

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Greenville County
Letitia H. Verdin, Circuit Court Judge

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S.C. Supreme Court

Opinion No. 2015-UP-015 (S.C. Ct. App. filed 1/14/2015)
11-GS-23-03885, 11-GS-23-03886

THE STATE,

RESPONDENT,

V.

ALBERT BRANDEBERRY,

PETITIONER.

APPELLATE CASE NO. 2015-000607

APPENDIX

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INDEX

INDEX.....	i
OPINION FROM THE COURT OF APPEALS (Filed January 14, 2015).....	1
PETITION FOR REHEARING (Filed January 29, 2015)	3
ORDER DENYING PETITION FOR REHEARING (Filed February 19, 2015).....	11

**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.

Albert Brandeberry, Appellant.

Appellate Case No. 2012-212841.

Appeal From Greenville County
Letitia H. Verdin, Circuit Court Judge

Unpublished Opinion No. 2015-UP-015
Submitted November 1, 2014 – Filed January 14, 2015

AFFIRMED

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

Attorney General Alan McCrory Wilson and Assistant
Attorney General John Benjamin Aplin, both of
Columbia; and Solicitor William Walter Wilkins, III, of
Greenville, for Respondent.

PER CURIAM: Albert Brandeberry appeals his convictions for first-degree criminal sexual conduct with a minor and committing a lewd act upon a minor. He

argues the trial court erred by (1) admitting expert testimony regarding the general characteristics of child sexual abuse and (2) charging the jury that the victim's testimony "need not be corroborated" pursuant to section 16-3-657 of the South Carolina Code (2003). We affirm pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred by admitting expert testimony regarding the general characteristics of child sexual abuse: *State v. Cope*, 405 S.C. 317, 343-44, 748 S.E.2d 194, 208 (2013) (stating the admission of expert testimony lies within the sound discretion of the trial court and an appellate court "will not reverse the trial court's decision to admit or exclude expert testimony absent a prejudicial abuse of discretion"); *State v. Schumpert*, 312 S.C. 502, 506, 435 S.E.2d 859, 862 (1993) ("[B]oth expert testimony and behavioral evidence are admissible as rape trauma evidence to prove a sexual offense occurred where the probative value of such evidence outweighs its prejudicial effect."); *State v. Weaverling*, 337 S.C. 460, 474, 523 S.E.2d 787, 794 (Ct. App. 1999) ("Expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible.").

2. As to whether the trial court erred by charging the jury that the victim's testimony "need not be corroborated" pursuant to section 16-3-657 of the South Carolina Code (2003): *State v. Wharton*, 381 S.C. 209, 213, 672 S.E.2d 786, 788 (2009) ("A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied."); *State v. Rayfield*, 369 S.C. 106, 116, 631 S.E.2d 244, 249 (2006) (stating "it [i]s not error to charge [section] 16-3-657 as long as the charge as a whole comports with the law"); *State v. Orozco*, 392 S.C. 212, 224, 708 S.E.2d 227, 233 (Ct. App. 2011) (adhering to *Rayfield* and holding the trial court committed no reversible error in charging the jury that "in South Carolina the testimony of a victim need not be corroborated for prosecution in a criminal sexual conduct case").

AFFIRMED.¹

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

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

ALBERT BRANDEBERRY,

APPELLANT.

APPELLATE CASE NO. 2012-212841

Appeal from Greenville County

Letitia H. Verdin, Circuit Court Judge

Opinion No. 2015-UP-015

PETITION FOR REHEARING

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SC Court of Appeals

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**SC OFFICE OF
APPELLATE DEFENSE**

Pursuant to Rule 221(a), SCACR, appellant requests rehearing because this Court may have overlooked the fact that the “no corroboration” instruction was a charge on the facts, and it was fundamentally unfair and infringed on appellant’s right to a fair trial as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution. The instruction detracted from the presumption of innocence. R. 453. (Issue two of the final brief).

It informed the jury that one witness, the alleged victim, was a special witness where none of the usual rules of ascertaining credibility applied. This was the “her word is her bond” witness.

The “no corroboration” statute was enacted so judges did not think they were compelled to

direct a verdict where the only evidence was the alleged victim's uncorroborated testimony or accusation. The same rationale was true for an appellate court considering a directed verdict issue on appeal. See, State v. Rayfield, 369 S.C. 106, 119, 631 S.E.2d 244, 251 (2006).

As the dissent explained in Rayfield: "I would hold that it is error for a trial court to charge the jury that an alleged victim's testimony needs no corroboration. **Although section 16-3-657 contains current and correct law, it is not a proper subject of a jury charge. Section 16-3-657 prevents courts, either on a dispositive motion at the trial level or on appellate review, from finding a lack of sufficient evidence to support a conviction because the alleged victim's testimony is uncorroborated.**" See, State v. Rayfield, 369 S.C. 106, 119, 631 S.E.2d 244, 251 (2006). (emphasis added). See, also, State v. Bagwell, 201 S.C. 387, 23 S.E.2d 244, 249 (1942) (similar instruction on "uncorroborated" statements of accomplices should be received with caution and should be scrutinized by the jury with great caution as a charge on the facts which violated the state constitution).

Shauna Galloway-Williams "expert testimony" in "child abuse and treatment"

Petitioner submits this Court may have overlooked the fact that State v. Weaverling, 337 S.C. 460, 474, 523 S.E.2d 787, 794 (Ct.App.1999) and State v. Schumpert, 312 S.C. 502, 506, 435 S.E.2d 859, 862 (1993) are no longer good law to the extent they allow bolstering by testifying about common behavioral traits of alleged sexual assault victims.

Appellant filed a "motion to exclude testimony of non-treating expert." R. 454. Appellant asserted the testimony of Galloway-Williams¹ should be excluded because the expert was not qualified to render an opinion on this particular subject, the expert's testimony is not necessary to the trier of fact, and the reliability of the basis for the opinion is not sufficient to support the opinion.

¹ Galloway-Williams is hereinafter referred to as "Williams" for ease of reference.

Appellant cited Rule 703, SCRE: State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999); Watson v. Ford Motor Company Inc., 389 S.C. 434, 699 S.E.2d 169 (2010); State v. Douglas, 380 S.C. 499, 671 S.E.2d 606 (2009); State v White, 382 S.C. 265, 676 S.E.2d 684 (2009). R. 454.

