

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Dorchester County
Edgar W. Dickson, Circuit Court Judge

S.C. Supreme Court

Opinion No. 2014-UP-346 (S.C. Ct. App. filed 10/1/2014)
10-GS-18-1144

THE STATE,

RESPONDENT,

V.

JASON A. BAUMAN,

PETITIONER

A P P E N D I X

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**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.

Jason Bauman, Appellant.

Appellate Case No. 2012-212285

Appeal From Dorchester County
Edgar W. Dickson, Circuit Court Judge

Unpublished Opinion No. 2014-UP-346
Heard September 10, 2014 – Filed October 1, 2014

AFFIRMED

Chief Appellate Defender Robert Michael Dudek, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Deputy Attorney General David A. Spencer, both of
Columbia, for Respondent.

PER CURIAM: Jason Bauman appeals his conviction for first-degree criminal sexual conduct with a minor. Bauman argues the trial court erred in (1) admitting hearsay testimony from the victim's mother; (2) admitting the written statement of jailhouse informant Adam Buhle; and (3) denying his requested jury charge

concerning the credibility of jailhouse informants. We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether trial court erred in allowing victim's mother other to testify victim told her she learned about oral sex from Bauman: *Jackson v. Speed*, 326 S.C. 289, 305, 486 S.E.2d 750, 758 (1997) ("The improper admission of hearsay is reversible error only when the admission causes prejudice[; however, w]here the hearsay is merely cumulative to other evidence, its admission is harmless.").
2. As to whether the trial court erred in admitting Buhle's written statement: *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012) ("The admission or exclusion of evidence is left to the sound discretion of the trial judge, whose decision will not be reversed on appeal absent an abuse of discretion.") (internal quotations marks omitted); *State v. Jennings*, 394 S.C. 473, 477-78, 716 S.E.2d 91, 93 (2011) ("An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.") (internal quotation marks omitted); *State v. Griffin*, 339 S.C. 74, 77-78, 528 S.E.2d 668, 670 (2000) ("There is no reversible error in the admission of evidence that is cumulative to other evidence properly admitted.").
3. As to whether the trial court erred in denying Bauman's request to charge the jury on weighing the credibility of jailhouse informants: *Clark v. Cantrell*, 339 S.C. 369, 389, 529 S.E.2d 528, 539 (2000) ("An appellate court will not reverse the trial court's decision regarding jury instructions unless the trial court abused its discretion. An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support."); *Sheppard v. State*, 357 S.C. 646, 665, 594 S.E.2d 462, 472-73 (2004) (holding the trial court is required to charge only the current and correct law of South Carolina and a jury charge is correct if it contains the correct definition of the law when read as a whole).

AFFIRMED.

FEW, C.J., and THOMAS and LOCKEMY, JJ., concur.

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OCT 16 2014

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

SC OFFICE OF
APPELLATE DEFENSE

THE STATE,

RESPONDENT,

V.

JASON A. BAUMAN,

APPELLANT.

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OCT 16 2014

SC Court of Appeals

APPELLATE CASE NO. 2012-212285

Appeal from Dorchester County

Edgar W. Dickson, Circuit Court Judge

Opinion No. 2014-UP-346

PETITION FOR REHEARING

Pursuant to Rule 221(a), SCACR, appellant requests rehearing because this Court found the error in the rank hearsay of the child's mother testifying the child told her she learned how to perform oral sex from "Uncle Jason" harmless because it was cumulative. In making this determination this Court apparently is referring to the state's argument in its brief that the hearsay error was cumulative to appellant's statement to law enforcement, and to the jailhouse snitch. Brief of Respondent at 6. Again, as discussed at some length during the oral argument, this Court may have overlooked the fact that appellant's statement to law enforcement was not an admission of

wrongdoing because it does not contain *any admission of criminal intent*. Appellant said he quickly stopped the minor from doing what she wanted instead.

As to the jailhouse snitch, Buhle, his testimony about what appellant allegedly told him should not be viewed as cumulative to anything since it was “bought and paid” for despite the natural denial of that fact by every jailhouse snitch. Buhle was convicted of numerous crimes of dishonesty, and he was hardly a believable person. App. 219-220. Further, the state felt the need to cheat to bolster Buhle’s testimony with his prior statement as argued infra.

The testimony of the child’s mother that the child told her she learned how to perform oral sex from appellant was devastating hearsay, and this Court should reconsider its holding that the error was harmless as cumulative to this other testimony as argued above.

Jailhouse snitch

Buhle admitted he also been convicted of grand larceny, burglary, and “some shopliftings.” R. 213, l. 11 – 214, l. 16.

Buhle testified on August 12, 2010, he was in the Dorchester County Detention Center and appellant was one of his cellmates. R. 214, l. 17 – 215, l. 7. Buhle claimed appellant told him he was in jail because he would “play around with his niece and he started touching his niece and having his niece touch him.” He maintained appellant told him he watched pornographic movies with the child. He confirmed to the solicitor that he gave the police a written statement on August 12, 2010. R. 215, l. 19 – 218, l. 17.

When the solicitor went to introduce Buhle’s statement into evidence, defense counsel objected because it was **cumulative** to his testimony. The judge overruled the objection. R. 218, l. 18 – 219, l. 6. The written statement was admitted into evidence over appellant’s objection. R. 218, l. 18 – 219, l. 11. R. 302.

In his statement to the police that was admitted over appellant's objection, Buhle said he learned the child's mother had seen her attempt to grab her brother's penis and the child said that "Uncle Jason" had taught her to do that. In the statement Buhle also stated appellant allegedly told him he had had the child perform oral sex on him on other occasions. R. 302.

This Court found there was no reversible error because the statement of Buhle was cumulative to his testimony. However, this Court has respectfully overlooked the fact that this reasoning would allow for solicitors, without fear of reversal, to introduce the statement of virtually every witness into evidence as a prior consistent statement because the Court on appeal would view it as merely cumulative.

In State v. Foster, 354 S.C. 614, 582 S.E.2d 426 (2003), the Supreme Court found the admission of a prior statement of the witness to the police was error. In the prior statement the witness told the police that Randal Scott Foster had shot her mother. The Court found error and held the statement was not admissible as a prior consistent statement. Prior consistent statements are not admissible to attempt to "rehabilitate" a witness from proper cross-examination by competent counsel. See State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001).

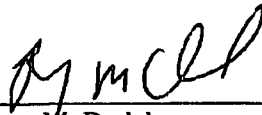
There was not even an assertion in this case that this statement was admissible a prior consistent statement, and no foundation for it to be one was made regardless. Its admission was absolutely gratuitous to bolster the snitch's testimony.

Further, the cumulative nature of this testimony and its bolstering effect on the jailhouse snitch's testimony was exacerbated because once it was made a trial exhibit the jury had Buhle's statement with it in the jury room to read it. This further unduly emphasized the prejudicial effect of the evidence. See State v. Gullledge, 277 S.C. 368, 287 S.E.2d 498 (1982). The bolstering of Buhle's testimony by the introduction of his prior statement to the police was prejudicial error in

this case. State v. Foster, 354 S.C. 614, 582 S.E.2d 426 (2003); State v. Gulledge, 277 S.C. 368, 287 S.E.2d 498 (1982).

If this Court meant that Buhle's testimony and his cumulative statement were cumulative to appellant's statement to law enforcement then appellant has addressed that contention above. Appellant's statement to law enforcement was not an admission of guilt because it did not contain any admission of criminal intent. This Court should respectfully grant rehearing, and address the two serious trial errors that occurred in this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R M Dudek', written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

This 16th day of October, 2014.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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OCT 16 2014

THE STATE,

RESPONDENT, **SC Court of Appeals**

V.

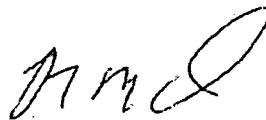
JASON A. BAUMAN,

APPELLANT.

APPELLATE CASE NO. 2012-212285

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon David Spencer, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 16th day of October, 2014.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 16th day
of October, 2014.

Rhonda Demetrie Jaswath (L.S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021.

The South Carolina Court of Appeals

The State, Respondent,

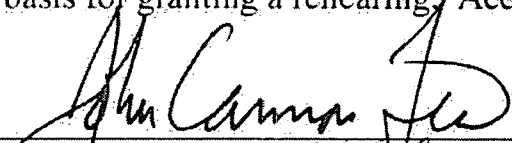
v.

Jason Bauman, Appellant.

Appellate Case No. 2012-212285

ORDER

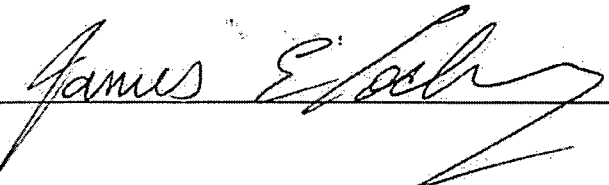
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.



J.



J.



J.

Columbia, South Carolina

cc:

Robert Michael Dudek, Esquire

Alan McCrory Wilson, Esquire

David A. Spencer, Esquire

The Honorable Edgar W. Dickson

FILED

December 17, 2014

DEC 18 2014

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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM DORCHESTER COUNTY

Edgar W. Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JASON A. BAUMAN,

APPELLANT

APPELLATE CASE # 2012-212285

RECORD ON APPEAL

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COUNTY OF DORCHESTER	)	DOCKET NO. 2010-GS-18-1144
	)	
	)	
THE STATE OF SOUTH CAROLINA	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
JASON A. BAUMAN	)	
	)	
Defendant	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

June 11, 2012
St. George, South Carolina

VOLUME 1 OF 3

B E F O R E:

THE HONORABLE EDGAR W. DICKSON, JUDGE

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Attorney for the Defendant

Melissa R. Singletary
Court Reporter

1 but the truth so help you God]

2 THE WITNESS: I do.

3 [Whereupon, the witness takes the witness stand]

4 THE COURT: Your witness, Mr. Hilton.

5 MR. HILTON: Thank you, Your Honor.

6 - - - - -

7 LAURA GIBBONS,

8 Having been first duly sworn,

9 Was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. HILTON:

12 Q. Detective Gibbons, where are you employed?

13 A. Summerville Police Department.

14 Q. And how long have you been employed there?

15 A. Twelve years including six months.

16 Q. And that six months was for what?

17 A. I worked at another agency.

18 Q. All right. And you were out a couple of weeks ago,
19 is that correct?

20 A. Yes, sir.

21 Q. And what was that for?

22 A. Maternity leave.

23 Q. All right. And were you involved in the
24 investigation and arrest of Mr. Jason Allen Bauman?

25 A. Yes, sir.

1 Q. And when was that arrest actually made?

2 A. He was actually arrested on June 30th of 2010.

3 Q. And you say you had involvement in the case. What
4 was your involvement in the case as far as your
5 assignment detail?

6 A. I was assigned as the head detective of the case.

7 Q. Okay. And were you the one that actually served
8 that arrest warrant or did somebody else do that?

9 A. Officer Trey Harvey served it.

10 Q. Okay. Now, let me turn your attention a little bit
11 more towards the defendant's statement and so forth.
12 When did Mr. Bauman meet with you and any other officer
13 with regard to a statement?

14 A. July 1st, 2010.

15 Q. And what were the circumstances of that meeting with
16 Mr. Bauman?

17 A. We were getting a statement in reference to his
18 involvement in the case.

19 Q. Did y'all bring him from the jail or what?

20 A. He was brought back to our agency for a bond hearing
21 and prior to his bond hearing we escorted him into the
22 detective's office.

23 Q. And when you say we who are you talking about?

24 A. Myself and Detective Gebhardt.

25 Q. Was Detective Gebhardt another detective?

1 A. Yes, sir.

2 Q. Also employed by Summerville Police Department?

3 A. Yes, sir.

4 Q. All right. So you say he was brought there for a
5 bond hearing and then y'all I guess got him into the
6 interview room for a statement?

7 A. Yes, sir.

8 Q. And what is the interview room like?

9 A. It's a small room, one two-way window, a desk,
10 several chairs, a filing cabinet, a couple of little
11 refrigerators.

12 Q. Just kind of standard interview room like you would
13 see?

14 A. Just a small room with a door.

15 Q. And when you got Mr. Bauman in there kind of
16 describe for the court the process of how you would
17 conduct an interview; with particularity the interview
18 with Mr. Bauman.

19 A. With our interviews we've been trained at first to
20 kind of do some small talk with the person to kind of get
21 to know what type of person they are and how they respond
22 to us.

23 We talk to them for a little bit and then we go into
24 the Miranda warning if they are in custody. And after
25 the Miranda then we speak to them in reference to the

1 case.

2 Q. And did you engage in any small talk with Mr. Bauman
3 on this day?

4 A. Yes, sir.

5 Q. And what is that small talk in reference to?

6 A. You just kind of talk to them about who they are,
7 where they are from, what type of relationship they have
8 with their family; just so we can see how they respond to
9 our questions.

10 Q. Okay. And then I think you even mentioned that you
11 go over the rights with the person you are interviewing,
12 is that correct?

13 A. That's correct.

14 Q. And did you go over the rights with Mr. Jason
15 Bauman?

16 A. I did.

17 Q. And how do y'all go about doing that?

18 A. We have a form that we use. I believe you have that
19 form there [indicates]. It's a copy of the Miranda
20 rights as well as the waiver.

21 Every time that I advise anyone of their rights I
22 read directly from the form and ask them if they
23 understand and if they do then they sign it.

24 Q. Let me show you what has been marked for
25 identification as State's Exhibit 1 and just ask if you

1 recognize this?

2 [Whereupon, the witness is shown document]

3 A. Yes sir, I do.

4 Q. What is that?

5 A. That is the advisement of rights that I read with
6 Mr. Bauman.

7 Q. All right. And do you have a copy of that or this
8 was your copy?

9 A. That was my copy.

10 Q. And is this the original copy?

11 A. That is the original.

12 Q. All right. I'm just going to go over a few things
13 with you, but first of all is this the original copy of
14 Mr. Bauman's rights that you read to him on June 1, 2010?

15 A. That it is.

16 Q. I said June; it would be July 1st, 2010.

17 A. July 1st, 2010.

18 MR. HILTON: Your Honor, at this time we would
19 offer the advisement of rights as State's Exhibit 1 into
20 evidence.

21 THE COURT: Any objection Mr. Bischoff?

22 MR. BISCHOFF: No objection, Your Honor.

23 THE COURT: It is in evidence.

24 [Whereupon, State's exhibit number 1 is entered into
25 evidence by the court]

1 Q. [Mr. Hilton] Detective Gibbons, when you start
2 filling out this form what is the top portion of the form
3 about?

4 A. The top portion of the form is to find out can the
5 person you are speaking to read and write. What is their
6 highest level of education.

7 Their personal identifiers; such as their name,
8 address, date of birth, social, driver's license number,
9 race, gender, phone numbers.

10 Q. Did you get that information from Mr. Bauman?

11 A. I did.

12 Q. And with regard to his educational level what did he
13 tell you?

14 A. He told us that he completed the 12th grade.

15 Q. Is that indicated on the State's Exhibit 1?

16 A. It is.

17 Q. And did he say that he could read and write?

18 A. Yes, he did.

19 Q. All right. Did he give any other indication at any
20 point in time during the interview about his education or
21 where he was with his schooling?

22 A. Yes, sir. He told us that he was currently enrolled
23 with the Trident Technical College for Culinary Arts to
24 be a chef.

25 Q. He was actually involved in that program at that

1 time?

2 A. He told us that he was enrolled in the program.

3 Q. Okay. Did he have a driver's license?

4 A. Yes, sir.

5 Q. All right. And was he able to communicate with you
6 to the point where you felt as though he knew what was
7 going on?

8 A. Yes, sir.

9 Q. Could you have meaningful conversation with him?

10 A. Yes, sir.

11 Q. Was there any point in time during the preliminary
12 questioning about his address and about his education
13 that he didn't understand what was going on?

14 A. No, sir.

15 Q. And after you fill out that first part what is the
16 second part of State's exhibit 1?

17 A. The second part is where I fill in my name and
18 advise him that I am a member of the Summerville Police
19 Department and that following I am going to advise him of
20 his rights.

21 Each time that I fill out this form with anyone that
22 I am speaking with I always tell them that I am going to
23 read this form to you. As I read this form, if you would
24 please stop me if you don't understand anything that I am
25 reading to you so that I can better explain it to you.

1 As I read it to you if you understand please put your
2 initials by each one.

3 Q. And that's what you tell everybody?

4 A. That's what I tell everybody.

5 Q. And is that what you told Mr. Bauman?

6 A. Yes, sir.

7 Q. Okay.

8 A. I actually wait for anyone that I speak to to
9 actually initial each one as I go along.

10 Q. All right. Now is that something they just put
11 their initials by at your direction or do -- how do you
12 go about getting them to initial those?

13 A. I ask them to please initial by each one if they
14 understand it; only if they understand it.

15 Q. And do you read those rights to the defendant?

16 A. Yes sir, I do.

17 Q. And did you read those rights to Mr. Bauman?

18 A. I did.

19 Q. And if you would please -- you've got -- on State's
20 exhibit 1 you've got five items there, five enumerated
21 items, will you start with number 1?

22 A. Yes, sir.

23 Q. And what does that say?

24 A. [Reading] Number 1. I have the absolute right to
25 remain silent and do not have to answer any questions or

1 give a statement. And this fact cannot be used against
2 me.

3 Q. And then after you read that what do you ask? As
4 far as what do you ask the defendant?

5 A. I usually wait to see if they put their initials.
6 If they don't put their initials I ask them do you
7 understand. And if they understand I say could you
8 please initial beside that.

9 Q. And is that what happened in this case?

10 A. Yes, sir.

11 Q. And the initials on the line for number 1, the J and
12 the B is that the defendant's initials?

13 A. Yes, they are.

14 Q. Okay. And how about with number 2?

15 A. [Reading] Number 2. If I do answer questions or
16 give a statement, anything I say can and will be used
17 against me in a court of law.

18 Q. And did he understand that one?

19 A. He did.

20 Q. And did he initial number 2?

21 A. Yes, sir.

22 Q. And what about number 3?

23 A. [Reading] Number 3. I have the right to consult
24 with a lawyer of my choice before I answer questions or
25 give a statement and also to have him present while I am

1 being questioned.

2 Q. And did he understand number 3?

3 A. He did.

4 Q. And likewise did he initial number 3?

5 A. He did.

6 Q. And number 4?

7 A. [Reading] If I wish to talk to a lawyer or have him
8 present but am unable to afford to hire a lawyer one will
9 be appointed to represent me free of charge.

10 Q. And did he understand number 4?

11 A. He did.

12 Q. And did he initial number 4?

13 A. He did.

14 Q. And finally number 5?

15 A. [Reading] Number 5. If I decide to answer
16 questions or give a statement without having a lawyer
17 present representing me I have the absolute right during
18 this interview to stop answering questions and to remain
19 silent.

20 Q. And did he understand number 5?

21 A. He did.

22 Q. And did he initial number 5?

23 A. Yes, sir.

24 Q. All right. And then underneath that it says: I
25 fully understand each of these rights which have been

1 advised of. And then there are two witness signatures.

2 Who are those signatures?

3 A. My signature and Detective Gebhardt's signature.

4 Q. Where was Detective Gebhardt during the advisement
5 of rights?

6 A. In the room with us.

7 Q. He was observing what was going on?

8 A. Yes, sir.

9 Q. And I know you can't read it but that's his
10 signature on the second line?

11 A. That is his signature.

12 Q. And whose signature is just to the right next to the
13 X that is located on the form?

14 A. That's Jason Bauman's signature.

15 Q. And did he sign that paper?

16 A. Yes, he did.

17 Q. And was that in his own hand?

18 A. Yes, sir.

19 Q. Okay. And was that -- to your knowledge because he
20 understood all those 5 rights that you read to him?

21 A. Yes, sir.

22 Q. And then finally down at the bottom there is a
23 section with a bold title called Waiver of Rights. Will
24 you publish that for the court?

25 A. Under Waiver of Rights it says: [Reading] I fully

1 understand each of these rights, which I have been
2 advised of and having those rights in mind I wish to
3 waive these rights and answer questions.

4 No threats, force, or promise of any kind have been
5 made to me by anyone to induce or cause me to waive these
6 rights and answer questions.

7 Q. And again, there are two signatures. Whose
8 signatures are those?

9 A. Mine and Detective Gebhardt.

10 Q. And then to the right whose signature?

11 A. Jason Bauman.

12 Q. Is that signed separately from the one above?

13 A. Yes, sir.

14 Q. Okay. And at any point in time during the
15 interview of Mr. Bauman did y'all ever display any
16 weapons or anything?

17 A. No, sir.

18 Q. Did you even have your weapons on you at the time?

19 A. No, sir.

20 Q. Why not?

21 A. Anytime that we escort anyone that is in custody
22 from our booking area we have to remove our weapon.

23 Q. Is that that police -- Summerville Police Department
24 policy?

25 A. Yes, sir.

1 Q. Okay. And was there anything in the interview by
2 either you or that you observed of Detective Gebhardt
3 that would come across as being threatening or
4 intimidating?

5 A. No, sir.

6 Q. Was it a fairly cordial conversation that y'all had
7 with Mr. Bauman?

8 A. Yes, sir.

9 Q. And after this State's exhibit number 1 was executed
10 how did the interview progress after that?

11 A. I initially began speaking to Mr. Bauman in
12 reference to what his relationship was with his brother
13 and his brother's wife and children.

14 And we went through a little bit of conversation
15 about that; again trying to kind of feel out how
16 everything was going to go. And we talked about where he
17 was staying.

18 And he said he was living in his car sometimes and
19 sometimes living with friends and just general
20 conversation.

21 And after speaking to him in general conversation I
22 attempted to go into some questions in reference to the
23 case. And after speaking with him a few minutes it
24 seemed like he really didn't want to speak to me and we
25 went from me talking to him to Detective Gebhardt.

1 Q. And why was that?

2 A. We've been trained that if an individual is not
3 responding to you or maybe not there just may just be
4 something about you that they don't like or are not
5 comfortable with you or what have you that we may need to
6 go from one detective to another.

7 It could have been that I was female. It could have
8 been any number of things that he wasn't comfortable with
9 and the conversation just wasn't going anywhere so we
10 transferred from me to Detective Gebhardt.

11 Q. And is that when Detective Gebhardt began the
12 questioning?

13 A. Yes, sir.

14 Q. And again was there anything threatening by
15 Detective Gebhardt once y'all kind of changed positions
16 in the interview? Was there anything that he did that
17 was threatening towards the defendant?

18 A. No, sir.

19 Q. Was there anything that would cause anyone to
20 believe that his statement was involuntary?

21 A. No, sir.

22 Q. Did he understand what was going on? The defendant?

23 A. Yes, sir.

24 Q. Please answer any questions that Mr. Bischoff may
25 have for you.

1 THE COURT: Mr. Bischoff?

2 MR. BISCHOFF: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 CROSS-EXAMINATION

5 BY MS. BISCHOFF:

6 Q. Detective Gibbons, it's nice to see you again.

7 A. You too, sir.

8 Q. You initially started your investigation at the
9 beginning of June, is that correct? June the 1st I
10 believe?

11 A. I was assigned to the case ---

12 Q. --- is that when you were assigned the case?

13 A. On June 1st, yes sir.

14 Q. And at that point all the information you had to go
15 on essentially was the conversation that you had with Ms.
16 Bauman, correct?

17 A. On June 1st the only thing that I had was the actual
18 initial report.

19 Q. And that initial report involved a conversation
20 between an officer and Ms. Bauman; the mother of the
21 alleged victim?

22 A. Yes, sir -- well, no sir. It was a conversation
23 between the nurse practitioner with Palmetto Primary Care
24 and the initial officer.

25 Q. Who stated that Ms. Bauman said that when she was

1 giving a bath to her child she stuck her head in the lap
2 of her little brother, right?

3 A. Yes, sir.

4 Q. Right. So the whole initial point of the
5 investigation was based on the mother's statement of what
6 she observed?

7 A. Yes, sir.

8 Q. At any point prior to speaking with Jason Bauman did
9 you speak with the girl, the little girl, Minor

10 A. Actually I did not speak to Minor because I wanted
11 her to be spoken to by professionals at the Children's
12 Center. And that's usually what we do so that things
13 don't...

14 Q. Correct. And what you did was you actually
15 suggested that they schedule a forensic interview.

16 A. That's correct.

17 Q. And that was scheduled for the end of June.

18 A. Yes, sir.

19 Q. June 24th to be exact, is that correct?

20 A. That's correct.

21 Q. And that prior to that forensic interview you met
22 with Ms. Bauman and the forensic interviewer in order to
23 gather more information about the victim.

24 A. I did.

25 Q. And when you gathered that more information you

1 found out that the child apparently stuck her head in the
2 lap of her little brother?

3 A. While being in a bath, yes sir.

4 Q. While in the bathtub and that the child then was
5 pulled away from the lap of her brother by her mother and
6 her Mom said what are you doing, correct?

7 A. Uh huh.

8 Q. And the child said I'm going to suck his pee pee?

9 A. Correct.

10 Q. And then you said -- or the mother said where did
11 you learn that? And the child responds Uncle Jason.

12 A. Correct.

13 Q. And basically at that point you didn't have any
14 other forensic evidence suggesting that a sexual assault
15 had occurred, correct?

16 A. No, sir.

17 Q. And you were going to leave it up to the
18 professionals to talk with Minor about whether or not
19 this alleged sexual assault took place?

20 A. Yes, sir.

21 Q. And you weren't quite sure whether or not you had
22 enough information to get an arrest warrant yet because
23 Jason wasn't arrested until after the forensic interview,
24 is that correct?

25 A. Correct.

1 Q. So you're basically -- you're hoping that the
2 forensic interview gives you something more?

3 A. Yes, sir.

4 MR. HILTON: --- Your Honor, I'm going to object at
5 this point. This is a Jackson v Denno hearing ---

6 MR. BISCHOFF: --- I'm going to get to it ---

7 MR. HILTON: --- defendant's ---

8 MR. BISCHOFF: --- I'm going to get to it, Judge.

9 THE COURT: Okay. Well, get ---

10 MR. BISCHOFF: --- I will. I will.

11 Q. [Mr. Bischoff] And the forensic interview went on
12 with the child and the child said -- did not say anything
13 about Criminal Sexual Conduct in the First Degree or
14 fellatio or anything to that extent, correct?

15 A. Yes, sir.

16 Q. And so at that point you knew that you had to get
17 something out of the defendant in order to get enough for
18 probable cause because at that point you didn't have
19 anything. You had a hearsay statement at that point.

20 A. Yes, sir.

21 Q. And so then you go and have somebody come and pick
22 up Jason Bauman on the 30th of June?

23 A. Well actually the officers pulled warrants and went
24 and did that on their own ---

25 Q. --- but you weren't -- you didn't make the arrest.

1 A. No, sir.

2 Q. And when they pickup Mr. Bauman it's late afternoon
3 on the 30th?

4 A. It was -- it was a night shift officer so it would
5 have been later, yes sir.

6 Q. And so he's arrested late afternoon on the 30th do
7 you see him that evening?

8 A. I do not.

9 Q. Does anybody in your department make contact with
10 him that evening other than the arresting officers?

11 A. Not that I know of, sir.

12 Q. Any other detectives?

13 A. No, sir.

14 Q. Did anybody try and get a statement out of him that
15 evening?

16 A. Not that I know of.

17 Q. Okay. So your first contact with him was over 12
18 hours later; some 15, 16 hours later?

19 A. I'm not exactly sure what time he was arrested, but
20 we met with him the next morning at around 9, a little
21 after 9 o'clock a.m.

22 Q. But you would agree that it was on June 30th,
23 correct?

24 A. Yes, sir.

25 Q. And you would agree that on July 1st according to

1 your report the following day he was transported to the
2 Summerville Police Department for what you say is a bond
3 hearing.

4 A. Yes, sir.

5 Q. But you knew he wasn't getting a bond, right? You
6 knew that Criminal Sexual Conduct with a Minor in the
7 First Degree the judge can't set bond.

8 A. Correct ---

9 Q. --- at a Municipal court level?

10 A. Yes, sir.

11 Q. So if you knew -- why would you put in your report
12 that he was coming over for a bond hearing if you knew he
13 wasn't going to get a bond?

14 A. Because he still has to go through the process of a
15 bond hearing.

16 Q. Okay. Did you tell Jason that he wasn't getting a
17 bond?

18 A. I don't believe I did.

19 Q. And as far as your training is concerned do you have
20 any training in dealing with folks who are borderline
21 mentally retarded?

22 A. No, sir.

23 Q. And you understand that someone who functions at a
24 high -- with an I.Q. of around 71 is borderline mentally
25 retarded, are you aware?

1 A. I believe someone did tell me that, yes sir.

2 Q. Okay. And in fact my client's father's girlfriend,
3 Ms. Cynthia, told you on the day of the forensic
4 interview that my client had been diagnosed with O-C-D,
5 A-D-H-D, Depression, and an Auditory Processing Disorder,
6 and that she stated the subject had scored a 71 on an
7 I.Q. test.

8 A. Yes, sir.

9 Q. Didn't ever think to -- it didn't ever occur to you
10 to think well maybe I'm dealing with someone who could
11 easily be coerced before you interviewed Mr. Bauman?

12 A. No, sir.

13 Q. In your training has anyone ever gone over with you
14 the purpose of a Jackson v Denno hearing?

15 A. I believe so, yes sir.

16 Q. And what is the purpose of a Jackson v Denno
17 hearing?

18 MR. HILTON: Your Honor, I'm going to object. That
19 calls for a legal conclusion.

20 THE COURT: I'll sustain the objection.

21 Q. [Mr. Bischoff] In the process of your training are
22 you familiar that some people can confess to things that
23 they did not do? Have you experienced that in your
24 training? Has anyone taught you that?

25 A. Yes, sir.

1 Q. And you also understand that folks who confess to
2 crimes they didn't commit it's possibly because police
3 coerced them?

4 A. If someone may have been coerced I assume so.

5 Q. And in order to basically combat that what you want
6 to do is get as highly detailed a statement as possible
7 about where you were, what happened, what time of day,
8 clothing; anything else. But you look for very specific
9 detail, correct?

10 A. Yes, sir.

11 Q. And if you look at Mr. Bauman's statement and he
12 says: *I apologize to Minor Bauman for allowing her to*
13 *grab my penis and put her mouth in it for a second. I*
14 *pushed her off my penis and pushed her away and to Tara*
15 *what happened I'm truly sorry.*

16 *I don't want to go to prison. I want to get help; to*
17 *get counseling would be better for me because I'm*
18 *currently enrolled in Trident Technical College to be a*
19 *chef for culinary arts. I work at day labor temporary*
20 *agency where you get paid. I said I'm truly sorry. I*
21 *just want to make things right.*

22 That's his statement?

23 A. Yes, sir.

24 Q. And then the follow up questions are by Detective
25 Gebhardt.

1 A. Yes, sir.

2 Q. Any reason why you didn't do any follow up
3 questions?

4 A. Because he had taken over the interview. I was
5 taking notes.

6 Q. And in your notes you talk about a number of things.

7 MR. BISCHOFF: Beg the court's indulgence.

8 THE COURT: Take your time.

9 Q. [Mr. Bischoff] In your notes you basically detailed
10 a whole lot of conversation with you and Jason, correct?

11 A. That -- I was taking notes on Detective Gebhardt
12 speaking with Jason Bauman.

13 Q. So how long did you actually speak with Jason for?

14 A. I talked to him probably I would estimate maybe five
15 or ten minutes.

16 Q. So in order to -- the person responsible for getting
17 details from him regarding his statement is that
18 Detective Gebhardt's duty that day?

19 A. Yes, sir.

20 Q. Okay. I'll ask him questions about that. But you
21 were the lead detective?

22 A. The case was assigned to me yes, sir.

23 Q. And you were aware that my client had severe mental
24 disabilities prior to the interview?

25 A. Well, I didn't know that they were severe, no sir.

1 Q. So the I.Q. of 71 didn't ring a bell to you at the
2 time that Cynthia disclosed that to you?

3 A. I thought that it might have been a little bit low
4 but I honestly don't know what a normal I.Q. score is.

5 Q. Okay. And you didn't do anything to find out but
6 when you talked to Jason you figured well he says he went
7 to high school so I guess he's just a regular old kid?

8 A. Well, when we talked to him he seemed like he could
9 carry on a normal conversation. And he seemed fine to
10 me when we were speaking to him.

11 Q. And you didn't recognize a very distinguished
12 stutter?

13 A. He stuttered a little bit, yes sir.

14 Q. An inability to get out words that he was trying to
15 say?

16 A. He stuttered, yes sir.

17 Q. Okay. Was it your idea to have him write an
18 apology or was that Detective Gebhardt's?

19 A. That was Detective Gebhardt.

20 Q. So all of your notes are basically notes based on
21 the questions and answers between Detective Gebhardt and
22 Jason Bauman?

23 A. Yes, sir.

24 Q. You didn't take down any notes involving your
25 conversations with him?

1 A. Detective Gebhardt took notes on my conversation. I
2 took notes on his conversation.

3 Q. Okay. So, have you had a chance to review
4 Detective Gebhardt's notes?

5 A. Yes, sir.

6 Q. And would you agree with me that he denies any
7 involvement whatsoever up until the time when you switch
8 off to Detective Gebhardt?

9 A. Yes, sir.

10 Q. Never asked Minor to suck on it. Never done
11 anything with anyone, and other statements in the notes.
12 I mean you would agree that up until the point when you
13 give it off to Detective Gebhardt that my client is
14 basically denying he had anything to do with the sexual
15 assault of Minor Bauman, correct?

16 A. Yes, sir.

17 Q. Okay. Any particular reason why you Mirandized him
18 if you're not going to be doing the question and answer?

19 A. I Mirandized him because I started out with him;
20 questioning him.

21 Q. And that took place right at the beginning of the
22 interview?

23 A. Yes, sir.

24 Q. So the first time you saw him that morning was at
25 0900 hours, 14 minutes; 09:14?

1 A. A couple of minutes prior to that when we walked in
2 from the booking area to the detective's office.

3 Q. Okay. And you Mirandized him and then basically he
4 was denying everything and then you handed it off to
5 Detective Gebhardt?

6 A. Yes, sir.

7 Q. Okay. Thank you.

8 MR. BISCHOFF: No more questions, Your Honor.

9 THE COURT: Anything on redirect?

10 REDIRECT EXAMINATION

11 BY MR. HILTON:

12 Q. You said he seemed fine to you?

13 A. Yes, sir.

14 Q. No further questions.

15 THE COURT: Anything on re-cross? Mr. Bischoff,
16 anything on re-cross?

17 MR. BISCHOFF: No, Your Honor.

18 THE COURT: You may step down. Thank you, ma'am.

19 THE WITNESS: Thank you.

20 [Whereupon, the witness is excused and exits the
21 witness stand]

22 THE COURT: The State would call who, please?

23 MR. HILTON: The State would call Detective Rick
24 Gebhardt.

25 [Whereupon, Detective Gebhardt comes forward]

1 CLERK OF COURT: Please raise your right hand and
2 state your full name for the record?

3 THE WITNESS: Richard H. Gebhardt, Jr.

4 [Whereupon, Detective Gebhardt is duly sworn by the
5 Clerk of Court as follows: do you solemnly swear or
6 affirm to tell the truth, the whole truth, and nothing
7 but the truth so help you God]

8 DETECTIVE GEBHARDT: I do.

9 [Whereupon, the witness takes the witness stand]

10 THE COURT: Mr. Hilton, your witness.

11 MR. HILTON: Thank you, Your Honor.

12 - - - - -

13 RICK GEBHARDT,

14 Having been first duly sworn,

15 Was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. HILTON:

18 Q. Detective Gebhardt, where are you employed?

19 A. With the Summerville Police Department.

20 Q. And how long have you been employed there?

21 A. Almost five years.

22 Q. And were you employed there back on July 1st of 2010?

23 A. Yes, sir.

24 Q. And do you recall meeting with a Jason Allen Bauman
25 in reference to getting a statement from Mr. Bauman?

1 A. Yes sir, I do.

2 Q. Okay. And describe for the court if you will what
3 was the -- how that encounter came to take place; just
4 briefly.

5 A. Detective Gibbons advised me that she had an
6 individual that was currently in the holding cell area
7 awaiting a bond hearing that needed to be interviewed and
8 she requested that I sit in with her for the interview.

9 Q. Okay. And is that what you did?

10 A. Yes, sir.

11 Q. All right. And how did that interview begin?

12 A. It began with -- we retrieved him from the cells
13 with no weapons on our side because we're not allowed to
14 have them in the booking area.

15 We escorted him to the interview room and we sat
16 down like Detective Gibbons said and we engaged in I
17 guess you could say small talk just to find out who he
18 is, where he's from.

19 And then Detective Gibbons advised him of his rights
20 via the Summerville Police Department advisement of
21 rights form.

22 Q. Okay. And you've been in the courtroom, right?

23 A. Yes, sir.

24 Q. And is that the rights that she went over just a
25 moment ago?

1 A. Yes, sir.

2 Q. And after that who started asking the questions?

3 A. Detective Gibbons began asking questions at first.

4 Q. All right. And then at what point in time or for
5 what reason did that change?

6 A. The defendant did not seem to take to Detective
7 Gibbons' questions too well so I began asking questions.

8 Q. And with Detective Gibbons did he initially deny any
9 involvement with anything?

10 A. He did.

11 Q. Is that uncommon?

12 A. No, it's not uncommon.

13 Q. And so when you started taking over the questioning
14 how did that go about?

15 A. He seemed to connect more with a male and eventually
16 he would start admitting to a slight involvement in the
17 incident until it got to the part where he talked about
18 Minor putting his penis in her mouth.

19 Q. And how were you able to develop a relationship with
20 Mr. Bauman where he opened up?

21 A. I was trying to explain to him that everybody makes
22 mistakes; nobody is perfect. I used the analogy -- I
23 asked him what he thought about people who were
24 homosexuals and he said that that was wrong. And I asked
25 him if that was in fact their fault or if that was a

1 choice that they made. He said that it was not their
2 fault. They were made that way.

3 So when I asked him if people who found young girls
4 attractive if it was their fault or was that a choice and
5 he said that it wasn't their fault. And that seemed to
6 open him up.

7 Q. And then from there how did the conversation between
8 you and Mr. Bauman progress?

9 A. He said that Minor had touched his penis through his
10 pants. And then it went to his penis was out of his
11 pants when he was sitting on the couch and she touched
12 his penis.

13 And then when I asked did she put your penis in her
14 mouth he said yes, just the tip, just the head, just for
15 a second.

16 Q. Okay ---

17 A. --- and it made him hard.

18 Q. And did you make notes of these conversations?

19 A. Detective Gibbons took notes when I was interviewing
20 him.

21 Q. And did that conversation manifest itself in one of
22 the police reports by the Summerville Police Department?

23 A. Yes, it did.

24 Q. All right. And if you would just kind of look
25 through that and the best you can publish Mr. Bauman's

1 oral statement for the court even if you have to repeat
2 some of what you've already said.

3 [Whereupon, the witness is shown documents]

4 A. Part of his oral statements he said his pants were
5 on and she put her mouth on my penis. A little bit later
6 he said he was sitting on the couch, and this is a direct
7 quote, she grabbed my cock and she tried to pull it out.
8 I pushed her away and told her no.

9 And then again he said she tried to pull my cock out
10 of my pants and I pulled her hands out and told her no.
11 And then I asked him it wasn't in your pants, was it?
12 And he said no.

13 He said she pulled it and he put it back in and she
14 tried to put her mouth on his cock I told -- on my cock,
15 I told her no.

16 And then I asked did she put her mouth on your cock
17 and he said she put her mouth on my cock and it -- and I
18 got hard.

19 Then he said she put her mouth on my cock for a
20 second, pulled it out, and he said that it was wrong --
21 oh, I'm sorry he said that -- other things he was saying
22 was that Minor is a very attractive girl. She shouldn't
23 be running around in just her underwear. He said there
24 was no cum or nothing. It was just the head, just the
25 tip, just for a second. And then he said because she's a

1 little kid, it's disgusting because she's a couple of
2 years old.

3 Q. Did he say anything about her being an attractive
4 person or anything of that nature?

5 A. I believe -- yes. She's a very attractive girl.

6 Q. Did you ever ask him anything about how all this
7 felt at the time?

8 A. I did and he said at first it felt good. And then
9 he stopped it because it was wrong.

10 Q. Did he ever give any statement about when this
11 actually happened?

12 A. He wrote on his written statement that it was May
13 11, 2010 at 12 o'clock on the couch.

14 Q. What did he say about how much will power it took to
15 make her stop?

16 A. It took a lot of willpower to make Minor stop the
17 action.

18 Q. Did he say how it felt?

19 A. At first he thought it felt good. And then he said
20 it was wrong.

21 Q. Now, with regard to a written statement did he ever
22 make a written statement?

23 A. Yes sir, he did.

24 Q. And did he want to write down the statements that he
25 had made orally to y'all?

1 A. He didn't seem to want to include that stuff in his
2 statement. You can't make them so...

3 Q. All right. How did you get him to write a
4 statement?

5 A. He said he would but he would have a hard time doing
6 it. And we just said that sometimes things come out well
7 as an apology letter and we said we would leave him in
8 the room while he wrote a statement if he wished. And we
9 returned a couple of minutes later and that's what he had
10 written.

11 Q. And let me show you State's exhibit 2 and ask if you
12 recognize this?

13 [Whereupon, the witness is shown document]

14 A. I do.

15 Q. And what is this?

16 A. That is the written statement provided by the
17 defendant on July 1st, 2010.

18 Q. And the top portion of it -- and I'll show it to you
19 again, the top portion, who filled out the top portion?

20 A. Detective Gibbons did.

21 Q. And who actually, in the blue ink, who wrote the
22 statement portion of it?

23 A. The statement portion was written by the defendant.

24 Q. Okay. And then at the bottom there is some
25 question and answer I guess if you will. Who wrote out

1 the questions?

2 A. I did.

3 Q. And who wrote the answers?

4 A. That would be the defendant.

5 Q. All right. And did he sign on the bottom?

6 A. Yes, he did.

7 Q. And just above the signature what does it say on the
8 statement form?

9 A. It says I read or had read to me the foregoing
10 statement, which I made freely and voluntarily. The
11 facts contained therein are true and correct to the best
12 of my knowledge.

13 Q. And is there any witnesses to his signature?

14 A. Yes. That would be Detective Gibbons and myself.

15 Q. Okay.

16 A. And we re-read them that statement prior to them
17 signing and tell them do not sign it if you do not agree
18 with it.

19 MR. HILTON: Your Honor, at this time we would
20 offer State's exhibit 2 into evidence.

21 THE COURT: Any objection?

22 MR. BISCHOFF: No, Your Honor.

23 THE COURT: State's 2 is in evidence without
24 objection.

25 [Whereupon, State's exhibit number 2 is entered into

1 evidence by the court]

2 Q. [Mr. Hilton] And Detective Gebhardt if you will
3 please publish his statement for the court?

4 A. It says: *It says I, Jason Allen Bauman, apologize*
5 *to Minor Bauman for allowing her to grab my penis and put*
6 *her mouth in it for a second. I push off my penis and*
7 *pushed her away and to Tara about what happened I am*
8 *truly sorry.*

9 *I don't want to go to prison. I want to get help.*
10 *Counseling would be better for me because I am currently*
11 *enrolled at Trident Technical College to be a chef for*
12 *culinary arts. I work at Day Labor Temporary agency*
13 *where you get paid. I am truly sorry. I just want to*
14 *make things right.*

15 Then I write questions asked by Detective Gebhardt
16 and answered by Bauman. And what I do is I put a Q, I
17 write a question and I read it to him aloud to make sure
18 he understands it.

19 And then I put an A and request that he write his
20 answer on there. And the first question said how many
21 time has she put your penis in -- then I made a mistake
22 and put yours so I scratched that out and initialed it to
23 show that I did that. And it says: Her mouth. And he
24 said -- put next to the A for his answer in his
25 handwriting, put once. When did this happen? His

1 answer was at 12 o'clock on a Monday on the couch on May
2 11th, 2010. And then I put: Is there anything else you'd
3 like to add? And he said: I am sorry that what all
4 happened.

5 Then I wrote 3 lines and I put end of statement.
6 And I put the time that the interview ceased. And I put
7 3 more lines and then I Z out so nothing else can be
8 added.

9 Q. All right. Just a second. Let me go back just to
10 his oral statement just for a moment just to make sure
11 that we have everything that he said.

12 And if you would refer to -- do you have Detective
13 Gibbons report where you talk about his statement?

14 A. I do.

15 Q. Did he tell you where he was living at the time?

16 A. At the time he was arrested or the time of the
17 incident?

18 Q. Just before the statement was taken. Just before
19 the arrest.

20 A. He had been staying, most recently, staying with a
21 guy by the name of Jeremy Morris and sleeping on his
22 couch.

23 Q. Did he say anything about children and their truth
24 telling ability?

25 A. He said in his oral statement that they don't always

1 tell the truth.

2 Q. And after that is that when -- I think you testified
3 briefly before that he went on to say the victim is a
4 really sexual person. And then did y'all ask anything
5 about where she may have learned that type of behavior
6 from?

7 A. We did. And he said at school. I believe that was
8 in Detective Gibbons part of the interview. I forget.
9 But I remember in some of the notes seeing that he said
10 she learned it in school. And when we advised him that
11 she was not old enough to attend public school he said
12 well then in daycare.

13 Q. And you would have been in the interview room to
14 hear him say that is that correct?

15 A. Correct.

16 Q. Okay. Please answer any questions Mr. Bischoff may
17 have for you.

18 A. Yes, sir.

19 THE COURT: Mr. Bischoff?

20 MR. BISCHOFF: Thank you, Judge.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. BISCHOFF:

24 Q. Detective Gebhardt, nice to see you again.

25 A. Nice to see you, sir.

1 MR. BISCHOFF: Your Honor, may I approach the
2 witness?

3 [Whereupon, defendant's exhibit number 1 is marked
4 by the court reporter]

5 Q. [Mr. Bischoff] Detective Gebhardt, you've been a law
6 enforcement officer for how many years?

7 A. Including military or just civilian?

8 Q. As many as you want to say on the record.

9 A. Eleven.

10 Q. And in that time you understand that when someone is
11 booked that it is documented on a form; a booking report
12 if you will.

