fact finding interview
24 where there are allegations of some type of abuse or
25 neglect of a child. And the purpose of the interview is

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Golloway-Williams - Direct Examination by Mr. Them

191

1 to gather information from children without leading or
2 suggesting them. They're videotaped. The interviewers
3 are trained to assess children developmentally, their
4 language skills and to conduct the interview in a way
5 that's non-leading. So we're just very careful about how
6 we ask questions and very careful to let the child sort of
7 lead the interview.

8 Q. When you say non-leading tell us what you mean by
9 that?

10 A. Well, the questions that we ask, a leading question
11 would be a question that has some or all of the answer in
12 it.

13 Q. For instance?

14 A. He touched you on your butt there.

15 MR. DEJONG: Your Honor, I'm going to object to
16 this. He hasn't tender -- I guess he's trying to qualify
17 her as an expert, but what relevancy does all of this
18 have?

19 THE COURT: I sustain the objection. If you can
20 just hit the points that you need to point out for her
21 expertise.

22 Q. All right. Would you tell us something about your
23 work experience as it would relate to issues involving
24 children and counseling?

25 A. Sure. Prior to becoming the clinical director and

1 executive director for the Rape Crisis and Child Abuse
2 Center, I was a mental health counselor for the Greenville
3 Mental Health Center from 2001 until 2007. And I worked
4 specifically with the children and adolescent unit at the
5 Greenville Mental Health Center.

6 Q. How many patients would you have seen in that multi-
7 year employment?

8 A. During my tenure there, I would carry a caseload of
9 anywhere from eighty to a hundred and twenty. I'd
10 estimate that I've probably seen four hundred and eighty
11 to five hundred children during my tenure at that
12 particular center.

13 Q. Okay. What percentage of those children were thought
14 to be or alleged to be victims of sexual abuse?

15 A. I would say that more than half of my caseload during
16 my tenure there.

17 Q. Prior to that work at mental health where did you
18 work?

19 A. Prior to working at the mental health center?

20 Q. Yeah.

21 A. I worked for a different mental health center working
22 with adults with chronic mental illness.

23 Q. Now, in your role at the Greenville Rape Crisis, you
24 said you were clinical director. Did you have a job
25 before you were clinical director?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - Direct Examination by Mr. Them

193

1 A. Yes. During that time while working at the mental
2 health center and working at the rape crisis center, I
3 also operated a part-time private practice where I saw
4 children and families where there were allegations of
5 sexual abuse.

6 Q. Over what period of time?

7 A. I operated that practice from April 2005 until
8 December of 2008.

9 Q. How many patients did you see in that time span?

10 A. Specifically for counseling, probably about thirty.

11 Q. Okay. Can you tell us what percentage of those
12 children were alleged to be or thought to be victims of
13 sexual abuse?

14 A. The majority of those thirty were alleged to have
15 been sexually abused. That was my primary practice.

16 Q. Now, in your role as clinical director and executive
17 director did you have any supervisory authority over other
18 counselors?

19 A. Yes.

20 Q. So in your time as clinical director and executive
21 director, how many cases have you supervised?

22 A. Well, I supervise two therapists who carry a caseload
23 of about thirty to fifty each. And I served in that
24 capacity -- or I've served in that role since 2007. So if
25 we're looking at about sixty cases a year on the low end

1 for them, over the course of, what, three years, a hundred
2 eighty, two hundred, three hundred.

3 Q. So if we added up all of your experience, your
4 personal experience first and then your supervisory
5 experience, how many children have you seen who were
6 thought to be or were alleged to be sexually abused?

7 A. If I add up the forensic interviewing, counseling ---

8 Q. Yes, ma'am.

9 A. -- and supervision?

10 Q. All of it.

11 A. Math is obviously not my strong suit. I've seen
12 about four hundred and fifty children for forensic
13 interviews. If we say about four hundred and eighty in
14 counseling and then let's just say I've supervised or was
15 supervisor, let's see, that would be a little over a
16 thousand children that I've had some either direct or
17 indirect contact with.

18 Q. Have you ever been qualified as an expert witness in
19 the field of counseling in the state courts of South
20 Carolina?

21 A. Yes.

22 Q. On how many different occasions?

23 A. In family court more than twenty times. In general
24 sessions once.

25 Q. Okay. Have you ever been qualified as an expert in

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - Direct Examination by Mr. Them

195

1 the field of forensic interviewing in the state courts of
2 South Carolina?

3 A. Yes. Forensic interviewing about the same in family,
4 court twenty or more times, and then in general sessions
5 five times.

6 Q. Okay.

7 MR. THEM: I would offer this witness as an
8 expert in the field of counseling children who are thought
9 or alleged to have been sexually abused, as well as the
10 field of forensic interviewing.

11 THE COURT: Over the objection of the defense,
12 I'll admit this witness as an expert in the field.

13 Ladies and gentlemen, let me explain a little bit to
14 you. Normally in a trial witnesses are allowed to talk
15 about what they see or experience or feel, but they don't
16 normally give opinions. However, there is an exception to
17 that in a field that -- where a person by training or
18 experience has an expertise in that particular field and
19 the court qualifies them in that particular area. Then
20 they may give an opinion and they give the basis of that
21 opinion in testimony. Now, this doesn't mean you must
22 accept that opinion. And I'll explain about expert
23 witnesses later when I instruct you on the law. This is
24 evidence for you to weigh and use in any way that you see
25 fit, as with all the evidence, you should weigh and

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - Direct Examination by Mr. Them

196

1 determine. You may continue with your examination of the
2 witness, solicitor.

3 MR. THEM: Thank you, sir.

4 Q. Ma'am, based on that -- let me back up. Have you
5 ever had the occasion to meet the young lady, Kourtney
6 Wheeler, the victim in this case?

7 MR. DEJONG: Your Honor, for the record and so I
8 do not have to jump up every time Mr. Them asks a
9 question, I would ask the court to note I have a
10 continuing objection to this part of this witness's
11 testimony as well.

12 THE COURT: Your objection is noted.

13 Q. Have you ever had the occasion to meet Kourtney
14 Wheeler?

15 A. No. No.

16 Q. Has anyone under your supervision ever provided any
17 treatment or counseling to Witness

18 A. Not that I know of, no.

19 Q. Have you ever examined any records as they relate to
20 Witness

21 A. No.

22 Q. Any contact whatsoever of any kind with Kourtney
23 Wheeler?

24 A. No.

25 Q. Okay. Let's talk about your experience. I believe

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - Direct Examination by Mr. Them

197

1 the number you used was in the neighborhood of a thousand
2 children that you had seen; correct?

3 A. Either direct or indirect experience with.

4 Q. Okay. In those approximately one thousand cases,
5 have you noticed any patterns as to when children disclose
6 or report allegations of abuse?

7 A. Yes.

8 Q. Tell us what those patterns have been?

9 A. Well, a typical pattern is that children don't
10 disclose right away. We call it delayed disclosure.
11 Generally children don't tell right after something
12 happens to them. There are lots of reasons why they wait.

13 Q. We'll get to that in just a second.

14 A. Okay.

15 Q. Is there any time frames that you could give us with
16 like percentages of children that report within this time,
17 this time and this time?

18 A. Well, there's some research that indicates that more
19 than seventy percent of children wait longer than -- you
20 know, at least a month or longer before they report.
21 Delayed disclosure is very typical among children.

22 Q. Would a delay of a year to two be -- let me back up.
23 Would a delay of reporting of a year to two be unusual?

24 A. No.

25 Q. Okay. Based on your experience what causes -- based

1 on what's been reported to you by these children that
2 you've interviewed, what causes these delays? Why did
3 they delay in reporting?

4 A. Well, both from my experience and also from my
5 training, there are lots of reasons why children don't
6 tell. The number one reported reason is fear. They
7 either fear that something's going to happen to
8 themselves, something's going to happen to someone they
9 love, something's going to happen to something that they
10 love. They fear the unknown, not knowing what's going to
11 happen when they tell. And then just generalized fear
12 about the experience. So that's one of the number one
13 reasons why they don't tell.

14 Q. Are there any other significant reasons that they
15 don't tell?

16 A. Sure. The majority of children who are abused are
17 abused by someone that they know, love and trust. I think
18 the number is about eighty percent or more of children are
19 abused by someone that's known to them. That has a
20 significant impact on when and if a child ever discloses.
21 You know, for many children this is someone that they have
22 a conflicted relationship with. They love this person,
23 but they don't like what's happening to them. It may be
24 someone that's close to another member of their family and
25 they know that it will hurt that other member of the

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - Direct Examination by Mr. Them

199

1 family or it might hurt the family as a whole. Sometimes
2 children report that they don't want to tell because they
3 know that they won't be able to pay their bills if they
4 tell. They worry about what would happen to mom or dad or
5 sister or brother. They worry about the other members of
6 their family. So it's not just -- you know, for them it's
7 not just about the experience that's happening to them.
8 Children really are, you know, concerned about all the
9 other things that are going on.

10 Q. Based on your experience, as children get older, say
11 from like ten or eleven up to like fifteen or sixteen, do
12 those fears drop or go away or reduce?

13 A. Well, there's a difference in the way that children
14 disclose as they get older. They may still have those
15 same kind of fears and that may be dependent on, you know,
16 either direct or indirect threats that have been made to
17 them. It'll depend on their perception of that
18 relationship that they have with that person and the
19 others around them. It also changes because as children
20 get older they come to understand that this sexual
21 experience, if they're sexually abused, they come to
22 understand that that's not okay. So like for a younger
23 child, they may not realize that this person committing
24 this act on them is doing something that's not okay. But
25 as the child gets older and they develop this sexual

1 knowledge and understanding of sexual development, they
2 come to realize, oh, well this person maybe shouldn't have
3 been doing this to me. And so then you may get more
4 disclosures later on. They may not be actually being
5 abused at that time that would result in the delayed
6 disclosure. You know, it may have happened to them before
7 they realized that what happened was not okay and then
8 they disclose.

9 Q. Okay. Now, are you generally familiar with the
10 scientific, scholarly and academic research in the field
11 of child abuse?

12 A. Yes. I try to stay up to date with that research.

13 Q. And are there certain national publications that are
14 generally accepted in your line of work as being scholarly
15 and something worth reading and knowing?

16 A. Yes.

17 Q. Do you read those?

18 A. I do.

19 Q. Do those publications -- how does what's contained in
20 those publications compared to what you've seen in your
21 personal experience as a counselor in forensic
22 interviewing? Is it agreement, disagreement?

23 A. In general there are some concepts that are presented
24 in the literature that are sort of -- they're not
25 universal, but they're sort of standards that we look at

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - Direct Examination by Mr. Them

201

1 when we're evaluating children's disclosures and their
2 response to abuse. And the information that's presented
3 in most of the articles that I read is very similar to my
4 experience. For example, you know, the idea that children
5 delay in disclosing, that's been researched. There's
6 evidence to support the research that's been done. And
7 then I've seen that in my actual experience. The same
8 thing with why children delay. You know, there are
9 research studies that show that children report that fear
10 is the primary reason why they don't disclose. And again,
11 I would say that the majority of cases that I've seen
12 that's one of the reasons why children didn't disclose.
13 They were afraid of something.

14 Q. From time to time have you ever studied the research
15 of people that disagree with you as well as those other
16 experts?

17 A. Yes.

18 Q. How do you select which publications you're going to
19 read. Do you look for ones that agree with you or
20 disagree or what?

21 A. I generally read the ones that are well respected and
22 accepted within my field.

23 Q. Are you familiar with the concept of peer, p-e-e-r,
24 peer reviewed?

25 A. Yes.

1 Q. What does peer reviewed mean?

2 A. That means that someone -- a peer would be someone.
3 who either has equal sort of status or, or higher
4 education than you in your field and you are reviewing
5 each other's work. So if you present a paper and let's
6 say I wrote a paper or an article for a journal in one of
7 the publications that, that I would be reading, then that
8 article would be peer reviewed. It would be read by
9 others who are considered experts in the field prior to it
10 being accepted as a publication or accepted for
11 publication in the journal.

12 Q. Just one second, please. I have nothing further for
13 this witness. Thank you very much, ma'am.

14 THE COURT: You may cross examine the witness,
15 Mr. DeJong.

16 MR. DEJONG: Thank you, Your Honor. And
17 certainly reserving any objections that I have.

18 THE COURT: Yes, sir. It's on the record.

19 MR. DEJONG: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MR. DEJONG:

22 Q. Ms. Galloway-Williams, you are a licensed counselor;
23 right?

24 A. Yes.

25 Q. And a counselor is one that counsels with people;

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - Cross Examination by Mr. DeJong

203

1 right?

2 A. As a licensed counselor I have done both counseling
3 and forensic interviewing.

4 Q. And basically counseling is therapeutic?

5 A. The nature of counseling is therapeutic. There is a
6 diagnostic component to it as well.

7 Q. Yes, ma'am. Now you talked about and what you were
8 talking with Mr. Them about was delayed reporting. And
9 you say that is not unusual; correct?

10 A. Yes.

11 Q. And you say, if I remember correctly, that's some
12 eighty percent of the cases?

13 A. That there is delayed reporting?

14 Q. Okay. Can you break that down by age for me?

15 A. No. I really can't break it down by age.

16 Q. All right, ma'am. Now, certainly you would have to
17 agree, would you not, that not every allegation of sexual
18 abuse is founded; is it?

19 A. Oh, no. Every allegation -- not every allegation of
20 abuse is founded.

21 Q. Correct. And sometimes those allegations of abuse
22 are not founded even when they are delayed reporting;
23 correct?

24 A. And when you say unfounded, are you meaning ---

25 Q. Nothing to it, nothing to the allegation. It just

1 ain't there.

2 A. There may be cases where there is no finding.

3 Q. Quite a number actually; is there not?

4 A. A high number of cases where there's been a report
5 and investigation and there is no finding?

6 Q. Yes, ma'am?

7 A. There are certainly a large number of those cases.

8 Q. Yes, ma'am. And in your research that you have done
9 on late reporting, what does the research indicate of how
10 many late reporting cases were not founded? That the
11 allegations just weren't there?

12 A. I don't really know a statistic that -- right off
13 hand that shows the number of delayed reporting cases that
14 were unfounded by either law enforcement or DSS or
15 something to that affect. But what some of the research
16 does show is that many adults who were abused as children
17 delay reporting until they are adults. In one of the
18 research studies some of the adults were disclosing for
19 the first time as participants in that research study. So
20 it's very likely that those were unfounded.

21 Q. I'm not asking you about adults. We're not talking
22 about adults. Now, in this -- what you say has been your
23 experience in late reporting, wouldn't you have to say
24 that each case you see has its own set of circumstances?

25 A. Each case is treated as an individual case.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - Cross Examination by Mr. DeJong

205

1 Q. And each case has to be evaluated on its own set of
2 circumstances?

3 A. Each case is treated as an individual case. However,
4 there are some sort of recognized standards in the field
5 for comparison.

6 Q. Well, let me ask you this. Out of the thousand cases
7 you say you have dealt with or you have supervised, how
8 many of those were false allegations?

9 A. I don't really know how many were false allegations.
10 There would have been some of those cases where there may
11 not have been a finding, meaning there may not have been
12 enough evidence to support the allegation and say DSS or
13 law enforcement may not have made a finding, it may never
14 have made it into the court as we are here today.

15 Q. And you have dealt with a thousand cases within the
16 last how many years?

17 A. I have been working with children and adolescents
18 since 2001. So that would be eight years.

19 Q. And what age group?

20 A. I treated children as young as two, up to eighteen or
21 older.

22 Q. And children are manipulative; correct?

23 A. Yes. Children can be manipulative.

24 Q. And children will lie?

25 A. Yes. Children can lie. They're not sophisticated

1 liars, but they can lie.

2 Q. And you taking the combination -- excuse me, ma'am,

3 I'm sorry.

4 A. I'm sorry.

5 Q. Taking the combination that children can be

6 manipulative and they are liars or can be, they certainly

7 can manufacture stuff; can't they?

8 A. They can.

9 Q. Yes, ma'am.

10 A. Like I said, they're not generally sophisticated

11 liars and manufacturers of lies.

12 Q. And then when we talk about manufacturing things,

13 we're talking about manufacturing things in the sexual

14 arena, are we not? They can manufacture in there; can

15 they?

16 A. A child could make up a lie about a sexual

17 experience.

18 Q. Yes, ma'am.

19 A. They could make up a lie about a sexual experience.

20 However, they would have to be pretty sophisticated to

21 carry that out throughout a period of time and to be able

22 to carry that out through multiple interviews and multiple

23 individuals asking them questions and the process in an

24 investigation the child goes through.

25 Q. You've never met the alleged victim in this case?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Shauna Galloway-Williams - Cross Examination by Mr. DeJong

207

1 A. I have not.

2 Q. You don't know her level of sophistication?

3 A. I do not.

4 Q. You never looked at any reports?

5 A. I haven't.

6 Q. You've never -- you don't know how many people she's
7 talked to or not talked to in the course of bringing this
8 case to court; do you?

9 A. I don't.

10 Q. So each case being case specific, Ms. Galloway-
11 Williams, you could not say why or if there was any reason
12 there was late reporting in this case; could you?

13 A. I could say that there is some generalized
14 understandings about why children disclose.

15 Q. Yes, ma'am.

16 A. And those might be or might not be related to why the
17 child in this case would have delayed in reporting. There
18 is only ---

19 Q. I'm sorry. We can also say children are manipulative
20 and liars; right?

21 A. We can say that children can be manipulative and can
22 lie.

23 Q. Thank you, ma'am. No further questions.

24 THE COURT: Any redirect?

25 MR. THEM: No, sir. May we excuse this witness?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Nick W. Direct Examination by Mr. Them

208

1 She has some other places she has to be.

2 THE COURT: Without objection, this witness may
3 be excused. Thank you, ma'am, for coming.

4 You may call your next witness.

5 MR. THEM: We're going to get him right now.

6 MISTER CLERK: If you would, place your left
7 hand on the bible and raise your right. Do you solemnly
8 swear or affirm the testimony you're about to give in this
9 case be the truth, the whole truth and nothing but the
10 truth, so help you God?

11 Nick W. I do.

12 MISTER CLERK: If you would, have a seat and
13 state your name for the record, please.

14 Nick W. My name is Nick W.

15 Nick W.

16 BEING DOLY SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. THEM:

19 Q. Nick, how old are you, sir?

20 A. I am seventeen.

21 Q. Okay. Are you related to Kourtney?

22 A. I am.

23 Q. How?

24 A. I am her brother.

25 Q. Okay. Do you remember -- let me back up. Did you

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Nick W. Direct Examination by Mr. Them

209

1 and your sister have a habit of going to Florida for the
2 summer?

3 MR. DEJONG: I'm going to object as to what
4 habit -- he can ask him what they did, but not what their
5 habit is, Your Honor.

6 THE COURT: Rephrase your question, if you will.
7 I sustain the objection.

8 Q. Did you and your sister generally go to Florida every
9 summer to spend time with your grandparents?

10 A. Yes, sir, we did.

11 Q. When did that start?

12 A. About nine or ten years ago, I would guess.

13 Q. And did you have relatives down in Florida?

14 A. We did.

15 Q. Who?

16 A. Our grandparents, our aunt and uncle and our cousins.

17 Q. Did your grandparents live near the beach?

18 A. They do.

19 Q. Within walking distance?

20 A. Within walking distance.

21 Q. Was that something that y'all looked forward to in
22 the summer?

23 A. Well, I guess, yeah. I'm not a big beach person, but
24 it was ---

25 MR. DEJONG: I apologize. Can I ask him to get

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Nick W. Direct Examination by Mr. Them

210

1 a little closer to the microphone, please.

2 THE COURT: Speak into the mike so everybody can
3 hear you, Mr. Wheeler, please.

4 Q. Let's pull this chair forward a little bit, Nick, if
5 you can. Okay. Talk loud, I'm way over here. Okay?

6 A. All right.

7 Q. Do you know the gentleman seated over there in the
8 blue short sleeve shirt?

9 A. Yes, sir, I do.

10 Q. Who is that?

11 A. That is my former stepfather.

12 Q. Do you remember when you first met him.

13 A. Not the date, no, sir.

14 Q. Can you generally tell me how old you were when you
15 first met him?

16 A. I would guess seven or eight.

17 Q. Okay. Was he dating your mother?

18 A. He was.

19 Q. At some point in time did they become romantically
20 involved and eventually get married?

21 A. They did.

22 Q. And did you live with him and your mother after they
23 got married?

24 A. I did.

25 Q. How about Kourtney, was she living there too?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)

211

Nick W. *Direct Examination by Mr. Them*

- 1 A. She was.
- 2 Q. Were there any other people living in the house with
- 3 y'all?
- 4 A. His children were there.
- 5 Q. Okay. Tell me about his children. Their names
- 6 first?
- 7 A. His four children was Crystal Dean, Lisa Dean, Hope
- 8 Dean and Lee Dean.
- 9 Q. Okay. Lee being a boy?
- 10 A. He is.
- 11 Q. The others being a girl?
- 12 A. Yes, sir.
- 13 Q. How old were these children in relation to you?
- 14 A. They were all older than me.
- 15 Q. Were they in middle school or elementary school or
- 16 high school or what?
- 17 A. They were in high school.
- 18 Q. Okay. And the youngest of those four children, how
- 19 much older than you was that child?
- 20 A. She must have been four or five years.
- 21 Q. Okay. Now, where did y'all live?
- 22 A. We lived in Clemson.
- 23 Q. Okay. Can you give us an address?
- 24 A. address Drive.
- 25 Q. Do you still live there?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Nick W. Direct Examination by Mr. Them

212

- 1 A. We do.
- 2 Q. Okay. Is that in Pickens County?
- 3 A. Yes, sir.
- 4 Q. Okay. Now, going back to at or about the time your
- 5 mother married Mr. Dean, was she working?
- 6 A. She was.
- 7 Q. What kind of work was she doing?
- 8 A. She was a psychiatric nurse.
- 9 Q. Okay. Where? Do you know?
- 10 A. I believe it was at Anderson Hospital.
- 11 Q. Okay. And generally what hours did she work?
- 12 A. Well, it varied at times. I mean, she worked
- 13 normally third shift and then sometimes she worked a
- 14 twelve hour shift.
- 15 Q. When you say she worked a normal shift and sometime a
- 16 twelve hour shift, was there a set time of the day that
- 17 she normally went to work?
- 18 A. She would normally leave around nine or ten.
- 19 Q. In the morning or at night?
- 20 A. At night. And she would come home around seven in
- 21 the morning.
- 22 Q. Okay. And where would and your sister be when she
- 23 went to work?
- 24 A. We would be at home.
- 25 Q. With whom?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Nick W. Direct Examination by Mr. Them

213

1 A. With my former stepfather or whoever was there at the
2 time.

3 Q. And whoever was there at the time. Did the four
4 children stay there the whole time y'all lived together as
5 a family?

6 A. They did not.

7 Q. Okay. How about the oldest boy? From the time your
8 mother married Mr. Dean until they separated, how much
9 time did that boy stay there? He's a full grown man now;
10 isn't he?

11 A. Oh, yes, sir. He must have been there for a year or
12 two.

13 Q. Okay. And the next sister, how much of that time did
14 she spend there?

15 A. I mean, they -- it's -- I don't know about a specific
16 times because they came and went. And they were there
17 sometimes and they weren't.

18 Q. Okay. Do you have any remembrance of any of those
19 children being there the majority of the time or most of
20 the time?

21 A. No, sir.

22 Q. Okay. Were you, were you ever disciplined or
23 punished by Mr. Dean for wrongdoing?

24 A. I was.

25 Q. A fair amount of time did you probably deserve it?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Nick W. Direct Examination by Mr. Them

214

1 A. Probably.

2 Q. What generally was your punishment?

3 A. I would either get spankings or would have to stand
4 in the corner, like any normal child, I'd imagine.

5 Q. All right. Spanking, stand in the corner or what?

6 A. Or just like any other child, I'd imagine.

7 Q. Okay. Were there any other forms of punishment that
8 you would get?

9 A. I would be sent to bed early and I would be grounded.

10 Q. The nights that you were sent to bed early, how old
11 would you have been when that started?

12 A. I guess as soon as they got married. So I would be
13 anywhere from seven or eight.

14 Q. Seven or eight. Okay. And on the nights you were
15 sent to bed early would your sister have been home with
16 you?

17 A. She would be.

18 Q. Would Mr. Dean's children, other than perhaps the
19 oldest boy, have been there?

20 A. Sometimes they were and sometimes they weren't.

21 Q. Were those children ever sent off prior to you going
22 to bed?

23 MR. DEJONG: Objection, Your Honor. Purely
24 calls for speculation on the witness's part. He would
25 have no way of knowing that.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Nick W. *Direct Examination by Mr. Them*

215

1 THE COURT: I'll allow him to answer it if he

2 can. I overruled your objection.

3 A. I'm sorry. What was the question?

4 Q. Were those children ever sent off prior to you going
5 to bed?

6 A. At times they would be.

7 Q. Who would send them off?

8 A. Well, I mean, they would either -- they might go
9 spend the night at a relative's house or they would just
10 go to the movies.

11 Q. Did Mr. Dean ever tell them to leave the house?

12 A. He would give them money to go out and eat or go to
13 the movies.

14 Q. Okay. Well, what about you and Kourtney?

15 A. We typically wouldn't. We would stay at home.

16 Q. Y'all were much younger than these ---

17 A. We were.

18 Q. Did these children have like driver's licenses and
19 stuff?

20 A. They did.

21 Q. Was there ever times that you were sent to bed early
22 that you felt that you had done nothing wrong?

23 A. There were.

24 Q. Did you try to discuss it with Mr. Dean?

25 A. I would ask him why?

1 Q. Okay. Did he ever give you an explanation that you
2 thought sending you off to bed was justified?

3 A. No, sir.

4 Q. But you would admit on many occasions he was probably
5 justified in sending you off?

6 A. Yes, sir.

7 Q. Okay. Now, let's talk about the sleeping
8 arrangements in the house. How many bedrooms were in the
9 house?

10 A. There were three bedrooms and then we used the --
11 half of the living room as a spare bedroom.

12 Q. Okay. Mr. Dean and your mother would have one of the
13 bedrooms?

14 A. Yes, sir.

15 Q. How were the other two bedrooms and this area and in
16 the living room split up?

17 A. Well, there would be two of us in each room.

18 Q. Okay. And you roomed with Lee?

19 A. I did.

20 Q. Okay. At some point in time when Lee left, did you
21 basically have a room to yourself?

22 A. I did.

23 Q. Where did, where did your sister live, Kourtney?

24 A. She shared a room with Hope.

25 Q. Okay. And where was that bedroom in relation to your

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Nick W. Direct Examination by Mr. Them

217

1 bedroom?

2 A. It was across the house.

3 Q. Across the what?

4 A. It was across the house. I mean on a different side
5 of the house. It was next to my parents' bedroom.

6 Q. Okay. Would you have had any difficulty in hearing
7 what would go on in your sister's bedroom if you were in
8 your bedroom?

9 A. Most definitely.

10 Q. How far apart were those two rooms?

11 A. On different sides of the house completely.

12 Q. Can you show me in this courtroom how far they would
13 be, point to something that would go from like your door
14 to Kourtney's door?

15 A. I mean across the entire room I would imagine.

16 Q. The entire length of the room?

17 A. Yes, sir.

18 Q. You any good at estimating distances so we can write
19 down what you said?

20 A. Probably not.

21 Q. Okay. How about car lengths, how many car lengths do
22 you think that would be, cars lined up?

23 A. Three or four.

24 Q. Okay. Now, did you have a conversation with your
25 sister down in the state of Florida when you were staying

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Nick W. Direct Examination by Mr. Them

218

1 at your grandparents' home sometime in the summer of 2006?

2 A. Yes, sir.

3 Q. Was that an upsetting conversation to you?

4 A. It was very upsetting.

5 Q. Okay. Without telling me what was said or what you
6 were told, how did it come to happen? I mean, what was
7 going on that caused this conversation to take place?

8 A. Well, my sister ---

9 MR. DEJONG: Your Honor, again, I'm going to
10 object. I think he's calling for speculation on the part
11 of this witness. He can testify as to his observation,
12 what he saw, what he heard, with the exception of hearsay
13 of course. But to ask him basically what caused the
14 conversation is purely speculation on this witness's part.

15 THE COURT: Okay. I'll allow him to testify as
16 to the setting that he remembers, if he remembers anything
17 about the setting or where they were and those kind of
18 things.

19 Q. What was going on when the conversation started?

20 A. We were in the office room. There's computers in
21 there, so we were in there.

22 Q. You were where now?

23 A. In the office room.

24 Q. Okay. And there was a computer in there?

25 A. There was.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Nick W. Direct Examination by Mr. Them

219

1 Q. All right. Without going into details or names or
2 anything, can you tell me what started the conversation?
3 What did your sister say to start the conversation?

4 MR. DEJONG: Your Honor, I'm going to object to
5 that. He's calling for hearsay.

6 THE COURT: I sustain the objection.

7 Q. Did your sister tell you something that caused you a
8 great deal of concern?

9 A. She did.

10 Q. Did you discuss with her what you thought she needed
11 to do based on what she told you?

12 A. I did.

13 Q. What did you tell her to do?

14 A. I told her that she needs to tell somebody.

15 Q. Okay. Did you suggest anybody she needed to tell?

16 A. Well, it was obvious. Our grandparents were in the
17 house.

18 Q. Okay. Were you and your sister particularly close to
19 your grandparents?

20 A. Yeah, I'd say so.

21 Q. How many summers had y'all spent with them prior to
22 that summer.

23 A. At least five or six.

24 Q. Okay. And at various points in your life did you and
25 Kourtney and your mother live with your grandparents?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Nick W. Direct Examination by Mr. Them

220

1 A. We did earlier on.

2 Q. Okay. Did your grandparents provide -- kind of hard
3 to say babysitting services with a young man like you, but
4 when you were much younger did they provide babysitting or
5 child care for you and Kourtney?

6 A. They did.

7 Q. Was Kourtney particularly close to her grandmother
8 and her grandfather?

9 A. She was.

10 Q. Okay. And when Kourtney told you what she told you,
11 in looking at her, how did she appear to you? What did
12 she look like, I mean, what was going on?

13 A. She was crying her eyes out. She was shaking. It
14 was very intense.

15 Q. Had you ever seen that kind of behavior with her
16 before?

17 A. I had not.

18 Q. Okay. Just one second, please. When Mr. Dean first
19 started seeing your mother did you have a decent
20 relationship with him?

21 A. Well, when I knew him, I mean, yeah, it was all
22 right.

23 Q. When he married your mother did y'all still get along
24 pretty good?

25 A. It was all right.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Nick W. *Direct Examination by Mr. Them*

221

- 1 Q. How long did that last?
- 2 A. I'm not real sure how long.
- 3 Q. Long time, short time?
- 4 A. Well, a short time.
- 5 Q. Okay. Was there a break-up in y'all's relationship,
- 6 yours and Mr. Deans?
- 7 A. Well, I didn't always get along with him afterwards.
- 8 Q. What sort of things caused you not to get along with
- 9 him, from your point of view?
- 10 A. I was just always treated different.
- 11 Q. Okay. Now, when your mother worked all night what
- 12 would she -- generally what time would she get home in the
- 13 morning?
- 14 A. Anywhere from six to eight.
- 15 Q. Okay. And what would she do when she got home?
- 16 A. She would probably get something to eat and then go
- 17 to sleep.
- 18 Q. Okay. Would she be awake by the time y'all got home
- 19 from school?
- 20 A. Well, sometimes she would be, but she normally needed
- 21 to sleep more.
- 22 Q. How did y'all get back and forth to school?
- 23 A. We rode a bus.
- 24 Q. School bus?
- 25 A. Yes, sir.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Nick W. Cross Examination by Mr. DeJong

222

1 Q. Mr. Dean's children, how did they get back and forth
2 to school?

3 A. They drove to school.

4 Q. They drove?

5 A. They drove.

6 Q. They had their own car available?

7 A. They did.

8 Q. Okay. When your sister told you what she told you in
9 the computer room at your grandparents' house down in
10 Florida that summer, were your mother and Mr. Dean already
11 separated?

12 A. I believe they were.

13 Q. Was he living in the house when you left to go to
14 Florida that year?

15 A. I do not think so.

16 Q. Thank you very much, sir.

17 THE COURT: You may cross examine, Mr. DeJong.

18 MR. DEJONG: Thank you, Your Honor. May it
19 please the court.

20 CROSS EXAMINATION

21 BY MR. DEJONG:

22 Q. So your grandparents lived in Clemson for awhile, I
23 gather, or somewhere in this area; right?

24 A. Yes, sir.

25 Q. Do you recall when they moved to Florida?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Nick W. Cross Examination by Mr. DeJong

223

1 A. Just about nine or ten years ago.

2 Q. I'm sorry?

3 A. Nine or ten years ago.

4 Q. All right. So around 1999, to the best of your
5 recollection, somewhere in there?

6 A. Yes, sir.

7 Q. And if you will, sir, you're fading away from that
8 microphone. Scoot up just a little bit if you would,
9 please, sir. So from the first summer they moved or from
10 the first summer that came after they moved in 1999, did
11 you and your sister go down there every summer?

12 A. We did.

13 Q. Did your mom go with you?

14 A. She did not.

15 Q. Did she ever go with you?

16 A. She might visit for a few days, but she had to work.

17 Q. All right. Well, in talking about her work, if I
18 understood you correctly, you said she went to work around
19 nine or ten?

20 A. Some nights she did.

21 Q. Okay. Was that fairly normal that she would go to
22 work between nine and ten?

23 A. When she had to work that shift, yes, sir.

24 Q. Well, I believe you told Mr. Them she normally worked
25 the night shift; didn't you?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Nick W. Cross Examination by Mr. DeJong

224

1 A. She did.

2 Q. All right.

3 A. It's just some nights she works twelve hour shifts so
4 she had to leave earlier.

5 Q. Okay. Well, if she didn't work a twelve hour shift
6 then she would go in at nine or ten, is what you're
7 telling me; right?

8 A. Yes, sir.

9 Q. If she did work a twelve hour shift what time would
10 she go in then?

11 A. I guess around five or six.

12 Q. All right. And was it more normal that she went in
13 around nine or ten?

14 A. I would guess so.

15 Q. Okay. Now, did she work five nights a week, six
16 nights a week, seven nights a week, or do you know?

17 A. I'm not real sure.

18 Q. Okay. Do you remember when your mom and Mr. Dean
19 separated?

20 A. I believe it was three or four years ago.

21 Q. Okay. Would November of 2005 sound about right?

22 A. Yeah, it does.

23 Q. Okay. Well, who set the rules in your house, Mr.

24 Wheeler?

25 A. Both of my parents.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Nick W. *Cross Examination by Mr. DeJong*

225

1 Q. When you say both of your parents, that would be your

2 mother and Mr. Dean; right?

3 A. Yes, sir.

4 Q. Okay. Who -- you said normally when you were

5 disciplined, I believe, that you got a spanking or had to

6 stand in the corner; right?

7 A. Yes, sir.

8 Q. Who gave the spankings?

9 A. My stepfather.

10 Q. All right. And if you were sent to bed early who

11 normally sent you to bed early?

12 A. My stepfather.

13 Q. Pardon me?

14 A. My former stepfather.

15 Q. All right. Well, now on many occasions, as I

16 understand it, your mother would have been home when you

17 were sent to bed early; right?

18 A. She would be every now and then.

19 Q. Pardon me?

20 A. She would be every now and then.

21 Q. All right. So then you said sometimes you thought

22 you were sent to bed early and it was not justified;

23 right?

24 A. Yes, sir.

25 Q. Pardon?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Nick W. Cross Examination by Mr. DeJong

226

1 A. Yes, sir.

2 Q. Did you ever get a spanking that you thought wasn't
3 justified?

4 A. I don't believe so.

5 Q. So all the spankings you ever got in your life were
6 justified; right?

7 A. I'm guessing they would be.

8 Q. Well, how about in your mind? I'm not asking you
9 about somebody else's mind. Did you think every spanking
10 you got you deserved?

11 A. Well, I was a kid. I didn't think I should be
12 spanked at all.

13 Q. Right. Didn't think you should be sent to bed early
14 either; did you?

15 A. No, sir.

16 Q. Didn't think you should have to stand in the corner
17 either; did you?

18 A. No, sir.

19 Q. So being sent to bed early when you thought it wasn't
20 justified wasn't any different from any spanking you got
21 or the time you has to spend in the corner; was it?

22 A. Well, I mean, now that I look back at it, I see that
23 I did things wrong, so ...

24 Q. All right. So now you can see being sent to bed
25 early, the spankings you got, standing in the corner, a

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Nick W. Cross Examination by Mr. DeJong

227

1 lot of all those were justified; weren't they?

2 A. Some of them.

3 Q. Yes, sir. Now when Mr. Dean's -- well, let's just

4 basically limit it to his daughters. His son wasn't there

5 very long; was he?

6 A. No, he wasn't.

7 Q. And the daughters, that was Crystal, Hope and Lisa;

8 right?

9 A. Yes, sir.

10 Q. They were in and out; correct?

11 A. Yes, sir.

12 Q. They would go away, they would come back; right?

13 A. Yes, sir.

14 Q. And I'm talking about when they lived there. No

15 regular hours; were there?

16 A. I mean, they moved like to different places and

17 different ...

18 Q. I understand that. But I'm asking you about when

19 they lived there. They came and went; right?

20 A. They did.

21 Q. Pretty much as they wanted to do; correct?

22 A. Yes, sir.

23 Q. It wasn't a matter that every time they left they

24 told Mr. Dean they were leaving; correct?

25 A. Well, I'm sure they would.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Nick W. Cross Examination by Mr. DeJong

228

1 Q. Or when they would be back? Were you close to your
2 mother?

3 A. At times I would be.

4 Q. And times you thought she was mean; right?

5 A. I did.

6 Q. All right. How about your sister, was she close to
7 your mother?

8 A. She would be at times.

9 Q. Did you want to move to Florida?

10 A. There was a while that I did.

11 Q. When you got these spankings and you had to stand in
12 the corner, you got sent to bed early, did you discuss
13 that with your sister?

14 A. I'm sure I did.

15 Q. I'm not asking you what she said, but how did she
16 react to it? Was she angry, happy, sad?

17 A. I really don't remember.

18 Q. Well, this conversation you said you had with your
19 sister in Florida, how long was that before y'all came
20 back to South Carolina?

21 A. It must have been a few weeks.

22 Q. Okay. And as far as you know that was the end of it,
23 after you say you had this conversation with her?

24 A. The end of what?

25 Q. Pardon me?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Nick W. Redirect Examination by Mr. Them

229

1 A. The end of what?

2 Q. Well, you didn't have anymore conversations with her;
3 did you?

4 A. Well, I mean, I'm sure I did, but it was nothing new.

5 Q. All right. Would that have been in Greenville or on
6 the way back from Florida to Greenville? When would that
7 have been?

8 A. I talk to my sister regularly.

9 Q. Okay. And you say your relationship with Mr. Dean
10 turned not so good; is that right?

11 A. Yes, sir.

12 Q. And when was that?

13 A. I don't really know the date.

14 Q. Well, was it before you mom and Mr. Dean separated?

15 A. It was.

16 Q. Couple years before then?

17 A. It was.

18 Q. Did you discuss that with your sister?

19 A. I mean, I'm sure I did.

20 Q. Thank you, sir. No further questions.

21 MR. THEM: Just one question.

22 REDIRECT EXAMINATION

23 BY MR. THEM:

24 Q. Talking about your stepbrother and sisters comings
25 and goings, was there anything unusual about the outside

State of South Carolina -vs-Robert Lee Dean (2007-GS-39-0346, 0347)
Nick W. Redirect Examination by Mr. Them

230

1 lighting at the house that would give you some indication

2 as to whether or not somebody was coming to your door?

3 A. We have -- the outside lights that are -- will turn

4 if something -- it's motion activated so ...

5 Q. Okay. Would you be able to see those lights turning

6 on when someone came from inside the house?

7 A. You would.

8 Q. Okay. Thank you, sir.

9 THE COURT: All right. Thank you, Mr. Wheeler.

10 You may step down.

11 MR. DEJONG: No objection to him being excused,

12 Your Honor?

13 THE COURT: Without objection, he may be

14 excused. Thank you, sir.

15 You may call your next witness.

16 MR. THEM: We're going to get her right now,

17 sir.

18 MISTER CLERK: Place your right hand on the

19 bible, raise your left. Do you solemnly swear or affirm

20 the testimony you're about to give in this case will be

21 the truth, the whole truth and nothing but the truth, so

22 help you God?

23 MS. GALLUSCIO: I do.

24 MISTER CLERK: If you would, have a seat and

25 state your name.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Carolyn Ritchie Galluscio - Direct Examination by Mr. Them

231

1 CAROLYN GALLUSCIO: Carolyn Galluscio.

2 MR. THEM: Could you slide forward a little bit
3 so we'll be able to hear you. Almost touch with your
4 knees. Okay. Now I'm going to stand back over there and
5 I want you to talk loud enough to where I can hear you.
6 Okay?