Brief reiteration of trial facts

Defense counsel Bannister noted that the proposed witness, Williams, was not treating the alleged victim, and she was going to testify about other sexual assault victims in generalities. Counsel said her testimony was “implicitly saying that’s what perpetrators typically do in all cases that I am working on.” Counsel said this lumped all perpetrators and victims into one category. “I don’t think it’s necessary for an expert opinion. I’m – it’s a little bit of a pig in a poke.” R. 210, l. 12 - 212, l. 4.

The solicitor argued that unlike defense counsel the jurors were “not legal experts. They are not experts of child sexual abuse.” The solicitor argued the testimony was necessary, and the judge said she would review the case law on the subject before ruling. R. 212, ll. 7-24.

Defense counsel then noted the more recent cases of State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011); State v. Tapp, 398 S.C. 376, 728, S.E.2d 468 (2012), as the now controlling case law. R. 212, l.23 - 213, l.17.

Williams testified that nondisclosure rates among women range from *thirty-three to ninety-two percent* “and among men from among *forty-two to eighty-five percent*.” R. 249, ll. 2-12. (emphasis added). The “vast majority” of individuals that “we have seen have been abused by a close family member or a friend, someone known to the child. There are very few cases we see where the child has been abused by a stranger or someone that is unknown to them.” R.251, ll. 10-18.

When questioned about any follow-up to determine which of the cases ever led to a conviction, Williams could only respond: "We could track that. We became accredited in 2007." R. 253, l. 18 - 254, l. 7. Williams admitted she was not aware of any statistics on how many accused people were "indicated for DSS," had their cases dismissed, or referred to law enforcement. She was also not aware of how many of those accused pled guilty or went to trial. Regarding those that went to trial she was not sure of any statistics on what verdicts were rendered. R. 254, ll. 14-22.

After hearing the testimony the judge ruled that she would not allow any questioning about whether it was more common for a family member to abuse a child than a stranger. She would also not allow testimony about whether a child who had been victimized was likely to become again become "a victim later." R. 258, ll. 8-22. It was undisputed that the father of this minor admitted he abused her.

Defense counsel objected that this testimony constituted improper bolstering of the child's disclosure. He argued that the "expert" opinion in essence was that the alleged victim in this case **"fits into what we understand to be a kind of the common way that children disclose, [therefore] she should be given credibility."** R. 259, l. 4 - 260, l. 5. (emphasis added). The judge ruled she would allow this testimony about "delayed disclosure." R. 260, ll. 6-11. She was qualified as an expert in "child abuse and treatment" over appellant's objection. R. 309, ll. 1-23.

Williams maintained that disclosure was "a process," and that "a lot of times, children are abused by someone that is known, loved, and trusted by them. That may be a family member." R. 312, l. 10 - 314, l. 25. She then testified about how the "proximity that the child has to the perpetrator" could play a part. She added that once the perpetrator was away the child may feel "safer to disclose." R. 315, l. 1 - 316, l. 4.

Williams offered that *forty-two percent of children did not delay disclosure but that fifty-eight percent of children did delay telling anyone.* R. 330, ll. 15-25.

No longer good law

Following State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), cases from the 1990's such as Weaverling and Schumpert can no longer be considered to be good law to the extent they permit "expert" testimony that could not pass a modern day reliability gatekeeping analysis. Further, they are no longer good law to the extent they allow the "expert" to bolster the testimony of the alleged victim through junk science statistics, and unreliable testimony.

In Kromah, our Supreme Court noted that while forensic interviewers may be useful as a tool to aid law enforcement their work is "not appropriate for use in a courtroom." Appellant understands that in this case Williams was not testifying as a forensic interviewer, although she is one. **Regardless, what occurred in this case was not occurring in a vacuum. The approach for the state, given the case law from this Court and the Supreme Court, is to now have the witness, here Williams, not appear as a forensic interviewer but as an expert in "delayed disclosure" or some other "child abuse" expert title. Here, Williams allegedly did not know anything about the case, and had not even interviewed the alleged victim. Nonetheless, defense counsel here correctly argued this was simply a backdoor attempt to improperly bolster the child's testimony.**

In State v. Douglas, 380 S.C. 499, 671 S.E.2d 606 (2009), our Supreme Court held there was no need for the testifying witness to be qualified as an expert. The Court then noted the impropriety of such a witness testifying that she believed the child. The Supreme Court and this Court have warned of "expert" testimony on "a compelling disclosure of abuse." See State v.

Jennings 394 S.C. 473, 716 S.E.2d 91 (2011). See, also, State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (2012).

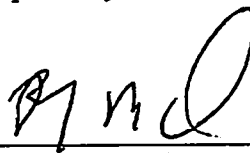
Williams here testified with the aura of an expert. She largely admitted her conclusions and opinions were based on her own experience. She did, as seen above, claim that statistics showed that 58% of abused children delayed telling anyone. This could be “for a day, months, years.”

Further, as defense counsel correctly argued, the purpose of this testimony was to improperly bolter the credibility of the accusing witness. It was meant to have the jury conclude that the accusing witness in this case fit into a “normal pattern” of an abused person. That was improper, and it was highly prejudicial. State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013); State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011). See, also, State v. McKerley, 397 S.C. 461, 725 S.E.2d 139 (2012).

While this Court is bound by precedent, appellant respectfully submits it is within its authority to correctly hold that cases are no longer good law where it appears they are no longer good law within the context of the facts of the case before this Court. Even non-scientific evidence must now pass the gatekeeping function of the trial judge to determine that the “expert” is qualified, and that the subject matter of the testimony is reliable. Watson v. Ford Motor Co., 389 S.C. 434, 699 S.E.2d 169 (2010); State v. White, 382 S.C. 265, 676 S.E.2d 684 (2009).

Appellant respectfully submits that this Court should grant rehearing and reconsider its two holdings 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 29th day of January, 2015.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County
Letitia H. Verdin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

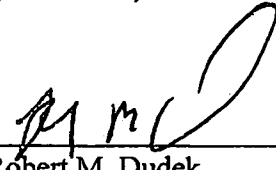
ALBERT BRANDEBERRY,

APPELLANT

APPELLATE CASE NO. 2012-212841

CERTIFICATE OF SERVICE

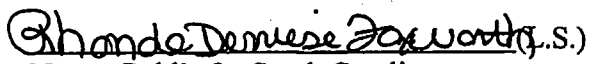
The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 29th day of January, 2015.



Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 29th day
of January, 2015.


(Rhonda Demese Foxworth, S.)
Notary Public for South Carolina
My Commission Expires: October 17, 2021.

The South Carolina Court of Appeals

The State, Respondent,

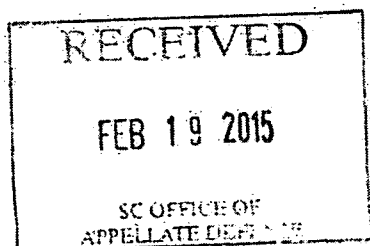
v.

Albert Brandeberry, Appellant.

Appellate Case No. 2012-212841

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.



John Cannon Jr C.J.
A. Lee J.

James E. Bohannon J.

Columbia, South Carolina

cc: Robert Michael Dudek, Esquire ✓
Alan McCrory Wilson, Esquire
John Benjamin Aplin, Esquire
William Walter Wilkins, III, Esquire

FILED

Feb 19, 2015 gcr

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Letitia H. Verdin, Circuit Court Judge

RECEIVED

MAR 31 2015

S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

ALBERT BRANDEBERRY,

APPELLANT

APPELLATE CASE NO. 2012-212841

RECORD ON APPEAL

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INDEX

INDEX	i
<u>JACKSON V. DENNO</u> TRANSCRIPT	1
MATTHEW TUTTLE	
Direct Examination by Ms. Bentley	22
Cross Examination by Mr. Bannister	26
Direct Examination by Ms. Bentley	29
TRIAL TRANSCRIPT	
OPENING STATEMENT BY MS. BENTLEY	49
OPENING STATEMENT BY MR. BANNISTER	53
TESTIMONY	
GRETA MCCALL	
Direct Examination by Ms. Bentley	64
Cross Examination by Mr. Bannister	71
Redirect Examination by Ms. Bentley	86
Recross Examination by Mr. Bannister	88
HEATHER HUBERT	
Direct Examination by Ms. Bentley	93
Cross Examination by Mr. Bannister	104
MATTHEW TUTTLE	
Direct Examination by Ms. Bentley	117
Cross Examination by Mr. Bannister	124
Redirect Examination by Ms. Bentley	129
MINOR 1	
Direct Examination by Ms. Bentley	130
Cross Examination by Mr. Bannister	164
Redirect Examination by Ms. Bentley	171
KELLY BRANDEBERRY	
Direct Examination by Ms. Bentley	174
Cross Examination by Mr. Bannister	190

DISCUSSION OF GALLOWAY-WILLIAMS PROPOSED TESTIMONY	206
SHAUNA GALLOWAY-WILLIAMS (IN CAMERA)	
Direct Examination by Ms. Bentley.....	216
Cross Examination by Mr. Bannister.....	234
ARGUMENTS	258
RULING OF THE COURT	260
MINOR 2	
Direct Examination by Ms. Bentley.....	264
Cross Examination by Mr. Bannister.....	271
HAROLD BRANDEBERRY	
Direct Examination by Ms. Bentley.....	276
Cross Examination by Mr. Bannister.....	290
SHAUNA GALLOWAY-WILLIAMS	
Direct Examination by Ms. Bentley.....	302
Cross Examination by Mr. Bannister.....	316
Redirect Examination by Ms. Bentley	329
DIRECTED VERDICT MOTION.....	333
NOREEN BRANDEBERRY	
Direct Examination by Mr. Bannister.....	340
Cross Examination by Ms. Bentley	355
Redirect Examination by Mr. Bannister	363
CLOSING ARGUMENT BY MR. BANNISTER.....	373
CLOSING ARGUMENT BY MS. BENTLEY.....	405
CHARGE ON THE LAW	434
VERDICT	449
MOTION TO PROHIBIT CHARGE TO JURY OF S.C. CODE 16-3-657 WITHOUT EXPLAINING THE TERM “UNCORROBORATED”	453
MOTION TO EXCLUDE TESTIMONY OF NON-TREATING EXPERT	454
MOTION TO RECONSIDER SENTENCE AND MOTION FOR A NEW TRIAL	456
INDICTMENTS	459
CERTIFICATE OF COUNSEL.....	463

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	Case No(s) .: 2011GS2303885,
	)	2011GS2303886
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Albert Brandeberry,	)	
	)	
Defendant.	)	
	)	

August 6-9, 2012
Greenville, South Carolina

B E F O R E :

HONORABLE LETITIA H. VERDIN, Judge.

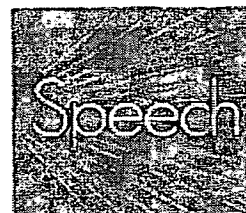
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P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 6th day of August, 2012 at approximately 1:43 p.m.)

THE COURT: Yes, sir.

MR. BANNISTER: Good to see you, Judge. Uh, Jim Bannister here on behalf of the defendant, Mr. Brandeberry. Of course, uh, -- let's see. Do I have an indictment number? I'm going to find an indictment number.

THE COURT: Yes, sir. 2011-GS-23-3885 and 3886; is that correct?

MR. BANNISTER: Correct.

THE COURT: All right.

MR. BANNISTER: Your Honor, we asked that you give us a moment to have some pretrial motions prior to bringing the jury in. We appreciate you giving us the opportunity to do that. By way of just a little bit of background for the record, the current charges against my client, Mr. Brandeberry, are Criminal Sexual Conduct and Lewd Act. This indictment stems from allegations that took place allegedly in 2001 through 2006. It apparently first came to light with law enforcement some time in 2010.

One of the, uh, rather unusual issues -- maybe

1 it's not that unusual, but an unusual legal issue
2 in this case is that the victim in the case, whose
3 name is Minor 1 Brandeberry, she, we know, was
4 sexually abused by her father at least from age
5 approximately 10 until she reported through her
6 mother, DSS and father, whose name is Harold
7 Brandeberry, was indicted, convicted, pled and --
8 actually pled January 12th of this year, I believe.
9 So that plays a part, not only in the defense of
10 the case, ---

11 **THE COURT:** Sure.