13 A. Correct.

14 Q. And it details the date and time in which they are
15 first logged in somewhere, and anytime they're
16 transferred or moved that also gets reflected in the
17 document correct?

18 A. Not always.

19 Q. Okay.

20 A. On their booking sheet it's not documented when they
21 are transferred from the police department to the Law
22 Enforcement Center for Dorchester County.

23 Q. In Dorchester County if someone is a guest at the
24 Annex, which would be Deming Way correct?

25 A. Uh huh.

1 Q. That is a facility where if someone is arrested in
2 Summerville they would be housed there until they are
3 moved to the jail up here in St. George, is that correct?

4 A. Yes.

5 Q. So anytime they are moved into the Annex and then
6 out of the Annex that would be documented, correct?

7 A. I don't know. I don't work for the Sheriff's
8 Office.

9 Q. Let me show you what's been marked as Defendant's
10 exhibit number 1.

11 [Whereupon, the witness is shown document]

12 Q. [Mr. Bischoff] Can you tell me what time the form
13 reflects that Mr. Bauman was lodged into the facility at
14 the Annex on whatever date it starts with? Tell the
15 court what ---

16 A. --- June 30th, 2010 at 21:31.

17 Q. And in your experience as a law enforcement officer
18 you would think that he was arrested sometime prior to
19 that 21:31 on June 30th.

20 A. He would have had to have been but I don't know what
21 time.

22 Q. And then it was your testimony that basically you
23 questioned Mr. Bauman on July 1st prior to a bond hearing.

24 A. Correct.

25 Q. And then he had a bond hearing, which was denied?

1 A. Correct.

2 Q. He was denied a bond. And then he moved to St.

3 George?

4 A. I don't know where he went after the bond hearing.

5 Q. Well, can you tell me what time it says he moves out

6 of the Annex and then what does it say next as far as

7 where he goes?

8 A. Time out of the Annex 7-1-2010 at 16:49. Annex time

9 in 7-1-2010 at 16:49 and out 7-2 08:23.

10 Q. Thank you. And so you didn't meet with Mr. Bauman

11 until the morning of July 1st, correct?

12 A. Correct.

13 Q. Any particular reason why you didn't fill out a

14 report about your interaction with him?

15 A. Because Detective Gibbons was present for the entire

16 interview and she encompassed.

17 Q. She was the head lead detective?

18 A. Correct.

19 Q. But you were the one who apparently ended up doing

20 most of the questioning?

21 A. Correct.

22 Q. And can you tell me a little bit about your

23 background as far as police interrogation is concerned.

24 A. I've been to statement analysis re: technique of

25 interview and interrogation. I don't recall if I

1 attended any other statement analysis classes.

2 Q. About how many hours of essentially of interviews
3 with accused defendants have you had as far as training
4 is concerned?

5 A. Approximately 50 hours of just interview training.

6 Q. And so the tag team procedure that Detective Gibbons
7 described is that normal where if one officer or
8 detective is not getting anywhere with a suspect or
9 defendant then you come in and switch?

10 A. Yes ---

11 Q. --- is that pretty standard?

12 A. Yes.

13 Q. And I guess you felt like you got a lot further with
14 Mr. Bauman than she did based on she has three pages of
15 notes about your questioning and you had one page of
16 notes.

17 A. Yes.

18 Q. And on your one page of notes the first thing you
19 indicate is that Jason 7-1-10 at 09:12.

20 A. Correct.

21 Q. That would have been the time that you first started
22 talking to Mr. Bauman correct?

23 A. Correct.

24 Q. And then you wrote very nervous, speech impediment,
25 stutters. So noticeably from the beginning that is the

1 second thing you wrote on your report or in your notes.

2 I mean it's obvious that this individual has some
3 deficiencies whether it's just speech, cognitive; you're
4 not sure. But you understand that you recognize
5 something from the beginning, is that correct?

6 A. Correct.

7 Q. And then you do develop a rapport with him.
8 Essentially you guys asked him about where you are
9 living. And he denies any involvement.

10 And then you get to the point where Detective
11 Gibbons starts to ask questions at 09:17. So did she
12 only talk to him for about five minutes? Is that your
13 recollection, very brief?

14 A. Very brief.

15 Q. Okay. And when you started questioning him were
16 you aware that he had an I.Q. of 71?

17 A. I wasn't -- did not.

18 Q. Did you have any involvement at the Dorchester
19 Children's Center prior to the interview with him on the
20 1st?

21 A. No, sir.

22 Q. Did you have any conversations with Detective
23 Gibbons about the conversations that she had had with
24 family members who knew the defendant?

25 A. She had told me that he was O-C-D prior to the

1 interview and I believe that was it.

2 Q. So she didn't indicate anything about an I.Q. but

3 she indicated that he was just O-C-D?

4 A. Correct.

5 Q. Okay. Was the interview videotaped?

6 A. No, sir.

7 Q. And why not?

8 A. We don't tape any of our interviews.

9 Q. Was it audio taped?

10 A. No, sir.

11 Q. So no video, no audio.

12 A. No.

13 Q. The only people in the room are you and Detective

14 Gibbons?

15 A. And the defendant.

16 Q. And the defendant.

17 A. Yes, sir.

18 Q. And you would agree at the beginning he maintains

19 his innocence for a good amount of time.

20 A. His body language wasn't speaking the same way as

21 his mouth was.

22 Q. So you had a hunch. You had a hunch he maybe wasn't

23 telling the truth ---

24 A. --- we were both aware -- I wouldn't call it a hunch

25 based on my training experience in my investigation and

1 interrogation classes. He was showing signs of
2 deception.

3 Q. But he didn't come out right away and say look, I
4 admit it. I did it and then let me write a statement.
5 It took you a while did it not?

6 A. I wouldn't quite call it a while.

7 Q. Well, if I tell you that at the top of his statement
8 it says '10:39.' That would indicate about an hour and 25
9 minutes, or 15 minutes. 25 minutes; my math is not good.
10 25 minutes then is a good amount of time is it not?

11 A. It was a lot of filler conversation in between. He
12 was talking about stuff that had nothing to do with this.

13 Q. Right, where you're trying to get him basically to
14 admit all this inappropriate stuff that has got nothing
15 to do with the charge conduct.

16 But you're getting -- trying to get him to tell you
17 that he is basically obsessed with sex.

18 A. No. I was trying to get him to tell me about the
19 incident.

20 Q. And so when he tells you that basically okay, look I
21 admit it. She touched my penis on the outside of my
22 pants.

23 You've got a lewd act there but that wasn't enough
24 because you knew the accusation was oral sex, right?

25 A. Correct.

1 Q. And you knew that you needed to have him say look
2 okay, she -- I made her give me oral sex in order for it
3 to match up with what the accusation was from Mom.

4 A. I didn't know what I needed. I was assisting with
5 the investigation.

6 Q. So you never told him that you had Minor on DVD
7 saying that Uncle Jason made me suck his pee pee? You
8 never told him that?

9 A. No.

10 Q. You never told the defendant that look buddy if you
11 cooperate we'll get you a bond and you'll get out of
12 here?

13 A. No.

14 Q. He never said I just want to go home and you said
15 look, cooperate, we'll get you a bond and we'll get you
16 out of here? That never....

17 A. Not that I can remember, no.

18 Q. Did you tell him anything about the investigation?

19 A. I advised him that there were special people that
20 interviewed children that ask non-leading questions and
21 they withdraw information from the children that way.

22 Q. Okay. And then I guess you didn't know anything
23 about what the child disclosed or didn't disclose ---

24 A. --- no, sir.

25 Q. Okay. So how did he get from she touches my penis

1 on the outside of my pants to okay look, she put her
2 mouth on penis but just for a second. How did that
3 happen?

4 A. I don't know why he decided to tell me that.

5 Q. And some of his responses to your questions he says
6 it happened at 12 o'clock on Monday on the couch on May
7 11th, 2010. And you took that as true?

8 A. I don't know how true it was. I just let him answer
9 the question.

10 Q. Well again, detail is important when you're asking
11 these folks about what happened.

12 A. Correct.

13 Q. You didn't accept that as true? You just let him
14 write whatever and that was it?

15 A. It was his answer. I can't tell him what to write.

16 Q. Okay. But you have no -- you didn't realize that
17 May 11th is actually a Tuesday?

18 A. Tuesday, I know that.

19 Q. And his answers to where did she learn that in your
20 questions and then him saying at school that didn't
21 strike you as a bit odd?

22 A. It's deflection.

23 Q. You took it as deflection?

24 A. Yes, sir.

25 Q. Okay. During the course of the conversation at any

1 time did my client tell you that he wanted an attorney?

2 He said look, I don't want to answer any more questions?

3 A. No, sir.

4 Q. So is it your policy to basically allow someone to
5 write a statement and then when they -- how did you know
6 to stop the interview?

7 A. What do you mean?

8 Q. Well I mean if you hadn't ever been told by
9 Detective Gibbons what the accusation was by Mom and you
10 didn't just stop with the lewd act statement and you went
11 forward to get the Criminal Sexual Conduct with a Minor
12 First Degree statement why did you stop there?

13 Why didn't you just let him -- say look, keep on
14 writing, what else can you give me? Why did you decide
15 to end the interview?

16 A. We just didn't feel -- I think Detective Gibbons
17 decided and said that was good or -- I don't remember how
18 it came to an end but we just decided to stop it there.

19 Q. It's got nothing to do with him getting a bond?

20 A. [No response]

21 Q. With him getting a bond?

22 A. No, I know bond is denied for this charge, but we
23 still have to go through the motions.

24 Q. Right. But you didn't say look, we'll get you a
25 bond. Okay great, thanks for the statement. Let's go

1 get in front of this bond judge. That never happened.

2 A. I said he was going to go before the bond judge. I
3 never said that he was going to get a bond.

4 Q. Okay. Thank you, Detective.

5 A. Thank you.

6 THE COURT: Anything on redirect?

7 MR. HILTON: Very briefly.

8 REDIRECT EXAMINATION

9 BY MR. HILTON:

10 Q. The length of the interview that was conducted, I
11 know Mr. Bischoff got into some of that, about how long
12 was the total interview?

13 A. It was less than two hours. We go from the time of
14 the advisement -- the time at the beginning of my notes,
15 which is 09:12 to the time of the end of the defendant's
16 statement I believe it was like 10:56 so it was less than
17 two hours.

18 Q. And 09:12 that would be 12 o'clock -- I mean 9:12 in
19 the morning?

20 A. Yes, sir.

21 Q. And then Mr. Bischoff asked if he ever asked for an
22 attorney, did he ever invoke any of his rights?

23 A. No, sir.

24 Q. Ever say I've had enough questioning, I'm not going
25 to answer any more?

1 A. No, sir.

2 Q. I want my attorney; nothing like that?

3 A. No, sir.

4 Q. And is it common for defendants during the course of
5 an interview to minimize their involvement at first?

6 A. It is.

7 Q. And I think you testified that he even denied
8 involvement to begin with, is that correct?

9 A. Yes, sir.

10 Q. And so that denied involvement developed into a
11 minimalization and then a confession of what he had done?

12 A. Correct.

13 Q. Okay. And is that commonplace in interviews for
14 that progression to take place?

15 A. Yes.

16 Q. And lastly Detective Gebhardt, Jason Bauman that
17 gave the statement to you do you see him in the
18 courtroom?

19 A. I do.

20 Q. Can you point him out for the court?

21 A. He is sitting right there [indicates] in the blue
22 shirt and blazer.

23 Q. Let the record reflect the witness identified the
24 defendant. No further questions.

25 THE COURT: Anything on re-cross?

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1 MR. BISCHOFF: No, Your Honor.
2 THE COURT: Thank you, sir. You many step down.
3 THE WITNESS: Thank you, sir.
4 [Whereupon, the witness is excused and exits the
5 witness stand]
6 THE COURT: The State have any other witnesses?
7 MR. HILTON: No, Your Honor.
8 THE COURT: Does the defense have any witnesses?
9 MR. BISCHOFF: I do, Judge. I call David Bauman to
10 the stand please.
11 THE COURT: Okay.
12 [Whereupon, Mr. Bauman comes forward]
13 CLERK OF COURT: Please raise your right hand and
14 state your full name for the record.
15 MR. BAUMAN: David Allen Bauman.
16 [Whereupon, David Bauman is duly sworn by the Clerk
17 of Court as follows: do you solemnly swear or affirm to
18 tell the truth, the whole truth, and nothing but the
19 truth so help you God]
20 THE WITNESS: I do.
21 [Whereupon, the witness takes the witness stand]
22 THE COURT: All right. Mr. Bischoff, your
23 witness.
24 MR. BISCHOFF: Thank you, Your Honor.
25 - - -

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF DORCHESTER	)	DOCKET NO. 2010-GS-18-1144
	)	
	)	
THE STATE OF SOUTH CAROLINA	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
JASON A. BAUMAN	)	
	)	
Defendant	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

June 12, 2012
St. George, South Carolina

VOLUME 2 OF 3

B E F O R E:

THE HONORABLE EDGAR W. DICKSON, JUDGE

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1 If we do call her it would be in the nature of some
2 impeachment or some response to any open door by the
3 defense. And so I don't think that Ms. Cynthia Robbins
4 will be a problem.

5 THE COURT: Okay.

6 MR. BISCHOFF: I'm satisfied with that response,
7 Judge.

8 THE COURT: Thank you, sir.

9 MR. BISCHOFF: Thank you, Your Honor.

10 THE COURT: Next?

11 MR. BISCHOFF: Next would be the motion to exclude
12 certain testimony of Ms. Tara Bauman. As I told Your
13 Honor before the allegation again is that Ms. Bauman has
14 given -- and so you've heard that.

15 THE COURT: I got it pretty much down now.

16 MR. BISCHOFF: Okay. I think that the statements
17 of the child are hearsay without exception and I'd like
18 to address that part first.

19 THE COURT: Okay.

20 MR. BISCHOFF: I don't want Ms. Bauman to testify
21 to that in front of the jury. And again, I don't think
22 the bell can be un-rung with that kind of testimony.

23 My first objection or issue with the court would be
24 that Ms. Bauman is not allowed to testify about the
25 statements the child made in response to her questions

1 while in the bathtub.

2 THE COURT: Okay. And -- we'll take them one at a
3 time. Mr. Hilton?

4 MR. HILTON: With regard to the statement of --
5 after the -- after Minor goes toward her little brother
6 and Mom stops her and says what are you doing and she
7 says I'm going to suck his pee pee that's a classic
8 present sense impression.

9 Rule 803 of the South Carolina Rules of Evidence
10 says: *A statement describing or explaining an event or*
11 *condition made while the declarant was perceiving the*
12 *event or condition, or immediately thereafter.*

13 And that's exactly what happened here. The little
14 girl did something and she explained it immediately after
15 she did it. And that's classic present sense impression
16 and that testimony would be admissible under Rule 803(1).

17 MR. BISCHOFF: No, sir. Absolutely not. There is
18 no way that what she says is under the present sense
19 impression of the alleged sexual assault.

20 You can't -- Mr. Hilton loses the opportunity to
21 argue present sense impression when the child does
22 something that apparently happened weeks if not a month
23 prior to the event in the bathtub. There is no present
24 sense impression there. The exception just clearly does
25 not apply. The declarant is not under the force or is

1 not involved in perceiving anything at that point.

2 THE COURT: Well, I understand she is not there but
3 can she not explain what she is doing?

4 MR. BISCHOFF: No, she's got a time to reflect. I
5 mean present sense impression basically requires that you
6 not be prompted for anything.

7 THE COURT: Okay.

8 MR. BISCHOFF: She's got to be under the impression
9 of the event itself.

10 THE COURT: Okay.

11 MR. BISCHOFF: It's not as if she was assaulted by
12 the defendant and then ran out of the room and Mom said
13 what's wrong, what's wrong? And she said Uncle Jason
14 just made me suck his pee pee. I mean that's not what we
15 have here and that's what the present sense impression
16 covers.

17 So with this passage of time in between -- and the
18 State doesn't even know when this allegedly took place.
19 They list a range but even within the range you're
20 talking about way too much passage of time for present
21 sense impression to apply.

22 And the case law is clear. I don't know how Mr.
23 Hilton can honestly say to the court that this is present
24 sense impression because it's just clearly not.

25 MR. HILTON: I can say that because this 803(1) and

1 Mr. Bischoff is talking about 803(2) excited utterance.
2 That's where there has to be a startled event and the
3 declarant has to be under the excitement of the
4 condition. That's 803(2) but we're not talking about
5 excited utterance. We're talking about present sense
6 impression.

7 MR. BISCHOFF: No. If you read present sense
8 impression ---

9 THE COURT: --- I'm reading it.

10 MR. BISCHOFF: *A statement describing or explaining*
11 *an event or condition made while the declarant was*
12 *perceiving the event or condition, or immediately*
13 *thereafter.*

14 Why would they use language immediately thereafter
15 and while the declarant was perceiving the event if it
16 didn't have any context or relation to the assault
17 itself.

18 THE COURT: Here was the -- as I understand it the
19 question from the Mom was why did you do that?

20 MR. BISCHOFF: Yes.

21 THE COURT: Is that correct?

22 MR. BISCHOFF: I believe so.

23 THE COURT: That was the ---

24 MR. BISCHOFF: --- what are you doing is the first
25 question ---

1 THE COURT: --- what are you doing ---

2 MR. BISCHOFF: --- it's my understanding ---

3 THE COURT: --- what are you doing? And that was
4 the event of putting her face in her brother's lap
5 correct?

6 MR. BISCHOFF: Correct.

7 THE COURT: Okay, so that ---

8 MR. BISCHOFF: --- well, I don't even know if it's
9 that far. I know the child apparently -- the statement
10 is the child made a movement towards the lap of the
11 brother. Not in the lap, not mouth open in the lap; just
12 made a movement toward the lap of the brother.

13 THE COURT: And it was such an event or motion that
14 the mother was concerned enough to ask her why she was
15 doing it, is that correct?

16 MR. BISCHOFF: I think -- sure. I mean that seems
17 to be what the mother has testified or has given
18 statements to.

19 THE COURT: Okay. So when she asked the child why
20 she did that regarding the event with her brother the
21 child explained it in whatever manner she could.

22 MR. BISCHOFF: But the child didn't -- no sir.

23 THE COURT: Okay.

24 MR. BISCHOFF: I think what happened is that the
25 child makes a movement toward the lap of her brother

1 according to the mother and then the Mom says what are
2 you doing? And the child responds I'm going to suck his
3 pee pee. And the Mom says not why are you going to do
4 that but where did you learn that. Not who taught you
5 that and the child says Uncle Jason did. I mean its
6 where did you learn that and the child says Uncle Jason
7 according to the mother.

8 THE COURT: Okay.

9 MR. BISCHOFF: But that's not present sense
10 impression.

11 THE COURT: Here's the way I look at this, okay.
12 I'm dealing with -- how old is this little girl? Four
13 years old at the time?

14 MR. BISCHOFF: Yes, sir. And the girl is diagnosed
15 with what is called Pervasive Developmental Disorder Not
16 Otherwise Specified, which is in the autism spectrum.

17 THE COURT: Right.

18 MR. BISCHOFF: And if you were to watch the
19 forensic interview in which we -- I don't know if the
20 State is going to offer that, but the child not only does
21 she not disclose when clearly asked did anybody ever do
22 anything to you? Did Uncle Jason harm you? But she
23 moves her body about in a way, Judge that would suggest
24 that the child's movements have no relationship
25 whatsoever to what she consciously is trying to do.

1 And so within the context of that considering that this
2 girl suffers from a disorder at this time when the
3 allegations were made where she is not able to
4 voluntarily control her body movements I think that's
5 highly relevant to your decision.

6 I understand what you're saying about if that wasn't
7 there, if the child didn't have this disorder that maybe
8 there would be a little bit something more; but not in
9 this case.

10 THE COURT: Well, here's the -- and I don't mind
11 talking about it for a little bit Mr. Bischoff but number
12 one I have a -- I've got a child.

13 MR. BISCHOFF: Yes, sir.

14 THE COURT: Which -- so I have presumably even if
15 she was okay I do not have a fully developed mental
16 person that can adequately understand what's going on or
17 what's happening.

18 MR. BISCHOFF: Yes, sir.

19 THE COURT: And that's the way I look at it. I've
20 been told that the child is also suffering under a
21 disability. These are serious charges against your
22 client.

23 MR. BISCHOFF: Yes, sir.

24 THE COURT: And I understand exactly why you want
25 to exclude those. But by the same token everything that

1 I have read in the child abuse case law that I have been
2 able -- we have to look at how we are going to deal with
3 a child's testimony or those situations in a little bit
4 different light rather than if she was an adult; an 18
5 year old adult, or a 16 year old adult or something like
6 that who could better respond. I mean that's the way I
7 look at it. Your take on that?

8 MR. BISCHOFF: And I think you are exactly correct.
9 I think the problem here it's not the child actually on
10 the stand testifying it's a hearsay statement. So if Mr.
11 Hilton wants to put the child on the stand and have the
12 child testify then that's a little bit different.

13 But I think my client still has a right of
14 confrontation and all the other protections that a
15 criminal defendant has. And I think he gets the benefit
16 of the doubt based on his position as a defendant in this
17 case.

18 But even back to the rule itself I think that the
19 court has to take it out of the context of Criminal
20 Sexual Conduct and just look at the rule. And I think
21 the rule would cover things that were made while under
22 the -- while the declarant was perceiving the event or
23 condition. The child is not perceiving anything at that
24 point. The mother is.

25 THE COURT: But the statement is from the child

1 describing or explaining the event; that's the declarant.

2 MR. BISCHOFF: Correct.

3 THE COURT: Okay.

4 MR. BISCHOFF: But I don't think the child is
5 really perceiving the event.

6 THE COURT: Okay. I -- let me just stop -- we
7 could probably go on with this ---

8 MR. BISCHOFF: --- yes, Your Honor. And
9 respectfully, that's my argument to the court.

10 THE COURT: I understand. And what I am going to
11 do and over -- and I'm going to note your objection in
12 the record so it can be preserved.

13 But I believe that Mother is entitled to state what
14 the child told her at that time, okay. I believe it is a
15 present sense impression 803(1). I'll note your
16 objection to my ruling so it can be preserved for the
17 record.

18 MR. BISCHOFF: Thank you. And so Mom is going to
19 be allowed to actually say what are you doing, allowed to
20 say the child said ---

21 THE COURT: --- she can say what the child did, not
22 what are you -- she is going to testify I assume as to
23 what she saw the child do.

24 MR. BISCHOFF: And I would argue that's irrelevant
25 without the context of what the child says.

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1 THE COURT: No, no ---

2 MR. BISCHOFF: --- and also it's a ---

3 THE COURT: --- I mean ---

4 MR. BISCHOFF: --- verbal -- non verbal assertion
5 and so I think it's also hearsay.

6 THE COURT: Well, let me ---

7 MR. BISCHOFF: --- which is my second part.

8 THE COURT: I know. Let me make sure is my
9 understanding of how the testimony is going to go is the
10 Mother is going to describe an event that caused her
11 concern.

12 MR. BISCHOFF: Correct.

13 THE COURT: At which point the Mother asked the
14 child why did you do that or ---

15 MR. BISCHOFF: --- what are you doing.

16 THE COURT: What are you doing?

17 MR. BISCHOFF: Yes, sir.

18 THE COURT: And then the child responded.

19 MR. BISCHOFF: Yes, sir.

20 THE COURT: Okay. The Mom can testify as to what
21 she observed because she was there. She can testify to
22 what she observed. And she can testify as to what the
23 child said under 803(1) present sense impression.

24 MR. BISCHOFF: And even in response to who taught
25 you that? Uncle Jason. And that also you are saying

1 clarifies under the exception?

2 THE COURT: Yes, sir.

3 MR. BISCHOFF: Okay.

4 THE COURT: And I'll note your objection.

5 MR. BISCHOFF: And may I clarify my objection?

6 THE COURT: Yes, sir.

7 MR. BISCHOFF: I also think that -- my objection on
8 what the child says I believe is hearsay. I don't
9 believe the present sense impression exception would
10 cover that.

11 THE COURT: Correct.

12 MR. BISCHOFF: And then I also think that the
13 child's movement itself if the way the State wants to
14 present it is essentially non-verbal conduct that is also
15 hearsay that would not be covered under an exception as
16 well.

17 THE COURT: Okay. And I ---

18 MR. BISCHOFF: --- so I object to the movement as
19 well as the statements by the child.

20 THE COURT: Okay. But I think she can describe
21 what she saw the child do.

22 MR. BISCHOFF: Yes, sir.

23 THE COURT: But I'll note your objection to that
24 part.

25 MR. BISCHOFF: As well as any relevance or any more

1 prejudicial than probative under 403.

2 THE COURT: Right.

3 MR. BISCHOFF: Thank you, Your Honor.

4 THE COURT: Thank you, sir. What else?

5 MR. BISCHOFF: There is also with regard to Ms.

6 Bauman there is a significant amount of what I think is
7 the same thing that Cynthia Robbins mentions in the
8 discovery and that would be impermissible character
9 evidence and other stuff that is irrelevant.

10 So anything outside the context of that bathtub,
11 which Your Honor just ruled on noting my objection I
12 think that there is a lot of potential impermissible
13 character evidence on the part of Ms. Bauman as well that
14 I would ask to be excluded.

15 THE COURT: I'm assuming Mr. Hilton is keeping it
16 to the event I'm assuming.

17 MR. HILTON: Judge, I'm aware of the rules and
18 we're not going to try to introduce something that I
19 believe is outside the scope of the rules. There will be
20 testimony about other things but they will be relevant
21 and it's not impermissible character evidence.

22 MR. BISCHOFF: I'd like to know what those other
23 things are. I don't think the bell can be un-rung.
24 There is a lot of impermissible character evidence within
25 the discovery. And I'm not trying to waste the court's

1 time, Your Honor, but under the circumstances I don't
2 want to have to have the jury be given a curative
3 instruction, especially when I'm dealing with a potential
4 confession by my client.

5 THE COURT: All right. Then tell me what you're
6 anticipating so that I can make sure it's --

7 MR. BISCHOFF: Yes, sir. For example, Your Honor,
8 in Detective Gibbons' report, which is where I am getting
9 a lot of this information because Ms. Gibbons -- or
10 Detective Gibbons; excuse me, talks with Ms. Bauman prior
11 to the forensic interview.

12 She mentions Tara stated that the subject sexually
13 assaulted one of his cousins when he was younger. And
14 the family never reported it and the cousin never
15 received treatment.

16 MR. HILTON: I'm not going to get into that.

17 MR. BISCHOFF: There is mention that my client --
18 well, Judge it looks like the majority of the statements
19 are made by Ms. Cynthia Robbins but Ms. Tara Bauman is
20 there.

21 So as long as the State assures me that none of the
22 things that Cynthia Robbins says about what she has heard
23 or anything like that, I'm okay with that. And I trust
24 that the Solicitor will just speak with these witnesses
25 about what is proper and improper.

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1 THE COURT: You know he will --

2 MR. BISCHOFF: I have.

3 THE COURT: Okay.

4 MR. BISCHOFF: I think that's all I have at this
5 time. But obviously if it comes up again ---

6 THE COURT: --- I'll ---

7 MR. BISCHOFF: --- I'll make my contemporaneous
8 objection.

9 THE COURT: I understand. And just -- when we get
10 to the testimony of Ms. Bauman at the trial if you just
11 want to reference the earlier objection that I ruled
12 against just so you can make sure it's preserved.

13 MR. BISCHOFF: Yes, sir.

14 THE COURT: Because I'm always interested when I
15 read the appellate documents of the appellate decisions
16 when and how many times you have to do it and when's the
17 appropriate time so we make sure that you are always
18 protected.

19 MR. BISCHOFF: I appreciate that. And don't worry,
20 I will object at every opportunity.

21 THE COURT: I know you will. I'm looking forward
22 to it.

23 MR. BISCHOFF: I have to.

24 THE COURT: Yes, sir. No, I mean ---

25 MR. BISCHOFF: --- the Supreme Court is ---

1 THE COURT: --- no, I just want to make sure that
2 we do it at the right time so that we don't run into a
3 situation where the Court of Appeals or the Supreme Court
4 says it was not timely.

5 MR. BISCHOFF: I completely agree and that's part
6 of the reason I am bringing them up now.

7 THE COURT: Yes, sir.

8 MR. BISCHOFF: I appreciate the court's indulgence.

9 THE COURT: What else?

10 MR. BISCHOFF: A potential witness who is a
11 jailhouse informant.

12 THE COURT: Mr. Conklin?

13 MR. BISCHOFF: Yes, sir.

14 THE COURT: Okay.

15 MR. BISCHOFF: The discovery that I was provided
16 shows that Mr. Conklin also engages in a bunch of -- or
17 gives statements that my client admits to doing some
18 other things that are not I don't think are part of the
19 conduct included in the indictment.

20 If I may I approach the bench? I've got a copy of
21 Mr. Conklin's statement and would prefer the court just
22 review this.

23 [Whereupon, documents are handed up to the court]

24 MR. BISCHOFF: It's fairly brief. But there is
25 nothing in any of the discovery that I have been provided

1 where he makes any mention whatsoever of the conduct
2 charged in the indictment. So I'm not quite sure what
3 the State proposes to have him testify to.

4 THE COURT: All right. I've reviewed it. Mr.
5 Bischoff?

6 MR. BISCHOFF: Yes, sir. I'm sorry.

7 THE COURT: I see there is some stuff in here that
8 does not ---

9 MR. BISCHOFF: --- it doesn't seem at all relevant
10 to the conduct in the indictment and seems like
11 impermissible character evidence.

12 THE COURT: Well, now he is talking -- there is
13 some stuff where he is talking about his niece.

14 MR. BISCHOFF: Correct. But not -- there's no
15 context to it. I'm not quite sure how the court can
16 allow him to testify to stuff that basically bypasses
17 relevance or anything under 403 or anything under 404
18 just because it's about his niece.

19 And that's uncharged conduct. If the State wanted
20 to bring a separate indictment for this conduct they had
21 an opportunity.

22 THE COURT: All right. Mr. Hilton?

23 MR. HILTON: Judge, I would just say I'm all about
24 pretrial motions and so forth and trying to get things
25 disposed of. But this is one of those witnesses where

1 it's just going to depend on how the testimony goes.
2 I know Mr. Bischoff spent a lot of time yesterday
3 attacking the law enforcement officers with the
4 statements and so forth saying that he was mentally
5 retarded, and that he couldn't function and that he was
6 easily influenced to say whatever.

7 And I think that some of the testimony that Mr.
8 Conklin may have to offer will be directly related as --
9 with regard to what Mr. Bischoff questions any law
10 enforcement officer in regard to their statement.

11 And so I think that testimony is more -- this
12 statement is more appropriately taken up after -- from
13 law enforcement and so forth.

14 MR. BISCHOFF: I don't even know what -- first of
15 all it's not an attack when I've got a duty to defend my
16 client against a confession ---

17 MR. HILTON: --- I don't ---

18 THE COURT: --- let me start with number 1 you know
19 he didn't mean it.

20 MR. BISCHOFF: Well, I'm not so sure sometimes,
21 Judge with all candor. But secondly I don't see how the
22 testimony of the detectives -- I'm not going to get into
23 anything that they said to Mr. Conklin if you say that
24 his testimony is irrelevant.

25 THE COURT: Well, do we -- we might -- have to

1 worry about this fellow?

2 MR. BISCHOFF: Well, we may not. I just don't
3 know what he can offer. He doesn't say anything about
4 J.B. _ told me about the bathtub incident or that -- or
5 I'm sorry, Jason.

6 THE COURT: Yes, sir. What we may do and right now
7 I'm going to see if he gets called as a witness.

8 MR. BISCHOFF: Okay.

9 THE COURT: And we may deal with it either through
10 an in camera hearing or we'll -- but I will leave that
11 out and we will deal with that if necessary.

12 MR. BISCHOFF: Thank you, Your Honor. And then
13 finally Judge I have a motion and memorandum in support
14 of motion to exclude prejudicial terms. And I believe
15 Your Honor has reviewed it?

16 THE COURT: Yes, sir.

17 MR. BISCHOFF: I don't feel I need to really
18 explain anything else about that unless Your Honor wants
19 to ask me a few questions. But I think it speaks for
20 itself.

21 THE COURT: No, I mean -- and I got that. I
22 understand that and Mr. Hilton if you want to say
23 something you're welcome to. But the court's take on
24 this is that the little girl Minor is the victim and Mr.
25 Bauman is the defendant.

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1 MR. BISCHOFF: Yes, sir, noting my objection.

2 THE COURT: Okay.

3 MR. BISCHOFF: Thank you, Judge.

4 THE COURT: All right. Anything else before I get
5 a cup of coffee?

6 MR. BISCHOFF: I don't believe so, Judge. I guess
7 it goes without saying that the detectives are aware that
8 they are not allowed to talk about anything that Tara
9 Bauman said to them about the bathtub. That has to come
10 from Ms. Bauman.

11 THE COURT: Right. Is that correct, Mr. Hilton?

12 MR. HILTON: That's the rules.

13 THE COURT: That's what I thought.

14 MR. BISCHOFF: Thank you, Judge.

15 THE COURT: Thank you. We'll take a break now. I
16 think the jury is coming in at 10 so we'll get a moment
17 to relax, get some coffee and then we'll get started.

18 Thank you. We're in recess.

19 [Whereupon, a recess is held]

20 [Whereupon, the jury enters the courtroom at 10:17
21 a.m.]

22 THE COURT: All right. Good morning ladies and
23 gentlemen. I want to make sure, number 1 nobody has
24 talked to y'all about this case?

25 [No response]

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1 THE COURT: Nobody has done any investigation?

2 [No response]

3 THE COURT: Now we're getting ready to start this
4 trial. Before we get started though the first thing we
5 got to do is you've got to be sworn in as jurors in this
6 case. So if you will please stand and raise your right
7 hand, the Clerk will swear you in.

8 [Whereupon, the jury is duly sworn by the Clerk of
9 Court as follows: do you solemnly swear or affirm that
10 you shall well, and truly, and true deliverance make
11 between the State of South Carolina and the defendant --
12 whom you shall have the charge and true verdict given
13 according to the law in evidence. If you accept this
14 oath please say I do and be seated.]

15 THE JURY: I do.

16 THE COURT: Thank y'all. Ladies and gentlemen, we
17 are about to start the case of the State of South
18 Carolina versus Jason Bauman.

19 What I am going to tell you now is just -- it's just
20 an introduction into the trial of the case. I know some
21 of you may have been involved in trials before and in
22 criminal trials, but these remarks are not the charge on
23 the law. When I charge -- the last thing that happens in
24 this case is I charge you on the law and tell you the
25 elements of the law you need to apply to the facts. This

1 is just an explanation of the procedure so you'll have an
2 idea of what is happening in this case.

3 Now again if you recall at the beginning of the case
4 the Solicitor stood up and told you that there was an
5 indictment. This is the indictment [indicates] that has
6 been filed in this court for the crime of Criminal Sexual
7 Conduct with a Minor First Degree.

8 The elements of that crime I will explain to you
9 later. The indictment is simply the charge by which this
10 case is brought to court. It is not in any sense
11 evidence of the allegations it contains.

12 The defendant has pled not guilty to this
13 indictment. The State therefore has the burden of
14 proving each of the elements of the indictment beyond a
15 reasonable doubt. And it will be your duty ladies and
16 gentlemen to decide whether the State has met that
17 burden.

18 Your job as jurors is to find and determine the
19 facts. You are the sole judges of the facts. If at any
20 time I make a comment regarding the facts I am asking you
21 -- I'm telling you that you must disregard it.

22 You are to determine the facts from the testimony
23 that you hear from this witness stand and from any other
24 evidence that is introduced in court. It is up to you
25 to determine the inferences which you feel may properly

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1 be drawn from that evidence. It is important you perform
2 your duty of determining the facts diligently and
3 conscientiously because ordinarily there is no way to
4 correct an erroneous determine of facts by the jury.

5 The same law that makes you the judges of the facts
6 makes me the judge of the law. The law is given by the
7 court and is the only law that you may consider -- that
8 you may consider. You must accept and follow it even if
9 you may disagree with it.

10 I cannot tell you what the facts are and you can't
11 disagree with me about what the law is or should be.
12 Your job is to take the law as I give it to you and apply
13 it to the facts as you find them from the testimony of
14 the witnesses and other evidence that is introduced.

15 After doing that you will render your verdict; a
16 true and just verdict on the solemn oath that you just
17 took as jurors.

18 Until I advise you to begin your deliberations you
19 must not discuss this case with anyone including your
20 fellow jurors, family members, friends, or anyone that is
21 involved in this case.

22 After the case is submitted to you you must discuss
23 it only in the jury room among your fellow jurors. The
24 attorneys and the parties in this case have been advised
25 that they are not to talk to you as I told you yesterday.

1 So if you see anyone involved in this case and they don't
2 even say hello and they are not even friendly, they are
3 following my directions.

4 During the trial do not read, listen to, or watch
5 any news reports about this case. This includes anything
6 that may be in the newspapers or the Internet, radio, or
7 television.

8 You must not consider anything that you have read or
9 heard about this case outside of the courtroom. And as I
10 told you before you must not investigate anything about
11 this case. Everything you need to know to make your
12 decision in this case you will find out in court.

13 It is important that you keep an open mind and not
14 decide any issue in this case until all of the evidence
15 has been presented, the parties have made their closing
16 arguments, and I have instructed you on the law of this
17 case.

18 It is your solemn responsibility to determine the
19 guilt or innocence of this defendant and your verdict
20 must be based solely on the evidence as it is presented
21 to you in this trial and on the law as I instruct you
22 during and at the close of the trial.

23 In a moment the Solicitor will make what is called
24 an opening statement in which he will explain to you the
25 issues that he believes are in this case. The attorney

1 for the defendant may also make an opening statement
2 concerning what he believes to be the issues in this
3 case.

4 What the attorneys tell you during their opening
5 statements is not evidence. It is only their contention
6 as to what the issues are. The evidence in this case
7 will be presented to you by the testimony of sworn
8 witnesses from this witness stand or by exhibits that may
9 be placed in evidence.

10 From time to time during the trial you may hear one
11 of the attorneys say something like we have a question of
12 law or a matter of law to take up with the court. Or
13 sometimes they may just want to approach the bench and
14 you'll hear me put that little noisemaker on so you can't
15 hear what we are saying.

16 Now, the reason for that is either to put the
17 noisemaker on or to exclude -- to ask y'all to step into
18 the jury room for a while is that when I discuss matters
19 of law with the attorneys and sometimes it's necessary
20 for me to make comments about the facts.

21 My comments about the facts should not and cannot
22 influence you so you are excused from hearing what our
23 discussions are about that matter. I'm not supposed to
24 tell you what I think the facts are. And so that you
25 will not be influenced in any way about what I say or do

1 in connection with the facts I will exclude you from the
2 room -- excuse you to go to the jury room or put this
3 noisemaker on so you can't hear what I am saying.

4 Now sometimes when the approach the bench the only
5 thing they are asking is what time are we going to break
6 for lunch; you need to know that. It's not always
7 serious when they come up here. Lunch is serious; don't
8 get me wrong. But sometimes we're just having scheduling
9 conversations as well.

10 In determining what the true facts are in this case
11 you must decide whether or not the testimony of a witness
12 is believable. It will be my responsibility to rule as a
13 matter of law as to whether certain testimony is
14 admissible at all. But once the testimony is admitted
15 whether or not you believe it is solely for you to
16 determine.

17 In deciding whether to believe a witness you have
18 the right to consider the interest of any witness, the
19 bias of any witness, the prejudice of any witness, the
20 opportunity for the witness to have seen the matters and
21 things about which the witness may testify and the way
22 the witness acts on the witness stand.

23 You have a right to consider anything that is in the
24 record that will help you evaluate the testimony of each
25 witness. That means that it is your duty to pay close

1 attention to these witnesses, to observe them, and listen
2 to them. It is also your duty to pay close attention to
3 the attorneys and the court.

4 I'm asking you again to pay attention so that at the
5 end of all the testimony, after the arguments of counsel,
6 and the charge on the law by the court you will be in a
7 position to determine what the true facts are in this
8 case and apply the law to those facts and thus render a
9 true and just verdict in this case.

10 All right. Mr. Hilton?

11 MR. HILTON: Actually Mr. Austin.

12 THE COURT: Oh, Mr. Austin.

13 MR. AUSTIN: Thank you, Your Honor. May it please
14 the court?

15 THE COURT: Yes, sir.

16 MR. AUSTIN: Good morning everybody. Opening
17 statements are usually a way for us to give the jury a
18 roadmap for the case they are about to hear. But in this
19 case there is simply no way I can fully prepare you for
20 the facts that you are about to hear.

21 And that's on the dates between May 1st and May 27th
22 of 2010 that man [indicates] Jason Bauman, the defendant
23 in this case, had his four year old niece perform oral
24 sex on him. Now at the end of the case -- I'll tell you
25 more about the facts in a second. But for right now my

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1 name is Matt Austin along with Russell Hilton we are
2 going to be prosecuting this case on behalf of the State
3 of South Carolina against Jason Bauman for Criminal
4 Sexual Conduct with a Minor.

5 At the end of the case Judge Dickson is going to
6 instruct you on the law. But for right now I'll tell you
7 that it's pretty simple.

8 A person commits Criminal Sexual Conduct with a
9 Minor when they engage in sexual battery with a minor
10 victim under the age of 11.

11 As applies to this case sexual battery means oral
12 sex. You're probably going to hear the word fellatio,
13 and that's how the statute describes it. But all that is
14 is just a fancy way of saying oral sex on a man.

15 Now let's get back to May of 2010. The victim in
16 this case her mother, Tara Bauman, was giving her two
17 children a bath. Little Minor was four years old and her
18 little brother J.B. was two.

19 As Ms. Bauman is washing them little Minor four
20 years old, leaned over and attempted to perform oral sex
21 on her little brother. Immediately Ms. Bauman grabbed
22 her and that's when Minor reported the abuse to her.

23 The police got involved and began investigating.
24 The defendant gave a statement, and that's why we're here
25 today. Now anyone who commits a crime in our society is

1 entitled to a trial. Nobody is required to plead guilty
2 or give up any rights. Now we're going to be here the
3 next few days just so Mr. Bauman can exercise his right
4 to a trial.

5 But I would submit to you that the State has rights
6 too. And when the State has proven beyond a reasonable
7 doubt that the defendant is guilty of the crime the State
8 is entitled to a guilty verdict.

9 And so the State has the burden to prove to you
10 beyond a reasonable doubt the defendant is in fact guilty
11 of this crime. And that is a burden that we gladly
12 accept because I'm confident that when you have seen all
13 the evidence and you're heard all the testimony you're
14 going to be firmly convinced that Jason Bauman is guilty.
15 Thank you.

16 THE COURT: Thank you, Mr. Austin. Mr. Bischoff?

17 MR. BISCHOFF: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 MR. BISCHOFF: Ladies and gentlemen, good morning.
20 My name is Scott Bischoff and I do represent Jason
21 Bauman.

22 And what I want everybody to do is sort of take a
23 deep breath. The accusations in this case and some of
24 the testimony that you're going to hear is absolutely
25 somewhat reprehensible. What I'm faced with today is

1 asking each and every single one of you to remember that
2 you're here not necessarily to accept what the Solicitor
3 has said is true. And not necessarily to accept what is
4 in the indictment.

5 This is our only opportunity within the laws of the
6 State of South Carolina to have the State prove my client
7 guilty beyond all reasonable doubt.

8 And what that means is you're going to hear how one
9 mother's observance of her child make a suggestive
10 gesture that spirals and ends up with an indictment
11 against my client for conduct that the child has told
12 nobody else about. Not one single medical professional
13 are you going to hear testify that the child told them
14 anything about what my client did to her.

15 The way that it works in South Carolina and what
16 you're going to hear is that when someone brings an
17 accusation the detectives with the law enforcement agency
18 will look into the case and then will do an
19 investigation.

20 But what the Solicitor didn't tell you is that you
21 will hear about how this girl who is my client's niece,
22 which sounds terrible, this girl suffers from Pervasive
23 Developmental Disorder Not Otherwise Specified. And what
24 that is is it is within the spectrum of autism. What
25 you're going to hear about is that the child met with a

1 number of medical professionals because that's the way it
2 works. There is an investigation; everybody is innocent
3 until they are proved guilty.

4 And the idea is that no one can just walk in and
5 make an accusation against someone and be convicted
6 without the State proving beyond a reasonable doubt
7 citizens just like yourself that what he is accused of
8 doing actually happened.

9 So she met with a number of medical professionals
10 and not once, even after being prompted directly, does
11 the child say Uncle Jason harmed me. He's the one who
12 made me perform fellatio on him; not one single time, and
13 arguably that the child did not even disclose that to her
14 own mother.

15 So you've heard how terrible the accusations are and
16 the crime itself is one of the most horrible crimes that
17 the State has. My client is facing a significant amount
18 of time in prison.

19 But what I want you to do is to try, because you
20 took an oath to come in here and give my client the same
21 rights that each and every single one of you has; which
22 is that when you're accused of a crime the State has the
23 burden of proving to citizens, ordinary citizens just
24 like yourselves, beyond all reasonable doubt that the
25 crime actually happened. Think about what you hear from

1 the witness stand because that's how you're supposed to
2 make your determination. What did the witnesses testify
3 to? What you don't hear is just as important as what you
4 do hear.

5 The State called this case with the idea that they
6 were going to prove to each and every one of you beyond a
7 reasonable doubt that my client did, not only what the
8 mother accuses him of doing, but you're also going to
9 hear that my client suffers from an I.Q. of 71; just over
10 the threshold of mentally retarded.