7 CAROLYN GALLUSCIO: Okay. I'll certainly try.

8 CAROLYN RITCHIE GALLUSCIO,

9 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MR. THEM:

12 Q. Would you tell us your name and please spell your
13 last name?

14 A. My name is Carolyn Ritchie Galluscio. Ritchie is
15 R-i-t-c-h-i-e. And Galluscio is G-a-l-l-u-s-c-i-o.

16 Q. Where do you live, ma'am?

17 A. I live in -- it's actually Melbourne, Florida, but
18 our mailing address is address Landing.

19 Q. You're Nick and Kourtney's grandma?

20 A. Yes, I am.

21 Q. Their mother is your daughter?

22 A. Yes.

23 Q. Okay. When did your husband retire?

24 A. He retired in 1999 and stayed on to finish the summer
25 session.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Carolyn Ritchie Galluseto - Direct Examination by Mr. Them

232

- 1 Q. Where did he retire from?
- 2 A. Clemson University.
- 3 Q. And did y'all move to Florida when he retired?
- 4 A. Yes.
- 5 Q. Okay.
- 6 A. We had already purchased a house.
- 7 Q. Excuse me?
- 8 A. We had already purchased a house so we just moved
- 9 right down.
- 10 Q. Since y'all have, you and your husband have moved to
- 11 Florida, have your two grandchildren, Kourtney and Nick,
- 12 come down to see you in the summer?
- 13 A. Every summer.
- 14 Q. During the time your husband worked at Clemson did
- 15 you work outside the home?
- 16 A. No. I did not.
- 17 Q. Do you feel that you've had any special relationship
- 18 with your grandchildren?
- 19 A. Definitely.
- 20 Q. Why? I mean, what caused it to develop?
- 21 A. Well, when Kourtney was born my daughter was working
- 22 nights at Self Memorial Hospital as a nurse. And she had
- 23 to sleep during the day because she worked all night and
- 24 her husband worked during the day ---
- 25 Q. We're not talking about Mr. Dean now?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Carolyn Ritchie Galluscio - Direct Examination by Mr. Them

233

- 1 A. No.
- 2 Q. Okay.
- 3 A. So I kept Kourtney as much as they'd let me keep her.
- 4 Q. And spoiled her?
- 5 A. I'm not sure about that.
- 6 Q. How long did that go on that you would take care of
- 7 Kourtney like that?
- 8 A. From the time she was a newborn baby.
- 9 Q. Until when?
- 10 A. Well, she comes every summer, so I'm still at it.
- 11 And she now lives with me.
- 12 Q. Okay. At any point in time prior to y'all retiring
- 13 after she was born did she live with you?
- 14 A. Yes. She lived with us a couple of years. We had a
- 15 basement apartment in the house.
- 16 Q. Who else was with her when she lived with you?
- 17 A. Her mother, her father and her brother.
- 18 Q. All right. Now, how about, Nick? When Nick came
- 19 along did you develop the same kind of relationship with
- 20 Nick?
- 21 A. Well, it was a little more difficult with Nick
- 22 because he had breathing problems and he was on a monitor.
- 23 So while he was on the monitor he stayed with his mother.
- 24 But when he was off the monitor, I was glad to have him.
- 25 Q. As a result of you not working outside the home did

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Carolyn Ritchie Galluccio - Direct Examination by Mr. Them

234

1 you have any daycare responsibilities while mama was
2 sleeping? When the kids got out of school?

3 A. I kept Kourtney during the day. And then when Nick
4 was off the monitor I kept him and sometimes I had them
5 both. It wasn't a regular thing so that I had them every
6 day, but ...

7 Q. Okay. Now, let me take you back to a summertime
8 visit sometime in 2006. Did Kourtney and Nick come down
9 to stay with you that summer?

10 A. Yes, they did.

11 Q. When did they come?

12 A. My husband picked them up as soon as they were
13 released from school for the year and ---

14 Q. Was that the normal pattern every year?

15 A. Yes.

16 Q. Okay. All right. And how long did they stay there
17 that summer, the two kids?

18 A. They stayed every summer until they had to be back
19 for school.

20 Q. Okay. Some time late in the summer did you have a
21 very disturbing conversation ---

22 MR. DEJONG: Objection, Your Honor, he's
23 leading.

24 THE COURT: I'll overrule your objection.

25 Q. Did you?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Carolyn Ritchie Galluscio - Direct Examination by Mr. Them

235

1 A. Yes, I did.

2 Q. Okay. Without telling me exactly what she told you,

3 I'm going to ask you a couple of specific questions.

4 Okay? Answer only those questions and don't elaborate.

5 A. Okay.

6 Q. Did she tell you that she had been molested?

7 MR. DEJONG: I object to that, Your Honor.

8 THE COURT: What's your objection?

9 MR. DEJONG: Any way he asks the question he's
10 asking -- calling for hearsay. That's number one. Number
11 two -- may we approach?

12 THE COURT: Yes, sir.

13 (WHEREUPON, Mr. Them and Mr. Dejong approached the
14 bar.)

15 MR. DEJONG: May it please the court. After the
16 bench conference we had, may the record reflect I take
17 exception to the court's ruling.

18 THE COURT: All right, sir.

19 MR. DEJONG: With all due respect, if Your Honor
20 wants to put that ruling on -- later on I certainly have
21 no objection.

22 THE COURT: All right. The objection is noted.
23 You may continue your examination.

24 Q. Let's start over here. I only want you to answer the
25 question I ask you. Okay?

1 A. Yes, sir.

2 Q. Don't go afield. Did your granddaughter in a
3 conversation at your house that summer tell you that she
4 had been molested?

5 A. Yes.

6 Q. Now, tell me where she told you the molestation took
7 place? Nothing else, just the location?

8 A. In her bedroom at home.

9 Q. At her home where?

10 A. At her mother's.

11 Q. In Clemson?

12 A. In Clemson.

13 Q. Did she tell you when this molestation took place?

14 A. Yes.

15 Q. Tell me what she told you as far as when? Again, not
16 going off in any other direction, strictly when it took
17 place?

18 A. You mean as far as her age?

19 Q. I want to know when she told you -- let me back up.
20 My question is, did she tell you when the molestation took
21 place? In other words, the date, the place, the time, an
22 age, where she was? Anything that would put a time factor
23 on when the molestation took place without going into any
24 other details?

25 A. She told me that she was in her bedroom at home,

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Carolyn Ritchie Galluscio - Direct Examination by Mr. Them

237

1 alone.

2 Q. No, I'm looking for a time factor now, ma'am?

3 A. From the time she was eleven years old until she was
4 almost sixteen.

5 Q. I'm sorry, but we have rules about how we have to do
6 that. Okay?

7 A. Okay.

8 Q. Now switching subjects. How did your granddaughter
9 appear to you when you looked at her? Tell me what you
10 saw?

11 A. Well, I was sitting on the porch and she -- I could
12 see her coming through the house through the front -- we
13 have french doors so I could see her through the doors.
14 And I thought, she's coming out without Nick. This is a
15 good time to really talk to her because she has a couple
16 years of high school left and I really wanted to have a
17 discussion with her about sex. So she came out and sat
18 down, but when she, when she got there I could see she was
19 tense. I could see it around her eyes. Her eyeballs were
20 a little bloodshot and I thought maybe she'd been crying.
21 I didn't ask her about that. But she sat down. And when
22 she sat down, she sat really forward on the chair. Now
23 this is a very comfortable chair so most people sit down,
24 they sit back and relax. She sat forward like she was
25 really tense. So I thought, well, make the most of your

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Carolyn Ritchie Galluscio - Direct Examination by Mr. Them

238

1 time. So I, I told her my priority lecture, which is, get
2 your priorities in order. First you fall in love, then
3 you get married, then you start your family. You don't
4 start your family and you don't lose your innocence in the
5 back seat of a car.

6 Q. Let me cut you off just a second, ma'am.

7 A. Yes, sir

8 Q. I'm sorry.

9 A. That's all right.

10 Q. How quickly after that did she report to you that she
11 had been molested?

12 MR. DEJONG: Again, Your Honor, I object.

13 A. Immediately.

14 THE COURT: Okay. Your objection is noted.

15 A. Immediately.

16 Q. Okay. What was your reaction to that?

17 A. I tried to stay calm because I wanted to keep her
18 talking.

19 Q. Okay. How long did y'all talk about it? Just answer
20 the question now. How long did y'all talk about it?

21 A. I don't know actually. I don't know how long. We
22 had, we had a pretty good discussion about what had gone
23 on.

24 Q. Where was your husband during this conversation?

25 A. He was in his office on a computer. I didn't know

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Carolyn Ritchie Galluscio - Cross Examination by Mr. DeJong

239

1 that Nick was in the dining room looking at us.

2 Q. Now, did you subsequently tell your husband about the
3 conversation with your granddaughter? Simple yes or no,
4 please.

5 A. Yes.

6 Q. Okay. And how much time -- I'm switching subjects
7 entirely now. Okay? How much time was left during the
8 normal summertime vacation?

9 A. I'm not sure. Probably a couple of weeks.

10 Q. Did you and your husband discuss what you should do
11 about the report that had been made to you by your
12 granddaughter?

13 A. Yes.

14 Q. Did you discuss whether or not y'all needed to
15 immediately take her home?

16 A. No.

17 Q. Okay.

18 A. We really wanted time to think about it.

19 Q. Okay. Now, was there something else going on in your
20 house at the time that required attention?

21 A. Yes. I had ---

22 Q. What?

23 A: I had my eighty-four old mother who was slowly dying
24 from kidney failure and heart failure.

25 Q. And how long after the conversation you had with

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Carolyn Ritchie Galluscio - Cross Examination by Mr. DeJong

240

1 Kourtney was it that she was brought home?

2 A. I'm not sure about that. Probably within two weeks.

3 Q. Were you able to make that trip with your husband and
4 the children?

5 A. No, sir. I stayed with my mother.

6 Q. Okay. Just one second, please. Thank you very much.

7 I have no further questions. Would you answer any
8 questions Mr. DeJong has, please?

9 MR. THEM: I'm sorry. Excuse me, Your Honor, I
10 do have one other question if I could reopen?

11 THE COURT: One question.

12 Q. Was there ever any discussion about your
13 granddaughter staying with you in the state of Florida on
14 a more permanent basis?

15 A. Not at that time, but we always anticipated that both
16 Kourtney and Nick would come to us to go to college.

17 Q. Okay. Thank you, ma'am.

18 THE COURT: You may cross examine.

19 MR. DEJONG: Thank you, Your Honor. May it
20 please the court.

21 CROSS EXAMINATION

22 BY MR. DEJONG:

23 Q. I'm sorry, ma'am, could you pronounce your last name
24 one more time for me?

25 A. Galluscio.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Carolyn Ritchie Galluscio - Cross Examination by Mr. DeJong

241

- 1 Q. Galluscio.
- 2 A. Yes.
- 3 Q. Am I half-way close?
- 4 A. Yes. That's good.
- 5 Q. I'm probably going to say it a few times ---
- 6 A. That's all right.
- 7 Q. -- so hopefully I can educate myself. Ms. Galluscio,
- 8 when did you and your husband move to Florida?
- 9 A. We bought the house in 1999 and I went down in the
- 10 spring of 2000.
- 11 Q. All right. You went down in the spring of 2000. In
- 12 the summer of 2000 did Kourtney and Nick come and see you
- 13 and your husband?
- 14 A. Yes.
- 15 Q. And they saw you every summer after that?
- 16 A. Yes.
- 17 Q. For the entire summer?
- 18 A. Part of one summer, Nick stayed with his daddy.
- 19 Q. Okay.
- 20 A. But just part of it, like the early part of it.
- 21 Q. Now, in addition to coming down for the summertime,
- 22 did they not also periodically come down on Christmas
- 23 vacation?
- 24 A. When we could manage that.
- 25 Q. Beg your pardon?

1 A. When we could manage that.

2 Q. Yes, ma'am. Now, do you know, Ms. ...

3 A. Galluscio.

4 Q. Galluscio. Thank you so much, ma'am. Ms. Galluscio.

5 Do you know when Mr. Dean and your daughter separated?

6 A. I'm not sure of the date. 2006.

7 Q. Could it have been '05?

8 A. It might have been '05.

9 Q. Would it have been November of '05?

10 A. I think that's correct.

11 Q. All right, ma'am. And assuming for the moment that
12 that is correct, did Kourtney and Nick come to see you and
13 your husband Christmas of '05?

14 A. I'm not sure, to tell you the truth. I mean, they've
15 gone back and forth so many times.

16 Q. All right. So they're down there a great deal?

17 A. Yes.

18 Q. Did Kourtney enjoy her time down there?

19 A. Oh, yes.

20 Q. All right. Did she appear to dread coming home at
21 any time?

22 A. No.

23 Q. Okay. Well, from the time of -- I believe we
24 established that the first summer they came down was the
25 summer of 2000. From the summer of 2000 to the summer of

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Carolyn Ritchie Galluscio - Cross Examination by Mr. DeJong

243

1 2006, was she about the same?

2 A. She was sometimes a little withdrawn. She's a very
3 quiet girl and I tried to give her as much privacy as I
4 could. She had her own bedroom separate from her brother
5 and could close the door. At the same time, she
6 interacted with us in a fairly normal manner.

7 Q. She talked with you?

8 A. In a general kind of a way.

9 Q. Yes, ma'am. As teenagers do?

10 A. Yeah.

11 Q. Correct? And sometimes teenagers get a little funny
12 and they withdraw a little bit; right?

13 A. That's probably true.

14 Q. Now, when you say this conversation occurred, the
15 summer was basically winding down; right?

16 A. I suppose that's true. To tell you the truth, I was
17 so shocked by what she told me that I don't really
18 remember when during the summer it happened. I know it
19 happened prior to the time when we were going to be
20 bringing -- when my husband was going to be bringing the
21 children back.

22 Q. Okay. Did you ever have occasion, after you and your
23 husband moved to Florida in 1999, to come up and visit?

24 A. I believe we did. It is a ten hour drive, so it's
25 not easy.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Eugene Galluscio - Direct Examination by Mr. Them

244

1 Q. Yes, ma'am. But when you would come to visit, to the
2 best of your recollection, did you stay with your daughter
3 and Mr. Dean?

4 A. Oh, no. They had six kids in the house, in a three
5 bedroom.

6 Q. Wasn't much room for anybody else; was there?

7 A. No.

8 Q. Thank you, ma'am.

9 MR. THEM: I have no further questions.

10 THE COURT: Thank you, ma'am. You may step
11 down.

12 MR. DEJONG: No objections to her being excused,
13 Your Honor.

14 THE COURT: How long will your next witness be?

15 MR. THEM: It's the grandfather. I wouldn't
16 anticipate anymore than eight to ten minutes on direct,
17 Your Honor.

18 THE COURT: All right.

19 MISTER CLERK: Place your left hand on the bible
20 and raise your right hand. Do you solemnly swear or
21 affirm the testimony you're about to give in this case to
22 be the truth, the whole truth and nothing but the truth,
23 so help you God?

24 EUGENE GALLUSCIO: I do, sir.

25 MISTER CLERK: If you would, have a seat and

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Eugene Galluscio - Direct Examination by Mr. Them

245

1 state your name, please.

2 EUGENE GALLUSCIO: Eugene Galluscio.

3 EUGENE GALLUSCIO,

4 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

5 DIRECT EXAMINATION

6 BY MR. THEM:

7 Q. So the lady that just testified a moment ago that you
8 passed walking out the door, is that your wife?

9 A. Yes, sir.

10 Q. Okay. You're retired now; is that correct?

11 A. That's correct, sir.

12 Q. Where are you retired from?

13 A. Clemson University.

14 Q. And what did you do there?

15 A. I was the chair of the Psychology Department.

16 Q. And how long were you at Clemson University?

17 A. Eighteen years.

18 Q. Okay. And when did you retire?

19 A. About ten years ago.

20 Q. Okay. And did y'all move away?

21 A. Yes, we did.

22 Q. To where?

23 A. We moved to Florida.

24 Q. Okay. Kourtney and Nick, those are your
25 grandchildren?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Eugene Galluscto - Direct Examination by Mr. Them

246

1 A. Yes, sir.

2 Q. Have you had an unusually close relationship with
3 them, you think?

4 A. Yes, sir. Very close.

5 Q. Why do you think it's been unusually close compared
6 to other grandparents?

7 A. I can't narrow it down to just one reason. We're
8 close to all six of our grandchildren. But being
9 separated from them as we are, we try to spend as much
10 time as we possibly can with them.

11 Q. You said six grandchildren, I know about two of them.
12 Where did the other four live?

13 A. In Florida.

14 MR. DEJONG: Objection, Your Honor. What is the
15 relevancy of this?

16 THE COURT: I sustain the objection.

17 MR. THEM: Might I be heard on that point, Your
18 Honor?

19 THE COURT: Yes, sir.

20 MR. THEM: There was testimony that part of the
21 reason the children enjoyed going down to Florida was
22 their cousins live there and I was just trying to
23 collaborate that. I'm not going any further with it.

24 THE COURT: I'll sustain the objection.

25 MR. THEM: Okay.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Eugene Galluscto - Direct Examination by Mr. Them

247

1 Q. Now, since you and your wife had moved to Florida, up
2 until the summer of 2006, did Nick and Kourtney come down
3 every summer?

4 A. Yes.

5 Q. How much of the summer did they spend with y'all?

6 A. Almost all of it. We would try to pick them up as
7 soon as school let out and then bring them back in time
8 for the start of school in the fall.

9 Q. Is the place you live in Florida a beach community?

10 A. Yes, sir. It is.

11 Q. Do your children have friends and relatives in the
12 neighborhood?

13 A. Yes, they do.

14 Q. Do you and your wife try to do a lot of things with
15 them? Particular Nick and Kourtney when they come down?

16 A. Oh, absolutely.

17 Q. Do you think it's a pleasant trip for them?

18 A. Yes. I would hope so.

19 Q. All right. Now, what do you know -- in the summer of
20 2006, were your grandchildren with you in Florida?

21 A. Yes.

22 Q. Your grandchildren that live here?

23 A. Yes.

24 Q. Did there come a time towards the end of that summer
25 that your wife called you into a conversation?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Eugene Galluscio - Direct Examination by Mr. Them

248

1 A. Yes, sir. She did.

2 Q. With your granddaughter?

3 A. Yes, sir.

4 Q. Had they been talking some time before you got there?

5 A. Yes.

6 Q. Without going into any detail, a simple yes or no
7 answer if you could, sir, did your wife report to you what
8 the conversation she had had with her granddaughter was
9 about?

10 MR. DEJONG: I object to that, Your Honor.
11 That's hearsay and hearsay now. He's asking this witness
12 via another witness what somebody else told him. I have
13 that same objection, Your Honor.

14 THE COURT: Well, I overrule ---

15 MR. DEJONG: Especially this one is even more
16 removed.

17 THE COURT: I understood the question to be was
18 there a conversation?

19 MR. DEJONG: Yes, sir.

20 THE COURT: And I'll allow that question.

21 MR. THEM: I asked him did his wife report to
22 him about what the conversation was. I didn't ask him to
23 repeat it. As a matter of fact I specifically told him
24 not to. I'm looking for a simple yes or no answer.

25 THE COURT: I'll allow that question.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Eugene Galluscio - Direct Examination by Mr. Them

249

1 Q. Did your wife report to you about the conversation?

2 A. Yes, sir. She did.

3 Q. Was Kourtney present when she told you about that
4 conversation?

5 A. Yes, sir. She was.

6 Q. Can you tell me how Kourtney appeared to you as the
7 conversation was being relayed. Physically how did she
8 look to you?

9 A. Well, it looked like she had just been crying.

10 Q. Okay. And was there any discussion at that point in
11 time about -- a simple yes or no again. Was there any
12 discussion about what should be done about this?

13 A. Yes, sir. There was.

14 Q. Was the discussion ever focused on whether or not the
15 children should be brought home immediately?

16 A. Yes. We talked about that.

17 Q. What was the decision that was made?

18 A. That we would wait until the end of the summer.

19 Q. Okay. And who brought them back?

20 A. I did.

21 Q. Where was your wife?

22 A. She had to stay at home.

23 Q. Why?

24 A. Her mother was living with us and she was quite ill.

25 Q. Do you know who told Kourtney's mother about the

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Eugene Galluscio - Direct Examination by Mr. Them

250

1 conversation that you had had with your wife with Kourtney
2 present on the porch that day?

3 A. I did.

4 Q. You did. Where was Kourtney when that -- when you
5 had that conversation with her mother?

6 A. Kourtney was in her house. Kourtney's mother was
7 with me in my car.

8 Q. How did -- did Kourtney know that you were going to
9 have a conversation with her mother?

10 A. Yes.

11 Q. How did she appear to you as you drew close to her
12 home?

13 A. She got more and more tense, I would say.

14 Q. Did she appear frightened?

15 A. I would say yes.

16 Q. Okay. Just one second. Did you have any discussions
17 with Kourtney or your wife about whether or not Kourtney
18 should stay with y'all in Florida after she talked to your
19 wife that day?

20 A. Yes. We did.

21 Q. Okay. And what was the resolution of those
22 discussions, from your point of view?

23 A. That -- it was so close to the end of summer that we
24 would finish the summer at our home. That I would then
25 take her home.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Eugene Galluscia - Cross Examination by Mr. DeJong

251

1 Q. Was there ever any discussion about she could stay

2 with y'all through the next school year or forever?

3 A. I don't recall that at all, no.

4 Q. Is that something that you would have recalled had it

5 happened?

6 A. Oh, I would think so.

7 Q. And do you recall it?

8 A. No, I don't.

9 Q. Thank you, sir. Answer any questions Mr. DeJong has,
10 please, sir.

11 **CROSS EXAMINATION**

12 **BY MR. DEJONG:**

13 Q. So as I understand it, you and your wife moved to

14 Florida in 1999, spring of 2000?

15 A. That's about right, yes, sir.

16 Q. And Kourtney and her brother came down every summer?

17 A. That's correct, sir.

18 Q. All right, sir. Well, let me ask you this. For some

19 period of time that your daughter, I gather, was married

20 to Mr. Dean, you lived in the Clemson area; right?

21 A. I'm sorry. Could you say that a little louder,

22 please, sir?

23 Q. Yes, sir. Maybe you have the same problem I do. No

24 offense intended. Okay. Let me just get a little closer

25 here. For some period of time that your daughter was

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Eugene Galluccio - Cross Examination by Mr. DeJong

252

1 married to Mr. Dean, y'all lived in this area?

2 A. Yes, sir.

3 Q. Okay. So you had an opportunity to observe the
4 relationship, for want of a better term, between Mr. Dean
5 and your granddaughter; right?

6 A. Yes, sir.

7 Q. They appear to have a good relationship?

8 A. It's hard to answer. There were times I think that
9 their relationship was okay. I think there were times
10 that my granddaughter felt like - I'm trying to find the
11 right way to say this - that the way that she was
12 disciplined was perhaps inappropriate.

13 Q. And she thought that the discipline being
14 inappropriate by Mr. Dean?

15 A. Yes, sir.

16 Q. All right. Now, in addition, excuse me, to coming in
17 the summertime did the children ever come for Christmas?

18 A. One more time, sir.

19 Q. I'm sorry. I wandered away from you there. In
20 addition to coming in the summertime did the children ever
21 come for Christmas?

22 A. No, sir.

23 Q. Did not come for Christmas of '06?

24 A. I don't recall that, sir, no.

25 Q. All right. Did they come for Christmas of '05?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Eugene Galluscio - Redirect Examination by Mr. Them

253

1 A. I don't recall any Christmas.

2 Q. All right. So as I understand it some -- it was some
3 two to three weeks after this discussion took place before
4 you came back to South Carolina?

5 A. I'm not sure of the exact amount of time, but it was
6 more than just a few days, yes.

7 Q. Or more than a few hours; wasn't it?

8 A. Oh, yes, sir.

9 Q. So then it was some two to three weeks before,
10 according to what you shared with Mr. Them, that you ever
11 had a conversation with Kourtney's mother?

12 A. That's correct, sir.

13 Q. Thank you, sir.

14 **REDIRECT EXAMINATION**

15 **BY MR. THEM:**

16 Q. Was there any particular reason that you didn't call
17 her or write her or anything?

18 A. Yes, sir. This is -- I didn't feel like this was the
19 kind of thing that you would want to deal with over the
20 telephone. I mean, this is obviously a very serious and
21 very traumatic thing to have to, to deal with.

22 Q. Was the timing of the trip back to the Clemson area,
23 did it have something to do with when school was starting?

24 A. Yes, sir.

25 Q. And what was the connection?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Eugene Galluscio - Redirect Examination by Mr. Them

254

1 A. Well, we needed to get them back before school began.

2 Q. Okay. Thank you, sir. No further questions.

3 THE COURT: All right, sir. You may step down.

4 MR. GALLUSCIO: Thank you, sir.

5 MR. DEJONG: No objection to the witness being
6 excused, Your Honor.

7 THE COURT: Without objection, you may be
8 excused.

9 Ladies and gentlemen, I think this would be a good
10 time for us to take a lunch break. I've been notified
11 that I've got a couple of other matters I need to take
12 care of. We've got your fellow jurors out in the hallway
13 ready for selection for another jury trial. So we --
14 which will start as soon as this one is over. So we've
15 got some -- several things to do. And I also want to get
16 a bite to eat. So if you'll be back at two forty-five.
17 That gives you an extended lunch hour. We're going to try
18 to get all those things done in that time ourselves and be
19 ready to start back with the case.

20 Let me remind you again not to discuss the case.
21 Don't let anyone discuss the case with you. Mr. McKinney
22 is now occupying the foreperson's seat. I'm going to
23 appoint him the foreman of the jury. He'll stay in that
24 seat now. We don't have an alternate, so all of you be
25 safe in your goings and comings during lunch. We want to

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Direct Examination by Mr. Them

255

1 make sure all of you arrive back here safely.

2 If you'll be back at two forty-five I believe these
3 other matters that I need to take care of with the
4 selection of the jury and one other matter that's going to
5 call for my attention, we'll have that completed and be
6 ready to start back promptly then. If you'll be back in
7 your jury room at two forty-five.

8 (WHEREUPON, the jury exited the open court at
9 approximately 1:00 p.m.)

10 (WHEREUPON, Court stood at recess for a lunch break.)

11 THE COURT: Are you ready to proceed?

12 MR. THEM: Yes, sir.

13 MR. DEJONG: Ready for the defense, Your Honor.

14 THE COURT: All right. Let's have the jury come
15 in, please, Mr. Evans.

16 (WHEREUPON, the jury entered the open court at
17 approximately 2:50 p.m.)

18 THE COURT: Mr. Them, you may call your next
19 witness.

20 MR. THEM: Thank you, sir. Call Maria
21 Galluscio.

22 MISTER CLERK: Place your left hand on the bible
23 and raise your right. Do you solemnly swear or affirm the
24 testimony you're about to give in this case be the truth,
25 the whole truth and nothing but the truth, so help you

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Marla Galluscio - Direct Examination by Mr. Them

256

1 God?

2 MARIA GALLUSCIO: Yes.

3 MISTER CLERK: If you would, have a seat and
4 state your name into the microphone there.

5 MARIA GALLUSCIO: My name is Maria Galluscio.

6 MARIA GALLUSCIO,

7 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MR. THEM:

10 Q. Are you Kourtney's mother?

11 A. Yes, sir.

12 Q. Nick's mother?

13 A. Yes.

14 Q. Were you at one time married to Robert Dean?

15 A. Yes, I was.

16 Q. Mr. Dean in court today?

17 A. Yes, he is.

18 Q. Point him out to me, please?

19 A. (Indicating.) The gentleman in the blue.

20 Q. When did you first start seeing Mr. Dean socially
21 before y'all got married?

22 A. I think we started seeing one another sometime in the
23 late '90's.

24 Q. Okay. And y'all got married when?

25 A. In February of 2001.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346; 0347)
Maria Galluscio - Direct Examination by Mr. Them

257

1 Q. Okay. In February of 2001 what was his approximate
2 height and weight?

3 A. He's six foot two, six foot three. Approximate
4 weight, three hundred and twenty-five pounds.

5 Q. How old was he when you married him? Approximately?

6 A. Forty, about forty.

7 Q. Okay. Now, what kind of work were you doing when you
8 first started seeing Mr. Dean?

9 A. I was working as a charge nurse in a hospital in
10 Anderson.

11 Q. Okay. What kind of nurse are you?

12 A. I'm a psychiatric nurse.

13 Q. Are you a registered nurse?

14 A. Yes, sir.

15 Q. Okay. And how long have you been a nurse?

16 A. Just about twenty-five years now.

17 Q. Okay. In the past ten years or so has there been one
18 shift that you have predominately worked?

19 A. Yes, sir.

20 Q. What shift would that be?

21 A. That would be the night shift.

22 Q. When you say the night shift, what time to what time?

23 A. The night shift usually runs from eleven p.m. until
24 seven a.m. in the morning.

25 Q. Okay. Did it ever extend longer than that?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Direct Examination by Mr. Them

258

1 A. Yes. It could if -- we're required to work twelve
2 hour shifts. It would then become seven p.m. until seven
3 a.m. the following morning.

4 Q. Okay. And on the day you married Mr. Dean on or
5 about February 2nd, 2001, did you remain employed as a
6 nurse up until y'all separated?

7 A. Yes, I did.

8 Q. Which shift did you work during that time or did it
9 vary?

10 A. It varied.

11 Q. Okay. Tell me what shifts you worked?

12 A. Towards the end I was usually primarily on third, but
13 I did spend a good few years working the twelve hour
14 shifts.

15 Q. Okay. When you say the twelve hour shifts, that's
16 the seven to seven?

17 A. Seven p.m. to seven a.m.

18 Q. Okay. And where do you live?

19 A. I live in Clemson, South Carolina.

20 Q. Your address, please?

21 A. address Drive.

22 Q. Is that the same place you and Mr. Dean lived as
23 husband and wife?

24 A. Yes, it is.

25 Q. Is that in Pickens County?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Direct Examination by Mr. Them

259

1 A. Yes, it is.

2 Q. Okay. When you married Mr. Dean were you living in
3 that house then?

4 A. Yes, we were.

5 Q. Okay. Who lived in that house with you prior to you
6 starting to have a social relationship, before it became a
7 romantic relationship with Mr. Dean. Who lived with you?

8 A. We -- I purchased the house after we started seeing
9 one another.

10 Q. I'm sorry?

11 A. I purchased the home after we were seeing one
12 another.

13 Q. Okay. At the time y'all got married who was living
14 in the house with you?

15 A. My two children, Kourtney and Nick, and Robert's four
16 children.

17 Q. Okay. So that would be six kids and two adults?

18 A. Six children and two adults.

19 Q. What were the sleeping arrangements in the house?

20 A. It was a three bedroom home. We had two of the girls
21 ---

22 Q. Keep your voice up a little bit, please. Thank you.

23 A. Two of the girls in one room, two of the girls in the
24 second bedroom. Robert and I had the master bedroom. And
25 we turned our dining room, we put a separation in there,

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Direct Examination by Mr. Them

260

1 and we put the two male children in there together in that
2 room.

3 Q. Mr. Dean's son's name was what?

4 A. Lee, Jonathan Lee.

5 Q. Was he older than your son, Nick?

6 A. Oh, yes, he was.

7 Q. By how much?

8 A. Probably six years.

9 Q. Okay. And when you married Mr. Dean, what grade was
10 Nick in? Take your time.

11 A. Probably about second or third grade.

12 Q. Okay. And what grade would Kourtney have been in?

13 A. Two grades above that. Fifth grade.

14 Q. Okay. Now, how long after you married Mr. Dean, did
15 Lee Dean, his son, live with y'all?

16 A. Lee left shortly after graduating high school. I
17 believe that might have been June, the middle or end of
18 2001.

19 Q. Okay. Now, who was Mr. Dean's next oldest child?

20 A. The next oldest was Crystal.

21 Q. And how old would Crystal have been when y'all got
22 married?

23 A. She would have been seventeen.

24 Q. Was she still in school?

25 A. No. She had graduated. She would have been

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Direct Examination by Mr. Them

261

1 eighteen.

2 Q. Okay. Was she working?

3 A. Not at that time, I don't believe. She was looking
4 for work.

5 Q. How long did she stay in y'all's house after --
6 well, did she stay in y'all's house from the time you got
7 married until she graduated?

8 A. Yes. She was there for that.

9 Q. Did she move out after that?

10 A. Eventually she moved out of the home. She moved out
11 late 2003, early 2004.

12 Q. Okay. And did she stay gone or did she ever come
13 back?

14 A. She stayed gone for several months, but then she
15 moved back around the fall, around fall of 2005.

16 Q. And how long did she stay that time?

17 A. Just a few months because she ended up moving back
18 out probably 2004, the spring.

19 Q. Did she ever return when she moved out that second
20 time?

21 A. No, sir.

22 Q. Okay. So that would have been your daughter's
23 roommate we're talking about?

24 A. No.

25 Q. That would have been which one, the oldest we're

1 talking ---

2 A. Kourtney's roommate was Hope. She's the youngest.

3 Q. Okay. So the one we were just talking about was?

4 A. The oldest. Crystal.

5 Q. Crystal. All right. And the next child was Lisa?

6 A. Yes.

7 Q. Correct? How old was Lisa at the time y'all got

8 married?

9 A. Sixteen, seventeen.

10 Q. Was she in school?

11 A. Yes, she was.

12 Q. Okay. And did she stay with y'all until she

13 graduated?

14 A. Yes, she did.

15 Q. At some point in time after graduation did she move

16 out?

17 A. Yes, she did.

18 Q. Okay. Did she ever come back?

19 A. Yes, she did return.

20 Q. How long was she gone before she came back?

21 A. Almost around about a year or maybe a little more.

22 She came back January 2005.

23 Q. When she came back did she stay or did she move back

24 out later?

25 A. She moved back out around April of 2005.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Direct Examination by Mr. Them

263

1 Q. And finally we get to the youngest, Hope, the one
2 that shared the room -- bed -- I mean the roommate -- the
3 room with your daughter? Excuse me.

4 A. Yes, sir.

5 Q. What grade was she in when y'all got married?

6 A. I believe she was still between freshman and
7 sophomore.

8 Q. Okay. And did she stay with y'all until she
9 graduated from school?

10 A. She did not return to school after her junior year,
11 but she stayed and worked and moved out the same time the
12 other girls did.

13 Q. Okay. When she moved out did she ever come back
14 while y'all were married?

15 A. Yes, the same time Lisa came back.

16 Q. And how long was she back?

17 A. She was back for a few months until the first of the
18 year of 2005.

19 Q. When did you and Mr. Dean separate?

20 A. We separated sometime in November 2005.

21 Q. Okay. So you were married in February of 2001 and
22 separated in November of 2005?

23 A. Yes.

24 Q. During that period of time, how much of that time
25 were the three girls of Mr. Dean at your home together,

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Direct Examination by Mr. Them

264

1 all three of them?

2 A. Together? That's kind of hard to judge because
3 sometimes Hope and Lisa would be gone but Crystal remained
4 and then Crystal ---

5 Q. Well, let me tell what I'm going to do. I'm asking
6 how many -- how much time all three of them were there
7 together. Then I'm going to ask how many times -- how
8 much time two of them, and then one of them, then how much
9 none of them were there?

10 A. At the time -- up until they moved out in 2003, they
11 were all there. Then Crystal returned in October. The
12 other girls returned that following January. Then all of
13 them moved out in April of 2005.

14 Q. Okay. And what about after that, were there ever
15 times that all three of them were back or just two or
16 what?

17 A. No, sir.

18 Q. Okay. Who were the two that came back?

19 A. The two that returned after Crystal came back in
20 October were Hope and Lisa.

21 Q. Okay. And you said they stayed how long?

22 A. They stayed a few months, about four to five months,
23 until they moved out again.

24 Q. Were Mr. Dean's children there at the home living
25 with y'all during the majority of the time that you were

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Direct Examination by Mr. Them

265

1 married to him?

2 A. No. It varied.

3 Q. What percent of time would you estimate?

4 A. Lee was gone since we -- a little while after we got
5 married. I would estimate the girls were there perhaps a
6 year and half, two years, total.

7 Q. Okay. Are you good with dates and numbers like this?

8 A. I try to be when I can.

9 Q. Were birth dates and things like this important to
10 you?

11 A. Yes, birthdays.

12 Q. Now, did you ever -- simple yes or no, please, if you
13 would. Did you ever receive any complaints from your
14 children about Mr. Dean imposing discipline on them?

15 A. Yes.

16 Q. Okay. Simple one word answer or two word answer.
17 Who made the complaints?

18 A. Both the children.

19 Q. Okay. Prior -- let me back up. When you first
20 started seeing Mr. Dean and when you first married him,
21 did your kids get along with him?

22 A. Yes, they did.

23 Q. Did it appear to be a successful relationship at that
24 time?

25 A. Yes, yes. At the beginning of the relationship it

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Direct Examination by Mr. Them

266

1 was very good.

2 Q. Did it eventually change?

3 A. Yes. Over time it did.

4 Q. How did it change?

5 A. Eventually, as years went on, Robert and I kind of
6 grew apart. We started having arguments ---

7 Q. I'm talking about the children and Mr. Dean now, not
8 you and Mr. Dean. We're not doing divorce, we're doing a
9 trial?

10 A. The -- as time progressed the children, as they got
11 older, they started complaining about the discipline.
12 They didn't think it was fair.

13 Q. When you and Mr. Dean separated in November of --
14 what year?

15 A. 2005.

16 Q. Did you have any indication, suspicion, knowledge or
17 any idea that anything inappropriate was going on
18 involving your daughter, Kourtney?

19 A. No, I did not.

20 Q. Okay. When was the first indication you had that
21 something inappropriate was going on with your daughter,
22 Kourtney?

23 A. That would have been when they came back from their
24 annual summer that they spend in Florida with my parents.

25 Q. What year was that?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluseto - Direct Examination by Mr. Them

267

1 A. That was 2006.

2 Q. How did you -- who told you that there was something
3 wrong? Don't tell me what they told you. I want to know
4 the name of the person who told you there was something
5 wrong?

6 A. My father told me.

7 Q. Without going into -- in any kind of detail
8 whatsoever as to what he told you, tell me how that
9 happened?

10 A. He returned from Florida with the children. We
11 usually go out to eat as a group when they come back
12 because it's a celebration that they're back. We returned
13 to the home and my father sent the two children into the
14 home and asked ---

15 Q. Y'all went out to eat first?

16 A. Went out to eat when they first came back. And when
17 we returned from out to eat, he sent the children into the
18 home and asked to speak to me privately in the car.

19 Q. When y'all went out to dinner did you notice anything
20 unusual about your daughter?

21 A. No, I did not.

22 Q. The way she was acting?

23 A. No.

24 Q. Okay. And when your -- did your father tell you very
25 alarming news about a conversation that he had

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscia - Direct Examination by Mr. Them

268

1 participated in with your daughter?

2 A. Yes, he did.

3 Q. What was your reaction?

4 A. I was stunned, disbelief, a little bit of horror.

5 Q. Were you able to talk to your daughter that night?

6 A. Yes, I was.

7 Q. Was she able to talk to you about what had happened
8 to her?

9 A. No, she wasn't.

10 Q. After you talked to her did you still have this
11 disbelief that you just mentioned?

12 A. Once I had talked to her, no, I didn't have the
13 disbelief.

14 MR. DEJONG: Your Honor, I'm going to object to
15 this.

16 THE COURT: I sustain the objection.

17 Q. Now, if you can answer yes or no. Did your daughter
18 tell you that she had been molested?

19 MR. DEJONG: Objection, Your Honor.

20 MR. THEM: Same problem as we had earlier, Your
21 Honor.

22 THE COURT: I'll overrule the objection.

23 Q. Did she tell you whether or not she'd been molested?

24 A. Yes, she did.

25 Q. Did she tell you where this molestation happened,

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Direct Examination by Mr. Them

269

1 physically where it happened?

2 A. Yes, she did.

3 Q. Where did she tell you it happened?

4 A. Primarily in her bedroom.

5 Q. Okay. In her bedroom where?

6 A. In her bedroom at my home.

7 Q. Okay. And did she tell you -- again, just answer the
8 question I ask. Don't go away from it. Did she tell you
9 when this molestation happen?

10 A. Yes, she did.

11 Q. When did she tell you it happened?

12 A. She told me it started when she was eleven or twelve
13 years old and continued for quite a few years.

14 Q. Have you -- simple yes or no to start with. Have you
15 talked to your daughter in some -- have you attempted to
16 talk to your daughter in some detail about what happened
17 to her?

18 A. Yes, I have.

19 Q. Is she able to talk to you about it?

20 A. Not to any depth or degree. She gets too upset.

21 Q. All right. Now, when you heard what your daughter
22 told you and heard what your father told you, what did you
23 do?

24 A. The very next day, we went to the police department
25 and reported it.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Cross Examination by Mr. DeJong

270

1 Q. Based on when your daughter told you the molestation
2 happened, how long after the last time she was molested
3 was it before you found out so you could go to the police?

4 A. It was about a year.

5 Q. Okay. And is this the gentleman you spoke to when
6 you got there?

7 A. Yes, it is.

8 Q. This lieutenant? Okay. Did you, your daughter and
9 your son give a statement to Lieutenant Crook?

10 A. Yes, sir.

11 Q. Okay. Now, were divorce proceedings -- or divorce
12 papers, had they already been filed before you had that
13 conversation with your daughter?