12 **MR. BANNISTER:** --- but I think also in the
13 prosecution's presentation of how this all came
14 about, how we ended up with a warrant against the
15 defendant. But it also raises some issues that,
16 uh, I want to address initially so we can get some
17 direction from you.

18 **THE COURT:** Sure.

19 **MR. BANNISTER:** Hopefully, a lot of this
20 stuff, I believe the Solicitor and I are generally
21 in agreement on. It just kind of needs to be put
22 on the record so everybody's on the same page.

23 **THE COURT:** That's fine. That's fine.

24 **MR. BANNISTER:** So first, Your Honor, I'm
25 going to -- and I've given the Solicitor a copy of

1 this. But the first motion that I would take up,
2 just, uh, is a motion to exclude testimony that
3 would relate to the defendant as to the abuse of
4 any other alleged victim, that is, uh, there have
5 been -- there has been some information apparently
6 from the father indicating some abuse in the past
7 that potentially involved the defendant, Albert
8 Brandeberry.

9 So just to kind of follow up, Harold
10 Brandeberry, the one who is convicted, at some
11 point said there was some abuse in the household
12 that related to my client, Albert Brandeberry. The
13 Solicitor and I both agree that that would be
14 improper to come in in this case. My particular
15 position would be its 404(b) evidence.

16 **THE COURT:** Yes.

17 **MR. BANNISTER:** Character or propensity,
18 whichever way you want to look at it, prior bad
19 acts, it should not be permitted under any
20 circumstances. I will -- unless I open the door,
21 of course.

22 **THE COURT:** Of course.

23 **MR. BANNISTER:** Go ahead.

24 **MS. BENTLEY:** And just to clarify briefly,
25 the State does have evidence provided to the

1 defense that the defendant sexually abused his own
2 children, specifically his two daughters and
3 possibly Harold Brandeberry. The State tried to
4 get the two daughters to come down as Lyle
5 witnesses and they did not want to cooperate. So
6 we do not anticipate introducing that evidence.

7 **THE COURT:** All right.

8 **MS. BENTLEY:** As to the defendant, pardon
9 me, the witness, Harold Brandeberry, uh, his
10 attorney, uh, prohibited me from speaking with him.
11 I am not going to seek to elicit testimony
12 regarding abuse by his father to Harold. However,
13 I think before he comes out, if he comes out, Your
14 Honor may need to advise him of such.

15 **THE COURT:** All right. It does not sound
16 like it would be proper anyway. I will instruct
17 the witness -- just -- you may have said this and
18 I've already forgotten it. What kind of sentence
19 is he serving?

20 **MR. BANNISTER:** 12 years.

21 **THE COURT:** 12 years.

22 **MS. BENTLEY:** CSC second degree, Your Honor.

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

24 **MR. BANNISTER:** Judge, I think, and I
25 suspect I speak for both of us on this core, uh, we

1 are both suspicious that Harold Brandeberry might
2 try to inject something of that nature into the
3 trial of this case.

4 **MS. BENTLEY:** Whether it be to cause a
5 mistrial, we're just not certain of his motives at
6 this point.

7 **MR. BANNISTER:** We'll put it this way, he's
8 not real excited about Ms. Bentley and he's not
9 real excited about me or my client, Albert
10 Brandeberry. So whatever tone you think you need to
11 take with him, I suggest we do that prior to the
12 jury being in here and make it real clear that
13 there will be some harsh repercussions if he gets
14 into that in any way, shape or form.

15 **THE COURT:** All right.

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

17 **THE COURT:** And let me -- when do you think
18 that he might testify?

19 **MS. BENTLEY:** Tomorrow afternoon, Your
20 Honor.

21 **THE COURT:** Tomorrow afternoon. All right.
22 Very well then. All right.

23 **MR. BANNISTER:** Judge, Your Honor, again, I
24 again hand this motion to the Solicitor. This
25 motion is a motion to limit the testimony that

1 would corroborate the victim's account to time and
2 place only pursuant to Rule 801(d)(1)(d). I think
3 generally there is an agreement from the Solicitor
4 that the --

5 **MS. BENTLEY:** We're going to comply with all
6 the law and rules.

7 **THE COURT:** Okay. All right. Very well.

8 **MR. BANNISTER:** Again, there might be one
9 that has more to do with letting the witnesses
10 know --

11 **THE COURT:** That was my question. Have
12 you ---

13 **MS. BENTLEY:** I have discussed that with all
14 the witnesses.

15 **THE COURT:** --- discussed that with all your
16 witnesses?

17 **MS. BENTLEY:** And my questions will state
18 without giving any information, please tell me
19 whether the defendant, pardon me, whether the
20 victim disclosed sexual abuse.

21 **THE COURT:** In my memory, I think you tried
22 one or two of these cases in front of me before.
23 My memory is that you -- that you somewhat advised
24 every witness who came up when you got to that
25 particular point something with regards to your --

1 **MS. BENTLEY:** I want to make sure this is
2 smooth and clean, Your Honor.

3 **THE COURT:** Okay. All right. Very well
4 then.

5 **MR. BANNISTER:** All right. Your Honor, this
6 is, again, a motion sort of along the same lines.
7 I don't think there is any real disagreement.

8 **THE COURT:** Sure.

9 **MR. BANNISTER:** But this would be to limit
10 any bolstering or statements of credibility as it
11 relates to the victim's disclosure of sort -- what
12 has been typical in cases like this up until a very
13 recent ruling has been, you know, I find the
14 disclosure credible because of various sundry
15 things. So I've cited a number of cases that would
16 suggest that that would be improper. I think as a
17 -- maybe a little bit more difficult to ascertain
18 in this case, because we got a delayed disclosure
19 from the victim, that is it is some years after the
20 incident. And on top of that, you will hear that
21 it is several interviews, several different
22 authority of figures away from the initial
23 disclosure before there is the first allegation
24 against the grandfather.

25 I would want the opportunity to argue if

1 there's going to be some, either expert testimony
2 about delayed disclosure through children, I think
3 that is sort of a backhanded way of bolstering
4 credibility by saying, okay, credible cases involve
5 children who report in a delayed fashion. This
6 child reported in a delayed fashion. What I'm
7 anticipating is maybe some testimony in a "don't
8 worry about that" in essence. I don't know her
9 case. But if that's going to come out, I'd like to
10 know I'd have an opportunity to --

11 **THE COURT:** All right. Do you anticipate
12 having an expert witness generally?