11 My client is not this well-developed, from a
12 cognitive standpoint, individual who knows what's going
13 on. You'll hear testimony about his I.Q. level and
14 you'll hear that he confessed to this crime.

15 But what you have to take into account when you hear
16 this what exactly is he confessing to? Was he prompted
17 in some way? Was he coerced in some way? What exactly
18 do I know about my ordinary daily life would lead me to
19 hesitate to act essentially. And that's what beyond a
20 reasonable doubt is; the kind of doubt that would lead
21 you to hesitate to act.

22 So when you are listening to the witnesses'
23 testimony think about the perception of the witnesses.
24 Is the witness really able to perceive what they are
25 testifying to? Think about the creditability. Who are

1 you going to hear from? Are they believable? Think
2 about the people that don't testify and know that the
3 State had an opportunity -- in fact, the child met with a
4 number of medical professionals; none of which are going
5 to testify that the child said that my client did what's
6 in the indictment.

7 At the end of all that testimony about -- remember,
8 what you don't hear is just as important as what you do
9 hear. If you are not firmly convinced beyond all
10 reasonable doubt my client is guilty, then you must find
11 him not guilty. Thank you for your service.

12 THE COURT: Thank you, Mr. Bischoff. Is the State
13 ready to call its first witness?

14 MR. HILTON: We are, Your Honor. The State would
15 call Tara Bauman.

16 [Whereupon, Ms. Bauman comes forward]

17 CLERK OF COURT: Please raise your right hand and
18 state your full name for the record?

19 MS. BAUMAN: Tara Bauman.

20 [Whereupon, Tara Bauman is duly sworn by the Clerk
21 of Court as follows: do you solemnly swear or affirm to
22 tell the truth, the whole truth, and nothing but the
23 truth so help you God]

24 MS. BAUMAN: I do.

25 [Whereupon, the witness takes the witness stand]

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1 THE COURT: All right. Your witness, Mr. Hilton.

2 MR. HILTON: Thank you, Your Honor.

3 - - - - -

4 TARA BAUMAN,

5 Having been first duly sworn,

6 Was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. HILTON:

9 Q. Ms. Bauman, where are you living now?

10 A. I currently live in Goose Creek.

11 Q. Do you know the defendant in this case, Jason
12 Bauman?

13 A. Yes, I do. He's my brother-in-law.

14 Q. He's your brother-in-law?

15 A. Yes.

16 Q. And kind of explain the family dynamic for the jury
17 if you will; just who is in your immediate family.

18 A. My immediate family is my husband, Carl Bauman, and
19 his brother, Jason Bauman, and my father-in-law is David
20 Bauman.

21 Q. And then within your household who lives with you?

22 A. My two children Minor and J.B.

23 Q. How about your husband, does he live with you?

24 A. Yes, my husband lives with me too.

25 Q. And Minor and J.B. how old are they?

1 A. Minor is six and J.B. is three.

2 Q. Back in May of 2010 how old would they have been at
3 that time?

4 A. Minor would have been four and J.B. would have
5 been one or two.

6 Q. I know there was a point in time when some changes
7 occurred but prior to that time what was Minor like as a
8 child?

9 A. Minor was -- seemed somewhat normal. I mean she
10 played and interacted with her brother. She did have a
11 speech impediment and there was some delay as well, but
12 she is receiving services for that.

13 Q. All right. And prior to these changes that we will
14 get to in a moment, prior to any of that had you or your
15 husband ever exposed her to any type of you know birds
16 and bees talk; any kind of sexual education?

17 A. No, we did not.

18 Q. Did she ever -- this might be a little bit
19 embarrassing, but did she ever walk in on y'all?

20 A. No, as far as I'm aware no, she did not ---

21 MR. BISCHOFF: --- Your Honor, I'm going to object;
22 relevance.

23 THE COURT: I'm going to overrule the objection and
24 let him go forward.

25 MR. BISCHOFF: Okay.

1 Q. [Mr. Hilton] And was she ever exposed by you or your
2 husband of any pornography or anything like that?

3 A. No.

4 Q. Let me turn your attention to around May of 2010.
5 Do you remember a particular time where you were giving
6 Minor and J.B. a bath together?

7 A. Yes, I do.

8 Q. Tell the jury about that incident.

9 A. I was giving Minor and J.B. a bath one evening and
10 Minor was sitting in the tub facing J.B. And she
11 proceeded to lean forward with her mouth open and I
12 stopped her. Her mouth opened towards J.B. lap and I
13 stopped her and I asked her what she was doing.

14 THE COURT: Now, just for the record I'm going to
15 note your objection to this testimony so it will be
16 preserved on the record.

17 MR. BISCHOFF: Yes, Your Honor, the same objection
18 we discussed earlier.

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

20 Q. [Mr. Hilton] You said you asked her what she was
21 doing and then what happened?

22 A. She said I'm going to suck his pee pee. And I asked
23 her where did you learn that from and she said Uncle
24 Jason.

25 Q. And Uncle Jason is he in the courtroom?

1 A. Yes, sir.

2 Q. Who is that?

3 A. He is sitting right over there [indicates].

4 Q. Is that the person you identified as your husband's
5 brother?

6 A. Yes, he's my brother-in-law.

7 Q. After that incident what did you do?

8 A. I waited a couple of days because just because I was
9 unsure as far as family issues and how that would turn
10 out and decided to go talk to my nurse practitioner and
11 report what I had seen in the bathroom.

12 Q. And who is your nurse practitioner?

13 A. Ms. Amy Young.

14 Q. And where is she employed?

15 A. She is employed with Palmetto Primary Care.

16 Q. Is that in Summerville?

17 A. Yes, sir.

18 Q. After you went and spoke with Ms. Young is that when
19 the investigation kind of began?

20 A. Yes. She informed me that by law she had to report
21 it and she made the contacts to the police department.

22 Q. And subsequent to that time did you end up taking
23 Minor for a forensic interview?

24 A. Yes, I did.

25 Q. And did she go for a physical examination?

1 A. Yes, she had one.

2 Q. Now prior to the -- and we'll refer to it as the
3 bathroom incident -- bathtub incident.

4 A. Okay.

5 Q. Prior to the bathtub incident was there a time that
6 you remember where you found Minor and Jason alone?

7 A. Yes.

8 MR. BISCHOFF: Objection, Your Honor. May we
9 approach?

10 THE COURT: Sure.

11 [Whereupon, an off the record bench conference is
12 held]

13 THE COURT: Mr. Hilton, I'm going to let you go
14 forward in a limited manner.

15 MR. HILTON: Thank you, Your Honor.

16 MR. BISCHOFF: My objection ---

17 THE COURT: --- I'm noting your objection on the
18 record, Mr. Bischoff.

19 MR. BISCHOFF: Thank you, Your Honor.

20 THE COURT: Thank you, sir. Okay.

21 Q. [Mr. Hilton] Do you remember a night where you found
22 Minor alone with the defendant?

23 A. Yes.

24 Q. And what had y'all done that night?

25 A. My husband and I went to see a movie.

1 Q. And where was Minor at the time?

2 A. Minor and J.B. were both with my father-in-law.

3 And when we came back to pick them up from the movie I

4 found Minor and Jason alone in the living room on the

5 couch. And J.B. and David were in the back bedroom.

6 Q. And as far as J.B. and David were they watching

7 T.V. or sleeping or what?

8 A. They were sleeping in the back bedroom.

9 Q. And David again is who?

10 A. He is my father-in-law.

11 Q. And that would also be his father, is that correct?

12 A. Jason's father; yes.

13 Q. And did you pick Minor up?

14 A. Yes, we did.

15 Q. And where was David Bauman living at the time?

16 A. At the time he was living in Summerville; Midland

17 Parkway -- off Midland Parkway in Summerville.

18 Q. And is that in Dorchester County?

19 A. I believe so, yes.

20 Q. Now before the bathroom incident; and you had

21 testified a little while ago about Minor behavior as a

22 child and so forth, before this bathroom incident did you

23 start noticing any changes in Minor behavior?

24 A. Yes, I did.

25 Q. As in what?

1 A. She was aggressive -- becoming aggressive at home,
2 acting out and hitting, and she had noticeable behavior
3 changes at school reported by her teachers.

4 She was displaying interest in body parts as far as
5 breasts and genitals. She also was flashing her private
6 part, her pee pee, to her brother. And I had overheard
7 her say asking ---

8 MR. BISCHOFF: --- Your Honor, objection.

9 THE COURT: I'm going to sustain that objection.

10 MR. BISCHOFF: And I'm going to object to the line
11 of testimony as well. I just don't see how it is
12 relevant.

13 THE COURT: I'll let Mr. Hilton go forward a little
14 bit on that, okay.

15 Q. [Mr. Hilton] Any other changes in behavior?

16 A. I had noticed as far as her bedwetting she was doing
17 it twice in one night.

18 MR. BISCHOFF: Again, Your Honor -- may we
19 approach?

20 THE COURT: You may.

21 [Whereupon, an off the record bench conference is
22 held]

23 THE COURT: All right. Continue on, Mr. Hilton.

24 Q. [Mr. Hilton] I'm sorry we were interrupted. What
25 were you talking about?

1 A. I had mentioned that she was -- she had wet the bed
2 twice in one night. And as far as -- she -- I noticed
3 that every time she would eat a meal she was gagging a
4 lot. It was odd behavior.

5 Q. How did she act when the defendant was around?

6 A. She would show signs of not wanting him around. She
7 would become agitated, angry; not really wanting to have
8 anything to do with him.

9 But it was more like a -- kind of like a love hate
10 relationship. She would talk to him but yet she didn't
11 feel comfortable.

12 Q. Was there a noticeable difference when he was
13 around?

14 A. Yes.

15 Q. Please answer any questions Mr. Bischoff may have.

16 THE COURT: Mr. Bischoff, your witness.

17 MR. BISCHOFF: Thank you, Your Honor.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. BISCHOFF:

21 Q. Ms. Bauman, good morning.

22 A. Good morning.

23 Q. Your child, Minor at the time was four years old,
24 correct.

25 A. Yes.

1 Q. And y'all had not lived in South Carolina very long
2 before the bathtub incident, is that correct?

3 A. That's correct.

4 Q. In fact you had lived in Louisiana part of that
5 time?

6 A. Yes.

7 Q. And that you moved here for your husband's job.

8 A. More so for school.

9 Q. More so for school?

10 A. Yes.

11 Q. Okay. And your child prior to moving here through
12 the services of the Louisiana School System was diagnosed
13 with Pervasive Developmental Disorder is that ---

14 A. --- that's correct ---

15 Q. --- Not Otherwise Specified?

16 A. Yes, that's correct.

17 Q. And you would agree with me when I say that that
18 diagnosis essentially covers cognitive defect, correct?

19 A. Correct.

20 Q. And it also covers inability to -- it affects
21 speech, correct?

22 A. Yes.

23 Q. And you would agree that it also affects your
24 child's ability to reason and to perceive certain events?

25 A. Yes, it can have that effect.

1 Q. And do you remember your child undergoing an
2 extensive evaluation whereby she was -- she underwent
3 what is called the Battelle Developmental Inventory? Do
4 you remember that?

5 A. Yes.

6 Q. And you remember that that essentially -- that test
7 is basically involves a battery of developmental tests on
8 a young child?

9 A. Yes.

10 Q. And you're aware of the results of that test?

11 A. Yes.

12 Q. So you would agree with me that when I tell you that
13 the results were that on a cognitive level at the time
14 when your daughter was almost three years old, when she
15 was undergoing these tests that she functioned within the
16 point 4 percentile?

17 A. Yes.

18 Q. And you would also agree that that had to do with
19 cognitive function?

20 A. Uh huh. Yes.

21 Q. You would also agree that regarding attention and
22 memory she functioned below the one percentile mark?

23 A. Yes.

24 Q. And you would agree that reasoning and academic
25 skills she was below the fifth percentile?

1 A. Yes.

2 Q. And in perception and concept she was also below the
3 first percentile?

4 A. Yes.

5 Q. But motor skills actually she functioned at a level
6 relatively close with her age, would you agree?

7 A. Yes..

8 Q. As far as cognitive ability what the percentile rate
9 means according to this report if you would agree with me
10 is that your child, even though she was almost three
11 years old, she functioned at the level of a child who was
12 nine months old?

13 A. I would say that's about correct.

14 Q. Okay. And after that your child basically was also
15 given a series of tests regarding infant preschool play
16 assessment. Do you remember the results of that?

17 A. Not particularly, no.

18 MR. BISCHOFF: Your Honor, may I approach the
19 witness?

20 THE COURT: You may.

21 [Whereupon, the witness is shown documents]

22 Q. [Mr. Bischoff] This is a copy -- let me ask you if
23 you recognize this?

24 A. Okay. Yes, I do.

25 Q. And would you help tell the ladies and gentlemen of

1 the jury exactly what this report is?

2 A. It's basically an evaluation on Minor as far as
3 where she is for her age range academically; fine motor
4 skills.

5 Q. And that basically is a report that sums up the
6 evaluations by folks affiliated with the Louisiana School
7 System?

8 A. That's correct.

9 Q. To make sure that Minor is in the appropriate
10 classes?

11 A. Yes.

12 Q. As a child?

13 A. Yes.

14 MR. BISCHOFF: I'm sorry. Madame Court Reporter
15 would you please mark this for identification purposes
16 only?

17 [Whereupon, defendant's exhibit number 2 is marked
18 by the court reporter]

19 Q. [Mr. Bischoff] What we are referring to is
20 defendant's exhibit for identification purposes only
21 number 2. And you would agree that on page 6 of 13 of
22 this report details the infant preschool play assessment
23 skills?

24 A. Yes --

25 Q. And do you remember -- if you want to take a look --

1 you were there when this evaluation was done, correct?

2 A. Yes, I was.

3 Q. And do you remember the results of the evaluation?

4 A. Yes, I do.

5 Q. This is refreshing your memory?

6 A. Yes. She was not very cooperative.

7 Q. I'm sorry?

8 A. She was not very cooperative.

9 Q. Your daughter was not?

10 A. Yes.

11 Q. Okay. And what this basically states is that at
12 this point when your child is three years old in the area
13 of receptive communication Minor ---

14 MR. HILTON: --- Your Honor, I'm going to object.

15 At this point it's not in evidence and he's reading the
16 document. He can place it --

17 MR. BISCHOFF: I'll rephrase the question.

18 THE COURT: Okay.

19 Q. [Mr. Bischoff] Would you agree that the reports say
20 that Minor basically could understand general commands of
21 yes or no but as far as a conversation is concerned she
22 struggled to have that?

23 A. That's correct.

24 Q. Okay. And Minor when she came to South Carolina
25 was also in an I-E-P program?

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1 A. Yes.

2 Q. And that stands for individualized education
3 program?

4 A. Yes.

5 Q. Is that correct?

6 A. Plan.

7 Q. Plan. Okay. And did she have to undergo testing
8 prior to entering the South Carolina School System?

9 A. Yes, she did. She had about the same amount of
10 testing that was received in Louisiana.

11 Q. And do you remember the results of that test?

12 A. They are about the same as given before as far as
13 her cognitive and speech.

14 Q. She was still functioning at a very low cognitive
15 level?

16 A. Yes.

17 Q. And when exactly did you come to South Carolina?

18 A. February of '09.

19 Q. So February of '09 would have been about a year
20 prior to -- a little over a year prior to these
21 allegations.

22 A. Yes.

23 Q. To the bathtub?

24 A. Yes.

25 Q. And at that particular point in time was your child

1 receiving any sort of counseling?

2 A. No, she wasn't.

3 Q. Was the child receiving any sort of assistance with
4 regard to her cognitive functioning?

5 A. Yes. She had attended like a preschool program for
6 special needs at Flowertown Elementary. And she was
7 receiving services as far as speech and services --

8 Q. And was your child attending a daycare at that
9 particular time? This was before preschool, correct?

10 A. No. She started attending daycare after preschool.

11 Q. Okay. So your child was essentially not in school
12 in any way leading up to when these accusations were --
13 came about.

14 A. No, she was in school. She was attending ---

15 Q. --- when did she start school?

16 A. We got here in February. So she had to have started
17 within -- the upcoming school year, which I'm thinking it
18 was September of '09. We got here early in February.

19 Q. And you would agree that her progress was still
20 slow?

21 A. Actually her progress was wonderful. She -- her
22 speech developed with leaps and bounds when she was
23 attending the preschool program.

24 Q. And again the preschool program was around the
25 beginning part of 2010?

- 1 A. Yes.
- 2 Q. And you say her speech was wonderful?
- 3 A. Well it went from no talking or little talking to
4 more talking as far as her being able to communicate.
- 5 Q. But you would agree your child was still very
6 developmentally delayed for a four year old ---
- 7 A. --- definitely not in her age range.
- 8 Q. Okay. And when these accusations came about when
9 you were giving your child a bath as you testified to
10 earlier after the bath you reported this to Amy Young you
11 said?
- 12 A. Yes. Amy Young, our nurse practitioner.
- 13 Q. And Amy never spoke directly with Minor is that
14 correct?
- 15 A. No, she didn't.
- 16 Q. And Amy told you that under South Carolina law even
17 if the allegation is unfounded she has to report this?
- 18 A. Correct.
- 19 Q. In fact she could not only lose her job but could
20 face criminal charges if she failed to report?
- 21 A. Correct.
- 22 Q. And so Amy tells you that she is going to report the
23 incident to law enforcement correct?
- 24 A. Correct.
- 25 Q. And then she also refers you to law enforcement and

1 somehow you get in contact with them?

2 A. Yes. I believe they were the ones that contacted
3 me.

4 Q. They contacted you?

5 A. I believe so if I remember correctly.

6 Q. Okay. So you didn't feel that this was urgent
7 enough that you needed to contact law enforcement?

8 A. Well, I didn't really know what to do. I just knew
9 that I had to tell someone so I told my nurse
10 practitioner and she said that she would inform the
11 police on the matter of what she had heard from me and
12 that they would be in contact with me.

13 Q. Because at this point you didn't really know what
14 was going on. You know that your child had made a
15 statement to you that caused you some concern?

16 A. Correct.

17 Q. But you looked to law enforcement and other experts
18 to help you figure out what was going on?

19 A. Yes.

20 Q. Is that a fair statement?

21 A. That is a fair statement.

22 Q. Okay. And you also are aware that -- let me
23 rephrase the question. You are aware that the child --
24 that Minor was subsequently scheduled for a forensic
25 interview.

1 A. Yes.

2 Q. At the Dorchester Children's Center, correct?

3 A. Yes, she was.

4 Q. And did the detectives tell you that that is just
5 standard protocol for them whenever there are allegations
6 of sexual assault?

7 A. Yes.

8 Q. And when was that interview scheduled?

9 A. I don't remember the exact time. It was shortly
10 after the whole bathroom incident. We were scheduled for
11 a forensic interview and a physical.

12 Q. If I told you that it was on June 24th, 2010 would
13 that sound about accurate?

14 A. That sounds about right.

15 Q. This is about ---

16 A. --- shortly after I reported it.

17 Q. About a month after you initially reported it?

18 A. Yes; to the nurse practitioner.

19 Q. Okay. And prior to that time did you meet with the
20 detectives involved?

21 A. No.

22 Q. So the detective didn't call you at all prior to...

23 A. No, she had called -- the detective had called and
24 let me know what was being scheduled as far as the
25 forensic interview and the physical. But I had not

1 physically met anyone until that time --

2 Q. Okay. So you report to the Dorchester Children's
3 Center with Minor on the 24th of 2010. Do you also take
4 your younger son with you?

5 A. I believe I did. I think he was in -- being watched
6 by one of the ladies there.

7 Q. And he was given the same evaluation as your
8 daughter and basically they ---

9 A. --- no, he wasn't given any evaluation.

10 Q. Okay. And did you actually witness the interview?

11 A. No, I did not. I was not there for the interview.

12 Q. Did you participate in a forensic -- or rather a
13 questionnaire at the beginning where they ask you ---

14 A. --- yes. The psychologist and the detective asked
15 questions and then we were excused from the room and the
16 forensic interview proceeded with Minor

17 Q. And so you did not observe that interview?

18 A. No, I did not.

19 Q. Do you remember being given an opportunity to fill
20 out this caregiver questionnaire -- you said yes, you do
21 remember that right?

22 A. Yes.

23 Q. And do you remember not mentioning once that your
24 child suffered from Pervasive Developmental Disorder?

25 A. No, I don't remember not listing that.

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1 MR. BISCHOFF: I beg the court's indulgence one
2 moment, Your Honor.

3 THE COURT: All right.

4 [Whereupon, defendant's exhibit number 3 is marked
5 by the court reporter]

6 Q. [Mr. Bischoff] Let me show you what has been marked
7 as defendant's exhibit number 3 for identification
8 purposes.

9 [Whereupon, the witness is shown documents]

10 Q. Do you remember that report and that questionnaire?

11 A. This wasn't filled out by me. That's not my
12 handwriting.

13 Q. Do you remember answering those questions?

14 A. Yes, I do. When it says down here that the child
15 has a medical disorder and I answered yes.

16 Q. And then what did you say?

17 A. It says develop -- delay functions, so
18 developmentally delays; that would be her diagnosis.

19 Q. At age three?

20 A. Uh huh.

21 Q. Would you agree that's what it says?

22 A. Yes.

23 Q. And would you agree that when it talks about speech
24 language problems you also indicate the speech
25 impediment?

1 A. Yes, sir.

2 Q. Okay. As far as mental health disorder you would
3 agree that is not marked?

4 A. That's not marked; no.

5 Q. Any reason why you didn't further specify that your
6 child suffered from a disorder that was in the range of
7 autism -- within the spectrum of autism?

8 A. Because I wasn't aware that it was in the spectrum
9 of autism. I was aware that it was a developmental
10 delay. I was understanding that it was based on
11 academics and her age; not as far as it being an actual
12 mental disorder.

13 Q. That's fine. So at that point when you actually
14 went to the interview you weren't aware that your child
15 had this cognitive -- you were aware that the functioning
16 ---

17 A. --- yes, I was aware ---

18 Q. --- at basically at nine months when she was almost
19 three years old?

20 A. Yes. I was aware there was a delay in my child.

21 Q. And -- but you weren't aware exactly what
22 P-D-D-N-O-S Pervasive Developmental Disorder Not
23 Otherwise Specified actually meant?

24 A. Well, yes I wasn't aware that it was on the autism
25 spectrum so to speak.

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1 Q. Okay. And have you seen the forensic interview
2 with your child?

3 A. No.

4 Q. To this day nobody in law enforcement ---

5 A. --- I have not seen it at all.

6 Q. So you wouldn't be aware that the forensic
7 interviewer asked her what Uncle Jason did to her and she
8 responded no ---

9 MR. HILTON: --- I'm going to object, Your Honor,
10 hearsay.

11 A. I don't ---

12 THE COURT: --- hold on one second if you don't
13 mind. Your objection?

14 MR. HILTON: It's hearsay.

15 THE COURT: And your question was just was she
16 aware of that?

17 MR. BISCHOFF: Correct.

18 THE COURT: Okay. And she had already answered
19 she hadn't seen the video, correct?

20 MR. BISCHOFF: Yes, Your Honor.

21 THE COURT: Okay. I'll sustain your objection.
22 Go ahead.

23 Q. [Mr. Bischoff] So you haven't had a chance to review
24 any of the reports that were made after the interview?

25 A. No.

1 Q. And after this interview what they typically do is
2 they take those results and then they recommend other
3 services, right?

4 A. Correct.

5 Q. And were you aware that Minor met with Carrie
6 Strunsky?

7 A. Yes. I believe she's a psychiatrist at the
8 Children's...

9 Q. Right. She works at the Children's Center.

10 A. Yes.

11 Q. Are you aware that she had Minor go through a Be
12 Safe quiz?

13 A. Yes.

14 Q. Okay. Do you remember the results of that
15 questioning?

16 A. No, I don't remember the results.

17 Q. Were you with your child when she answered the
18 questionnaire?

19 A. No, I wasn't. It was ---

20 Q. --- she's all by herself?

21 A. No. She was accompanied by my friend, Cynthia
22 Robbins, and her grandfather David Bauman.

23 Q. Any particular reason why you didn't feel it
24 important to attend?

25 A. Well ---

1 Q. --- that session with your daughter?

2 A. At the time I had to work and my husband was very
3 ill so those were the only two caregivers that I had
4 around and available.

5 Q. So it's safe to say at this point you still were not
6 aware of the severity of the situation?

7 A. As far as on legal documents? No, I hadn't seen
8 anything as far as --

9 Q. --- I'm not just talking about legal documents. If
10 you believed that your child was sexually assaulted by
11 her uncle and you believed that to be true, why would you
12 not participate in the interviews or the whole process to
13 find out exactly what was going on?

14 A. Well, I had gone to the interview as far as the
15 forensic. But the Be Safe was displayed as just
16 something that we do. Its protocol and it was more or
17 less a good thing for her to go through or to understand.

18 Q. I thought you just testified a second ago that you
19 didn't actually go to the forensic interview?

20 A. No. When we took -- when I took my child, Minor to
21 the forensic interview yes, I took her to the Lowcountry
22 Children's Center where the interview was being held.
23 But I wasn't actually in the room during the forensic
24 interview.

25 Q. I'm aware of that. But you also agree that there is

1 a viewing area where you could have viewed the forensic
2 interview; did they not share that with you?

3 A. No. I was downstairs in the lobby.

4 Q. Okay. Did you meet with the detectives after the
5 forensic interview?

6 A. No, I met with the detective before.

7 Q. You didn't meet with her afterwards?

8 A. No.

9 Q. You didn't ask anybody any follow up questions? I
10 mean what did my child say? What do you think; you're
11 the experts. None of that -- none of that questioning?

12 A. Well, the answers that were given to me were more or
13 less they were kind of open ended answers that Minor
14 gave.

15 They didn't quite understand as far as when she was
16 relating to her private parts her speech was delayed so
17 it was kind of hard for them to understand her as far as
18 her explaining what happened or her private part.

19 Q. Nobody told you that she did not disclose?

20 MR. HILTON: Judge, I'm going to object. May we
21 approach?

22 MR. BISCHOFF: Gladly.

23 [Whereupon, an off the record bench conference is
24 held]

25 THE COURT: All right. If you will continue, Mr.

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1 Bischoff.

2 MR. BISCHOFF: Thank you, Your Honor.

3 Q. [Mr. Bischoff] Ms. Bauman, did you ever get any
4 results after the forensic interview that detailed your
5 daughter's responses or anything that was significant?

6 A. Yes, I received a phone call from the psychiatrist.

7 Q. And who was that psychiatrist?

8 A. Carrie -- I can't pronounce her last name correctly.

9 Q. It's tough for me too but I'm going to give it a
10 try. Strunsky?

11 A. It sounds about right.

12 Q. Is that right? S-T-R-U-N-S-K-Y?

13 A. Yes.

14 Q. And what was the purpose of that phone call?

15 A. She was just stating that ---

16 MR. HILTON: --- objection, Your Honor.

17 THE COURT: Hearsay?

18 MR. BISCHOFF: I asked her what the purpose was.

19 THE COURT: Okay.

20 MR. BISCHOFF: I'm not asking what Ms. Strunsky
21 said.

22 THE COURT: All right. I'll allow the question as
23 to what was the purpose of the call.

24 Q. [Mr. Bischoff] What was the purpose of the call?

25 A. The purpose of the call was just to tell me that ---

1 Q. --- but you can't ---

2 A. --- I'm sorry ---

3 Q. --- that's okay.

4 THE COURT: You just tell him what did she call you
5 for?

6 A. Just called to tell me that everything was finished
7 as far as interview and they were going to proceed to the
8 next....

9 Q. [Mr. Bischoff] The next step?

10 A. Yes.

11 Q. Okay.

12 THE COURT: Thank you, ma'am.

13 Q. [Mr. Bischoff] And that next step would be?

14 A. It would have been as far as the detective getting a
15 hold of me on what they were going to do with the
16 information.

17 Q. So Ms. Strunsky told you essentially we're done.
18 The detectives are going to take it from here.

19 A. Uh huh. As far as I can remember.

20 Q. They didn't refer you to M-U-S-C?

21 A. That's correct, you're right. I did go to M-U-S-C.

22 Minor was involved in the victim's crime unit and she was
23 seen by a psychiatrist or a psychologist; one of the two.

24 Q. And they told you that this is also protocol?

25 A. Yes.

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1 Q. So this is standard. Standard follow up?

2 A. Yes.

3 Q. Did you review any of the results of the evaluation
4 at M-U-S-C to find out at this point what's going on with
5 my daughter?

6 A. Yes, I did.

7 Q. And she's still functioning at a very low level?

8 A. Yes.

9 Q. According to this report, correct?

10 A. Yes.

11 Q. And she also at this point -- and this is subsequent
12 to the forensic interview. Do you know exactly when you
13 first went to M-U-S-C?

14 A. No, I mean not a date ---

15 Q. --- that's okay. Just generally can you say if it
16 was a month, was it two months? How long did you wait
17 after you were referred to M-U-S-C to schedule an
18 appointment?

19 A. I would say about a month; maybe less.

20 [Whereupon, defendant's exhibit number 4 is marked
21 by the court reporter]

22 Q. Okay. And I'd like to show you what has been
23 marked as defendant's exhibit number 4 for identification
24 purposes.

25 MR. BISCHOFF: Your Honor, may I approach the

1 witness?

2 THE COURT: You may.

3 Q. [Mr. Bischoff] Ms. Bauman, if you'll just take a
4 second and tell me if you remember receiving that
5 document?

6 [Whereupon, the witness is shown documents]

7 A. Yes, I think so.

8 Q. And if you want to flip through it I believe it's the
9 complete copy of the report, but you've seen it so please
10 let us know.

11 A. It doesn't state who gave the evaluation by any
12 chance?

13 Q. I think it does towards the end. Does that ring a
14 bell?

15 A. Yes.

16 Q. This psycho educational evaluation?

17 A. Yes.

18 Q. Okay. And you're -- I'm not asking you to remember
19 anything specifically on a page number or anything like
20 that. But generally speaking do you remember what your
21 child was diagnosed with after that testing?

22 A. The testing there if my memory corrects -- if I
23 remember correctly it would state that she doesn't have
24 Pervasive Developmentally Delay anymore. It's her A-D-D
25 that is the problem -- or the A-D-H-D that's the issue;

1 her learning.

2 MR. BISCHOFF: Judge, may I approach the witness
3 again?

4 THE COURT: You may.

5 Q. [Mr. Bischoff] Would you also agree that there is a
6 diagnosis of Disruptive Behavior Disorder Not Otherwise
7 Specified?

8 A. Can you point out to where...

9 Q. Yes.

10 A. Yes, I see it here.

11 Q. And would you also agree that there is a diagnosis
12 of Mixed Receptive Expressive Language Disorder?

13 A. Yes.

14 Q. And then would you also agree that there is a
15 diagnosis of Developmental Coordination Disorder?

16 A. Yes.

17 Q. Did anyone ever explain to you what those diagnoses
18 meant?

19 A. At the end the explanation was as far as Minor
20 education or academics she would always need the extra
21 help but that her motor skills were fine it was more
22 academics and speech and that she would receive
23 occupational therapy as well.

24 Q. Did you ever ask them what Disruptive Behavior
25 Disorder is?

1 A. No. I was under the impression that was just stated
2 because her teachers had said that she had behavior
3 issues in school before. But she did not ever declare
4 any disruptive behavior while being tested.

5 Q. Your child didn't exhibit any behavior -- disruptive
6 behavior at M-U-S-C?

7 A. No, she didn't.

8 Q. Well, do you remember an occasion when you went to
9 M-U-S-C and met with a Julie Jensen?

10 A. No. At the time when she went to the crime victim's
11 unit she was being seen by Julia Felton [phonetic].

12 Q. You don't remember her meeting with a Julie Jensen?

13 A. No, I remember Julia Felton with the victim's crime
14 unit and another Doctor Hamlin [phonetic] I believe gave
15 another evaluation.

16 Q. Now I'm not just talking about after the event but
17 even before. Didn't you receive services at M-U-S-C
18 before?

19 A. Not that I can remember.

20 Q. Not that you can remember?

21 A. No. Okay, yes I do remember ---

22 Q. --- you do?

23 A. Yes. She did receive services before she went to
24 the Children's Psych Unit and received some direction as
25 far as what to do for her A-D-H-D.

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1 Q. Right and that you also talked about how your child
2 is a picky eater?

3 A. Yes. She's four.

4 Q. And the report says that you noticed some increased
5 aggression and irritability at school and at home.

6 A. Yes, that's correct. That was stated.

7 Q. Not sure if it's the side effect of the medication
8 or what?

9 A. She wasn't taking medication at the time.

10 Q. Well...

11 A. At the time of the report ---

12 Q. --- would you like me to show you the report?

13 A. Sure.

14 [Whereupon, defendant's exhibit number 5 is marked
15 by the court reporter].

16 Q. Now I'm showing the witness what has been marked as
17 defendant's exhibit number 5 for identification purposes.

18 [Whereupon, the witness is shown documents]

19 Q. Would you agree that that report was made prior to
20 your forensic interview? The date of the report would
21 you agree is April 8th, 2010?

22 A. And the forensic interview was held in June or July.

23 Q. I'm asking you. I don't know. Do you remember?

24 Such a traumatic event I would imagine you would
25 remember, correct?

1 A. I'm just reading this; excuse me.

2 Q. Sure. Take your time. There is a second page too.

3 [Whereupon, the witness reviews documents]

4 A. Okay.

5 Q. Does that ring a bell now?

6 A. Yes. And this statement it says that she was on

7 medication and had behavior problems. But it was also

8 noted that she had behavior problems before she was on

9 medication.

10 Q. Right. That's sort of my point. Your child had had

11 these behavior problems prior to the bathtub incident and

12 then she had problems afterwards.

13 A. Uh huh.

14 Q. Right?

15 A. Yes.

16 Q. And she also went on this A-D-H-D --

17 A. --- I ---

18 Q. --- I'm sorry.

19 A. Excuse me. I don't remember noting that she had

20 significant behavior problems before the bathtub scene.

21 Q. I'm just saying did you know that she had behavior

22 problems? You apparently told ---

23 A. --- before the bathtub scene?

24 Q. Well, you just -- according to the report you

25 indicated that there had been some increased aggression

1 and irritability both at school and at home.

2 A. Okay.

3 Q. But I'm not sure if it's age related or a side
4 effect of medication. That's your statement, right?

5 A. Yes.

6 Q. Y'all were having issues of whether or not the child
7 was reacting well to the medication?

8 A. Yes.

9 Q. And that you were considering adding behavior
10 management to her I-E-P program.

11 A. Yes I considered it. But we didn't follow through
12 with it.

13 Q. Okay. And earlier you testified about Minor --
14 Minor reactions to the defendant, to Jason ---

15 A. --- uh huh ---

16 Q. --- that she didn't want to be around him. Was that
17 after the bathtub incident?

18 A. No, that was before. Before -- and after.

19 Q. So before and after she didn't really want to be
20 around Jason?

21 A. Yes. She seemed -- some irritation.

22 Q. And do you remember a particular incident at M-U-S-C
23 when you were meeting with these experts where your child
24 throws this temper tantrum and runs down the hall and she
25 has to be put in time out and then she kicks you and the

1 evaluator?

2 A. Yes, I remember. It was the psychiatrist and there
3 was only one incident; yes.

4 Q. So there are a number of examples would you not
5 agree where your child is acting out?

6 A. Uh huh. Yes.

7 Q. Okay. And was before and after the bathtub
8 incident as you just testified?

9 A. Yes. But the particular incident that you're
10 speaking of with the psychiatrist was when we were at the
11 crime victim's unit.

12 Q. Sure.

13 A. Yes.

14 Q. Sure. Your child was also given a physical
15 examination, correct?

16 A. Yes.

17 Q. And that turned up negative?

18 A. Yes, that's correct.

19 Q. Do you remember reviewing the results of that test?

20 A. No, I just remember being told that it came up
21 negative.

22 Q. At any point in this process did you ever demand to
23 see a document that says what is going on with your child
24 or did you just assume that all of it was related to the
25 bathtub incident?

1 A. I just assumed it was for the case and any documents
2 I had were based on her academics and her pervasive
3 mentally delay -- developmental delay.

4 Q. Okay. Do you remember going over the pertinent
5 medical history with the folks at M-U-S-C?

6 A. Not off the top of my head, no.

7 Q. Well would you disagree if I told you that you
8 didn't check P-D-D on the pertinent ---

9 A. --- I don't remember the document so I would have to
10 look and see.

11 Q. I'll be happy to show you.

12 A. There are so many of them.

13 [Whereupon, defendant's exhibit number 6 is marked
14 by the court reporter]

15 Q. This is marked as defendant's exhibit number 6 for
16 identification purposes. Ms. Bauman, again take your
17 time and if you'll review that and then let me know if
18 any of that rings a bell.

19 [Whereupon, the witness reviews documents]

20 A. I see developmental delay marked right here
21 [indicates].

22 Q. Correct.

23 A. Okay.

24 Q. And let's talk about that because that's the page I
25 want to discuss.

- 1 A. Okay.
- 2 Q. You would agree -- do you remember telling somebody
- 3 -- or them asking you a checklist of things?
- 4 A. Yes.
- 5 Q. So there was an interview prior to the medical
- 6 professionals meeting with your daughter in which they
- 7 try and get background information?
- 8 A. Yes.
- 9 Q. About your daughter just to make sure they
- 10 understand exactly who they are dealing with, correct?
- 11 A. Yes.
- 12 Q. And you would agree that this document indicates
- 13 that there are a number of disorders or conditions that
- 14 are listed?
- 15 A. Yes.
- 16 Q. And you check A-D-H-D.
- 17 A. Uh huh.
- 18 Q. And would you agree that right under that it says
- 19 Asperger's syndrome slash P-D-D?
- 20 A. Yes, it says that.
- 21 Q. And is that box checked?
- 22 A. No, it is not.
- 23 Q. And under that entry you would agree that there is
- 24 also an entry for autism?
- 25 A. Yes.

1 Q. And that is not checked, would you agree?

2 A. That is not checked because she wasn't diagnosed
3 with autism.

4 Q. Fair enough. And then under developmental delay you
5 do check that.

6 A. Yes.

7 Q. And you check the ---

8 A. --- language ---

9 Q. --- language disorder.

10 A. Uh huh.

11 Q. You wouldn't qualify your daughter's situation as
12 having gross motor delay?

13 A. No. I mean ---

14 Q. --- not at the time?

15 A. No, I just didn't check it.

16 Q. And then on other specified nothing is marked
17 correct?

18 A. Correct.

19 Q. And would you agree that in the comment section
20 underneath that apparently you told someone that she is
21 delayed in her language and speech?

22 A. Correct.

23 Q. Never anything about P-D-D?

24 A. Well as far as language goes P-D-D to me means
25 developmentally delayed. Whether or not I checked it

1 it's about the same to me.

2 Q. Okay. And so did you -- do you remember reading
3 that report prior to today or is this the first time
4 you've looked at it?

5 A. I'm pretty sure I read it before. As far as
6 remembering exactly no, I do not.

7 Q. That's okay. I'd like to show you again if you've
8 read it -- I'm going to show you this section that is
9 marked child's statement.

10 A. Okay.

11 Q. Would you agree that it says no disclosure to this
12 examiner during forensic interview ---

13 MR. HILTON: --- objection, Your Honor. This is
14 hearsay and I think we're losing focus of who is on trial
15 here.

16 MR. BISCHOFF: I'm not -- I know the witness is not
17 on trial.

18 THE COURT: I understand your objection. You can
19 ask her about the questions. I overrule the objection.
20 Go ahead.

21 MR. BISCHOFF: Thank you, Your Honor.

22 Q. [Mr. Bischoff] Do you remember telling someone or
23 reading that there was no disclosure to this examiner
24 during forensic interview. Does that -- do you remember
25 that?

1 A. Yes.

2 Q. Okay. And so if you've read that before why did
3 you say earlier that you didn't know anything about the
4 forensic interview?

5 A. I don't remember any specific things on reports.

6 Q. But you remember she did not disclose, right?

7 A. I've been told, yes. That's what I've been told,
8 yes as far as any specifics. There were no specifics; it
9 was all based on body function -- body language that she
10 gave to the psychiatrist during the forensic interview.

11 Q. And so you've been told that the child's body
12 language in the forensic interview was such that caused
13 people some concern. Is that essentially...

14 A. Yes. It was noted in the sense of there was some
15 concern as of whether there was sexual abuse.

16 Q. And when you heard that did you think I want to see
17 this interview?

18 A. I didn't know I could, honestly.

19 Q. Okay. And according to this report it says that
20 you disclosed -- the child disclosed to you, meaning
21 Minor about a month and a half ago.

22 Is that accurate? Do we know when this disclosure
23 took place? Do you remember?

24 A. To the paperwork you just showed me or...

25 Q. Well, yes. According to the paperwork it says that

1 per Mom child disclosed to Mom about a month and a half
2 ago. I'm just trying to figure out do you remember
3 exactly when the bathtub incident took place?

4 A. Sometime around May; I remember that.

5 Q. Okay. But you don't remember the day?

6 A. Not the exact day, no.

7 Q. Okay. And your testimony is that you went after
8 that to meet with Amy Young?

9 A. Yes.

10 Q. But you don't remember how many days; a few days?

11 A. I think it was a week or so.

12 Q. A week or so?

13 A. Yes.

14 Q. Okay. Is your -- is Minor still undergoing
15 counseling?

16 A. No, she is not.

17 Q. She is no longer, okay. Do you remember taking
18 Minor to see a Doctor Foster in the past few months?

19 A. Yes, I do.

20 Q. And what do you remember about that visit?

21 A. Doctor Foster explained to me that she would talk to
22 Minor. She didn't tell me what she was going to ask her
23 or anything.

24 She just expressed that she would have a videotape,
25 like a videotape playing so that Minor didn't know it was

1 going on -- or it wouldn't be out in the open and that
2 she would tell Minor that she is being recorded while
3 being questioned. And I sat in another room while that
4 was going on.

5 Q. So you didn't observe that evaluation either ---

6 A. --- no, not specifically; no.

7 Q. Okay. Did you have a chance to review the report?

8 A. No, I did not.

9 Q. You have no idea what Minor said during that
10 interview?

11 A. All I know is that -- what was told to me as far as
12 there wasn't any like exact ---

13 Q. --- hang on. Let me be clear. Were you told about
14 the interview?

15 A. Well afterwards there was -- no. Actually she did
16 not tell me what was being -- what was said because I
17 don't believe she was allowed to tell me the information
18 after the interview with my child ---

19 Q. --- not allowed to tell you the information about
20 your own child ---

21 A. --- well, before the trial, yes because I guess it
22 was sensitive as far as the case goes.

23 Q. Okay. Do you remember why your daughter was
24 referred there?

25 A. I believe it was an evaluation to see if she was

- 1 able to go on the stand.
- 2 Q. To determine whether or not she was competent?
- 3 A. Yes.
- 4 Q. Earlier you testified about how you remember this
- 5 night in particular; this movie night with your husband,
- 6 right?
- 7 A. Uh huh.
- 8 Q. And that you had gone back to pick up your daughter
- 9 because she was staying with your father-in-law?
- 10 A. Yes.
- 11 Q. Who is also the father of Jason?
- 12 A. Yes.
- 13 Q. Jason is your brother-in-law?
- 14 A. Yes.
- 15 Q. And that you walked in and saw Jason sitting with
- 16 Minor on the couch?
- 17 A. Yes.
- 18 Q. If that memory of yours -- do you remember the day?
- 19 A. Not the exact day. No, I do not.
- 20 Q. If that is so significant how come you haven't told
- 21 anybody in law enforcement about that prior to today,
- 22 your testimony here?
- 23 A. As far as them being alone on the couch?
- 24 Q. Correct.
- 25 A. I believe I did disclose that.

1 Q. You did? To who?

2 A. I -- to my attorney...

3 Q. Who was your attorney?

4 A. Russell Hilton.

5 Q. Russell Hilton is your attorney?

6 A. Well, represented as far as the State.

7 Q. You said Russell Hilton is your attorney. Is that
8 your understanding that Russell Hilton is your attorney?

9 A. Yes. He is aiding me in this case, yes.

10 MR. BISCHOFF: Your Honor, may I approach?

11 THE COURT: Sure.

12 [Whereupon, an off the record bench conference is
13 held]

14 THE COURT: All right. Continue, Mr. Bischoff.

15 Q. [Mr. Bischoff] How many times have you met with Mr.
16 Hilton prior to today?

17 A. Maybe about four or five times.

18 Q. Have y'all gone over your testimony?

19 A. As far as what may occur in the courtroom.

20 Q. As far as what you're going to testify to?

21 A. Uh huh.

22 Q. And did Mr. Hilton ever tell you what to say?

23 A. No, he did not.

24 Q. And back to that night. So you were there to pick
25 up your daughter and you don't remember anything out of

1 the ordinary at the time of, but now in retrospect what
2 you're thinking is that that may have been the night that
3 that happened?

4 A. That was something that I observed so I thought that
5 could possibly be when the incident could have occurred.

6 Q. And beside Mr. Hilton did you ever tell anybody else
7 about that night?

8 A. I thought I disclosed that in the forensic interview
9 with the detective but I may not have.

10 Q. What do you mean the forensic interview with the
11 detective?

12 A. Well, I mean as far as when we brought Minor in for
13 the forensic interview when we were being interviewed
14 before she was going to be alone in the room getting --
15 having her forensic interview.

16 Q. The detective met with you ---

17 A. --- statements or as far as what's going on; kind of
18 getting an overall of what happened so far.

19 Q. Okay. So the detective met with you prior to the
20 forensic interview to talk about your daughter and my
21 client?