14 A. No, sir.

15 Q. Okay. At some later point in time did you file for
16 divorce?

17 A. Oh, yes, sir.

18 Q. Are you divorced now?

19 A. Yes, sir.

20 Q. Okay. Just one second, please. Do you know why this
21 case has taken three years to come to court?

22 MR. DEJONG: Objection, Your Honor. That's not
23 relevant.

24 THE COURT: What's the relevance?

25 MR. THEM: Your Honor, I don't know what he's

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluselo - Cross Examination by Mr. DeJong

271

1 going to argue in closed argument about delays and stuff
2 and I just want to try to explain. One or two questions.

3 THE COURT: One or two?

4 MR. THEM: Yes, sir.

5 THE COURT: All right, sir.

6 A. Could you repeat the question?

7 Q. That would be three questions. Do you know of any
8 two factors that have caused this case to be delayed in
9 getting to trial?

10 A. Yes, sir. We have been wondering about that. Your
11 illness that you told me about, of course, caused a delay.
12 And I also remember the gentlemen who was waiting for
13 sentencing who had committed a murder, that had caused
14 several delays as well.

15 Q. Was that a death penalty case?

16 A. Sir?

17 Q. Was that a death penalty case waiting for sentencing?

18 A. Yes, a death penalty.

19 Q. Thank you very much, ma'am. I have no further
20 questions.

21 THE COURT: You may cross examine the witness.

22 MR. DEJONG: Thank you, Your Honor. May it
23 please the court.

24 CROSS EXAMINATION

25 BY MR. DEJONG:

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Cross Examination by Mr. DeJong

272

1 Q. So you and Mr. Dean started seeing each other in the
2 late '90's?

3 A. Yes.

4 Q. Can you be anymore specific than that?

5 A. Maybe spring, summer of 1998.

6 Q. All right. And then you married on -- in February of
7 2001?

8 A. Yes.

9 Q. When did he move into the house with you?

10 A. December 1999.

11 Q. All right, ma'am. And then he lived there
12 continuously until November of 2005; correct?

13 A. Yes.

14 Q. Now, did he work?

15 A. Yes.

16 Q. Where did he work?

17 A. BMW in Greer.

18 Q. All right. And what hours did he work?

19 A. That changed. I think he started there on the third
20 shift rotation, but then he went to first shift rotation.

21 Q. Now, throughout the marriage, as I understand it, you
22 say you worked the night shift; is that correct?

23 A. Yes.

24 Q. So if you were working, for want of a better term, a
25 normal shift, you worked from eleven till six-thirty in

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Cross Examination by Mr. DeJong

273

1 the morning?

2 A. Eleven to seven-thirty.

3 Q. Eleven to seven-thirty in the morning?

4 A. Yes.

5 Q. All right. And then if you worked twelve hour shifts
6 that would entail from seven at night until seven in the
7 morning; right?

8 A. That's correct. Seven-thirty in the morning.

9 Q. Now were there also periods of time in there when you
10 only worked weekends, ma'am?

11 A. Yes.

12 Q. And there were also times when you worked three days;
13 right?

14 A. Yes.

15 Q. So certainly it's not a matter that you worked twelve
16 hour shifts from when Mr. Dean moved in until y'all
17 separated in November of '05, you didn't work twelve hour
18 shifts every day?

19 A. Not every day.

20 Q. There were times you worked twelve hour shifts?

21 A. Yes.

22 Q. Now, so when you and Mr. Dean set up housekeeping in
23 1999, his four children came in 1999 I gather; right?

24 A. Yes, sir.

25 Q. Okay. And the youngest -- let's just leave Lee out

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Cross Examination by Mr. DeJong

274

1 of the picture. He wasn't there that long; was he?

2 A. Not after he graduated.

3 Q. Right. That was, what, pretty shortly after y'all
4 set up housekeeping?

5 A. Lee was there from 1999 until after he graduated in
6 2001.

7 Q. Okay. So he and your son, Nick, they shared a room
8 together during that period of time?

9 A. Yes, they did.

10 Q. Now, was he the oldest or was Crystal the oldest?

11 A. Crystal is the eldest.

12 Q. Of the four?

13 A. Yes.

14 Q. And then Lee?

15 A. And then Lee.

16 Q. And then Lisa?

17 A. Then Lisa.

18 Q. And then Hope?

19 A. Then Hope.

20 Q. Hope. All right. So in 1999 when y'all set up this
21 household were all four of Mr. Dean's children teenagers?

22 A. Yes.

23 Q. And they were all in school at that point in time?

24 A. Yes.

25 Q. Now, did Kourtney and Crystal, Lisa or Hope, did any

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Cross Examination by Mr. DeJong

275

1 of them attend the same school?

2 A. The three of Robert's girls attended Belton-Honea
3 Path High School and Kourtney attended school in Clemson.

4 Q. How about Hope?

5 A. Hope was -- Hope, Lisa and Kourtney -- or Hope,
6 Crystal and Lisa were all at the same school.

7 Q. And that was at Belton-Honea Path?

8 A. Yes.

9 Q. All right. Now, when you came home from work what
10 would -- would you go to bed, would you stay up, what
11 would you do?

12 A. It would vary. Usually I would stay up enough to
13 make sure the children, the younger ones, got off to
14 school and had breakfast and what not. And then I might
15 have something to eat and lay down and try to sleep while
16 they were at school.

17 Q. So under -- if I hear you correctly, under normal
18 circumstances you were home when those children, your two
19 children, left for school?

20 A. Sometimes I wasn't. Sometimes I would get home a
21 little later.

22 Q. All right. Now, when Mr. Dean's children lived there
23 did they pretty much come and go as teenagers come and go?

24 A. Yes.

25 Q. Okay. Did they always tell you where they were

1 going?

2 A. If Robert wasn't around they might ask me or let me
3 know that they were leaving.

4 Q. They always tell you what time they were going to
5 be back?

6 A. No.

7 Q. Okay. So they might come back whatever time
8 teenagers come back; right?

9 A. Uh-huh (affirmative).

10 Q. And was that pretty much standard for the entire time
11 they lived there?

12 A. No. There were times that the girls or Lee would go
13 visit family members and sometimes it would be for a night
14 or sometimes it might be for a whole weekend.

15 Q. All right. But that wasn't every night or every
16 weekend?

17 A. No. It wasn't every night or every weekend. It
18 varied, as teenagers do.

19 Q. I think we would say sporadic, would that be a good
20 word? Every once in a while?

21 A. More than every once in a while.

22 Q. So Hope and Kourtney shared a bedroom?

23 A. Yes.

24 Q. And Hope was how much older than Kourtney?

25 A. Four years.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Cross Examination by Mr. DeJong

277

1 Q. I'm sorry?

2 A. Four years, I believe.

3 Q. Well, the children, the children, your children and
4 Mr. Dean's children, with the exception of Lee - again,
5 we'll just kind of leave Lee out of it - did they do
6 things together?

7 A. Sometimes they did.

8 Q. Go places together?

9 A. Sometimes. Sometimes the girls would go and have a
10 girls time and then we would keep Nick at home and do
11 something with him.

12 Q. All right. Okay. But it certainly wasn't that the
13 girls went away and Kourtney and Nick stayed behind all
14 the time; was it?

15 A. Not all the time, but a lot of the times because of
16 the age difference. Especially there certain -- if they
17 went out to the movies there were certain movies that
18 Kourtney could not participate in because of her age. Or
19 they might just not want a younger girl tagging along with
20 them.

21 Q. Yes, ma'am. I understand. Who was the
22 disciplinarian at your house?

23 A. We tried to share the disciplinary actions with the
24 children. But mostly Robert could discipline his children
25 and he also would assist me in decision-making in

1 disciplining mine.

2 Q. Okay. What was the manner and nature of discipline?

3 What did you do to discipline the children?

4 A. Well, time out was used when they were younger of
5 course. Time out in the corner for a few minutes. Maybe
6 they couldn't watch a favorite TV program on TV. If it
7 was a serious enough way to get into trouble, they got
8 spanked.

9 Q. All right. Was going to bed early a discipline
10 measure?

11 A. Sometimes. Not very often.

12 Q. All right. Now, as I understand it both the
13 children, Kourtney and Nick, complained to you about Mr.
14 Dean's discipline; is that correct?

15 A. Yes.

16 Q. When did that start?

17 A. I would say when they got older, Nicholas about nine
18 or ten, Kourtney maybe two years older than that.

19 Q. Can you equate that to a year for me, please, ma'am?

20 A. 2001, 2002.

21 Q. Okay. So the discipline complaints, as I understand
22 it now, started almost immediately after y'all got
23 married?

24 A. Well, there were some prior to that.

25 Q. Even before you got married?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Cross Examination by Mr. DeJong

279

1 A. Just occasionally if it was -- if they felt it was
2 unjust. Kids complain about discipline.

3 Q. I'm sorry. I didn't mean to interrupt you, ma'am.
4 Did those complaints get more and more as time went on?

5 A. As the discipline was issued out more frequently
6 their complaints increased with frequency.

7 Q. When -- well, let me ask you this. Do you recall
8 when your parents moved to Florida?

9 A. It was in the year 2000, 2001. Before 2001. 2000.

10 Q. How often would your children go to Florida to see
11 your parents?

12 A. It was an annual vacation for them. They would go at
13 summertime after school ended.

14 Q. Did you and the children ever have occasion to go to
15 Florida at Christmastime?

16 A. On occasion, yes.

17 Q. Did you go to Florida the Christmas of 2005; do you
18 recall?

19 A. We made a quick trip out there, yes.

20 Q. Okay. Now, when -- were you and Mr. Dean separated
21 in November of '05; is that correct?

22 A. That's correct.

23 Q. And he left the house; right?

24 A. Yes.

25 Q. Do you know why you separated?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluselo - Cross Examination by Mr. DeJong

280

1 A. Sir?

2 Q. Why did you separate?

3 A. The arguments got worse and worse. We started to
4 argue over things like money, time not spent enough
5 together and over the type of discipline and frequencies
6 for the children.

7 Q. Did you have arguments over the shift that you
8 worked?

9 A. No.

10 Q. Did Mr. Dean ever try to get you to work first shift?

11 A. No.

12 Q. When -- so you and Mr. Dean separated in November of
13 '05 and you and the children went to Florida in Christmas
14 of '05?

15 A. For a few days and Christmas.

16 Q. All right. Well, after you and Mr. Dean separated
17 did he still come around the house periodically?

18 A. At times he would come and pick up his mail, might
19 spend a few minutes talking.

20 Q. And when would this be, nights, mornings, afternoons?

21 A. It would be generally in the afternoon, late evening,
22 when he would get home from work.

23 Q. Did he continue to provide for you and the children?

24 A. No.

25 Q. When Kourtney came back from Florida in '06, if I

State of South Carolina -vs- Robert Lee Deon (2007-GS-39-0346, 0347)
Maria Golluscio - Cross Examination by Mr. DeJong

281

1 understood you correctly, you said you did not notice

2 anything unusual about Kourtney?

3 A. That's correct.

4 Q. She was the same; right?

5 A. In the short time she was there, yes.

6 Q. Now, I gather that your father, Kourtney and Nick got

7 home in the evening sometime?

8 A. Yes, they did.

9 Q. Well, let me ask you this. What kind of relationship

10 did you have with your daughter?

11 A. Well, it usually was a very good relationship. Some

12 ups and downs during the teenage years, but not out of the

13 ordinary.

14 Q. Were you there for her?

15 A. Yes.

16 Q. So if you had noticed -- strike that. If there had

17 been anything unusual you would have noticed it; right?

18 A. Yes.

19 Q. Okay. Excuse me. You say the next day after she

20 came back from Florida y'all went to the police

21 department?

22 A. That's correct.

23 Q. And who did you talk to?

24 A. We talked to Lieutenant Crooks here.

25 Q. When you say we, was that you and Kourtney?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Cross Examination by Mr. DeJong

282

1 A. It was Kourtney, myself, Nicholas and my father.

2 Q. So all four of you were present when you talked to
3 Lieutenant Crooks?

4 A. Yes. He saw us at different times.

5 Q. Pardon me?

6 A. He saw us at different times.

7 Q. But there were times everybody was in the room
8 together; right?

9 A. Yes.

10 Q. And when everybody was in the room together the
11 discussion was going on; was it not?

12 A. Yes.

13 Q. How many times did you see Detective Crooks?

14 A. I saw him the first time we went into the police
15 station. And I brought Kourtney back, I believe, maybe a
16 couple more times to speak with him.

17 Q. Were you present when she spoke with him?

18 A. No.

19 Q. Any police officer ever come to your home?

20 A. Yes.

21 Q. About this?

22 A. No.

23 Q. What did the police officers come to your home for?

24 A. They had been called after Kourtney got upset. She
25 had called the police because I had some friends over on

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Cross Examination by Mr. DeJong

283

1 the porch. And Robert for some reason had come by and
2 didn't like -- I think he was afraid of the people I was
3 visiting with at that time and he started to object and he
4 came onto my property and began yelling and fussing. And
5 Kourtney became afraid and called the police.

6 Q. You're sure about that?

7 A. Yes.

8 Q. Well, since you brought it up, do you remember an
9 incident on May the 12th, 2006?

10 A. May 12th, 2006?

11 Q. Yes, ma'am.

12 A. Is that -- that's when the police were called to the
13 house?

14 Q. Somebody had a knife at your house?

15 MR. THEM: Objection. Relevance.

16 THE COURT: Overruled.

17 Q. Somebody had a knife at your house?

18 A. One of my friends was bringing a commemorative piece
19 over for Nicholas to look at. He had been studying World
20 War II history at the time and this was a knife or some
21 kind of ceremonial piece from that time that the person
22 that was visiting had shown him.

23 Q. Do you remember a police officer knocking that night
24 about somebody's hand?

25 A. No, sir. I don't.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Gallusolo - Cross Examination by Mr. DeJong

284

1 Q. All right. But once you and Kourtney went to talk to
2 Detective Crooks, I guess in August 2006, nobody ever came
3 to your house as a result to that?

4 A. No.

5 Q. And each time or anytime that you went you went to
6 the police department; right?

7 A. I didn't understand the question.

8 Q. Well, at anytime that you talked to the police you
9 went to the police department. They never came to your
10 house?

11 A. That's correct.

12 Q. To your knowledge other than what you did, what if
13 anything else, did the police do?

14 A. Nothing.

15 MR. THEM: Object to basis of knowledge and
16 relevance from this witness.

17 THE COURT: I sustain the objection based upon
18 the way the question was asked.

19 MR. DEJONG: I simply asked her as to her
20 knowledge, Your Honor.

21 THE COURT: I didn't hear that part of your
22 question. But if you would just rephrase your question.

23 Q. I don't know that I can rephrase it. The question
24 that I asked, to your knowledge what if anything else did
25 the police do?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Redirect Examination by Mr. Them

285

1 A. To my knowledge nothing.

2 Q. Was there ever an occasion after Mr. Dean left when
3 the police came to your house and the children went to
4 spend the night at Mr. Dean's house?

5 A. Yes. We spent one night there.

6 Q. All right. And do you recall when that would have
7 been, ma'am?

8 A. I'm really not sure. I don't recall.

9 Q. I'm sorry?

10 A. I don't recall exactly when.

11 Q. But it was sometime after you and Mr. Dean separated;
12 right?

13 A. Yes.

14 Q. Thank you, ma'am.

15 MR. THEM: Just one second, please, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. THEM:

18 Q. Was there a different pay scale for various shifts
19 working as a nurse at a hospital?

20 A. Oh, yes.

21 Q. Huh?

22 A. Yes, there was.

23 Q. What was the highest pay scale shift?

24 A. That would be third shift.

25 Q. Is that the shift you work?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Redirect Examination by Mr. Them

286

1 A. Yes.

2 Q. And the next highest?

3 A. That was the highest, especially if you worked the
4 weekend.

5 Q. I'm sorry, the next lowest. I said that ---

6 A. The next lowest would be second shift.

7 Q. Okay. Did the fact that that shift paid more than
8 other shifts have anything to do with your decision about
9 working that shift?

10 A. Yes.

11 Q. Thank you very much. I have no further questions.

12 THE COURT: Thank you, ma'am. You may step down
13 from the witness stand.

14 THE COURT: You may call your next witness.

15 MR. THEM: State of South Carolina rests, Your
16 Honor.

17 THE COURT: Ladies and gentlemen, at this time
18 I'll -- we need to take a short break. I need to take
19 care of a legal matter. If you would go back to your jury
20 room. Don't discuss the case at this time. We'll call
21 you back in just a few moments.

22 (WHEREUPON, the jury exited the open court at
23 approximately 3:33 p.m.)

24 THE COURT: All right. Is there anything we
25 need to do as far as any motions or certainly about

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Redirect Examination by Mr. Them

287

1 settling the record as far as testimony from the defense?

2 MR. DEJONG: Your Honor, part of -- I do have a
3 motion. But as part of covering the record, I would like
4 to put on the record, and I believe it was the first
5 witness, the grandmother, I apologize, I do not remember
6 how to pronounce her last name, Ms. Galluscio, that's
7 Carolyn Galluscio, I believe. I objected to the solicitor
8 being able to have the state ask and the question be
9 answered that the alleged victim in this case had shared
10 with her that she had been molested. We took care of that
11 at a bench conference which Your Honor overruled at my
12 objection. I took exception to that on the record.
13 However, I would like to state on the record, Your Honor,
14 my reason for that objection. That objection being that
15 under the case law that we're operating under in this
16 particular case, my objection was the only thing a
17 witness, as I understand it, is allowed to testify to is
18 time or place. I submit that and did submit to the court,
19 I believe, that that portion of asking that it was --
20 whether they had been molested or what exactly -- how it
21 was put, I don't recall at this point in time. But that
22 was certainly the part I was objecting to. And so the
23 record is clear I think it was - Mr. Them cleared it up on
24 one witness for me - that it was a continuing objection to
25 what I had already objected to. But I did not know if the

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Redirect Examination by Mr. Them

288

1 basis of my objection was on the record. I'm not arguing
2 with Your Honor's ruling. I simply wanted the basis of my
3 objection on the record. Having said that, I consider it
4 on the record, Your Honor.

5 THE COURT: All right, yes. Yes, sir.

6 MR. THEM: For the record, Your Honor, I don't
7 know how you ask a question about a time and a place that
8 inappropriate sexual activity took place if you don't
9 establish from the witness that they told me inappropriate
10 sexual activity took place when and where. I mean, it's a
11 foundational question that you have to ask to get to when
12 and where. You can't just look at the witness and say
13 when and where.

14 MR. DEJONG: I'm not arguing the motion, Your
15 Honor. I just wanted the basis of my motion put on the
16 record.

17 THE COURT: Yes, I understand. And for the
18 record, so that the Appellant Courts will know my thought
19 process too, as well as yours, Mr. DeJong, and perhaps the
20 solicitor's. Maybe it'll help our -- help them to all
21 understand our reasoning. While at the bench I felt there
22 might have been some -- the question had already been
23 asked and then the objection was made -- some perhaps
24 softer language, inappropriate behavior or whatever.
25 Since the question had been asked with molested, I allowed

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Redirect Examination by Mr. Them

289

1 the question, primarily in my mind because that was the
2 word that the victim in this case, the complaining party,
3 had used and it was not other words that seemingly it
4 would sound like the same thing that she would have said,
5 rather than using other words or even more egregious words
6 that the state could have come of with I guess to put the
7 time and place. I certainly understand the difficulty
8 that lawyers have in presenting the cases and defending
9 the cases. It's a difficult process that you have to go
10 through and I'm well aware of that. Hopefully Columbia's
11 well aware of that as well.

12 MR. DEJONG: Thank you, Your Honor. Like I say,
13 I just wanted that on the record.

14 At this point in time, Your Honor, I would move on
15 behalf of Mr. Dean for a directed verdict specifically as
16 to indictment 2000-GS-39-346, which is the indictment I
17 believe that alleges criminal sexual conduct in the second
18 degree with a minor. Your Honor did allow in prior bad
19 acts and I'm not going back to reargue that. But it is my
20 understanding that what the state is using for the basis,
21 a factual basis if you will - I'm not saying there is a
22 factual basis - but a factual basis for that particular
23 indictment is that cunnilingus occurred.

24 Now, I cannot give the court a legal definition of
25 cunnilingus. However, I think, Your Honor, if you look at

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Redirect Examination by Mr. Them

290

1 the CSC statute as a whole where they speak of fellatio,
2 cunnilingus and penetration however slight, I submit, Your
3 Honor, that cunnilingus, definitionally would require some
4 penetration. The only testimony in this case was -- with
5 regard to that was by the alleged victim in this case.
6 And her testimony, as I recall it and the only testimony
7 was, if this is -- and it's my understanding this is the,
8 the time frame that we're talking about on indictment 346.
9 Her only testimony was that he licked her vaginal lips. I
10 submit to you, Your Honor, that that is not cunnilingus.
11 That does not meet the definition of cunnilingus. And it
12 may be - I'm not conceding and I'm not saying Mr. Dean is
13 guilty of anything - but that may be -- could be one of
14 two things. It could conceivably be assault and battery
15 of a high and aggravated nature. It could conceivably be
16 a lewd act. I'm not conceding that is a lewd act. I'm
17 not saying that it occurred. But just based on her
18 testimony and looking at that testimony in a light most
19 favorable to the state, I think we have to -- and as I
20 recall Mr. Them's opening statement to the jury, that's
21 what he was talking about. And I simply submit that if
22 that is the incident that we are talking about that that
23 is not sufficient, even looking at it in a light most
24 favorable to the state, not sufficient to take this case
25 to the jury on criminal sexual conduct in the second

State of South Carolina -vs-Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscelo - Redirect Examination by Mr. Them

291

1 degree with a minor.

2 Overall, I would move for a directed verdict on both
3 charges in looking at the case at this point in time in a
4 light most favorable to the state. In addition to that
5 there is no credible substantial testimony or evidence in
6 this case from which a jury could find guilt. Thank you,
7 Your Honor.

8 THE COURT: Mr. Them, be glad to hear from the
9 state.

10 MR. THEM: Your Honor, I have a slightly
11 different recollection as to what the witness talked about
12 when she described the act of cunnilingus. She talked
13 about between her lips or between the lips. If we can
14 talk about this in plain geometry terms, imagine if we
15 would a plane caused by the outer lips and if you go
16 between those lips you've broken that plane. In breaking
17 that plane is penetration however slight. So when she
18 said between the lips, that was penetration.

19 As far as the other matters, I believe that we have
20 satisfied the t's we had to cross and the i's we had to
21 dot as far as the age of the defendant, the age of the
22 victim, the specific act. The court can easily interpret
23 the acts that we talked about designed to appeal to his
24 lusts and passions or to inflame the lusts and passions of
25 the child. No question but the crime, if it occurred, it

1 occurred in Pickens County according to three different
2 witnesses.

3 I believe that the general motion fails and the
4 motion on the specific act of cunnilingus is obviated by
5 the testimony of the witness. Now, I'm not sure if that
6 testimony -- if I've mis-stated that testimony. Let's
7 assume for the sake of argument that I have, but I don't
8 believe that I have. I don't know that cunnilingus
9 requires penetration per se. I realize the overall
10 statutory scheme talks about all of these penetrating
11 injuries and things of that nature. But I would maintain
12 that the mere act of some sort of oral sexual attack on
13 the vaginal opening to a woman would be cunnilingus.
14 Thank you.

15 I'm getting the Blacks Law Dictionary brought in,
16 Your Honor.

17 THE COURT: All right. I'll review the law on
18 that. Any other motions?

19 MR. DEJONG: Your Honor, I don't have any other
20 motions at this point in time. Mr. Dean and I have talked
21 about his right to testify, the right not to testify. I
22 would simply ask the court for about a ten or fifteen
23 minute recess so I can nail down with him his desire to
24 testify.

25 THE COURT: All right. If I could, if I could

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Marla Gallusio - Redirect Examination by Mr. Them

293

1 talk to him and explain. Mr. Dean, if you could come
2 forward, please, with your attorney. Let me just put a
3 little bit on the record here. If you would raise your
4 right hand. Do you swear or affirm the testimony you're
5 about to give the court will be the truth the whole truth
6 and nothing but the truth, so help you God?

7 DEFENDANT: I do, sir.

8 (WHEREUPON, the defendant was duly sworn.)

9 THE COURT: As you've heard your attorney and
10 the state, we've reached the stage in the case now where
11 you have a right to put up a defense if you choose to. I
12 need to explain certain rights to you. I want to make
13 sure -- I'm sure your attorney and you have had an
14 opportunity to discuss these. I need to be satisfied in
15 my own mind you understand those rights that you have.

16 Among the rights you enjoy under the State
17 Constitution of South Carolina and the Fifth Amendment to
18 the United States Constitution, you have the right to not
19 be a witness against yourself in a criminal case. No
20 person can be compelled in any criminal case to be a
21 witness against himself. That's in the Fifth Amendment of
22 the United States Constitution. Obviously what this means
23 is you can't be required to testify in the case. You have
24 a right to testify in your own behalf, but nobody can make
25 you testify. Whether to testify or not testify is a

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluccio - Redirect Examination by Mr. Them

294

1 personal right that you enjoy. Nobody can waive this
2 right except you. You can decide to testify. And if you
3 do testify you'd be subject to the same rules that govern
4 other witnesses in a trial. You can be examined and cross
5 examined on any relevant issue in the case. If you have
6 any convictions in your past that involve dishonesty or
7 false statements or crimes for which you could have been
8 punished by imprisonment for more than a year and the
9 court determines that the probative value of admitting
10 this evidence outweighs any prejudicial effect to you,
11 then the state solicitor would be able to introduce your
12 record to attack your credibility.

13 Your decision to testify of course has to be
14 voluntarily and knowingly made by you and intelligently
15 made with the knowledge of the protections that you enjoy
16 under the Fifth Amendment to the Constitution and being
17 aware of the consequences of your decision to testify.

18 You may choose not to testify, and if that's the
19 case, I'll instruct the jury they can't give that fact
20 that you chose not to testify any consideration
21 whatsoever. That can't be any prejudice to you. I'll
22 tell them they can't even talk about that in the jury room
23 if you choose not to testify. Whether to testify or not
24 to testify is left entirely up to you. You can -- we'll
25 give you a time to talk to your attorney. You can talk to

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Redirect Examination by Mr. Them

295

1 family, friends, anyone else you want to. But ultimately
2 that's got to be your decision to testify or not testify.
3 Mr. Dean, have you understood what I've explained to
4 you?

5 DEFENDANT: Yes, sir.

6 THE COURT: Do you have any questions of me?

7 DEFENDANT: No, sir.

8 THE COURT: You've had a chance, I'm sure, to
9 discuss with your attorney. I'll certainly give you
10 another chance now. We'll take a short break. Is there
11 any question, Mr. DeJong, with the state of any prior
12 record that -- for which he could be ---

13 MR. DEJONG: When we step back, I was going to
14 discuss that in accordance, Your Honor.

15 THE COURT: Do you understand your rights?

16 DEFENDANT: Yes, sir.

17 THE COURT: All right, sir. You can return back
18 to your seat.

19 MR. DEJONG: I guess we do need to clear that up
20 before we talk, Mr. Dean. The only record that Mr. Dean
21 has, Your Honor, is he had a conviction for fraudulent
22 checks in 19- some in '86, some in '87, and the last was
23 1988. I think the Court of Appeals or the Supreme Court
24 has ruled, I beg your pardon, has ruled on that as being a
25 crime of dishonesty, which it's not for me to agree or

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Redirect Examination by Mr. Them

296

1 disagree with that. I guess they've ruled that way.

2 However, Your Honor, I would take the position that they
3 are more than ten years old and certainly have no
4 probative value in this case whatsoever. I don't know
5 what the solicitor's position is on that.

6 THE COURT: Any other offenses other than those?

7 MR. DEJONG: Not that I'm aware of, unless I'm
8 misreading his record, Your Honor. But that's the only
9 thing I see.

10 THE COURT: I'll be glad to hear from you, Mr.
11 Them. I'm not inclined to allow those to be used.

12 MR. THEM: I was going to tell you that I agree
13 with that, Your Honor. If we were to impeach everybody
14 that ever wrote a bad check, we'd all be in trouble.
15 Correction, you all would be in trouble.

16 THE COURT: I'll not allow that to be used. All
17 right. We'll take about a ten minute break, or fifteen
18 minute break. I'll check the law and I'll give you a
19 ruling on your motions, Mr. DeJong.

20 MR. THEM: Your Honor, may we approach?

21 THE COURT: Yes, sir.

22 (WHEREUPON, Mr. Them and Mr. Dejong approached the
23 bar.)

24 (WHEREUPON, Court stood at recess for a short break.)

25 THE COURT: All right. Back on the record. Mr.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Maria Galluscio - Redirect Examination by Mr. Them

297

1 DeJong, I believe that based on the facts that have been
2 presented, I must consider them in the light most
3 favorable to the state. I believe there is sufficient
4 evidence to present this case to the jury.

5 As far as your other issue as to the lack of
6 penetration, I'm denying your motion as well. I'm relying
7 on the case of State v. Morgan, 352 SC 359, that I believe
8 -- I believe that's still good law.

9 MR. THEM: Would you be so kind as to give us
10 that site again. I got State versus Morgan.

11 THE COURT: 350 -- I'm sure y'all found this
12 during the break too; didn't you?

13 MR. THEM: No, sir.

14 THE COURT: Okay. All right. 352 SC 359, 2002
15 case.

16 MR. THEM: Thank you.

17 MR. DEJONG: Thank you, Your Honor.

18 THE COURT: All right. Ready to proceed?

19 MR. DEJONG: We are ready to proceed, Your
20 Honor. I will share with the court that Mr. Dean has
21 decided to testify at the appropriate time. However, I
22 have three witnesses prior to putting Mr. Dean up.

23 THE COURT: All right. You got the witnesses
24 ready?

25 MR. DEJONG: Yes, sir. My first witness is

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Marta Galluccio - Redirect Examination by Mr. Them

298

1 seated in the courtroom and the other two are seated
2 outside in the -- right outside the courtroom.

3 THE COURT: Before we get started, does anybody
4 know the status of the case from the solicitor's office
5 with Ms. Hamaker and Mr. Cantrell? Does anybody know
6 about that? They were wanting to enter a plea. I just
7 didn't know. I didn't want to keep them waiting again.
8 We sort of told them four thirty. And I don't know if
9 they're coming or not. But they might have to wait a
10 while longer. I don't know if Mr. Cantrell is on his way
11 or not. Let's have our jury come in. Okay?

12 (WHEREUPON, the jury entered the open court at
13 approximately 4:17 p.m.)

14 THE COURT: All right. We're now ready to
15 proceed with the trial of the case. Mr. DeJong, you may
16 call your first witness.

17 MR. DEJONG: Thank you, Your Honor. May it
18 please the court. The defense would call Ms. Crystal Dean
19 to the stand. Ms. Dean, come up and be sworn, please,
20 ma'am.

21 MISTER CLERK: Place your left hand on the bible
22 and raise your right hand. Do you solemnly swear or
23 affirm the testimony you're about to give in this case be
24 the truth, the whole truth and nothing but the truth, so
25 help you God?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Crystal Dean - Direct Examination by Mr. DeJong

299

1 CRYSTAL DEAN: I do.

2 MISTER CLERK: If you would, state your full
3 name, please.

4 CRYSTAL DEAN: My name is Crystal Dean.

5 CRYSTAL DEAN,

6 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION

8 BY MR. DEJONG:

9 Q. Spell your first name please, ma'am?

10 A. C-r-y-s-t-a-l.

11 Q. And your last name, please?

12 A. D-e-a-n.

13 Q. How old are you, Ms. Dean?

14 A. Twenty-seven.

15 Q. And are you related to Mr. Robert Lee Dean?

16 A. I am.

17 Q. And what is that relationship?

18 A. He's my father.

19 Q. All right, ma'am. I want to take you, please, to the
20 year of 1999. How old would you have been in say the fall
21 of 1999?

22 A. I would have been seventeen.

23 Q. All right. Ma'am, were you in school at that point
24 in time?

25 A. I was.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Crystal Dean - Direct Examination by Mr. DeJong

300

1 Q. And in 1999, the latter part of 1999, where did you
2 live?

3 A. We moved to Clemson, South Carolina.

4 Q. Do you remember the address?

5 A. It was address Drive.

6 Q. And who all lived at that house?

7 A. It was me, my sister Lisa, my other sister Hope, my
8 brother Lee, my dad Robert, Maria, Kourtney and Nick.

9 Q. All right. So how many people were living in that
10 house at that point in time?

11 A. Eight.

12 Q. And how big was this house?

13 A. It was a three bedroom.

14 Q. All right, ma'am. Now did you at some point in time
15 leave that house?

16 A. I did.

17 Q. All right. And when did you leave?

18 A. In May of 2003.

19 Q. All right. And in May of 2003 where did you move to?

20 A. We moved to Anderson.

21 Q. We being who?

22 A. Me and my two sisters.

23 Q. Both of your sisters?

24 A. Uh-huh (affirmative).

25 Q. And did you then continue to live in Anderson?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Crystal Dean - Direct Examination by Mr. DeJong .

301

1 A. We lived there until -- I moved back to Clemson

2 November of 2004.

3 Q. All right. And how about Lisa and Hope?

4 A. They moved back in December -- I'm sorry, January of
5 2005.

6 Q. Okay. So everybody left when now?

7 A. May of 2003.

8 Q. All right. Now, after you left did you ever have
9 occasion to visit your father?

10 A. We didn't go up there. Him and the kids came down to
11 see us a couple of times.

12 Q. What kids?

13 A. Him, Kourtney and Nick came to see us.

14 Q. Do you remember what time frame that would have been?

15 A. I'm not positive.

16 Q. All right. That's fine. So you left in May of '03
17 and came back in ...

18 A. November ---

19 Q. Of?

20 A. -- 2004.

21 Q. All right. And then from November of 2004 did you
22 continue to live there in Clemson?

23 A. I lived there in Clemson until August of 2000 --
24 August of that same year, August of 2005.

25 Q. All right, ma'am. Now when you say there, where ---

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Crystal Dean - Direct Examination by Mr. DeJong

302

1 A. address Drive.

2 Q. And was your dad still living there?

3 A. He was.

4 Q. And was Kourtney still living there?

5 A. She was.

6 Q. Nick still living there?

7 A. Uh-huh (affirmative).

8 Q. Now, so between 1999 and 2005, I didn't do the math

9 and I'm not sure I can, how much of that time were you in
10 Clemson?

11 A. I would say three and a half to four years.

12 Q. Okay. Between 1999 and 2005?

13 A. Right.

14 Q. All right. Now, you were the oldest of the children
15 in your family; is that right?

16 A. Yes, sir.

17 Q. Okay. Did you have an opportunity to observe your
18 dad around Kourtney and Nick?

19 A. Yes, sir. We were there all the time.

20 Q. What kind of -- what were your observations as to
21 their relationship?

22 A. She -- he treated her just like he treated us.

23 Q. Well, was that good or bad?

24 A. It was good.

25 Q. Okay. All right. Well, who was the disciplinarian

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Crystal Dean - Direct Examination by Mr. DeJong

303

1 in the family?

2 A. It -- he was because his wife wouldn't discipline her
3 kids because she worked second shift.

4 Q. And were y'all disciplined?

5 A. Uh-huh (affirmative).

6 Q. Even though you were seventeen?

7 A. Right.

8 Q. You were still disciplined?

9 A. Right.

10 Q. What type of discipline did your dad give out?

11 A. We were -- me, my two sisters and Kourtney were all
12 grounded, we would be grounded.

13 Q. All right.

14 A. And Nick, he would send to bed early.

15 Q. All right. Now, you were seventeen in 1999?

16 A. Uh-huh (affirmative).

17 Q. Okay. Did you have a driver's license?

18 A. No, sir.

19 Q. Did Lee have a driver's license?

20 A. He did.

21 Q. Okay. How about Hope or Lisa?

22 A. Hope and -- Lisa did but Hope didn't.

23 Q. Okay. Well, when you lived there at the house did
24 you pretty much come and go as you pleased?

25 A. We had to ask permission to go.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Crystal Dean - Direct Examination by Mr. DeJong

304

1 Q. Okay. And was that permission usually granted?

2 A. Usually. If we were all -- all the sisters were
3 together they would let us go.

4 Q. And how about the time to come home?

5 A. It was normally about nine or ten.

6 Q. Let's talk about Ms. -- I'm sorry. How do you
7 pronounce that name? Ms. Galluscio, did she work?

8 A. She did sometimes.

9 Q. All right. Do you know where she worked?

10 A. At Anderson Hospital.

11 Q. Okay. Do you know what hours she worked?

12 A. Second shift and third shift.

13 Q. Okay.

14 A. I don't know exactly when she switched. But I know
15 she switched around a couple of times.

16 Q. Okay. What time did she leave for work, to the best
17 of your recollection?

18 A. Usually between ten and twelve at night.

19 Q. All right, ma'am. And when she left would you and
20 your sisters be home?

21 A. Uh-huh (affirmative).

22 Q. To your knowledge -- well, strike that. Did y'all
23 run errands for your father?

24 A. Yes, sir.

25 Q. Was that done voluntarily?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Crystal Dean - Direct Examination by Mr. DeJong

305

1 A. Yeah.

2 Q. Okay. Well, let me ask you this. As far as Nick and
3 Kourtney are concerned, were they included in your
4 activities?

5 A. Yes. We were always made to take Kourtney with us
6 when we went places, to include her with us.

7 Q. Was that more of the rule than the exception to the
8 rule that ---

9 MR. THEM: Objection. Leading.

10 MR. DEJONG: I'll rephrase the question.

11 THE COURT: Thank you, sir.

12 Q. Did Kourtney normally go with you?

13 A. Yes. She did.

14 Q. Okay. Were there times that you didn't take Kourtney
15 with you?

16 A. No, sir.

17 Q. How about if you made a run to the grocery store?

18 A. She ran with us.

19 Q. Okay. You say, went with us. Who is us?

20 A. Me, Lisa, Hope and Kourtney.

21 Q. Okay. How about to the movies?

22 A. We never went to the -- went out to the movies and
23 stuff like that.

24 Q. With her or would just never go?

25 A. We didn't go.

1 Q. All right. Did you -- and I'm just speaking just of
2 you now, not your sisters or your brother. Did you ever
3 have occasion to spend a weekend away from home or
4 anything like that?

5 A. No, sir. I stayed at home.

6 Q. You stayed at home?

7 A. Uh-huh (affirmative).

8 Q. All right. As -- well, you were there from 1999
9 through the latter part of '05, but you had a break?

10 A. Right.

11 Q. But while you were there did you ever notice
12 Kourtney's relationship changing with your father?

13 A. No, sir.

14 Q. Now, you had already left when your father and Ms.
15 Galluscio -- I cannot pronounce that name. I'm going to
16 call her Maria. I don't mean to be forward but that's
17 easier. You had already moved out when they separated; is
18 that correct?

19 A. Yes, sir.

20 Q. How about family vacations. Did you ever take family
21 vacations?

22 A. We took a couple.

23 Q. Okay. Where would you go?

24 A. To Carowinds. I think we went to Carowinds one time
25 and to Six Flags one time. And I think we went to the

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Crystal Dean - Cross Examination by Mr. Them

307

1 zoo.

2 Q. Did Maria go with you on those vacations?

3 A. Yes, sir.

4 Q. Okay. Did your dad work?

5 A. Yes, sir.

6 Q. Where did he work?

7 A. He worked at BMW.

8 Q. What hours did he work, if you know?

9 A. He left around four or five in the morning and got
10 home around five or six in the evening.

11 Q. All right. Did -- based on your observations of
12 Kourtney, did she ever exhibit any fear of your father?

13 A. No, sir.

14 Q. And based on your observation while you lived in the
15 house, did you ever notice anything inappropriate between
16 Kourtney and your father?

17 A. No, sir.

18 Q. Was there anything inappropriate between you and your
19 father?

20 A. No, sir.

21 JOHN DEJONG: Witness is with you, Mr. Them.

22 MR. THEM: Thank you, sir.

23 CROSS EXAMINATION

24 BY MR. THEM:

25 Q. What bedroom in the house did Hope share with the

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Crystal Dean - Cross Examination by Mr. Tham

308

1 young lady that we're here about today?

2 A. She shared the corner bedroom. It was right across
3 from mine and my other sister.

4 Q. Would that be on the front of the house?

5 A. Yes, sir.

6 Q. Okay. And where would the driveway -- let me back
7 up. Did the house have a driveway?

8 A. Yes, sir. It had a small one.

9 Q. Was the driveway on the end of the house where Hope's
10 bedroom was? Or was it at the other end of the house?

11 A. It was where Hope's bedroom was.

12 Q. Okay. So if you were in Kourtney and Hope's bedroom
13 at night and a car drove up into the driveway, it would
14 automatically kick on the outside security lights;
15 wouldn't it?

16 A. Right.

17 Q. And you could see that from their bedroom; couldn't
18 you?

19 A. Right.

20 Q. So if you were in that bedroom and a car drove up and
21 pulled into the driveway, you would know it?

22 A. Yes, sir.

23 Q. Okay. Now, I hate to make you do this again, but I'm
24 not sure I got it right. Okay? From the time your father
25 -- and I'm going to call her Maria too, just for ease, if

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Crystal Dean - Cross Examination by Mr. Them

309

1 that's agreeable with you.