13 **MS. BENTLEY:** I do anticipate having
14 particularly if the schedules work out. We do
15 anticipate having a live expert. She would not
16 discuss a compelling nature of disclosure because
17 the victim never disclosed to her. She would not
18 talk about credibility or believability. She would
19 merely talk about child sexual abuse trauma,
20 reasons that children delay disclosure, family
21 dynamics, which are very important in this case,
22 but nothing regarding the victim's credibility in
23 any way. There will be another therapist who we
24 will not seek to qualify as an expert, uh, the
25 victim's therapist. But we do not discuss

1 credibility, believability, compelling nature of
2 disclosure with her either.

3 **THE COURT:** All right. This blind expert
4 that's planning on coming in, before we get to her
5 -- and I've heard her testimony before, uh, if --
6 before we get to her, then I'm going to allow --
7 Mr. Bannister, I think the case law has been
8 clarified somewhat since the last time I've heard
9 her testify. I'd be happy to hear argument on that
10 point.

11 **MR. BANNISTER:** Okay. That would be great.
12 One of the things that -- this is the Solicitor's
13 fault. I think she's had limited time to talk with
14 Ms., uh, -- I think it's Mrs. Williams, Mrs. Shauna
15 Galloway-Williams.

16 **THE COURT:** Yeah. Yeah.

17 **MR. BANNISTER:** She's had limited time to
18 talk with her as I understand it. But she wouldn't
19 talk to me last week. So I really have no idea
20 what she's getting ready to testify to other than
21 what I gleamed from some of the past cases.

22 **THE COURT:** I can tell you what she's going
23 to say from having heard her in a case at some
24 point. I think your synopsis of what she generally
25 testifies to is almost that brief.

1 **MS. BENTLEY:** Broad strokes and
2 hypotheticals, Your Honor. Nothing to try to get
3 in credibility or testimony for our case through
4 her.

5 **THE COURT:** All right. And if we need to go
6 through her testimony, we can take time to do that
7 as well.

8 **MR. BANNISTER:** We might have some
9 objections to her expertise on the subject and
10 whether or not its something that's needed to
11 assist the trier of fact. And if so, whether or
12 not it's the type of evidence that is the basis for
13 reliable opinion.

14 **THE COURT:** Okay.

15 **MR. BANNISTER:** So the basic 702 analysis.

16 **THE COURT:** Sure.

17 **MR. BANNISTER:** I know I'm going to need to
18 go through that with her.

19 **THE COURT:** And so it looks like we should
20 just build in some time for her for there to be
21 pretty extensive voir dire in the argument after
22 that.

23 **MS. BENTLEY:** Your Honor, for scheduling
24 purposes only, she is available only tomorrow
25 morning. But based on our late start today -- or

1 Wednesday morning if we can push it all to
2 Wednesday morning. I don't know what our day looks
3 like tomorrow. We will either call her Wednesday
4 morning or not call her.

5 **THE COURT:** Okay. Sounds like Wednesday
6 morning might be, yeah, the best.

7 **MR. BANNISTER:** All right. And then, Your
8 Honor, the last motion that I have, uh, pretrial
9 would be a motion to exclude testimony of, again,
10 character propensity nature. That is to say these
11 are the things potentially that a pedophile or a
12 child molester would do and then to back it up with
13 in the facts of this case, the defendant is alleged
14 to have done certain things ---

15 **THE COURT:** Uh-huh.

16 **MR. BANNISTER:** --- and that fits the
17 pattern. I don't think that there's -- from my
18 discussion with the Solicitor, I haven't been aware
19 of anything that is potentially going to fit what
20 I'm concerned about except maybe testimony about
21 typical grooming, which is one of those words that
22 is used sometimes by experts and sometimes by law
23 enforcement and by individuals who are in the field
24 of child sexual abuse to say this is what happens
25 prior to the actual sexual contact between the

1 perpetrator and the victim. It describes acts that
2 sort of lead up slowly to the ultimate act and the
3 inappropriate touch or the sexual contact. And so
4 I just want everybody to be aware that I have an
5 objection to any expert that would come in and try
6 to characterize anything the defendant has done as
7 fitting that pattern. Does that make sense?

8 **THE COURT:** All right. In fitting the
9 pattern in general that a pedophile will often try
10 to groom a victim and that this particular
11 defendant acted or did not act in conformity with
12 that. Is that --

13 **MR. BANNISTER:** Yes, Your Honor. You
14 described it a little narrower than I would, ---

15 **THE COURT:** Okay.

16 **MR. BANNISTER:** --- but that's where we're
17 starting from.

18 **THE COURT:** Okay.

19 **MS. BENTLEY:** Your Honor, we would just
20 again discuss that or confirm that our expert has
21 never met the victim. She does not know -- she
22 does not have a copy of the police report. She
23 does not know what the testimony will be. The
24 questions I got from her are quite broad. What is
25 grooming? Why do perpetrators groom victims? And,

1 you know, -- it's basically about the process.
2 It's not about what happened here. It's not
3 hypotheticals. It is narrowly tailored just to
4 give the jury an idea of how and why, you know, it
5 could take six years for this to come to light.
6 But again, we want to proffer her testimony
7 Wednesday morning and see -- the words pedophile
8 or, you know, patterns, things like that will not
9 be used.

10 **MR. BANNISTER:** Judge, I think you can see
11 where I'm struggling with that kind of testimony on
12 that side. This is a blind expert who is qualified
13 in this general field of sexual assault or child
14 abuse. Start talking about the victims that I
15 reviewed or my experience has been and this is how
16 we get there. It tends to long-haul the
17 perpetrators into one category. Even though you
18 are not using the word pedophile, uh, you're not
19 saying this is what the characteristics of a
20 pedophile are, in essence, what you're doing is
21 describing it without putting that moniker on it.
22 That's where I have a problem with that testimony.
23 Maybe we all are just going to have to wait and
24 hear exactly what she's going to say.

25 **THE COURT:** Well, I guess, Ms. Bentley, as I

1 was hearing what you were saying your expert is
2 going to testify to, I heard you say -- talk about
3 some grooming. But then you said and she would
4 then explain why it took so long for this to come
5 to light. It's two really different issues it
6 sounds like unless, uh, -- it's one thing to say
7 there were a lot of social reasons or things like
8 that things don't necessarily disclose at that
9 point. That's one thing. But for her to explain
10 that this is what pedophiles do, groom, it might be
11 different.