22 A. Yes, and what's happening or what has happened so
23 far.

24 Q. And you think you told Detective Gibbons about that
25 movie night?

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- 1 A. I thought I did, but I may not have.
- 2 Q. Okay. Is your child still in the I-E-P program?
- 3 A. Yes.
- 4 Q. Do you know what level of cognitive function she has
5 now? And has she been recently tested?
- 6 A. She was recently tested at M-U-S-C and released from
7 her P-D-D diagnosis. And now that her -- and now
8 basically her academics will be based -- would be
9 hindered by her A-D-H-D.
- 10 Q. Okay.
- 11 A. And not her developmental delay.
- 12 Q. So she has made progress?
- 13 A. Yes, she has.
- 14 Q. Since the bathtub incident?
- 15 A. Yes.
- 16 Q. Okay. Any more trips to the Children's Center?
- 17 A. No.
- 18 Q. And she's not currently undergoing any counseling
19 through M-U-S-C?
- 20 A. Not through M-U-S-C; no.
- 21 Q. And is she undergoing any counseling anywhere else?
- 22 A. No.
- 23 Q. Just at school she gets special services at school?
- 24 A. Special services at school.
- 25 MR. BISCHOFF: I beg the court's indulgence for one

1 second, Your Honor.

2 THE COURT: All right, Mr. Bischoff.

3 Q. [Mr. Bischoff] Ms. Bauman, I know that was difficult
4 but thank you for answering my questions. I appreciate
5 it.

6 MR. BISCHOFF: No more questions, Your Honor.

7 THE COURT: Thank you. Anything on redirect, Mr.
8 Hilton?

9 MR. HILTON: Nothing, Your Honor. Thank you. You
10 may step down. Thank you, ma'am.

11 [Whereupon, the witness is excused and exits the
12 witness stand]

13 THE COURT: Ladies and gentlemen, y'all have been
14 sitting patiently and listening as I asked you to do, and
15 I appreciate that.

16 I'm going to let y'all step back in the jury room
17 for a short break. Relax and maybe get some more coffee
18 or go to the restroom or whatever. I'll get you back out
19 here in about ten minutes. Thank y'all.

20 [Whereupon, the jury exits the courtroom at 11:37
21 a.m.]

22 THE COURT: All right. Mr. Bischoff, just to clear
23 up anything on the record I know you came up and we had a
24 conversation because you were concerned about her
25 statement about Mr. Hilton being her attorney.

1 DR. ALLISON FOSTER,

2 Having been first duly sworn,

3 Was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. HILTON:

6 Q. Doctor Foster, where are you employed?

7 A. I'm employed with the South Carolina Department of
8 Mental Health. I'm the program director of a children's
9 advocacy center known as the ARC.

10 Q. And where is that located?

11 A. Columbia.

12 Q. And tell the jury what your educational background
13 is.

14 A. Sure. Starting with college I went to college at
15 Emory University in Atlanta. I majored in Psychology and
16 English Literature.

17 Then I worked for a year at a residential treatment
18 facility for adolescents called the Kennesaw -- Devereux
19 [phonetic] Foundation in Kennesaw, Georgia.

20 Then I moved to South Carolina to attend the
21 Doctoral Clinical Psychology Program at U-S-C. So I
22 started on Ph.D. program in 1989.

23 I graduated in the spring of 1996 with a PhD. in
24 Clinical Community Psychology. As part of getting a
25 Ph.D. you go through a pre-doctoral internship year. I

1 did that at William S. Hall Psychiatric Institute in
2 Columbia. And that was when I first began actually
3 working at the ARC. It was then called the Abuse
4 Recovery Center and did a rotation there as part of my
5 training.

6 And upon completing my internship I was actually
7 hired into my job in the fall of 1995 as the Program
8 Manager of the ARC. I became licensed in September of
9 1997.

10 And as part of being a psychologist of course there
11 is lots of continuing education that goes on after you
12 graduate.

13 Q. So you are still learning as you go?

14 A. Yes.

15 Q. All right. And how ---

16 MR. BISCHOFF: --- if we want to speed things up we
17 both hired Ms. Foster to evaluate the child. I think she
18 is absolutely an expert and it's just I guess a question
19 of what she is going to be qualified in.

20 THE COURT: What is she going to be qualified in?

21 MR. HILTON: Forensic clinical psychology.

22 MR. BISCHOFF: No objection, Your Honor.

23 THE COURT: All right. She is so qualified in
24 forensic -- what was it?

25 MR. HILTON: Clinical psychology.

1 THE COURT: Clinical psychology.

2 Q. [Mr. Hilton] How long have you been employed at the
3 ARC?

4 A. Seventeen years this September. So just shy of
5 seventeen years.

6 Q. And over the course of your career how many times
7 have you testified as an expert in court?

8 A. Well over a hundred. I don't keep count.

9 Q. All right. Now you actually got an opportunity to
10 meet with little Miss Minor Bauman in this case, is that
11 correct?

12 A. Yes, I did.

13 Q. And I want to ask you some questions relating to
14 that case.

15 First of all in general what are some signs of, in
16 your expert opinion, what are some signs of sexual abuse
17 that would be exhibited by a child around her age that
18 has been sexually abused?

19 A. Well behavioral signs and symptoms with child sexual
20 abuse certainly do vary. And one of the ways we look at
21 them is in terms of children's age and developmental
22 status.

23 And with preschool age children one of the more
24 prevalent behavioral indicators will be what we call
25 imitative play; so demonstrating behaviors just like how

1 children act out lots of things that they are learning.
2 Imitative play is sort of their first language really
3 before the spoken word.

4 Q. And are there other signs that may manifest
5 themselves that are sort of indicative of child abuse?

6 A. Yes. There is kind of wide range. And it's one of
7 those things ---

8 MR. BISCHOFF: --- Your Honor, I object to the form
9 of the question. If Mr. Hilton would please rephrase?

10 THE COURT: All right.

11 Q. [Mr. Hilton] In your opinion as an expert are there
12 other areas or other behaviors that may exhibit
13 themselves as signs of sexual abuse in children?

14 A. Yes. We see behavior changes, which sometimes are
15 called adjustment reactions. We may see children who
16 were previously able to sleep in their own bed at night
17 that become more clingy, needy, want to sleep with their
18 parents.

19 We may see regression in skills that they've
20 achieved so children who had -- who were no longer
21 bedwetters who become bedwetters again or have encopresis
22 or bowel movement accidents; things that are related to
23 anxiety and what we call dysregulation; just not being
24 able to feel that their world is regulated, predictable,
25 and safe. And so they have -- they can have reactions

1 that are consistent with those sort of disruptions in
2 their environment. Not being able to control something
3 that is causing fear or anxiety in their environment.

4 Q. And let me ask you a couple of questions about some
5 specific signs that -- we've heard testimony before that
6 were manifested by Minor Bauman in this case.

7 What about in your opinion as an expert what about
8 any signs where Minor would show increased interest in
9 body parts and so forth?

10 A. Preoccupation with body parts is certainly something
11 that we see with children who are being, the term in our
12 field we would use is sexualized or just oriented towards
13 activity with their private parts.

14 Preschool age children have general interest in body
15 parts anyway. And then on top of that if they are being
16 inducted into sexualized behavior or sexually abusive
17 behavior they would become more preoccupied with those
18 parts of the body, who has them, what they do with them,
19 and so on.

20 Q. And would that be consistent with like her flashing
21 herself and so forth?

22 MR. BISCHOFF: Objection, Your Honor. Leading.

23 THE COURT: Rephrase the question please, sir.

24 Q. [Mr. Hilton] Would something like flashing be
25 consistent with what you're talking about ---

1 MR. BISCHOFF: --- objection, Your Honor. Leading.

2 THE COURT: I'm going to let you ask the question.

3 I'll overrule the objection. Go ahead, please answer.

4 A. The answer is yes; children will expose themselves.

5 Q. [Mr. Hilton] What about things like nightmares and

6 increased bedwetting, and that sort of thing ---

7 MR. BISCHOFF: --- objection, Your Honor. Leading.

8 THE COURT: Okay. I'm going to overrule the

9 objection. I'll let you ask -- I'll let you -- if you

10 want to just ask her about specific things I would

11 appreciate that, Mr. Hilton.

12 MR. BISCHOFF: And I also think the form of the

13 question is also an objection.

14 THE COURT: I understand that.

15 MR. BISCHOFF: Thank you, Your Honor.

16 THE COURT: Thank you, sir.

17 Q. [Mr. Hilton] In your opinion, Doctor Foster, as an

18 expert does bedwetting and nightmares have any

19 significance to you as it relates to sexual abuse?

20 A. Yes.

21 Q. In what fashion?

22 A. As I was previously testifying both of those can be

23 indications of an adjustment reaction, anxiety, obviously

24 not specific solely to sexual abuse, but it would

25 certainly be an indicator that there is something

1 behaviorally going on. It would give a clinician like me
2 concern about what is it that is causing an anxious or --
3 and disturbance in this child's functioning.

4 Q. Now Doctor Foster in your opinion do any one of
5 those things that we've talked about so far in and of
6 themselves mean anything of any significance?

7 A. No. It's not as if somebody can oh, a child is
8 bedwetting therefore something specific is known to have
9 happened to this child.

10 These would be what we call behavioral indicators
11 that something may be going on that is causing anxiety,
12 regression; an environmental disruption.

13 And it's not until sort of everything is taken
14 together that one starts to come up with a more specific
15 hypothesis; something to look into.

16 Q. Now, let me ask you about a more specific event that
17 happened to Minor In your opinion as an expert and I'll
18 tell you there was testimony that she sort of went down
19 towards her brother's lap and stated that she was going
20 to suck his pee pee.

21 What behavior in your opinion as an expert what does
22 that exhibit to you in regards to sexual abuse?

23 MR. BISCHOFF: Your Honor, I'm going to object to
24 that question as well. It's an ultimate issue for the
25 trier of facts to decide. I don't think he's phrased the

1 question correctly either.

2 THE COURT: I believe he asked as an expert. He
3 was asking for her opinion as an expert given that
4 factual situation.

5 MR. BISCHOFF: I'm not hearing -- if that's the
6 form of the question, that's not what I heard.

7 THE COURT: If you would rephrase the question in
8 that manner, Mr. Hilton.

9 Q. [Mr. Hilton] In your opinion as an expert Doctor
10 Foster if a little girl four years old goes down on her
11 brother as if she is going to perform oral sex on him and
12 states to her Mom I was going to suck his pee pee, in
13 your opinion as an expert in that hypothetical question
14 what significance does that event have with regard to any
15 sexual abuse?

16 A. It has significance and is the sort of imitative
17 behavior that is not typical of preschool age children
18 and would give rise to the hypothesis that sexual abuse
19 or exposure something that -- some kind of environmental
20 exposure to a behavior that we do not typically observe
21 in preschool age children.

22 Q. And you used a phrase, I can't remember the phrase.
23 It was the type of behavior that was. You said it was...

24 A. Imitative ---

25 Q. --- imitative behavior ---

1 A. --- imitating.

2 Q. Define that phrase for the jury if you will.

3 A. Certainly. I have children, I don't know if the
4 jurors have children or have spent time with children but
5 children imitate what they observe. It's how they learn.
6 And so it's literally kind of reenacting behavior to make
7 sense out of it.

8 So if a child has been exposed to oral copulation
9 whether that be that they have seen oral sex in the media
10 or they have experienced it first hand, they may imitate
11 that activity as part of kind of how they are trying to
12 come to understand behavior.

13 Q. Please answer any questions Mr. Bischoff may have
14 for you.

15 THE COURT: Mr. Bischoff, your witness.

16 MR. BISCHOFF: Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. BISCHOFF:

20 Q. Doctor Foster, it's very nice to finally meet you.
21 We contacted -- Mr. Hilton and I both contacted you
22 regarding an evaluation of Minor Bauman to see if she was
23 competent to testify.

24 A. Yes.

25 Q. And what were the results of that evaluation? What

1 was your determination, your expert medical opinion
2 regarding her competency?

3 A. My ultimate opinion was that -- my opinion was that
4 she met the threshold to be competent to testify;
5 competent to take the oath.

6 Q. Okay. And would you please tell the ladies and
7 gentlemen of the jury what sort of documents you reviewed
8 to come up with that diagnosis.

9 A. Sure. So in terms of documents I looked at, in this
10 case and in cases like it I would look at medical
11 background, any mental health records, any school
12 records.

13 So academic, educational, health records that would
14 help me to know whether the child was functioning at a
15 developmentally normal level, whether he or she had any
16 diagnoses or learning disorders; impairments that might
17 contribute to whether or not that child was competent to
18 take the oath.

19 Q. Did you have a chance to review the report from the
20 Louisiana School System?

21 A. Yes.

22 Q. And that was the initial point in time when Minor
23 was diagnosed with Pervasive Developmental Disorder Not
24 Otherwise Specified?

25 A. Correct.

1 Q. Correct?

2 A. Yes.

3 Q. And could you please explain is P-D-D-N-O-S is that
4 within the autism spectrum?

5 A. Yes. It's commonly referred to as being in the
6 autism spectrum.

7 Q. And are you familiar with this report from the
8 Louisiana School System? Would you like to review it?

9 A. I will probably want to review it. I do recall -- I
10 reviewed my report today and I've reviewed the materials
11 to some degree and I know that I did see a report from
12 Louisiana.

13 Q. We're try it this way. In reviewing this report do
14 you remember that according to a school psychologist down
15 in Louisiana that Minor at the time that this report was
16 taken was three years old -- or almost three?

17 A. Two years, ten months was one of the reports so it
18 might be that one.

19 Q. And -- why don't I just go ahead and show you the
20 report. I believe it has been marked for identification
21 purposes.

22 MR. BISCHOFF: Your Honor, may I approach the
23 witness?

24 THE COURT: You may.

25 Q. [Mr. Bischoff] Doctor Foster, let me show you what

1 has been marked as defendant's exhibit number 2 for
2 identification purposes only.

3 [Whereupon, the witness is shown documents]

4 Q. Is that the report from Louisiana?

5 A. Yes.

6 Q. Do you remember reviewing that report in its
7 entirety?

8 A. Yes, I do.

9 Q. And specifically -- I'll allow you to keep the
10 report, what I would like to ask you about is on page 5
11 of 13.

12 A. Okay.

13 Q. Apparently according to the report Minor underwent
14 an assessment known as the -- and you'll have to correct
15 me if I pronounce this incorrectly the Battelle
16 Developmental Inventory?

17 A. Battelle.

18 Q. Battelle. And you please give the ladies and
19 gentlemen of the jury and explanation as to what that
20 test is really looking for?

21 A. Yes. And I'm going to review, if it's okay, the
22 introductory paragraph about the test.

23 Q. Certainly.

24 [Whereupon, the witness reviews documents]

25 A. Okay. I don't myself administer Battelle anymore

1 but I learned about it in graduate school and I wanted to
2 make sure that I was able to articulate appropriately
3 what it does.

4 It's a developmental assessment and it's designed
5 for early identification of developmental delays in a
6 range of domains.

7 So it includes looking at cognitive functioning, so
8 in terms of learning, speech, but also motor functions.
9 So it's got some physical measures as well in terms of
10 motor development.

11 Q. So the two parts are -- one is cognitive and one is
12 motor?

13 A. Yes.

14 Q. And upon reviewing that report you would agree that
15 the real issue with Minor when she was given this test
16 was cognitive? She was slightly delayed in motor but
17 cognitively she was way behind?

18 A. Yes.

19 Q. And if you see point four percentile rank as far as
20 cognitive functioning what does that mean to you in your
21 expert medical opinion?

22 A. That she is -- in terms of -- that she is
23 significantly delayed. We look at achievements like a
24 bell curve and we expect most children to be in kind of
25 the -- around the 50th percentile and in sort of a normal

1 range. And there are a couple of tails under that bell
2 curve and then there are the more far reaching outline
3 levels of functioning either to the superior level or the
4 inferior level. And Minor clearly was scoring
5 significantly below average.

6 Q. Not four but point four.

7 A. Point four.

8 Q. And significant is what you had testified to. Thank
9 you. And in the way that these examiners came to this
10 determination and went through these tests they also
11 would have undergone a Q and A if you will; an interview
12 with the family member would they not?

13 A. I believe in -- yes, this evaluation includes more
14 than just administering that test. It included a family
15 interview and other sources of data.

16 Q. Did you do a family interview?

17 A. I did an interview of Minor mother.

18 Q. Minor mother, okay. And if you'll look at again
19 what has been marked as State -- or Defendant's exhibit
20 number 2 for identification purposes only the report from
21 the school system down in Louisiana would you mind
22 looking at page 2 of 13.

23 [Whereupon, the witness complies]

24 A. Yes, I'm here.

25 Q. And do you -- the final paragraph would the fact

1 that Minor presented as breech birth would that have any
2 significance to you as far as her cognitive functioning?

3 A. Well, not necessarily. My son was breech birth and
4 he's very bright. It would depend on really the child
5 birth; whether or not there was trauma at birth as
6 opposed to just being breech.

7 Q. Okay. And you would agree that apparently
8 according to the family interview that she was, the
9 mother, at the very last sentence is very concerned about
10 her lack of progress in developing speech skills?

11 A. Yes.

12 Q. And likewise in reviewing this if you saw that Minor
13 is bowel and bladder trained but sometimes has accidents
14 at night that would indicate to you that Minor was having
15 trouble wetting the bed at night prior -- around the time
16 of this interview?

17 A. Correct.

18 Q. Okay. And then again the statement says that she
19 gets along with her peers but sometimes displays
20 frustration.

21 Would that -- is that significant in any way as far
22 as figuring out exactly what the diagnosis would be
23 regarding P-D-D-N-O-S?

24 A. They would be behavioral symptoms that they would be
25 considering whether or not she has poor frustration

1 tolerance and more difficulty kind of modulating her
2 emotional state, regulating her reactions compared to
3 other children.

4 So it would be one of the things that a clinician
5 would pay attention to in terms of coming up with a
6 diagnosis.

7 Q. And if I told you that they did a full physical
8 evaluation of the child and didn't find anything wrong
9 with her structural makeup of her mouth would that have
10 any bearing on your determination of whether or not she
11 was -- the reason for the speech or the communication
12 issues? Would that bear on your ---

13 A. --- yes.

14 Q. How would that affect your opinion?

15 A. It would rule out in terms of thinking about what
16 the possible causes are for a speech problem. One thing
17 you want to figure out is is there an anatomical
18 explanation.

19 So by ruling that out saying no, anatomically
20 speaking she is normal, her muscular capacity is normal.
21 Then you start looking for other explanations that have
22 more to do with the brain.

23 Q. And did all these things weigh upon you or did you
24 consider these when you came to your evaluation, or your
25 reasoning after your evaluation of Minor

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1 A. Yes.

2 Q. And when did you actually perform the evaluation of
3 Minor

4 A. I don't have my evaluation in front of me. I'm not
5 going to be able to remember the month. I apologize.

6 Q. I don't blame you. I'm sorry.

7 [Whereupon, defendant's exhibit number 7 is marked
8 by the court reporter]

9 Q. I'm going to show you what's been marked as
10 defendant's exhibit 7 for identification purposes.

11 [Whereupon, the witness is shown documents]

12 Q. Do you recognize that report?

13 A. Yes, that's my report.

14 Q. And you put that together after meeting with Tara
15 Bauman and Minor

16 A. Yes. And reviewing records.

17 Q. And reviewing records, of course. And in those
18 records did you not find that there is a significant
19 amount of behavioral disorders or behavior actions that
20 were inappropriate both prior to the bathtub incident and
21 then after the bathtub incident?

22 A. Yes.

23 Q. And would you also agree that around the time of the
24 incident that Minor was -- before the incident Minor was
25 diagnosed with P-D-D-N-O-S?

1 A. Correct.

2 Q. And then after the incident she was still diagnosed
3 with P-D-D-N-O-S, but yet it took some time for that
4 diagnosis to go away?

5 A. Correct. The diagnosis ultimately went away and that
6 was subsequent to the complaint; yes.

7 Q. Okay. And according to your report there is a rule
8 out diagnosis of A-D-H-D. What exactly is significant
9 about a rule out diagnosis or what does that mean?

10 A. I think it ultimately became the diagnosis but a
11 rule out diagnosis means that a clinician is putting it
12 down as a possibility and saying I don't yet rule it in.
13 I'm not yet diagnosing somebody as having this.

14 But I also can't exclude it; I'm not ruling it out.
15 So it becomes -- another word we use as real similar is a
16 provisional diagnosis.

17 There is not really much difference between saying
18 something is a rule out versus a provisional. So it's
19 saying it's a concern, it's something to watch and it may
20 become the diagnosis.

21 Q. Would it be fair to say that the person who is
22 giving the diagnosis isn't quite sure at that point?

23 A. Yes.

24 Q. And would it be fair to say that the caregiver, the
25 mother for example, was giving accounts of the child's

1 behavior that would lend the clinician or the person
2 doing the evaluation to consider A-D-H-D but yet not be
3 quite there medically speaking to make the full
4 diagnosis?

5 A. Correct.

6 Q. Okay. And you would agree too that your report
7 indicates that you reviewed that prior to the bathtub
8 incident, in March of 2010 Minor was actually diagnosed
9 with A-D-H-D and then prescribed A-D-H-D medication?

10 A. You're asking me if that had already -- if that was
11 already in place prior to the complaint?

12 A. Right. I'm asking you if based on your review of
13 the medical records would you agree that she was
14 diagnosed with A-D-H-D around March of 2010?

15 A. Yes.

16 Q. And would you agree that she was placed on medication
17 at that time?

18 A. Yes.

19 Q. And that would have been two months prior to the
20 bathtub incident?

21 A. Yes, that's right.

22 Q. In your experience as a clinical psychologist do
23 children react oddly to medications when they are first
24 placed on it; especially A-D-H-D at a young age?

25 A. That is a question I have to say it depends. It

1 really just depends. It is a process of prescribing
2 something then the family, the physician, everybody has
3 to -- the teacher monitors the behavioral reaction to the
4 medication. And that's part of the dance that goes on to
5 get it right.

6 Q. And I think you testified earlier that a lot of what
7 you observe in children who are -- do you observe
8 children who have been the victims of sexual assault that
9 has resulted in the conviction of somebody? I mean you
10 don't just evaluate children prior to a trial you also
11 evaluate them after a trial?

12 A. Yes.

13 Q. And at this point when you evaluated Minor you
14 weren't quite sure whether or not the abuse had happened
15 or not happened, but your purpose was to determine
16 competency?

17 A. Correct. I'll never be sure. It's for the judge --
18 or rather for the jury to decide.

19 Q. And did you have a chance to review the police
20 reports?

21 A. I did.

22 Q. And in your conversations with Minor would you agree
23 that she not once mentions anything that was consistent
24 with what Tara Bauman stated to the police regarding the
25 bathtub incident?

1 A. She did not -- the child said nothing to me about
2 the bathtub incident.

3 Q. And the child also developed this elaborate story
4 about a Papa Dave calling the police or her father
5 calling the police, is that correct, the day of the
6 incident essentially?

7 A. That is correct.

8 Q. And in fact you had to multiple times use the Lyon
9 Saywitz, is that correct?

10 A. Lyon Saywitz ---

11 Q. --- Lyon Saywitz competency test with Minor

12 A. No. That -- it wasn't as if I administered it
13 multiple times. I administered it as part of my
14 assessment of her competency.

15 Q. Well -- and I know that she passed that test
16 according -- and that's how you determined that she was
17 competent.

18 A. It was a ---

19 Q. --- one of the factors?

20 A. Substantial piece of it, yes.

21 Q. Okay, a substantial piece. But you also talked
22 about that she exhibited or responded to some of your
23 questions with imaginative content.

24 A. That's correct.

25 Q. Can you explain exactly what the imaginative content

1 was? Do you remember?

2 A. I remember some of it, yes. She ---

3 MR. HILTON: --- Judge, let me object at this
4 point. Not necessarily to cut it off but we do need to
5 approach.

6 THE COURT: Okay.

7 [Whereupon, an off the record bench conference is
8 held]

9 THE COURT: All right. Mr. Bischoff?

10 MR. BISCHOFF: Thank you, Your Honor.

11 Q. [Mr. Bischoff] And then one of your conclusions,
12 Doctor Foster, was that even though Minor no longer
13 carries the diagnosis of P-D-D-N-O-S she still possesses
14 some developmental delays?

15 A. Yes.

16 Q. And like many preschool children was faulty on
17 occasion with respect to self-monitoring for accuracy of
18 statements. What exactly do you mean by that?

19 A. What I mean by that is like all preschoolers she can
20 -- like all preschoolers and even though she was six
21 years old taking into account that she is delayed she is
22 functioning more like a kindergartener or an older
23 preschooler.

24 And it's a fairly new skill at that point to pay
25 attention to what you are saying and make sure you are

1 really monitoring it for accuracy. So it's thinking
2 about your thinking and making sure that you are
3 answering the question you were asked. That's not a
4 skill that is very well honed for preschool age children.

5 So while I expressed the rule for truth telling and
6 not using imagination and only answering my questions
7 with what she knows to be true sometimes Minor gave
8 responses that violated that rule and were imaginative.

9 MR. BISCHOFF: I beg the court's indulgence for one
10 second, Your Honor.

11 THE COURT: Okay.

12 Q. [Mr. Bischoff] Thank you.

13 MR. BISCHOFF: No more questions, Your Honor.

14 THE COURT: All right. Anything on redirect?

15 MR. HILTON: Nothing, Your Honor.

16 THE COURT: All right. Thank you, Doctor Foster,
17 I appreciate it.

18 [Whereupon, the witness is excused and exits the
19 witness stand]

20 THE COURT: All right. Ladies and gentlemen, I
21 told you that we were going to take one more witness and
22 then we were going to take a break for lunch.

23 And it stopped raining right about the same time so
24 we'll be able to make it and hopefully stay relatively
25 dry for lunch. Let me remind y'all of a couple of

1 things before you leave. And the first is the cardinal
2 rule that you cannot talk about the evidence that you
3 have heard in this case so far because you haven't heard
4 all of the evidence in this case.

5 Another thing is that I mentioned do not take notes.
6 If this was going to be a two week trial or something
7 like that I would allow you to take notes or like that.

8 The reason I don't allow you to take notes in what
9 is a shorter trial is because when you do that what
10 happens sometimes is when you are talking about the
11 matter in the room if one person wrote something down and
12 someone didn't, it might give more emphasis to a part of
13 the testimony than what another person remembered.

14 And the other reason is that I know when I was
15 taking notes in college what would happen is sometimes I
16 wasn't watching the witness.

17 And remember when I was talking to you earlier about
18 watching the witness, you have to judge the creditability
19 of the witnesses. And part of the way you judge
20 creditability in witnesses is the same way you do it
21 using your good common sense.

22 You judge their body language, what they are saying,
23 and things like that. So that's the reason I'm not
24 asking y'all to take notes because this is a shorter
25 trial. Now again, I'm going to ask y'all to come back in

1 here and be ready to go at 2 o'clock which gives you some
2 time because I know you usually have to drive some
3 distance in St. George to find a place to eat.

4 But again there is nothing wrong with y'all sitting
5 together or doing anything like that at lunch but you
6 cannot talk about this case until I tell you you can
7 begin talking about this case.

8 And you can't talk it over with anyone. So go and
9 have a good lunch. Hopefully it won't rain on you and
10 I'll see y'all back in here at 2:00. Thank you, very
11 much.

12 [Whereupon, the jury exits the courtroom at 12:34
13 p.m.]

14 THE COURT: Do you know if Mr. Buhle or Mr. Conklin
15 is right out in the hall? If not, we'll take them up
16 right when we come back from lunch.

17 [Whereupon, Mr. Buhle enters the courtroom]

18 THE COURT: Come forward please, sir.

19 MR. HILTON: This is Mr. Adam Buhle, Your Honor.

20 THE COURT: Okay. Mr. Buhle, would you come right
21 up here please, sir.

22 [Whereupon, Mr. Buhle comes forward]

23 THE COURT: Do you mind raising your right hand?

24 [Whereupon, the witness is duly sworn by the Court
25 as follows: do you swear to tell the truth, the whole

1 CLERK OF COURT: Yes, sir.

2 THE COURT: Okay. Bring them on in.

3 [Whereupon, the jury enters the courtroom at 2:04
4 p.m.]

5 THE COURT: Good afternoon. I hope y'all had a
6 good lunch. The rain -- it looks like everybody got back
7 relatively dry. We are getting ready to continue with
8 the State's case now. Mr. Austin?

9 MR. AUSTIN: The State calls Amy Young.

10 [Whereupon, Ms. Young comes forward]

11 CLERK OF COURT: Please raise your right hand and
12 state your full name for the record?

13 MS. YOUNG: Amy -- Young.

14 [Whereupon, the witness is duly sworn by the Clerk
15 of Court as follows: do you solemnly swear or affirm to
16 tell the truth, the whole truth, and nothing but the
17 truth so help you God]

18 MS. YOUNG: I do.

19 [Whereupon, the witness takes the witness stand]

20 THE COURT: Mr. Austin, your witness.

21 MR. AUSTIN: Thank you, Your Honor.

22 - - - - -

23 AMY YOUNG,

24 Having been first duly sworn,

25 Was examined and testified as follows:

1 DIRECT EXAMINATION

2 BY MR. AUSTIN:

3 Q. Ms. Young, where do you currently work?

4 A. At a Palmetto Primary Care.

5 Q. And what do you do there?

6 A. I'm a family nurse practitioner.

7 Q. And how long have you been working there?

8 A. About three years.

9 Q. Can you explain for the court the duties that you
10 have there?11 A. I am a family nurse practitioner so I see patients,
12 I treat and evaluate them. I have my own patients. I
13 work under -- I have a supervising physician that is
14 available if I have questions.15 But I can write prescriptions. I can order
16 evaluations, diagnose and treat accordingly.17 Q. And what kind of education did you have to pursue to
18 get that job?19 A. I have a Masters degree in Nursing. But I was a --
20 I first got my Associate's degree in Nursing and worked
21 as a bedside nurse for several years and then went back
22 to school and got my Bachelor's degree in Nursing,
23 continued working and then finished up getting my
24 Master's degree specializing in family practice.

25 Q. And were you working there back in May of 2010?

1 A. Yes.

2 Q. In your job do you ever encounter situations where
3 there have been allegations of sexual or physical abuse?

4 A. Yes.

5 Q. And what do you do when that type of situation comes
6 up?

7 A. Nurse practitioners and health care providers like
8 teachers are also mandatory reporters. So we are
9 required by law to report any suspicious child abuse or
10 neglect.

11 Q. And how does that process play out?

12 A. There are a couple of different ways that we can do
13 it. We can contact D-S-S or we can contact the police.
14 So generally -- because once we contact D-S-S I found in
15 the past we have to contact the police and give a
16 statement to them. I just go ahead and report to the
17 police.

18 Q. And do you see the Bauman family?

19 A. I do.

20 Q. And were you treating them back in May of 2010?

21 A. Yes.

22 Q. And in your conversations with Ms. Bauman did you at
23 any point file a report?

24 A. I did on May 28th --

25 Q. And who did you make that report to?

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1 A. I first contacted -- my husband is a detective for
2 the town of Summerville in the criminal investigations,
3 which is the realm which they handle these cases.

4 So I contacted him to find out who I should contact
5 and he notified Sandy Williams who is a sergeant for the
6 unit because she was on call that week. And so I spoke
7 to her.

8 Q. Okay.

9 MR. AUSTIN: No further questions, Your Honor.

10 THE COURT: Anything on cross-examination?

11 MR. BISCHOFF: No, Your Honor. No questions for
12 this witness.

13 THE COURT: Thank you. You may step down. I
14 appreciate it.

15 [Whereupon, the witness is excused and exits the
16 witness stand]

17 THE COURT: Is the State ready to call its next
18 witness?

19 MR. HILTON: The State would call Detective Rick
20 Gebhardt.

21 [Whereupon, Detective Gebhardt comes forward]

22 CLERK OF COURT: Please raise your right hand and
23 state your full name for the record?

24 MR. GEBHARDT: Richard H. Gebhardt, Jr.

25 [Whereupon, the witness is duly sworn by the Clerk

1 of Court as follows: do you solemnly swear or affirm to
2 tell the truth, the whole truth, and nothing but the
3 truth so help you God]

4 MR. GEBHARDT: I do.

5 [Whereupon, the witness takes the witness stand]

6 THE COURT: Your witness.

7 MR. HILTON: Thank you, Your Honor.

8 - - - - -

9 DETECTIVE GEBHARDT,

10 Having been first duly sworn,

11 Was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. HILTON:

14 Q. Detective Gebhardt where are you employed?

15 A. With the Summerville Police Department.

16 Q. And how long have you been working there?

17 A. Almost five years.

18 Q. And what is your assignment at the Summerville
19 Police Department?

20 A. I am a Detective Corporal in the Criminal
21 Investigations Division.

22 Q. And back in May of 2010 what was your assignment?

23 A. I was assigned to assist the lead detective in this
24 incident, who was Detective Laura Gibbons, to conduct an
25 investigate -- or an interview with the defendant.

1 Q. I guess more generally what was your assignment
2 within the police department in May of 2010?

3 A. I was assigned to the Criminal Investigation
4 Division as a general detective investigating all sorts
5 of crimes.

6 Q. And how did you get involved with the case against
7 Mr. Jason Bauman?

8 A. Detective Laura Gibbons requested my assistance that
9 morning due to the defendant being there for a bond
10 hearing. She was going to conduct an interview with him
11 and requested that I sit in and take notes.

12 Q. Who is Laura Gibbons?

13 A. She is the case agent for this incident.

14 Q. Do y'all have like a lead detective or a secondary
15 detective and so forth?

16 A. You could call her the lead detective.

17 Q. And do you remember what day this was?

18 A. This was July 1st, 2010.

19 Q. And what was the purpose of Detective Gibbons
20 getting you involved in this part of the investigation?

21 A. Whenever we interview somebody we try to have two
22 detectives present; one to act as primary to ask
23 questions, the other acts as a note taker. And if the
24 interview tends to stall out then the other detective can
25 step in and try to ask questions because sometimes they

1 can build a better rapport with the individual than the
2 initial.

3 Q. And is that kind of what happened in this interview?

4 A. Yes, sir.

5 Q. All right. And when we're talking about an
6 interview who are we talking about interviewing?

7 A. Talking about interviewing the suspect in the
8 incident or in this case it was the defendant, Mr.
9 Bauman.

10 Q. All right. And how did y'all come in contact with
11 him that day?

12 A. We were advised that he was being held in the
13 holding cell located at the Summerville Police Department
14 awaiting his bond hearing.

15 Q. Had he already been arrested on the warrant at that
16 time?

17 A. Yes, sir. He was arrested the previous night.

18 Q. Okay. And so was he brought over to Summerville
19 Police Department?

20 A. Yes, sir.

21 Q. And that was for what purpose?

22 A. The bond hearing.

23 Q. Okay and ---

24 A. --- and the interview.

25 Q. Okay. And y'all talked to him sometime either

1 before or after that bond hearing?

2 A. We spoke to him before the bond hearing.

3 Q. All right. And when you conduct an interview, just
4 any interview, how do you go about doing that? What is
5 the process that you go through before you start asking a
6 bunch of questions?

7 A. What we do is we engage in a little bit of small
8 talk trying to find out personal information about him;
9 verify his name, where he grew up, where he lives.

10 And before any questioning takes place about the
11 incident that we are investigating the individual is
12 advised of their rights via Miranda with the Summerville
13 Police Department Advisement of Rights Form.

14 Q. All right. Let me show you what's been marked for
15 identification as State's exhibit 1 and ask if you
16 recognize this?

17 [Whereupon, the witness is shown documents]

18 A. Yes sir, I do.

19 Q. What is that?

20 A. That would be the Advisement of Rights Form
21 presented to Mr. Bauman on July 1st, 2010.

22 Q. Is this an accurate -- I was going to say copy, but
23 is this the actual original of that?

24 A. Yes sir that would be the original.

25 MR. HILTON: Your Honor, at this time we would.

1 offer State's exhibit 1 into evidence.

2 THE COURT: Any objection?

3 MR. BISCHOFF: I don't believe so, Your Honor.

4 THE COURT: All right. State's 1 is in evidence
5 without objection ---

6 MR. BISCHOFF: --- no objection, Your Honor.

7 [Whereupon, State's exhibit number 1 is entered into
8 evidence by the court]

9 Q. [Mr. Hilton] I'm going to put this up on the board
10 here and let's see if we can see what's what.

11 The top portion up there that you can see on your
12 screen and the jury can see up here of State's exhibit 1
13 what is that top portion about?

14 A. Before we advise them of their rights first we ask
15 them if they can read and write to which that was asked
16 by -- I observed that question being asked and Mr. Bauman
17 responded that he could read and write.

18 We then asked what the highest level of education
19 they completed was and he advised us that he had
20 completed the 12th grade.

21 Q. Okay. And that other information just generally
22 what is that?

23 A. The O-C-A is the case number generated every time a
24 report is filed by the police department. The date and
25 the time is the date and time that this form would have

1 been reviewed with the defendants. And under that is his
2 personal information, which we ask of him, and write down
3 his answers exactly.

4 Q. Okay. And then there is one that says are you
5 under the influence of any alcohol or medication and the
6 answer to that is what?

7 A. Is no.

8 Q. And where would you have gotten that information
9 from?

10 A. We get that directly from the individual we are
11 interviewing, and in this case Mr. Bauman.

12 Q. Let's move on down the form a little bit; one
13 section, and we have some enumerated items there and it
14 starts off it says -- Detective Gibbons has advised me
15 that since he is a member of the Summerville Police
16 Department and has further advised me that.

17 What is that section underneath that?

18 A. These are the Miranda rights.

19 Q. Okay. And is that something that you go through
20 with every defendant?

21 A. Every defendant who is in custody.

22 Q. That you end of interviewing I guess?

23 A. Yes, sir.

24 Q. All right. And did you go through these statements
25 with the defendant, Mr. Jason Bauman?

1 A. Detective Gibbons did and I observed it, yes sir.

2 Q. Okay. And at the very top of the screen we
3 actually see the defendant's name, is that correct?

4 A. Correct.

5 Q. And the initials beside 1, 2, 3, 4, and 5 what are
6 those initials?

7 A. When these are read to the defendant what we do is
8 we fill out the top half and we provide them with this
9 copy and we read off another copy because that way we
10 read it word by word to make sure we get everything
11 correct.

12 And what she -- what we do is we write our name and
13 read the top that says has advised me that he is a member
14 of the Summerville Police Department, further advised me
15 that.

16 And we advise them that we are going to read each
17 bullet one by one. If you understand it, put your
18 initials next to it. If you do not, please stop us and
19 we will explain it further.

20 So what happened was they read I have the absolute
21 right to remain silent. I don't have to answer any
22 questions or give a statement and this fact cannot be
23 used against me. Mr. Bauman then put his initials next
24 to number 1 indicating that he understood it and then we
25 progressed to the next one, which is if I do answer

1 questions or give a statement anything I say can and will
2 be used against me in a court of law. Again, Mr. Bauman
3 wrote his initials next to number 2.

4 We progressed to number 3, which says I have the
5 right to consult with a lawyer of my choice before I
6 answer questions or give a statement and also have him
7 present while I am being questioned. Mr. Bauman
8 indicated he understood that by putting his initials next
9 to number 3.

10 We then progressed to number 4, which says if I wish
11 to talk to a lawyer or have him present but am unable to
12 afford to hire a lawyer one will be appointed to
13 represent me free of charge. Mr. Bauman indicated he
14 understood that by placing his initials next to number 4.

15 We then progressed to number 5, which says if I
16 decide to answer questions or give a statement without
17 having a lawyer present representing me I have the
18 absolute right during this interview to stop answering
19 questions and remain silent.

20 Mr. Bauman indicated he understood that one as well
21 by placing his initials next to number 5.

22 Q. Now is this something that you would have gone
23 through like boiler plate print so to speak or is it
24 something that you would have taken time with?

25 A. It's something we take time with and we read it nice

1 and slow and allow them to follow along at their own pace
2 to make sure that they understand the information in
3 front of them.

4 Q. Was there anything during the interview that would
5 have given you an indication that he felt threatened or
6 that he was given any kind of statement involuntarily?

7 A. No, sir.

8 Q. Did he seem to understand what he was going over
9 here?

10 A. Yes, sir.

11 Q. Were you able to converse with him and have verbal
12 communication?

13 A. Yes sir, I was.

14 Q. And did you learn I know he told you he could read
15 and write, but did you learn whether he could read or
16 write?

17 A. Yes, as he followed along he appeared to be reading
18 each line as we went along.

19 Q. Okay. Was there any question about his
20 understanding of what was going on?

21 A. No. He said he understood that.

22 Q. And in fact that moves us to the third section of
23 the page, which is -- it says I fully understand each of
24 these rights, which I have been advised of, and then
25 there are some signatures. Whose signatures are those?

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1 A. Well, first we read that out loud to the defendant
2 to make sure that they understand that. We tell them
3 only to sign the line with the X next to it if they fully
4 understood each one of their rights.

5 Mr. Bauman indicated he understood his rights by
6 signing next to that X. On the left hand side is -- the
7 top line, is the case agent's signature Detective Laura
8 Gibbons and beneath it is my signature Detective Richard
9 Gebhardt and my badge number is L-31.

10 And we do not sign that until after the individual
11 we are interviewing signs it to indicate that we
12 witnessed him acknowledging his rights.

13 Q. And the individual that signed on the right says
14 Jason Bauman, is that this Jason Bauman over here
15 [indicates]?

16 A. Yes, sir. I saw him sign that line.

17 Q. Okay. And then at the bottom it says -- I fully
18 understand each of these rights, which I have been
19 advised, and having those rights in mind I wish to waive
20 those rights and answer questions.

21 No threats, force, promise of any kind have been
22 made to me by anyone to induce or cause me to waive these
23 rights and answer questions.

24 That's a lot of words but did he ever say I want an
25 attorney?

1 A. No, sir.

2 Q. Did he ever say I don't want to talk to you?

3 A. No, sir.

4 Q. Okay. Did he understand that when he signed the
5 next portion of that?

6 MR. BISCHOFF: Objection, Your Honor. Speculation.

7 MR. HILTON: I'll rephrase the question, Your
8 Honor.

9 THE COURT: If you don't mind just rephrase it.

10 Q. [Mr. Hilton] Was there anything to you that would
11 give indication that he didn't understand what he was
12 signing when he signed that bottom portion?

13 A. No, sir.

14 Q. Okay. And again that is witnessed by the same
15 signatures that are up top?

16 A. Yes, sir.

17 Q. And that's Detective Gibbons and the second one is
18 yours?

19 A. Yes, sir.

20 Q. All right. After you went through this form,
21 State's exhibit 1, with Mr. Bauman he understood what he
22 could invoke, what he didn't have to invoke; all that
23 sort of thing. Did he end up talking to either you or
24 Detective Gibbons?

25 A. He spoke with both of us.

1 Q. Who started out the interview?

2 A. Detective Gibbons did.

3 Q. And how did that progress?

4 A. It didn't seem to go very well. She wasn't able to
5 -- Mr. Bauman didn't seem to take well to her.

6 Q. Okay. And is that something that is common in
7 interviews with defendants?

8 A. Yes, sir.

9 Q. Okay. And after that ---

10 MR. BISCHOFF: --- I'd object to the last question
11 on relevance and ask that the response be stricken from
12 the record regarding the commonality of defendants and
13 whether or not they don't disclose right away. And I
14 just don't think it's relevant.

15 THE COURT: Okay. I understand that. I'm going
16 to allow it. I'm overruling the objection.

17 MR. BISCHOFF: Thank you, Your Honor.

18 Q. [Mr. Hilton] After Detective Gibbons wasn't making
19 much progress what -- how did the interview change?

20 A. Detective Gibbons had mentioned the severity of the
21 incident and what was being investigated and he just
22 didn't seem to answer well. So then I began asking
23 questions of Mr. Bauman.

24 Q. Is that something that y'all learn in your training?

25 A. Yes, sir.

1 Q. And what does that -- what's the purpose?

2 A. The purpose is certain crimes and certain
3 individuals tend not to take well to members of the
4 opposite sex depending on the investigation.

5 Therefore, with him being a male and myself being
6 male and the alleged victim being a female we thought it
7 was more appropriate for him to try to talk to a male
8 detective.

9 Q. And did that seem to go a little further?

10 A. Yes sir, it did.

11 Q. And how did you -- how did you kind of start the
12 questioning with Mr. Bauman?

13 A. I advised him that the allegations being made were
14 very serious and that four year olds don't make this type
15 of allegation up. They don't have the experience to and
16 that something had to happen.

17 And Mr. Bauman seemed to understand that, and then I
18 asked what he thought about individuals who are
19 homosexuals.

20 MR. BISCHOFF: Objection, Your Honor. May we
21 approach?

22 THE COURT: Sure.

23 [Whereupon, an off the record bench conference is
24 held]

25 THE COURT: Ladies and Gentlemen, we're going to

1 I think my objections would be under 401, under 403,
2 under 404, and I guess due process, Judge, would also be
3 -- I hope I covered it all.

4 THE COURT: If not -- if you think of any others
5 we'll come back to it, okay.

6 MR. BISCHOFF: Thank you.

7 THE COURT: Thank you, sir. All right. Bring the
8 jury on back in.

9 [Whereupon, the jury re-enters the courtroom at 2:39
10 p.m.]

11 THE COURT: All right ladies and gentlemen, we are
12 going to continue with the testimony. Mr. Hilton?

13 MR. HILTON: Thank you, Your Honor.

14 DIRECT EXAMINATION OF DETECTIVE GEBHARDT RESUMES

15 BY MR. HILTON:

16 Q. Detective Gebhardt you were talking just before the
17 break about how the test -- how the interview with Mr.
18 Bauman kind of began to develop when you took over the
19 questioning and we stopped you. Go ahead.

20 A. Yes, sir. I asked him what he thought about people
21 who were homosexuals. And Mr. Bauman stated that he
22 thought it was wrong.