2 A. Yes, sir.

3 Q. From the time your father married Maria until May of
4 2003, you lived there?

5 A. Yes, sir.

6 Q. And then you moved out?

7 A. Right.

8 Q. Both of your sisters went with you?

9 A. Right.

10 Q. And y'all moved to ...

11 A. We moved to Anderson.

12 Q. To Anderson, okay. Now, you moved back in November
13 of '04?

14 A. Yes, sir.

15 Q. All right. So you were gone, you were gone about
16 sixteen, seventeen months?

17 A. Right.

18 Q. Okay. Your two sisters were gone during that same
19 time period?

20 A. Yes, sir.

21 Q. So in the house for sixteen to seventeen months would
22 have been your father, Maria, Nick and Kourtney?

23 A. Yes, sir.

24 Q. All right. Now, you moved back in November of '04?

25 A. Right.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Crystal Dean - Cross Examination by Mr. Them

310

- 1 Q. When did you go back out?
- 2 A. August of 2005.
- 3 Q. Okay. I wrote down January of 2005. Did I ---
- 4 A. That's when my other sisters moved back in.
- 5 Q. Okay. So you moved back in '04 and Lisa and Hope
- 6 moved back in January of '05?
- 7 A. Right.
- 8 Q. Okay. And you moved out in August of '05?
- 9 A. Yes, sir.
- 10 Q. Okay. Did the other two girls go with you?
- 11 A. They moved out before.
- 12 Q. Okay. When did the other two girls move out?
- 13 A. I would say February, March.
- 14 Q. February, March?
- 15 A. Uh-huh (affirmative).
- 16 Q. And that would have been '05?
- 17 A. Yes, sir.
- 18 Q. Okay. And we would show Crystal moving out in August
- 19 of '05?
- 20 A. Right.
- 21 Q. Okay. So let me see if I can summarize this, and I'm
- 22 going to go slow. I don't want to be disrespectful, I
- 23 just want to make sure you're keeping up with me. Okay?
- 24 A. Okay.
- 25 Q. From the time your mother -- I'm sorry, the time your

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Crystal Dean - Cross Examination by Mr. Them

311

- 1 father married Maria until May of 2003, all four of y'all
2 were there or -- I tell you what. I'm going to do what
3 Mr. DeJong did. I'm going to ignore Lee, okay?
4 A. Okay.
5 Q. We'll just forget about him.
6 A. All right.
7 Q. Let's just talk about it like it's three girls even
8 though we know there's a boy. The three girls were there
9 from the time your father married Maria until May of '03?
10 A. Right.
11 Q. Then y'all all moved out and went to Anderson?
12 A. Uh-huh (affirmative).
13 Q. In November of '04 you moved back?
14 A. Uh-huh (affirmative).
15 Q. In January of '05 the other two girls moved back?
16 A. Uh-huh (affirmative).
17 Q. And Crystal moved out in -- I'm sorry. The other two
18 girls being Lisa and Hope, moved out in February or March
19 of '05?
20 A. Right.
21 Q. And you moved out in August of '05?
22 A. Right.
23 Q. Did y'all ever come back to live, any of the three of
24 you?
25 A. Just those times when I told you we came back to

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Crystal Dean - Redirect Examination by Mr. DeJong

312

1 Clemson. That's the only time we came back there.

2 Q. Would that be for like visits or did you actually
3 moved back in?

4 A. No. We actually moved back in.

5 Q. Okay. And you actually moved back in when?

6 A. When I came back in -- the dates I told you we came
7 back to address Drive, that's when we moved back in.

8 Q. Okay. I'm not trying to give you a hard time, but
9 it's all kind of confusing to me. We've got a lot of
10 names and times and dates. When did you -- when did all
11 of y'all move back or just you move back?

12 A. I moved back in November of 2004.

13 Q. I got that.

14 A. And I was there ---

15 Q. And out in January and you came back in August;
16 right?

17 A. I moved back in in November of 2004. I moved back
18 out in August of 2005.

19 Q. Okay. Did you ever return to live there after that?

20 A. No, sir.

21 Q. Okay. Good. When your sisters moved out in February
22 or March of 2005, did they come to live with you or ...

23 A. When they moved out they got their own apartment and
24 I stayed there with Maria and my dad.

25 Q. To your knowledge, after they moved out in February

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Crystal Dean - Redirect Examination by Mr. DeJong

313

1 or March of 2005, did they ever return there to live?

2 A. No, sir.

3 Q. Okay. So would you agree with me there are -- well,
4 let me back up. Would you agree that your stepmother and
5 your father separated in November of 2005?

6 A. Yes, sir.

7 Q. Okay. Would you agree that y'all moved in together
8 sometime around December of '99 or January of 2000?

9 A. Yes, sir.

10 Q. So that would be a period of about almost two years?

11 Excuse me, almost six years; correct?

12 A. Correct.

13 Q. All right. During that six years there was at least
14 two, two and a half years that the only people living in
15 the house was your father, Maria and Maria's two children?

16 A. Right.

17 Q. Okay. Just one second please, ma'am. I thank you,
18 ma'am. I have no further questions.

19 THE COURT: Any redirect?

20 MR. DEJONG: Thank you, Your Honor. May it
21 please the court.

22 REDIRECT EXAMINATION

23 BY MR. DEJONG:

24 Q. Ms. Dean, Mr. Them was asking you about lights coming
25 on and cars pulling in?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Lisa Nichole Dean - Direct Examination by Mr. DeJong

314

1 A. Right.

2 Q. That house, did it have a concrete driveway in it?

3 A. Yes, sir.

4 Q. Okay. From the concrete -- from where you would park
5 the car to go into the house, how far was that?

6 A. I'd say maybe ten feet.

7 Q. As far as I'm standing from you at this point?

8 A. Maybe from here to that table.

9 Q. All right. How long would it take you to get in?

10 A. Say about fifteen, twenty seconds.

11 Q. Okay. That's immediately leaving the car and getting
12 into the house?

13 A. Right.

14 Q. Now, once you've entered the house where were these
15 bedrooms in relationship to where you entered the house?

16 A. You came in the front door, you went down a short
17 walkway and then you turned left and they were at the end
18 of the hall.

19 Q. Could you see the bedrooms when you walked in the
20 door?

21 A. No, sir.

22 Q. All right. Thank you, ma'am. Nothing further.

23 MR. THEM: I have nothing further with this
24 witness either, Your Honor.

25 THE COURT: Thank you. You may step down,

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Lisa Nichole Dean - Direct Examination by Mr. DeJong

315

1 ma'am.

2 MR. DEJONG: Your Honor, I realize the witnesses
3 have been sequestered, but since she's testified I'm going
4 to ask that she be allowed to stay in the courtroom.

5 MR. THEM: I have no objection to her staying,
6 but, I mean, she's burned as a witness from here on.

7 THE COURT: Yeah.

8 MR. DEJONG: I don't have any anticipation of
9 recalling her.

10 The defense would call Ms. Lisa Dean to the stand.

11 MISTER CLERK: Place your left hand on the bible
12 and raise your right hand. Do you solemnly swear or
13 affirm the testimony you're about to give in this case to
14 be the truth, the whole truth and nothing but the truth,
15 so help you God?

16 LISA DEAN: I do.

17 MISTER CLERK: Have a seat and state your name
18 for the record.

19 LISA DEAN: My name is Lisa Nichole Dean.

20 **LISA NICHOLE DEAN,**

21 **BEING DULY SWORN, TESTIFIED AS FOLLOWS:**

22 **DIRECT EXAMINATION**

23 **BY MR. DEJONG:**

24 Q. Spell your Lisa for us, please, ma'am?

25 A. Spell it?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Lisa Nichole Dean - Direct Examination by Mr. DeJong

316

1 Q. Yes, ma'am.

2 A. L-i-s-a.

3 Q. What you're going to have to do is get a little
4 closer to that microphone. Okay? It won't bite you. I
5 promise. Spell your middle name for us please?

6 A. N-i-c-h-o-l-e.

7 Q. And the last name Dean, same as Mr. Dean?

8 A. D-e-a-n.

9 Q. Well, I guess I -- let me ask. Are you related to
10 Robert Lee Dean?

11 A. Yes, sir.

12 Q. And what is that relationship?

13 A. He is my father.

14 Q. All right, ma'am. I want to take you back to late
15 1999 or early 2000, Ms. Dean. Do you recall where you
16 were living?

17 A. Yes, we were living in Anderson.

18 Q. Okay. Did you ever have occasion to leave Anderson.
19 Move to a different place?

20 A. Yes. Right after that we moved in with Maria up in
21 Clemson.

22 Q. In where?

23 A. In Clemson.

24 Q. Okay. You're fading out. Keep that voice up. Keep
25 near that microphone, okay? Do you remember the address

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Lisa Nichole Dean - Direct Examination by Mr. DeJong

317

1 in Clemson?

2 A. address Drive, I think.

3 Q. All right. And who all lived in that house?

4 A. It was my father, me, my older sister and my younger
5 sister, my brother, Maria and Kourtney and Nick.

6 Q. Okay. And at anytime did you have -- did you quit
7 living at that house for some period of time?

8 A. We did. We moved out after my youngest sister's
9 birthday in May. Her seventeenth birthday.

10 Q. Of what year?

11 A. I think it was 2003.

12 Q. All right. Now, who moved out in May of 2003?

13 A. It was me, my older sister and my younger sister.

14 Q. So the three girls moved out at that point in time?

15 A. Yes, sir.

16 Q. And you moved to where?

17 A. We moved to Anderson.

18 Q. Did all three of you continue to live there?

19 A. Yes, sir.

20 Q. At any point in time did any of you ever go back to
21 the Clemson address?

22 A. My older sister, Crystal, moved back, I'm thinking it
23 was around November of 2004.

24 Q. Okay. And did you ever move back to the Clemson
25 address?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Lisa Nichols Dean - Direct Examination by Mr. DeJong

318

1 A. It was right after Christmas, maybe right after New
2 Year's of 2005.

3 Q. And did you, did you then continue to live at the
4 Clemson address?

5 A. We continued to live there until, I think it was
6 March of that year, me and my younger sister moved back
7 out.

8 Q. Your younger sister being?

9 A. Hope.

10 Q. Hope. Okay. When y'all moved out in March of '05,
11 you and Hope moved out, where was Crystal?

12 A. Crystal was still staying there at the time.

13 Q. Okay. To your knowledge did Crystal leave that
14 address again?

15 A. To my knowledge, yes. A couple of months later I
16 think she moved in with us.

17 Q. All right. Now, in late 1999 or early 2000, do you
18 recall how old you were, Ms. Dean?

19 A. I was fourteen probably, thirteen, fourteen.

20 Q. Okay. And in terms of the living -- well, let me ask
21 you this. How big was the house?

22 A. In Clemson?

23 Q. Yes, ma'am.

24 A. It was a three bedroom and it had a formal living
25 room and a formal dining room. And the formal dining room

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Lisa Nichole Dean - Direct Examination by Mr. DeJong

319

1 was moved -- or was changed into a bedroom.

2 Q. Okay. Who stayed in that room?

3 A. That room was Nicholas and my brother.

4 Q. Okay. And what was the arrangement for the four
5 girls?

6 A. Me and my older sister Crystal, we stayed in the
7 first room in the hallway and then there was a bathroom
8 between Kourtney's and my younger sister Hope's bedroom.

9 Q. All right. From your bedroom was there a door into
10 the bathroom?

11 A. Yes. It was an adjoining door to both bedrooms to
12 the bathroom.

13 Q. All right. Now, was that a full bath between the two
14 bedrooms?

15 A. It had a shower in it and the toilet and sink.

16 Q. Okay. Now, when -- in 1999 through I believe 2003,
17 you said that was the arrangement; is that correct?

18 A. Yes, sir.

19 Q. How about when you came back in, I believe you said
20 January of '05, what was the arrangement then?

21 A. Me and my older sister were staying back in the other
22 bedroom and Hope moved back in with Kourtney in her room.

23 Q. Pretty much the same arrangement?

24 A. Yes, sir.

25 Q. Okay. Now, when you were living there did you do

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Lisa Nichole Dean - Direct Examination by Mr. DeJong

320

1 things together?

2 A. We usually went out to the movies on the weekends.

3 Q. Okay. And how about Kourtney, was she ever included
4 in any of that?

5 A. Yes, sir. We were told to take her with us because
6 she was younger and she wanted to go with the older girls.

7 Q. All right. And did you comply with that order?

8 A. Yes, sir.

9 Q. Okay. Would you run errands for Maria and your dad?

10 A. Yes, sir.

11 Q. Did any of you -- of the three girls have a driver's
12 license at that point in time or a permit?

13 A. I had my driver's license and I think Hope had a
14 permit at the time.

15 Q. Okay. How about Crystal?

16 A. No, sir.

17 Q. Were -- when you lived there from '99 to 2003, you
18 lived there on a daily basis?

19 A. Yes, sir.

20 Q. Did Maria work?

21 A. She worked on usually the weekends, starting maybe
22 Thursday or Friday, and she worked night shift at the
23 hospital in Anderson.

24 Q. What were her hours; do you know?

25 A. She would leave the house about nine, would do like a

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Lisa Nichole Dean - Direct Examination by Mr. DeJong

321

1 ten to six, I think.

2 Q. Did you attend the same school that Kourtney
3 attended?

4 A. No, sir.

5 Q. Where did you attend school?

6 A. I went to Belton schools. I went to BHP.

7 Q. How about Crystal?

8 A. She also went to BHP.

9 Q. How about Hope?

10 A. Also went to the same school.

11 Q. So all three of you went to Belton?

12 A. Yes, sir.

13 Q. And how about Kourtney, do you know what school she
14 went to?

15 A. I think she was still in elementary then. I'm not
16 sure if she went to Daniel before moving in or not, before
17 then or not.

18 Q. Well, living there the time you did, did you have an
19 opportunity to observe Kourtney with your dad?

20 A. Yes, sir.

21 Q. Just based on your observation what kind of
22 relationship did they have?

23 A. I mean, she seemed to care for him. Like, I mean,
24 she had problems with her dad and, you know, I thought she
25 kind of looked up to my dad. I mean she would always sit

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Lisa Nichole Dean - Cross Examination by Mr. Them

322

1 with him and watch TV.

2 MR. THEM: Objection, Your Honor. These are
3 opinions that this lady is not entitled to make. She can
4 talk about what she saw, but she's making opinions, seemed
5 to look up to, etcetera. And I just think those opinions
6 need to be struck.

7 THE COURT: I overrule your objection. I'll
8 allow her to testify as to her impressions of what she
9 observed.

10 MR. DEJONG: I'm done with that, Your Honor,
11 most of it.

12 Q. When you came back in January of '05, did you see any
13 change in the relationship between Kourtney and your
14 father?

15 A. No, sir. I didn't.

16 Q. Did you ever see any inappropriate behavior on the
17 part of your father directed towards Kourtney?

18 A. No, sir. I didn't.

19 Q. Was there any inappropriate behavior from your father
20 directed toward you?

21 A. No, sir.

22 Q. Would you all take family vacations or anything?

23 A. Did we? Yes, we did.

24 Q. Okay. How many times while you were living there?

25 A. We would go at least once a year. My dad worked at

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Lisa Nichole Dean - Cross Examination by Mr. Them

323

1 BMW and he had family days that they had at Six Flags or

2 Carowinds and we would go to those.

3 Q. We being who?

4 A. My dad, all three of us girls and Maria and her two

5 kids.

6 Q. Now, after March of '05, you never returned to the

7 Clemson address; is that correct?

8 A. Not to live, no, sir.

9 Q. Did you ever visit your father?

10 A. I did occasionally, every couple of days.

11 Q. When you visited him where did you visit him?

12 A. I would just come over and like just talk to him for

13 an hour or so.

14 Q. And you say come over, come over ---

15 A. Oh, just the living room, sir.

16 Q. Okay. What house?

17 A. Oh, the address

18 JOHN DEJONG: All right. Witness is with you,

19 Mr. Them.

20 MR. THEM: Thank you, sir.

21 CROSS EXAMINATION

22 BY MR. THEM:

23 Q. Did you find it a little bit of a hassle being a

24 teenager with teenage sisters and having to drag along

25 this elementary school child, Kourtney?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Lisa Nichole Dean - Cross Examination by Mr. Them

324

1 A. I did, sir.

2 Q. So there was a little bit of friction there like all
3 teenagers don't want to be dragging along a little brother
4 or a little sister. They get in the way; don't they?

5 A. Occasionally.

6 Q. Sure. Now, when y'all went to the movies and you're
7 -- did you take Kourtney with you?

8 A. Yes, sir. We did.

9 Q. Didn't that kind of limit what movies you could see
10 about like PG-13 and all that sort of stuff?

11 A. Well, we couldn't really get into the rated R movies
12 anyway because my sister was younger.

13 Q. Okay. Did that -- is that a problem you ever brought
14 up and talked about?

15 A. No, sir.

16 Q. Is that a problem Hope ever brought up?

17 A. Not to my knowledge.

18 Q. How about Crystal, she was the oldest?

19 A. Not that I know of, sir.

20 Q. Would Hope go to the movies with you and the child
21 we're talking about?

22 A. Yes, sir.

23 Q. Did Crystal?

24 A. Yes, sir.

25 Q. How often did y'all go to the movies?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Lisa Nichole Dean - Cross Examination by Mr. Them

325

1 A. We went usually every weekend. We would skip one

2 every now and again.

3 Q. Crystal would go with you to the movies every

4 weekend?

5 A. Mostly, yes.

6 Q. Okay. Now, the house that we're talking about, let's

7 pretend, just for talking purposes, that this is the

8 house. Okay? You're standing across the street looking

9 at the house, okay?

10 A. Uh-huh (affirmative).

11 Q. Where is the front door of the house? In the middle

12 of the house or towards one end?

13 A. In the middle.

14 Q. In the middle, okay. Where's the driveway? On the

15 end, where?

16 A. It was on the left hand side and went up and straight

17 in front of the house.

18 Q. Okay. So the left hand side would be right here?

19 A. Uh-huh (affirmative).

20 Q. And was that where Kourtney's bedroom was?

21 A. Yes, sir.

22 Q. And the driveway was where?

23 A. It went straight towards the bedroom and cut in front

24 of the house.

25 Q. Okay. Was there a garage over here or anything or

1 just the driveway?

2 A. No, sir. The garage was on the right.

3 Q. Okay. The garage was over here?

4 A. Yes. With the driveway in front of it.

5 Q. And the driveway was over here?

6 A. It came up and went in front of the house.

7 Q. Okay. So when you parked your car here -- well, when

8 y'all came in, would y'all park the car here or would you

9 park it on the thing going across the front of the house

10 or where?

11 A. Maria parked her car there. We had to park on the

12 side.

13 Q. Park on the side over here?

14 A. Yes, sir.

15 Q. Okay. So when you got out of the car, the car -- say

16 you were driving and you parked it over here on the

17 driveway and walked to the front of the house. I believe

18 you told Mr. DeJong that it was approximately from me to

19 you. Is that correct or did I misunderstand?

20 A. He didn't ask me a question like that, sir.

21 Q. Well, how far was it from the driver's side of the

22 car to the front door? Can you tell me, I mean, back me

23 up, bring me forward?

24 A. It was probably here to that wall behind you, sir.

25 Q. This little short wall right here?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Lisa Nichole Dean - Cross Examination by Mr. Them

327

- 1 A. Yes, sir.
- 2 Q. Would you agree that's about three car lengths?
- 3 A. Looks about two, sir.
- 4 Q. Huh?
- 5 A. About two.
- 6 Q. About two?
- 7 A. Yes, sir.
- 8 Q. Okay. And when you got to the house, you actually
- 9 entered the house?
- 10 A. Yes, sir.
- 11 Q. Was there a little entrance hall kind of area or did
- 12 you come right into the living room or something?
- 13 A. An entrance hall, sir.
- 14 Q. Huh?
- 15 A. An entrance hall.
- 16 Q. Okay. And you said the bedrooms were on this end of
- 17 the house; right?
- 18 A. Yes, sir.
- 19 Q. So when you turned down here was there a hallway
- 20 going down this section?
- 21 A. Yes, sir.
- 22 Q. Okay. And how long was that hallway from the time
- 23 you entered the house down to Kourtney's bedroom door?
- 24 A. It's about the same length, sir.
- 25 Q. Same length we talked about here?

1 A. Yes, sir.

2 Q. Okay. And you said you moved out -- let me back up.

3 From the time your father married Maria till May 2003, all
4 the girls lived there, all of your girls, your family?

5 A. Yes, sir.

6 Q. Y'all moved out in 2003?

7 A. Yes, sir.

8 Q. May of 2003?

9 A. Yes, sir.

10 Q. Your older sister moved back in November?

11 A. Yes, sir. That was in 2004.

12 Q. Huh?

13 A. 2004.

14 Q. Okay. And you moved back in January?

15 A. Yes, sir.

16 Q. Brought your other sister with you?

17 A. Yes, sir.

18 Q. You say y'all left again in March?

19 A. It was around the time of March.

20 Q. I'm not asking you to be exact. Was it around March
21 like you said earlier?

22 A. Yes, sir.

23 Q. Okay. So you were only home two months or so?

24 A. Yes, sir.

25 Q. Okay. Now, this may seem like a stupid question and

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Amanda Hope Dean - Direct Examination by Mr. DeJong

329

1 I don't mean for it to be. But obviously if you and your
2 sisters were not there, y'all couldn't know what was going
3 on in the house while you weren't there; could you?

4 A. No, sir.

5 Q. Thank you. I have no further questions.

6 THE COURT: Any redirect?

7 MR. DEJONG: Nothing on redirect, Your Honor. I
8 ask this witness to be excused or allowed to remain in the
9 courtroom as she sees fit.

10 THE COURT: Without objection.

11 MR. THEM: On the same terms, I would agree.

12 JOHN DEJONG: No problem.

13 THE COURT: You may step down, ma'am.

14 MR. DEJONG: The defense will call Ms. Hope Dean
15 to the stand.

16 MISTER CLERK: Place your left hand on the bible
17 and raise your right hand. Do you solemnly swear or
18 affirm the testimony you're about to give in this case to
19 be the truth, the whole truth and nothing but the truth,
20 so help you God?

21 HOPE DEAN: I do.

22 MISTER CLERK: Thank you. Have a seat and state
23 your name for the record, please.

24 HOPE DEAN: My name is Amanda Hope Dean.

25 AMANDA HOPE DEAN,

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Amanda Hope Dean - Direct Examination by Mr. DeJong

330

1 **BEING DULY SWORN, TESTIFIED AS FOLLOWS:**

2 **DIRECT EXAMINATION**

3 **BY MR. DEJONG:**

4 Q. Spell your first name for us, please, ma'am.

5 A. A-m-a-n-d-a.

6 Q. All right. We've got to get something straight here.

7 That microphone will not bite you, scoot up to it. Okay?

8 Keep your voice up. We've got to be able to hear you.

9 What's your middle name?

10 A. Hope, H-o-p-e.

11 Q. And your last name?

12 A. Dean, D-e-a-n.

13 Q. Thank you, ma'am. Are you related to Mr. Robert Lee
14 Dean?

15 A. Yes, sir. I am.

16 Q. What is your relationship?

17 A. He's my father.

18 Q. And do you have any brothers or sisters?

19 A. Yes, sir. I do.

20 Q. How many of each?

21 A. I have one brother and two sisters.

22 Q. And in the ranking of age, where do you fit in?

23 A. I am the baby.

24 Q. You're the baby. I want to take you back, please,

25 ma'am, to late 1999, early 2000. Do you recall where you

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Amanda Hope Dean - Direct Examination by Mr. DeJong

331

1 were living?

2 A. It would be in Clemson, South Carolina.

3 Q. Do you remember the exact address?

4 A. address Drive.

5 Q. And how old were you late 1999, early 2000?

6 A. I would have been about fifteen, sixteen.

7 Q. Okay. And do you know Witness

8 A. Yes, sir. I do.

9 Q. How much older are you than Kourtney?

10 A. I'm not exactly positive. I do know there's a few

11 years difference, a couple to a few years.

12 Q. Well, when you moved into the Clemson address that

13 you just gave us, who all lived there?

14 A. It was me, my father, my sister Lisa and my sister

15 Crystal, my brother Lee and then Maria Wheeler and

16 Witness _ and Nick W.

17 Q. All right ma'am. Now, were you in school at the

18 time?

19 A. Yes, sir. I was.

20 Q. Where did you attend school?

21 A. I attended BHP High School.

22 Q. Who?

23 A. BHP High School.

24 Q. That is?

25 A. It is like on the outside of Anderson.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Amanda Hope Dean - Direct Examination by Mr. DeJong

332

1 Q. BH ...

2 A. BHP. It's for Belton-Honea Path High School.

3 Q. Oh, okay. Threw me there. I'm not familiar with
4 that area. What grade were in then, do you recall?

5 A. I was probably a freshman.

6 Q. Okay. How big was the house you lived in?

7 A. It wasn't very big. I mean, it wasn't small but it
8 wasn't big. It was average.

9 Q. How many bedrooms?

10 A. It was a one, two, three bedroom house.

11 Q. Okay. What was the sleeping arrangements with
12 reference to the bedrooms?

13 A. The first room went to my dad and Maria. The second
14 room was me and Kourtney. The third room was my other two
15 sisters. And they had another room they turned into a
16 bedroom for Nick and my brother.

17 Q. Which room is that, do you recall?

18 A. It was part of the dining room, but they turned it
19 into a bedroom.

20 Q. All right, ma'am. Now, how long did you live at this
21 Clemson address?

22 A. We moved out at the end of May of 2003.

23 Q. We being who?

24 A. Me and my sisters. Both sisters.

25 Q. Now, I believe you said you shared a bedroom with

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Amanda Hope Dean - Direct Examination by Mr. DeJong

333

1 Kourtney?

2 A. Yes, sir.

3 Q. So did you see Kourtney on a daily basis?

4 A. Yes, sir.

5 Q. And your father, did he work at this point in time?

6 A. Yes, sir.

7 Q. Do you know where he worked?

8 A. He worked at BMW Manufacturing.

9 Q. Well, let me ask you this. Maria is not your natural
10 mother; is that correct?

11 A. No, sir.

12 Q. Where is your natural mother?

13 A. She is deceased. She passed away in May.

14 Q. All right. Were your natural mother and father
15 married when she died? I'm sorry, ma'am.

16 A. No, sir.

17 Q. There's a Kleenex if you need one. Did your natural
18 mother and father divorce?

19 A. Yes, sir.

20 Q. When they divorced who did you go live with?

21 A. My father.

22 Q. How about Crystal and Lisa?

23 A. They lived with my mother.

24 Q. So you have always been with your father?

25 A. Yes, sir. Me and my brother lived with my dad.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Amanda Hope Dean - Direct Examination by Mr. DeJong

334

- 1 Q. Okay. Now, do you need a glass of water?
- 2 A. No, I'm fine.
- 3 Q. So in May of 2003, all three of you moved out?
- 4 A. Yes, sir.
- 5 Q. Did y'all move to the same place or different places?
- 6 A. Same place.
- 7 Q. Where did you move to?
- 8 A. To Anderson with my mother.
- 9 Q. I'm sorry?
- 10 A. To Anderson with my mother.
- 11 Q. Now, after you moved out in May of '03, did you ever
- 12 go back to the Clemson address?
- 13 A. Yes, sir. It was -- I'm not sure of the dates. It
- 14 was probably a year we moved back in and we stayed there
- 15 for a while.
- 16 Q. Now, did all three of you go back to the Clemson
- 17 address at the same time or stay in Anderson? How did
- 18 that work?
- 19 A. No. My oldest sister Crystal stayed there longer
- 20 than me and my sister did.
- 21 Q. All right. Now, while you lived at the Clemson
- 22 address from '99 to '03, were you able to observe the
- 23 relationship between your father and Kourtney?
- 24 A. Yes, sir.
- 25 Q. Based on your observations what was that relationship

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Amanda Hope Dean - Direct Examination by Mr. DeJong

335

1 like?

2 A. She adored my father.

3 Q. Okay. She ever exhibit any fear of your father?

4 A. No.

5 Q. So then you left in May of '03 and you went back in

6 '05?

7 A. I believe that was the year, sir.

8 Q. And how long did you live there in '05?

9 A. It was about -- it was a few months, four or five
10 months.

11 Q. When you moved back in '05, what were the living,
12 sleeping arrangements then?

13 A. Kourtney stayed in her room and I stayed in her room
14 and on the couch both.

15 Q. Well, when you went back in '05, did you observe any
16 changes in Kourtney's relationship with your father?

17 A. No, sir. None.

18 Q. The -- of the three of you girls -- and when I'm
19 talking about you girls, I'm talking about you, Crystal
20 and Lisa. When you first started living in Clemson did
21 any of you have your driver's license?

22 A. My sister may have. She was four years older than
23 me.

24 Q. Which sister?

25 A. My older sister, Crystal.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Amanda Hope Dean - Direct Examination by Mr. DeJong

336

1 Q. Okay. How about Lisa?

2 A. Lisa did have her license because she drove us to
3 school.

4 Q. Okay. Would you run errands?

5 A. Yes, sir.

6 Q. Would you go places?

7 A. Yes, sir.

8 Q. When you went places was Kourtney included in that?

9 A. She always wanted to be. Sometimes she was not
10 allowed. But most of the time, nine times out of ten, she
11 was always with us.

12 Q. Okay. Was that your desire?

13 A. No, but ...

14 Q. Okay. Whose desire was that?

15 A. That was hers. We were like sisters, sir.

16 Q. Who was the disciplinarian in the family?

17 A. My father.

18 Q. Okay. How were you -- well, let me ask it. Were you
19 disciplined?

20 A. Yes, sir.

21 Q. How about your sisters?

22 A. Yes, sir.

23 Q. How about Kourtney?

24 A. She was not disciplined by my father. She was
25 disciplined by her mother.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Amanda Hope Dean - Direct Examination by Mr. DeJang

337

1 Q. And what was that discipline?

2 A. It would be what she decided.

3 Q. Okay.

4 A. She was never -- if she got whipped it would be by
5 her mother. Daddy wasn't allowed to.

6 Q. How about Nick?

7 A. Nick, when he got in trouble he would get like sent
8 to bed early or doing his homework or wouldn't go play
9 outside or picking up poop or something.

10 Q. All right. When you went out did you just come and
11 go as you pleased or how did that happen?

12 A. You just want the first time or the second time?

13 Q. First time?

14 A. First time, it was not whenever we pleased because we
15 were still in high school and under my father's roof, so
16 we had to follow the rules of being in bed at a certain
17 time and in the house at a certain time.

18 Q. When was bedtime, if you recall, first time?

19 A. The first time, I had a job at -- the first time. I
20 was also working. So I had to be at the house by eleven
21 o'clock.

22 Q. All right. How about Crystal and Lisa; do you know?

23 A. No, sir. They didn't have really a certain curfew.

24 Q. Okay. Did y'all ever take family vacations together?

25 A. They did go on a family vacation, but me and my

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Amanda Hope Dean - Direct Examination by Mr. DeJong

338

1 brother went with my grandmother at the same time they
2 went on vacation, so I didn't go with them.

3 Q. Excuse me. When they went on family vacations do you
4 know who went?

5 A. Everyone but me. We did go on a family vacation to
6 the zoo, but it was like up to Greenville. So ...

7 Q. The -- going back to -- again, Ms. Dean, I apologize
8 for having to do this, but I've got to do it. Okay? You
9 said you initially went with your father after your
10 natural mother and your father were divorced?

11 A. Yes, sir.

12 Q. At any point in time after the divorce did Lisa and
13 Crystal come and live with you and your father?

14 A. Yes. My sister got in trouble -- my sister moved in,
15 Crystal moved in, and Lisa got in trouble at my mom's
16 house, so she was moved back up to live with us also. So
17 we all ended up living with him.

18 Q. How long was that after the divorce, if you remember?

19 A. It wasn't very long. I would say a year, but I'm not
20 sure.

21 Q. While you were living there either between 1999 and
22 May of '03 or in '05, did you ever see your father touch
23 or deal with Kourtney inappropriately?

24 A. Never, not once.

25 Q. Did he ever deal with you inappropriately?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Amanda Hope Dean - Cross Examination by Mr. Them

339

1 A. No, sir.

2 Q. In '99 to '03, did your father work?

3 A. Yes, sir.

4 Q. Do you know where he worked?

5 A. BMW.

6 Q. Did you ever have occasion to do anything as a result
7 of his employment with BMW?

8 A. Oh, we did go to family trips to BMW and Six Flags.

9 Q. All right, ma'am.

10 JOHN DEJONG: The witness is with you, Mr. Them.

11 THE COURT: You may cross examine.

12 CROSS EXAMINATION

13 BY MR. THEM:

14 Q. Not to be disrespectful, but would you mind if I
15 would call you Hope ---

16 A. Go ahead.

17 Q. -- so we can keep everybody straight?

18 A. That's fine.

19 Q. Rather than talk about Ms. Dean, Ms. Dean and Ms.
20 Dean. Okay. Hope, what's your date of birth?

21 A. It's 5/1/1986.

22 Q. 5/1/1986. So in December of 1999 when your father
23 and your sisters and brother moved in - I'm going to call
24 her Maria just for the sake of being able to -- that would
25 be Kourtney's mom; wouldn't it? So when y'all moved in in

1 December 1999, if you were born in '86, you would have
2 been thirteen years old; correct?

3 A. I'm not positive. We moved in in '03 and I was born
4 in '86. I mean, moved out in '03 and I was born in '86.
5 I'm not sure.

6 Q. Maybe I misunderstood you. I want to make sure. I'm
7 trying to understand your testimony. Did you tell Mr.
8 DeJong that in December of 1999 when you moved in with
9 Maria and Kourtney and Nick that you were fifteen to
10 sixteen years old?

11 A. No, sir. I said fifteen and sixteen, but I'm not
12 sure.

13 Q. Okay.

14 A. I wasn't sure of how old I was when we moved in.

15 Q. But I mean, if you were born in '86, in '96 you'd be
16 ten years old. '97, '98, '99, you would have only been
17 thirteen, not fifteen or sixteen; correct?

18 A. Okay.

19 Q. Okay. Now, can I assume you, like most teenagers,
20 that you don't want to be stuck carrying your little
21 brother or your little sister or your stepbrother or
22 little sister around? They're kind of baggage; aren't
23 they, at that age?

24 A. It was the first time for me, yes.

25 Q. Now, did y'all take Nick places or just Kourtney?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Amanda Hope Dean - Cross Examination by Mr. Them

341

1 A. We did take Nick places and Kourtney.

2 Q. Well, when you took Kourtney out, did that kind of
3 control what y'all could do because she was so young, like
4 what kind of movies y'all could see, GP's or PG's or stuff
5 like that?

6 A. Not really. When we went out, we would like go to
7 the store and stuff and Kourtney would just want to ride
8 with us.

9 Q. Okay. So she wasn't going to the movies with you and
10 your sisters every weekend?

11 A. No.

12 Q. She mostly did the little errands where y'all could
13 take her out to the store and she wouldn't get in the way
14 much?

15 A. Yes.

16 Q. Okay. Y'all ever -- you -- let me ask you. Did you
17 ever do anything with Kourtney more than just these little
18 side trips to the store to deliver something or to pick up
19 something?

20 A. She has taken a trip to Anderson with us.

21 Q. Do what?

22 A. She has taken trips to Anderson with us. We went
23 shopping.

24 Q. Three, four times? What?

25 A. At least over a handful. I mean, we were there for a

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Amanda Hope Dean - Cross Examination by Mr. Them

342

1 while.

2 Q. Over a handful. Let's say ten. Two handfuls,
3 roughly?

4 A. That's fine.

5 Q. Okay. Now, your dad had some health problems; didn't
6 he, with headaches and things like that?

7 A. Yes, sir.

8 Q. And from time to time they got serious enough that he
9 was forced to miss work; correct?

10 A. Yes, sir.

11 Q. How much work did he have to miss because of those
12 headaches?

13 A. It wasn't a lot. It only started after he had his
14 back surgery.

15 Q. Uh-huh (affirmative). And when was that?

16 A. I'm not sure of the year.

17 Q. As best you can estimate? And I heard you say you're
18 not sure.

19 A. As best as I can estimate, it was about ten years
20 ago.

21 Q. Okay. Well, I'm more interested in the time when he
22 was married to Maria. Did he have to miss a lot of work
23 then because of headaches and things?

24 A. No. He was out on disability for a few months, but
25 it was not missing -- he was there -- he got home at like

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Amanda Hope Dean - Cross Examination by Mr. Them

343

1 nine o'clock every night and there wasn't -- I can't

2 remember hardly any days that he missed, but I'm sure he

3 missed a few days.

4 Q. Okay. In response to a question from Mr. DeJong, you

5 said that Kourtney adored your father?

6 A. Yes, sir.

7 Q. What did you see her do that leads you to believe

8 that she adored your father?

9 A. She always talked about how good my father was and

10 how good of a father he was to us.

11 Q. Would you see or do -- I heard what you just said.

12 You said she always talked about him. What did you see

13 her do, an action?

14 A. Always wanted to be around him. Always. Whenever we

15 went somewhere -- even when we tried to move out, she

16 still asked to move in with us.

17 Q. Okay.

18 A. It was never any kind of fear or anything, anything

19 out of the ordinary.

20 Q. Did she just kind of adore him around you or did she

21 adore him around your other two sisters too?

22 A. It was around everyone in the house.

23 Q. Okay. You said one of your sisters went to live with

24 your biological mother when she and your father got

25 divorced and had come to live with y'all, you went to live

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Amanda Hope Dean - Cross Examination by Mr. Them

344

1 with your dad, because she got into some trouble. What do
2 you mean trouble?

3 A. I have no -- I was too young at the time. I just
4 know she got in trouble and she got sent to live with us.

5 Q. Okay. That's good enough. Now, I'm going to do this
6 slowly and I'm not trying to be disrespectful. I just
7 want to make sure we're on the same wavelength. Y'all
8 moved into the house in December of '99; correct?

9 A. That may be correct. I'm not sure ---

10 Q. On or about around there. Okay?

11 A. Okay.

12 Q. And y'all stayed there until May of 2003?

13 A. Yes, sir.

14 Q. When all the girls moved out and went to live in
15 Anderson County?

16 A. Yes, sir.

17 Q. Crystal came back sometime in when?

18 A. It was -- I believe it was 2004, but I'm not sure of
19 the month. More towards end of ---

20 Q. If I told you November would you argue with me?

21 A. No, sir.

22 Q. Okay. Around November. Okay. So from May of 2003
23 until November of 2004, none of you three girls was living
24 there?

25 A. No, sir.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Amanda Hope Dean - Cross Examination by Mr. Them

345

1 Q. And brother Lee had long since gone. He wasn't

2 living there during that time; correct?

3 A. Correct.

4 Q. Okay. Now, Crystal moved back in November of '04.

5 In January of '05, one or two months later, you and Lisa

6 moved back ---

7 A. Correct.

8 Q. -- to the house? So now all three of the girls are

9 home?

10 A. Yes, sir.

11 Q. Your sisters, I mean. All right. Then in August of

12 that year, Crystal moves out? Is that about right, August

13 or so?

14 A. Probably. I'm not sure of the months.

15 Q. Did you leave -- did you and your sister Lisa leave

16 with Crystal or did y'all follow a couple of months later?

17 A. No. We left like a month before she did.

18 Q. Okay. Y'all left before she did. But it -- was it

19 around August or so?

20 A. Yes.

21 Q. Okay. And did y'all ever go back to live at your

22 dad's house?

23 A. No, sir. He moved in with us later though.

24 Q. Okay. So from August or so of '05 until your father

25 and your stepmother separated in November of '05, you were

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Amanda Hope Dean - Cross Examination by Mr. Them

346

1 not living there?

2 A. Correct.

3 Q. Would you agree with me that if you weren't living
4 there you wouldn't know what was going on there, ---

5 A. I agree.

6 Q. -- other than what people might have told you?

7 A. I agree.

8 Q. I thank you very much, ma'am. I appreciate it. I
9 have no further questions.

10 THE COURT: Anything on redirect?

11 MR. DEJONG: Nothing on redirect, Your Honor. I
12 ask the witness to be excused or allowed to remain in the
13 courtroom.

14 THE COURT: Thank you. You may be excused. You
15 may step down from the witness stand.

16 MR. THEM: Excuse me, Your Honor, may I
17 approach?

18 THE COURT: Yes, sir. Be glad to hear from you.

19 (WHEREUPON, Mr. Them and Mr. Dejong approached the
20 bar.)

21 THE COURT: Mr. Foreman, ladies and gentleman,
22 we've reached a good time to break, I think, rather than
23 go on with another witness. So I'm going to send you home
24 for the evening. Let me remind you again, you've not
25 heard all this case. You haven't heard all the testimony.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Amanda Hope Dean - Cross Examination by Mr. Them

347

1 Certainly haven't heard my instruction to you on the law.
2 So let me remind you again the commitment you've made to
3 these parties not to discuss the case and not let anyone
4 discuss it with you.