12 **MS. BENTLEY:** Yes, Your Honor. And I
13 supposed that it would be two-prong. One, the
14 delayed disclosure and, two, what is grooming. I
15 have not spoken to her again. Essentially the
16 escalating behavior, going from innocuous touching,
17 uh, to more sexually abusive touching and how it
18 can confuse the child. We believe that under State
19 v. Weaverling, that testimony would be probative so
20 long as it was narrowly tailored to not be
21 prejudicial or to not concern this particular
22 defendant with the facts of this case.

23 **THE COURT:** All right. Well, let's just
24 wait to hear what she has to say. I'm not as
25 concerned at this point about the delayed

1 disclosure testimony that I would anticipate. I'm
2 not quite as concerned about it. I'm a little
3 concerned about the grooming aspect of it. I'll
4 just have to hear where she's going with it.

5 **MR. BANNISTER:** All right. And Your Honor,
6 -- All right. Judge, one more motion at this time.
7 I guess this is more of a heads up. Again, a
8 little bit of a background of how we get to this
9 particular motion. The motion I handed up to you
10 is a motion to exclude Dr. Bodtdorf's report and/or
11 his testimony. In this case, Dr. Bodtdorf was
12 hired by Harold Brandeberry to do a report that was
13 ultimately used in Harold Brandeberry's sentencing.
14 I just -- I don't see how his report or his
15 testimony about talking with Harold Brandeberry is
16 relevant to our case. If it's relevant, I don't
17 see how it's not hearsay without an exception.

18 **THE COURT:** Okay.

19 **MS. BENTLEY:** And Your Honor, how I got here
20 was a very long and twisted road. I have no idea
21 what Harold Brandeberry will be saying.

22 **THE COURT:** I see.

23 **MS. BENTLEY:** I have kept -- I have Dr.
24 Bodtdorf's report. It's actually a public record.
25 It's been turned over. I have to give Your Honor a

1 copy. I, in no way, believe that I would be able
2 to introduce the physical report. In the event the
3 defendant -- pardon me. In the event that Harold
4 Brandeberry, the witness, were to give untruthful
5 testimony on the stand, this would merely be
6 impeachment by extrinsic evidence. And it would be
7 Dr. Bodtdorf's report which I don't think I could
8 possibly redact enough to get in. That's my long --

9 **THE COURT:** Do I understand you to say that
10 if you plan to impeach him, you plan to bring Dr.
11 Bodtdorf to do it?

12 **MS. BENTLEY:** Yes, Your Honor.

13 **THE COURT:** All right. Well, if we think we
14 need to go down that road.

15 **MS. BENTLEY:** And we will know as soon as
16 Harold Brandeberry takes the stand.

17 **THE COURT:** All right. That makes sense.
18 All right. Mr. Bannister, did you have the
19 opportunity to discuss with your client the issue
20 that I called to your attention, and that is that
21 my law clerk has accepted a job at the Solicitor's
22 office. I do not mind screening him from this
23 particular case if you would like for me to do
24 that. I certainly would not have any qualms about
25 doing that.

1 **MR. BANNISTER:** Your Honor, I think in an
2 abundance of caution, I would prefer that you do
3 that. I don't mean to impugn in any way, shape or
4 form your law clerk or his character.

5 **THE COURT:** He has lots and lots of other
6 things to do. To a certain extent, I think he was
7 hoping that that was going to be, not that he does
8 not want to see y'all try a case.

9 **MR. BANNISTER:** I just don't feel like I've
10 got a choice but to do that.

11 **THE COURT:** I certainly understand. I
12 certainly understand about that. I certainly
13 understand.

14 **MR. BANNISTER:** All right. Your Honor,
15 other than --

16 **THE COURT:** Could I interrupt you briefly?
17 This is probably in too much of an abundance of
18 caution. But I will tell you that having tried
19 several of these cases in the past, I do have a
20 charge that we've used in another case that we
21 thought might come close to mirroring the potential
22 charge on the law in this case. We'll go over that
23 with a fine tooth comb, but I will say that is the
24 extent of what he has provided to me in this case
25 is a past charge that I've used in another case.

1 That's it.

2 **MR. BANNISTER:** Okay.

3 **THE COURT:** Nothing else.

4 **MR. BANNISTER:** It would help me, not for
5 that reason, if I knew what you potentially were
6 going to charge. I don't mind starting to work on
7 that at this point.

8 **THE COURT:** Okay. Sure. Sure. It's, for
9 lack of a better phrase, a kitchen sink kind of
10 charge where it had kind of everything to it.

11 **MR. BANNISTER:** Sure.

12 **THE COURT:** So there will be some things
13 that may be -- may not be applicable in this case.
14 But I will go ahead and give it to y'all. I don't
15 mind.

16 **MR. BANNISTER:** Okay.

17 **THE COURT:** I'll see if I can get that from
18 him some time today. All right. Yes, sir.

19 **MR. BANNISTER:** Your Honor, the only thing I
20 have left is a motion for voir dire which I think I
21 provided to the Solicitor as well.

22 **THE COURT:** What's the State's position on
23 it? Have you taken a look at it?

24 **MS. BENTLEY:** Yes, I have. I have no
25 opposition to anything in there.

1 **THE COURT:** Some of it, I think just from
2 looking at this one second might be a little
3 redundant. Give me just a minute and I'll look it
4 over. (Pause.)

5 It's actually not very redundant. Okay. I
6 don't have any problem with any of these questions.
7 I'll be happy to ask them all. I probably will do
8 it in a manner that allows him to come up here and
9 do it sort of off the record. I mean, not off the
10 record. Not in open court, but it will still be on
11 the record is what I'm trying to say.

12 **MS. BENTLEY:** While we're talking about
13 jurors, -- I don't know if now is the appropriate
14 time -- the son of someone involved in my case is
15 in the large venire. I don't know if he'll be in
16 here.

17 **THE COURT:** Okay.

18 **MS. BENTLEY:** But let the clerk know at the
19 appropriate time or let --

20 **THE COURT:** Tell me that. Do you know the
21 juror number?