23 So I asked him if he thought that they were made that way
24 or if it was a choice that they made. And he advised me
25 that he felt that they were made to be homosexual. So I

1 asked him if -- what if he was made to find young girls
2 attractive if he felt that was his fault. And he told me
3 that it wouldn't have been his fault.

4 So I advised him that we don't know if he finds
5 young girls attractive unless he tells us. And that
6 began opening Mr. Bauman up to provide more statements to
7 what had happened.

8 Q. And did he ultimately begin to sort of open up and
9 give you some information about what happened?

10 A. Yes sir, he did.

11 Q. And just kind of -- if you will just kind of go
12 through the interview and tell the jury what he told you.

13 A. He made plenty of statements. He began with kids
14 don't always tell the truth. And then he progressed to
15 saying that Minor was a really sexual person.

16 We asked him where she may have learned the behavior
17 that she exhibited in the bathtub and he said that she
18 probably learned it at school.

19 He began going -- saying that Minor runs around and
20 sticks her tongue and tries to -- I'm going to quote him
21 -- she stick her tongue out at him and tries to grab his
22 dick.

23 He continued to say that her little brother J.B.
24 is not a sexual person and that is calm, quiet, and just
25 lays around. He stated that Minor sometimes likes him

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1 and sometimes hates him. He also stated that Minor is a
2 very attractive girl. And he stated that when she sits
3 on his lap it makes him hard.

4 He stated that he picks her up and holds her under
5 her butt. He then stated that in May of 2010 while
6 sitting on the couch Minor tried to pull his cock out of
7 his pants and he pulled his hands out -- quote, pulled
8 her hands out; I'm sorry.

9 Q. And these are his words. I know you're using some
10 graphic language ---

11 A. --- correct, these are his words. Mr. Bauman then
12 stated that his penis wasn't in his pants and that Minor
13 put her mouth on his cock and he got hard.

14 He stated that she put her mouth on his penis and
15 had her hand on it too. And then he said it was just the
16 head, just the tip, just for a second. And he stated
17 that it took a lot of willpower to make her stop.

18 He said that he thought it was wrong but at first he
19 thought it felt good. And he provided a written
20 statement to us as well.

21 Q. Did you ask him to write out the information that he
22 told you?

23 A. I did. I asked him to provide a written statement.

24 Q. And what was his response to that?

25 A. He stated he would.

1 Q. But did he give you any conditions on that?

2 A. He said he was uncomfortable writing the statement
3 and didn't know how to do it and an apology letter was
4 suggested.

5 Q. Suggested by who?

6 A. By the detectives.

7 Q. Did he end up giving that apology letter?

8 A. Yes sir, he did.

9 Q. Let me show you what has been marked for
10 identification as State's exhibit 2 and ask if you
11 recognize that?

12 [Whereupon, the witness is shown documents]

13 A. Yes, I do.

14 Q. Is that the original of his apology letter?

15 A. Yes sir, it is.

16 MR. HILTON: Your Honor, at this time we would
17 offer State's exhibit 2 into evidence.

18 THE COURT: Any objection?

19 MR. BISCHOFF: I don't think it's cumulative. The
20 detective has been allowed to testify about everything
21 else. I don't think the statement ought to come in or
22 the written statement as well.

23 THE COURT: Did you already go over the statement?

24 MR. HILTON: This is additional to what he has
25 testified to.

1 THE COURT: Okay. I'm going to let it in over
2 your objection. Thanks.

3 MR. HILTON: Thank you, Your Honor.

4 [Whereupon, State's exhibit number 2 is entered into
5 evidence by the court]

6 Q. [Mr. Hilton] The written statement that he gave, who
7 filled that out?

8 A. The top portion was filled out by Detective Gibbons
9 with the case number, his name, social security number,
10 date and time, address.

11 And then the narrative portion of the written
12 statement was filled out by Mr. Bauman.

13 Q. And is there any question and answer session on that
14 statement?

15 A. Yes sir, there is.

16 Q. And if you would just publish that to the jury.

17 A. Yes, sir. Like I was saying the top portion of the
18 statement is filled out by Detective Gibbons and that's
19 just the case number, the date and time, the address, the
20 suspect's name, education level.

21 And then we allowed Mr. Bauman to write his version
22 of the story on this form. And it says: *I, Jason Allen*
23 *Bauman, apologize to Minor Bauman for allowing her to*
24 *grab her penis and put her mouth in it for a second. I*
25 *push off my penis and push her away. And to Tara about*

1 *what happened I am truly sorry. I don't want to go to*
2 *prison. I want to get counseling would be better for me*
3 *because I am currently enrolled in Trident Technical*
4 *College to be a chef for culinary arts. I work at Day*
5 *Labor Temporary Agency where you get paid. I said I am*
6 *truly sorry. I just want to make things right.*

7 And then below that I wrote in my handwriting --
8 Questions asked by Detective Gebhardt and answered by
9 Bauman.

10 And then what I do is I write a Q and I write out a
11 question and I read it to -- I read it to Mr. Bauman and
12 then I would provide him with the form and he would
13 answer my question and write his answer out.

14 And my first question was how many times did she put
15 your penis in -- and then I wrote your and I scratched
16 that out so it read her mouth -- and I put an A and his
17 response was once.

18 Then I asked when did this happen? His response was
19 at 12 o'clock on Monday on the couch on May 11, 2010.
20 And then my last question was is there anything else
21 you'd like to add? And his answer was I'm sorry that
22 what all happened.

23 And then I write three lines, I put end of
24 statement, and I put the date and time that the interview
25 ceased and three more lines and I Z the statement out so

1 nothing can be added after the fact.

2 Q. And that statement is written in whose handwriting?

3 A. It's written in Jason Bauman's and the questions are
4 written in my handwriting.

5 Q. And then did Mr. Bauman sign the bottom of that
6 statement?

7 A. Yes sir, he did indicating that -- before we finish
8 we read the statement at the bottom to him and ask him
9 only to sign if he agrees.

10 And it says -- I have read or had read to me the
11 foregoing statements I made freely and voluntarily. The
12 facts contained are true and correct to the best of my
13 knowledge.

14 Q. At any time during any of these statements that you
15 testified to was there anything that was promised to him
16 or did y'all threaten him or anything in that fashion
17 that would sort of encourage him to write that statement?

18 A. No, sir.

19 Q. Please answer any questions Mr. Bischoff may have
20 for you.

21 A. Yes, sir.

22 THE COURT: Mr. Bischoff?

23 MR. BISCHOFF: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25 - - -

1 CROSS-EXAMINATION.

2 BY MR. BISCHOFF:

3 Q. Detective Gebhardt, do you have any training in

4 dealing with people who are cognitively delayed?

5 A. I do.

6 Q. You do? Please tell me your training and background

7 dealing with people who have cognitive disabilities.

8 A. Back in 2006 I took a class hosted by the National

9 Alliance of the Mentally Ill. It was a one week course.

10 Q. And what did you learn at that course?

11 A. How to deal with people who have mental

12 disabilities.

13 Q. And in that course I'm sure they taught you that

14 folks who have mental disabilities can be easily

15 susceptible to coercion, persuasion, etcetera.

16 A. Some.

17 Q. Some. You weren't the lead detective on this case,

18 were you?

19 A. No.

20 Q. And that was Detective Gibbons' responsibility?

21 A. Yes, sir.

22 Q. And were you aware that Detective Gibbons had had a

23 conversation with Tara Bauman prior to you interviewing

24 Jason Bauman?

25 A. No.

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1 Q. And seeing how -- you did note though -- you would
2 agree with me when I say that when you first met Jason
3 Bauman in the interview room he had a bit of a serious
4 stutter, correct?

5 A. Correct.

6 Q. And in fact he had trouble getting out words at
7 times. Would you agree that is a fair statement?

8 A. Some words, correct.

9 Q. Would you say he had trouble communicating?

10 A. No.

11 Q. And you would agree that folks who have a stutter or
12 come across with a bit of a difficulty in speaking or
13 communicating may have a cognitive disability in some
14 regard, correct?

15 A. Not necessarily.

16 Q. Sure, not necessarily but it is possible.

17 A. Not in my experience.

18 Q. Your training -- this one week long course where you
19 went and got study on cognitive disabilities, nobody told
20 you that someone may have a bit of a stutter or problem
21 communicating that might suggest cognitive dysfunction?

22 A. Not that I recall.

23 Q. Would you agree that there is cognitive dysfunction
24 on the part of the alleged victim in this case?

25 A. I never met the alleged victim in this case.

- 1 Q. Never met the alleged victim whatsoever?
- 2 A. No.
- 3 Q. Would you agree that in your tactics as far as
- 4 investigation is concerned that they tell you not to tell
- 5 a suspect the facts of the case prior to questioning
- 6 them, isn't that correct?
- 7 A. Not always. Every investigation is different.
- 8 Q. So sometimes it works, sometimes it doesn't; you
- 9 just throw stuff at the wall and hope it sticks, is that
- 10 fair?
- 11 A. You play it by a case by case basis; yes.
- 12 Q. Well then how did you play this by a case by case
- 13 basis? What went through your head when you were
- 14 interviewing Mr. Bauman?
- 15 A. He was showing signs of deception when Detective
- 16 Gibbons was speaking with him.
- 17 Q. And what were those signs of deception?
- 18 A. Fear to make eye contact, the information that
- 19 didn't make sense, deflection, minimizing his
- 20 involvement.
- 21 Q. And in fact Detective Gibbons wasn't really getting
- 22 anywhere with him, I think that's what you testified to,
- 23 that no progress or something to that extent?
- 24 A. Correct.
- 25 Q. So essentially they weren't telling you what you

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1 wanted to hear so you came in and started questioning

2 Jason Bauman, correct?

3 A. I wouldn't say it that way.

4 Q. Then how would you define no progress? What do you
5 mean by that?

6 A. She wasn't obtaining the facts of the case.

7 Q. Well, earlier you testified that she gave him the
8 facts before you took over. So which is it?

9 A. I didn't testify that she gave him the facts.

10 Q. Yes, you did. Earlier in your testimony with Mr.
11 Hilton you testified that Detective Gebhardt told him
12 about the specifics of the investigation. Did you not
13 testify to that?

14 A. You have to run that by me again, please?

15 Q. Earlier in your testimony you said that before you
16 took over Detective Gibbons gave Jason Bauman the
17 specifics of the investigation.

18 A. Not the whole investigation; had confronted him with
19 the allegations.

20 Q. So you told him what the allegations were?

21 A. She did.

22 Q. She did, right?

23 A. Correct.

24 Q. You told him look we've got her on video tape. She
25 says that fellatio happened or that she put her mouth on

1 your penis. Just fess up.

2 A. I did not say that.

3 Q. Well then what are the specifics of the
4 investigation? What did you tell him?

5 A. I advised him that Minor was interviewed by trained
6 professionals that asked non leading questions in a
7 manner to ascertain what had really happened.

8 Q. Well then why would you tell him that if you had no
9 idea that happened? If you hadn't communicated with
10 Detective Gibbons prior to the interview how would you
11 have any idea if that was true or not?

12 A. Because through my training and experience every
13 sexual assault victim that is underage goes to the
14 Dorchester Children's Center for a forensic interview.

15 Q. Prior to the arrest?

16 A. They always go to a forensic interview.

17 Q. Correct. But at that point you had no idea if it
18 happened prior to or after scheduling -- you had no idea
19 if the interview had actually place but you tell him it
20 had?

21 A. Correct.

22 Q. Okay. And you also -- in your training and
23 experience you know that they are videotaped?

24 A. Correct.

25 Q. And so you told him we got her on videotape. She

1 says this happened don't you?

2 A. I did not say that.

3 Q. And I'm looking at your notes, you didn't write a
4 report?

5 A. No, I didn't.

6 Q. So considering that you are aware that investigating
7 this case that you don't really have a whole lot -- or
8 you don't know what's gone on before, right? You have no
9 idea, you're just investigating.

10 You're in there to talk to a kid that has a
11 significant stutter and you're trying to get information
12 out of him. Is that fair to say?

13 A. I'm assisting at Detective Gibbons request.

14 Q. But after you actually spoke with Jason Bauman and
15 all this stuff that you testified to earlier you didn't
16 think to document that in a report?

17 A. Detective Gibbons was present for the entire
18 interview so she wrote her report based on what happened
19 in the interview room.

20 Q. Well if it really happened wouldn't you want
21 everybody to be able to objectively view whether or not
22 it happened, to give it some creditability of putting it
23 in a report, that didn't cross your mind?

24 A. I believe that Detective Gibbons is a credible
25 source.

1 Q. You didn't think it was significant considering that
2 you spent pretty much the entire hour and 25 minutes
3 talking to Jason Bauman? You didn't think that was
4 important to document other than some handwritten notes?

5 A. Detective Gibbons wrote the report on what happened
6 in the interview room.

7 Q. You would agree that the interview started at 9:14
8 according to the documentation.

9 A. I believe he was advised of his rights -- correct,
10 9:14.

11 Q. Any particular reason why you didn't have Jason
12 Bauman fill out the top of the sheet? If he could read
13 and write, if that's the first question you asked him,
14 can you read and write why didn't you have him fill out
15 his information?

16 A. Well, we ask that because we want to be able to
17 gauge their response and be able to read the handwriting
18 that encompasses the case number, highest level of
19 education, the date and the time, their name, and their
20 information.

21 Q. So you don't think it's important that he fill out
22 for example, are you under the influence of alcohol or
23 medication. You don't think that's appropriate to let
24 him answer that question?

25 A. He did answer it.

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1 Q. You don't think it's appropriate to let him fill
2 that part of the form out?

3 A. No, he answered earlier that he was not ---

4 Q. --- right, I'm aware. You don't think it's
5 important to let him fill that out?

6 A. No.

7 Q. But you think it's important to let him fill out
8 everything else? The statement that he wrote; that's
9 important to let him write that, correct?

10 A. Correct.

11 Q. And you would agree that according to your notes,
12 again you said you took notes while Detective Gibbons was
13 interviewing Jason Bauman right?

14 A. I implied it but it didn't say it; correct.

15 Q. And at the top you write Jason 7-1-10 at 09:12.

16 A. Yes.

17 Q. And then -- have you had a chance to review the
18 notes by Detective Gibbons?

19 A. Yes, sir.

20 Q. And you would agree that her notes basically start
21 out the same way I'm guessing that -- you're taught to
22 fill out the first part of your notes with the first
23 thing that happens?

24 A. With the date and time that we ---

25 Q. --- yes, the date and time. And so she writes

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1 09:17.

2 A. Correct.

3 Q. And then you would agree that the handwritten

4 statement -- I guess the handwritten statement was at the

5 end of the interview?

6 A. Yes.

7 Q. And the top of that forms indicates 10:39.

8 A. Correct.

9 Q. Okay. So again for the hour and 25 whatever

10 minutes that is that you talked with Jason Bauman, not

11 videotaped?

12 A. No, sir.

13 Q. Why don't you video tape the statement?

14 A. We're not required to.

15 Q. But you could?

16 A. We're not required to.

17 Q. You know the purpose of what we're asking you is to

18 determine whether or not Jason Bauman freely and

19 voluntarily gave this statement.

20 So you've got the ability to record the interaction

21 between you and the defendant do you not?

22 A. Our interview room isn't equipped with video or

23 audio recording.

24 Q. Do you have a cell phone?

25 A. I do.

1 Q. Could you have recorded it on your cell phone?

2 A. Then I might have to lose my entire cell phone for
3 evidentiary reasons and they tell us we don't record ---

4 Q. --- you don't have the ability to take this, record
5 what you're talking about, and then hit email? You can't
6 do that?

7 A. I could.

8 Q. Well, if you can do that and the whole purpose is to
9 figure out whether or not this individual who is
10 developmentally delayed, has an I.Q. of 71, whether or
11 not he voluntarily gave a statement, why don't you
12 interview [phonetic] it and let these people see what he
13 said for themselves?

14 A. He was conversing fine with me. His intelligence
15 didn't seem to be an issue during our interaction at all.

16 Q. So it just never crossed your mind?

17 A. No.

18 Q. What about when he tells you that when did this
19 happen? At 12 o'clock on Monday on the couch on May 11th,
20 2010. May 11th is not a Monday is it?

21 A. No, it's not.

22 Q. It's a Tuesday.

23 A. Correct.

24 Q. And he gave this statement for such a traumatic
25 situation if he is being completely honest with you

1 wouldn't you expect him to get that part right? That
2 doesn't bother you?

3 A. Not exactly. It happened a month and a half ago.

4 Q. Why didn't you ask him to be a little bit more
5 specific in his actual handwritten statement?

6 He just simply says that he allowed her to put her
7 mouth on his penis for a second and then goes about
8 apologizing I'm sorry; that sort of thing.

9 Why didn't you tell him look, I need you to document
10 all this stuff that you told me before because it gives
11 context to what you are saying?

12 A. This met the statute requirements for sexual battery
13 and Criminal Sexual Conduct with a Minor in the First
14 Degree.

15 Q. And so you were -- this was at the end of the
16 interview.

17 A. Correct.

18 Q. Why didn't you ask him to write the statement at the
19 beginning?

20 A. Because we -- he did not want to tell us the truth
21 in the beginning.

22 Q. When he starts to tell you that what you think is
23 the truth because it matches up with the accusation,
24 that's your definition of the truth, right?

25 A. The facts that were reported.

1 Q. Once he starts to tell you all of that why don't you
2 say look Mr. Bauman, you've got -- we're going to let you
3 put this in writing, okay.

4 We don't want there to be any confusion whatsoever
5 of how you are giving us this information or how anybody
6 can actually listen to us. We want you to write this
7 out. Why didn't you give him the form then?

8 A. We give it to them at the end of the interview.

9 Q. Why don't you give it to them in the beginning? I'm
10 just curious; let him document everything he's saying,
11 let him write it out.

12 Record it somehow; make sure that -- if there is no
13 question whatsoever that what he said actually came out
14 of his mouth.

15 A. Because this is exactly what he wrote.

16 Q. I understand that. But you testified to a lot of
17 stuff earlier.

18 A. Correct.

19 Q. About what he told you.

20 A. Correct, which is documented in the incident report.

21 Q. What incident report? You didn't fill out an
22 incident report.

23 A. The one that Detective Gibbons filled out because
24 she was present during the interview.

25 Q. And you didn't think it was important for you to

1 actually fill all that information out. You're going to
2 let Detective Gibbons do it?

3 A. Correct.

4 Q. Okay. The whole concept at the beginning you said
5 that you tried to create small talk with the individual
6 who you are interviewing, right?

7 A. Correct.

8 Q. You want them to feel comfortable with you enough so
9 that you feel like they can open up later on, is that
10 accurate?

11 A. Correct.

12 Q. Well how do you distinguish when someone is telling
13 the truth or not?

14 A. Just gauge their reactions through training.

15 Q. Are you aware that people falsely confess to crimes
16 they didn't commit all the time?

17 A. I have never experienced that.

18 Q. Never experienced that?

19 A. No.

20 Q. Amanda Knox over in Italy? Never heard of that
21 case?

22 A. No.

23 Q. You never heard about her confessing in detail about
24 a murder that she was not involved in ---

25 MR. HILTON: --- this is irrelevant.

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1 THE COURT: All right.

2 MR. BISCHOFF: I'm just -- Judge, if he wants ---

3 THE COURT: --- I know that ---

4 MR. BISCHOFF: --- to tell me he's never heard of
5 anything I get a right to ---

6 THE COURT: --- no, he said he never experienced
7 it.

8 Q. [Mr. Bischoff] I know you've never experienced it.
9 Let me rephrase the question. Have you ever heard of
10 anybody falsely confessing?

11 A. I've heard stories of it.

12 Q. Okay. And in your training has anyone told you in
13 the process of training look, false confessions are real.
14 We know they happen. Here's how you figure out whether
15 or not a confession is actually real or fake.

16 A. It's touched on.

17 Q. How much is it touched on?

18 A. I can't recall.

19 Q. Okay. But it's not important enough you think --
20 you obviously have not spent a significant amount of time
21 on it.

22 A. Well I've never experienced a false confession so
23 I...

24 Q. But in your training has it been addressed for an
25 extended period of time?

1 A. It's addressed. I can't tell you for an extended --
2 what amount of time it is, but it is addressed.

3 Q. Okay. And you said that Jason was there for a bond
4 hearing, right?

5 A. Correct.

6 Q. And did you ever tell Jason at the beginning look
7 Jason, I know you're brought over here for a bond
8 hearing, but this charge doesn't allow you to get a bond
9 today.

10 But we still want to talk to you about what
11 happened. Did you tell him that he was not entitled to a
12 bond on that charge?

13 A. He -- I didn't tell him he's not entitled to a bond.
14 I advised him he's entitled to a bond hearing.

15 Q. But you weren't clear with him that he wasn't going
16 to get a bond that day?

17 A. No.

18 Q. Okay. You never told him you cooperate, you'll get
19 a bond and you'll go home tonight. You never said ---

20 A. --- no never said that.

21 Q. Thank you, Detective. I appreciate it.

22 A. Thank you.

23 THE COURT: Anything on redirect?

24 MR. HILTON: No questions, Your Honor.

25 THE COURT: All right. Thank you, Detective. You

1 may step down.

2 THE WITNESS: Thank you, sir.

3 THE COURT: I appreciate it.

4 [Whereupon, the witness is excused and exits the
5 witness stand]

6 THE COURT: Is the State's next witness going to be
7 long or...

8 MR. HILTON: May we approach, Your Honor?

9 THE COURT: Sure.

10 [Whereupon, an off the record bench conference is
11 held]

12 THE COURT: We're going to take about a 10 minute
13 break. This will be our mid afternoon break. So we're
14 going to take a ten minute break. Let's all be back in
15 the chambers -- into the jury room for the same.

16 Remember, you cannot talk about the case yet. You
17 haven't heard all the testimony. Thank you, very much.
18 I appreciate it.

19 [Whereupon, the jury exits the courtroom at 3:04
20 p.m.]

21 THE COURT: All right. The State has advised the
22 court that they are getting ready to call Mr. Buhle and
23 Mr. Conklin. And Mr. Bischoff you expressed concern
24 because I think that Mr. Conklin since -- I wish to
25 question Mr. Carl Bauman, Mr. Buhle, and Mr. Conklin

1 about whether they were talking about the testimony of
2 Mr. Bauman's wife.

3 MR. BISCHOFF: Correct.

4 THE COURT: And everyone had stated they had not.

5 MR. BISCHOFF: I think everybody gave a different
6 answer.

7 THE COURT: Well, they did.

8 MR. BISCHOFF: It's clear that somebody is lying
9 ---

10 THE COURT: They all said that they didn't talk
11 about that. But they did give me different things that
12 they did talk about.

13 MR. BISCHOFF: Yes, sir. All three statements
14 were inconsistent.

15 THE COURT: Okay. And your concern was that under
16 those circumstances you were concerned about any
17 conversation that they had had concerning -- and I'm
18 trying to remember where -- I had a note here. There
19 was something Mr. Conklin said that triggered something
20 in your mind.

21 MR. BISCHOFF: Mr. Conklin said that they were
22 talking about statements that Jason had made or talking
23 about something having to do with my client. My concern
24 is Judge, that even when you prompt them tell me what you
25 were talking about, and I think you thoroughly questioned

1 them, each individual left out something else that the
2 other individual said they talked about. Nothing was
3 consistent.

4 And then as soon as you said well, you didn't talk
5 about the case did you? They said oh, no, no, no,
6 absolutely not, Judge. I didn't talk about the case.

7 I think under the circumstances not a single one is
8 credible. They've discussed the case in some detail and
9 under those circumstances they ought to be excluded from
10 testifying in front of the jury.

11 THE COURT: Okay. And Mr. Hilton?

12 MR. HILTON: Judge, the fact that they -- well,
13 first of all let me say it's uncontroverted from any of
14 them that there was no discussion about Tara Bauman's
15 testimony. And that was the crux of the court's
16 examination upon all three of them.

17 The fact that they were talking about the case,
18 assuming they did, is of no -- they can talk about the
19 case. They are not jurors in the case. They are not
20 under any order not to discuss the case with anybody.

21 So I don't even think if they discussed about the
22 case that's not inappropriate. Secondly, both Mr. Buhle
23 and Mr. Conklin gave written statements early on; way
24 back when; but certainly way before today. And so if
25 they get up and say something that is inconsistent with

1 those statements; Mr. Bischoff is welcome to cross-
2 examine them on that. But their statements have been
3 memorialized to writing early on and so I don't think
4 there is any risk of prejudice; even if they were talking
5 about the case.

6 THE COURT: Let me do mention one thing that I am
7 concerned about and I'm sure that Mr. Bischoff is also
8 concerned. They've given written statements. If they
9 go along with that, that's fine.

10 But if they say something they haven't already said
11 we get back to the bell ringing and me trying to clean it
12 up later, okay.

13 MR. BISCHOFF: Judge, I'm exhausted from having to
14 try and clean up at this point. But I think also it's
15 not just that, but the court makes a very good point.
16 It's that and it's the fact that they were told once the
17 case started don't have any contact with one another.

18 And they came in here and I don't think they were
19 consistent with you. And I don't quite -- if they can't
20 tell you the truth, I'm not so sure they can tell the
21 truth in front of a jury.

22 THE COURT: Well, unfortunately when people are
23 having conversations different people think different
24 parts of a conversation is more important than the other.
25 And I don't know from my listening to what they said I

1 didn't -- I did not get a feel that they had conspired to
2 say anything about any testimony. So I didn't get any
3 kind of conspiracy feeling.

4 But -- and you know we sequestered the witnesses
5 just so they couldn't hear what other people said. That
6 was the point of the sequestration.

7 MR. BISCHOFF: Yes, sir.

8 THE COURT: And that's why we were concerned at
9 least -- a concern was made to the court that perhaps
10 somebody had reported some statements that the wife had
11 made to the witnesses in the hopes that their testimony
12 would be perhaps consistent to it or something like that.
13 That was the concern of my questioning.

14 MR. BISCHOFF: And I think you did a great job of
15 asking them. My concern with Mr. Carl Bauman is that I'm
16 sure he's discussed this with his wife, Tara, prior to
17 today. And I would imagine she'll probably testify
18 consistently today as they had discussed previously.

19 And then he takes that information; whether or not
20 he relays what he heard on the stand it's still injecting
21 this testimony that I don't think Mr. Buhle or Mr.
22 Conklin would have been aware of prior to that
23 conversation. So that's the nature of my objection,
24 Judge.

25 THE COURT: And I note your objection. I am going

1 to let them go ahead and testify but before we get them
2 on the stand I'm going to make sure -- I don't want any
3 new information.

4 MR. HILTON: Well Judge, I -- let me just bring up
5 another point.

6 THE COURT: Yes, let's address it now --

7 MR. HILTON: Mr. Bischoff during his examination of
8 Detective Gebhardt brought out the fact that the
9 defendant is developmentally delayed and he's got
10 problems and all this kind of thing.

11 Well, Mr. Conklin and even in his statement, in Mr.
12 Conklin's statement, which I think you've had the
13 opportunity to review early on.

14 THE COURT: It was one of them but I don't know
15 which one ---

16 MR. HILTON: --- he said ---

17 MR. BISCHOFF: --- it was Mr. Conklin, Judge.

18 MR. HILTON: --- he said in his statement --
19 quoting from Mr. Conklin's statement, he told me and
20 another roommate that when he goes to the mental hospital
21 he is going to play dumb so that he can get out of his
22 charges.

23 Mr. Conklin's testimony now becomes relevant in that
24 his mental state has been brought into the issue. Mr.
25 Conklin has reported to us, and we testified, that in his

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1 stay with Mr. Bauman in the cell that when guards would
2 come up he would go to acting crazy and when the guard
3 got out of ear sight he would go back to being perfectly
4 normal; that there was absolutely nothing wrong with Mr.
5 Bauman other than the stutter and that he would fake
6 these symptoms when the guards would come by. And this
7 is Mr. Bischoff's idea of introducing all this testimony.

8 MR. BISCHOFF: Absolutely not. That is just ---

9 THE COURT: --- wait a minute, let him finish.
10 You'll get to talk.

11 MR. BISCHOFF: Yes, sir.

12 MR. HILTON: And so -- I mean Mr. Bischoff
13 questioned the officer about that. He had his statement
14 here. He knew full well that that statement was in the
15 statement -- that that phrase was in Mr. Conklin's
16 statement.

17 And I think at this point in time he has opened the
18 door to have that charge of him being handicapped to the
19 point where they could have influenced him to say
20 whatever. That can be rebutted by the State at this
21 point.

22 MR. BISCHOFF: No, it can't. I asked him if he was
23 aware that my client had an I.Q. of 71; not that he would
24 make up a whole bunch of things with some jailhouse
25 snitch. It's just not true, Judge. That's not opening

1 the door.

2 THE COURT: All right.

3 MR. BISCHOFF: How in the world does Jason Bauman
4 fake an I.Q. test, which is basically what he's got to do
5 to give any creditability to what Mr. Hilton says? I
6 mean he's already attacked him in a number of different
7 ways on stuff that I think is impermissible. But now
8 he's trying to say that he somehow faking the I.Q. test.
9 I mean it's just totally ludicrous.

10 If my client takes the stand, then he may open
11 himself up to cross-examination. But Mr. Hilton can't
12 cross-examine or bring out on direct examination from Mr.
13 Conklin things that aren't relevant. Why is that even
14 relevant to whether or not he absolutely committed the
15 crime?

16 This idea of me -- that he went -- that he is going
17 to play dumb at the mental hospital. I just don't see
18 how that is -- should come in under any situation. How
19 did I open the door when I asked of Detective Gebhardt if
20 he knew the gentleman that he was questioning had a
21 cognitive defect and had an I.Q. of 71? It's just -- it
22 makes no sense.

23 THE COURT: All right. All right.

24 MR. BISCHOFF: I think we still have to address
25 whether or not Mr. Conklin can testify anyway.

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1 THE COURT: Yes, I'm going to take it ---

2 MR. BISCHOFF: --- I'm guessing you're -- I'm
3 sorry; you're going to allow him to testify?

4 THE COURT: Yes, sir. Okay. What I will do is
5 I'm going to take a break. I'm going to think about how
6 far I'm going to let Mr. Hilton go regarding that and
7 whether or not I feel like he opened the -- you opened
8 the door in any way just by mentioning his I.Q.

9 But we'll be in recess.

10 MR. BISCHOFF: Thank you, Judge.

11 [Whereupon, a recess is held]

12 THE COURT: All right. Gentlemen, before we bring
13 the jury in we've got to take up -- regarding the
14 testimony of Mr. Buhle and Mr. Conklin. I have the
15 written statement of Mr. Conklin. I do not have the
16 statement of Mr. Buhle. Let me give you the general
17 guidelines.

18 MR. BISCHOFF: I'm sorry, Your Honor. Mr. Hilton
19 was asking if I wanted Mr. Buhle out of the courtroom
20 while we were going over this. If you're going to give
21 the guidelines I figured now is just the perfect time as
22 any for him to be in the courtroom unless...

23 THE COURT: Any problems?

24 MR. HILTON: No. No problems. I brought him in.

25 THE COURT: Okay. I have Mr. Conklin's statement.

1 I don't have Mr. Buhle but the guidelines should help.

2 MR. BISCHOFF: And I don't -- Judge, in my review
3 of the discovery and the statement of Mr. Buhle it seems
4 that his statement is going to be regarding conduct that
5 I think is relevant to or is somehow related to the
6 charge conduct. So I do not object to his testimony in
7 its entirety.

8 THE COURT: Assuming it goes along with what his
9 statement was ---

10 MR. BISCHOFF: --- I will make the objection when
11 he is testifying of course, but have been provided -- I
12 didn't make the request that he be excluded. But I do
13 have a request that Mr. Conklin be excluded.

14 THE COURT: Right. And what I'm going to do just
15 so y'all understand I've got the statement in front of me
16 right here. I'm going to let Mr. Conklin testify about
17 any statements that Mr. Bauman made with relation to his
18 niece, Minor

19 But he is not going to testify as to the other
20 things that he talked about. I know Mr. Hilton you had
21 indicated that because it is in the record that Mr.
22 Bauman had a 71 I.Q. that you wanted to be able to go
23 into the statement about what his plans were about
24 playing dumb. That part of his statement.

25 MR. HILTON: Yes sir, Your Honor.

1 THE COURT: Okay. Let me tell you why I'm letting
2 -- I'm not allowing him to testify about that. His I.Q.
3 is a physical condition, not a mental condition, but to
4 me the statement about his plans to play dumb goes into
5 character issues.

6 And the only person that can initially put his
7 character in issue is the defendant. And so far he has
8 not placed his character in issue. I don't think that we
9 have his as an I.Q. and I don't think that's a character
10 issue.

11 So Mr. Conklin can testify about the stuff that he
12 told him about his niece, but he can't go into the other
13 things about getting bond, playing dumb, laptop issue, or
14 the girls walking by.

15 MR. HILTON: In light of the court's ruling I
16 probably will not call Jeremy Conklin as a witness.

17 THE COURT: Okay.

18 MR. HILTON: And I don't mind saying he's one of
19 those witnesses that is kind of like walking on banana
20 peels; he might go either direction. And so I ---

21 THE COURT: --- okay. I just wanted to get it
22 clear on the record as to what it is now. Again, if
23 character becomes an issue that's a different ball game.

24 MR. HILTON: Yes sir, Your Honor.

25 THE COURT: But right now it has not been placed an

1 issue for the court.

2 MR. HILTON: And there is one other item that has
3 come up in light of this -- in light of this, the only
4 indication in this trial of any 71 I.Q. is through a
5 question that was asked to Detective Gebhardt that said
6 were you aware that he had a 71 I.Q. and Detective
7 Gebhardt said no.

8 THE COURT: Right.

9 MR. HILTON: So there is no evidence in the record
10 whatsoever of Mr. Bauman's I.Q. or mental state. And
11 because of that I would, at this time based on the
12 information that we have at this time, asked that Mr.
13 Bischoff be precluded from arguing that in his closing
14 argument in that it would be evidence that is not in the
15 record.

16 THE COURT: Well, we are a long way from closings I
17 think.

18 MR. BISCHOFF: A long way; days.

19 THE COURT: Perhaps. But I appreciate you firing
20 that warning shot across the bow so that Mr. Bischoff
21 will be aware -- Mr. Bischoff will be aware of that fact.
22 Anything else?

23 MR. HILTON: Nothing, Your Honor.

24 THE COURT: Okay. Is the State ready to proceed?

25 MR. HILTON: We are, Your Honor.

1 THE COURT: Mr. Bischoff, anything else I need to
2 take care of?

3 MR. BISCHOFF: One, Judge. I will go back and
4 review my notes on the Tara Bauman issue. I thought I
5 maybe asked Ms. Bauman about Mr. Jason Bauman, my
6 client's, cognitive delays.

7 THE COURT: And I don't ---

8 MR. BISCHOFF: --- I don't know either. But ---

9 THE COURT: --- I believe what I will have to do is
10 we will have to check with -- asking her about it and
11 having her testify about it are ---

12 MR. BISCHOFF: --- well, I think she confirmed my
13 question.

14 THE COURT: We'll -- that's fine. We can talk
15 about it.

16 MR. BISCHOFF: Yes, sir.

17 THE COURT: I'll not issuing a ruling on that yet.

18 MR. BISCHOFF: Thank you, Judge. I don't think we
19 elected a foreperson. I don't know if we want to do that
20 now or if we want to ---

21 THE COURT: --- have we elected one?

22 [Whereupon, counsel confer]

23 THE COURT: I haven't. I told them when they got
24 in they were supposed to do that. We'll have time for
25 them to do that. But remind me; I thought I told them

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1 when they got here this morning they were supposed to do
2 that. But I forgot to remind y'all.

3 MR. BISCHOFF: I wanted to bring it to the
4 court's...

5 THE COURT: Anything else?

6 MR. HILTON: Nothing from the State.

7 MR. BISCHOFF: No, Your Honor.

8 THE COURT: I'm going to bring the jury on back
9 now, okay. I'll try to remember to remind them before
10 they leave.

11 [Whereupon, the jury enters the courtroom at 3:51
12 p.m.]

13 THE COURT: Ladies and Gentlemen, we are going to
14 continue with the State's case now. Mr. Hilton?

15 MR. HILTON: Thank you, Your Honor. The State
16 would call Adam Buhle.

17 [Whereupon, Mr. Buhle comes forward]

18 CLERK OF COURT: Please raise your right hand and
19 state your full name for the record?

20 MR. BUHLE: Adam Chase Buhle.

21 [Whereupon, the witness is duly sworn by the Clerk
22 of Court as follows: do you solemnly swear or affirm to
23 tell the truth, the whole truth, and nothing but the
24 truth so help you God]

25 MR. BUHLE: Yes, I do.

1 [Whereupon, the witness takes the witness stand]
2 THE COURT: All right Mr. Hilton, whenever you are
3 ready.
4 MR. HILTON: Thank you, Your Honor.
5 - - - - -
6 ADAM BUHLE,
7 Having been first duly sworn,
8 Was examined and testified as follows:
9 DIRECT EXAMINATION
10 BY MR. HILTON:
11 Q. Mr. Buhle, are you working anywhere right now?
12 A. Yes, sir.
13 Q. Where is that?
14 A. Neon Needle.
15 Q. Where is it?
16 A. Neon Needle.
17 Q. What's that about?
18 A. Tattoo artist.
19 Q. Tattoo artist; I got you. And -- now you recently
20 got out of prison, right?
21 A. Yes, sir.
22 Q. And what was that for?
23 A. Violation of Probation and Forgery.
24 Q. All right. The underlying charge was Forgery you
25 say?

- 1 A. Yeah. That's correct.
- 2 Q. You got any other criminal offenses on your record?
- 3 A. I have a Grand Larceny on my record.
- 4 Q. All right. Anything else?
- 5 A. No, sir. Two Grand Larcenies.
- 6 Q. And some Shopliftings maybe?
- 7 A. Yeah.
- 8 Q. Burglary?
- 9 A. Burglary, yes.
- 10 Q. And you've had your trouble with the law, is that
- 11 correct?
- 12 A. Yes.
- 13 Q. All right. And that's not -- for the first time
- 14 that's not why you're in the courtroom today, is that
- 15 correct?
- 16 A. No, sir.
- 17 Q. Let me ask you back in -- August 12th, 2010 where
- 18 were you staying at that time?
- 19 A. August 12th I was in Dorchester County Detention
- 20 Center.
- 21 Q. And what was that for?
- 22 A. Violation of Probation and Forgery.
- 23 Q. Was that what you went to prison for ultimately?
- 24 A. Yes, sir.
- 25 Q. Okay. And who were your roommates at that time who

1 were in the cell?

2 A. Jason Bauman and Jeremy Conklin.

3 Q. Okay. And Mr. Bauman do you see him in the
4 courtroom today?

5 A. Yes, sir.

6 Q. Can you point him out for the jury?

7 A. [Indicates].

8 Q. And over the course of your time that you spent with
9 Mr. Bauman in the cell did you get to know him?

10 A. Yes, sir.

11 Q. And did you know what he was in there for?

12 A. Not first off. No, first off I didn't know.

13 Q. All right. At some point in time did you learn
14 what he was in there for?

15 A. Yes, sir.

16 Q. Did you ever talk to him about what he was in there
17 for?

18 A. Yes, sir.

19 Q. And what did he end up telling you about what he had
20 done?

21 A. At first he told me he was in there for stealing
22 cars. And we got to know each other and he came out and
23 just said that he was in there for his niece. He would
24 play around with his niece and he started touching his
25 niece and having his niece touch him. And he told me

1 that -- I was just wondering how they found out and
2 everything and he told me that his niece supposedly went
3 down on her brother ---

4 Q. --- let me stop you right there. I want you to tell
5 the jury what Mr. Bauman told you that he did to his
6 niece.

7 A. That he tried to have her play with him. He would
8 watch porno movies with her.

9 MR. BISCHOFF: Objection, Your Honor. Again, I'd
10 like to renew my objection from earlier regarding this
11 line of testimony for the record.

12 THE COURT: Okay. I understand your objection and
13 I am going to overrule your objection.

14 MR. BISCHOFF: Thank you, Judge.

15 THE COURT: Thank you, sir.

16 Q. [Mr. Hilton] Go ahead, Mr. Buhle.

17 A. He would have her watch porno movies with her. And
18 he would try to get her to play with him. And after he
19 would gradually move her into it she would start sucking
20 his dick. Excuse my language.

21 Q. And did he ever say who he was referring to?

22 A. His niece.

23 Q. Did he give you a name?

24 A. I can't -- not really. He might have but I can't
25 really think of it off the top of my head.

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1 Q. All right. Did he ever -- I'm sorry, what were you
2 going to say?

3 A. No, go ahead.

4 Q. Did he ever talk about like touching her
5 inappropriately?

6 A. Yes, sir.

7 Q. What did he say about that?

8 A. He said that he would try to stick his finger in but
9 it was too small. So he just gradually kept playing with
10 her to get it where she would touch him. And they would
11 watch porn and do whatever.

12 Q. Now, do you remember when you gave that statement?

13 A. September, 2010. September 8th, 2010.

14 Q. Do you have a copy of your statement with you?

15 A. Yes, sir.

16 Q. Will you get that out? Does it have a date on the
17 top of when you gave the statement?

18 A. Yes, sir.

19 Q. What does that say?

20 A. 8/12/2010.

21 Q. Would that be September or August?

22 A. August.

23 Q. August 12, 2010. And at the time that you gave that
24 statement had you seen any of Mr. Bauman's documentation
25 or anything, any of his discovery?

1 A. I know he received some documentation that he ripped
2 up and flushed in the toilet.

3 Q. Was that before or after you gave a statement?

4 A. My statement was before it.

5 Q. Okay.

6 A. And then later on that month I think it was when he
7 got his Rule 5.

8 Q. All right. Let me ask you this. Did anybody
9 either from our office, the Solicitor's office, from law
10 enforcement or anybody promise you anything to get you to
11 give the statement that you gave police?

12 A. No, sir.

13 Q. Did you end up getting any deals with regard to this
14 statement?

15 A. No, sir.

16 Q. In fact, it got you in prison is that correct?

17 A. Yes.

18 Q. Let me show you what has been marked as State's
19 exhibit 3 for identification and ask if you recognize
20 that?

21 [Whereupon, the witness is shown documents]

22 A. Yes, sir.

23 Q. What is that?

24 A. My statement.

25 Q. Is it a copy of your statement?

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1 A. Yes, sir.

2 MR. HILTON: Your Honor, at this time we'd offer
3 State's exhibit 3 into evidence.

4 MR. BISCHOFF: Object, Judge. It's cumulative --
5 the statement.

6 THE COURT: I'm going to overrule your objection.
7 I'll let it in. I will note your objection.

8 [Whereupon, State's exhibit number 3 is entered into
9 evidence by the court]

10 Q. [Mr. Hilton] Please answer any questions Mr.
11 Bischoff may have for you.

12 A. Yes, sir.

13 THE COURT: Mr. Bischoff?

14 CROSS-EXAMINATION

15 BY MR. BISCHOFF:

16 Q. Mr. Buhle?

17 A. Yes, sir.

18 Q. You're a thief.

19 A. Yes, sir.

20 Q. Right?

21 A. Yes, sir.

22 Q. And even when you are prompted by the Solicitor to
23 come tell the truth today you take that oath -- charged
24 with anything else, got anything else on your record?

25 No. You had to be prompted about your Grand Larcenies,

1 about your Shopliftings, about your Burglaries correct?

2 A. Yes.

3 Q. Why weren't you telling the truth just a second ago?

4 A. Because I...

5 Q. You didn't think that he'd find out right?

6 A. No, it's not like I didn't know he would out. I

7 mean the burglaries were a long time. I mean I just ---

8 Q. --- long time ago. Let's go over it, how about

9 that?

10 A. That's fine.

11 Q. Shoplifting, convicted January 8, 2003. Grand

12 Larceny times 2, October 12th, 2004. Petty Larceny, April

13 1st, 2004, Shoplifting Third, where you spent three years

14 in prison, September 23, 2004. Two counts of Grand

15 Larceny in '08; right after you get out of prison you go

16 and rob somebody else twice, correct?

17 A. No, not rob somebody; but yes.

18 Q. Okay. You steal from somebody?

19 A. That's better.

20 Q. I'm sorry. I'm not a criminal. I wouldn't know the

21 distinction.

22 A. All right.

23 Q. And then you're also convicted again of Forgery in

24 2010, right?

25 A. Yes.

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1 Q. And that was -- you pled right after you call up the
2 Solicitor's office and say man, I got this information
3 that I want to share with you. What kind of deal can I
4 get, right? No?

5 A. No.

6 Q. Are you aware of the law in South Carolina ---

7 A. --- I came here with zero to eight open plea and I
8 wound up getting three years. The judge made the
9 decision on what I got. I have no -- I didn't make no
10 deal. I came here with a zero to eight open plea.

11 MR. BISCHOFF: Judge, may I approach the witness?

12 THE COURT: Go ahead.

13 [Whereupon, defendant's exhibit number 8 is marked
14 by the court reporter]

15 Q. [Mr. Bischoff] And your testimony just now, when
16 you are telling the truth, is that you came in with an
17 open plea.

18 A. I came in -- John Lloyd [phonetic] was my lawyer and
19 he said do it now. I came in here with a zero to eight
20 open plea.

21 Q. Zero to eight open plea ---

22 A. --- zero to eight that I could be facing and I come
23 in here and the judge was told and I was given three
24 years.

25 Q. And you also were on probation at that time, right?

1 A. That's why I pleaded so they ---

2 Q. --- and you're aware -- what were you on probation
3 for?

4 A. I think it was Grand Larceny.

5 Q. You didn't go to prison for that or did you? You
6 just got probation.

7 A. Yes.

8 Q. Grand Larceny. What was the value do you remember?

9 A. Under 1,000 dollars.

10 Q. I'm sorry.

11 A. It was under 1,000 dollars.

12 Q. Well, you couldn't have gotten probation for that
13 offense because that's a misdemeanor.

14 A. It might not that -- but ---

15 Q. --- you're not sure. So you're on probation. You
16 didn't go to prison. You got this time. How does
17 probation work?