5 Again, I say to you, not to tempt you in anyway but
6 to instruct you, you shouldn't do any kind of research or
7 investigation. That would be totally improper. Your
8 commitment is that you're going to decide this case from
9 what the lawyers present to you in this courtroom and that
10 alone. So you should not do any independent
11 investigation. You should not discuss it with anyone. I
12 don't know that there'll be any media coverage, I wouldn't
13 suspect. But if there is, you should refrain from reading
14 the newspaper or watching the news. You can have your
15 family clip any news articles there might be. You can
16 read those after the fact. But it's very important that
17 you maintain the integrity of the jury system. So let me
18 remind you again to remember your oath that you've made to
19 these parties.

20 We're going to start back at nine-thirty in the
21 morning. I've got some other matters I need to take care
22 of this afternoon. We'll be ready to proceed at that time
23 with more testimony. If you'll be in your jury room at
24 nine-thirty in the morning, we'll be ready to proceed.
25 Thank you very much. Have a good evening, ladies and

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Direct Examination by Mr. DeJong

348

1 gentlemen.

2 (WHEREUPON, the jury exited the open court at
3 approximately 5:17 p.m.)

4 THE COURT: All right. We'll be at ease till
5 nine-thirty in the morning on this case.

6 9/23/09

7 (WHEREUPON, Court convened with all parties present
8 and the following proceedings were had.)

9 THE COURT: You gentlemen ready to proceed?

10 MR. THEM: Yes, sir.

11 MR. DEJONG: Ready for the defense, Your Honor.

12 THE COURT: All right. Let's have our jury come
13 in. Are all of them here? Okay. If you'll bring them in
14 please.

15 (WHEREUPON, the jury entered the open court at
16 approximately 9:39 a.m.)

17 THE COURT: Good morning, ladies and gentlemen,
18 we're now ready to proceed with the trial of the case.
19 Mr. DeJong, you may call your next witness.

20 MR. DEJONG: Thank you, Your Honor. May it
21 please the court. The defense will call Mr. Robert Lee
22 Dean to the stand.

23 MISTER CLERK: Place your left hand on the bible
24 and raise your right hand. Do you solemnly swear or
25 affirm the testimony you're about to give in this case to

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Direct Examination by Mr. DeJong

349

1 be the truth, the whole truth and nothing but the truth,
2 so help you God?

3 DEFENDANT: I do.

4 MISTER CLERK: If you would, have a seat and
5 state your name, please.

6 DEFENDANT: My name is Robert Lee Dean.

7 ROBERT LEE DEAN,

8 BEING DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MR. DEJONG:

11 Q. How old are you, Mr. Dean?

12 A. Forty-seven, sir.

13 Q. Are you the ex-stepfather of Witness

14 A. I am, sir.

15 Q. At any time that y'all were living together, Mr.

16 Dean, did you ever fondle Witness breasts?

17 A. No, sir. I find that to be a sick, offensive thing.

18 I would not do that to any child, let alone my daughter.

19 And I did consider Nick and Kourtney my children.

20 Q. Did you ever lick her breasts?

21 A. Never, sir.

22 Q. Did you ever undress her?

23 A. Never did I.

24 Q. Did you ever lick her between her legs?

25 A. No, sir. Again, that's sick and disgusting. It's

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Direct Examination by Mr. DeJong

350

1 not something I would do to any child, including any of my
2 children.

3 Q. Let me take you back to about '98 or 1999, Mr. Dean.

4 Did you start a relationship with Maria Galluscio?

5 A. I did, sir.

6 Q. And about when did that relationship start?

7 A. Approximately spring or late fall of '98.

8 Q. At some point in time did you and Ms. Galluscio set
9 up a household, set up housekeeping, live together?

10 A. We did. During, excuse me, during '99 when it was
11 evident that her parents -- grandparents were moving to
12 Florida when he retired, she did not want to move to
13 Florida with them. So because we were dating we decided
14 to look for a house together so that we could live
15 together and be a family.

16 Q. And did you finally move into a house?

17 A. Yes, sir. We did. We looked at several houses. We
18 decided on the address Drive. That house
19 belonged to her grandmother and her grandmother gave her a
20 really good deal on the house.

21 Q. And what was the address of that house?

22 A. It was address Drive in Clemson.

23 Q. All right, sir. Did you and Ms. Galluscio ever live
24 at any other residence other than that one?

25 A. No, sir.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Direct Examination by Mr. DeJong

351

1 Q. Let me back up a little -- even a little further if I

2 may, Mr. Dean. Had you previously been married?

3 A. Yes, sir. I was previously married. I have four

4 children by that marriage.

5 Q. All right, sir. And how many boys?

6 A. One boy and three girls.

7 Q. What was the boy's name?

8 A. Jonathan Lee.

9 Q. What were the girls' names?

10 A. Crystal Leanne was the oldest, Jonathan Lee was next,

11 Lisa Nichole was the third child, and Amanda Hope was the

12 fourth.

13 Q. And your first wife, were y'all divorced?

14 A. Yes. We did divorce.

15 Q. All right. When you divorced where and with whom did

16 the four children go?

17 A. Although it was my idea to get the divorce because of

18 things that had happened, we tried to make it amicable and

19 easy for the children. And we pretty much let the

20 children decide who they wanted to stay with. And to make

21 it even as far as money-wise where she would not have to

22 pay any alimony or child support, I kept two children and

23 she kept two children. She kept the two oldest girls with

24 her, the two youngest lived with me.

25 Q. All right, sir. Now, did that arrangement stay the

1 same?

2 A. It did not. I'm not sure exactly what some of the
3 problems were. After a few months my oldest daughter
4 decided she wanted to come and live with us. A few weeks
5 later my daughter had a curfew problem, I don't think she
6 was being supervised very well by my first wife, and she
7 moved in with me at that time also.

8 Q. All right, sir. About -- well, let me ask you this.

9 In -- and I may have and I apologize if I have. When did
10 you and Ms. Galluscio move into the house in Clemson?

11 A. It was the first of December of '99. We actually
12 started looking in November. I believe she signed the
13 papers either at the end of November or the first of
14 December. Once the papers were signed, everything went
15 through the bank, we were able to have the power turned
16 on, that's when we all moved in together.

17 Q. Now, when you moved into the Clemson address were all
18 of your -- all four of your children living with you?

19 A. Yes. All four of mine and also Nick and Kourtney.

20 Q. All right. And how big was that house in terms of
21 bedrooms and baths, Mr. Dean?

22 A. We looked at several. The house at address
23 was only a three bedroom, but it had a living room, a
24 dining room, actually a formal dining room, a den and also
25 had an enclosed sunroom. Because it was her grandmother's

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Direct Examination by Mr. DeJong

353

1 house and was getting a good price on it, we decided that
2 the girls would split two of the bedrooms, Maria and I
3 would take the master bedroom and that we could turn the
4 den/formal living room into a bedroom by kind of dividing
5 that and make that a bedroom for the boys.

6 Q. At my request did you do a rough drawing of the
7 layout of that house?

8 A. Yes, sir. I did a very rough drawing. And I
9 apologize, I am not an artist. I have trouble drawing
10 stick people.

11 Q. Let me ask you this. You didn't draw it real big,
12 but can you see it from where you are?

13 A. Yes, sir. I can see it. And like I say, I pretty
14 much know the layout of the house.

15 Q. All right, sir. As you ---

16 MR. THEM: Your Honor, may I move around so I
17 can see?

18 THE COURT: Yes, sir.

19 Q. Let's get oriented a little bit. This, I gather, is
20 the rough drawing of the house?

21 A. Yes, it is.

22 Q. And this is a street?

23 A. Yes, it is.

24 Q. What street is this?

25 A. It skips my mind. I wrote it down. Berkeley, I

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Direct Examination by Mr. DeJong

354

1 I believe.

2 Q. You have Berkeley written down.

3 A. Okay.

4 Q. Okay. And then this street right here would be what?

5 A. It's the Plain View address.

6 Q. All right, sir. Now, if you have to come down -- if

7 you can't see it and have to come down, let me know.

8 Okay?

9 A. All right, sir.

10 Q. So this is address right here?

11 A. Correct, yes, sir.

12 Q. And this would be the front of the house?

13 A. Correct.

14 Q. Now, about -- if you know, Mr. Dean, about how far

15 off of the street, off of address does this house

16 sit back?

17 A. The total, I would think, would be about twenty to

18 thirty feet, maybe two to three car lengths from the front

19 door to the street.

20 Q. All right, sir. Now, did the house have a garage?

21 A. It did, sir. It's on the front part of the house.

22 It was almost kind of detached. I think they built that

23 on afterwards. It was a one car garage.

24 Q. All right. As you face the house, if you're standing

25 on address facing the house, would the garage be on

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Direct Examination by Mr. DeJong

355

1 the left or the right?

2 A. It would be on the right just as it is in the
3 drawing.

4 Q. Okay. This is the garage ---

5 A. Yes, sir.

6 Q. -- that you drew right here? Now, as far as
7 driveways are concerned, was there a driveway coming off
8 of address that would take you right into the
9 garage?

10 A. No, sir. There was not.

11 Q. Where was the driveway?

12 A. The driveway was just to the left. You would come
13 up, there was a small squared off area there, but the
14 driveway itself was basically, you pull right into the
15 front of the garage and that's to the front door.

16 Q. Oh, so the garage doors would have been
17 perpendicular, I guess, to the house itself; right?

18 A. Right.

19 Q. All right, sir. Now, do you know how many square
20 feet this house has in it?

21 A. Honestly, no, sir. I don't.

22 Q. All right, sir. Now, if you can see, tell me what
23 room this is right here?

24 A. That would be the master bedroom.

25 Q. Who occupied that bedroom during your either staying,

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Direct Examination by Mr. DeJong

356

1 living with or marriage to Ms. Galluscio?

2 A. Maria and I would share the master bedroom.

3 Q. Did it have its own bathroom?

4 A. It did. We shared that bathroom with the boys
5 because we thought the girls needed their own privacy.

6 Q. All right. So there was a separate master bathroom;
7 correct?

8 A. Right. It was a master bathroom with a door from the
9 master bedroom but also a door from the hallway.

10 Q. All right. This is the master bathroom?

11 A. That's correct.

12 Q. All right. Now the other two bedrooms, where were
13 they?

14 A. They were actually across.

15 Q. All right. So let's look at this bedroom, I guess it
16 would be on the far end of the house, that is the left end
17 as you're facing the house from address

18 A. That's correct.

19 Q. When your daughters lived there who occupied that
20 bedroom?

21 A. That would be Amanda and Hope. Excuse me. Amanda
22 and Kourtney.

23 Q. All right. So they were on the far end of the house?

24 A. Correct.

25 Q. And then was -- who occupied the third bedroom, if

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Direct Examination by Mr. DeJong

357

1 you will?

2 A. When Crystal and Lisa lived there when we first moved
3 in, that's the bedroom they occupied. When they moved out
4 we allowed Nick to move into that and kept the bedroom
5 that they had kind of a computer room and just kind of an
6 extra room.

7 Q. All right. And what if anything separated those two
8 bedrooms?

9 A. There was a small bathroom. It had the sink, the
10 toilet and a shower stall. There was doors from each
11 bedroom leading into that bathroom.

12 Q. All right. Let's back up here a minute now. Here
13 can you see what, what I'm pointing to here?

14 A. Yes, sir.

15 Q. What is that?

16 A. That really to me was a great room. There was a
17 small wall coming out from either side about three feet
18 that divided it. Where you actually have the pen was
19 where her grandmother had her formal dining room. And
20 that's what we turned into their bedroom because it was
21 carpeted.

22 Q. All right, sir. And who occupied that formal dining
23 room/bedroom while your three daughters lived there?

24 A. My son Lee and Nick lived in that room.

25 Q. All right. Now, the -- let's talk a little about

1 your daughters living there. When you moved in in 1999, I
2 believe, how many people were actually living in that
3 house?

4 A. My four children, my two stepchildren and my wife and
5 I. She wasn't my wife then but she was -- you know, we
6 were living together.

7 Q. Yes, sir. Well, let's clarify that. Did y'all
8 ultimately get married?

9 A. We did.

10 Q. And when did you get married, if you recall, Mr.
11 Dean?

12 A. I believe it was February of 2001. I was having
13 problems with headaches. They originally thought it might
14 be a tumor. And because of the fact that it could get
15 very serious, we did marry so that the family would be
16 taken care of.

17 Q. All right, sir. Now, did your daughter -- well, let
18 me ask you this. We're going to jump to the back end. At
19 any time did you move out of address in Clemson?

20 A. Yes, sir. We'd been having problems for about a year
21 and a half in '05. I'd gotten the impression that she was
22 cheating on me.

23 MR. THEM: Objection, Your Honor. Basis of
24 knowledge.

25 THE COURT: Overruled.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Direct Examination by Mr. DeJong

359

1 Q. Go ahead, Mr. Dean.

2 A. I found some things on the internet where she had
3 been ---

4 MR. THEM: Objection, Your Honor. He's now
5 going into detail. We're not trying a case on adultery.

6 THE COURT: What's the relevance, Mr. DeJong?

7 MR. DEJONG: Just laying ground work here, Your
8 Honor, why ---

9 THE COURT: Well, tell me the relevance of this
10 as far as the issues.

11 MR. DEJONG: The relevance is, Your Honor, she
12 said when she testified that they were just having
13 problems over money and being apart. I think I'm entitled
14 to share with this jury what Mr. Dean's take on all that
15 was.

16 MR. THEM: This is impeachment on a collateral
17 matter, Your Honor.

18 THE COURT: Well ...

19 A. And I'm sorry, Your Honor, I thought ---

20 THE COURT: Well, hang on just a minute. I
21 don't believe that's relevant, Mr. DeJong. Please move
22 on.

23 Q. Nonetheless, you separated?

24 A. Yes, we did.

25 Q. And when was that?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Direct Examination by Mr. DeJong

360

1 A. November of '05.

2 Q. All right. So you lived at address from
3 1999 to November of '05?

4 A. Yes, I did.

5 Q. Did Lee continue to live with you during that period
6 of time?

7 A. Lee stayed approximately, I believe, two years. But
8 he had gotten a grant from Bosch to go to Tri-county Tech.
9 They were going to send him to school. It was easier and
10 closer for him to live with my sister. And that's the
11 reason that he moved out of the house, to make it easier
12 and closer for him to drive to school.

13 Q. Did he ever move back in to address

14 A. No, sir. He never did.

15 Q. Now, let's talk about your three daughters. Did they
16 ever move out of address

17 A. Yes, sir. They were unhappy with the situation.
18 They did move out. They had some hardships and they did
19 move back in for a short time until they could get back on
20 their feet and move and get their own apartment again.

21 Q. First time they moved out, do you recall
22 approximately when that was?

23 A. No, sir. I don't recall the approximate date. I'm
24 trying to remember. I thought it was in sometime '03.

25 Q. All right, sir. Now ---

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Direct Examination by Mr. DeJong

361

1 MR. THEM: Excuse me, are you finished with the
2 drawing?

3 MR. DEJONG: Pardon? No. For a little while if
4 you want to sit down.

5 MR. THEM: Okay, sir.

6 Q. In '03, so that I'm clear, did one, two, three, who
7 moved out?

8 A. I believe in '03 all three of them moved out to try
9 to get an apartment together. They were trying to
10 reestablish a bond with their mother.

11 Q. And was Lee already gone at that point in time?

12 A. I believe he was already gone at that point in time.

13 Q. When the girls, your girls, left in '03, did the
14 living arrangement remain the same and -- or excuse me --
15 the bedroom arrangement remain the same in the house?

16 A. No. We thought it was appropriate for Nick to go
17 ahead and move into his own bedroom.

18 Q. And what bedroom then did he move back into?

19 A. He took the empty bedroom that my oldest two
20 daughters was in.

21 Q. And that would have been?

22 A. Back bedroom.

23 Q. This bedroom right here?

24 A. Yes. That's correct.

25 Q. All right. Now, Kourtney and Nick, did they continue

1 to live with you and Ms. Galluscio the entire time?

2 A. They did, with the exception of the summer visits to
3 their grandparents and every other weekend they got to
4 visit with their father.

5 Q. All right, sir. So now I believe you said your
6 daughters came back for a little while; is that correct?

7 A. They did.

8 Q. Do you recall when that was?

9 A. Crystal came back first, and I believe that was
10 sometime in '04. I'm not real sure of the exact date.
11 Probably the latter part of '04.

12 Q. All right, sir. How about the other two girls?

13 A. The other two girls continued to try to struggle to
14 be on their own, but eventually moved back, I believe it
15 was January of '05.

16 Q. Okay. Now, when Crystal moved back, you say you
17 believe in '04, did the bedroom arrangements -- at that
18 point in time, as I understand, Kourtney would have been
19 in the far end bedroom?

20 A. Right.

21 Q. And Nick would have been in the, for want of a better
22 term, the adjoining bedroom; correct?

23 A. Correct.

24 Q. All right, sir. When Crystal moved back in did that
25 remain the same?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Direct Examination by Mr. DeJong

363

1 A. I'm not sure exactly when all that changed. But when
2 they first came back there was a little bit of animosity
3 that my grown children were having to move back in with
4 us. So we kind of -- if I'm not mistaken, I believe Nick
5 continued to stay in his room and we let Crystal go into
6 the other room that we had previously set up for the boys.

7 Q. Now, when Lisa and Hope came back what was the
8 arrangement then?

9 A. I believe the arrangements was pretty much switched
10 back like it was. I'm not entirely sure. I know Hope
11 spent time in Kourtney's room. We put up a bed in there
12 for her. But at that time Kourtney had already had a desk
13 and it was a little crowded. I believe her and Lisa both
14 kind of swapped out back and forth. And as you see
15 there's a sunroom on the very back right of the house.

16 Q. This is the sunroom?

17 A. Yes, sir. It was an enclosed sunroom that we had a
18 couch and TV and everything, and they would sometimes, you
19 know, swap back and forth sleeping on the couch in there.

20 Q. All right. So when -- well, I believe you said that
21 they left again; right?

22 A. Yes. They did. The two, Lisa and Hope, managed to
23 find themselves an apartment together. Crystal was
24 thinking about going back to school, was having trouble
25 getting another job, so she stayed there in the residence.

1 And she stayed in the room with -- that had previously
2 been my son's room.

3 Q. Previously been your son's room. Are you talking
4 about the bedroom or the dining room?

5 A. The formal dining room.

6 Q. All right, sir. At any time that you lived in
7 address did either one of these bedrooms here remain
8 vacant?

9 A. Never were vacant, no, sir.

10 Q. So -- all right, sir. Now, the -- how many vehicles
11 did you have?

12 A. We had three. Maria had one, I had one and my
13 children had one.

14 Q. What was the parking arrangements here at the house?

15 A. When Maria was home, she parked in front of the
16 house. If she was gone to work like at night and the
17 girls had been out working, they would leave to go to
18 school early. They would park in front of the house
19 because it would be, you know, dark. And I would usually
20 park over on the very side.

21 Q. The other side being this side?

22 A. Yes, sir. Right. Correct.

23 Q. All right. Now, in relationship to address and
24 the house, can you tell me where the front door is?

25 A. It's -- if you pulled the car up right in front of

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Direct Examination by Mr. DeJong

365

1 the garage, as soon as you got out there were steps
2 leading up to the front door. It was a car length. If
3 you parked a car -- if this was the garage and you parked
4 a car right here, the front door would be right there.

5 Q. Now, when you -- how long would it take you if you
6 parked by the front door to get out of the driver's side,
7 I guess, if -- you were facing the garage; right?

8 A. Right.

9 Q. Get out of the driver's side and get into the front
10 door?

11 A. Never timed it, but I assume you open the front door
12 -- I mean, your car door, you shut it, there's like three
13 or four steps, you open the screen door, you open the
14 front door and you're in the house.

15 Q. All right, sir. Now, what was security like at your
16 house? Did you keep the front door locked or unlocked or
17 how did that work?

18 A. We usually had both a dead bolt and of course the
19 handle lock. When everyone was gone and no one was
20 expected in, we locked both. Other than that it would
21 just be the door lock.

22 Q. I see. Now, when you came in the front door what did
23 you come in to?

24 A. It's what I would call a little hallway. You took
25 about two feet in and it would break off to the kitchen.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Direct Examination by Mr. DeJong

366

1 You took another probably three feet and if you went
2 straight ahead you would be in the formal living
3 room/formal dining room. And that same three feet, if
4 you're standing there and you turn left, there's the
5 hallway that you go down to the bedrooms at the other end
6 of the house.

7 Q. All right, sir. Now this drawing is not to scale; is
8 it, Mr. Dean?

9 A. No, sir. I'm afraid it's not.

10 MR. DEJONG: Your Honor, I would respectfully
11 move that drawing into evidence as Defense Exhibit 1.

12 MR. THEM: Without objection, Your Honor.

13 THE COURT: Without objection, Defense Exhibit
14 Number 1 will be marked and entered into evidence.

15 (WHEREUPON, Defendant Exhibit Number 1 was marked and
16 admitted into evidence.)

17 MR. DEJONG: Court recorder, may I move the
18 whole easel over there because I've got to keep this thing
19 taped up or it's going to fall.

20 Q. Now, when you -- from '99 to '05, Mr. Dean, did you
21 work?

22 A. Yes. I worked at BMW. I actually started BMW in
23 September of '99 before we moved in together.

24 Q. And what kind of work did you do there?

25 A. I worked on the assembly line.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Direct Examination by Mr. DeJong

367

1 Q. What hours did you work?

2 A. When I first started I started on what they called a
3 -- well, the first three weeks I went through a training
4 period where we started at seven o'clock and finished at
5 five. After that three week training period, we went
6 through a training period on what they called A shift or
7 first shift which required you to be there at six-thirty
8 and you worked until approximately four to five.

9 Q. All right. Now, when you worked at BMW was that the
10 plant over there off of 85?

11 A. Yes, sir. It was Highway 101 in Greer.

12 Q. And so what shift, when you finally got cranked up
13 and running there, what shift did you actually work?

14 A. Well, once they started the line that I was hired
15 for, which was the X5, the new line, I did go to what they
16 called a B shift. That started at approximately -- it's
17 actually two times. When I first started it was eight
18 o'clock. But when they expanded it to a ten hour shift
19 then I had to be there at six.

20 Q. In the morning or in the evening?

21 A. In the evenings, on the B shift.

22 Q. Okay. Now, did Ms. Galluscio work during the term of
23 your marriage and living together?

24 A. For the most part. When we first lived together she
25 worked a second shift. And because I was also working, my

1 children would kind of babysit the stepchildren. They
2 didn't respond so well to my children being in charge, so
3 we arranged it to where she would only have to work
4 weekends and be off during the week to be there with the
5 children to make sure they were fed, make sure they did
6 their homework and make sure that an adult was there in
7 the house.

8 Q. All right, sir. Now, when she worked, what hours did
9 Ms. Galluscio work?

10 A. She originally, if I recall worked -- she knew the
11 head nurse or charge nurse on her floor, and if I remember
12 correctly she worked three twelve hour shifts, which were
13 Friday, Saturday and Sunday, and she got paid for forty
14 hours. Now that ultimately changed because she had a
15 heart condition that required her to take some time off.
16 And once she took that time off she basically lost that
17 spot. There was a time that she did not work. She was
18 there because of that. And when she got back to work then
19 they put her ---

20 MR. THEM: Objection, Your Honor. Relevancy.

21 He asked him when she worked and ---

22 THE COURT: I overrule your objection.

23 Q. Go ahead, Mr. Dean.

24 A. I believe when she started back they only would allow
25 her to work an eight hour shift for a while, for probably

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Direct Examination by Mr. DeJong

369

1 a period of two to three years, and then she was able to
2 get back on a twelve hour shift when they were cutting
3 back manpower.

4 Q. When did she get back on the twelve hour shift, if
5 you recall?

6 A. Honestly, I do not recall.

7 Q. All right, sir. Well, do you recall for the majority
8 of the time or the -- well, can you give me a percentage
9 of the time that you lived together or were married, what
10 percentage did she work eight hour shifts?

11 A. I would say at least forty percent.

12 Q. All right, sir. Now, what did you perceive your
13 relationship with Kourtney to be?

14 A. I thought it was good, as all stepparents have a
15 little bit of, I guess, adjusting to new children. I
16 think they somewhat blamed me for coming in and taking
17 their father's role. I think that's how they saw it. I'm
18 not sure. But for the most part it was good. We -- you
19 know, I made sure that they were involved with my children
20 when they went to movies. Tried to incorporate them going
21 to the store, going shopping, going out to eat. I always
22 made sure they were included for vacations.

23 Q. Who was the disciplinarian in the household when you
24 lived there?

25 A. For the most part it was me, simply because I had

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Direct Examination by Mr. DeJong

370

1 older children and they needed disciplining more. Maria
2 again, I think wanted me to have that role so that she,
3 you know, didn't have to.

4 Q. With regard to Kourtney and Nick, what types of
5 discipline, if any, did you use?

6 A. I'm old school and I believe in spanking. I spanked
7 my children. I did originally want to spank Nick because
8 he's a boy. I never spanked Kourtney. She's a girl.
9 That would be her mother's job. I think the children
10 complained about the spanking, because really they weren't
11 even taught to say yes, sir, yes, ma'am, no, ma'am, no,
12 sir. But I did that. I was old school. That's what I
13 believed. So I think they complained, not only to their
14 mother but their grandparents. And after that I was told
15 I could not spank ---

16 MR. THEM: Objection, Your Honor. The answer's
17 not responsive to the question.

18 THE COURT: All right. I sustain the objection.

19 Q. Don't go into that.

20 A. I'm sorry.

21 Q. How about being sent to bed?

22 A. That was a punishment that Maria came up with because
23 they didn't like what they called corporal punishment.

24 Any time that they didn't complete their homework, didn't
25 complete chores, talked back, did anything that a normal

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Direct Examination by Mr. DeJong

371

1 child would do that would be considered needing punishment

2 for, then they were sent to bed thirty minutes early.

3 Q. What was normal bedtime?

4 A. Kourtney normally, again, was different than what I
5 did my children. Maria let Kourtney usually stay up till
6 ten o'clock when she left for work, when she worked the
7 night shift, and Nick was usually an hour before that.

8 Q. That would be nine o'clock?

9 A. Eight-thirty, nine o'clock.

10 Q. All right, sir. Now, did you ever send Nick to bed
11 other than for -- well, let me rephrase that. Did you
12 ever send him to bed early for anything other than
13 punishment?

14 A. Never. And even when I sent him to bed, he wasn't
15 always asleep. As young children do he fought going to
16 bed early. He would -- you know, got to go to the
17 bathroom, I need a drink of water but ...

18 Q. Did y'all have TVs in this house?

19 A. Yes, we did.

20 Q. How many?

21 A. We had one, two, three, four. We had four. I'm not
22 sure that we had one in Kourtney and Hope's room. I
23 thought at the very end Kourtney got one, but I'm not real
24 sure.

25 Q. When you lived with Ms. Galluscio and were married to

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Direct Examination by Mr. DeJong

372

1 her did you and Kourtney communicate?

2 A. We did.

3 Q. And when your daughters were there did they all
4 communicate?

5 A. They did. I again, tried to make sure it was a
6 family unit, knowing that stepchildren, especially with
7 the age difference, would be difficult for them.

8 Q. Did your daughters run errands for you?

9 A. Of course.

10 Q. When they ran those errands would they all go, some
11 go? How did that work?

12 A. Most of the time I would like -- when they ran
13 errands would like for them to take the children when they
14 could. Most of the time they did go. There was sometimes
15 they didn't because their mother wouldn't let them go.
16 Their mother sometimes would not want them to be
17 incorporated so much. She thought my kids were much to
18 older to be with Kourtney.

19 MR. THEM: Objection. Non-responsive.

20 THE COURT: Overruled.

21 Q. What about did y'all ever take any family vacations?

22 A. Yes, we did. We actually -- I don't remember the
23 exact number. I know we went as a family to Gatlinburg.
24 This was before, I believe, we actually moved into the
25 house on address We all went except for my

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Direct Examination by Mr. DeJong

373

1 youngest daughter, my son, they went with their
2 grandparents. We went to Six Flags through BMW. They had
3 a family day where they would rent out a park. Everybody
4 went to that. We stayed the night. We went to Carowinds
5 a couple of times, but Maria did not go. She did not
6 enjoy it. So it was me and the children that went. Now,
7 when I say children, I mean all six of the children.

8 Q. All right, sir. Now, did you ever observe Kourtney
9 exhibit any fear of you?

10 A. No, sir. No fear. I did detect anger at times,
11 especially when it was time for her to be disciplined for
12 something. Again, I think it was, I'm not her father, I
13 shouldn't be disciplining her.

14 Q. That anger that you saw, did that remain the same,
15 lessen or get worse as you were there longer?

16 A. I think it pretty much stayed the same. Again, as
17 long as she was getting her way and everything was fine.
18 But when it came to discipline time, I wasn't her father,
19 I shouldn't say things to her.

20 Q. After you left in November of '05, did you ever go
21 back to address

22 A. Yes, sir. When I left in November of '05, I still
23 cared deeply for the family. I ---

24 Q. Let me -- I'm sorry. I've got to digress here a
25 moment. In the summertime where did Kourtney and Nick

1 spend their summer?

2 A. Usually their grandfather would come up the last day
3 of school and they would either leave that night or the
4 very next day.

5 Q. Now, in the summer of 2000, to the best of your
6 recollection, did they go to Florida?

7 A. Summer of when?

8 Q. Summer of 2000.

9 A. Yes, they did. They went every summer.

10 Q. All right. Other than the summers did they spend any
11 other time in Florida?

12 A. Yes. They had gone occasionally to Florida. My last
13 recollection is they went to summer -- the 2006 summer.

14 They also went Christmas of 2005. I drove the three of
15 them -- the mother went too. I drove the three of them to
16 the airport. I picked them up from the airport and
17 brought them home. And that was December of '05.

18 Q. Now, after -- well, that was after y'all had -- you
19 and Ms. Galluscio had separated?

20 A. Yes, sir. That was after we had separated.

21 Q. All right, sir. Now, did you continue to go back to
22 the house after -- even after Christmas of '05?

23 A. Yes. Like I said, I, excuse me, I believe in family
24 and wanted it to work. I was concerned for the kids. I
25 would go by once every two weeks to pick up my mail, make

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Direct Examination by Mr. DeJong

375

1 sure they had lunch money and see if there's anything else
2 that they needed. And there was occasions when I would
3 come by that they would need something from the store and
4 I would take either Nick and ---

5 MR. THEM: Objection. This is non-responsive,
6 Your Honor. He's making a speech for ---

7 THE COURT: I'll overrule your objection. I'll
8 allow him to answer the question.

9 Q. Go ahead, Mr. Dean.

10 A. I would see if they would need anything.

11 Q. Other than that did you ever have occasion to be over
12 at the house?

13 A. I did. There's actually two -- well, I guess the one
14 occasion I stopped by, there was an altercation with the
15 neighbor. That was on one of my regular stops to pick up
16 the mail, check on the children. There was another time
17 that I got a call -- I'm not sure the exact time. It was
18 probably one or two o'clock in the morning.

19 Q. Now, don't tell us what the caller said. But as a
20 result of that call what, if anything, did you do?

21 A. I went to the addr address.

22 Q. And what did you ---

23 A. I'm sorry.

24 Q. Well, who was there when you got there?

25 A. There were several police cars, several Clemson City

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Cross Examination by Mr. Them

376

1 police officers, Nick, Maria and Kourtney.

2 Q. All right. Can you tell us what happened?

3 A. I only know from understanding why they were there,

4 Nick and Kourtney told me what ---

5 MR. THEM: Objection. Hearsay.

6 THE COURT: Sustained.

7 Q. You can't say what Nick and Kourtney told you.

8 A. Okay.

9 Q. You can say what you saw. Okay?

10 A. What I saw was the police there. They were

11 investigating a broken bottle. All the ---

12 MR. THEM: Objection. Hearsay. The only way he

13 could know what they were investigating is what somebody

14 told him, Your Honor.

15 THE COURT: All right. Again, rephrase you

16 question so that the witness understands that.

17 Q. You can only testify to what you observed, not what

18 somebody told you, ---

19 A. I'm sorry.

20 Q. -- or information that you got from what somebody

21 told you.

22 A. Yes, sir. I understand. And I say that because I

23 observed the police officers with the flashlight checking

24 the front doors, the back doors. On the front porch was a

25 broken piece of glass. They were scared. They asked if

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Cross Examination by Mr. Them

377

1 they could spend the night with me. They left with me
2 that night and spent the night with me and my daughters.

3 Q. They being who?

4 A. Maria, Nick and Kourtney.

5 JOHN DEJONG: One moment please, Your Honor.

6 Q. From what you observed, not what somebody told you
7 but from what you observed, did Kourtney look forward to
8 going to Florida?

9 A. Yes. Always.

10 Q. Did you ever take Kourtney and Nick to Florida?

11 A. I don't believe I ever took them, but her and her
12 mother and I did go down and make a trip to visit and
13 bring them back at one time. I did take them to the
14 airport to fly down on several occasions, or a couple of
15 occasions.

16 Q. What was the time frame that you and Maria went down
17 to pick the children up, if you recall?

18 A. I don't know what year it was, but when we went we
19 stayed three or four days and brought them back up in time
20 to go to school.

21 Q. All right, sir. Thank you, Mr. Dean.

22 JOHN DEJONG: Witness is with you, Mr. Them.

23 **CROSS EXAMINATION**

24 **BY MR. THEM:**

25 Q. Shortly after these charges were filed, this police

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Cross Examination by Mr. Them

378

1 officer, Lieutenant Crooks, had conversations with you;

2 did he not?

3 A. He did.

4 Q. Do you remember him asking to want to be able to

5 interview your daughters? Do you remember that?

6 A. He did. I remember that.

7 Q. Do you remember refusing to allow him to do that?

8 A. I remember ---

9 Q. Simple yes or no, then you can explain, sir. Did you
10 refuse?

11 A. I never refused, no, sir.

12 Q. You didn't in anyway try to interfere with him seeing
13 your daughters?

14 A. I don't think I was interfering with him. I was
15 telling him what I was told by a lawyer who I had
16 contacted.

17 Q. No, I don't want you to repeat what a lawyer told
18 you, sir.

19 MR. DEJONG: Your Honor, may we approach?

20 THE COURT: Yes, sir.

21 (WHEREUPON, Mr. Them and Mr. Dejong approached the
22 bar.)

23 THE COURT: Mr. Foreman, ladies and gentlemen,
24 we've got one matter of law we need to take care of. It
25 won't take us long, I don't think. If you'll go back to

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Cross Examination by Mr. Them

379

1 your jury room. Don't discuss the case. We'll call you
2 back in just a few moments.

3 (WHEREUPON, the jury exited the open court at
4 approximately 10:19 a.m.)

5 MR. DEJONG: Your Honor, in view of the fact
6 that Mr. Dean is on the witness stand, I would prefer not
7 to talk to him by myself. If we can do this -- whether
8 Your Honor wants it on the record or off the record, I
9 don't particularly mind. But to avoid the appearance of
10 any impropriety, I'd rather not talk to him while he's
11 sitting on -- while he's on the witness stand but in
12 private.

13 Mr. Dean, why we took -- the reason we took this
14 break is this. As I understand the discovery, there was
15 some discussion about you taking a polygraph. The purpose
16 of this recess is, the state will not be allowed to go
17 into any discussion about polygraphs. However, I'm
18 admonishing you, instructing you that you are not to get
19 into any discussions about taking polygraphs, whether you
20 were offered a polygraph, whether you refused. I don't
21 want the word polygraph in any way by inference or direct
22 statement. Don't want that word coming over your lips.

23 DEFENDANT: Okay. May I ask a question?

24 JOHN DEJONG: Yes, sir.

25 DEFENDANT: Can I say that the reason my

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Cross Examination by Mr. Them

380

1 daughter -- my daughters would have gone. However, when I
2 spoke to a lawyer about this preliminary, she didn't think
3 there was a case. She said that if charges were brought
4 up, to contact her and not let anyone in my family give
5 any statements or do any of the other stuff without her
6 being present. And that was told to Lieutenant Crooks. I
7 believe he tried to call that particular lawyer and that
8 lawyer was out of town because I believe it was on a
9 Thursday or a Friday. She didn't return his call. So I
10 was under the impression that if the case went forward
11 legally, I should listen to what a lawyer said and not let
12 my girls give any testimony without a lawyer being
13 present. That was my understanding. I'm not a lawyer.
14 I'm not a layperson. I want to prove my innocence
15 regardless of what it is. I don't expect my daughters to
16 lie for me. I'm sorry.

17 MR. DEJONG: I don't know exactly where Mr. Them
18 is going with this, Your Honor. I am not sure that this
19 is actually proper cross of Mr. Dean. I think it gets
20 into implications of his Fifth Amendment rights to remain
21 silent. Now, if Mr. Them can try to maybe lay a
22 foundation as to the age of these children, there might be
23 some basis there. But if these children were out on their
24 own, and unless Mr. Dean was actually hiding them away
25 from law enforcement, I don't think Mr. Dean's testimony

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Cross Examination by Mr. Them

381

1 is relevant to that issue. Again, I think the state is
2 coming perilously close to getting into his Fifth
3 Amendment right to remain silent, Your Honor.

4 THE COURT: What's the purpose of the
5 examination, Mr. Them?

6 MR. THEM: Your Honor, the purpose of the
7 examination is I have a copy of an addendum to an incident
8 report signed by Lieutenant Crooks that was presented to
9 Mr. DeJong as part of discovery that says, on August - I'm
10 quoting from it, four or five lines - on August 23rd,
11 2006, Lieutenant Crooks spoke with Robert Dean in
12 reference to interviewing his biological daughter, Amanda
13 Dean, who is twenty-one years of old, I'm quoting it.

14 THE COURT: What's the date of this, did you
15 say? August?

16 MR. THEM: August 23rd, 2006.

17 THE COURT: Okay. I didn't hear you say the
18 2006.

19 MR. THEM: ... concerning her knowledge of any
20 wrongdoing on her father's behalf at this time. Dean
21 advised Lieutenant Crooks that his daughter would not be
22 available for questioning. That's as far as I would plan
23 to go, but I would be disingenuous if I didn't tell the
24 court that the remainder of that sentence says, and that
25 he had hired an attorney, Nancy Thomason of Anderson.

1 Lieutenant Crooks attempted to explain to Dean that his
2 daughter was not the suspect, that he was.

3 When he got up on the stand, he waived his rights
4 against self-incrimination and subjected himself to cross
5 examination. If he's not going to -- if he says his
6 daughter's not going to be available and she's not a
7 suspect, I think I'm entitled to bring that out, that he
8 in effect frustrated an attempt to try to talk to a
9 witness about something. And I'm trying to lay the ground
10 work so that if he denies saying that, I can call this
11 officer up there for reply. If he admits that he said
12 that, I don't have any reply testimony from that officer
13 on this issue.

14 THE COURT: Well, it sounds like he's already
15 said before the jury went out that he admitted that and it
16 was based on legal advise. And I think he's entitled to
17 say that in response to the question. I mean, I thought
18 -- I'm not sure that that wasn't said before the jury
19 left.

20 MR. THEM: I think Mr. DeJong objected when he
21 was saying that. And I'm not positive what was said
22 either. I wonder if we could have the court reporter go
23 back and tell us what he said.

24 (WHEREUPON, the testimony was replayed.)

25 MR. THEM: He said he didn't refuse, but I

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Cross Examination by Mr. Them

383

1 maintain this is a refusal ---

2 THE COURT: If you want to ask the question
3 again, he can tell you again, based on the advise of my
4 lawyer, I -- you call it refused, he can call it what he
5 wants to. I mean, that's there. I don't know if you want
6 to pursue it further or not, but the jury's heard that.

7 MR. THEM: Yes, sir.

8 THE COURT: But if we go, if you feel like you
9 need to pursue it, then I'm assuming his response is going
10 to be on advice of legal council and he's been admonished
11 by his attorney and the court also that we don't mention
12 anything about a polygraph.

13 MR. THEM: I think we're ready to move on, Your
14 Honor, with the jury.

15 THE COURT: I would hope so.

16 MR. DEJONG: Without a ruling is that a dead
17 issue, Mr. Them?

18 MR. THEM: I don't plan on pursuing it further.
19 I've kind of gotten that velvet hammer strike blow from
20 the court and I understand it.

21 MR. DEJONG: I just wanted to make sure where we
22 were.

23 THE COURT: Let's have our jury come back. I'll
24 tell you what, hang on just a minute. Are they here?

25 MS. MUNSON: They're outside.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Cross Examination by Mr. Them

384

1 THE COURT: Okay.

2 MR. THEM: It would not do a tremendous violence
3 to me if you wanted to interrupt and do something else
4 because I haven't really gotten that far into it.

5 THE COURT: All right. Let's do that. I've got
6 a civil matter just briefly I need to hear. If you'd step
7 down, sir. Let me remind you, Mr. Dean, you're not to
8 talk about your testimony and not to talk about anything
9 about the case with your attorney or anyone else while
10 you're down.

11 DEFENDANT: Not my attorney?

12 THE COURT: Not your attorney. You don't talk
13 about your testimony in anyway whatsoever. He knows that.

14 DEFENDANT: Okay. And I apologize to the court
15 for anything before. I'm not familiar with the courts.

16 THE COURT: That's okay. You just step down and
17 we're going to take just a quick ten minutes.

18 MR. DEJONG: ... is worth ten pounds of cure,
19 and I'm not even going to talk to him. Have a seat, Mr.
20 Dean.

21 THE COURT: All right, sir.

22 MR. THEM: I appreciate the court's reluctance
23 to interrupt me, but feel free.

24 THE COURT: To interrupt you?

25 MR. THEM: Yeah, I got the impression you didn't

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Cross Examination by Mr. Them

385

1 want to interrupt my cross examination to do the civil
2 thing, is why I told you to do so, it wouldn't bother me.