22 **MS. BENTLEY:** It's 44. It's Daniel
23 Crawford.

24 **THE COURT:** All right. I'll -- what I did
25 was I asked for 36 jurors anticipating 5 and 10, 1

1 and 2, and two alternates. Anticipating that, I
2 asked for 36, which gives us a cushion of -- well,
3 my math's not too good but I think a cushion of
4 six. But it could be a cushion of four just
5 thinking off the top of my head. All right.

6 **MS. BENTLEY:** And I have two motions, Your
7 Honor.

8 **THE COURT:** Yes, ma'am.

9 **MS. BENTLEY:** One was my motion in limine
10 for compliance with the Rape Shield Law.

11 **THE COURT:** All right.

12 **MS. BENTLEY:** I spoke with Mr. Bannister
13 about that. This piece is unique in that the
14 victim does have some prior sexual knowledge
15 because of her father's abuse.

16 **THE COURT:** Right.

17 **MS. BENTLEY:** But anything other than that,
18 we don't want that to be viewed as opening the
19 door.

20 **THE COURT:** Okay.

21 **MR. BANNISTER:** I have no intention of
22 getting into that.

23 **THE COURT:** Okay. Very good.

24 **MS. BENTLEY:** And we need to have a Jackson
25 v. Deno hearing on some statements ---

1 **THE COURT:** All right.

2 **MS. BENTLEY:** --- this defendant made.

3 **THE COURT:** Yes, ma'am.

4 **MS. BENTLEY:** Okay. The State calls
5 Detective Matt Tuttle to the stand.

6 **THE COURT:** Sir, if you'll come forward and
7 be sworn please.

8 **MATTHEW TUTTLE**

9 having first been sworn, testifies as follows:

10 **THE COURT:** Okay. Thank you. Have a seat.

11 **DIRECT EXAMINATION**

12 **BY MS. BENTLEY:**

13 **Q** Detective Tuttle, where are you employed?

14 **A** With the City of Finley Ohio Police Department.

15 **Q** What is your position there?

16 **A** I'm a detective.

17 **Q** How long have you been a detective?

18 **A** 10 years. Then I did -- 10 years full-time and
19 then a one-year rotation prior to that.

20 **Q** In the course of your job, did you begin an
21 investigation into the defendant, Albert Brandeberry?

22 **A** Yes, ma'am.

23 **Q** When?

24 **A** Uh, it started around February of 2011.

25 **Q** And how did you get the initial report?

1 **A** Detective Hubert from the Greenville, South
2 Carolina Police Department had contacted my boss and
3 advised they were requesting a courtesy interview on
4 Albert, so that's how I got involved.

5 **Q** Tell us what a courtesy interview is.

6 **A** From the trip down, it's roughly nine hours
7 from here to Finley, Ohio. So some departments to save
8 money or save time ask other departments to interview
9 people for them.

10 **Q** Okay. Did any of the allegations involve
11 crimes in Ohio?

12 **A** No, ma'am.

13 **Q** Had a warrant been issued when Detective Hubert
14 called you?

15 **A** No.

16 **Q** Did you have any probable cause that -- to
17 believe that the defendant had been engaged in any crime?

18 **A** From Detective Hubert's report, yes. But other
19 than --

20 **Q** Other than that?

21 **A** No.

22 **Q** Would you have been able to arrest the
23 defendant at that time?

24 **A** No.

25 **Q** Please tell me what you did in order to conduct

1 this interview.

2 **A** On March 10th, around 1:00 in the afternoon, I
3 went to his residence. I believe it was [REDACTED]
4 Street. Again, that's in the city of Finley.

5 **Q** Okay.

6 **A** Basically, asked to talk with him.

7 **Q** And did he speak with you at that time?

8 **A** Yes, he did.

9 **Q** Where did you speak?

10 **A** In his living room.

11 **Q** Where was the defendant seated?

12 **A** I believe he had his own chair in the northeast
13 corner of the living room.

14 **Q** Was anyone else present?

15 **A** His wife.

16 **Q** Was he restrained in any way?

17 **A** No.

18 **Q** Did you advise him that he could discontinue
19 the interview at any time?

20 **A** Correct.

21 **Q** Did he indicate that he wanted to speak with
22 you?

23 **A** Yes, he continued talking to me.

24 **Q** Did you advise him of what the purpose of your
25 interview was?

1 **A** I explained there was a sexual abuse case
2 started in South Carolina. I was wanting to talk to him
3 about that.

4 **Q** Okay. Did you advise him of his rights?

5 **A** I did not.

6 **Q** Tell us why.

7 **A** He was not in custody. Basically, in our
8 jurisdiction, what I would explain to him is he's not in
9 custody, not going to be arrested and if any time he
10 chose not to talk to me any further, I would leave if he
11 just asked.

12 **Q** At any point in time -- pardon me. Did he make
13 statements to you?

14 **A** Yes.

15 **Q** At any point in time, did you end the
16 interview?

17 **A** Yes.

18 **Q** Tell me what prompted the end of that
19 interview.

20 **A** From speaking with Albert about the
21 allegations, he started to make comments about wanting to
22 hurt himself. I believe one comment was even putting a
23 bullet into his brain. At which point, I stopped the
24 interview and requested that he go up to our department
25 and speak with a counselor.

1 Q And did he do that?

2 A Yes.

3 Q Did you continue the interview at any point
4 after that?

5 A After he talked to the counselor, I said that I
6 would like to continue our conversation at a later date.
7 He said he had talked to an attorney and an attorney had
8 already advised him not to talk to me any further.

9 Q Okay. Did you press him any further on that?

10 A No.

11 Q Did that end your involvement in this case?

12 A Except for the warrant, yes.

13 Q And you served the warrants on Mr. Brandeberry?

14 A Yes.

15 Q Did you speak to him at that time?

16 A I spoke to him but not about the case.

17 Q Okay. I have no further questions. Please
18 answer any questions Mr. Bannister may have.

19 THE COURT: Mr. Bannister.

20 MR. BANNISTER: Thank you, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. BANNISTER:

23 Q At the time that you conducted the interview,
24 were you aware of any allegations against the son, Harold
25 Brandeberry?

1 A Through the course of the interview with him,
2 yes.

3 Q But had you received that information from
4 Investigator Hubert prior to meeting with Mr.
5 Brandeberry, Albert Brandeberry?