18 Tell the ladies and gentlemen of the jury basically
19 you've got time over your head and if you mess up you can
20 go to prison for up to that amount of time, is that
21 correct?

22 A. Uh huh.

23 Q. And that can actually be run what's called
24 consecutive to the additional crime for which you're
25 convicted of while you are probation, right?

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1 A. Uh huh.

2 Q. Let me show you what's been marked as defendant's
3 exhibit number 8 for identification purposes.

4 [Whereupon, the witness is shown documents]

5 Q. Do you recognize that document?

6 A. Sir, I mean I signed it so I'm sure I do recognize
7 it.

8 Q. Yes or no?

9 A. Yes.

10 Q. Okay. What does it say at the top?

11 MR. HILTON: Objection, Your Honor.

12 A. This was not ---

13 MR. HILTON: --- objection ---

14 THE COURT: --- hold up one second.

15 MR. HILTON: May we approach?

16 THE COURT: Sure.

17 [Whereupon, an off the record bench conference is
18 held]

19 THE COURT: All right, Mr. Bischoff.

20 MR. BISCHOFF: Thank you, Your Honor.

21 Q. [Mr. Bischoff] Mr. Buhle, you just testified that
22 you recognize this document, correct?

23 A. Yes, sir.

24 Q. Would you agree that you received a deal in this
25 case for your sentence on the Forgery to run concurrent

1 with your probation revocation?

2 A. No, I wouldn't because I came here -- he told me I'd
3 come here with a zero to eight open plea.

4 And right after I got the three years they were on
5 the computer right over there with Berkeley County and
6 they went ahead and run my charges. He didn't even know
7 I had that charge until it was time for the court.

8 Q. Well, then why would the Solicitor indicate that
9 your sentence was to run concurrent with your probation
10 revocation?

11 A. When I got into the courtroom that's when they
12 pulled up on the computer that I had a violation of
13 probation in Berkeley County.

14 When he came and visited me the first time he didn't
15 even know not to contact -- he didn't even know I was
16 violated. And then he came up later on down and he told
17 me I was coming here with an open plea zero to eight.

18 Q. So you weren't aware that the Solicitor was telling
19 you that you could run this sentence concurrent with the
20 probation revocation?

21 A. No, sir.

22 Q. And then you also weren't aware that you got the
23 benefit of three years as opposed to eight?

24 A. And I -- whenever I was in here my witness was in
25 here -- my victim witness was in here and that's what she

1 recommended three years.

2 Q. Okay.

3 A. And that's what the judge went with.

4 Q. Okay. So you're saying this document is false?

5 This sentencing sheet?

6 A. I'm not saying it's false, no. I'm just saying ---

7 Q. --- you can't have it both ways ---

8 A. --- I didn't come here with a plea. I mean I didn't

9 come here with a guilty plea. I mean I had a guilty plea

10 but I didn't come here with a deal knowing what I was

11 getting.

12 When I come here I was looking at zero to eight and

13 didn't know if I was walking out with one year or eight

14 years.

15 Q. How do you get eight years? Is that what you

16 remember the sentence carries?

17 A. That's what John Lloyd told me it was zero to eight.

18 That's what I was going in here looking at.

19 Q. Are you aware the offense itself carries more time

20 than that?

21 A. No, I wasn't.

22 Q. Okay. You're aware though that your conviction

23 could also run consecutive to your probation violation;

24 the time that you got on probation right?

25 A. It could have been.

- 1 Q. Okay. But it did not?
- 2 A. No, it didn't.
- 3 Q. Okay. And as soon as you get out of prison you
- 4 commit another offense where you steal from somebody,
- 5 right?
- 6 A. Are you talking about the first time in prison in
- 7 2003?
- 8 Q. Yes?
- 9 A. Yes.
- 10 Q. Okay. And you testified earlier that you were in
- 11 the same cell for a period of time with Jason Bauman is
- 12 that correct?
- 13 A. [Nods affirmative].
- 14 Q. And that -- I'm just curious y'all were in there --
- 15 I think you said that you were in there -- you didn't
- 16 actually tell me an amount of time. How long were y'all
- 17 together, a couple of weeks?
- 18 A. Two weeks, yes.
- 19 Q. Two weeks?
- 20 A. And then later on about a month later he got put in
- 21 my cell again.
- 22 Q. So he was in there multiple times?
- 23 A. Twice.
- 24 Q. Twice.
- 25 A. But I ---

1 Q. --- what cell would it have been?

2 A. First cell we were in was D-3. The last cell we
3 were in was D-8; and that's where I left --

4 Q. Okay. And the first one would be D-3?

5 A. Yes, sir.

6 Q. Do you remember when you were in the cell together?

7 A. Probably the end of July beginning of August if I'm
8 correct.

9 Q. So your testimony is you're in the cell together
10 with him right before you gave this statement?

11 A. Yes. As soon as I found out -- when Jason told me
12 the things he told me I got -- I had tickets up there in
13 Summerville.

14 And when I revoked the ticket I asked -- and I got
15 -- I wound up getting time served and they put me back in
16 the cell -- and I told them everything I knew.

17 Q. And that's after you spent a significant amount of
18 time with Mr. Bauman?

19 A. Yes, sir.

20 Q. Okay. What if I was to tell you that your sheet,
21 your booking sheet showing where you were in the jail
22 doesn't have you with Jason Bauman at all?

23 A. That's wrong.

24 Q. That's wrong, too?

25 A. That's wrong.

1 Q. So we got the wrong sentencing sheet, we got the
2 wrong form over at the jail saying that you were never in
3 the same cell with Jason Bauman for an extended period of
4 time that's also incorrect?

5 A. It's a lie.

6 Q. And we should believe you right?

7 A. It don't matter if you believe me or not; I know
8 what it is.

9 Q. Well, sure it matters. It definitely matters.
10 What's the truth?

11 A. It's surely what I'm telling, not what you're
12 telling.

13 Q. You think that they make these forms up at the jail?

14 A. I mean I'm not lying. That's what you do for a
15 living.

16 Q. And you tripped up in your testimony earlier, did
17 you recognize that? How many times have you met with
18 the Solicitor?

19 A. Met with the Solicitor?

20 Q. Yes, to go over your testimony.

21 A. How many times have I met with him to go over my
22 statement that I wrote?

23 Q. Maybe I wasn't clear. How many times have you met
24 with the Solicitor to go over your testimony?

25 A. Maybe a couple of times.

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1 Q. And did you meet with them specifically back in 2010
2 or did you just meet with the detective?

3 A. I just met with the detective.

4 Q. But you met with them after you got out of prison?

5 A. What -- met with?

6 Q. The three years. Weren't you sentenced to three
7 years?

8 A. Who did I meet with after I got out? I didn't meet
9 with ---

10 Q. --- the Solicitor?

11 A. The Solicitor came to me while I was in prison.

12 Q. While you were in prison?

13 A. Nine days before I got released from ---

14 Q. --- and went over your testimony?

15 A. Yes, sir.

16 Q. Okay. Well, if you went over your testimony can
17 you explain why in your statement when you're talking
18 about did Jason Bauman say anything about pornography.

19 You answered way back when no. And now today you
20 saying he was talking about pornography all over the
21 place.

22 A. Yes, he did talk about pornography.

23 Q. Then why do you indicate no in your statement?

24 A. Let me see it.

25 [Whereupon, the witness is shown documents]

1 Q. The same statement that was just admitted into
2 evidence, I believe it's State's number 3.

3 A. I said in my statement that he was -- I said that he
4 was watching porno movies with her.

5 Q. Did he say anything about pornography? No. That
6 wouldn't have been an appropriate time to mention
7 pornography? Of course not. Where do you keep personal
8 belongings in jail?

9 A. Where do you keep your personal belongings ---

10 Q. --- yes, when you're checked into the jail ---

11 A. --- in your box underneath your mat.

12 Q. When you are checked into the jail everything you're
13 wearing -- let's say you're checked in in that purple
14 shirt today. Does that get logged into a locker of some
15 sort?

16 A. Yep.

17 Q. And then you're given jump suits ---

18 A. --- State clothes ---

19 Q. State clothes. And then you're given a pair of
20 sandals right?

21 A. Yep.

22 Q. Toiletries, that sort of thing, discovery in your
23 case; where do you keep all that? Under your bed?

24 A. In the toilet -- well, the toilet paper stays right
25 there and you got a little box that you put your stuff

1 in.

2 Q. So you got -- and other inmates do the same thing?

3 A. Yes.

4 Q. Where did you keep your discovery?

5 A. I didn't get any discovery. I didn't need any
6 discovery.

7 Q. Do you know what discovery is ---

8 A. --- I never filed for Rule 5.

9 Q. You don't know what discovery is?

10 A. I was guilty of my charge. I wasn't trying to say I
11 was innocent.

12 Q. Okay.

13 A. So I didn't need one.

14 Q. Okay. So your lawyer, John Lloyd, never sent you
15 any documents?

16 A. No, I never got ---

17 Q. --- he just walked in and said you know what? You
18 say you're guilty. We're going to let you plead.

19 A. Yes. I never got a Rule 5.

20 Q. Okay. But Jason had his, right?

21 A. Yep.

22 Q. And you reviewed it before you gave your statement?

23 A. No, I ---

24 Q. --- and you had access to it before you gave your
25 statement ---

1 A. --- no, as soon as he got it he flushed it down the
2 toilet.

3 THE COURT: Mr. Bischoff, hold up one second. Just
4 let him finish answering ---

5 MR. BISCHOFF: --- sure.

6 THE COURT: Just a second more will be fine.

7 MR. BISCHOFF: Okay.

8 A. Can you look on there and see when he received his
9 Rule 5?

10 Q. [Mr. Bischoff] You don't get to ask me questions.
11 That's the beauty of this whole thing. I get to ask you
12 questions.

13 A. I could tell.

14 Q. We can talk when we're outside if you want to. But
15 you had access to Jason Bauman's discovery before you
16 gave this statement?

17 A. No, I didn't.

18 Q. And before you cut a deal with the State so you
19 didn't have to go to prison for a long amount of time.

20 A. No, I didn't.

21 Q. Okay. And you've told the truth today, right?

22 A. Yep.

23 Q. You were never in the same cell with -- you were in
24 the same cell with Mr. Bauman for an extended period of
25 time but the jail got that wrong.

1 A. I was in the same cell with Jason Bauman and Jeremy
2 Conklin; yes I was.

3 Q. And so the records from the jail that suggest
4 otherwise they are incorrect?

5 A. I guess so.

6 Q. And the sentencing sheet that suggests that you got
7 a deal by running concurrent with your probation
8 revocation that's also incorrect?

9 A. I don't know about that. But I know the jail
10 situation -- I know the cell situation is very incorrect.

11 Q. Thank you.

12 THE COURT: Thank you, Mr. Bischoff. Anything on
13 redirect?

14 REDIRECT EXAMINATION

15 BY MR. HILTON:

16 Q. How long did you stay with Mr. Bauman in the cell?

17 A. Probably about three weeks.

18 Q. And that was in ---

19 A. --- and I was up there for medical reasons. I was
20 in D-3. He was in P-C and I was up there for medical
21 reasons.

22 Q. And P-C means what?

23 A. Protective custody.

24 Q. Okay. And that's Mr. Bauman right here

25 [indicates]?

1 A. Yes, sir.

2 Q. And is that the guy that told you that statement?

3 A. Yes, sir.

4 MR. HILTON: No further questions, Your Honor.

5 THE COURT: Anything on re-cross?

6 MR. BISCHOFF: No, Your Honor.

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

8 [Whereupon, the witness is excused and exits the

9 witness stand]

10 THE COURT: Is the State ready to call its next

11 witness?

12 MR. HILTON: Just one second, Your Honor.

13 THE COURT: Okay.

14 MR. HILTON: Your Honor, may we approach right

15 quick?

16 THE COURT: Sure.

17 [Whereupon, an off the record bench conference is

18 held]

19 THE COURT: All right. Mr. Hilton, is the State

20 prepared to call its next witness?

21 MR. HILTON: Your Honor, that would be the balance

22 of the State's witnesses. We would at this time offer a

23 certified copy of the Rule 5 discovery motion that was

24 sent to the defendant's attorney into evidence.

25 THE COURT: Okay. Mr. Bischoff, you going to take

1 a second to double check your work?

2 MR. BISCHOFF: I would appreciate that.

3 THE COURT: What we will do is -- pending that, any
4 other witnesses by the State?

5 MR. HILTON: Nothing from the State, Your Honor.

6 THE COURT: Okay. So the State rests at this
7 time?

8 MR. HILTON: After introduction of that.

9 THE COURT: Yes, I mean after that goes in assuming
10 we don't have any issues about that.

11 MR. HILTON: Yes, Your Honor.

12 THE COURT: Okay. Ladies and gentlemen, the State
13 has proffered one document -- when the Rule 5 discovery
14 documents were sent in. And Mr. Bischoff is just
15 checking through the records before we actually put those
16 into evidence.

17 But at this time assuming that we don't have any
18 other issues you've heard all the testimony from the
19 State's case.

20 We're going to take a break now and let y'all go
21 back into the jury room for a second because I've got
22 some matters I've got to talk with the attorneys about
23 and see how we are going to proceed this afternoon.

24 Again, first thing I always say to you is you can't
25 talk about the case. You've haven't heard all the

1 THE COURT: Mr. Bischoff, I know you needed some
2 time. Just come get me; I'll give you about five or ten
3 more minutes.

4 MR. BISCHOFF: Thank you, Your Honor.

5 THE COURT: Then y'all can tell me -- y'all come
6 back and get me and tell me where we're going, okay.

7 MR. BISCHOFF: Thank you, Judge.

8 THE COURT: Thank y'all.

9 [Whereupon, court is in recess from 4:25 p.m. until
10 4:49 p.m.]

11 THE COURT: All right. We're back on the record.
12 Mr. Hilton, I believe that the Rule 5 letter --

13 MR. HILTON: The detective, the letter and the
14 State's motion for reciprocal discovery -- State's
15 request for disclosure is how it is captioned.

16 THE COURT: Okay. And that's into evidence
17 without objection, is that correct Mr. Bischoff?

18 MR. BISCHOFF: Correct, Your Honor.

19 THE COURT: That will be State's 4.

20 [Whereupon, State's exhibit number 4 is marked by
21 the court reporter]

22 [Whereupon, State's exhibit number 4 is entered into
23 evidence by the court]

24 MR. HILTON: It's a packet of -- a packet of four
25 pages.

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF DORCHESTER	)	DOCKET NO. 2010-GS-18-1144
	)	
	)	
THE STATE OF SOUTH CAROLINA	)	
	)	
Plaintiff	)	
	)	
vs.	)	
	)	
JASON A. BAUMAN	)	
	)	
Defendant	)	
	)	
	)	
	)	
	)	TRANSCRIPT OF RECORD

June 13, 2012
St. George, South Carolina

VOLUME 3 OF 3

B E F O R E:

THE HONORABLE EDGAR W. DICKSON, JUDGE

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1 your patience. I appreciate your attention. And now we
2 are going to proceed with the case. Is it -- as you
3 recall yesterday afternoon the State rested in its case.
4 And now it's the defense turn to begin with their part of
5 the case. And, Mr. Bischoff?

6 MR. BISCHOFF: Your Honor?

7 THE COURT: Yes, sir.

8 MR. BISCHOFF: The defense rests.

9 THE COURT: All right. Ladies and gentlemen, the
10 defense has rested in this case. That means what we are
11 now to the closing arguments of the attorneys okay.

12 So what is going to happen now is the State is going
13 to get up and present their closing arguments. After the
14 State does their closing arguments the defense will make
15 their closing arguments. Then we will take a short break
16 then you will come back in here and I will charge you
17 with the law.

18 After I've charged you with the law I will excuse
19 you to go back into the jury room, but you will not be
20 able to begin your deliberations at that time because
21 after I charge you with the law I will go over my charge
22 with the attorneys after I've done it to make sure that I
23 haven't misspoken, left out anything, or they believe
24 that I need to make some kind of further clarification on
25 a legal charge. If I do need to do any of those things,

1 CLOSING ARGUMENT BY MR. HILTON

2 Thank you, ladies and gentlemen of the jury. I want
3 to take this opportunity to thank you for sitting here
4 over the past couple of days. It's always important to
5 pay attention to all the testimony and pay attention to
6 all the exhibits.

7 This is my first chance to actually get up and speak
8 to you as a jury. You've seen me talk to the witnesses,
9 but this is my first chance to get up and speak to you.
10 But it will also be my last chance to get up and speak to
11 you.

12 And so what I want to say about the trial is I want
13 to talk about these exhibits. I want to talk about the
14 testimony that came from the witness stand.

15 I always tell juries in closing arguments that any
16 criminal trial is important to both the State and the
17 defense; and I can't stress that enough. It's very
18 important. It's important for the defendant because this
19 is his chance in court. This is his day to get a fair
20 shake at a trial; and that's what he is entitled to.

21 And it's also important for the State because it's
22 the opportunity for the State, people of South Carolina,
23 to hold a criminal defendant accountable for his conduct.
24 Whenever you find, after considering all the evidence,
25 that it has been proved beyond a reasonable doubt it was

1 your oath that -- when you stood up at the beginning when
2 Ms. Westbury told you to raise your right and you said
3 you will deliver a verdict based on the evidence. That
4 wasn't the exact line, but it was something in older
5 English that meant about the same thing.

6 And that's why a trial is important. It's because
7 you're here to hear the testimony and evidence and render
8 a verdict that is based on the evidence and based on the
9 laws of the State of South Carolina.

10 I think the Judge may have told you at the
11 beginning; somebody said it, but the criminal justice
12 system isn't about punishing your enemies. It's not
13 about rewarding your friends.

14 And that's why at the outset when you were out here
15 for jury selection the Judge stood up and asked you do
16 you know any parties to the case? Do you know anybody
17 from the Solicitor's office? Do you know the defense
18 attorney? Do you know the defendant or witnesses?

19 And the purpose of that is so we can get impartial
20 jurors. And you're here deciding the case solely on the
21 evidence. And it's not on a motion, it's not on
22 friendship, it's not to punish somebody for some five
23 dollars they might have messed you out of a couple of
24 years ago. That's not what -- that's not what the
25 criminal justice system is about. It's about the facts

1 and being impartial. And even if you did know somebody
2 one of the questions was does that fact, would that cause
3 you to be an impartial juror. And if you said yes you
4 couldn't sit on the case.

5 I am going to talk to you about the facts of the
6 case a little bit more, but first I want to talk to you
7 about the charge that the defendant is charged with.

8 The State of South Carolina along with every other
9 state in the United States has a charge that prohibits
10 sexual conduct with four year olds. There is no secret
11 to that. Four year olds can't make up their mind about
12 what type of sexual behavior they want to engage in;
13 that's saved for later on, 16, 18; those ages.

14 But none the less South Carolina has a statute and
15 it says that Criminal Sexual Conduct with a Minor in the
16 First Degree where the victim if under 11 years old is
17 illegal.

18 And the definition of it is simple, and the Judge
19 will charge you more on the law in a few minutes. But
20 the definition of it is simple. It's against the law to
21 engage in sexual battery with a person under the age of
22 11. Period.

23 It doesn't matter whether they consent to it. It
24 doesn't matter whether they wanted it; none of that
25 matters. And the purpose is because a four year old

1 can't make up their mind whether they want it or not.
2 They don't even know what it is. So what is sexual
3 battery? I know Mr. Austin talked to you at the
4 beginning of the trial, sexual battery is just what you
5 think it is.

6 It's any penetration, however slight, into any body
7 orifice. And it includes fellatio, cunnilingus, anal,
8 vaginal penetration. And in this case we're talking
9 about fellatio. We're talking about oral sex on a man;
10 on the defendant Jason Bauman, by a four year old victim.

11 That's Criminal Sexual Conduct in the First Degree.
12 And that's what he is on trial for. That's what the
13 indictment is for. That is what the State has alleged
14 from the outset, and the testimony -- that's what you
15 heard was about that particular charge.

16 Now, let's talk about the facts of the case. And
17 there is one thing for sure I am going to stick to the
18 facts of the case. There are several things that we do
19 know for certain: 1) Minor Bauman is four years old.
20 There is no contraversion in that; she is four years old
21 no question.

22 And there's another thing that we know for sure is
23 that Minor Bauman is not the person on trial here. There
24 has been a lot of time -- Mr. Bischoff spent a lot of
25 time talking about Minor Bauman, the four year old

1 victim. And talked about how mentally challenged she was
2 and tried to demonstrate to you that she was mentally
3 challenged.

4 Well, I submit to you ladies and gentlemen Minor
5 does have some problems. She's got some maybe attention
6 deficit. She's got some other learning problems, but
7 she's catching up. But I also submit to you that that is
8 why you didn't hear from her during the course of this
9 trial.

10 And there was significant time spent by the defense
11 proving that Minor was deficient. Yet for some reason
12 they want you to believe that although she is deficient
13 she was able to make up this story and essentially frame
14 her Uncle Jason all the way to where we are now.

15 That's absolute nonsense. It's not even logical to
16 believe that she is point something percentile in her
17 range of cognitive function yet she is making up the
18 story and making up these actions about going to suck her
19 little brother's pee pee in her words. That doesn't make
20 sense.

21 So what else has the defendant suggested? Well,
22 we've got the part about Minor made all this up because
23 she is mentally challenged. Well, how about none of this
24 must be true because Tara Bauman didn't attend the Be
25 Safe session with Minor There was some testimony to

1 that. How about it must not be true because Minor threw
2 a fit at M-U-S-C? What about it must not be true because
3 some box wasn't checked on the form down at M-U-S-C
4 talking about the Pervasive Developmental Disorder.

5 How about the one where it must not be true because
6 Tara Bauman told me something in the pretrial interview?
7 So whatever she told you must not be true because she
8 told it to me to begin with.

9 What about none of this could have happened because
10 Minor was a breech birth baby? What about it must not be
11 true because Jason Bauman didn't fill out the top of his
12 statement form here? Law enforcement filled out his name
13 and address.

14 Forget about the statement part; just the top he
15 didn't fill out so none of this can be true. And how
16 about the one where none of this can be true because
17 Detective Gebhardt should have used his cell phone to
18 record the interview. I didn't make up this list of
19 stuff. All that stuff came from the stand and I jotted
20 it down as the testimony developed.

21 And I submit to you ladies and gentlemen that every
22 of those was efforts by the defense to distract your
23 attention to say hey, look over here; when the trial was
24 over here. Red herrings thrown out to try to distract
25 you away and say it can't be true because of all these

1 things. Let's talk about why what you heard is what
2 happened in this case. You heard testimony from Tara
3 Bauman. She was giving her two kids a bath and she
4 described to you what happened.

5 She said I was giving them a bath and Minor was in
6 there and little J.B. was in there. And Minor opened
7 her mouth and put her head down towards J.B. lap.
8 And she said, I stopped her and said whoa, what are you
9 doing? I was going to suck his pee pee.

10 Four years old, four years old; and that's what she
11 says to her Mom. And what is Mom's immediate response?
12 Whoa, where did you learn that from? And what did she
13 say? She said, Uncle Jason taught me.

14 There is only one Uncle Jason and it's that man
15 seated right over there [indicates] at the table. Uncle
16 Jason taught her how to perform oral sex. And that's
17 what she was going to show her Mommy in the bathtub with
18 her little two year old brother.

19 About a week later -- she didn't know what to do.
20 This is her family. What do you do when you are in that
21 situation? What do you do? And she did what she thought
22 was right. She went to her family nurse practitioner,
23 somebody that she had a relationship with, somebody that
24 she had a rapport with and she reported that behavior.
25 And that's how the investigation began. And she also

1 testified about the changes in behavior. She testified
2 about the bedwetting, the increased bedwetting. She
3 testified about nightmares, testified about the increased
4 interest in body parts; you know flashing and increased
5 interest in other people's body parts and so forth.

6 She also testified that she was angry when Jason
7 would come around; didn't want to be around Jason. She
8 was angry; kind of a love hate relationship. In fact I
9 think Mr. Bauman actually told police sometimes she liked
10 me and sometimes she hated me. That's what Tara Bauman
11 told you describing Minor conduct.

12 And then we heard from Doctor Allison Foster. Now,
13 why did I put her up? She is an expert in clinical
14 psychology. She's testified over a 100 times and she
15 came up here and told you that the conduct that was
16 exhibited by Minor was conduct that is indicative of
17 someone who has been sexually abused.

18 Now you can't take the bedwetting alone and say oh
19 well, this kid peed the bed a couple of times last week
20 so she must have been sexually abused. That's not what
21 she was testifying to.

22 She said when you put all those things together,
23 especially the conduct in the bathtub, if all those
24 behavioral changes, which manifested to her attempting to
25 perform oral sex on her two year old brother, that was a

1 red flag she termed it. A red flag ---

2 MR. BISCHOFF: --- Your Honor, objection. May we
3 approach?

4 THE COURT: Sure.

5 [Whereupon, an off the record bench conference is
6 held]

7 THE COURT: Ladies and gentlemen, it is going to
8 take me a little while longer to talk about one thing
9 with the attorneys and I am going to have to get y'all
10 again to go back into the jury room again.

11 You cannot talk about the case, okay. Y'all bear
12 with me for just one second. It will just take me a
13 minute and y'all come on back out -- I'll get you back
14 out. You can't talk about the case yet. Thanks.

15 [Whereupon, the jury exits the courtroom at 11:00
16 a.m.]

17 THE COURT: All right. I'm sorry, Mr. Austin and
18 Mr. Hilton, sorry to break up your closing. Mr. Austin,
19 what did you want to put on the record?

20 MR. BISCHOFF: Bischoff, Judge.

21 THE COURT: I mean -- I'm sorry ---

22 MR. BISCHOFF: --- that's okay.

23 THE COURT: I'm sorry Mr. Bischoff. I apologize.

24 MR. BISCHOFF: I think what the Solicitor did just
25 then was he mentioned information that was not in

1 evidence and I think it's highly prejudicial at this
2 stage. The expert that testified, Doctor Foster, never
3 testified that she exhibited or observed or somehow
4 related these symptoms of child sexual abuse to Minor
5 Bauman.

6 And that's the inference that the Solicitor made
7 during his closing argument and I move for a mistrial
8 based on what he ought to know is absolutely
9 impermissible.

10 THE COURT: This was Doctor Foster?

11 MR. BISCHOFF: Yes, sir. Doctor Foster testified
12 that there are certain things that she looks for when
13 analyzing child sex abuse victims or meeting with small
14 children who are allegedly victims of sexual abuse. She
15 never related it to Minor Bauman. She never made that
16 connection and the Solicitor made the connection and I
17 think it's improper.

18 THE COURT: Okay. And Mr. Hilton -- and I
19 apologize. I was working on the charge and so I wasn't
20 listening to what you were actually saying unfortunately
21 and I apologize for that. If you will just tell me what
22 you were saying.

23 MR. HILTON: I was referring to the testimony of
24 Doctor Allison Foster and I said that she testified about
25 the changes in behavior and that behavior along with the

1 bathtub incident would be a red flag of someone who has
2 been sexually abused.

3 THE COURT: Okay.

4 MR. BISCHOFF: And that's not in her report.
5 That's not what her testimony was about.

6 THE COURT: And I understand what you're getting at
7 Mr. Bischoff. My reading of the notes -- I'm trying to
8 look back over my notes. She went from my -- she said
9 she met with Minor and then she went over what the signs
10 of sexual abuse were. Is that correct?

11 MR. HILTON: That's correct.

12 THE COURT: Okay. As far as I know she did not
13 ever use that phrase red flag or anything like that. Do
14 you recall?

15 MR. HILTON: I think she did use the term red flag;
16 that's why I have it in quotes in my notes.

17 THE COURT: Okay --

18 MR. BISCHOFF: --- I think she used the term red
19 flag, but I don't think she related it to Minor Bauman.
20 And that's what the Solicitor just implied.

21 In fact she testified basically in conjunction with
22 her report. And in her report she never says anything
23 about relating these red flags to Minor and how that is
24 somehow indicative of abuse. In fact, she indicates
25 because of Minor young age diagnosis, etcetera,

1 etcetera, there are limits to her capacity to comprehend
2 questions and monitor her responses for source and
3 accuracy.

4 THE COURT: Okay.

5 MR. BISCHOFF: So I think the expert said that I'm
6 not so sure that what the child is saying, the bathtub
7 incident, I can't confirm that that is in any way related
8 to the situation that we're in.

9 And I think the Solicitor knew that and yet he is
10 implying to the jury the expert is up there and is going
11 to somehow say that this child exhibited those red flags
12 that are signs of sexual abuse when he's got no other
13 expert -- he hasn't put any other expert up there.

14 THE COURT: Okay. I'll see y'all in chambers for
15 just one second.

16 MR. BISCHOFF: Okay.

17 THE COURT: We'll be in recess for just a minute.

18 [Whereupon, the court takes a brief recess]

19 THE COURT: This is June 13th, isn't it?

20 MR. BISCHOFF: Yes, sir.

21 THE COURT: That explains some things to me. Mr.
22 Bischoff, I am going to deny your motion for a mistrial.
23 I'm going to allow Mr. Hilton to not correct -- well,
24 correct his statement or clarify his statement so it will
25 more accurately confirm to what the testimony was. Okay.

1 MR. BISCHOFF: Thank you, Judge.

2 THE COURT: And I will note your objection on the
3 record so it will be preserved.

4 MR. BISCHOFF: Yes, sir. Thank you.

5 THE COURT: Go ahead and bring the jury back in.

6 [Whereupon, the jury enters the courtroom at 11:10
7 a.m.]

8 THE COURT: Ladies and gentlemen, thank y'all. The
9 reason we're doing this is to keep you alert and it helps
10 me to stand up and walk around. Mr. Hilton, I apologize
11 for the interruption in your closing. Ladies and
12 gentlemen, if y'all will give him your complete
13 attention. Thank you.

14 MR. HILTON: Thank you ladies and gentlemen. We
15 were talking about Doctor Foster and I may have misspoke.
16 The testimony from Doctor Foster was that hypothetically
17 a four year old victim taking a bath with her two year
18 old brother that tries to perform oral sex on him,
19 hypothetically speaking, who also possesses increased
20 bedwetting, nightmares, interest in body parts, being
21 angry around her uncle, that hypothetically that is
22 indicative of someone who has been sexually abused.

23 And lo and behold, that is what was happening to
24 Minor Lo and behold, she exhibited those same symptoms.
25 Mom says, who taught you this? Uncle Jason. That alone

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1 I submit to you ladies and gentlemen is enough to convict
2 him of Criminal Sexual Conduct in the First Degree. That
3 alone.

4 But that's not where the investigation stopped.
5 They didn't just stop with that and say okay, we've got
6 what we need, that's the end of it. They brought the
7 defendant in for questioning and gave him the opportunity
8 to talk to police and tell his story if he wanted to.

9 And a criminal defendant doesn't have to say
10 anything. And he was well aware of that. He initialed
11 right by number 1, I have the absolute right to remain
12 silent. I do not have to answer any questions or give a
13 statement and this fact cannot be used against me. I can
14 get an attorney and so on and so forth. And y'all will
15 have that back, that's State's exhibit 1, y'all will have
16 it back in your jury room.

17 What does he tell police when he comes in there?
18 And this is the part where Mr. Austin was in his opening
19 he got up and said there is not much we can do to prepare
20 you for this type of case.

21 Because he comes in and says to police, after
22 denying it at first, let's see he met with Detective
23 Gibbons and Detective Gebhardt and Detective Gibbons
24 started questioning him about the incident. And he
25 didn't really want to say anything. He wasn't really

1 making contact -- he wasn't really making a connection
2 with Detective Gibbons. And so based on their training
3 Detective Gebhardt kind of stepped in and took over the
4 interview.

5 And he asked him what do you think about homosexual
6 people? Do you think they are programmed that way or do
7 you think they become that way? And he gave an answer
8 and he said well, what do you think about people who like
9 little kids? Do you think they are born that way or
10 think they become that way.

11 And that line of questioning allowed him to open up
12 and form a rapport with Detective Gebhardt where he began
13 to give a statement. And he started out by saying kids
14 don't always tell the truth. Kids don't always tell the
15 truth. And he said the victim is a really sexual person.

16 He said she probably learned that behavior from
17 school. We're talking about a four year old and oral
18 sex. She didn't learn that behavior from school.

19 Again I apologize for the language but these are his
20 words. It says: She sticks her tongue out and tries to
21 grab his dick. Says sometimes the victim hates him,
22 sometimes the victim likes him.

23 Now remember that's what Ms. Bauman said, Tara
24 Bauman said about Minor He said: The victim is a very
25 attractive little girl. When she sits on my lap it gets

1 me hard. He picks up the victim and holds her under her
2 butt. And then he comes to: In May of this year while
3 sitting on the couch the victim tried to pull my cock out
4 of my pants and I pulled her hands out.

5 And then he goes further, he then admits all right;
6 my penis wasn't in my pants. The victim put her mouth on
7 my cock and it got hard. She put her mouth on his penis
8 and had her hand on it too. This isn't something a four
9 year old learns at school. This is something that man
10 [indicates] taught her.

11 He said it was just the head, just the tip, just for
12 a second; again, minimizing his involvement. And that's
13 not uncommon. It took a lot of will power to make the
14 victim stop. So he knew it was wrong, but he thought it
15 felt pretty good. Those are his words, not mine.

16 And at the end of that interview he ended up writing
17 -- he didn't want to write down that stuff. And who
18 would? I don't even want to say it to you. But he ended
19 up writing an apology letter.

20 And it starts out: I, Jason Allen Bauman, apologize
21 to Minor Bauman for allowing her to grab my penis and put
22 her mouth on it for a second, and it goes on. For
23 allowing her. This is her fault according to him. This
24 is her fault. She did this and he just went along with
25 it. They don't want you to believe that Minor Bauman

1 actually said this stuff to Mom. They don't want you to
2 believe that that actually happened. But how did they
3 get around the defendant's own statement?

4 This is his handwriting. This isn't Minor Bauman's;
5 this isn't Tara Bauman's handwriting. This is Jason
6 Bauman's handwriting. I, Jason Allen Bauman, apologize
7 for allowing her to grab my penis and put her mouth on it
8 for a second.

9 And he goes on to say he's sorry. And I bet he is.
10 I bet he is. What else did Mom testify to? You remember
11 she testified that there was a night she couldn't
12 remember exactly when, but it was before the bathtub
13 incident, and there was a night when she and her husband
14 went on a date and she dropped Minor and J.B. off at
15 Granddad's house, that was the testimony, and that's
16 where Jason lived as well, and he was there.

17 And they got back late, David Bauman and J.B. were
18 in the bedroom asleep and Minor and were Jason were alone
19 on the couch. And why did I put that testimony up for
20 you? Because in his written statement, State's exhibit
21 2, he says when prompted with a question, when did this
22 happen? He said 12 o'clock on Monday on the couch on
23 May 11th, 2010. On the couch. That 12 o'clock wasn't 12
24 o'clock in the afternoon. I think you can reasonably
25 infer that that was 12 o'clock at night. But maybe Tara

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1 Bauman is making all this stuff up too. And finally you
2 heard from a guy named Adam Buhle. You know what they
3 say about you can't pick your family. Well, as
4 prosecutors we don't get to pick our witnesses.

5 I would love to be able to bring up some wrongfully
6 charged school teacher and let her testify or some Sunday
7 School teacher and let her testify about happened. But
8 that's not what we have. We don't get to pick our
9 witnesses.

10 Adam Buhle has had his problems with police for
11 years; Burglary, Grand Larceny, and so on and so forth.
12 But he came in here on his own will; despite what Mr.
13 Bischoff says, there is absolutely no evidence of any
14 kind of deal or anything other than Mr. Bischoff asking
15 him and he completely denied it.

16 He came in here and he said I was in the cell with
17 this guy and this is what he told me. And he ended up
18 writing a statement, and its right here: We were sitting
19 in the room in D-3. Jason Bauman was in there for C-S-C-
20 First.

21 He told me he was in there for stealing cars and I
22 got to know him and he told me. And he didn't know what
23 -- then I told him I knew why he was in there so he told
24 me. He was stupid. He doesn't know why he did it. But
25 at first he told me he just showed her a couple of times

1 just to see what she would do and a while later he had
2 her touch him then he started to touch her. He said he
3 doesn't know why he was doing it. Just, in time he got
4 her to suck his dick and he was telling me he had some
5 Barbie dolls and he put them in her and played with her
6 and she would play with him, and so on and so forth. And
7 you can read this in your jury room.

8 Adam Buhle, on cross-examination Mr. Bischoff said
9 well, you read all of his documents and that's how you
10 learned that stuff and that's why you went to police and
11 that's how you knew; you're trying to make this up
12 against Jason Bauman. No, no, State's exhibit 4, State's
13 exhibit 4 right at the end of the case all the witnesses
14 were done and we introduced a document.

15 And otherwise this document would have absolutely no
16 bearing on the trial except for one thing; a date. A
17 date on the cover letter and a date on the affidavit of
18 service, the certificate of service on the back, that
19 says August 25, 2010.

20 August 25, 2010 it says: Dear Scott, in response to
21 your Rule 5 discovery motion in the above referenced
22 matter I am enclosing herewith a copy of our file. Our
23 file is also open for your inspection. See the discovery
24 gets sent to the attorney and the attorney passes it on
25 to the client. That was August 25th. What is the date of

1 this statement? August 12th. August 12th. The defendant
2 didn't even have his discovery at the time Adam Buhle
3 made this statement. And so how can they sit here and
4 argue to you with a straight face that he made this up
5 because he saw the defendant's discovery when the
6 defendant didn't even have his discovery at the time.

7 Sexual battery, fellatio; oral sex, with a victim
8 under 11. She's four years old. The Judge will tell you
9 again -- again as I said the Judge will tell you more
10 about the law in the case but let me talk to you a second
11 about reasonable doubt.

12 Reasonable doubt is one of those legal concepts that
13 is kind of hard to define, but there are some
14 definitions. And there is one definition that says after
15 considering all of the evidence you still hesitate to act
16 then that is reasonable doubt.

17 But that is a definition of reasonable doubt. Let
18 me tell you why that's not the greatest definition in the
19 world. Because I look both ways before I pull out from a
20 stop sign and still sometimes I hesitate to act.

21 But that doesn't mean that I'm not going to do it.
22 It doesn't mean that I'm not going to do it. You
23 hesitate to act before you buy a house but that doesn't
24 mean that you're not going to do it. There's another
25 definition that says there are very few things we know in

1 life with absolute certainty. And some people say death
2 and taxes. Really death is the only one. Very few
3 things we know in life with absolute certainty. And
4 that's not what the criminal law requires. You don't
5 have to have absolute certainty.

6 If after hearing all the testimony and considering
7 all the evidence you go back to your jury room and you
8 are firmly convinced of the defendant's guilt, then you
9 took an oath at the beginning that you would render a
10 verdict based on the facts presented to you. And the
11 facts of this case I submit to you ladies and gentlemen
12 will leave you firmly convinced of but one verdict; and
13 that's the verdict of guilty.

14 There are two half's to a criminal trial. There is
15 the law and there is the facts. Your half, the fact
16 half, is to answer one question. Did Jason Bauman commit
17 a sexual battery against Minor Bauman? What to do about
18 it if you find him guilty, what to do about it is up to
19 the Judge. That's up to the Judge.

20 But to answer that question of what happened that's
21 up to you. If you don't believe Tara Bauman, if you
22 don't believe what Minor Bauman said to Tara Bauman, if
23 you don't believe the defendant's statement or Detective
24 Gebhardt, if you don't believe Adam Buhle -- and those
25 are or's because like I said you can believe Minor Bauman

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1 and there is enough evidence alone on her testimony
2 through Tara Bauman to convict Jason of Criminal Sexual
3 Conduct.

4 But if you discount all of that stuff, find him not
5 guilty and let him walk out of here; if on the other hand
6 you go back there and you discuss the case and you look
7 at the stuff and you say that I'm firmly convinced of the
8 defendant's guilt, I'm firmly convinced of what he did,
9 and you took oaths to find him guilty and that's what I'm
10 asking you to do.

11 Again, I told you that this was the last time I
12 would get a chance to speak to you. And so Mr. Bischoff
13 is going to get up here now I suppose and talk to you
14 about the facts as he heard them; his version of the
15 facts.

16 Folks you sat through this whole trial just like I
17 did, like Mr. Austin, like Mr. Gebhardt, and just like
18 Mr. Bischoff did. If you heard something different than
19 what he gets up here and tells you, go by what you
20 remember. You heard it. Talk about it when you get back
21 to the jury room. Y'all heard it.

22 But don't let him steer you away from the real issue
23 in this trial. The real issue is not whether Minor
24 Bauman is mentally defective or not. That absolutely has
25 nothing to do with it. In fact, that makes it more

1 likely that this is the truth and not made up. Verdict;
2 it means to speak the truth. And that's all I'm asking
3 you to do is to speak the truth. Thank you ladies and
4 gentlemen.

5 THE COURT: Thank you, Mr. Hilton. Mr. Bischoff?

6 MR. BISCHOFF: Thank you, Your Honor.

7 THE COURT: Yes, sir.

8 CLOSING ARGUMENT BY MR. BISCHOFF:

9 This ought to not be very difficult for me to
10 explain to you guys. I'm not trying to ask you to ignore
11 the testimony that you heard. I'm trying to help you
12 understand exactly what was testified about and what was
13 not testified about.

14 Remember I told you at the beginning that what you
15 don't hear is just as important as what you do hear. I
16 surely hope in the year 2012 that we as a society are not
17 going to convict somebody on their statements alone. And
18 that's essentially what we have here.

19 I'm not picking on Tara Bauman or Minor Bauman. I'm
20 trying to give you an understanding that this is the full
21 picture. No one can distort the reality of the medical
22 documents. That's not able to be manipulated. But what
23 the Solicitor wants you to believe is that somehow that I
24 get up here and my sole purpose is to try and manipulate
25 you into thinking that this mother is making things up or

1 that the daughter is making things up, or that somehow
2 I'm going to try and change the reality. And that's not
3 the case. What I'm trying to let you do is understand
4 that in our society and our criminal justice system
5 people are innocent until proven guilty.

6 And if you want to go back there and convict Jason
7 Bauman for the despicable things that he told the
8 detective or for the despicable things that he tells this
9 guy who has more convictions on his rap sheet than a
10 majority of people that I've been in contact with. And
11 that's fine; you can do that. You have the power to do
12 that.

13 But I hope that you will give me an opportunity to
14 explain to you what I think the situation is and how I
15 think all of the players involved have failed us. Now,
16 the Solicitor was right about one thing and that is that
17 you have to make a decision beyond a reasonable doubt
18 that you think the defendant is guilty.

19 And everything that happens in the courtroom and
20 everything that has happened over the past couple of days
21 has been very calculated. The reason we ask all these
22 questions -- the Solicitor is right at the beginning
23 before the trial even started, is because in our criminal
24 justice system it's important to have fair and impartial
25 jurors who leave all of their preconceived notions at

1 home. And when they step into this courtroom -- you took
2 an oath to say I'm going to make sure that the State
3 proves that man, the defendant, guilty beyond all
4 reasonable doubt. And again, if you can live with that
5 based on his statements then that's your decision. There
6 is no special skill needed.

7 But you did take an oath to listen to all the
8 evidence and then make up your mind not to make a
9 decision based on the charge alone; based on the fact
10 that it's one of the most serious crimes in the State of
11 South Carolina based on the fact that if what they are
12 charging him with is true, then he deserves to go to
13 prison.

14 But how do we know whether or not it happened? How
15 do we as a group individually and collectively, you'll be
16 able to deliberate back there, how do we make sure that
17 this absolutely happened and that we are firmly
18 convinced. And you do that by you listening to the
19 witnesses.

20 Or let's start with what you didn't hear. You
21 didn't hear one single expert testify that they met with
22 Minor Bauman and that she told them Uncle Jason made me
23 suck his pee pee. Not one. They had access to multiple
24 experts. We know that the way this whole thing got
25 started is because Tara Bauman saw her child act

1 | inappropriately. Didn't she testify she was acting
2 | inappropriately before the bathtub incident? Did she
3 | testify she was acting inappropriately after the bathtub
4 | incident?

5 | I'm not saying that Tara Bauman came up here and
6 | lied about what happened. But what I am saying is that
7 | when you've got a mother who is giving her child a bath
8 | and her child has had so many struggles leading up to
9 | that point that what she hears puts her in a very
10 | cautious position.

11 | And then she goes and tells a nurse, who you heard
12 | testify. She looks to her and says look, help me out
13 | here. You heard her testify. I don't know what's going
14 | on. My daughter did something that I think is
15 | inappropriate and she made a comment to me in response to
16 | where did you learn that. Not who did that to you but
17 | where did you learn that. And she says Uncle Jason.

18 | And the nurse is a mandatory reporter; just like
19 | teachers. Anytime there is an allegation, not a founded
20 | allegation, not an absolute truth, not when someone comes
21 | and tells you something and says I know this happened,
22 | but any suspicion whatsoever of child abuse or neglect
23 | then Amy Young is required to report that. And so what
24 | does she do? She immediately calls her husband who works
25 | for the Summerville Police Department, just as Detective

1 Gebhardt, and they start the whole process. They start
2 the investigation. Where is the lead detective?
3 Shouldn't the State have to prove to y'all that the lead
4 detective investigates and met with the child and looked
5 over the medical records and followed up with the
6 forensic interviewers and followed up at M-U-S-C?

7 But they didn't do that. You didn't hear from the
8 lead detective. Why? Why didn't they put the lead
9 detective up there? I presume it's because she would
10 have nothing positive to offer to their case. But what
11 you hear is that somehow she failed to essentially do an
12 investigation after the confession; which is basically
13 what happened.