3 THE COURT: Well, I can let them wait. The
4 trial is most important. All right.

5 (WHEREUPON, Court stood at recess for a short break.)

6 THE COURT: All right. Let's have our jury come
7 in, Mr. Lewis.

8 (WHEREUPON, the jury entered the open court at
9 approximately 10:57 a.m.)

10 THE COURT: Mr. Foreman, ladies and gentlemen, I
11 apologize for keeping you waiting. I told you it wouldn't
12 be very long and it wasn't very long, but I got called
13 upstairs to take care of a civil matter that they needed a
14 hearing on. So I apologize for keeping you waiting. I
15 hope that'll be the last interruption I have. We're now
16 ready to proceed. You may continue your cross
17 examination, Mr. Them.

18 MR. THEM: Thank you, sir.

19 Q. Mr. Dean, I'm not certain I heard you correct on
20 something, so I'm going to ask you a question that Mr.
21 DeJong asked.

22 A. Yes, sir.

23 Q. Most of -- and for talking purposes, may I refer to
24 your children by their first names so we can keep them
25 straight as to who we're talking about?

1 A. Absolutely.

2 Q. And I'm going to refer to your ex-wife as Maria?

3 A. That's fine.

4 Q. And your ex-in-laws as grandma and grandpa?

5 A. That's fine.

6 Q. Okay. We have too many Galluscios and Deans.

7 A. I understand.

8 Q. During the time that you were married to the child's
9 mother, did you primarily work day shifts or night shifts?

10 A. I would say primarily day shift.

11 Q. Okay. So towards the end of your marriage, the last
12 couple years of your marriage, were you primarily working
13 day shifts then too?

14 A. Yes, I was, day shift.

15 Q. Okay. All right. Would you feel comfortable in
16 trying to split it into percentages of the time you were
17 -- the time you lived with Maria. How much of that time
18 was daytime work for you and how much of that was
19 nighttime work for you, if you can split it?

20 A. I would probably say thirty/seventy. When I first
21 started, like I said, you had to train on day shift. You
22 went to night shift and then you went to a day shift. But
23 at BMW, it's kind of a funny day shift for the simple fact
24 of how many hours we work a day.

25 Q. So when you say thirty/seventy you mean seventy

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Cross Examination by Mr. Them

387

1 percent days and thirty percent nights?

2 A. Seventy days, thirty nights. Yes.

3 Q. Okay. I don't want to go back completely over your
4 daughter's testimony about who was there and when, but
5 listen to me if you would, and then I'll give you a chance
6 to correct me when I'm finished. Okay?

7 A. All right, sir.

8 Q. Would you agree that when you and Maria got married
9 all four of your children lived there and all two of her
10 children lived there?

11 A. That's correct.

12 Q. About a year or so, maybe two years after you got
13 married or moved in together, your son moved out?

14 A. That's correct.

15 Q. And he never came back to live?

16 A. That's correct.

17 Q. All right. Now, sometime in the spring of 2003, I
18 believe the testimony was in May, all of the girls -- all
19 of your girls moved out and went to Anderson?

20 A. I believe it was sometime in May, but I would
21 consider that more towards spring than summer.

22 Q. Okay. That's all right.

23 A. I believe that's correct.

24 Q. If you agree with me on May, that's fine. Now, in
25 November, Crystal came back without her other two sisters?

1 A. That's correct.

2 Q. And in January the other two sisters came back?

3 A. To my knowledge that's correct.

4 Q. Okay. So from May of '03 until at least November of

5 '04, roughly eighteen months, the only people living in

6 that house were you, Maria, Kourtney and Nick?

7 A. That's correct.

8 Q. All right. Now, in August of '05 -- I'm sorry. From

9 January of '05 when the other two girls came back to join

10 Crystal, till August of '05, all three of your girls lived

11 there?

12 A. I believe Lisa and Hope moved out before August. I

13 think Crystal was the last one and she moved out in

14 August.

15 Q. Okay.

16 A. I left in November.

17 Q. Okay. So from August until November, the only people

18 living in that house were you, Maria, Kourtney and Nick?

19 A. That's correct.

20 Q. Okay. Now, there was some testimony about a security

21 light or a burglar light, whatever you call it. Would

22 that light have been in this general area here by the

23 front bedroom where Kourtney and Hope lived?

24 A. We had them on all four corners of the house.

25 Q. All four corners?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Cross Examination by Mr. Them

389

1 A. Right. Not just that one corner.

2 Q. And they were motion activated?

3 A. Yes, sir.

4 Q. So a car coming up the driveway would trigger that
5 light?

6 A. Most times it would. Yes, sir.

7 Q. How about a person my size, your size, walking up the
8 driveway, would they trigger that light, that movement?

9 A. Most of the times, yeah. Even sometimes a bird
10 would.

11 Q. So if you were -- all right. This bedroom is on the
12 front corner of the house. Can I assume that there's a
13 window facing the street?

14 A. I believe there's two windows facing the street and
15 there's also one facing the opposite street.

16 Q. Okay. And on the long side -- when I look at this
17 drawing and I know you said it's not to scale.

18 A. Right.

19 Q. I show the room being deeper than it's wider. Do you
20 remember it that way or is that just ---

21 A. It's probably more square than anything. I'm not an
22 artist. I'm sorry.

23 Q. So you say it's a double window in the front and a
24 single window on the side?

25 A. That's correct.

1 Q. Now, the light that's on the corner of the house,
2 would it shine more towards the front or more towards the
3 side or other than at an angle?

4 A. Honestly I'm not sure. I would think it would be
5 more to the side for the simple fact that we have a front
6 porch light also.

7 Q. Okay. Now, if you were in this front bedroom and
8 something caused that light to activate, you would see
9 that light come on through the windows; wouldn't you?

10 A. I would think so.

11 Q. Okay. And the front door of the house here -- and I
12 remember what you said about not to scale and I'm not
13 trying to get into that.

14 A. I understand.

15 Q. Is this door, the front door to the house, is it
16 fairly centered on the house or is it more up towards the
17 end where the driveway is, the way you've indicated it?

18 A. It's not centered. It's more towards the left
19 because to the right of door would -- as in the drawing,
20 is the kitchen, a family room, a laundry room and a
21 garage. So it's more not completely centered. I'd say
22 more forty percent.

23 Q. Over this way?

24 A. Right. To the left.

25 Q. Towards the driveway?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Cross Examination by Mr. Them

391

1 A. Right.

2 Q. Towards the front bedroom where ---

3 A. Yes, sir.

4 Q. -- where the girls lived?

5 A. Uh-huh (affirmative).

6 Q. Okay. Now, how far from say the front door to the
7 center of the hallway leading down to where the girls'
8 rooms were? Can you talk to me in terms of in this room
9 or here, there, back seat, front seat?

10 A. I would guesstimate approximately six feet. Because
11 in that hallway we had a little what we called a book
12 table, and when you opened the door it actually hit the
13 book table and there was about this much space to that
14 hall. So I would guesstimate six feet at the most.

15 Q. Now, when you say six feet, are you talking wide or
16 long?

17 A. From the time you walked into the front door ---

18 Q. Uh-huh (affirmative).

19 A. -- till you made the left turn down the next hall
20 that led to the bedrooms, I would say that was
21 approximately six feet.

22 Q. Okay. So this area right here, this wall or the
23 bedroom that's set -- I'm sorry. The hallway that
24 separates the bedroom from the kitchen was six feet long
25 this way before you made the turn?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Cross Examination by Mr. Them

392

1 A. Approximately. Yes, sir.

2 Q. This bedroom was only six feet wide? I mean six feet
3 deep?

4 A. Six feet deep. Like I said, we had a table that we
5 called a little table that was shorter than that, I know.
6 I don't know the exact dimensions. I never measured it.
7 But I know when you opened up the front door it would hit
8 that table. And there's only a small enough spot at the
9 end of the table before the hallway. It may have been
10 seven feet. I don't know. I didn't measure. But it was
11 a short distance, if that's what you're asking.

12 Q. Can you see this well enough to be answering
13 questions or do you need me to turn it a little bit?

14 A. No, I'm fine.

15 Q. Okay. Now, as we came in this hallway and turned
16 down into this hallway that would have led down to
17 Kourtney's bedroom, how far down that hallway would the
18 door to Kourtney's bedroom have been?

19 A. Again, a guesstimate, probably from here to that
20 first wall.

21 Q. This little short wall?

22 A. Yeah, not that far. Her door was on the, I guess
23 opening end of their bedroom.

24 Q. Would you agree with me that that's approximately
25 twenty feet from where you are to this thing?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Cross Examination by Mr. Them

393

1 A. Again, I'm not good with figures. If that's what you
2 say, that's fine. I'm -- from here to there, ever how far
3 that is, that's fine.

4 Q. Do you have a number that you're more comfortable
5 with if you're not comfortable with approximately twenty
6 feet?

7 A. No, sir. I don't have a number one way or the other.

8 Q. Okay. Just one second please, sir. Thank you very
9 much, sir.

10 A. Yes, sir.

11 MR. DEJONG: Nothing on redirect, Your Honor.

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

14 DEFENDANT: Thank you, sir.

15 MR. DEJONG: The defense rests, Your Honor.

16 THE COURT: Anything in reply?

17 MR. THEM: Nothing in reply on behalf of the
18 state, Your Honor.

19 THE COURT: Ladies and gentlemen, you've heard
20 all the testimony in this case. The next process is that
21 where the attorneys will have an opportunity to address
22 you. I'll then instruct you on the law. Before we start
23 that process, we're going to again take a short break.
24 I'm going to let the clerk talk with you briefly about
25 ordering lunch so that we can have some lunch here for you

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Cross Examination by Mr. Them

394

1 after those processes are taken care of so that you will
2 be ready to start your deliberations then. So I'll ask
3 you if you would, please, just go back to your jury room
4 just briefly. We'll be ready to start with the closing
5 statements from the attorneys in just a few moments.
6 Don't discuss the case.

7 (WHEREUPON, the jury exited the open court at
8 approximately 11:10 a.m.)

9 THE COURT: Yes, sir, Mr. DeJong?

10 MR. DEJONG: Thank you, Your Honor. May it
11 please the court. At this time I would renew my motion
12 for directed verdict, Your Honor. Based on the argument I
13 made for a directed verdict at the close of the state's
14 case, I would again reiterate now with the defense
15 testimony that there's no substantial credible evidence
16 from which this jury could find guilt, that even taken in
17 a light most favorable to the state, Your Honor. Now, I
18 think I'd made it clear on the record, but I am renewing
19 everything without rearguing it that I argued at the close
20 of the state's case, Your Honor.

21 THE COURT: All right. I respectfully deny your
22 motion.

23 MR. DEJONG: Thank you, Your Honor.

24 THE COURT: Anything else by way of motions or
25 are y'all ready to start your arguments?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Robert Lee Dean - Cross Examination by Mr. Them

395

1 MR. THEM: Nothing by way of motions. When I
2 spoke to your clerk earlier, I think she was going to
3 print out the definition of that word we were talking
4 about because I think we're going to have to define it for
5 the jury.

6 MR. DEJONG: I don't mind her printing it out,
7 but I'm going to object to that going to the jury until
8 such time as they ask the question.

9 THE COURT: I agree with the defense. If they,
10 if they ask for the explanation, we'll be glad to do that.
11 But I'm not going to charge that.

12 MR. THEM: Yes, sir.

13 THE COURT: Anything else?

14 MR. THEM: I don't have any other exotic
15 charges, Your Honor. The standards would apply.

16 THE COURT: Okay, sir. Let me let you look at
17 the proposed verdict forms to see if they're in order for
18 you.

19 MR. THEM: The state has no objection to the
20 verdict forms, Your Honor.

21 MR. DEJONG: None of behalf of the defense, Your
22 Honor.

23 THE COURT: All right. Let's take about a five
24 to seven minute break and then we'll be ready to start
25 back about twenty after.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Closing Statement by Mr. DeJong

396

1 (WHEREUPON, Court stood at recess for a short break.)

2 THE COURT: Let's bring our jury in, if they're
3 ready, Mr. Lewis.

4 (WHEREUPON, the jury entered the open court at
5 approximately 11:19 a.m.)

6 THE COURT: Mr. Foreman, ladies and gentlemen,
7 we're now ready to proceed with the closing statements of
8 these attorneys. I told you at the beginning of the trial
9 what the attorneys have to say to you in opening
10 statements and closing statements are not evidence.
11 You've heard all the evidence that's going to be presented
12 in this case. And even though that -- what these
13 attorneys have to say to you is not evidence, I urge you
14 to listen carefully as they address you. I'm confident
15 they can give you some insights that perhaps could help
16 you in your analysis of the evidence and later in your
17 deliberations. After they've had a chance to briefly talk
18 with you, I'll then instruct you on the law and the case
19 will then be yours. Mr. DeJong.

20 CLOSING STATEMENT

21 BY MR. DEJONG:

22 Thank you, Your Honor. May it please the court, Mr.
23 Them.

24 Mr. Foreman, ladies and gentlemen of the jury, as His
25 Honor has shared with you, you have now heard all the

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Closing Statement by Mr. DeJong

397

1 testimony in this case and seen all the evidence. I think
2 the only evidence as such is what's been marked as Defense
3 Exhibit Number 1. This case, ladies and gentlemen,
4 basically boils down to an issue of credibility. There's
5 no physical evidence. There's no what the lawyers like to
6 call forensic evidence. And if you watch television shows
7 that's a familiar term to you, I'm sure. And credibility
8 is an issue that is left to your determination. I believe
9 His Honor will charge you on credibility. I am not going
10 to stand here and rehash a day and a half or two days of
11 testimony. You all have been very attentive for which I
12 am truly grateful and I do thank you. So there's no need
13 for me to do that. But I would like to talk a little bit,
14 mostly about this credibility issue, and then a little bit
15 about the law on the tail end.

16 And I think that credibility issue comes really into
17 play when you recall, replay your memory of the expert
18 that was called by the state. Now, this expert wanted to
19 tell you about late reporting. And indeed she did. What
20 she didn't want to talk about, as I recall, she didn't
21 want to talk about false allegations. She didn't want to
22 talk about that at all. Indeed couldn't even, of all the
23 research that she shared with you that she has done, she
24 couldn't even talk about it because she didn't know. But
25 she said it is there.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Closing Statement by Mr. DeJong

398

1 Do children lie? As I recall before she answered
2 that question there was some real hesitation on her part,
3 this is the expert for the state. But she agreed children
4 lie. She agreed children are manipulative. She agreed
5 that there are false allegations. That's the expert
6 testifying.

7 Now, let's look a little bit at Witness
8 Mr. Dean came into Witness life, I don't
9 exactly remember what age, I'm sure you remember, but she
10 was young. A houseful of people obviously, a lot of
11 people for some period of time, and I think we've rehashed
12 that enough, who was there when. But what strikes me in
13 that regard is the mother's testimony. The mother's
14 testimony was that Nick, the brother, whom Kourtney says
15 she loves, complained about discipline. And indeed if not
16 Ms. Galluscio, one of the other witnesses said that
17 Kourtney also complained about discipline. And this was
18 an ongoing thing.

19 And from all the testimony I can gather and what I'm
20 saying is not testimony -- I would not attempt to mislead
21 you, you remember it the way you heard it. But what I
22 recall hearing was that Mr. Dean was the disciplinarian in
23 this family through various means. Old fashioned
24 spankings. As he shared with you, he's from the old
25 school. There were other forms of punishment. Going to

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Closing Statement by Mr. DeJong

399

1 bed early, being sent to bed early, the mother testified,
2 time out. Children, I submit to you, ladies and gentlemen
3 of the jury, don't like discipline. I've never come
4 across one that did. And children will lie and children
5 will manipulate them. State's expert.

6 Now, Mr. Dean sat on the witness stand, you heard
7 him, he said, I never touched her, never did anything
8 inappropriate. His own daughters, who have lived with him
9 all his life, there's never been anything inappropriate
10 between us and our father. He disciplined us. I think
11 they even -- one or more said, he spanked us. But nothing
12 inappropriate.

13 Now, the state, I'm sure from what I can gather, is
14 going to make a big issue of there's times in this house
15 that Mr. Dean's daughters were not there. And they
16 weren't there. That's a given. They weren't there. But
17 I would ask you to recall that in that bedroom, I believe
18 it was the bedroom on the State's Exhibit Number 1 -- I
19 mean, excuse me, Defense Exhibit Number 1, the bedroom
20 where Crystal and Lisa stayed, that bedroom was never
21 vacant. Either Crystal and Lisa were in that bedroom or
22 Nick was in that bedroom.

23 Now, thinking as an aside though, ladies and
24 gentlemen, however old Nick was, and I don't remember how
25 old he was, he was young, the state brings before you and

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Closing Statement by Mr. DeJong

400

1 alleges that Nick was sent to bed early. Just because a
2 child's sent to bed doesn't mean they go to sleep. So
3 again -- and again of course Mr. Dean says it was never
4 used other than a form of punishment. I don't remember
5 what Nick said. I'm going to leave that to you. But all
6 Nick said, he was punished, he had felt sometimes
7 unjustified, which many children when they are punished, I
8 submit, will think it's unjustified, whether it is
9 justified or not justified, in their mind. That it is not
10 justified. So I ask you to look at this now.

11 Another thing on this reporting, I'll just touch on
12 it, that allegedly, and according to the state this has
13 gone on for a number of years. How long, I don't think
14 even the state nailed down their own allegations on that
15 one, but with all these people in the house and in and out
16 of the house and Kourtney wasn't really clear on that in
17 my opinion. But when these supposed allegations were made
18 known to the people in Florida, what did they do?
19 Nothing. For two to three weeks they did absolutely
20 nothing.

21 There is, as I said, no forensic evidence. The
22 police officers didn't testify. I submit to you that this
23 case was brought to you on the bold face assertion of a
24 fifteen or sixteen year old child. There was no
25 investigation done whatsoever. Perhaps one of the

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Closing Statement by Mr. DeJong

401

1 greatest defense lawyer said it best, our rights are not
2 safe unless we guarantee them to those who are charged
3 with the worst crimes. What rights? Presumption of
4 innocence, a substantial right afforded every citizen.

5 As I shared with you Monday afternoon, arrest means
6 nothing in this case. Indictment means nothing in this
7 case. That is not proof. This case started late Monday
8 afternoon and ended a few moments ago. That's where we
9 are. That's the rights we are talking about. Our rights
10 are not safe unless we guarantee them to those charged
11 with the worst crime. Beyond a reasonable doubt. Burden
12 of proof is on the state, the state of South Carolina to
13 prove beyond a reasonable doubt to your satisfaction,
14 twelve members of the jury, of guilt. More than a
15 substantial right, secondary only to you twelve jurors,
16 the second cornerstone if there can be one in our criminal
17 justice system.

18 And speaking of reasonable doubt, ladies and
19 gentlemen, I don't know if any of you have ever served on
20 a jury before. If you've served on a civil jury, you may
21 have heard something about preponderance of evidence.
22 That's the lowest form of evidence in our judicial system.
23 So if you put something on the scale and one side tips
24 ever so slightly, that's preponderance of the evidence.

25 In a criminal case, in a criminal charge where a

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Closing Statement by Mr. Them

402

1 citizen is charged with a criminal offense, the burden of
2 proof is much greater. The burden of proof in a criminal
3 case is the highest burden of proof in our system, and
4 that is beyond a reasonable doubt. Now, His Honor is
5 going to charge you on the law. I am not going to try to
6 step on His Honor's toes, because you take the law from
7 His Honor as you hear it and as he gives it.

8 Now I want to talk with you a little bit about
9 reasonable doubt. What is a reasonable doubt? We've been
10 searching for that ever since, I think, probably the first
11 lawyers ever stood in a courtroom, to try to find the
12 definition. What is a reasonable doubt? And His Honor is
13 going to charge you, I believe, that nothing can be proved
14 to an absolute certainty. There's just not anything in
15 life really that we can prove to an absolute certainty.
16 He's going to share some other things. But the part I
17 would really ask you to listen to is this, I believe in
18 part of that charge he's going to say something along
19 these lines. Ladies and gentlemen, if you think there is
20 a real possibility that Robert Lee Dean is not guilty,
21 then you must, it's not discretion, you must give Mr. Dean
22 the benefit of that doubt and find him not guilty. That
23 is the law His Honor will charge you when we get to that.

24 Again, you've heard all the testimony. I'm not going
25 to rehash it. His Honor will charge you on credibility

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Closing Statement by Mr. Them

403

1 and I ask you to listen to that charge. It's simply
2 believability. And how do you measure believability? And
3 His Honor is going to charge you on that. But I think,
4 ladies and gentlemen, when you look at this case in its
5 totality, you've listened to the testimony in this case,
6 and if you'll recall, I said that presumption of innocence
7 follows Mr. Dean right back into this jury room. You can
8 sit down, take the verdict forms that His Honor will
9 provide you and say, state, Mr. Dean still has on that
10 robe of righteousness called presumption of innocence
11 because you have not proved your case beyond a reasonable
12 doubt. Now, I ask you to bring back a verdict of not
13 guilty on both indictments. Thank you so much for your
14 time and attention.

15 THE COURT: Mr. Them, you may address the jury.

16 CLOSING STATEMENT

17 BY MR. THEM:

18 Thank you, sir. Mr. DeJong, ladies and gentlemen.
19 Let me dot a few i's and cross a few t's if I can. These
20 are the indictments. These set out what the state has to
21 prove. In the criminal sexual conduct with a minor
22 charge, as in the lewd act charge, we must prove that if a
23 crime was committed, and if we convince you of that, then
24 it was convicted -- it happened here in Pickens County.
25 No argument whatsoever, this house was in Pickens County.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Closing Statement by Mr. Them

404

1 In the criminal sexual conduct case we have to prove
2 that within a certain time period, and the time periods
3 were talked about, that the defendant committed a sexual
4 battery. That's what the law calls the long list of
5 sexual activity that people can take care of. Sexual
6 battery requires a penetration. One of the things that is
7 listed in the definition of sexual battery is cunnilingus.
8 Cunnilingus is the medical or legal term for oral sex done
9 to a female. The issue of penetration was resolved and
10 uncontested that he licked me between my lips. That's
11 penetration, however slight. And that the child involved
12 was between the ages of eleven and fourteen. If you
13 remember, I carefully asked her questions in terms of
14 before your thirteenth -- fourteenth -- before your
15 fifteenth birthday, excuse me, and after your eleventh.

16 Now on the lewd act charge, we must prove that the
17 defendant was over fourteen years of age. There's no
18 question about that. And that he committed or attempted
19 to commit a lewd and lascivious act, a sexual act. If you
20 believe the testimony of Kourtney as to what she says he
21 did to her, those were lewd and lascivious acts. The
22 rubbing, the touching, the kissing, the fondling, all of
23 that stuff, the digital penetration, all of that. And
24 that she was a child under the age of sixteen. She
25 clearly told you that she was that. And that the

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Closing Statement by Mr. Them

405

1 defendant's intent when he did those acts was to arouse,
2 appeal or gratify his lusts and passions or to inflame the
3 lusts and passions of the child. So if you believe the
4 testimony of the child in this case, she has satisfied, or
5 her testimony has satisfied the checklist of things that
6 must be proven.

7 Now, something that's obvious that I didn't think
8 about until really last night. I have referred to this
9 child as a woman child. She is a woman because she is
10 nineteen years old now, but she was in here today, excuse
11 me, she was in here earlier talking about what she
12 reported when she was sixteen, a child, three years ago.
13 And when she reported what happened to her when she was
14 sixteen, she was telling the police and her family what
15 the defendant had done to her when she was between the
16 ages of eleven and fourteen, some five, six, seven, eight,
17 nine years ago. So to be fair you must look at her
18 testimony through the eyes of a child eleven to fourteen.

19 Now, the closest thing I could find where anyone
20 tried to say that the child was not telling the truth, was
21 that she was in effect trying to get back at the defendant
22 for disciplining her. She didn't need to get back at the
23 defendant for disciplining her. When these charges were
24 made he was long gone. He was eight, nine, ten months
25 separated. And looking at your ages, members of the jury,

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Closing Statement by Mr. Them

406

1 almost everyone of y'all has a teenage child, or had a
2 teenage child and maybe a teenage girl or knows about
3 teenage girls. And anybody that's ever fooled with
4 teenage girls knows that the thing that they fear most in
5 this world, even more so that nuclear war, is to be
6 embarrassed and to have to talk about stuff that just,
7 just embarrasses them. Do you think that this child has
8 anything to gain whatsoever by coming to this court and
9 testify.

10 And that's a real good way to start your discussions
11 in deliberations about whether or not somebody's telling
12 the truth or not. Do they have anything to gain by their
13 testimony? If it was a civil suit, obviously you could
14 make the argument that brought the suit of -- that the
15 person that brought the suit is asking for, you know, a
16 thousand dollars for their injuries. They've got
17 something to gain. Because if they win the lawsuit, they
18 get a thousand dollars. But by the same token you can
19 also look to evaluate somebody's credibility about what
20 they have to lose. Sitting on that witness stand in front
21 of total strangers talking about these horribly personal
22 events, she had a lot to lose.

23 And time worked against her. I was out for awhile,
24 that death penalty case kept postponing the case. But she
25 was steadfast in her belief that she wanted the defendant

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Closing Statement by Mr. Them

407

1 held accountable for what he did to her. She never
2 wavered from that, and she could have. Oh, she'd already
3 had her revenge if she'd made up the story. He'd been
4 arrested, his name had probably been in the newspaper for
5 getting arrested for something. He'd been coming to court
6 and all that. If she was doing it for pure vengeance, she
7 already had her vengeance. Why would she want to come in
8 here and go through the process that she had to go
9 through. And I'm not trying to say Mr. DeJong abused her,
10 he did not. He did his job the way he's supposed to. But
11 still being asked those questions is a horribly emotional
12 thing for that child.

13 Now, there is another way to look at credibility.
14 His Honor will tell when he tells you the law, that you
15 can look at the evidence or the lack of evidence. Mr.
16 DeJong alluded, I think, to the lack of evidence when he
17 talked about an investigation. What could this officer
18 have done nine or ten months after a crime like this was
19 alleged to have happen, other than to try to talk to the
20 defendant and other people that were in the house. As I
21 told you in the beginning, it would have done no good to
22 have sent the entire team of CSI Miami, CSI Las Vegas, and
23 all those places, send fifty of them over to the house
24 because they wouldn't have found anything there that
25 everybody didn't know already. That the defendant at one

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Closing Statement by Mr. Them

408

1 time lived there. And of course things are going to be
2 there that shows that he was there. So there was nothing
3 he could do as far as that investigation. All he could
4 try to do was to try to talk to people about what had
5 happened. The defendant frustrated his access to talk to
6 his children.

7 There is another way of looking at that. That's
8 normally a defense argument about evidence or lack of
9 evidence. But I don't think anybody actually came out and
10 said it, but if Kourtney is not telling the truth, she's
11 lying, she's fabricated a story if she's not telling the
12 truth. This isn't like, he accidentally brushed up against
13 me, but I know he did it on purpose. You can argue about
14 whether or not somebody did that on purpose or not. But
15 you don't accidentally do the actions that she says that he
16 did to her. Now, if you were out to get somebody and you
17 were going to make up a story, wouldn't you have gone a
18 little further to make your story stronger, more
19 offensive, that he actually put his penis inside of me.
20 He did all these other things like that. She didn't tell
21 you that. She told you, as a matter of fact, that never
22 happened. And if you've got your brother Nick helping you
23 work up this story, why don't we have Nick, well, you
24 know, I woke up and I heard a noise and I went in my
25 sister's room and I saw my step daddy da-da-da. There was

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Closing Statement by Mr. Tham

409

1 none of that. There was no story made up. These children
2 reported what they saw happen.

3 Now, the sending to bed, the taking of privileges,
4 the standing in the corner, the spanking, all that makes
5 sense. But what does not make sense to these children is
6 being sent to bed early when you don't think that you did
7 anything. And when that happens your sister is sexually
8 abused. She made the connection between Nick being
9 shuffled off to bed and getting abused. She made the
10 connection between Nick being shuffled off to bed for
11 something that didn't deserve it and getting abused. I
12 think everybody agreed that Nick probably did things, just
13 like all kids, that deserved some punishment. But there
14 was no connection with him being sent to bed for something
15 he did at some point in time and the abuse. The abuse was
16 planned by the defendant. The evidence in all of these
17 cases is controlled by the defendant. They pick the time
18 of the crime, the actually acts of the crime, the place of
19 the crime, who the witnesses are. People that abuse
20 children don't do it in front of witnesses. And they try
21 to do acts that doesn't leave evidence. He had a -- kind
22 of an accidental accomplice in his crime. The safety and
23 security lighting at the house. He could go back into the
24 child's bedroom like she described and he had an instant
25 warning system if someone was coming up to the house. The

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Closing Statement by Mr. Them

410

1 security lights would go on.

2 The testimony of the expert witness in this case, I
3 don't remember the exact numbers, but I think it was close
4 to a thousand children that she had interviewed and she
5 brought to you the benefit of that experience. Benefit of
6 that experience is children very seldom promptly report.
7 Why do they not promptly report? Because they're afraid
8 of the person that did something to them might hurt them.
9 Might hurt their family. They're afraid that their family
10 might think that they did something wrong, because even at
11 that tender age, they know that this isn't right, what's
12 going on, and what if nobody's going to believe me.
13 Kourtney did what most children would do. At the point in
14 time that the danger was removed, she began to think she
15 had -- she needed to tell someone, she had to get it out.
16 She chose her brother to tell. Her brother, evidently
17 wise beyond his years told her, you need to tell an adult.
18 When she made that decision to tell somebody and tell her
19 brother, she happened to be at her grandmother's house.
20 You heard the description of her emotions as she told the
21 story to Nick, she told the story to her grandmother, and
22 she told the story to her grandfather. There was no
23 reason for her, at that point in time, to lie.

24 Something has been said about, well, the grandparents
25 waited a week and a half, two weeks before they told mama

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)

411

Charge

1 and did anything. Well, is that something you would want
2 to tell your daughter, that your granddaughter had been
3 molested by her husband, over the telephone. Or is that
4 something that you would want to be there with her when
5 you told her so that you could comfort and support her.
6 Remember there's a great grandmother. I'm calling the
7 Galluscios, the older couple retired in Florida grandma
8 and grandpa. There was a great grandma down there who was
9 very old and required care. They couldn't just pick up
10 and run up here. Plus, they were also, in a way,
11 providing some sense of -- these kids are probably too old
12 to be talking about daycare at that time, but some sort of
13 daytime supervision in a friendly environment. What kid
14 would not want to spend the summer at the beach with
15 doting grandparents and a bunch of their cousins right
16 around the corner. It sounds like a real fun time for
17 them. No wonder they wanted to go down there.

18 But there was another reason, if the defendant worked
19 in the daytime and Maria worked all night, she had to
20 sleep sometime. How can you supervise two teenagers when
21 you're sleeping because you worked all night and your
22 husband's at work. So the summertime vacation had a bunch
23 of different angles to it. One of the angles was it was a
24 lot of fun for the kids. It was wonderful for the
25 grandparents. They got to renewed those things. But it

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)

412

Charge

1 also provided supervision for them in the summer. Had
2 they brought that child back the day she told grandma,
3 there would have been no supervision because they would
4 not be in school. School provided some supervision too.

5 In the final analysis you need to look into that
6 child's eyes and decide whether or not she's telling the
7 truth. Very simply, if you believe her beyond a
8 reasonable doubt, you should vote the defendant guilty.
9 If you do not believe her beyond a reasonable doubt, you
10 should vote the defendant not guilty. The choice is yours
11 and yours alone.

12 We have, oh, I don't know, well, probably two hundred
13 forty to two hundred fifty years, if not more, twenty-four
14 hundred or twenty-five hundred years of collective wisdoms
15 in here. Everybody has different experiences, everybody
16 has different backgrounds and learnings. And our theory
17 of justice is if we take the twelve of y'all and mix y'all
18 together that y'all will come up with a verdict that
19 speaks the truth. Do that today, satisfy yourself, no one
20 else to answer, answer to but yourself. Thank you very
21 much.

22

CHARGE23 **BY THE COURT:**

24 Ladies and gentlemen, it is now my responsibility to
25 instruct you on the law of the case. As I stated to you

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Charge

413

1 at the beginning there's two indictments that have been
2 brought against the defendant in this case. One charges
3 him with criminal sexual conduct with a minor in the
4 second degree. The other charges him with committing a
5 lewd act upon a child. Each of these indictments is
6 separate and distinct and you must decide each indictment
7 separately on the evidence and the law applicable to it,
8 uninfluenced by your decision on the other indictment.

9 A defendant can be convicted or acquitted on any or
10 all the offenses that are brought. And I'll have a
11 verdict form for you on each of those to write a separate
12 verdict. And of course the indictment is not any evidence
13 in the case. The fact that the defendant has been
14 arrested and charged and indicted is not to be considered
15 by you as evidence in the case toward his guilt. It
16 doesn't create any presumption of guilt. These
17 indictments are merely the formal papers that are brought
18 against the defendant and for which this case is brought
19 to this court.

20 Now, the defendant has entered pleas of not guilty to
21 each of these indictments. And that plea places the
22 burden on the state to prove his guilt beyond a reasonable
23 doubt. A person charged with committing an offense in
24 South Carolina is never required to prove himself
25 innocent. That's an important rule of law. Any criminal

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Charge

414

1 trial, no matter how serious the charge may be, a
2 defendant will always be presumed innocent of the crime
3 for which the indictment was issued unless guilt is proven
4 by evidence satisfying you of that guilt beyond a
5 reasonable doubt. Presumption of innocence doesn't end
6 when you begin your deliberations. It accompanies the
7 defendant throughout the trial until you've reached a
8 verdict of guilt based upon evidence satisfying you of
9 that guilt beyond a reasonable doubt.

10 Presumption of innocence is not just a legal theory.
11 It's not a legal phrase. It is a substantial right to
12 which every defendant is entitled unless you the jury are
13 satisfied from the evidence of the guilt beyond a
14 reasonable doubt.

15 Now, I've used the phrase reasonable doubt, and you
16 may ask what is a reasonable doubt in the law. A
17 reasonable doubt is the kind of doubt that would cause a
18 reasonable person to hesitate to act. By having the
19 burden of proof beyond a reasonable doubt, it may be
20 different from what you've experienced in the past. If
21 any of you have served on juror -- as jurors before, you
22 may have been on a civil case and a judge told you that it
23 was only necessary to prove that a fact was more likely
24 true than not true, such as by what would be called the
25 greater weight or the preponderance of the evidence. In

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Charge

415

1 criminal cases the state's proof must be more powerful
2 than that. It must be proof beyond a reasonable doubt.
3 This would be proof that would leave you firmly convinced
4 of the defendant's guilt. There are very few things in
5 this world that we know with absolute certainty and in
6 criminal cases the law doesn't require proof that
7 overcomes every possible doubt.

8 If, based on your consideration of the evidence,
9 you're firmly convinced of the defendant's guilt of the
10 crime charged, then you must find the defendant guilty.
11 If, on the other hand, you think there's a real
12 possibility that the defendant is not guilty, then you
13 must give the defendant the benefit of the doubt and find
14 him not guilty.

15 Now, during the course of the trial you and I have
16 had certain duties to perform. As the trial judge, it's
17 been my responsibility to preside over the trial of the
18 case. My duty also to rule on the admissibility of
19 evidence that's been offered during the course of the
20 trial. You're to consider only the competent evidence
21 that's before you, the testimony that's been offered from
22 the witness stand, the exhibit that's been made a part of
23 the record. That and that alone should be your
24 consideration of the evidence.

25 My job is also to charge you the applicable law in

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347).
Charge

416

1 this case. As the presiding judge, I'm the sole judge of
2 the law in the case. It's your duty as jurors to accept
3 that law and apply the law exactly as I state it to you
4 now. You may already have an idea about what the law is
5 in a case like this or even an idea about what the law
6 ought to be in a case like this. If you have such notions
7 and they don't agree with what I now tell you the law is,
8 then you must abandon those ideas because you're sworn to
9 accept the law and apply the law exactly as I state it to
10 you.

11 Every case that's tried in this courtroom before a
12 jury, the jury becomes the sole and exclusive judge of the
13 facts in a case. The trial judge can't intimate or state
14 or comment on, make any reference whatsoever to the facts
15 in the case. Since you, the jury, are the sole judges of
16 facts, you're not to infer from what I've said during the
17 course of the trial, any rulings I've made on the
18 admissibility of evidence or otherwise, anything I say to
19 you now during the course of this instruction to you, that
20 I have an opinion about the facts in the case. I don't
21 have an opinion about the facts. Our Constitution in
22 South Carolina prohibits me from having an opinion about
23 the facts in the case. That's totally and exclusively up
24 to you and you alone to determine what the facts are.
25 It's your duty as jurors to make that determination and

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Charge

417

1 give it the effect and the value and the weight and the
2 truth of the evidence presented during the course of the
3 trial.

4 Normally there are two types of evidence. There's
5 direct evidence and there's circumstantial evidence
6 presented. Direct evidence is the testimony of a person
7 who claims to have actual knowledge of a fact, such as an
8 eyewitness. It would be evidence that would immediately
9 establish the main fact to be proved. Circumstantial
10 evidence is proof of a chain of facts and circumstances
11 that would indicate the existence of a fact. It's
12 evidence which immediately establishes collateral facts
13 from which the main fact may be inferred. In other words
14 it's based on inference and not on personal knowledge and
15 observation. The law makes absolutely no distinction
16 between the weight or value to be given either direct
17 evidence or circumstantial evidence, nor is a greater
18 degree of certainty required for circumstantial evidence
19 more than that of direct evidence. You should weigh all
20 the evidence, ladies and gentlemen, in the case. And
21 after weighing the evidence, if you're not convinced of
22 the guilt of the defendant beyond a reasonable doubt, then
23 you must find the defendant not guilty.

24 Necessarily, you must determine the credibility of
25 witnesses who've testified in the case. Credibility

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Charge

418

1 simply means believability. It's your duty as jurors to
2 analyze and evaluate the evidence and determine which
3 evidence convinces you of its truth. In determining the
4 believability of witnesses who've testified in the case,
5 you can believe one witness over several witnesses,
6 several witnesses over one witness. In your discretion
7 you can believe part of the testimony of a witness and you
8 can reject the remaining part of the testimony of that
9 very same witness. You can believe the testimony of a
10 witness in its entirety. You can reject the testimony of
11 a witness in its entirety. You can consider whether the
12 witness has exhibited to you any interest or bias or
13 prejudice or other motive in the case. You can consider
14 the appearance and the manner of the witness while on the
15 witness stand. Was he or she straightforward or hesitant
16 in answering? Was the testimony of the witness consistent
17 or inconsistent? How did that witness's testimony line up
18 with other testimony given? Was it strengthened or
19 weakened? It's totally your prerogative, ladies and
20 gentlemen, to determine the credibility of witnesses.

21 Rules of evidence ordinarily would not permit
22 witnesses to testify to opinions or conclusions. And
23 there is an exception to what we call expert witnesses. A
24 witness who by education and experience has become an
25 expert in some art or science or profession or calling may

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Charge

419

1 state an opinion as to relevant and material matters to
2 which that witness claims to be an expert and may also
3 state the reasons for that opinion. You should consider
4 any expert opinion received in evidence in the case, and
5 like other evidence, give it the weight that you think it
6 deserves. If you decide the opinion of an expert is not
7 based on sufficient education and experience or you
8 conclude the reasons given in support of the opinion are
9 not sound or that the opinion is outweighed by other
10 evidence, you may disregard the opinion entirely. An
11 expert witness's testimony is to be given no greater
12 weight than that of any other witness simply because the
13 witness is an expert. Furthermore, you're not required to
14 accept an expert's opinion even though it may have been
15 uncontradicted.

16 In order to establish criminal liability, criminal
17 intent is required and must be proven by the state beyond
18 a reasonable doubt. Criminal intent is always a matter
19 that must be determined by a jury from the circumstances
20 surrounding the situation. There's no way to prove intent
21 to a mathematical certainty. There's no way medical
22 science can dissect a person's brain and determine what
23 that person had in mind. So the law says that criminal
24 intent may be inferred from the circumstances shown to
25 have existed. It's not necessary to establish intent by

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Charge

420

1 direct and positive evidence, but it may be established by
2 inference in the same way as any other fact, taking into
3 consideration the acts of the parties and all the facts
4 and circumstances of the case. Criminal intent's a mental
5 state. It's a conscious wrongdoing. It's up to you to
6 determine what the defendant intended to do based upon the
7 circumstances shown to have existed.

8 In this case the defendant is charged with second
9 degree criminal sexual conduct with a minor. The state
10 must prove beyond a reasonable doubt that the defendant
11 engaged in a sexual battery with the victim. A sexual
12 battery is sexual intercourse, it's cunnilingus, it's
13 fallatio, it's anal intercourse or it's any intrusion,
14 however slight, of any part of a person's body or of any
15 object into the genital or anal openings of another
16 person's body, except when that intrusion is accompanied
17 for medically recognized treatment or diagnostic purposes.

18 The state must prove beyond a reasonable doubt that
19 the victim was at least eleven years old but not more than
20 fourteen years old at the time of the sexual battery.
21 Consent or willingness or indifference or ignorance on the
22 part of the minor, if any, as to what was taking place
23 does not in anyway affect the charge of criminal sexual
24 conduct with a minor because an unmarried woman under the
25 age of fourteen cannot legally consent to sexual

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Charge

421

1 intercourse.

2 The defendant is also charged with committing a lewd
3 act on a minor. The state must prove beyond a reasonable
4 doubt that the defendant was over the age of fourteen.
5 Next, the state must prove the defendant willfully and
6 lewdly committed or attempted a lewd or lascivious act on
7 or with the body or with parts of the body of a child
8 under the age of sixteen years with the intent to arouse,
9 appeal to or gratify the lusts, passions or sexual desires
10 of the defendant or of the child. Willfully means
11 voluntarily and intentionally with a specific intent to do
12 something the law forbids. Lewd means obscene, lustful,
13 indecent, lecherous. Lascivious means intending to
14 insight lust or lewd or indecent or obscene or intending
15 to deprave the morals in respect to sexual relations.

16 Now, Mr. Foreman and ladies and gentlemen, there's
17 two possible verdicts that you can find in this case. And
18 as I've stated, there's two separate charges and each of
19 those should be considered by you independently. It's
20 either a finding of guilty, if you find the state has met
21 its burden of proof. Or not guilty, if you find the state
22 has failed to meet its burden of proof.

23 I've prepared a verdict form. There's no
24 significance whatsoever in the order in which the
25 different findings are listed. One has to be listed

1 first, one second. So you should not consider the order
2 in which they're listed. Your verdict must be a unanimous
3 one. All twelve of you must agree on the verdict. Your
4 verdict can't be based upon sympathy or passion or
5 prejudice, emotion, any other consideration not in
6 evidence in the case.

7 Mr. Foreman, I'll ask -- I believe the verdict forms
8 are self explanatory. I just ask that after the jury has
9 reached a unanimous verdict, you'd make an appropriate
10 check on each of the forms, I've got one on each charge,
11 sign your name as foreperson, date it on behalf of your
12 fellow jurors. Do the same on the other charge. After
13 you have reached a unanimous verdict, you will just let
14 the bailiffs know. We'll then receive the verdicts back
15 here in the courtroom.

16 I need you to go back to your jury room now. I'll
17 ask you once more not to start discussing the case just
18 yet. There's one final matter of law I need to take care
19 of with the attorneys. After that, I'll have the verdict
20 forms back for you, the exhibit that's been offered into
21 evidence, with instructions that you can begin your
22 deliberations at that time. I'll ask you to retire to
23 your jury room. Don't start discussing the case just yet.

24 (WHEREUPON, the jury exited the open court at
25 approximately 12:07 p.m.)

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Charge

423

1 THE COURT: Any exceptions to charge from the
2 state?

3 MR. THEM: Nothing on behalf of the state, Your
4 Honor.

5 THE COURT: From the defense?

6 MR. DEJONG: Nothing on behalf of Mr. Dean, Your
7 Honor.

8 THE COURT: All right. If you'll get your
9 exhibit, I've got the verdict forms here. We'll give the
10 jury instructions they can begin their deliberations.

11 Mr. Lewis, you can tell them they can start their
12 deliberations.

13 (WHEREUPON, the jury began deliberating at
14 approximately 12:11 p.m.)

15 (WHEREUPON, Court stood at recess awaiting the
16 verdict of the jury.)

17 THE COURT: All right. We've received a
18 question from the jury. And they just got their lunch.
19 So my intention is to bring them back out and give them an
20 instruction. The statement from the foreman, I assume.
21 We need to make sure the foreman signs these when they
22 send them out. Between May 2003 and November 2004 while
23 all of Mr. Deans natural children had moved out of the
24 house in Clemson at address Drive, are we the
25 jury allowed to know the work, underlined, schedules of

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Charge

424

1 Mr. Dean and Maria. I'm going to call the jury back out
2 and tell them again that I'm the judge of the law and I
3 can't comment on the facts, that we have transcripts that
4 we can certainly play anything they need if they'll give
5 us advanced notice. But that I can't comment on the
6 facts, and ask them to continue their deliberations and
7 enjoy their lunch. Any comments?

8 MR. THEM: No objection.

9 MR. DEJONG: I have no exception on the part of
10 Mr. Dean, Your Honor.

11 MR. THEM: While we're standing down, can I
12 bring another matter to the court's attention, Your Honor?

13 THE COURT: Yes, sir.

14 MR. THEM: I had told the court, as well as Mr.
15 DeJong, that I would not seek to have the defendant taken
16 into custody overnight during the trial, but that at such
17 a point in time as the jury got the case, I was going to
18 ask if you'd do that. I got distracted this morning and
19 didn't ask if you'd do that. So I'm going to ask if you'd
20 take him into custody.

21 THE COURT: Let's take care of this and then
22 we'll take care of that.

23 (WHEREUPON, the jury entered the open court at
24 approximately 12:56 p.m.)

25 THE COURT: Mr. Foreman, ladies and gentlemen.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)

425

Charge

1 I hate to interrupt your lunch. I think you just got
2 lunch and I hope you'll enjoy it. Let me -- we're about
3 to start another trial and I wanted to respond as best I
4 could to the inquiry you've made. The law prohibits me
5 from commenting on facts. If there is factual matters,
6 that's totally up to you to decide. We can certainly
7 play, with notice, we can play any testimony you need to
8 hear here in the courtroom. The court reporter can find
9 it, she can play it back for you. But it's impermissible
10 for me under our Constitution and our law for me to answer
11 any factual questions or to make any comments whatsoever
12 on the facts. As I've stated, that's your determination
13 as to just what the facts are. If you need to hear
14 testimony, please let us know. I'll ask if you would go
15 back, continue your deliberations after you've had your
16 lunch. We'll be in another trial. If you do have an
17 inquiry just give it to the bailiff. I'll try to respond
18 to that just as quick as we can take a break. If it's a
19 matter of the law or if you need to hear any testimony, we
20 can certainly play that for you at any time. So I'll ask
21 you to go back and continue your deliberations. And if
22 you have any questions of the law, I'll be glad to answer
23 them. Or if you need to hear any testimony, we'll be glad
24 to play that for you. Thank you very much. You may
25 retire back to your jury room.

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Charge

426

1 (WHEREUPON, the jury exited the open court at
2 approximately 12:58 p.m.)

3 THE COURT: Any exceptions to the instructions I
4 gave the jury, from the state?

5 MR. THEM: Nothing on behalf of the state, Your
6 Honor.

7 THE COURT: From the defense?

8 MR. DEJONG: Nothing on behalf of Mr. Dean, Your
9 Honor.

10 THE COURT: This will be marked as Court Exhibit
11 Number 1 for the record. Be glad for y'all to examine
12 that if you need to.

13 (WHEREUPON, Court Exhibit Number 1 was marked for
14 identification.)

15 THE COURT: The motion is to take the defendant
16 into custody now, you're saying?

17 MR. THEM: Yes, sir.

18 THE COURT: All right. I think that would be
19 appropriate. We'll have an officer keep him in custody
20 for the -- during the deliberations of the jury. We'll
21 see how long they might be.

22 MR. DEJONG: Thank you, Your Honor.

23 THE COURT: All right. We'll be at ease on this
24 case until we hear from the jury.

25 (WHEREUPON, Court stood at recess awaiting the

State of South Carolina -vs-Robert Lee Dean (2007-GS-39-0346, 0347)
Charge

427

1 verdict of the jury.)

2 THE COURT: All right. I understand the jury
3 has reached a verdict in the case that we're about to hear
4 from the jury. I'm well aware that a case of this nature,
5 high emotions come about. I don't know what the jury
6 verdict might be. It isn't likely -- in all likelihood
7 will bring elation to some and disappointment to others.
8 Whatever that verdict is though, we're going to respect
9 that verdict. The jury's deliberated on this matter.
10 They've listened carefully to the case. And whatever that
11 verdict may be, while the jury's here with us, we're going
12 to not show any disrespect to them whatsoever. If there's
13 any member of the audience that feels that he or she just
14 cannot contain themselves and feel like the emotion of the
15 moment will just cause an outburst, this would be a proper
16 time for you to excuse yourself from the courtroom because
17 we're not going to tolerate any outburst from anyone from
18 whatever emotion there might be. I certainly can
19 understand the emotional situation this is. But we need
20 to respect the jury and we plan to do that. So if there's
21 any member in the audience that just feels they can't
22 contain themselves, this would be a good opportunity to
23 step outside. It won't be but about two or three minutes
24 later that the jury will be dismissed and you'll have an
25 opportunity to hear the verdict. But I expect decorum

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Charge

428

1 from all the people. Does everybody understand that? All
2 right. Anything we need to take care of before the jury
3 comes back?

4 MR. THEM: Nothing on behalf of the state, Your
5 Honor.

6 MR. DEJONG: Nothing on behalf of Mr. Dean, Your
7 Honor.

8 THE COURT: Let's have our jury come in, Mr.
9 Lewis.

10 (WHEREUPON, the jury entered the open court at
11 approximately 2:58 p.m.)

12 THE COURT: Mr. Foreman, I understand the jury
13 has reached a verdict. Is that correct?

14 MISTER FOREMAN: Yes, sir.

15 THE COURT: Is it a verdict on both charges?

16 MISTER FOREMAN: Yes, sir.

17 THE COURT: It is a unanimous verdict?

18 MISTER FOREMAN: Yes, sir.

19 THE COURT: If you would, please hand the
20 verdict form to the bailiff.

21 (WHEREUPON, the verdict form was handed to the
22 bailiff.)

23 THE COURT: Madame Clerk, you may publish the
24 verdict.

25 MADAM CLERK: 2007-GS-39-347 the State of South

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Charge

429

1 Carolina versus Robert Lee Dean. As to the charge of lewd
2 act upon a child, we the jury unanimously find the
3 defendant, Robert Lee Dean, guilty.

4 2007-GS-39-346, the State of South Carolina versus
5 Robert Lee Dean. As to the charge of criminal sexual
6 conduct with a minor second degree, we the jury
7 unanimously find the defendant, Robert Lee Dean, guilty.

8 Is this your verdict and still your verdict so say
9 you all by raising your right hand.

10 (WHEREUPON, all jurors' right hands were raised.)

11 THE COURT: All right. Thank you very much. Is
12 there anything we need to take care of with the jury
13 before they're discharged in this case.

14 MR. THEM: Nothing on behalf of the state, Your
15 Honor.

16 MR. DEJONG: Nothing on behalf of Mr. Dean, Your
17 Honor.

18 THE COURT: Mr. Foreman, ladies and gentlemen,
19 thank you very much for your participation in this trial.
20 I know it's been a difficult one for you. And it's been a
21 fairly long one. You've served your county and your state
22 well. It's not every day you'll have jury service and
23 this might be the only opportunity you'll ever have to
24 participate in a jury. It's been an honor for me to serve
25 with you. You've been a conscientious group. You've

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)

430

Charge

1 listened attentively and I appreciate having the
2 opportunity to work with you.

3 You've directly participated in your government. You
4 have an opportunity to petition your legislators about
5 passing laws or repealing laws. Unless you get elected to
6 congress or the U.S. Senate or County Council or City
7 Council or something of that nature where you can pass
8 laws, you're never going to have an opportunity to enact
9 laws. And the same with the executive branch of
10 government, in executing the laws, unless you're a mayor
11 of a town or decide to run for governor of our state or
12 president of the United States to be one who is in the
13 executive branch. You can petition those folks and you
14 can send letters and make comments and suggestions, but
15 you can't make those decisions to execute our laws.

16 Our third branch of government is the judicial branch
17 and you have directly participated in that branch of
18 government by being judges. You've been judges of the
19 facts and I appreciate so much your willingness to serve.
20 As I stated on Monday, our system could not work without
21 jurors to be the fact finders. We have a -- not a perfect
22 system of justice in America and in our state, but the
23 best that I think has been known in our societies in the
24 history of our world, because we have citizens who
25 participate. And I think that's what makes our country

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Charge

431

1 strong. Thank you for doing that this week.

2 I've emphasized so much to you not to discuss this
3 case. Obviously you can discuss this with your family,
4 your friends or anyone else. Sometimes attorneys want to
5 talk to you and find out what they did that was helpful.
6 What they did that was not so helpful. I know as a lawyer
7 myself for many years, it was helpful to me if a juror
8 would tell me the truth as to what I did that maybe can
9 help me to improve as a lawyer. There's nothing the
10 matter if these attorneys do want to talk with you.
11 However, you make the ultimate call as to whether you wish
12 to talk to anyone. If you don't want to talk to anyone
13 you tell that person you'd rather not talk. If you wish
14 to share your feelings or your insights then certainly
15 that's fine too. But you make that decision, not the
16 attorneys, not anyone else. And if anyone were to want to
17 persist and talk to you when you say I don't want to talk,
18 you let me know. I'll take care of that for you, I assure
19 you.

20 Thank you for serving with us this week. Your
21 service for the week is over. We have another case going
22 on now. I understand it's going to pretty much take up
23 the rest of the day and tomorrow and we won't be able to
24 start another trial at the end of the week, so your
25 services for the week are over. Your services, if you

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Charge

432

1 remember what we said on Monday, would be over for the
2 next three years if you were to choose to exercise your
3 exemption. I hope that it's been an educational
4 experience for you, an enjoyable experience as best it
5 could. Thank you for serving.

6 Some of you may need an employment statement. If you
7 do, if you would stop by the clerk's office, they'll have
8 those forms there for you to show your employer that you
9 were performing jury service this week.

10 Also, Mr. Foreman, Ms. Garrett will meet you in the
11 hallway. There's one more piece of paper, or two more,
12 that you need to sign on behalf of your jury, if you'd
13 just wait just a few moments back there. The rest of you
14 are discharged for the week. Thank you very much for this
15 opportunity to work with you. You may be excused at this
16 time.

17 (WHEREUPON, the jury was dismissed and exited the
18 open court at approximately 3:05 p.m.)

19 MR. THEM: May we approach just a second, Your
20 Honor?

21 THE COURT: Yes, sir.

22 (WHEREUPON, Mr. Them and Mr. Dejong approached the
23 bar.)

24 THE COURT: All right. Anything else we need to
25 take care of before sentence is imposed?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Charge

433

1 MR. THEM: Nothing on behalf of the state, Your
2 Honor.

3 MR. DEJONG: Your Honor, at this point in time,
4 on behalf of Mr. Dean, I would respectfully request the
5 court to direct and grant a motion for a new trial in that
6 the evidence does not substantiate the verdict, Your
7 Honor. And basically the same arguments I made on my
8 directed verdict motions.

9 THE COURT: Thank you. Your motion is denied,
10 Mr. DeJong.

11 MR. DEJONG: Thank you, Your Honor.

12 THE COURT: If I could have your defendant or
13 your client come forward.

14 MR. DEJONG: Yes, sir. Come around, please,
15 sir, Mr. Dean.

16 THE COURT: All right. Mr. DeJong, I'll be glad
17 to hear from you, be glad to hear from your client, anyone
18 else in mitigation if you have anything you want to tell
19 me. Then I'll be glad to hear from the state.

20 MR. DEJONG: Your Honor, I don't know what the
21 status of the state and the victim is, but the state, if
22 they're going to speak or have someone speak on their
23 behalf, I would respectfully request that I could make my
24 comments after the court receives that.

25 THE COURT: Any of the victims or family wish to

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Charge

434

1 testify, Mr. Them?

2 MR. THEM: No, sir. They have asked me to
3 briefly speak for them.

4 THE COURT: Mr. Them, be glad to hear from you
5 then.

6 MR. THEM: Your Honor, the defendant has no
7 appreciable or germane criminal record prior to these
8 charges. A whole bunch of magistrate's court charges for
9 some bad checks. But I don't believe that they're germane
10 to this case. I would point out to the court that the
11 victim testified about a five year reign of terror at the
12 hands of this defendant. While this may be his first
13 offense, it is really his first conviction. We would ask
14 the court to give him a strong active sentence in that he
15 has taken this child's childhood from her forever. Thank
16 you.

17 THE COURT: Well, thank you. Mr. DeJong, I'll
18 be glad to hear from you or -- and/or your client.

19 MR. DEJONG: Thank you, Your Honor. May it
20 please the court. You've probably heard most of what I
21 would share with you. I would share with you that Mr.
22 Dean is forty-seven. He is now divorced. I think that
23 came out in the testimony. Has four grown children, three
24 of whom you have met, Your Honor. The fourth is a son who
25 is not here. Mr. Dean worked for BMW for some period of

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Charge

435

1 time when my relationship with Mr. Dean was started. He
2 was on short term disability, after having worked for BMW,
3 I think for about nine years, if I'm not mistaken. That
4 short term disability turned into a long term disability.
5 I asked him the nature of it. He said it is psychiatric.
6 I asked him the diagnosis, he says it is anxiety. And
7 none of -- either of us can remember the technical term
8 for it. However, he has a phobic reaction to being around
9 large crowds of people. He does have a high school
10 diploma, Your Honor.

11 As indicated by the solicitor, his only prior record
12 are magistrate court charges. I do take a little issue
13 with what the solicitor said. If I understood him
14 correctly to say numerous or something along those lines.
15 There were numerous fraudulent checks, Your Honor.
16 However that was basically a one shot deal. I think there
17 were a couple of times, however, I'm not trying to pass
18 the buck, they were his checks -- the first -- he was
19 married to his first wife at that point in time and that
20 had some bearing on it.

21 Your Honor, I am not here to argue with the verdict.
22 I would simply ask the court to take into consideration
23 the fact that this man has no prior record. He obviously
24 had custody of his daughters for all their lives until
25 they became grown. Candidly, I'm trying to remember, Your

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Charge

436

1 Honor, when the new law went into effect for the GPS
2 monitoring. I believe that was '06, if I'm correct. I
3 don't believe this would fall under the monitoring
4 statute.

5 MR. THEM: I've checked that on the sentencing
6 sheet that he did qualify, but after hearing Mr. DeJong
7 tell me that, he is correct. This does not qualify for
8 monitoring because of the time of the offense verses the
9 time the law went into effect. So I've asked you to black
10 out the portion about mandatory GPS monitoring.

11 MR. DEJONG: It does -- the criminal sexual
12 conduct second degree with a minor, Your Honor, does fall
13 within the eighty-five percent nonparolable sentencing
14 range. Obviously that -- whatever Your Honor does would
15 require two years of community supervision on the back end
16 of any sentence Your Honor gave.

17 He is a forty-seven year old man, Your Honor.
18 Standing beside him here, he's basically in his prime
19 compared to me. Being an old fellow myself. I would ask
20 the court to take that into consideration. He does have,
21 as I indicated, some health issues, his total lack of
22 record, and I ask the court to take all of that into
23 consideration on sentencing.

24 Anything you would like to share with His Honor, Mr.
25 Dean?

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Charge

437

1 DEFENDANT: Just again, I ask for leniency for
2 my family's sake more so than mine. They are dependent
3 somewhat on me. We live as a family unit. And whatever
4 Your Honor decides, I will abide by.

5 THE COURT: Thank you, sir. Can I see the
6 attorneys just a minute about the sentencing sheet and
7 what you wanted me to block out.

8 (WHEREUPON, Mr. Them and Mr. Dejong approached the
9 bar.)

10 THE COURT: This is case 2007-GS-39-346,
11 sentence of the court is the defendant be committed to the
12 State Department of Corrections for a period of twenty
13 years.

14 Case 2007-GS-39-347, sentence is fifteen years, to be
15 concurrent to previously imposed sentence.

16 Wish you the very best. And I certainly wish the
17 victim the very best.

18

19 END OF REQUESTED TRANSCRIPT OF RECORD

State of South Carolina -vs- Robert Lee Dean (2007-GS-39-0346, 0347)
Certificate of Reporter

438

1 CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the State
5 of South Carolina, do hereby certify that the foregoing is
6 a true, accurate, and complete transcript of record of all
7 the proceedings had and evidence introduced in the
8 trial/hearing of the captioned case, relative to appeal,
9 in the Circuit Court for Pickens County, South Carolina,
10 on the 21st day of September, 2009.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

13 I do further certify that I am neither of kin,
14 counsel, nor interest to any party hereto.

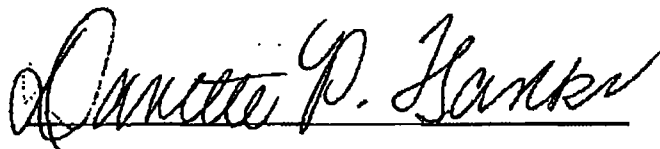
15 April 17, 2010

16

17

18

19



Circuit Court Reporter

WITNESSES

DOCKET NO. 2007-GS-39-347
PT

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

February TERM 2007

THE STATE

VS.

ROBERT LEE DEAN

ARREST WARRANT NUMBER

DIRECT PRESENTMENT

ACTION OF GRAND JURY

TRUE COPY
2007-07
Date

Robert S. Malone
Foreperson of Grand Jury

VERDICT

Guilty
Foreperson 2468

Foreperson of Petit Jury

Date:

Indictment for

LEWD ACT UPON A CHILD

VIOLATION § 16-15-0140

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

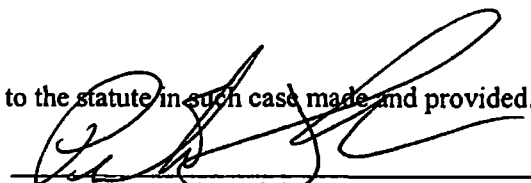
INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on February 20, 2007 the Grand Jurors of Pickens

County present upon their oath:

That ROBERT LEE DEAN did in Pickens County, between the dates of August 2001 and November, 2005, 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 K.W., 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.



SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Pickens

VS.

Robert Lee Dean

AKA:

Race: W Sex: M Age: 47

DOB: SS#: [REDACTED]

Address: [REDACTED]

Clemson, SC 29631

DL#: SID#:

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)

IN THE COURT OF GENERAL SESSIONS

441

INDICTMENT/CASE#: 2007GS3900347

A/W#: 2007GS3900347

Date of Offense: 8/1/2001

S.C. Code § : 16-15-140

CDR Code #: 2468

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §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:

Them, Peter

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 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2007GS39-346☐ 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. SEX REGISTER REQUIRED

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

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

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

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

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

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$100 \$ _____

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

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

§ 90.7 (SCCA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter: Danette Hanks

SCCA/217 (06/2009)

PRESIDING JUDGE

Judge Code: _____

Sentence Date: 9-23-09

WITNESSES

Crooks

Clemson Police Department

8/24/2006

ARREST WARRANT NUMBER

K058147

ACTION OF GRAND JURY

Vickary S. Malone **TRUE BILL** *8-20-07*
Foreperson of Grand Jury

VERDICT

David M. [Signature] Foreperson
GUILTY

Foreperson of Petit Jury

Date:

DOCKET NO. 2007-GS-39- *346*
PT

The State of South Carolina

County of Pickens

COURT OF GENERAL SESSIONS

February TERM 2007

THE STATE

vs.

ROBERT LEE DEAN

Indictment for

0396

CRIMINAL SEXUAL CONDUCT WITH A MINOR
2ND DEGREE (11-14)

VIOLATION § 16-03-0655(B)

STATE OF SOUTH CAROLINA)
)
COUNTY OF PICKENS)

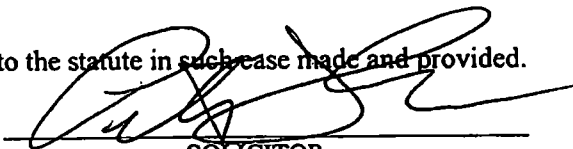
INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR 2ND DEGREE
(11-14)

At a Court of General Sessions, convened on February 20, 2007 the Grand Jurors of Pickens

County present upon their oath:

That ROBERT LEE DEAN did in Pickens County, between the dates of August 2001 and November 2005, commit a sexual battery on K.W., who was fourteen years of age or less but who was at least eleven years of age. This is in violation of § 16-3-655(B) [formerly § 16-3-655(2)] 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.


SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Pickens

VS.

Robert Lee Dean

AKA:

Race: W Sex: M Age: 47

DOB: SS#:

Address: Clemson, SC 29631

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS3900346

A/W#: K058147

Date of Offense: 11/30/2005

S.C. Code § : 16-03-0655(B)

CDR Code #: 0396

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADS

TO: Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive - Second deg.

in violation of § 16-03-0655(B) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Ther, Peter

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 20 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 \$ 100.00

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

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

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

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

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$100 \$ _____

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

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

§ 90.7 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

_____ 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

Court Reporter:

SCCA/217 (06/2009)

PRESIDING JUDGE

Judge Code:

Sentence Date:

FORM 5

STATE OF SOUTH CAROLINA

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF

Pickens

2012 AUG 31 P 12:42

Mr. Robert Lee Dean, #337033

Full name and prison number (if any) of Applicant.

2012-CP-39-1273

v.

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention *McCormick Correctional Institution*
2. Name and location of Court which imposed sentence *Pickens Co. / Gen. Sessions*
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) *2007-GS-39-0346*
 - (b) *2007-GS-39-0347*
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) *9-21-2009 - 20 years*
 - (b) *9-21-2009 - 15 years (concurrent) with (a)*

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence? 4/13
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal (Dismissed)
- ii. (Dismissed)
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Prosecutorial Misconduct
 (b) Ineffective Assistance of Counsel and Appellate Counsel
 (c) Due Process Violations (14th Amendment)

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) Please see attached Memorandum (Upcoming)
 (b) Please see attached Memorandum (Upcoming)
 (c) Please see attached Memorandum (Upcoming)

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? Yes
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? _____

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

(a) the specific nature thereof:

- i. Direct Appeal From Trial (Anders Brief)
 ii. _____
 iii. _____
 iv. _____

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

- i. South Carolina Court of Appeals
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. Direct Appeal Dismissed
 ii. _____
 iii. _____

iv. _____

(d) the date of each such disposition:

i. Submitted February 1, 2012 - Filed February 22, 2012

ii. _____

iii. _____

iv. _____

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

i. Unpublished Opinion No. 2012-UP-097

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) _____

(b) _____

(c) _____

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

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. John Oljorg - Pickens County Public Defender's Office
- ii. Wanda H. Carter, 1330 Lady Street, Suite 401
- ~~iii.~~ Columbia, S.C. 29201-3332
- (b) the proceedings at which each such attorney represented you:
- i. Trial / Sentencing
- ii. Direct Appeal
- iii. _____
19. State clearly the relief you seek in filing this application:
Vacating of Sentence, or any other available relief.
20. Are you now under sentence from any other court that you have not challenged?
No

APPLICATION TO PROCEED WITHOUT PAYMENT

CLERK OF COURT
 PICKENS COUNTY
 SOUTH CAROLINA

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

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

Robert L. D.
 Applicant

SWORN or affirmed to and subscribed before me this

27 day of August, 2012.

J. C. Franklin
 Notary Public

My Commission Expires: 12-16-2019

STATE OF SOUTH CAROLINA

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

VERIFICATION

County of

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

Robert D. [Signature]

SWORN to and subscribed before me this 27
day of August, 2 2012

[Signature] (L.S.)
Notary Public

My Commission Expires: 12-16-2019

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

2017 AUG 31 PM 12:42

State of South Carolina
County of Pickens

Robert L. Dean, #337033
Applicant
v.

State of South Carolina
Respondent

In The Court of Common Pleas
Case No.

Memorandum of Law In Support
of PCR Application

Now Comes, the Applicant, above-named to present his
Memorandum of Law In Support of PCR Application, and
would show unto the Honorable Court the following:

This matter comes before the Court by way of an applica-
tion for post-conviction relief. In which, is requested that
the Applicant "State concisely the grounds on which
you base your allegation(s) that you are being held in
custody unlawfully" ¹.

1. Question 10.(a), (b), and (c).

As well as, ... "State concisely, and in the same order, the Facts which support each of grounds".....

Procedural History.

Applicant, Robert Lee Dean, was Found guilty - per jury trial - of second degree criminal sexual conduct with a minor, and lewd act, during the September, 2009 term of the Pickens County General Sessions, before the Honorable G. Edwards Welmaker, Judge. Applicant was sentenced to imprisonment for an "aggravate period of twenty years.

Applicant Filed a timely Notice of Appeal with the South Carolina Court of Appeals. Applicant's appellate counsel Filed an Initial Answer Brief, along with a

1. Question 11. (a), (b), and (c).

2.

"Petition To Be Relieved As Counsel" on September 20, 2010. No opportunity to file a Pro Se Petition was granted!

On February 24, 2012, the Applicant received the Appellate Court's "Unpublished Opinion" dismissing his appeal, along with the granting of his appellate counsel's Motion To Be Relieved.

Allegations

The Applicant is requesting post-conviction relief for the following reasons:

1. Prosecutorial Misconduct
 - a.) Illegal enhancement of charges
 - b.) Threats and attempted coercion to induce a guilty plea
 - c.) Brady violation with state witnesses
 - d.) Improper interrogation proceedings
 - e.) Improper trial tactics (bolstering witnesses/closing arguments)
2. Ineffective Assistance of Counsel and Appellate Counsel
 - a.) Failure to request Brady materials
 - b.) Failure to properly investigate
 - c.) Failure to raise proper objections and preserve "relevant issues"

1. Along with a PCR application.

3.

for appellate review, during trial and closing arguments.

d.) Failure to Motion For Mistrial.

e.) Failure of appellate counsel to present appropriate issues for appellate review.

f.) Failure to ensure applicant's right to present pro se Anders Brief on direct appeal.

3. Due Process Violation

a.) Abuse of discretion with preliminary hearing Judge

b.) Abuse of discretion with trial Judge

c.) Failure of South Carolina Court of Appeals in granting "Forty-Five" (45) days to submit a Pro Se Anders Brief.

Prosecutorial Misconduct - Question 10 (a.), 11 (a.)

"The prosecutor is an officer of the Court, whose duty is to present a forceful and truthful case to the jury, not to win at any cost."

Su. v. Filion, 335 F.3d 119 (2nd Cir. 2003).

"As a general matter, we will reverse a conviction on the basis of governmental misconduct, only if the misconduct may have prejudiced substantial rights of the accused."

U.S. v. Cross, 928 F.2d 1030 (1st Cir. 1991)

"The Supreme Court stated that... 'the long ago applicable rule was that a prosecutor may strike hard blows, [but] he is not at liberty to strike foul ones.'"

U.S. v. Eastley, 994 F.2d 1241 (7th Cir. 1993).

"To Find misconduct, a 'two-pronged' test must be met:

1. The remarks must be improper.

2. The remarks must prejudicially affect the substantial rights of the defendant.

U.S. v Eyster, 948 F.2d 1196 (11th Cir. 1991).

During an in-camera segment of the jury Voir Dire; Trans.-pgs. 15 and 16, lines 18-1, the solicitor argues to the court that the applicant was "on notice" concerning the State's intentions of enhancing the applicant's "original charge of CSC, by the means of 'suspending defense counsel' with the requested discovery. But, in all actuality the applicant submits that over the two-year period of having Mr. Dejong's representation, he (applicant) was never provided with any copy of the discovery. And that there were, then, - with the two actual office visits - only the reading of the witnesses statements. And even here, what little discussion(s) there were, were in "direct relationship" to the - again - the original charge.

Further, Trans.-pgs. 12-13, lines 24-10 denote the solicitor reflecting to a "communication" made (or rather) initiated by himself, to the applicant, before the applicant acquired legal representation. And as such, again, emphatically charged that the applicant had proper notification of the additional two act charge(s). See - Trans.-pg. 14, lines 15-18 as well. Yet, Trans.-pg. 13, lines 7-18 denote . . . "And I quote, 'multiple indictments' to follow on CSC and a two act."

The applicant submits, the solicitor's quote clearly defines an "upcoming action" (not one that has already occurred). The quote also further implicates the existence of several other charges of CSC and two act that the applicant - then and now - has no knowledge of.

The solicitor then reverts back, again, to "single charge(s)" of CSC and a two act. Trans.-pg. 13, lines 11-13. And the applicant being

"adequately informed" of the solicitor's (State's) intentions through a "duly authorized person"? While, the applicant was "without" "established defense counsel!"

Further, the solicitor then asserts.... "Then, also for the purposes of the record, since Mr. Dijang has structured this in the form of a notice argument, I would like to make this a copy of the record at some appropriate time." Trans. lines 13-17. And,.... "But, if the court will take it in a sealed fashion"... (until after sentencing, that's fine), I think it needs to be a part of the record." Trans. lines 17-21.

The applicant asserts that "two issues" come to the fore.

- 1.) The "proper channels" issue asserts itself. With a plea offer included with the letter, defense counsel advice and representation were "most prudently" required.
- 2.) Inasmuch, as counsel for the state contends that the letter of May 2, 2007, constituted a "proper notification". Then, this "self-same" letter written to the applicant, should have "automatically" met the criteria as Brady material, prior, to the applicant's trial appearance. Even, without request from defense counsel.

"This circuit has held that defendants in a criminal case have the constitutional right to be fully advised about all plea offers and discussions, and then to receive 'counsel's informed opinion,' as to what pleas should be entered."

Boria v. Keane, 99 F.3d 492, 497 (2nd Cir. 1996).

Further....

"Our process requires that a convicted person not be sentenced on

1. Because the alleged notice contained a plea offer. Presented improperly.

materially untrue assumptions or misinformation."

U.S. v. Miller, 263 F.3d 1 (2nd Cir. 2001).

"The prosecutor does not represent an entity whose interest include winning at all cost; prosecutor's client is society, which seeks justice not victory."

U.S. v. Doe, 860 F.2d 488 (1st Cir. 1988).

"The government may not suggest that information not in evidence supports its case."

U.S. v. Badger, 983 F.2d 1443 (7th Cir. 1993).

The applicant further contends that his "very first" knowledge of the indictment was when it was "presented" in the "record on appeal," in his direct appeal, prepared by appellate counsel. This is to the CSC charge!

As to the "new" act indictment, his "very first knowledge" of its existence was on September 21, 2009 - the day of his trial! Presented to himself (applicant), by the solicitor, himself!!

The applicant asserts:

- a.) Notification of documentation "intended for use" in a case; not produced through "appropriate channels" (processes) does not constitutionally convey "authoritative" validity. Channels being, with designated counsel!
- b.) "was coming" does not define as "has arrived."
- c.) As the solicitor has pointed out, service of an indictment to an attorney "may," and should not, validate a defendant's constitutional rights of due process being fulfilled.
- d.) It is the "filing" of an indictment "with the court" that conveys jurisdiction to that court. And it is the "serving" of a filed indictment.

1. See also, Memorandum - Ineffective Assistance of Counsel.

ment upon the accused - allowing "ample time" to prepare "defense strategy (ies)" before a court appearance that should convey accepted acknowledgement from the defendant and the court, as well.

The Applicant asserts that in "neither instance" should this court find that the appropriate criteria has been met.

"Repeated misstatements that go uncorrected may be grounds for ordering a new trial or reversal on appeal."

Floyd v. Muchum, 907 F.3d 347, 353 (2nd Cir. 1990).

Prosecutorial Misconduct - B.

The South Carolina Supreme Court held that a prosecutor has special responsibilities to do justice and is held to the highest standards of professional ethics.... and that deliberate prosecutorial misconduct which threaten rights.... Fundamental to liberty and justice will not be tolerated.

State v. Quattlebaum, 527 S.E. 2d 105 (S.C. 2000).

The Applicant asserts that, from the onset of communications with the solicitor - under the context of plea negotiations - he (Applicant) was informed that "in no uncertain terms" a fifty year sentence was being sought against him. Upon reflection by the Applicant, this would have had to have been on the initial charge of the warrant for a lewd act.

As time progressed towards a trial date, various other "ultimatums" were cast upon the Applicant. Ranging from pursuing an additional charge of criminal sexual conduct along with the lewd act charge, and seeking their "maximum sentences, respectively. To seeking "multiple counts

of the two charges. To the final act presenting the Applicant with an indictment for CSC (second degree), the day of trial. And securing an aggravated sentence of twenty years.

Leaving the Applicant or counsel any defense preparation time, completely out of the picture. As, aside from the initial - warranted and indicted charge - the ultimatum between the charges and the accompanying plea offers were "constantly changing."

"The function of the prosecutor under the Federal constitution is not to tack as many skins of victims as possible to the wall. His function is to vindicate the right of the people, as expressed in the laws, and give those accused of a crime a fair trial."

Donnelly v. DeChristoforo, 416 U.S. 637, 648-49, 40 L. Ed. 2d 431, 440, 94 (S. Ct. 1968-1974.).

The applicant would also believe it relevant to make known the "entirely opposite side" of the solicitor's "attempted conviction maneuvers". That being, the last plea offer, for probation, which - although the applicant both maintained at that time (and now) "actual innocence" - certainly brings forth the questions of what exactly did he, (or did not) truly have in the way of evidence, to secure any conviction, at all?

The applicant (though legally unlearned) would speculate - and even question - whether or not probation could be "bargained out" of a "violent" most serious crime, such as those used in the instant case? Without the necessity of surely reducing the charges, say, to the level of a non-violent circumstance, where it would not - as a prerequisite of maintaining freedom - require any kind of registry participation. Or even probation granted through, say, an Alford Plea. Likewise, the applicant (like Alford) would have asserted....

"We hold that where, as in this case, the defendant pleads guilty, but refuses to admit to conduct that demonstrates a factual basis for the plea....."

N.C. v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed. 2d 162 (1970).

.... as well as, found the arrangement feasible.

"Conviction in circumstantial evidence case will be reversed if evidence points equally of innocence and guilt.

U.S. v. Mulder, 120 F.3d 534 (5th Cir. 1997).

"Prosecutors engaging in plea bargaining are held to the 'most meticulous standards of both promise and performance.

U.S. Lawler, 168 F.3d 633 (2nd Cir. 1999).

Prosecutorial Misconduct - C, D, and E.

"We hold that the criminal action must be dismissed when the government, on the grounds of privilege, elects not to comply with an order to produce, for the accused inspection and for admission in evidence, relevant statements or reports in its possession of government witnesses touching the subject matter of their testimony at trial."

Junck v. U.S., 353 U.S. 657, 1 L. Ed. 1103, 77 S. Ct. 1007 (1957).

"As a general matter, we will reverse a conviction on the basis of governmental misconduct only if the misconduct may have prejudiced substantial rights of the accused."

U.S. v. Cross, 928 F.2d 1050 (11th Cir. 1991).

"The government's obligation to disclose favorable evidence under Brady covers not only exculpatory evidence, but also information that could be used to impeach government witnesses."

U.S. v. Agurs, 427 U.S. 97, 107-11 (1976).

In the instant case situation, the Applicant would point out that this argument(s) encapsulates the "one issue" that his defense counsel utilized as an entry for her "direct appeal brief" to the South Carolina Court of Appeals. Along with her Petition to be Relieved as Counsel. That being.... "The trial judge erred in offering the expert testimony of a forensic interviewer of abused children into evidence at trial in order to explain why children make delayed disclosures in reporting abuse because this testimony was irrelevant to the single issue

of whether sexual misconduct occurred in the case, partly because this expert witness never met or interviewed the prosecutrix explained her late reporting of the incidents in question.

This expert testimony prejudiced appellant's case because this testimony improperly bolstered the prosecutrix's testimony at trial."

Further, while the Applicant- through the submission of the Anders Brief (herein)- concurs with the issue presented, it is in an "additional context of this issue" that he would also extrapolate the following:

A. In addition to the fact that the expert witness never actually met the prosecutrix, the solicitor's "very use" of this individual without any prior notice or warning "before trial commencement constitutes misconduct under the Brady doctrine, as well.

The Applicant's counsel (as well as the Applicant, himself) were not able to "anticipate" the solicitor's motives in the presentation of a witness under this circumstance. And as such, were not only "blindsided" with (and by) her appearance. But struck blind with the "inhibitor" of being able to utilize "countermeasures" of defense preparation, such as, as Motion In Limine, under State v. Smith, 337 S.E. 2d 522 S.E. 2d 598 (1999), as well.

B.) And, if all else fails, be able to secure "opposing expert testimony." "The government may not suggest that information, not in evidence, supports its case."

U.S. v. Badger, 983 F.2d 1443 (7th Cir. 1993).

1. See also PER exhibit- Initial Anders Brief of Appellant.

"A conviction may not be obtained simply by piling inference upon inference."

U.S. v. Vallo, 238 F.3d 1242 (10th Cir. 2001).

"Structural errors" call into question the very accuracy of the trial process, and thus are not amenable to "harmless error" analysis, but require automatic reversal."

Quintero v. Bell, 256 F.3d 409 (6th Cir. 2001).

ShawFelt v. Alaska, 228 F.3d 1088 (9th Cir. 2000).

To find misconduct, a "two-pronged" test must be met:

- (1) the remarks must be improper
- (2) the remarks must prejudicially affect the substantial rights of the defendant.

U.S. v. Fyster, 948 F.2d 1196 (11th Cir. 1991).

"Prosecutor improperly attempted to bolster witness testimony when during closing argument she told jury that uncalled witness would have corroborated the witness's testimony."