14 Why didn't they put that detective up there to tell
15 you what she did? They bring in the closer, right? They
16 know they've got to get a statement and they know they
17 don't have a whole lot to work with, they know at that
18 time when they're interviewing that there has been no
19 disclosure at the forensic interview, and so they need a
20 statement. And they get it from a kid who has got
21 cognitive defects.

22 You heard Tara Bauman talk about her brother-in-law.
23 And how did he go about getting that confession? He had
24 no knowledge of the child involved. He had no knowledge
25 of the defendant. He didn't even talk with Detective

1 Gibbons prior to interviewing the gentleman other than
2 briefly about what the investigation was about. Well,
3 what's the investigation about? There is an allegation
4 of oral sex by a young child on her uncle. And that's
5 the statement that they got.

6 They bring in the closer to get the statement they
7 need. And this idea that somehow it can't be video
8 recorded? Come on, give me a break right? Wouldn't you
9 like to see what the interaction was like so you can be
10 firmly convinced? Wouldn't you like to see how my client
11 acted? Wouldn't you like to see the questions that were
12 asked? Wouldn't you like to see what the nature was of
13 these disclosures; these despicable comments?

14 I'm not asking you to completely ignore those
15 comments. But he's not on trial for hate speech. He's
16 not on trial for being someone who makes comments that
17 are incredibly inappropriate. He's on trial because the
18 State tells you through an indictment that he is -- that
19 he has made Minor Bauman perform oral sex on him.

20 Why didn't we hear from the forensic interviewer?
21 We know that there was no disclosure. Mom admits that.
22 Why didn't we hear from the expert? If she didn't
23 disclose then there has got to be a reason for that. And
24 if the State wants to somehow match that up with look,
25 children who are in this situation who could be possible

1 victims of sexual assault they may react differently.
2 But you can't have it both ways. And the State is
3 manipulating you into thinking that that is possible.
4 They want you to say oh well look she's a bedwetter after
5 the bathtub incident.

6 You heard me cross-examine Mom. I'm not trying to
7 disparage Mom. But I'm trying to point out that there
8 are a number of things that Mom did not realize about her
9 child that when you get this child who acts
10 inappropriately and you look to experts to help you and
11 they don't help you then you start to think I want
12 answers.

13 And I'm not getting them from the State. I'm not
14 getting them from the quote unquote experts. Why didn't
15 they tell you? Why didn't they tell you why the child
16 said no? When the child was asked did Uncle Jason do
17 this to you? No. Why didn't they ---

18 MR. HILTON: --- objection, Your Honor. None of
19 that is in evidence.

20 MR. BISCHOFF: The Mom testified there was no
21 disclosure.

22 THE COURT: If you will just phrase it as no
23 disclosure, not that the child said that ---

24 MR. BISCHOFF: --- why don't they bring in the
25 expert who wrote the report that said in there no

1 disclosure? Why don't they do that? I feel absolutely
2 terrible for Tara Bauman and for this entire family. But
3 did you notice how even Tara was not aware that her child
4 had been diagnosed with something that is in the autism
5 spectrum.

6 Doctor Foster, the expert, testified to that. I
7 don't have to explain to you what autism is. I think all
8 of you know. Children who have autism are in their own
9 world, right? And if the State's got such a strong case
10 to leave you firmly convinced why don't you hear from the
11 child?

12 Why don't you hear from anybody who has interviewed
13 the child? Not one person got up there and told you they
14 had interviewed the child. Why? You had Doctor Foster
15 tell you that the child was competent. Why did we go
16 through this process of having a child evaluated to
17 determine whether or not she is competent to testify if
18 the State is not going to put her up?

19 Why didn't we hear from the M-U-S-C expert, Karlayne
20 Tool who did an evaluation on the child? No findings
21 maybe? They thought it would hurt their case? They got
22 a guy who says pretty awful rotten things and they want
23 to basically manipulate you into believing that means he
24 definitely did what he is accused of doing. And then
25 you've got Mom talking about where there was this movie

1 night, right? That's when it had to have happened.

2 Well, if you look at the indictment, you'll be able to
3 take that to the back, if they know its movie night and
4 they know it's Monday on the couch -- on May 11th; which
5 May 11th is a Tuesday.

6 If they know that that is when it happened why do
7 they have this range? Why do they have Detective Gibbons
8 who is the lead investigator who knows more about the
9 case than anybody else, talk to my client for five
10 minutes and then hand it -- and he denies -- clearly you
11 heard the closer Detective Gebhardt.

12 The kid was denying. We feel like that means that
13 Detective Gibbons wasn't getting anywhere and so I came
14 in to get that statement; to get that confession. And
15 that's what it is. You can look at the way my client
16 writes his statement out. You can look at the way his
17 word choices, no punctuation, misspellings, and determine
18 for yourself how disabled he may be.

19 And then the -- what the State wants you to believe
20 is that their entire case is going to basically be
21 supported by this guy, this Adam Buhle, who has been
22 convicted of multiple offenses who denies that he got a
23 deal; even though he says yes, okay I got three years.
24 He admits he got three years and admits that he was
25 facing more times than that but says he didn't get a

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1 deal. And then he somehow wants you to believe, the
2 State does -- what they are doing is yes, okay, the
3 client did not have the full discovery packet. But you
4 know what he did have? He had a copy of his statement.

5 He signed I have received a copy of this statement.
6 Where else is he going to put those belongings? People
7 in jail, you heard Adam Buhle testify about it, they keep
8 their belongings, their paperwork underneath their bed.
9 Clothes, shoes, etcetera are put in a locker.

10 The State is manipulating you again. They are
11 trying to make you think that just because you got this
12 document that shows that they didn't get discovery prior
13 to the statement that you are going to ignore the fact
14 that right here, I have received a copy of this
15 statement. Jason Bauman went straight to jail. Got
16 denied a bond even though the detective told him he was
17 there for a bond hearing. It wasn't going to happen. He
18 had a hearing but he wasn't entitled to a bond.

19 So they want you to ignore that. And if my client
20 is going to run his mouth to a detective what do you
21 think he is going to do on the defensive in jail when
22 he's got people that probably could handle him. He's a
23 bigger kid but he's not going to be able to handle
24 himself. Surely their case does not depend on Adam Buhle
25 corroborating my client's statement? Surely they've got

1 something else, right? I mean its right there;
2 everything. They've got all the resources that they need
3 and yet they don't put up any expert. They don't put up
4 the lead detective. Why not? That why, if you're not
5 able to answer that why, that's the doubt that is going
6 to cause you to say I took that oath. I'm not sure what
7 happened. I don't know what happened.

8 But I can't -- I cannot be firmly convinced after
9 taking that oath and listening to the charge of the judge
10 I can't take that oath and say that he did this beyond a
11 reasonable doubt. And it may pain me to make that
12 decision but I've not been firmly convinced. I don't
13 know why these experts didn't get up here and tell you
14 the child's situation:

15 You heard also from detective -- or from Doctor
16 Foster that the child engaged in this imaginative content
17 or this imaginative communication. If the expert, Doctor
18 Foster, is going to get up there and testify about the
19 child's situation why doesn't she tell you that not only
20 did I see -- not only do we typically see these
21 particular behavioral characteristics in children, she
22 didn't relate it. And that's why I got up and objected.
23 There was no relationship made by Doctor Foster between
24 these clues, these red flags, and the child's behavior.
25 But the State is trying to deceive you into believing

1 that that is the case. They thought I wasn't paying
2 attention. I have a duty to represent my client and
3 defend him because the State requires -- the State is
4 required to prove him guilty beyond a reasonable doubt.

5 And that's what I'm trying to do. I'm trying to
6 explain this is how the evidence was presented. The
7 State is not giving you the full picture. He wants you
8 to think Mom testified about all these changes in the
9 child. But you heard Mom, we went over the reports. The
10 child had these behaviors prior to the bathtub incident.
11 It's documented.

12 So how is the State going to look you in the eye and
13 tell you these things were exhibited by the child? This
14 child is having trouble and it's after the bathtub
15 incident. But yet they ignore the fact that the Mom
16 testified that Minor is doing well. She has made
17 significant progress.

18 She is no longer diagnosed with P-D-D-N-O-S. She
19 has improved in school. How can they have it both ways?
20 How can they say that this child has been through a lot
21 and she has been abused but yet ignore the fact that she
22 is improving? They can't have it both ways; y'all know
23 better. And if that kind of behavior or that kind of
24 improvement is typical then where is the expert to tell
25 you guys that, to leave you firmly convinced? Not here.

1 They weren't here because they don't have it. I'm not
2 trying to tell you again that the mother lied. That's
3 not what I'm saying. I think -- I believe that that Mom
4 perceived something that she thought was inappropriate.

5 Whether or not the discussion was exactly spot on
6 with her questioning and the child's responses -- you
7 know I'm not asking you to say that the mother is a liar.
8 But what I am asking you to do is to listen to Mom when
9 she says I didn't know what was going on. And I looked
10 to the experts.

11 And the experts aren't telling you that this is what
12 happened. The child who is competent is not telling you
13 what happened. You've got to make the State prove their
14 case. You've got to because you took the oath. And the
15 State wants to talk about why I hesitate to turn -- or to
16 pull out from the stop sign and I look both ways;
17 mischaracterization.

18 In our society you have to prove defendants;
19 everybody, it doesn't matter if you're poor, rich, black,
20 white, Asian, it does not matter. If you are a citizen
21 of this country then you are entitled to when you're
22 charged with a crime, when they bring an allegation
23 they've got to prove you guilty beyond all reasonable
24 doubt. That's a right that everybody enjoys. And I hope
25 that you understand that that's more than checking left

1 and right before you pull past the stop sign. Ladies and
2 gentlemen, I've been over with you -- I think just
3 briefly I want to remind you exactly what the child was
4 diagnosed with; and the Mom talked about this.

5 The record here from Louisiana, Minor is bladder
6 trained but sometimes has accidents at night. She was
7 having accidents before. We know about the cognitive
8 defect of point four. And this was a year before the
9 bathtub incident. The child is delayed. The child --
10 who knows what the child was thinking when she made those
11 statements.

12 But if everything that the child has experienced
13 afterwards what is contemporaneous with this bathtub
14 incident, she has met with the experts who know it and
15 they didn't testify. And I can't believe that you're
16 going to convict a gentleman on his statements. Make the
17 State prove their case. Do what is right based on his
18 rights as a criminal defendant and find him not guilty.
19 Thank you.

20 THE COURT: Thank you, Mr. Bischoff. All right.
21 Ladies and gentlemen, y'all have listened carefully and
22 attentively to the arguments of the attorneys and I
23 appreciate that. But they have been lengthy as they
24 should be because they had a lot to go over with you.
25 But what I am going to do now is I am going to take about

1 a ten minute break and allow y'all to stretch your legs,
2 or go to the restroom. And then when you come back I
3 will charge you with the law and go over the verdict form
4 with you.

5 Again, you cannot start discussing the case yet.
6 I'm going to let y'all go back in the jury room for a
7 minute and then come right on back out and I'll charge
8 you with the law. Thank y'all very much.

9 [Whereupon, the jury exits the courtroom at 11:47
10 a.m.]

11 THE COURT: Do y'all want to go over the charges
12 back in chambers or do y'all want to do it right here?

13 MR. BISCHOFF: Yes, sir if that's okay with you to
14 go back in chambers?

15 THE COURT: Okay. Y'all come on back.

16 [Whereupon, the court holds an off the record
17 conference with counsel in chambers]

18 THE COURT: Mr. Bischoff, do you have a copy of
19 this motion that you want -- that I marked as a court's
20 exhibit ---

21 MR. BISCHOFF: --- Judge, actually I do ---

22 THE COURT: --- is this it?

23 MR. BISCHOFF: That may be the only copy I have.

24 THE COURT: That's okay -- I'm going to get ---

25 MR. BISCHOFF: --- I need to file the jailhouse

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1 informant...

2 THE COURT: I was just going to make that a court's
3 exhibit and that way we'll have it in the record.

4 MR. BISCHOFF: Perfect. Thank you.

5 MR. HILTON: We didn't agree on that jailhouse ---

6 MR. BISCHOFF: --- right, right. We did not ---

7 THE COURT: --- no, I'm just marking it as an
8 exhibit so we'll have something in the record and I won't
9 go into a whole lot...

10 [Whereupon, Court's exhibit number 2 is marked by
11 the court reporter]

12 [Whereupon, Court's exhibit number 2 is entered into
13 evidence by the court]

14 THE COURT: For the record Mr. Bischoff, you were
15 kind enough to submit a motion requesting a special jury
16 instruction on the creditability of jailhouse informants.
17 I marked it as the Court's exhibit number 2.

18 And I have looked it over and I am going to decline
19 to give that charge. But I wanted to preserve this on
20 the record so that you would -- so that my -- your
21 objection to my failure to charge this would be preserved
22 on the record.

23 MR. BISCHOFF: Thank you, Your Honor.

24 THE COURT: And I've got your memorandum in the
25 record. Now other than that just for the record I have

1 reviewed the jury charge with both the State and the
2 defense. And y'all have gone over my charge and y'all
3 are in agreement with my charge, is that correct Mr.
4 Hilton?

5 MR. HILTON: We talked about several things. I
6 just wanted to ask was creditability of witnesses in the
7 general charge?

8 THE COURT: It is.

9 MR. HILTON: Okay.

10 THE COURT: And Mr. Bischoff, other than my failure
11 to charge on that creditability the other things in the
12 charge you were fine with and I added that -- with the
13 agreement of the State we added that additional jury
14 charge on the use of the defendant's statement to this
15 charge -- to my general charge. Is that correct?

16 MR. BISCHOFF: That's correct, Your Honor.

17 THE COURT: Okay. And then finally y'all have
18 both reviewed the verdict form and no issues with the
19 verdict form, is that correct? Mr. Hilton?

20 MR. HILTON: None from the State.

21 MR. BISCHOFF: None from the defense.

22 THE COURT: All right. Then we'll go ahead and
23 bring the jury on out. Thank y'all.

24 [Whereupon, the jury enters the courtroom at 12:08
25 p.m.]

1 THE COURT: All right ladies and gentlemen, we are
2 now getting ready to go through the final part of this
3 trial process and that's when I charge you on the law.

4 Again, just so you will remember after I've charged
5 you with the law I'm going to excuse y'all to go back
6 into the jury room. I will go over my charges with the
7 attorneys and make sure I didn't leave anything out or
8 misspeak.

9 If I didn't then I will send the verdict form back
10 into the room with you along with the exhibits and you
11 can begin your deliberations. Now, it is now a little
12 after 12 and I think y'all are aware -- or if you're not
13 aware the County in addition to the huge sums of money
14 you are paid to be jurors is going to provide you with a
15 free lunch.

16 Now, when you are ordering lunch or eating lunch or
17 like that you will not be discussing this case. That's
18 break time. You know how your Momma has told you you
19 can't talk with your mouth full; you're not going to
20 discuss this case while eating lunch. When the food
21 comes and y'all are getting ready to start if you've
22 already begun deliberations before the food comes when
23 y'all take that break to eat you do not discuss the case
24 while you're eating. And as soon as everybody is done
25 you go back and you can then resume your deliberations.

1 CHARGE OF THE COURT

2 THE COURT: Y'all have heard all the evidence and
3 you've heard the closing arguments. It is now my turn to
4 tell you what the law is in this case. And as you recall
5 this is the indictment [indicates]. It charges the
6 defendant with Criminal Sexual Conduct with a Minor in
7 the First Degree.

8 The fact that the defendant was arrested, charged,
9 and indicted in this case is not evidence and cannot be
10 considered by you as evidence of guilt in this case. Nor
11 does it create any presumption or inference of guilt.
12 The indictment is simply the formal, written instrument
13 which contains the charge made against the defendant. It
14 is the formal document, which brings this case to court.

15 The defendant has pled not guilty to this indictment
16 and that plea puts the burden on the State to prove the
17 defendant guilty beyond a reasonable doubt. A person
18 charged with committing a criminal offense in South
19 Carolina is never required to prove themselves innocent.

20 I charge you that it is a cardinal rule of the law
21 that the defendant in a criminal trial no matter how
22 serious the charge will always be presumed to be innocent
23 of the crime for which the indictment was issued unless
24 guilt has been proven by evidence satisfying you, the
25 jury, of that guilt beyond a reasonable doubt. The

1 presumption of innocence does not end when you begin your
2 deliberation, but it accompanies the defendant throughout
3 the trial until you reach a verdict of guilt based on
4 evidence satisfying you of that guilt beyond a reasonable
5 doubt.

6 The presumption of innocence is like a robe of
7 righteousness placed about the shoulders of the
8 defendant, which remains with the defendant until it has
9 been stripped from him by evidence satisfying you of the
10 defendant's guilt beyond a reasonable doubt.

11 Presumption of innocence is not a mere legal theory.
12 It is not just a legal phrase. It is a real and
13 substantial right to which every defendant is entitled
14 unless you, the jury, are satisfied from the evidence of
15 the defendants -- if you are satisfied from the evidence
16 of the defendant's guilt beyond a reasonable doubt.

17 What is reasonable doubt in the law? A reasonable
18 doubt is the kind of doubt that would cause a reasonable
19 person to hesitate to act. The State has the burden of
20 proving the defendant guilty beyond a reasonable doubt.

21 Some of you may have served as jurors in civil cases
22 where you were told it is only necessary to prove that a
23 fact is more likely true than not true; such as by the
24 greater weight or preponderance of the evidence. In
25 criminal cases the State's proof must be more powerful

1 than that. It must be beyond a reasonable doubt. Proof
2 beyond a reasonable doubt is proof that leaves you firmly
3 convinced of the defendant's guilt. There are very few
4 things in this world that we know with absolute
5 certainty. And in criminal cases the law does not
6 require proof that overcomes every possible doubt.

7 If based on your consideration of the evidence you
8 are firmly convinced that the defendant is guilty of the
9 crime charged you must find the defendant guilty. If on
10 the other hand you think that there is a real possibility
11 that the defendant is not guilty you must give the
12 defendant the benefit of the doubt and find him not
13 guilty.

14 In order to establish criminal liability criminal
15 intent is required. For example, the mental State
16 required to be proven by the State for a particular crime
17 like the purpose, intent, knowledge, recklessness, or
18 criminal negligence. Criminal intent must be proven by
19 the State beyond a reasonable doubt.

20 Criminal intent is always a matter that must be
21 determined by the jury from the circumstances surrounding
22 the situation. There is no way to prove intent to a
23 mathematical certainty. There is no way medical science
24 can dissect a person's brain and determine what the
25 person had in mind. So the law says that criminal intent

1 may be inferred from the circumstances shown to have
2 existed. To make a determination of whether or not the
3 element requiring intent was present it is not necessary
4 to establish intent by direct and positive evidence.
5 Intent may be established by inference in the same way as
6 any other fact by taking into consideration the acts of
7 the parties and all the facts and circumstances of the
8 case.

9 Criminal intent is a mental state; a conscious
10 wrongdoing. It is up to you to determine what the
11 defendant intended to do based on the circumstances shown
12 to have existed. Criminal intent can arise from an
13 action or from a failure to act. It may arise from
14 negligence, recklessness or indifference to duty or to
15 consequences that is considered by the law to be the
16 equivalent of criminal intent.

17 During the trial you and I have certain duties to
18 perform. As the trial judge it is my responsibility to
19 preside over the trial of the case and to rule on the
20 admissibility of evidence offered during this trial. You
21 are to consider only the evidence before you. You are to
22 consider only the testimony which has been presented from
23 this witness stand right here [indicates] and the
24 exhibits which have been made a part of the record in
25 this case. In every case the jury is the sole and

1 exclusive judge of the facts. A trial judge cannot kind
2 -- or make any statement about the facts in a case.
3 Since you are the sole judges of the facts do not think
4 by anything I have said during the trial that I have an
5 opinion about the facts in this case. The law does not
6 allow me to have an opinion about the facts and I do not
7 have one.

8 There are two types of evidence generally presented
9 during a trial; direct evidence and circumstantial
10 evidence. Direct evidence is the testimony of a person
11 who claims to have actual knowledge of a fact, such as an
12 eyewitness. It is evidence which immediately establishes
13 the main fact to be proved.

14 Circumstantial evidence is proof of a chain of facts
15 and circumstances indicating the existence of a fact. It
16 is evidence which immediately establishes collateral
17 facts from which the main fact may be inferred.

18 Circumstantial evidence is based on inference and
19 not on personal knowledge or observation. To determine
20 the facts in this case you will have to evaluate the
21 creditability that means the believability of each
22 witness. Some of the things you may consider as you
23 decide whether or not to believe a witness's testimony
24 about a particular matter include what was the manner and
25 appearance of the witness who testified. Was he or she

1 straightforward or hesitant in answering? Was the
2 testimony of a witness consistent or inconsistent? How
3 did the witness come to know the facts that he or she
4 testified to? What was his ability to know these facts?

5 Is there some reason a witness would want to give
6 testimony which would help or hurt one side or the other?
7 In other words was the witness biased or prejudiced. Was
8 the testimony of a witness strengthened or weakened by
9 other testimony or evidence.

10 Throughout this process you have but one objective;
11 to seek the truth regardless of its source. The rules of
12 evidence ordinarily do not permit witnesses to testify to
13 opinions or conclusions.

14 An exception to this rule exists for witnesses we
15 call expert witnesses. A witness who by education and
16 experience has become expert at some art, science, or
17 profession may give an opinion as to the subject the
18 witness claims to be an expert in and may also give the
19 reasons for the opinion.

20 You should consider an expert opinion like any other
21 evidence and give it the weight you think it deserves.
22 If you decide that an expert witness's opinion is not
23 based on sufficient education and experience or if you
24 decide that the reasons given in support of the opinion
25 are not sound or that the opinion is outweighed by other

1 evidence, you may disregard the opinion entirely. An
2 expert witness's testimony is to be given no greater
3 weight than that of other witnesses simply because the
4 witness is an expert and you do not have to accept an
5 expert's opinion even though it is uncontradicted.

6 A statement alleged to have been made by the
7 defendant has been admitted into evidence in this case.
8 While the court has determined that the statement is
9 admissible I instruct you that you make the ultimate
10 decision of whether or not the defendant made the
11 statement.

12 If the defendant did make the statement you must
13 determine whether the statement was made by the defendant
14 voluntarily and of his own free will. This means the
15 statement was not caused by pressure, force, fear,
16 threats, coercion or intimidation or by hope or a promise
17 of leniency or a reward of any kind.

18 In determining whether the statement was voluntary
19 you should consider both the characteristics of the
20 defendant and the details of the questioning. Some of
21 the factors you must consider are the age of the
22 defendant, the defendant's education or lack of
23 education, the defendant's mental ability or capacity,
24 the defendant's I.Q. or intelligence, the defendant's
25 background and environment, the place and length of

1 detention, the nature of the questioning, and the advise
2 or lack thereof to the defendant of his constitutional
3 rights including but not limited to the right to remain
4 silent; that any statement could be used against him in a
5 court of law, the right to have a lawyer present, and
6 that if he could not afford a lawyer a lawyer would be
7 appointed to represent him without any cost, and that he
8 could stop making a statement at any time.

9 You must carefully consider all of the surrounding
10 circumstances before you give any weight to an alleged
11 statement. The State has the burden of proving beyond a
12 reasonable doubt that the alleged statement was
13 voluntary. If you determine that it was, you may give
14 the statement any further consideration that you deem
15 proper.

16 You must decide what weight, if any, should be given
17 to the alleged statement. If you determine the alleged
18 statement is not the free and voluntary statement of the
19 defendant, you should not consider the statement at all.

20 Ladies and gentlemen of the jury there has been
21 admitted into evidence a statement that Mr. Bauman gave
22 to the police. Before you may consider this statement as
23 evidence for any purpose you must find that the
24 prosecution has corroborated Mr. Bauman's statement
25 beyond a reasonable doubt because Mr. Bauman's statement

1 alone uncorroborated by other evidence will not support a
2 finding of guilt. I further instruct you and emphasize
3 that the fact that the defendant did not testify is not a
4 factor to be considered by you in any way in your
5 deliberation and in your consideration on the question of
6 the guilt or innocence of the defendant. It must not be
7 considered by you in any manner whatsoever.

8 A defendant has a constitutional right to remain
9 silent. And the assertion of this right must not be
10 considered by you in your deliberations. I repeat, under
11 your oath you are to draw no conclusion whatsoever from
12 the fact that the defendant in this case did not testify.

13 The fact that this defendant did not testify should
14 not even be discussed in the jury room. The burden of
15 proof as I have stated to you is on the State. The
16 defendant is not required to prove his innocence. The
17 burden of proof remains on the State to prove guilt
18 beyond a reasonable doubt.

19 The defendant is charged with Criminal Sexual
20 Conduct with a Minor in the First Degree. The State must
21 prove beyond a reasonable doubt that the defendant
22 engaged in a sexual battery with the victim. A sexual
23 battery is sexual intercourse, cunnilingus, fellatio,
24 anal intercourse, or any intrusion however slight of any
25 part of a person's body or any object into the genital or

1 anal openings of another person's body except when the
2 intrusion is accomplished for medically recognized
3 treatment or diagnostic purposes. The State must then
4 prove beyond a reasonable doubt that the victim was less
5 than eleven years old at the time of the sexual battery.

6 Consent, willingness, indifference, or ignorance on
7 the part of the minor, if any, as to what was taking
8 place does not in any way effect the charge of Criminal
9 Sexual Conduct with a Minor because an unmarried woman
10 under the age of 14 cannot legally consent to sexual
11 intercourse.

12 I have declared the law to you through these
13 instructions to help guide you to a just and lawful
14 verdict. Whether some of these instructions will apply
15 will depend upon what you find to be the facts. The fact
16 that I have instructed you on various subjects in this
17 case must not be taken as indicating an opinion of this
18 court as to what you should find to be the facts or to
19 which party is entitled to your verdict.

20 Your verdict must represent the considered judgment
21 of each juror. In order to return a verdict it is
22 necessary that each one of you agree. Your verdict must
23 be unanimous. All twelve of you must agree on this
24 verdict. Your verdict cannot be based on sympathy,
25 passion, prejudice, emotion, or any other consideration

1 not in evidence in this case. Remember you are not
2 partisans favoring one party over another. You are the
3 judges of the facts and your sole interest is to seek the
4 truth from the evidence that has been presented to you in
5 this case.

6 Now Madame Forelady, I told you I was going to go
7 over the verdict form with you and that's what I am going
8 to do now. Okay, this is the verdict form. It has the
9 heading up here [indicates], it has the indictment
10 number, it has the State versus the defendant; it's
11 labeled verdict form.

12 The directions are please circle the appropriate
13 verdict below and follow the accompanied instructions
14 carefully. You have one question to decide. We, the
15 jury, unanimously -- again you have to be unanimous in
16 your decision -- find the defendant as to the charge of
17 Criminal Sexual Conduct with a Minor First Degree and
18 your options are guilty or not guilty.

19 Once you have decided you will sign as presiding
20 juror and you will date it. And I told you I'm not going
21 to give this to you right now. As I told you before I am
22 going to go over my charges with the attorneys. If I
23 don't need to clarify anything or add anything to them,
24 then this verdict form and the evidence will go back into
25 the jury room and you can begin your deliberations.

The State v Jason Bauman (2010-GS-18-1144)

1 Otherwise, I will bring you back out here. We may put up
2 a clarification we have to make, and then send you back
3 so you can begin your deliberations at that time. Y'all
4 have been very attentive. I know the attorneys, all the
5 parties, the defendant, the State; they all appreciate
6 how attentive y'all have been.

7 So if y'all will just bear with me just for another
8 minute I'm going to let y'all go back into the jury room
9 and then see where we are. Thank y'all very much.

10 [Whereupon, the jury exits the courtroom at 12:27
11 p.m.]

12 THE COURT: All right. Mr. Hilton, anything
13 regarding the charge?

14 MR. HILTON: Nothing from the State, Your Honor.

15 THE COURT: Mr. Bischoff?

16 MR. BISCHOFF: No, Your Honor. Nothing from the
17 defense.

18 THE COURT: All right. If y'all would come down
19 here and make sure we've got all the exhibits straight,
20 and then I'm going to send the verdict form back there
21 with the exhibits and they can begin their deliberations.

22 [Whereupon, counsel reviews the exhibits]

23 MR. BISCHOFF: Judge, I need to put on the record
24 renew all previous motions and -- I don't know if I do or
25 not. I don't believe I do.

The State v Jason Bauman (2010-GS-18-1144)

1 THE COURT: Well, what ---

2 MR. BISCHOFF: --- I think that's...

3 THE COURT: I'm going to go ahead and let the
4 alternates go. Do you want to put the motion on first?

5 MR. BISCHOFF: Well, I just worry if something
6 would happen during lunch ---

7 THE COURT: --- okay ---

8 MR. BISCHOFF: --- I don't know -- as far as the
9 alternates are concerned letting them go at this point --
10 because they're not supposed to deliberate before lunch,
11 right?

12 THE COURT: They haven't gotten their food yet.
13 They are going to start their deliberations.

14 MR. BISCHOFF: Oh, they're going to start now. I'm
15 sorry. I didn't hear that part.

16 THE COURT: Okay. Let's go ahead and bring them
17 on out. Just the alternates.

18 [Whereupon, the alternate jurors enter the courtroom
19 at 12:27]

20 THE COURT: I just wanted to tell y'all thank you
21 for being willing to serve as alternates. Y'all were
22 attentive during the whole trial. But because we're
23 ready to have the matter go to the jury and since y'all
24 are alternates y'all don't have to take part in it. Your
25 services are not needed. Y'all are excused. Y'all can

The State v Jason Bauman (2010-GS-18-1144)

1 go back to work or whatever y'all got to do. The other
2 good news is as I -- you probably don't know but we're
3 not doing another trial so you have done your jury duty.

4 JUROR: For the week?

5 THE COURT: For the week.

6 JUROR: Thank you.

7 THE COURT: Okay. Thank y'all very much.

8 [Whereupon, the alternate jurors are dismissed and
9 exit the courtroom]

10 THE COURT: All right. Mr. Bischoff?

11 MR. BISCHOFF: Yes, sir. Just on the record I want
12 to renew all prior motions and objections.

13 THE COURT: You can go ahead and take this back.
14 They can begin deliberations and remind them to stop when
15 the food gets here.

16 [Whereupon, jury deliberation begins at 12:31 p.m.]

17 THE COURT: Mr. Bischoff, I'm noting on the record
18 that we are renewing all the objections that you made
19 during the trial -- the motions that you made during the
20 trial at the conclusion of the State's case and your
21 motion regarding the charges. I think that included
22 everything?

23 MR. BISCHOFF: I think so.

24 THE COURT: Or you hope so?

25 MR. BISCHOFF: We're trying to preserve the record

1 here.

2 THE COURT: The intention is that we are preserving
3 everything on the record.

4 MR. BISCHOFF: Correct.

5 THE COURT: Thank you, sir. And I'm ruling the
6 same way I did.

7 MR. BISCHOFF: Yes, sir.

8 THE COURT: Okay. Thank you sir, I appreciate it.
9 We'll be in recess. Thank y'all.

10 [Whereupon, court is in recess]

11 THE COURT: I want to get this marked as another
12 court's exhibit. It's Doctor Schwartz-Watts evaluation.

13 [Whereupon, court's exhibit number 3 is marked by
14 the court reporter]

15 [Whereupon, court's exhibit number 3 is entered into
16 evidence by the court]

17 THE COURT: Mr. Hilton, is the State ready to
18 proceed?

19 MR. HILTON: We are, Your Honor.

20 THE COURT: Mr. Bischoff?

21 MR. BISCHOFF: Judge, I've tried to locate my
22 client's father and have not been able to locate him. I
23 would ask the court to defer sentencing obviously until
24 he gets here.

25 THE COURT: Okay. I just want to get the ---

The State v Jason Bauman (2010-GS-18-1144)

1 MR. BISCHOFF: --- but in order to not make the
2 jury wait anymore ---

3 THE COURT: --- right ---

4 MR. BISCHOFF: --- we've given him I believe over
5 an hour to get back and so I think it's appropriate to
6 read the verdict.

7 THE COURT: And I'll give him a few -- I'll wait a
8 little while for sentencing.

9 MR. BISCHOFF: Yes, sir.

10 THE COURT: But I won't wait ---

11 MR. BISCHOFF: --- I understand.

12 THE COURT: All right.

13 MR. BISCHOFF: Thank you, Judge.

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

15 [Whereupon, the jury enters the courtroom at 1:42
16 p.m.]

17 THE COURT: Ladies and gentlemen, I apologize for
18 making y'all wait. We had to gather some people together
19 before we could reconvene, so that was the reason for the
20 delay. Madame Forelady, it's my understanding that the
21 jury has reached a verdict.

22 MADAME FORELADY: That's correct.

23 THE COURT: Is that verdict unanimous?

24 MADAME FORELADY: Yes, it is.

25 THE COURT: Okay. Would you hand the bailiff the

The State v Jason Bauman (2010-GS-18-1144)

1 verdict form please?

2 [Whereupon, Madame Forelady complies]

3 THE COURT: Madame Clerk, would you mind publishing
4 the verdict?

5 CLERK OF COURT: In the matter of State of South
6 Carolina versus Jason Bauman, indictment number 2010-GS-
7 18-1144 we, the jury, unanimously find the defendant as
8 to the charge of Criminal Sexual Conduct with a Minor
9 First Degree, guilty. Presiding juror, Barbara Fogle,
10 dated today June 13, 2012.

11 THE COURT: Thank you, ma'am. Anything from the
12 State?

13 MR. HILTON: Nothing from the State, Your Honor.

14 THE COURT: Anything from defense?

15 MR. BISCHOFF: No, Your Honor.

16 THE COURT: All right. Thank you. Ladies and
17 gentlemen, I want to tell you I appreciate your diligence
18 of you listening to the testimony in this case. I
19 appreciate your service.

20 I'd already told the alternates earlier that we are
21 not going to be doing any other trials this week so y'all
22 have done your jury service. I do appreciate it. I hope
23 y'all have a wonderful weekend. And thank you.

24 [Whereupon, the jury is excused and exits the
25 courtroom at 1:44 p.m.]

The State v Jason Bauman (2010-GS-18-1144)

1 SENTENCING OF THE COURT

2 THE COURT: Mr. Bauman, the -- we've had a trial in
3 this matter. The jury has found you guilty of Criminal
4 Sexual Conduct with a Minor in the First Degree. Under
5 the statute I am required to sentence you from no less
6 than 25 years up until life.

7 I have listened to the mitigating circumstances that
8 have been provided to the court, the Solicitor's office,
9 your attorney, and I met with Doctor Schwartz-Watts and
10 went over her evaluation.

11 I've heard what your Daddy said you know. And I've
12 heard what the parents of the victim have also requested.
13 It is the sentence of this court that you are committed
14 to the State Department of Corrections for a period of 25
15 years.

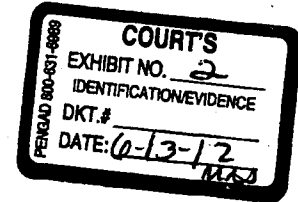
16 I will give you credit for the time that you have
17 served since June 30th, 2010. I have placed in the order
18 that you shall not be -- that you shall be housed in
19 protective custody and not with the general population.
20 And you are to be evaluated and receive appropriate
21 medication and treatment. Good luck to you.

22 MR. BISCHOFF: Thank you, Judge.

23 THE COURT: Thank y'all. Oh, one other thing. Mr.
24 Bauman, one other thing. Your attorney mentioned it
25 earlier and he told me he was going to go ahead and file

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)

IN THE COURT OF GENERAL SESSIONS
 FOR THE FIRST JUDICIAL CIRCUIT
 INDICTMENT NUMBER: 2010-GS-18-1144



STATE OF SOUTH CAROLINA,)
)
 Plaintiff,)
)
 -versus-)
)
 JASON BAUMAN,)
)
 Defendant.)

MOTION REQUESTING A SPECIAL JURY
 INSTRUCTION ON THE CREDIBILITY
 OF JAILHOUSE INFORMANTS

Counsel for Jason Bauman (Bauman) hereby moves before the Court requesting a special jury instruction on the credibility of jailhouse informants.¹ Such a charge is warranted under the circumstances of Bauman's case where there is no forensic evidence linking Bauman to the crime, and also where the crux of the State's case rests on testimony from two jailhouse informants who have been housed in the Dorchester County Detention Center while Bauman has been in custody awaiting trial. Although a novel argument in this State, other state courts have held that jury instructions on the credibility of jailhouse informants are required considering the inherent unreliability of jailhouse informant testimony.²

¹Defining "jailhouse informants" as "witnesses who testify as to statements made by a fellow inmate while both are in custody. The statements usually relate to offenses that occurred outside the custodial institution." Bloom, Robert M., *Jailhouse Informants*, 18 Crim. Just. 20, 20 (ABA Criminal Justice Spring 2003).

²*State v. Arroyo*, 292 Conn. 558, 973 A.2d 1254 (2009), cert. denied *Arroyo v. Conn.*, 2010 U.S. LEXIS 958 (U.S., Jan. 25, 2010); *Dodd v. State*, 2000 OK CR 2, 993 P.2d 778 (Okla. Crim. App. 2000).

In State v. Arroyo, the Connecticut Supreme Court, in expanding upon the rule in State v. Patterson, 276 Conn. 452, 886 A.2d 777 (2005) that required trial courts to give a special instruction on jailhouse informants who received a promise or a benefit in exchange for his testimony, held that a “trial court should give a special credibility instruction to the jury whenever such testimony is given, *regardless of whether the informant has received an express promise of a benefit*.”³

Additionally, the court went on to say:

In addition, the trial court may ask the jury to consider: the extent to which the informant’s testimony is confirmed by other evidence; the specificity of the testimony; the extent to which the testimony contains details known only by the perpetrator; the extent to which the details of the testimony could be obtained from a source other than the defendant; the informant’s criminal record; any benefits received in exchange for the testimony; whether the informant previously has provided reliable or unreliable information; and the circumstances under which the informant initially provided the information to the police or the prosecutor, including whether the informant was responding to leading questions.

In Dodds v. State, 2000 OK CR 2, 26 993 P.2d 778, 784 (Okla. Crim. App. 2000), the Oklahoma Court of Appeals held that the following jury instruction should be given in all cases where a court admits jailhouse informant testimony:

The testimony of an informer who provides evidence against a defendant must be examined and weighed by you with greater care than the testimony of an ordinary witness. Whether the informer’s testimony has been affected by interest or prejudice against the defendant is for you to determine. In making that determination, you should consider: (1) whether the witness has received anything (including pay, immunity from prosecution, leniency in prosecution, personal advantage, or vindication) in exchange for testimony; (2) any other case in which the informant testified or offered statements against an individual but was not called, and whether the statements were admitted in the case, and whether the informant received any deal, promise, inducement, or benefit in exchange for that testimony or statement; (3) whether the informant has ever changed his or her testimony; (4) the criminal history of the informant; and (5) any other evidence relevant to the informer’s credibility.

³Id. At 569, 973 A.2d at 1261 (2009)

Under State v. Bamberg, 270 S.C. 77, 82, 240 S.E.2d 639, 641 (1977), our Supreme Court has held that a decision to give an additional credibility charge is within the Judge's discretion. Additionally, as stated in Hoffa v. United States, 385 U.S. 293, 311-12, 87 S.Ct. 408 (1996), "[t]he established safeguards of the Anglo-American legal system leave the veracity of a witness to be tested by cross-examination, and the credibility of his testimony to be determined by a *properly instructed jury*." (emphasis added). An additional charge on the credibility of jailhouse informants is warranted under the circumstances in this case, not only where a significant part of the State's case depends on the credibility of two jailhouse informants, but also because the special charge will better ensure the jury deciding Bauman's case is properly instructed. Specifically Bauman requests the following credibility charge, including the special jailhouse informant highlighted in bold, be presented to the jury in this case:

Credibility of Witnesses

- Necessarily you must determine the credibility of witnesses who have testified in this case. Credibility simply means believability. It becomes your duty as jurors to analyze and evaluate the evidence and determine which evidence convinces you of its truth.
- In determining the believability of witnesses who have testified in this case, you may believe one witness over several witnesses or several witnesses over one witness. You may believe a part of the testimony of a witness and reject the remaining part of the testimony of that same witness. You may believe the testimony of a witness in its entirety or reject the testimony of a witness in its entirety. You may consider whether any witness has exhibited to you any interest, bias, prejudice, or other motive in this case. You may also consider the appearance and manner of a witness while on the witness stand.

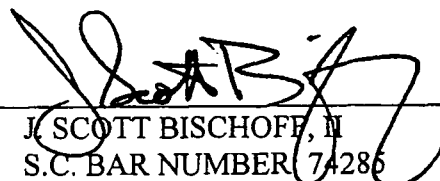
- You the jury may also consider the extent to which a jailhouse informant's testimony is confirmed by other evidence; the specificity of the testimony; the extent to which the testimony contains details known only by the perpetrator; the extent to which the details of the testimony could be obtained from a source other than the defendant; the informant's criminal record; any benefits received in exchange for the testimony; whether the informant previously has provided reliable or unreliable information; and the circumstances under which the informant initially provided the information to the police or the prosecutor, including whether the informant was responding to leading questions.

(Instruction in **bold** taken from State v. Arroyo, 292 Conn. 558, 973 A.2d 1254 (2009), cert. denied Arroyo v. Conn., 2010 U.S. LEXIS 958 (U.S., Jan. 25, 2010)).

In light of the foregoing, Bauman, through undersigned counsel, respectfully asks this Court to grant the motion for a special jury instruction on credibility of jailhouse informants.

Respectfully submitted,

SAVAGE LAW FIRM
15 Prioleau Street
Post Office Box 1002
Charleston, SC 29402
Telephone: (843) 720-7470

BY: 

J. SCOTT BISCHOFF, II
S.C. BAR NUMBER 74286
ATTORNEY FOR JASON BAUMAN

Charleston, South Carolina

June 11, 2012

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Page 1 of 3

SUMMERSVILLE POLICE DEPARTMENT

VOLUNTARY STATEMENT FORM

☐ Victim
☒ Witness
☐ Accused

DATE 8-12-2010 TIME 1517

OCA # 10-046723

NAME Buhle, Adam C.

SOCIAL SECURITY # [REDACTED]

ADDRESS [REDACTED]

PHONE [REDACTED]

EMPLOYMENT Gasper's Pooling

PHONE [REDACTED]

RACE W

SEX M

DATE OF BIRTH [REDACTED]

EDUCATION H.S. Dipl.

X We were sitting in the room in D-3 and Jason Bauman is in there for CSC^{1st}. He told me he was in there for stealing cars. Then I got to know him and I told him I knew why he was in there so he told me he was stupid he didn't know why he did it. But at first he told me he just showed her a couple of times just to see what she would do and awhile later he had her touch him and he started to touch her and he said he didn't know why he was doing it and just in time he got her to suck his dick and he was telling me she had some Barbie dolls and he would put them in her and play with her and she would play with him and then he told me how he got caught the little girl went down on her brother and then tried to grab his penis in front of the little girl's mom and she asked who taught you this and she said Uncle Jason. Questions asked by Det. B. B. answered by Buhle.

Q: Who are you talking about?

A: Jason Bauman

Q: Who is this?

A: Jason Bauman (Buhle was shown booking photo of Jason Allen Bauman - taken at SPD)

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH I HAVE MADE FREELY AND VOLUNTARILY,
 THE FACTS CONTAINED THEREIN ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESS

SIGNATURE

SIGNATURE

SIGNATURE

I HAVE RECEIVED A COPY OF THIS STATEMENT

SIGNATURE

SUMMERVILLE POLICE DEPARTMENT

303
☐ Victim
☒ Witness
☐ Accused

VOLUNTARY STATEMENT FORM

DATE 8-12-2010 TIME 1535

OCA # 10-046723
NAME Julie, Adam C. SOCIAL SECURITY # _____
ADDRESS _____ PHONE _____
EMPLOYMENT _____ PHONE _____
RACE _____ SEX _____ DATE OF BIRTH _____ EDUCATION _____

Q: Who was he doing this to?
A: ~~ACB~~ neice
Q: How would he touch her?
A: He told me between Her legs
Q: With what?
A: His Hands and Barbie Dolls
Q: What would he do with the Barbie Dolls?
A: ~~ACB~~ He was inserting them in Her
Q: In where?
A: Vagina
Q: What did he "show" her that you mentioned on page 1?
A: ~~ACB~~ His penis
Q: How did she touch him?
A: He said He got her to touch His penis
Q: Touch his penis with what?
A: Her hands at first
Q: What else?
A: With ~~ACB~~ Her mouth
Q: Did he get blow jobs (fellatio)?
A: yes He said She would suck his penis
Q: How many times did that happen?
A: no idea
Q: Did he say anything about pornography?
A: no
Q: How about watching movies with the kids?

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH I HAVE MADE FREELY AND VOLUNTARILY, THE FACTS CONTAINED THEREIN ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESS: _____
SIGNATURE _____
SIGNATURE _____

☒ SIGNATURE _____
I HAVE RECEIVED A COPY OF THIS STATEMENT
☒ SIGNATURE _____

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Page 3 of 3

SUMMERVILLE POLICE DEPARTMENT

VOLUNTARY STATEMENT FORM

☐ Victim
☒ Witness
☐ Accused

DATE 8-12-2010 TIME 1543

OCA # 10-0 46723

NAME Ruhl, Adam C.

SOCIAL SECURITY #

ADDRESS

PHONE

EMPLOYMENT

PHONE

RACE

SEX

DATE OF BIRTH

EDUCATION

A: He did not say nothin

Q: What else did he say about his niece?

A: nothin that i no of

Q: Is there anything else you can add to this? If so, what?