U.S. v. Hanks, 184 F.3d 1322 (11th Cir. 1999).

"It is improper for a prosecutor to inject personal beliefs about the evidence into closing arguments, or to call the defendant a liar."

U.S. v. Nickens, 935 F.2d 112 (1st Cir. 1992).

U.S. v. Iglesias, 915 F.2d 1524 (11th Cir. 1990).

The Applicant asserts that during the course of the solicitor's closing arguments it was stated . . . by the solicitor . . . "But I think it was close to a thousand children that she had interviewed and she brought to you the benefit of that experience. Benefit of that experience is children very seldom promptly report."

Trial Transcript-pg. 410, lines 3-6.

Further.... "Why do they not promptly report? Because they're afraid of the person that did something to them, might hurt them."

Transcript-pg. 410, lines 7-8.

The Applicant asserts that, clearly, because the expert witness' testimony was ruled "acceptable as evidence" into the record, it was (and is) perfectly acceptable to use that same testimony to (in closing argument) "drive the relevance of that testimony home."

The Applicant, in rebuttal, would further assert that, in the instant case, driving the testimony home should not have entailed the solicitor's "methodology" of personal additional reassessment of that testimony, by the means of suddenly becoming an expert witness, themselves. Though objected to, the trial judge entered (allowed) the testimony of the expert, which a competent jury heard. Which, if the solicitor felt needed "reemphasizing" in the closing argument, the "proper venue" would have been to direct the jury back to that testimony, as recorded by the record. Which also, if reemphasis was required, the jurors, themselves, were with the "authoritative" without to request it.

Bearing-in-mind, again, if this was "legitimate evidence."

The Applicant further submits an "additional prejudicial degree" with this particular circumstance, in that....

Using the guise of the expert's testimony as a springboard, the solicitor not only became the expert, he also became the victim (alleged), himself. wherein, he stated.... ".... she told the story to Nick, she

"told the story to her grandmother, and she told the story to her grandfather. There was no point, (or rather), no reason for her, at that point in time, to lie."

Transcript- pg. 410, lines 20-23.

"Prosecutor may not use 'bully pulpit' of closing argument to inflame passions or prejudices of jury, or to argue facts not in evidence."

U.S. v. Childress, 58 F.3d 693 (D.C. Cir. 1995).

Further...

1.) Under the Jencks act, witness statements, (including reports prepared by arresting officers), must be turned over to the defense.

2.) Statement need relate only generally to events and activities testified to by witness to come within sweep of Jencks act.

U.S. v. Alvarez, 86 F.3d 901 (9th Cir. 1996).

The Applicant submits - as a quick refutation to the expert witness' testimony - that there were no "previous statements" rendered through Brady from the expert, provided for defense perusal or purpose, prior to the expert's appearance at trial....

"Jencks act is designed to provide the defense with access to impeachment material, and critical to analysis of alleged violation is whether timing of the disclosures of the material prevented its effective use at trial, by the defense...."

U.S. v. Arboleda, 929 F.2d 858 (1st Cir. 1991)....

and as such, "critical analysis" under Jencks - in the instant case - falls not to the "timing of disclosure, before trial," but rather the timing of disclosure being "during the trial. However yet, all of the

preceding immediate alleged arguments "culminate" to render the misconduct of the solicitor, the testimony of the expert witness (along with her subject matter), and the acceptance of the trial court, thereof, under the entire circumstance "explosively prejudicial." Particularly where the alleged victim testified.... "through the solicitor's".... "testimony".... "in camera"....

"MR. THEM: "When I asked her why she was afraid of him, she said, "because she (I) thought he was suicidal."

Trial transcript - pg. 80, lines 4-5.

And further....

"MR. THEM: I'm not trying to prove he was suicidal, Your Honor, I'm trying to prove that this was the young lady's state of mind."

Transcript - pgs. 80-81, lines 24-1.

The Applicant imparts two "immediate conceptions? Concerns?
A. Suicide - by its own formal definition - is the taking of one's "OWN" life!
B. As the solicitor here - again as, or rather, in the role of the alleged victim, would convey is Fear of a suicide! Which, in light "most favorable" to the Applicant's, "innocence stand," denotes not harm to others. (Yet, the solicitor shifts ambiguities again).... by stating....

"I'm not trying to prove he was suicidal. I'm trying to prove that the child thought he was.... and that increased her Fear level about not telling other people.... because she was afraid that he might hurt her or some-

1. The State Solicitor

"one else."

Transcript - pg. 81, lines 6-10.

From suicidal, the solicitor has interwoven "homicidal," or some "lesser variant" thereof? Yes!

As, or by, becoming the witness (in earlier and current years)? Yes!

Where the witness (victim-alleged) is of a "current age," to rectify (clarify), this discrepancy, herself, in camera? Yes!

Wherein, according to the solicitor's accounting, these "suicidal tendencies" were spoken of in the presence of other children in the car? Yet, no confirmation from any of the other children was utilized, in discovery? Yes! Or, in camera? Yes! Or, trial? Yes!

Where, the solicitor succeeded in using the "also unconfirmed testimony" of the expert witness - who interviewed not the alleged victim, or her sibling, or step-sister's, or even, the mother, or anyone else? Yes!

And Finally, where the solicitor managed the "all aforementioned," in spite of the fact that the "in-camera" ruling from the trial judge was....

"THE COURT: All right. I'm going to allow her to testify that she was afraid to report it, but not the reason for the -- I was just afraid. Not go into what his mental state was or her view of his mental state." She can say that that she was afraid to report it. And again that will not be any -- that'll just be that she was afraid.

Transcript - pgs. 81-82, lines 24-4.

1. -- = Fear? 2. -- = Elaboration on the Fear?

And Further...

"THE COURT: Well, I think it's relevant for the witness to say why she didn't report it. I think that's relevant testimony that a jury is entitled to have. You objected to the basis of her stating as to why she was afraid to tell this to anyone. I sustained your objection to that. I guess all we can do then is go down the path and see what happens.

Transcript pgs. 82-83, lines 21-2.

The Applicant asserts that "what happened" was a "repeated testimonial account" of unsubstantiated innuendo presented to the jurors, by unorthodox, as well as, unconstitutional means. Which, the Applicant further asserts contaminated the entire trial proceeding, beyond the scope of redemption, as enacted.

In State v. Shuler, 344 S.C. 604, 545 S.E.2d 805, cert. denied, 51 U.S. 2d 306, — U.S. —, 122 S.Ct. 404 (2001), the court explained that under [Headnote 3] a solicitor... "cannot vouch for the credibility of a witness by expressing or implying his personal opinion concerning a witness's truthfulness..., or placing the government's 'prestige' behind a witness, by making explicit personal assurances of a witness's veracity.

"Because a jury must make its own assessment on the credibility of witnesses, it is inappropriate for the State to assure the jury of a government witness's credibility."

State v. Kelly, 343 S.C. 350, 369, 540 S.E.2d 851, 681 (2001).

State v. Bilchrist, 329 S.C. 621, 496 S.E.2d 424 (Ct. App. 1998).

Ineffective Assistance of Counsel- Question 10(b.), 11(b.)

A.) Failure to request Brady materials.

"Indeed counsel's incompetence can be so serious that it rises to a level of a constructive denial of counsel, which can constitute constitutional error without any showing of prejudice."

"Taylor v. United States, 724 F.2d 831, 834 (CA 9 1984).

"An attorney has a duty to familiarize himself, (rather clearly), with the discovery materials provided by the state. Because counsel failed in this regard, his behavior was not objectionably reasonable under Strickland."

Williams v. Washington, 59 F.3d 673 (7th Cir. 1995).

"If counsel's ineffectiveness was so pervasive, an applicant may be exempted from proving actual prejudice."

Frett v. State, 298 S.C. 54, 378 S.E. 2d 249 (1988).

The Applicant would assert that with this issue comes the allegation(s) of....

- a.) Requesting any documentation concerning "what information(s) that were to be introduced by the state's "expert" witness."
- b.) And in fact, the fact, that this witness even existed and was intended to be called to testify. Which in turn, would have both given counsel and the Applicant sufficient forewarning to either challenge the appearance or make the necessary defense countermeasures. Such as, the presentation of their own "expert witness" to offer rebuttal testimony as to why an individual such as the alleged victim might fabricate this circumstance.

Particularly, where - as an ultimate consequence - the solicitor

tor's misconducts (with and concerning) his witness's appearance at trial came to "prejudicially bear" upon both the Court and jurors.

Please see also Argument - Prosecutorial Misconduct, and PER-exhibit- , in support.

C) Requesting serving of all indictments intended for use to bring the Applicant to trial, within "appropriate notification parameters," to prepare a defense.

The Applicant asserts that on the "very day" of his trial the solicitor - in an attempt to substantiate the Court's jurisdiction - did present the Applicant with an indictment to bring forth "immediate prosecution" of the charge contained therein.

The Applicant further asserts that this action was his "especially prejudicially problematical," in that, "only minutes previous," to the Applicant unwisely accepting possession, this same indictment was presented to his defense attorney, which, defense counsel adamantly chose not to accept. (Trial Transcript - pg. 6, lines 14-16.).

Being summoned to the court reporter's station at the front of the courtroom - the solicitor then served the indictment on the Applicant.

While defense counsel maintains "But I suggested to him that I was not pleased that he would serve that document, or attempt to serve that document, on my client with the jury panel assembling." (Transcript - pg. 7, lines 5-8). And that.... "what Mr. Thorne's intentions were at that point in time, I do not know." (Transcript -

1. The Solicitor

lines 3-5). The Applicant asserts that his being summoned "anywhere in the courthouse by the solicitor" for any reason was sufficient cause for alarm. Or, at least, a "wariness" on the part of his counsel. Particularly when that "anywhere" turned out to only be within "speaking distance" of where counsel was. As well as, under the - only moments previous - exchange between the two counsels, concerning the indictment presentation, issue.

The Applicant asserts that... while it is true counsel argued during the "in camera" segment at the beginning of the trial about the indictment being presented upon the Applicant as it was. (Transcript pgs. 5-20). Counsel - ultimately - gave up on the issue through the following concession(s):

1. "Now, if the state is conceding a lewd act on a child, lewd act on a minor as a lesser included, I'll fold my tents and go home, and we'll take it as a lesser included. But not on two indictments."

(Transcript - pg. 17, lines 16-19).

The Applicant asserts and maintains that there was never a question of innocence. Or his desire to pursue that avenue of defense. Nonetheless,

"The appeals court stated that the attorney breached his duty to advise the defendant about the desirability of a plea offer, by grossly underestimating sentencing."

U.S. v. Gordon, 156 F.3d 376 (2nd Cir. 1998).

The Applicant would further assert that counsel's decision to accept the "lesser included charge" - if, in fact, - had been agreed

to buy the Court and the solicitor, it had not been discussed between himself and counsel. And as such, counsel's "sole decision."

Further, counsel's "willingness" to "fold the case" at that point would have rendered "moot" any relevance to the arguments concerning proper presentment of the indictment in this segment of transcribed exhibit. Or, the jurisdictional issue. Or, the misconduct issues, as well, argued within this memorandum.

2. On page 11, line 5, of the transcript. (jury voir dire), the solicitor stated:

"With Mr. Dejong's arguments about 'argumental' notice and everything The proper remedy would be continuance.

Here, the Applicant asserts that, indeed, a continuance was the proper recourse at that point. Where the Applicant would have been able to move the "entire circumstance" of the second indictment back to its initial Formulations. Being, the direct presentment, as well as, the warrant, arrest, and arraignment (preliminary hearing) issues.

And yet, counsel stated

"Mr. Dejong: Your Honor, I'm not asking for an arraignment, as for that I would have ended my argument." (transcript pg. 19, lines 16-17).

Further

"Mr. Dejong: And I mean no disrespect to your Honor, and I understand your ruling and I'm not arguing with your ruling.

Here, the Applicant asserts that it was not "a continued argument" to the judge's ruling that was required at this juncture, but rather

1. Applicant's defense counsel.

the "taking advantage of" the court's ruling with the caveat. "That being, mistrialing the case, based on the new act charge if counsel determined that there was surprise evidence (information) brought forth during the course of the trial. (Transcript-pg. 18, lines 20-25; pg. 19, lines 1-3) As well as, "prejudice!"

The Applicant asserts further that, that "surprise" came with the solicitor's calling of the "expert witness." And, that ensuing testimony! Lastly, with this issue, by the solicitor's own acknowledgement....

.... Then also for purposes of the record, since Mr. Djong has structured this in the form of a notice argument, I would like to make this a copy of the record at some appropriate time." (Transcript-pg. 13, lines 13-17). And.... "I would like to also make a part of the record, a copy of the plea offer sent to Mr. Djong, not to his client, because at that point in time Mr. Djong had filed for discovery." (Transcript-pg. 13, lines 21-25).

The Applicant asserts that defense counsel should have made a "recorded objection" of the solicitor's effort to substantiate the "plea offer segment" of the letter forwarded to the Applicant.

The Applicant would further assert that, with the "several" plea offers that came forth from the solicitor, there was, never, a clear understanding of the circumstances surrounding them explained to the Applicant. Only that they were in existence.

With the offers ranging from an initial (50) Fifty years, sought, down to an offer of probation, the Applicant feels that there should have been "informative discussions" between his defense

counsel and himself. Particularly, as the offers were continually diminishing in the "sentencing time factors". And especially, again, with the offer of probation.

Under Boria v. Keane, Id. "Defendant who was not advised by his attorney of plea bargain offering a one-to-three-year sentence was tried and sentenced to twenty years to life. The court held that attorney's failure to advise defendant of probability (or rather) improbability of acquittal and benefit of plea bargain constituted ineffective assistance of counsel."

The Applicant asserts that with the "final plea offer of probation" his counsel "verifiably" elected to disclose the offer. But, in view of his knowledge of the Applicant refusing all the previous offers, he (counsel) "assumed" that the last offer needed only be disclosed, as well.

The Applicant can now - after some legal research - assert that, while it is true that he (Applicant) did and does, adamantly maintain his innocence, despite all the offers presented, and unexplained, had defense counsel given "any elaboration" with the final offer, it may have been "highly considered." And perhaps, even accepted.

Especially, if counsel would have taken to the bargaining table the understanding that with the "probation offer," the Applicant would have been pleading to a "non-registry" offense.

Or, again, where - in the Applicant's case - the State went from a threat of fifty years, down to an offer of probation, and ultimately to securing a sentence of a total of thirty-five years.

Twenty years and fifteen years, (concurrent).

"From counsel's function as assistant to the defendant derive the the overarching duty to advocate the defendant's cause. And more particular duties to consult with the defendant on important decisions, and to keep defendant informed of important developments in the course of the prosecution."

U.S.C.A. Amendment 6; Strickland v. Washington, 104 S.Ct. 2052 (1984).

The Applicant would assert, counsel's "advocation of the defendant's cause, would and should have, incorporated taking the appropriate measures" to insure that despite his acquiescence with all aforementioned thusfar in this memorandum were preserved for appellate review.

Ineffective Appellate Counsel - (c.)

"The Supreme Court held that the Strickland standard of ineffective assistance of appellate counsel claims are governed by the standards set forth in Strickland v. Washington, 80 L.Ed.2d 674 (1984)."

Hook v. Ward, 184 F.3d 1206 (10th Cir. 1999); Evits v. Lucet; Supra note 51.

"Appellate counsel need not advance every argument, regardless of merit, urged by the appellate defendant. But the issues chosen must not fall below an objective standard of reasonableness."

Gray v. Green, Supra note 125, 778 F.2d at 353.

"A defendant is entitled to effective assistance of counsel."

Southard v. State, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999).

"When appellate counsel omits a significant and obvious issue without legitimate strategic purpose, his performance will be deficient."

Kitchen v. U.S., 277 F.3d 1014 (7th Cir. 2000).

Here, the Applicant would assert "a simple fact of conclusion. That being, rather than appellate counsel submitting a "worthy brief" for the appellate court's consideration - such as, (possibly), along the lines of what has been transcribed herein. Counsel elected to present an Anders Brief of Appellant." which consists of "one, possibly merit-
orious issue." which also consists of a "Petition To Be Relieved As Counsel." which also contends that, "in her opinion, the appeal is without legal merit sufficient to warrant a new trial."

By the Applicant's estimation of this document, it amounts to, no more than, a perfunctory "formal abandonment of counsel," at a critical stage in the appeals process. As both appellate counsel and this court are aware, there still remains, "five more levels of appeal, where this case must venture, in the Applicant's pursuit of vindication. And for additional relief."

Further, it is a given "prominent factor" that each court places a goodly amount of "assumed confidence" in each lower court's assessment - and ultimately, rendered decisions - as being appropriate. Of equal importance (and concern) to the Applicant, is the fact of how much more difficulty arises where an issue - believed "highly important" - to a petitioner (defendant) is lost to the appellate process, because of improper - or even nonexistent - efforts to preserve the given issue(s), by counsel. Whose views totally contrast those of their client. As is the case, here.

Specifically further still, appellate counsel's Anders Brief issue addressed the "single error" of the trial judge, with his ruling

concerning the admittance of a witness's testimony. What appellate counsel's brief did not make a "subsequent issue(s)" were, / was

- a.) The "prosecutor's (trial) misconduct" in introducing the witness.
 - b.) Trial counsel's "ineffectiveness" of having the objection of the witness' testimony, and the judge's ruling thereon, "properly preserved for appellate review", within all the forthcoming courts.
 - c.) All additional issues (again) presented within this memorandum. each, being presented as the "grounds" that they represent.
- "Appellate counsel may also be ineffective for failing to make a record sufficient for review."

Ezell v. State, 345 S.C. 312, 548 S.E. 2d 852 (2001).

"The Applicant asserts further, that prior the appellate counsel's submission of the Anders Brief there was a "direct inquiry" made by the Applicant (himself), in reference to his making his "own ideas of input" into the preparation of what he was anticipating as being a substantial appellate presentation. And, in response to his inquiry, he was informed by appellate counsel that.... "You will be able to file any paperwork you desire concerning (regarding) your appeal."

As a consequence of the response from appellate counsel, the applicant allowed - what was perceived as - a "suitable time lapse" for his opportunity. Only, instead of receiving the "opportunity notification", the next communicate he received was counsel's brief. And subsequently, the dismissal (denial) of appellate relief.

The Strickland test of effective assistance of counsel applies with equal force to analysis of the performance of appellate counsel.

U.S. v. Mannino, 212 F. 3d 835 (3rd Cir. 2000).

Due Process Violations

"Structural errors" call into question the very accuracy and reliability of the trial process, and thus, are not amenable to harmless error analysis, but require automatic reversal.

Quintana v. Belt, 256 F.3d 409 (6th Cir. 2001).

Shewfelt v. Alaska, 228 F.3d 1088 (9th Cir. 2000).

"To rise to a level of due process violation, prosecutorial misconduct must be of significant sufficiency to result in the denial of a defendant's right to a fair trial."

U.S. v. Maynard, 236 F.3d 601 (10th Cir. 2000).

"Due process requires that a convicted person not be sentenced on materially untrue assumptions or misinformation."

U.S. v. Miller, 263 F.3d 1 (2nd Cir. 2001).

"The government has a special responsibility to ensure the integrity of the criminal judicial process by living up to the code of professional ethics and fair play at all times."

U.S. v. White, 222 F.3d 363 (7th Cir. 2000).

Here, the Applicant asserts his belief that the violation(s) of his due process rights extend into "each and every issue" argued within memorandum, from the misconduct, to the ineffectiveness of both his trial and appellate counsels, to (regretably) the "ruling authorities" in the trial and appellate courts, thus far.

The would Further point out that, it is his intention that the issues argued thusfar have the "appropriate matter" to warrant and for substantiate the annexing of the remaining circum-

1. Applicant

startiated allegations. Namely:

A. Where the solicitor sought to incur the court's jurisdiction to prosecute the Applicant with a warrantless - as well as - arrestless indictment presented at trial, the Applicant believes that the court should have - of its own volition - at best - declared a mistrial, with misconduct attached. Or, at second - best, declared the indictment and its charge "invalid for use." As it did not come to life through the "appropriate channels" set forth under this state's Rules of Criminal Procedure; 3(b) and 3(c). As well as, the Fourteenth Amendment to the U.S. Constitution.

"The Federal Court stated in *habe verba*, "J. (Jurisdiction) is conferred upon the court by the filing of the indictment; it is the filing of the indictment, not the reading, which invests the trial court with jurisdiction.

Shupe v. Johnson, 104 F.3d 282 (1997).

This should have been done despite trial counsel's "unwillingness" to take the court up on its caveat.

B. Where the solicitor sought to introduce the testimony of the state's expert witness, and succeeded, defense counsel should have moved "more vigorously" to establish the alleged testimony as inconsequential. As well as, unconstitutionally unreliable. Further, the very use of the witness required that the solicitor provide notification of defense counsel. Obviously so, under Brady, for defensive preparatory measures to be taken.

Particularly, in the Applicant's case, where the solicitor sought to introduce "any mental health issues," concerning either the alleged victim or the Applicant, himself. As to whether or not this prerequisite was met the Applicant can only allege, not. On the basis that his defense counsel never brought up any notification(s) or insight(s) during their consultations, before trial concerning the expert witness's existence.

In fact, where "any of the state's witnesses" appearance and testimonies were concerned, there was no "definitive strategies" discussed between the applicant and defense counsel. Such as, what impeachable or mitigating circumstances might have been utilized to bolster the Applicant's goals and causes for an acquittal of the charge(s) brought against him. Again particularly, where the alleged victim's testimony was concerned.

Such as, where there existed (and should still exist) police records of an incident concerning the alleged victim, her brother, and a next door neighbor. Also, where the Applicant was summoned, along with the police, concerning an alleged "sexual occurrence" between the alleged victim in this case, and the neighbor. Months before this case.

The Applicant would assert that, under the "auspices of character reference" the two officers could (and) should have been summoned to testify in the Applicant's behalf.

"If counsel entirely fails to subject the prosecution's case to a meaningful adversarial testing, then there has been a denial of sixth Amendment rights that makes adversary process itself presumptively unreliable."

U.S. v. Cronin, 466 U.S. 648 104 S.Ct. 2059 80 L.Ed 2d 637 (1984).

C. Likewise, with the due process necessity of challenging the prosecutor's misconduct(s) with proper defensive mitigating investigations, counsel's handling of the state's plea offers of negotiation with respect to the Applicant's Full awareness is not optional. To the inclusion of (in the Applicant's case).....

"Prior to trial an accused is entitled to rely upon his counsel to make an independent examination of the facts, circumstances, pleadings, and laws involved, and then offer his informed opinion as to what plea should be entered."

Van Morke v. Gillies, 392 U.S. 708, 68 S.Ct. 316, 92 L. Ed. 309 (1947).

"In short, inquiry into counsel's conversations with the defendant may be critical to a proper assessment of counsel's investigative decisions, just as it may be critical to a proper assessment of counsel's other litigation decisions."

U.S. v. Decoster, Supra, at 312-313, 624 F.2d at 209-210.

D. With respect to the due process issue(s) of appellate counsel, the Applicant would also assert....

"A criminal defendant has a right to properly prepared record on appeal," which includes complete transcript of proceedings at trial.

U.S. v. Neal, 27 F.3d 1035 (5th Cir. 1994).

The Applicant asserts that, with his appellate counsel's preparation of the Record on appeal comes a portfolio that lacks the exhibits used in his trial. As well as, the documentation utilized by the Sheriff's department in their pursuits of investigating his case. And as such, he (Applicant) is currently
I. Clemson City Police Dept.

at a "decidedly disadvantaged dilemma" with the preparation of this memorandum in support of his PER application. It is his both desire and intention to be able to acquire these informations and utilize them prior to his PER hearing appearance. In an effort to "shore up" any necessary inconsistencies with his PER submission. This, the Applicant prays to accomplish through the means of an Amended PER Application as soon as possible.

Meanwhile.....

"A state must provide an indigent defendant with the basic tools to present an 'adequate defense or appeal'."

Manuelo v. Alvarez, 292 F.3d 939 (9th Cir. 2002).

"Rule 71.1-Post-Conviction Relief Actions"

d.) Appointment of counsel for hearing.

"Counsel shall ensure that 'all available grounds' for relief are included in the application, and shall amend the application if necessary."

Lastly, with the due process grounds (at this point).....

where the South Carolina Supreme Court denied the Applicant the opportunity to submit a "pro se brief" on direct appeal, within 45 days after granting appellate counsel's Petition to be Relieved, due process has been violated.

"A state procedural ground is not adequate, unless it is strictly or regularly followed."

Harrison v. Lovorn, 457 U.S. 255, 262-63 (1982).

"It is a basic canon of statutory construction that the use of the word 'shall' indicates mandatory intent."

U.S. v. Myers, 106 F.3d 936 (10th Cir. 1997).

"Very simply stated, the Applicant presents an exhibit, wherein this opportunity was granted to another inmate appellant." Yet, denied the Applicant. An opportunity wherein a "very real possibility" of Appellate relief may have been obtained. An opportunity whereby, when denied, brings (or rather) places the Applicant's appellate efforts in jeopardy of default, in that.... in conjunction with the Applicant's anticipated habeas petition....

"A State prisoner [must] present state courts with the same claims he urges upon Federal Courts."

Picard v. Connor, 404 U.S. 270-276-277 (1971).

"No procedural default where counsel refused to include all claims in appellate brief, and petitioner filed motion with State Supreme Court for leave to file supplemental pro se brief, circuit court held petitioner's motion, including attached pro se brief placed issues before the state's highest court for decision on the merits."

Clemmons v. Delo, 124 F.3d 944, 953-55 (8th Cir. 1997).

Under Delo, The Applicant "re-emphasizes" two pertinent issues:

A.) Appellate counsel "inadvertently" refused to include all claims that he [Applicant] felt were cognizable. In that, with counsel's Johnson Brief to Be Relieved, she felt there were "no meritorious issues" worthy of appellate (direct appeal) relief.

B.) As the Applicant interprets "proper appellate protocol," rather than move forward to certiorari with the South Carolina Supreme Court at this juncture, - optionally bypassing PER - it would be "more prudent" to move into PER, thus eliminating the "very real likelihood" of having

to regress back to PCR, and entertaining certiorari, twice! Being mindful, however, of the fact that had the opportunity been given by the Court of Appeals and insured by appellate counsel, a pro se brief would have been forthcoming, not unlike, "this Memorandum.

With All Being Said, For now, The Applicant - in Finality - asserts
 this, these ,
 Addendum(s)

"It is generally preferred that a blameless party not be disadvantaged by the procedural errors or neglect of his or her attorney."

Harris v. U.S. Railroad Retirement Bd., 198 F.3d 139 (4th Cir. 1999).

"When the solicitor knows something is wrong with the judicial process, it is used as (much) a 'legal subterfuge' for wrongfully depriving a defendant of his liberty."

Mooney v. Holohan, 294 U.S. 103, 55 S.Ct. 340 (1934).

"Cumulative error applies when, although no single error - or trial - examined in isolation is sufficiently prejudicial to warrant reversal, the cumulative effect of multiple errors may still prejudice defendant."

Manous v. Oliver, 292 F.3d 939 (9th Cir. 2002).

"Court must accept allegations in pleadings as true."

Hamm v. Groose, 15 F.3d 110 (8th Cir. 1994).

Cooper v. Pate, 378 U.S. 546, 12 L.Ed 2d 1030, 84 S.Ct. 1733 (1994).

1. of the Courts?

Dear Honorable Clerk,

Please find enclosed my application for PER. Along with my memorandum of law in support, (and relevant exhibit), for filing with your office.

Could you please (with your return copies) ensure that the memorandum "cover page" bear its "own separate stamp," for the "Foreseen Future Filings," that will be required.

Lastly, could you also please provide a copy of this submission to the Office of the Attorney General, "Institutional Policy" will not duplicate any documents that do not bear "an appropriate letterhead, or your office's 'clock-stamp'."

Which is why I make the above request.

I am, both, most thankful and grateful for your assistance. And I, "anxiously await," your response to all enclosed.

To You, The Best!
Mr. Robert Lee Dean
Applicant (Pro Se)

487
2013 APR 16 AM 10:4
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF PICKENS)
Robert Lee Dean,)
S.C.D.C. No. 337033,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
C.A. No. 2012-CP-39-1273

RETURN

In response to the post-conviction relief application filed August 31, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Pickens County Clerk of Court's orders of commitment. The Pickens County Grand Jury indicted the Applicant at the February 2007 term of General Sessions for second-degree criminal sexual conduct (CSC) with a minor (2007-GS-39-0346) and lewd act upon a child (2007-GS-39-0347). John W. DeJong, Esquire represented the Applicant.

After the State called the case to trial, the Applicant was found guilty. On September 23, 2009, the Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of twenty years for second-degree CSC with a minor and fifteen years for lewd act upon a child. The Applicant did not appeal.

A notice of appeal was filed at the South Carolina Court of Appeals. Wanda H. Carter, Esquire of the South Carolina Office of Appellate Defense perfected the appeal in the form of an

Anders¹ brief. The Court of Appeals dismissed the appeal. State v. Dean, Op. No. 2012-UP-097 (S.C. Ct. App. filed February 22, 2012).

Attached herewith and incorporated herein by reference are the records of the Pickens County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the trial transcript, and the appellate records.

II.

In his application for post-conviction relief, the Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Prosecutorial misconduct:
 - a. Illegal enhancement of charges.
 - b. Threats and attempted coercions to induce a guilty plea.
 - c. Brady violation with State witnesses.
 - d. Improper interrogation proceedings.
 - e. Improper trial tactics:
 - i. Bolstering witnesses.
 - ii. Closing arguments.
2. Ineffective assistance of trial counsel:
 - a. Failure to request Brady materials.
 - b. Failure to properly investigate.
 - c. Failure to raise proper objections and preserve relevant issues for appellate review during trial and closing arguments.
 - d. Failure to move for mistrial.
3. Ineffective assistance of appellate counsel:
 - a. Failure to present appropriate issues for appellate review.
 - b. Failure to ensure Applicant's right to present pro se Anders brief.
4. Due process violations:
 - a. Abuse of discretion with preliminary hearing judge.
 - b. Abuse of discretion with trial judge.
 - c. Failure of South Carolina Court of Appeals in granting forty-five days to submit a pro se Anders brief.

In a document captioned "Amendment to Application for Post-Conviction Relief" dated

¹ Anders v. California, 386 U.S. 738, 87 S. Ct. 1396, 18 L. Ed. 2d 493 (1967).

February 14, 2013, the Applicant made the following allegations:

1. Trial judge erred in denying motion for directed verdict.
2. Ineffective assistance of counsel:
 - a. Counsel failed to "properly and timely raise the Corpus Delictit issue during trial base on lack of corroborating evidence."

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625. Second, counsel's deficient performance must have

prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S. Ct. 830 (1985). In analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See Bennett v. State, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009); Southerland v. State, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999) (noting courts apply the Strickland test to determine if appellate counsel was deficient for failing to raise an issue and whether the defendant was prejudiced from the failure to raise the issue). Appellate counsel, however, is not required to raise every non-frivolous claim, but instead may select among them in order to maximize the likelihood of a favorable outcome. Smith v. Robbins, 528 U.S. 259, 288, 120 S. Ct. 746, 765 (2000).

The Respondent contends that the Applicant's appellate attorney rendered effective

assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. The Respondent requests a hearing on this allegation.

V.

The Applicant has alleged prosecutorial misconduct. The Respondent would submit the Applicant has failed to meet his burden of proving this allegation. See Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989) (finding the burden is on the defendant to prove actual vindictiveness).

VI.

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

VII.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

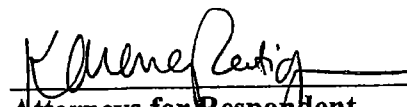
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

KAREN C. RATIGAN
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By:


Attorneys for Respondent

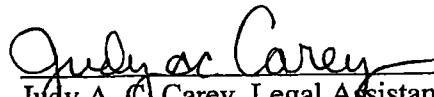
March 28, 2013

STATE OF SOUTH CAROLINA **2013 APR 16 AM 10 48**
COUNTY OF PICKENS) IN THE COURT OF COMMON PLEAS
) CLERK OF COURT
) PICKENS COUNTY
) SOUTH CAROLINA 2012-CP-39-1273
) ROBERT LEE DEAN, 337033
))
) Applicant,)
))
) vs) AFFIDAVIT OF SERVICE BY MAIL
))
) STATE OF SOUTH CAROLINA,)
))
) Respondent.)
_____)

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

**Robert Lee Dean, 337033
McCormick Correctional Institution
386 Redemption Way
McCormick SC 29899**

DATED this 28th day of March, 2013.


Judy A. Carey, Legal Assistant
For Respondent

2013 APR 16 AM 10:48

CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 09/27/12
 OMCOMITA RELEASE DATE SCREEN C051123
 SCDC# > 337033 LOC: MCCORMICK
 DEAN, ROBERT LEE SCDC CLASSIFICATION... VIOLENT
 OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY... Y
 SEXUAL PREDATOR... PENDING
 DNA STATUS...: COMPLETED
 GPS REQUIREMENT... Y
 PREA DECISION...:
 CURRENT SENTENCE: 020-00-000 CONSECUTIVE SENTENCE ... N
 020-00-000 CURRENT SENT START DATE: 09/23/2009
 PROJECTED COMPLETION DATES
 MAXOUT DATE 09/19/2026 CURRENT EWC ..: 3 F 5
 YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
 INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000

 TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999
 TOTAL EARNED WORK CREDITS ...: 000258 LABOR CREW DISQ REASON:
 TOTAL EDUCATION CREDITS: 000000 CURRENT OR PRIOR SEX CONDUCT CONVICT
 TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00
 TOTAL SERVICE TIME EARNED ...: 001084 ISS.....:

PFKEYS: 5:HISTORY OF DATE CHANGES

4-C

1 Sess-1 167.7.50.33

SCDC1081

3/11

494

Received:

Sep 23 2009 03:21pm P001/002

Fax:

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Pickens

VS.

Robert Lee Dean

AKA:

Race: W Sex: M Age: 47

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED]

Clemson, SC 29631

DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 2007GS3900347

A/W#: 2007GS3900347

Date of Offense: 8/1/2001

S.C. Code §: 16-15-140

CDR Code #: 2468

SENTENCE SHEET

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)☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-15-140 of the S.C. Code of Laws, bearing CDR Code # 2468

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

A TEST

Thom, Peter

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 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2007GS39-346☐ 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. SEX REGISTER REQUIRED

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

\$

100.00

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

\$

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 56-1-286 (DUI Breath Test)

\$25

\$

§ 47-12 (Public Def/Prob)

\$500

\$

§ 14-1-212 (Law Enforce. Funding)

\$25

\$

25.00

§ 14-1-213 (Drug Court Surcharge)

\$100

\$

§ 50-21-114(BUI Breath Test Fee)

\$50

\$

§ 56-5-2942(I) (Vehicle Assessment)

\$40/ea

\$

§ 90.7 (SCCJA Surcharge)

\$5

\$

5.00

3% to County (if paid in installments)

\$

\$

3.90

TOTAL

\$ 133.90

Clerk of Court/ Deputy Clerk

Handwritten signature: Harold P. Welborn, Jr.

PRESIDING JUDGE

Judge Code: _____

Handwritten signature: [Signature]

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

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

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, \$47.12
requires \$500 be paid to Clerk during probation.

Received:

Fax: Sep 23 2009 03:21pm 495 002/002

STATE OF SOUTH CAROLINA

COUNTY OF Pickens
STATE VS.

Robert Lee Dean

AKA:

Race: W Sex: M Age: 47

DOB: SS#:

Address: Clemson, SC 29631

DL#: SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS3900346

A/W#: K058147

Date of Offense: 11/30/2005

S.C. Code §: 16-03-0655(B)

CDR Code #: 0396

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Criminal sexual conduct with minor - victim 11 to 14 yrs of age inclusive - Second deg.

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0655(B) of the S.C. Code of Laws, bearing CDR Code # 0396

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ 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

Theresa Peter

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 20 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:

SEX REGISTER REQUIRE

☐ 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)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$	
\$	
\$100	\$ 100.00
\$100	\$
\$12	\$
\$25	\$
\$500	\$
\$25	\$ 25.00
\$100	\$
\$50	\$
\$40/ea	\$
\$5	\$ 5.00
\$	\$ 3.90
\$	\$ 133.90

_____ 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

PRESIDING JUDGE

Judge Code:

Sentence Date:

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Robert Lee Dean,

Appellant.

2013 APR 16 PM 10:48
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

Appeal From Pickens County
G. Edward Welmaker, Circuit Court Judge

Unpublished Opinion No. 2012-UP-097
Submitted February 1, 2012 – Filed February 22, 2012

APPEAL DISMISSED

Deputy Chief Appellate Defender Wanda H. Carter,
of Columbia, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, and Assistant
Deputy Attorney General Salley W. Elliott, all of
Columbia; and Solicitor W. Walter Wilkins, III, of
Greenville, for Respondent.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Pickens County

G. Edward Welmaker, Circuit Court Judge

2013 APR 16 AM 10 48
CLERK OF COURT
PICKENS COUNTY
SOUTH CAROLINA

THE STATE,

RESPONDENT,

V.

ROBERT LEE DEAN,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

WANDA H. CARTER
Deputy Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF AUTHORITIES

Cases

<u>Jolly v. State</u> , 314 S.C. 17, 443 S.E.2d 566 (1994)	6
<u>Smith v. State</u> , 386 S.C. 562, 689 S.E.2d 629 (2010)	6
<u>State v. Douglas</u> , 367 S.C. 498, 626 S.E.2d 59 (Ct. App. 2000)	6
<u>State v. Douglas</u> , 380 S.C. 499, 671 S.E.2d 606 (2009).....	6
<u>State v. Kelly</u> , 543 S.C. 333, 540 S.E.2d 851 (2001)	6
<u>State v. Lyles</u> , 379 S.C. 328, 665 S.E.2d 201 (S.C. Ct. App. 2008).....	5
<u>State v. Mitchell</u> , 286 S.C. 572, 336 S.E.2d 150 (1985).....	7
<u>State v. Preslar</u> , 346 S.C. 544, 613 S.E.2d 381 (2005).....	5

ARGUMENT

The trial judge erred in offering the expert testimony of a forensic interviewer of abused children into evidence at trial in order to explain why children make delay disclosures in reporting abuse because this testimony was irrelevant to the single issue of whether sexual misconduct occurred in the case, partly because this expert witness never met or interviewed the prosecutrix in this case and partly because the prosecutrix explained her late reporting of the incidents in question. This expert testimony prejudiced appellant's case because this improperly bolstered the prosecutrix's testimony at trial.

There were no statements or confessions obtained from appellant in this case. There was no physical evidence or forensic evidence obtained and offered in this case. There was no forensic interview evidence obtained and presented in this case. Thus, this case hinged on the testimony of the prosecutrix, who alleged that appellant "molested her," and the testimony of appellant, who denied the prosecutrix's allegations.

The prosecutrix testified that when she was eleven and twelve years old, her stepfather, i.e., appellant touched and licked her breasts on a weekly basis. The prosecutrix added that when she was fourteen years old, appellant massaged and licked her vagina. The prosecutrix claimed also that when she was fifteen years old, appellant inserted his finger into her vagina. R. p. 98, l. 21 – p. 122, l. 1.

Appellant testified in his defense at trial. Appellant denied committing any sexual or lewd acts upon the prosecutrix. R. p. 349, line 7 – p. 350, line 2. Appellant stated that the prosecutrix was angry at him because he disciplined her. R. p. 373, lines 8 – 19.

Also at trial, the state offered the testimony of Shauna Galloway-Williams, who was executive director of the Greenville Rape Crisis and child abuse center at that time. R. p.

prosecutrix. What better way to understand the prosecutrix's late reporting than to hear the reasoning from the prosecutrix.

Clearly, the expert's testimony which expounded on the issue of late reporting provided prejudicial corroborative and cumulative evidence via the back door. As a rule, improper corroborative testimony in a criminal sexual conduct trial that is merely cumulative to the victim's testimony cannot be harmless as it is exactly the cumulative effect which enhances the devastating impact of improper corroboration. See reversals on similar issues in Jolly v. State, 314 S.C. 17, 443 S.E.2d 566 (1994) and Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010). Also, not only was the expert's testimony irrelevant and cumulative, but it served to improperly bolster the credibility of the prosecutrix's testimony. Improper bolstering occurs when an expert witness is allowed to give his or her opinion as to whether the complaining witness is telling the truth because that is the ultimate issue of fact and then inference rate drawn is not beyond the zen of the average juror. State v. Douglas, 367 S.C. 498, 626 S.E.2d 59 (Ct. App. 2000). In Douglas, however, the forensic interviewer testified because she actually interviewed the prosecutrix in that case. See also State v. Kelly, 543 S.C. 333, 540 S.E.2d 851 (2001). See also State v. Douglas, 380 S.C. 499, 671 S.E.2d 606 (2009). Here, the expert was only used to infer that the prosecutrix was telling the truth.

Clearly, the expert's testimony was not relevant to the issue of guilt on the sex charges levied against appellant in the case. Also, because this case was a swearing contest between the prosecutrix and appellant sans any forensic, physical, or any corroborative evidence in the case, then the error was not harmless as this was a credibility case involving the prosecutrix's words versus appellant's words and this could have tipped the scales in the