A: He say he hopes he gets mental help - //END OF STATEMENT
 08-12-2010 @ 1546 //

I HAVE READ (HAD READ TO ME) THE FOREGOING STATEMENT WHICH I HAVE MADE FREELY AND VOLUNTARILY,
 THE FACTS CONTAINED THEREIN ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

WITNESS:

SIGNATURE

SIGNATURE

SIGNATURE

I HAVE RECEIVED A COPY OF THIS STATEMENT

SIGNATURE

The State of South Carolina

305

OFFICE OF SOLICITOR
First Judicial Circuit



DAVID M. PASCOE
Solicitor

140 North Main Street
Suite 102
Summerville, SC 29483
(843) 871-2640
FAX (843) 871-2643
PTI (843) 873-7842

5200 East Jim Bilton Boulevard
Dorchester County Courthouse
St. George, SC 29477
(843) 832-0150
FAX (843) 832-0155

Courthouse, Amelia Street
Post Office Box 1525
Orangeburg, SC 29116
(803) 533-6252
FAX (803) 533-6004
PTI (803) 533-6137

102 Courthouse Drive
Suite 111
St. Matthews, SC 29135
(803) 874-1978
FAX (803) 874-1242

August 25, 2010

J. Scott Bischoff, Esquire
107 West 6th North Street
Summerville, SC 29483

IN RE: STATE OF SOUTH CAROLINA vs. JASON BAUMAN

Dear Scott:

In response to your Rule 5 Discovery Motion in the above referenced matter, I am enclosing herewith copy of our file. Our file is also open for your inspection.

Also, please find enclosed herewith for service upon you our Request for Disclosure with a Certificate of Service.

Sincerely,

Russell D Hilton/KHH

Russell D. Hilton

Enclosures

cc: Dorchester County Clerk of Court

CERTIFIED COPY
10-12-12
Cheryl Graham
Clerk of Court
Dorchester County

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

) IN THE COURT OF GENERAL SESSIONS
) CASE NO(s): 2010GS18-1144
)

STATE OF SOUTH CAROLINA,

-versus-

REQUEST FOR DISCLOSURE

JASON BAUMAN,

Defendant.

TO: J. Scott Bischoff, ATTORNEY FOR THE DEFENDANT

WHEREAS, you, attorney for the above-mentioned matter, have requested disclosure of evidence and related information in regard to the above referenced cause of action pursuant to the provisions of **Rule 5, South Carolina Rules of Criminal Procedure**, and

WHEREAS, the State of South Carolina has complied with such request;

YOU WILL PLEASE TAKE NOTICE that the State of South Carolina, pursuant to said Rule 5, does hereby request for disclosure of evidence and related information and for permission to inspect, copy and photograph such evidence and related information in regard to the above referenced cause of action as follows:

Any books, papers, documents, photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the Defendant, and which are material to the preparation of said Defendant's defense or are intended for use by the Defendant as evidence in chief at the trial of the above referenced cause of action; and

Any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are or were made in connection with this particular case within the possession, custody, or control of the Defendant, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the Defendant and which are material to the preparation of the defense or are intended for use by the Defendant as evidence in chief at the trial of the within matter.

FILED-RECORDED
2010 AUG 23 PM 3:03
CLERK OF COURT
DORCHESTER COUNTY

CERTIFIED COPY
6-12-12
Cheryl Graham
Clerk of Court
Dorchester County

Defense of Insanity - As to this defense, the State requests that the Defendant submit written notice of his intent to use the defense of insanity. Such notice should include all of the matters subject to disclosure pursuant to Rule 5 including, but not limited to, the expert witnesses who have interviewed the Defendant, who the Defendant expects to call as witnesses at his trial, the date of the interview and/or examination of the Defendant, and their findings in regard to the Defendant's sanity.

Defense of Alibi - As to this defense, the State requests that the Defendant submit written notice of his intent to offer an alibi defense. Said notice shall include all matters subject to disclosure pursuant to Rule 5, including, but not limited to, the specific place or places the Defendant claims to have been at the time, or around the time, the alleged offense was committed, the names and addresses of witnesses upon whom he intends to rely to establish this defense, and any documents or physical evidence which would support this defense.

The State alleges the offense(s) with which the said Defendant is charged in Indictment Number(s) **2010GS18-1144** occurred on or ^{between} ~~about~~ **May 20, 2010 and May 27, 2010** in the County of Dorchester, State of South Carolina.

- (5) Please be advised that the Request for Disclosure also serves as written notices that the State of South Carolina pursuant to Rule 609(b) of the South Carolina Rules of Evidence will seek to impeach the credibility of your client and any defense witnesses by introducing evidence at trial of all criminal convictions including those more than ten years old.

Russell D Hilton / RHH
RUSSELL D. HILTON, SOLICITOR
FIRST JUDICIAL CIRCUIT
5200 E. JIM BILTON BLVD.
ST. GEORGE, SOUTH CAROLINA 29477
(843) 832-0150

Aug 25, 2010
 St. George, South Carolina

CERTIFIED COPY
6-12-12
Cheryl Graham
 Clerk of Court
 Dorchester County

STATE OF SOUTH CAROLINA

)

IN THE COURT OF GENERAL SESSIONS

)

COUNTY OF DORCHESTER

)

CASE NO.: 2010GS18-1144

)

STATE OF SOUTH CAROLINA,

)

-versus-

)

CERTIFICATE OF SERVICE

)

JASON BAUMAN,

)

)

Defendant.

)

I, Kerri H. Huff, an employee of David M. Pascoe, Solicitor for the First Judicial Circuit, do hereby certify that on Aug 25, 2010, I served the REQUEST FOR DISCLOSURE, RULE 5, upon the Defendant, Jason Bauman, by forwarding a copy thereof to, J. Scott Bischoff, Attorney for the Defendant, by depositing said papers in the United States Mail at Summerville, South Carolina, on this date, with first class postage duly affixed to the address below:

J. Scott Bischoff, Esquire
107 West 6th North Street
Summerville, SC 29483

SOLICITOR DAVID M. PASCOE

BY: *Kerri H. Huff*

CERTIFIED COPY

0-12-12
Cheryl Graham
Clerk of Court
Dorchester County

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2010GS18-1144

At a Court of General Sessions, convened on September 7, 2010 the Grand Jurors of
Dorchester County present upon their oath:

CRIMINAL SEXUAL CONDUCT WITH A MINOR - FIRST DEGREE

That in Dorchester County, South Carolina, on or between May 1, 2010 and May
27, 2010, the Defendant, Jason Bauman, did commit a sexual battery upon the
victim, Minor Bauman, a minor under the age of 11 years; the said minor being 4
years old at the time of the offense in that the defendant did allow or encourage
the victim to perform fellatio on the defendant. This offense in violation of
Section 16-03-652 of the South Carolina Code of Laws, as amended.

Against the peace and dignity of the State, and contrary to the statute in
such case made and provided.



Russell D. Hilton, Solicitor

WITNESSES

Laura Gibbons

Summerville Police Department

ARREST WARRANT NUMBER

J094355

Arrested: June 30, 2010

ACTION OF GRAND JURY

TRUE BILL

DATE

9-2-10

Foreperson of Grand Jury

Date: September 2, 2010

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2010GS18-1144

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

September 7, 2010 TERM

THE STATE

vs.

Jason Bauman

Indictment for

**CRIMINAL SEXUAL CONDUCT - FIRST
DEGREE**

SC Code: 16-3-652

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. ANSWER

FILED-RECORDED
2010 SEP -2 PM 12:50
CLERK OF COURT
DORCHESTER COUNTY

25 - Life

STATE OF SOUTH CAROLINA

COUNTY OF DorchesterSTATE VS.
Jason Bauman

AKA:

Race: W Sex: M Age: 29DOB: 12-21-1982 SS#: 623-01-4941Address: 188 Midland Pkwy # 203Summerville, SC 29485DL#: 100159810 SID#: _____CDL: Yes ☐ No ☐ CMV: Yes ☐ No ☐ Hazmat: Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010GS18-1144A/W#: .094355Date of Offense: 5/20/2010S.C. Code § 16-3-655(A)(1)CDR Code #: 0385

SENTENCE SHEET

TO: Criminal Sexual Conduct with Minor - Victim Under 11 Yrs of Age - First DegreeIn violation of § 16-3-655(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0385☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS/CSC ☐ § 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant Initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State

ATTEST:

Hilton, Russell D.73945
SC Bar#Jason BaumanAttorney for Defendant74285
SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Dept. 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 16-25-85 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTJP _____

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)

Proviso 47.9 (Public Def/Prob)

§ 73.3. 1B TP (Law Enforce. Funding)

§ 33.7. 1B TP (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

§ 44-53-450(C) (Conditional Discharge)

3% to County (if paid in installments)

TOTAL

Cheryl Graham
Clerk of Court Deputy ClerkMelissa Singletary
Court Reporter:

_____ 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: Defendant shall be housed in protective custody and not with general population. Defendant shall be evaluated and receive appropriate medication and treatment.

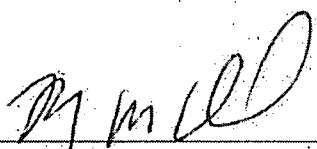
☐ Conditional Discharge § 44-53-450(C) requires \$350 be paid to the Clerk prior to disposition.☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.PRESIDING JUDGE StacyJudge Code: 2153Sentence Date: June 13, 2012

SCCA/217 (06/2010)

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

January 15th, 2014



Robert M. Dudek
Chief Appellate Defender

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

ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County

Edgar W. Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JASON A. BAUMAN,

APPELLANT

Appellate Case No. 2012-212285

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
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South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

1.

Whether the court erred in allowing the child's mother to testify the child told her she learned how to perform oral sex from "Uncle Jason," appellant, since this testimony was highly prejudicial hearsay?

2.

Whether the court erred by admitting the statement of jailhouse informant, Adam Buhle, into evidence since it was cumulative to his testimony and therefore impermissibly bolstered his testimony?

3.

Whether the court erred by refusing to charge the jury on the requested written jury instruction on analyzing a jailhouse informant's credibility from *State v. Arroyo*, 292 Conn. 558, 973 A.2d 1254 (2009) since the standard credibility of the witnesses instruction did not adequately enlighten the jury on how to evaluate the highly unusual special circumstances a jailhouse informant's testimony presents?

STATEMENT OF THE CASE

Appellant was indicted by the Dorchester County Grand Jury for the offense of criminal sexual conduct with a minor in the first degree. R. 309. His case came on for trial on June 11, 2012 before the Honorable Edgar W. Dickson, and a jury. Scott J. Bischoff, II, represented appellant. Russell Hilton and Matt Austin were the assistant solicitors. R. 1.

On June 13, 2012, the jury found appellant guilty of this offense. R. 296, ll. 5-10. Judge Dickson sentenced appellant to twenty five years imprisonment. R 297, ll. 11-15.

This appeal follows.

ARGUMENT

1.

The court erred in allowing the child's mother to testify the child told her she learned how to perform oral sex from "Uncle Jason," appellant, since this testimony was highly prejudicial hearsay.

Relevant Facts

Tara Bauman is the alleged female child victim's mother. Appellant Jason Bauman is her brother-in-law. R. 88, ll. 9-22. The child at issue was four-years-old, and her brother was two-years-old in May of 2010. R. 89, ll. 1-5.

Ms. Bauman testified she was giving both children a bath that day in May of 2010 when she said she saw the child's mouth open towards the male child's "lap and I stopped her and asked her what she was doing." The defense had earlier objected to hearsay statements that the child made to her mother while in the bathtub. The solicitor contended they were admissible as a present sense impression which the defense strongly contended the child's statement was not. It was further noted that the child apparently was not even going to testify. R. 56, l. 10 – 67, l. 4.

The judge noted the defense objected to this line of testimony earlier, and defense counsel renewed those objections, but the judge allowed the witness to continue. R. 90, ll. 8-18. Ms. Bauman then testified the child said "I'm going to suck his pee-pee. And I asked her where did you learn that from and she said 'Uncle Jason.'" R. 90, ll. 4-24.

Ms. Bauman then identified appellant in the courtroom as "Uncle Jason." R. 90, l. 25 – 91, l. 6. The child indeed did not testify.

On cross-examination Ms. Bauman admitted her child had been diagnosed with Pervasive Developmental Disorder, which involved cognitive defects that also affected the child's speech. R. 96, ll. 11-19. Her reasoning skills were below the first percentile in testing. R. 97, l. 21 – 98, l. 4.

Ms. Bauman testified she mentioned this exchange with her daughter in the bathtub to Amy Young, her nurse practitioner. Young told Ms. Bauman that she had to report the child's statement to the police. R. 103, l. 8 – 104, l. 21.

Ms. Bauman was not present when her child was subsequently interviewed by the police. Ms. Bauman admitted she did not know at the time her child was "in the spectrum of Autism." R. 106, l. 10 – 108, l. 12.

Dr. Allison Foster was hired by both the defense and the prosecution to evaluate the child. R. 135, l. 6 – 136, l. 25. Dr. Foster was qualified as an expert in forensic clinical psychology. She diagnosed the child with Pervasive Developmental Disorder Not Otherwise Specified. The child was also "within the Autism spectrum." However, the child did meet the minimal threshold to be competent to testify in her opinion. R. 144, l. 3 – 147, l. 10.

Dr. Foster testified that after reviewing the child's records she came to the conclusion there were significant amounts of behavioral disorders or behavioral actions that were inappropriate **both prior to the bathtub incident and then after** the bathtub incident. R. 151, ll. 17-22.

Appellant was interviewed by the police. Detective Gebhardt testified that appellant told him that children do not always tell the truth. He also told Gebhardt that the child

involved in this case was a real “sexual person.” For example, the child stuck her tongue out at people and that she had tried to grab him by his penis. R. 178, l. 8 – 182, l. 6.

Appellant acknowledged at one point the child “for a second” attempted to perform oral sex on him by putting her mouth over his penis. The detectives had appellant write a letter of apology to the child’s mother, his sister-in-law. R. 178, l. 8 – 182, l. 6.

On cross-examination, the Gebhardt said he had received training on interviewing people such as appellant who were cognitively delayed. He had also been taught that people with mental disabilities can easily be susceptible to coercion and persuasion. Gebhardt maintained he had never encountered a person he thought falsely admitted committing a crime, and he refused to admit that it happened. He also offered that appellant did not act like what he thought a person with an IQ of only 71 would act like while interacting. R. 184, l. 3 – 196, l. 17.

The Jailhouse informant

Adam Buhle was working as a tattoo artist after just getting out of prison for a “violation of probation and forgery.” Buhle admitted he also been convicted of grand larceny, burglary, and “some shopliftings.” R. 213, l. 11 – 214, l. 16.

Buhle testified on August 12, 2010, he was in the Dorchester County Detention Center and appellant was one of his cellmates. R. 214, l. 17 – 215, l. 7. Buhle claimed appellant told him he was in jail because he would “play around with his niece and he started touching his niece and having his niece touch him.” He maintained appellant told him he watched pornographic movies with the child. He confirmed to the solicitor that he gave the police a written statement on August 12, 2010. R. 215, l. 19 – 218, l. 17.

When the solicitor went to introduce Buhle's statement into evidence, defense counsel objected on the grounds that it was cumulative to his testimony. The judge overruled the objection. R. 218, l. 18 – 219, l. 6. The written statement was admitted into evidence over appellant's objection. R. 218, l. 18 – 219, l. 11. R. 302(Statement)

On cross-examination Buhle drew a distinction between people who robbed other people and people who stole from people. Buhle admitted he was a thief, but not a robber. Larceny, grand larceny, two counts, shoplifting third, and forgery were among his convictions but "not robbing somebody." R. 219, l. 16 – 220, l. 19.

Buhle denied he got any kind of deal or consideration from the solicitor for his testimony. "I didn't make no deal. I came here with a zero to eight open plea." R. 221, ll. 1-10. Buhle also denied he had access to appellant's discovery which obviously would have contained the accusations against appellant. R. 232, ll. 14-22.

In his statement to the police that was admitted over appellant's objection, Buhle said he learned the child's mother had seen her attempt to grab her brother's penis and the child said that "Uncle Jason" had taught her to do that. In the statement Buhle also stated appellant allegedly told him he had had the child perform oral sex on him on other occasions. R. 302.

Request to Charge

The following occurred between defense counsel and the judge regarding his request to charge:

The Court: For the record Mr. Bischoff, you were kind enough to submit a motion requesting a special jury instruction on the credibility of jailhouse informants. I marked it as the Court's exhibit number 2.

And I have looked it over and I am going to decline to give that charge. But I wanted to preserve this on the record so that you would - - so that my - - your objection to my failure to charge this would be preserved on the record.

Mr. Bischoff: Thank you, Your Honor.

The Court: And I've got your memorandum in the record. Now other than that just for the record I have reviewed the jury charge with both the State and the defense. And y'all have gone over my charge and y'all are in agreement with my charge, is that correct Mr. Hilton?

Mr. Hilton: We talked about several things. I just wanted to ask was creditability of witnesses in the general charge?

The Court: It is.

R. 277, l. 14 – 278, l. 8. R. 298 (Request to charge).

Appellant's request to charge contained the standard language on determining the credibility of the witnesses and added:

You the jury may also consider the extent to which a jailhouse informant's testimony is confirmed by other evidence; the specificity of the testimony; the extent to which the testimony contains details known only by the perpetrator; the extent to which the details of the testimony could be obtained from a source other than the defendant; the informant's criminal record; any benefits received in exchange for the testimony; whether the informant previously had provided reliable or unreliable information; and the circumstances under which the informant initially provided the information to the police or the prosecutor, including whether the informant was responding to leading questions. (Instruction in bold taken from State v. Arroyo, 292 Conn. 558, 973 A.2d 1254 (2009), cert. denied Arroyo v. Conn., 2010 U.S. LEXIS 958 (U.S., Jan. 25, 2010)).

R. 298. (Court's Exhibit 2)

Discussion

In State v. Davis, 371 S.C. 170, 638 S.E.2d 57 (2006), the Supreme Court found error in the admission of hearsay testimony. Witness Hicks testified in the early morning of April 18, 2000 he was selling cocaine in the area when he heard Defendant Davis and two other men arguing. Hicks then heard a gunshot and saw the three men running from the area. Hicks testified Davis had a shotgun with him and wanted to sell it to Hicks. Hicks was allowed to testify that one of the men involved told him not to buy the shotgun from Davis because the victim had been shot with it. The Supreme Court held this testimony was not admissible as an excited utterance, and it was inadmissible hearsay.

The testimony of the child's mother in this case that the child told her while taking a bath with her brother that she learned the sexual behavior "from Uncle Jason" was inadmissible hearsay. It was not a present sense impression as defense counsel correctly argued at length. It was devastating testimony particularly since the child, who had many difficulties and problems, did not testify and was not subject to cross-examination.

The child's alleged statement to her mother was an out-of-court statement offered to prove the truth of the matter asserted. It was therefore inadmissible hearsay. See State v. Sims, 304 S.C. 409, 405 S.E.2d 377 (1991). See Rule 801(c), SCRE; Player v. Thompson, 259 S.C. 600, 193 S.E.2d 531 (1972).

The jury heard the child's mother testify the child told her appellant taught her how to perform oral sex. That rank hearsay went directly to the only matter at issue during this trial.

The error was not harmless. This is a strange case where both the child and appellant had mental and other disabilities. The jury never heard from the child, and

appellant with an IQ of 71 and other difficulties. Appellant appeared to be tricked or coerced into writing a letter of apology given the context of his statement. See Colorado v. Connelly, 479 U.S. 157 (1986). Although it did not rise to the level of suppression of the statement, it is nonetheless problematic given appellant's mental limitations and the other two issues involved in this case.

Further, the testimony of the jailhouse informant, which the jury should have been instructed on how to evaluate, also does not provide comforting or overwhelming evidence of appellant's guilt such that any of the errors can be found harmless beyond a reasonable doubt. Appellant should be granted a new trial.

The court erred by admitting the statement of jailhouse informant, Adam Buhle, into evidence since it was cumulative to his testimony and therefore impermissibly bolstered his testimony.

Relevant Facts

As seen above, the judge allowed the solicitor to introduce the written statement of the jailhouse snitch, Buhle, while he was testifying. The statement was cumulative to his testimony and therefore did unfairly bolster his credibility.

Buhle testified appellant told him he was in jail because he would “play around with his niece and he started touching his niece and having his niece touch him.” R. 215, l. 19 – 218, l. 17.

As seen, in his written statement Buhle claimed he learned from appellant that the child’s mother had seen her attempt to grab her brother’s penis and the child said that “Uncle Jason” had taught her to do that. In the statement Buhle also stated appellant allegedly told him he had had the child perform oral sex on him on other occasions. R. 302.

Buhle’s prior statement to the police was offered to bolster his credibility by giving the illusion to the jury that because Buhle had made some of the same accusations against appellant, about what appellant allegedly told him, in the past that the jury should believe Buhle’s in-court testimony. That is what makes cumulative evidence so dangerous and bolstering.

In State v. Foster, 354 S.C. 614, 582 S.E.2d 426 (2003), the Supreme Court found the admission of a witness’s prior statement to the police was error. In the prior statement the witness told the police that Randal Scott Foster had shot her mother. The Court found

error and held the statement was not admissible as a prior consistent statement. Prior consistent statements are not admissible to attempt to “rehabilitate” a witness from proper cross-examination by competent counsel. See State v. Saltz, 346 S.C. 114, 551 S.E.2d 240 (2001). There was not even an assertion in this case that this statement was admissible a prior consistent statement, and no foundation for it to be one was made regardless.

Further, the cumulative nature of this testimony and its bolstering effect on the jailhouse snitch’s testimony was exacerbated because once it was made a trial exhibit the jury had Buhle’s statement with it in the jury room. This further unduly emphasized the prejudicial effect of the evidence. See State v. Gulledge, 277 S.C. 368, 287 S.E.2d 498 (1982).

The solicitor knew what most juries do not: That jailhouse snitches curry favor with the prosecution to help themselves. Many of them are pathological liars. Their assertions are often not credible, and they should be subject to more scrutiny than a person who might do anything to regain his freedom.

The bolstering of Buhle’s testimony by the introduction of his prior statement to the police was prejudicial error in this case. State v. Foster, 354 S.C. 614, 582 S.E.2d 426 (2003); State v. Gulledge, 277 S.C. 368, 287 S.E.2d 498 (1982). Appellant should be granted a new trial.

The court erred by refusing to charge the jury on the requested written jury instruction on analyzing a jailhouse informant's credibility from *State v. Arroyo*, 292 Conn. 558, 973 A.2d 1254 (2009) since the standard credibility of the witnesses instruction did not adequately enlighten the jury on how to evaluate the highly unusual special circumstances a jailhouse informant's testimony presents.

Relevant Facts

As seen, defense counsel asked for a general jury instruction on the credibility of the witnesses, and an instruction on weighing the credibility of a jailhouse informant that had been approved by the Connecticut Supreme Court.

In *State v. Arroyo*, 292 Conn. 558, 973 A.2d 1254 (2009) the Supreme Court of Connecticut held that a special credibility instruction on the testimony of a jailhouse informant should be given regardless of whether the jailhouse informant has received a promise of a benefit in exchange for his testimony.

In *State v. Arroyo* the Court noted that there had been a number of recent high profile cases involving wrongful convictions based on the false testimony of jailhouse informants. *Citing* R. Bloom "Jailhouse informants," 18 Crim. Just. 20 (Spring 2003). *State v. Arroyo*, 973 A.2d at 1260.

The Court also wrote that approximately twenty one percent of wrongful capital convictions were influenced by jailhouse informant testimony. *Citing* A. Natapoff, "Beyond Unreliable; How Snitches Contribute to Wrongful Convictions," 37 Golden Gate U. L. Rev. 107, 109 (2006). The Court in *State v. Arroyo* relied on *State v. Patterson*, 276 Conn. 452,

886 A.2d 777 (2005) where the Court had concluded the defendant was entitled to a jury instruction on jailhouse informants substantially in accord with the one he had sought.¹

The proposed instruction on jailhouse informant testimony instructed the jury that such testimony must be reviewed with particular scrutiny and weighed with greater care than the testimony of an ordinary witness. State v. Patterson, 886 A.2d at 787. In State v. Arroyo the Court noted that the jury could be instructed to consider “the extent to which the informant’s testimony is confirmed by other evidence; the specificity of the testimony; the extent to which the testimony contains details known only by the perpetrator; the extent to which the details of the testimony could be obtained from a source other than the defendant; the informant’s criminal record; any benefits received in exchange for the testimony; whether the informant has previously provided reliable or unreliable information; and the circumstances under which the informant initially provided the information to the police or the prosecutor, including whether the informant was responding to leading questions.” State v. Arroyo, 973 A.2d at 1263.

Here, Buhle presented as a typical jailhouse snitch to experienced criminal defense attorneys and prosecutors. He had a long history of crimes involving dishonesty. Therefore there is every reason to think he knew how to manipulate the system by striking deals -- plea agreement in more polite company -- with the police and solicitor’s office. See State v. Jones, 343 S.C. 562, 541 S.E.2d 813 (2001).

¹ Patterson was limited to those cases where the informant received a benefit or seemingly admitted he received or expected a benefit for this testimony. It is painfully obvious jailhouse snitches often lie about their true expectations.

The instruction requested in this case on the credibility of jailhouse informants should have been given because it would have assisted -- enlightened the jury -- in evaluating the testimony of a jailhouse informant:

You the jury may also consider the extent to which a jailhouse informant's testimony is confirmed by other evidence; the specificity of the testimony; the extent to which the testimony contains details known only by the perpetrator; the extent to which the details of the testimony could be obtained from a source other than the defendant; the informant's criminal record; any benefits received in exchange for the testimony; whether the informant previously had provided reliable or unreliable information; and the circumstances under which the informant initially provided the information to the police or the prosecutor, including whether the informant was responding to leading questions. (Instruction in bold taken from State v. Arroyo, 292 Conn. 558, 973 A.2d 1254 (2009), cert. denied Arroyo v. Conn., 2010 U.S. LEXIS 958 (U.S., Jan. 25, 2010)).

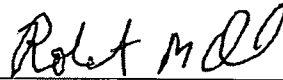
R. 302. (Court's Exhibit 2)

The purpose of a jury instruction is "to enlighten the jury and to aid it in arriving at a correct verdict." State v. Blurton, 352 S.C. 202, 207, 573 S.E.2d 802, 804 (2002) *citing* State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). The jury was not given such guidance by way of a more particular credibility instruction on evaluating the testimony of a jailhouse informant. That jailhouse informant testimony was prominent in the facts of the case presented to the jury -- Buhle testified that appellant confessed to him. See State v. Fuller, 297 S.C. 440, 377 S.E.2d 328 (1989) (the judge has to consider all of the evidence when fashioning a correct instruction). Appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing arguments, appellant's conviction should be reversed and this case remanded to the Dorchester County Court of General Sessions for a new trial.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert M. Dudek", is written over a horizontal line.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 4th day of February, 2014.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Dorchester County
Edgar W. Dickson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

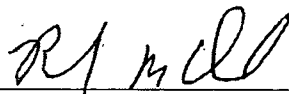
JASON A. BAUMAN,

APPELLANT

Appellate Case No. 2012-212285

CERTIFICATE OF SERVICE

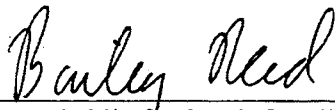
The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 4th day of February, 2014.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 4th day of February, 2014.



(L.S.)

Notary Public for South Carolina

My Commission Expires: October 24, 2021



SCCID

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Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

February 4, 2014

Salley W. Elliott, Esquire
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Re: The State v. Jason A. Bauman

Dear Salley:

Enclosed are two copies of the Final Brief of Appellant in the above-entitled case, which I have filed today with the South Carolina Court of Appeals.

Please call me if you have any questions.

Sincerely,

Robert M. Dudek
Chief Appellate Defender

RMD/brr

Enclosure

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Dorchester County
Edgar W. Dickson, Circuit Court Judge

THE STATE,

Respondent,

vs

JASON A. BAUMAN,

Appellant.

FINAL BRIEF OF RESPONDENT

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South Carolina Constitution:

S.C. Const. art. V, § 21 13

STATEMENT OF ISSUES ON APPEAL

I.

Any error in admission of hearsay testimony is harmless in light of Bauman's confession to law enforcement and his detailed admission of sexual conduct with Victim to a jailhouse informant.

II.

Bauman's allegation of improper influence during cross-examination of the State's witness opened the door and ultimately made the witness's written statement admissible as a prior consistent statement.

III.

The requested charge concerning jailhouse informants is an unconstitutional charge on the facts and the trial court did not err in declining to charge the instruction nor was Appellant prejudiced by the failure to give the instruction where the trial court gave a sufficient instruction to the jury concerning the determination of credibility of the witnesses.

STATEMENT OF THE CASE

Appellant Bauman was indicted and tried by jury for criminal sexual conduct with a minor in the first degree. The jury convicted Bauman and he was sentenced by the Honorable Edgar W. Dickson to twenty-five years imprisonment.

STATEMENT OF FACTS

Victim's mother (Mother) was giving Victim a bath with Victim's brother when Mother saw Victim, with mouth open, lean forward to her brother's lap. Mother described what happened as follows:

I was giving [Victim] and [Brother] a bath one evening and [Victim] was sitting in the tub facing [Brother]. And she proceeded to lean forward with her mouth open and I stopped her. . . . Her mouth opened towards Jeremy's lap and I stopped her and I asked her what she was doing.

ROA. p. 90, lines 9-13. Victim said "I'm going to suck his pee pee." Mother asked her where she learned that from and she said "Uncle Jason". ROA. p. 90, lines 22-24. Victim's Uncle Jason is Appellant Bauman, Mother's brother-in-law. ROA. pp. 90-91.

Before the bath tub incident, Mother had noticed Victim was "becoming aggressive at home, acting out and hitting, and . . . had noticeable behavior changes at school reported by her teachers." ROA. p. 94, lines 1-3. Mother also testified that one time she found Bauman and Victim alone after Mother and her husband returned from seeing a movie. Bauman and Victim were alone in the living room on the couch. The other two people present in the house, Bauman's father and Victim's sister, were asleep in the back bedroom. ROA. pp. 92-93.

Mother also noted Victim "was displaying interest in body parts as far as breasts and genitals. She also was flashing her private part . . . to her brother." ROA. p. 94, lines 4-7. Mother also noted other disturbing behavior. Victim would gag a lot when she ate a meal. She wet the bed twice one night. ROA. p. 95.

Mother described how Victim acted around Bauman as follows:

She would show signs of not wanting him around.

She would become agitated, angry; not really wanting to have anything to do with him.

But it was more like a – kind of like a love hate relationship. She would talk to him but yet she didn't feel comfortable.

ROA. p. 95, lines 6-11.

Unsure what to do, Mother discussed the bathtub incident with Nurse Practitioner Amy Young. Pursuant to mandatory reporting laws, Nurse Young contacted law enforcement. Law enforcement in this case was the nurse's husband, a Summerville Police Officer. ROA. pp. 162-163.

Law enforcement did its duty and investigated the allegation. This included interviewing Bauman. He was interviewed by Detective Gebhardt and Detective Gibbons. Detective Gebhardt testified that Bauman appeared to understand the Miranda warnings and what was happening. Bauman appeared to be able to read – Detective Gebhardt noted Bauman was following each line as they went along. ROA. p. 172. Detective Gebhardt testified that Bauman's intelligence was not an issue during the interview. ROA. p. 193. Initially, Gibbons started to interview Bauman, but the interview was not productive, so Gebhardt started interviewing Bauman instead. ROA. p. 175.

Detective Gebhardt advised Bauman that four-year olds do not make these things up – four-year olds do not have the experience to make an allegation like that, something had to have happened. ROA. p. 176. Bauman told the detective that children do not always tell the truth. Bauman then told Detective Gebhardt that Victim is a sexual person and suggested that Victim learned this at school. ROA. p. 178. Bauman told the detective that Victim "stick[s] her tongue out at him and tries to grab his dick." ROA. p.

178, lines 4-22. Bauman told Detective Gebhardt that Victim is “a very attractive girl” and “that when she sits on his lap it makes him hard.” ROA. p. 179, lines 1-3. Bauman told Detective Gebhardt that Victim pulled his penis out of his pants, that she put her mouth on the tip his penis “just for a second” and that it took Bauman “a lot of willpower to make her stop.” ROA. p. 179, lines 5-17. Bauman told Detective Gebhardt, “he thought it was wrong but at first he thought it felt good.” ROA. p. 179, lines 18-20. Bauman, at Detective Gebhardt’s suggestion, wrote an apology letter to Victim’s mother. ROA. pp. 180-182.

Dr. Allison Foster testified as an expert in forensic clinical psychology. She testified that pre-school children will often engage in what she termed “imitative play” where children will act out things they are learning. “Imitative play is sort of their first language really before the spoken word.” ROA. p. 137, line 19 – p. 138, line 3. Dr. Foster would later explain imitative behavior is how children will learn, “it’s literally kind of reenacting behavior to make sense out of it.” ROA. p. 143, lines 5-7.

Dr. Foster further testified that a sexually abused child will often exhibit behavioral changes, termed adjustment reactions. Children may become more clingy or needy, they may regress in their skills – such as wetting their beds again, and having increased fear and anxiety. They also may become preoccupied with their private parts. ROA. pp. 138-139.

The State then elicited the following testimony from Dr. Foster:

Q: In your opinion as an expert Doctor Foster if a little girl four years old goes down on her brother as if she is going to perform oral sex on him and states to her Mom I was going to suck his pee pee, in your opinion as an expert in that hypothetical question what significance does that event have with regard to any sexual abuse?

A: It has significance and is the sort of imitative behavior that is not typical of preschool age children and would give rise to the hypothesis that sexual abuse or exposure something that – some kind of environmental exposure to a behavior that we do not typically observe in preschool age children.

ROA. p. 142, lines 16-21.

Adam Buhle has had trouble with the law in the past and he was in jail when Bauman told him all about the things he did to Victim. At first, Bauman fibbed and said he was in jail for stealing cars. But he then told Buhle he was there for his niece. He started touching his niece and having her touch him. He would watch pornography with her and try to have her play with him. ROA. pp. 215-216. “And after he would gradually move her into it she would start sucking his dick.” ROA. p. 216, lines 17-20.

Buhle gave a statement on August 12, 2010 relating this information. That was before Bauman even received his discovery. Buhle testified that neither the prosecution nor law enforcement promised Buhle anything for his statement. ROA. pp. 217-218.

Buhle testified that he later pled to forgery and his probation was concomitantly revoked. Buhle testified it was an open plea, he was facing zero to eight years at the discretion of the judge, and received three years imprisonment. ROA. pp. 220-221. Buhle was interviewed by the prosecutor nine days before he was released from prison. ROA. p. 229. When Buhle testified at trial, he was no longer incarcerated and was employed. ROA. p. 213, lines 19-23. It appears at the time of trial he had nothing to gain but the satisfaction of seeing justice done for Bauman’s sexual predations.

ARGUMENT

I.

Any error in admission of hearsay testimony is harmless in light of Bauman's confession to law enforcement and his detailed admission of sexual conduct with Victim to a jailhouse informant.

Bauman complains testimony by Mother was improper hearsay testimony. Specifically, after Victim told Mother she was going to "suck [her brother's] pee-pee"¹, Mother asked where she learned that and Victim responded "from Uncle Jason".

Even if assuming error, this testimony was harmless in light of the fact that Bauman confessed to law enforcement and offered a detailed account of his grooming and abuse of Victim to fellow inmate Buhle.

"When guilt has been conclusively proven by competent evidence such that no other rational conclusion can be reached, the Court should not set aside a conviction because of insubstantial errors not affecting the result." State v. Bailey, 298 S.C. 1, 5, 377 S.E.2d 581, 584 (1989). Admission of improper evidence is harmless where it is merely cumulative to other evidence. State v. Haselden, 353 S.C. 190, 197, 577 S.E.2d 445, 448-49 (2003); State v. Johnson, 298 S.C. 496, 499, 381 S.E.2d 732, 733 (1989).

In the instant case, Bauman's admissions to law enforcement and Buhle provided ample evidence of guilt. When other properly admitted testimony reveals essentially the same information, the jury's exposure to improper evidence is harmless. State v. Brown, 344 S.C. 70, 75, 543 S.E.2d 552, 554-555 (2001). Therefore, reversal on this ground is not warranted.

¹ This portion is indisputably admissible under SCRE, Rule 803(3) as a statement of the declarant's then existing state of mind.

II.

Bauman's allegation of improper influence during cross-examination of the State's witness opened the door and ultimately made the witness's written statement admissible as a prior consistent statement.

Bauman argues the trial court erred in admitting Buhle's statement (State's Exhibit #3) into evidence, arguing the defense had not made an allegation of recent fabrication sufficient for the statement to be admissible as a prior consistent statement. However, any error was subsequently cured as the statement became admissible to rebut the allegation made during cross-examination that Buhle relied on Bauman's S.C.R.Crim.P. Rule 5 discovery materials in providing information in the statement.

On cross-examination, Bauman's counsel questioned Buhle about whether Bauman received his discovery and whether Bauman reviewed this discovery before giving his statement. ROA. pp. 231-232. The prosecution established that Buhle gave his statement on August 12 and that Bauman did not receive his discovery until August 25. See State's Exhibit 4; ROA. p. 234; p. 236, ROA. pp. 258-259.

The statement was admissible to show that Buhle's statement preceded receipt of discovery, refuting the allegation that the statement was fabricated by Buhle utilizing Bauman's discovery materials. Accordingly, the statement became admissible under both Rule 801(d)(1)(B), SCRE and under the open the door doctrine.

When a party introduces evidence about a particular matter, the other party is entitled to explain it or rebut it, even if the latter evidence would have been incompetent or irrelevant had it been offered initially. State v. Foster, 354 S.C. 614, 582 S.E.2d 426 (2003). "When a party introduces evidence about a particular matter, the other party is

entitled to introduce evidence in explanation or rebuttal thereof, even if the latter evidence would have been incompetent or irrelevant had it been offered initially.” State v. McEachern, 399 S.C. 125, 137, 731 S.E.2d 604, 610 (Ct. App. 2012).

Further, the statement was admissible to rebut the allegation of improper influence (use of discovery to manufacture the jailhouse confession). Under Rule 801(d)(1)(B), SCRE, “a hearsay statement is potentially admissible if it is consistent with declarant’s trial testimony and ‘is offered to rebut an express or implied charge against the declarant of recent fabrication or **improper influence** or motive.’” State v. Jeffcoat, 350 S.C. 392, 565 S.E.2d 321 (Ct. App. 2002) (emphasis added).

In Jeffcoat, the defense raised the issue of coaching by asking the victim if she practiced before testifying and whether anyone told her what to say. Defense counsel specifically asked whether the victim’s mother and the solicitor told the victim what to say at trial. This Court found the statement was admissible as the line of questioning constituted an allegation of improper influence. This Court further found that the statement arose before the improper influence arose. Id., 350 S.C. at 397-98, 565 S.E.2d at 324.

United States v. Pena, 949 F.2d 751 (5th Cir. 1991) is instructive. In that case, the Fifth Circuit found that admission of a DEA agent’s handwritten notes from an interview with Pena following Pena’s arrest was not error. The Fifth Circuit found the notes were admissible under Federal Rule of Evidence 801(d)(1)(B) to rebut assertions that the agent inserted information learned after the interview into Pena’s statement. Pena, at 757. The opinion quoted favorably the advisory notes to the rule as follows: “If the opposite party wishes to open the door for its admission in evidence, no sound reason is apparent why it

should not be received generally.” Id. (quoting FED. R.EVID. 801 advisory committee’s notes). The Fifth Circuit concluded: “Defense counsel clearly intimated that McDaniel may have attributed his own knowledge of the drug operation to Pena.” Id.

In the instant case, by suggesting that Buhle relied on discovery documents to make his statement to law enforcement, defense counsel opened the door to the statement coming into evidence to show that it was made before discovery was provided to Bauman. Therefore, any error is not prejudicial as the statement ultimately became admissible, even if initially inadmissible on direct examination. Any error was subsequently waived by defense counsel’s cross-examination.

III.

The requested charge concerning jailhouse informants is an unconstitutional charge on the facts and the trial court did not err in declining to charge the instruction nor was Appellant prejudiced by the failure to give the instruction where the trial court gave a sufficient instruction to the jury concerning the determination of credibility of the witnesses.

Bauman argues the trial court erred in giving an instruction to the jury that a jailhouse informant's testimony should be reviewed with particular scrutiny and weighed with greater care than the testimony of an ordinary witness. This charge is an impermissible comment on the facts of the case and invades the province of the jury. Further, the trial court more than adequately instructed the jury on their responsibility in determining the credibility of a witness and the weight to assign a witness's testimony.

"An appellate court will not reverse the trial judge's decision regarding a jury charge absent an abuse of discretion." State v. Mattision, 388 S.C. 469, 479, 697 S.E.2d 578, 584 (2010). "To warrant reversal, a trial judge's refusal to give a requested jury charge must be both erroneous and prejudicial to the defendant." Id., at 479, 697 S.E.2d at 583.

A trial court is required to charge the current and correct law of South Carolina. See State v. Rayfield, 369 S.C. 106, 119, 631 S.E.2d 244, 251 (2006); Sheppard v. State, 357 S.C. 646, 665, 594 S.E.2d 462, 472-73 (2004). A jury charge is correct if it contains the correct definition of the law when read as a whole. See Rayfield, 369 S.C. at 119, 631 S.E.2d at 251; Sheppard, 357 S.C. at 665, 594 S.E.2d at 473; State v. Patterson, 367 S.C. 219, 231, 625 S.E.2d 239, 245 (Ct. App. 2006).

On review of a jury charge, an appellate court considers the charge as a whole in

view of the evidence and issues presented at trial. State v. Lee-Grigg, 374 S.C. 388, 406, 649 S.E.2d 41, 50 (Ct. App. 2007).

The Supreme Court has rejected similar requests for instructions. In State v. Steadman, 257 S.C. 528, 186 S.E.2d 712 (1972), the State relied largely on the uncorroborated testimony of a coconspirator. The trial court was asked “to instruct the jury that in determining the credibility of the testimony of the witnesses, ‘they have the right if not the duty to take into consideration any bias or prejudice or hope of reward that a witness might have.’” Id., at 524, 186 S.E.2d at 717. The trial court denied the request and instead charged the jury “that it was their duty to pass upon the credibility of the testimony of the witnesses and that they could reject any part of the testimony if they found good reason for so doing.” Id. The Supreme Court held: “The instructions clearly left to the jury the determination of the credibility of the testimony of the witnesses and the record shows no prejudice from the failure to give the requested instruction.” Id.

In State v. Collins, 266 S.C. 566, 225 S.E.2d 189 (1976), the appellant asserted the trial judge erred in “refusing to charge that the testimony of a codefendant should be carefully scrutinized and that the jury may consider whether the witness is fearful of retribution or has any hope of leniency from the prosecution.” Id., at 573, 225 S.E.2d at 193. The South Carolina Supreme Court found “the trial judge’s overall instruction that it was the jury’s duty to pass upon the credibility of the testimony of witnesses, and that they could reject any part of the testimony if they found reason for doing so, was adequate.” Id. (citing Steadman). The Supreme Court also held: “Any further instruction on this point might have invaded the province of the jury to draw inferences from the evidence.” Id.

The charge in this case is unnecessary in light of the extensive instructions to the

jury by the trial court on determining the credibility of witnesses. During his initial remarks to the jury, the trial court advised the jury as follows:

In determining what the true facts are in this case you must decide whether or not the testimony of a witness is believable. It will be my responsibility to rule as a matter of law as to whether certain testimony is admissible at all. But once the testimony is admitted whether or not you believe it is solely for you to determine.

In deciding whether to believe a witness you have the right to consider the interest of any witness, the bias of any witness, the prejudice of any witness, the opportunity for the witness to have seen the matters and things about which the witness may testify and the way the witness acts on the witness stand.

You have a right to consider anything that is in the record that will help you evaluate the testimony of each witness. That means that it is your duty to pay close attention to the witnesses, to observe them, and listen to them. . . .

ROA. p. 80, line 10 – p. 81, line 2. Prior to jury deliberations, the trial court instructed the jury as follows:

To determine the facts of this case you will have to evaluate the credibility that means the believability of each witness. Some of the things you may consider as you decide whether or not to believe a witness's testimony about a particular matter include what was the manner and appearance of the witness who testified. Was he or she straightforward or hesitant in answering? Was the testimony of a witness consistent or inconsistent? How did the witness come to know the facts that he or she testified to? What was his ability to know these facts?

Is there some reason a witness would want to give testimony which would help or hurt one side or the other? In other words was the witness biased or prejudiced. Was the testimony of a witness strengthened or weakened by the other testimony or evidence.

ROA. p. 284, line 19 – p. 285, line 9.

The instructions in the instant case were more than adequate to evaluate Buhle's

testimony. The jury could decide how he came to know the facts about which he testified. The jury could decide the motive for Bauman to testify. The jury did not need a specific instruction for Buhle as opposed to an “ordinary witness” -- a troublingly vague and undefined term. However, Bauman’s proposed instruction is an impermissible charge on the facts that would invade the province of the jury. Our state constitution commands that “[j]udges shall not charge juries in respect to matters of fact, but shall declare the law.” S.C. Const. art. V, § 21. The South Carolina Supreme Court earlier this year determined that an instruction that included the language “strong evidence” was an impermissible comment on the weight of the evidence by the court. State v. Cheeks, 401 S.C. 322, 329, 737 S.E.2d 480, 484 (2013).

Bauman’s requested charge offends the holding of Cheeks and the trial court did not err in declining the charge. Further, as in Collins, the trial court’s instruction to the jury adequately advised the jury on how to judge credibility of the witnesses presented to it. Accordingly, Bauman’s conviction and sentence should be affirmed.

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

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January 28, 2014

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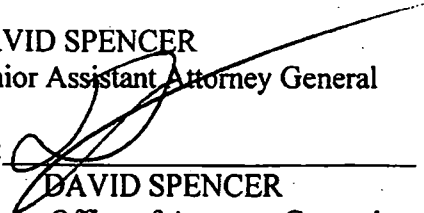
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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PROOF OF SERVICE

I, Norma Bigbee, certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

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I further certify that all parties required by Rule to be served have been served.

This 28th day of January, 2014.


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