6 A I can not say exactly.

7 Q So maybe, maybe not?

8 A Right. Sorry. It's been a year and a half
9 ago.

10 Q And is there -- is there any document that you
11 have used to refresh your recollection about what
12 happened and what was said and that sort of thing?

13 A Yeah, in my report.

14 Q Anything other than your report?

15 A Uh, no.

16 Q Take any field notes while you were there at
17 the interview with Mr. Brandeberry?

18 A Yes, I would have.

19 Q Would those be handwritten notes that you would
20 keep on pad or something of that nature?

21 A Yep.

22 Q Do you have those with you?

23 A They are sitting on the desk.

24 Q Can I just get a copy of those? Is that what
25 you based your report on?

1 A Correct.

2 Q Were you in uniform when you went to meet with
3 Mr. Brandeberry?

4 A I wear a suit everyday, except for Fridays now.

5 Q All right. And so did you have a gun or no?

6 A I would have had a gun, yes.

7 Q Okay. Did you have a badge?

8 A Yes.

9 Q Did you show at least the badge to Mr.
10 Brandeberry?

11 A I don't recall if I did or not.

12 Q How long would you say that the interview took
13 place?

14 A Roughly 45 minutes.

15 Q And, uh, during the interview, how many times
16 did you tell him about what the allegations were?

17 A I wouldn't have any idea to tell you exactly.
18 It was obviously more than a few times.

19 Q I guess what I'm getting at is at least
20 initially you told them why you were there, that there
21 were allegations that he had potentially sexually
22 assaulted his granddaughter, correct? And at that point,
23 if I understand correctly, he denied that he had done it?

24 A Correct.

25 Q I guess my question is after he denied that,

1 isn't it true that you asked him sort of the same
2 question again which is, well, she's saying that you
3 touched her inappropriately. You got three denials from
4 him, correct?

5 **A** If it was three, could have been more. I'm not
6 sure exactly.

7 **Q** All right. Do you deny though that you
8 continue to ask, at least maybe not exactly the same
9 question, but the same kind of question which is, hey,
10 these allegations are out there. Can't you tell me
11 something about them?

12 **A** Correct.

13 **Q** And is there anything that he said that you
14 recall is not in your written report?

15 **A** No.

16 **MR. BANNISTER:** Okay. I don't have any
17 further questions, Your Honor.

18 **THE COURT:** All right. Anything else, Ms.
19 Bentley?

20 **REDIRECT EXAMINATION**

21 **BY MS. BENTLEY:**

22 **Q** In addition to eliciting allegations, did you
23 ask him other questions?

24 **A** Correct.

25 **Q** And did he provide you relevant responses to

1 those?

2 A Yes.

3 Q Okay.

4 MS. BENTLEY: Your Honor, I have no further
5 questions for this witness.

6 THE COURT: Anything else, Mr. Bannister?

7 MR. BANNISTER: No, Your Honor.

8 THE COURT: All right. Sir, you can step
9 down.

10 MS. BENTLEY: Those are all the statements
11 the defendant made.

12 THE COURT: Okay. Mr. Bannister?

13 MR. BANNISTER: Uh, Your Honor, I don't have
14 anything.

15 THE COURT: All right then.

16 MR. BANNISTER: Sorry.

17 THE COURT: Ms. Bentley.

18 MS. BENTLEY: Your Honor, we believe that the
19 defendant's statements were freely and voluntarily
20 given and we believe they are admissible in this
21 trial.

22 THE COURT: All right. Mr. Bannister.

23 MR. BANNISTER: Your Honor, I don't think I
24 -- I don't have anything to add.

25 THE COURT: All right.

1 **MR. BANNISTER:** I think I agree with her
2 actually.

3 **THE COURT:** All right. I do, uh, -- well, I
4 do find that the statement was -- I'll allow the
5 statements during trial. I think they comply. I
6 don't think Miranda -- I don't think the defendant
7 at that point needed to be mirandized. I feel that
8 he was free to leave at any time. He could
9 terminate the conversation at any point and in fact,
10 at a point, I think did terminate the conversation
11 if I understand the testimony correctly. All right.
12 Anything else we need to take up pretrial?

13 **MS. BENTLEY:** Nothing from the State, Your
14 Honor.

15 **THE COURT:** Anything from the defense?

16 **MR. BANNISTER:** No, Your Honor. I don't
17 believe so.

18 **THE COURT:** Well, y'all are so quick and
19 efficient that we are actually 30 minutes ahead of
20 when the jury is supposed to come back. I'm very,
21 very sorry about that. Looks like we're going to
22 need to take a break for about 30 minutes while we
23 wait for the jurors to assemble. But we'll be quick
24 about going through voir dire. I don't have very
25 many questions to ask. We'll move pretty quickly

1 and hope to get started very quickly thereafter.

2 MS. BENTLEY: Thank you.

3 THE COURT: Sorry.

4 MR. BANNISTER: Your Honor, you want my list
5 of witnesses?

6 THE COURT: Oh, yes. Yes, yes.

7 (WHEREUPON, a recess is taken.)

8 THE COURT: Anything we need to bring up --
9 bring up before we bring the jury up?

10 MS. BENTLEY: Nothing from the State.

11 THE COURT: All right. Anything from the
12 defense?

13 MR. BANNISTER: Your Honor, Juror Number 23
14 and 99 -- I was looking back through -- appear to
15 have conflicts on Thursday. I just ask they be
16 struck for cause. Hopefully, we'll be done, but
17 there's no guarantee.

18 THE COURT: You said Juror Number 99?

19 MR. BANNISTER: 99 and 23.

20 THE COURT: Number 23 is in here. Uh, Ms.
21 Bentley, you have any objection to that?

22 MS. BENTLEY: I do not, Your Honor.

23 THE COURT: All right. Then, I'll strike
24 that juror as well. All right then.

25 We'll just tell you all. I have not gone over

1 this particular charge to look at. This was just
2 something, just a starting point, something we had
3 and have used in a past case. I have not actually
4 reviewed it yet. So if there's errors or whatnot,
5 please do bring it to my attention.

6 **MR. BANNISTER:** Judge, I move to sequester
7 witnesses. We've got them all out there.

8 **THE COURT:** All right.

9 **MR. BANNISTER:** I don't think there's any --

10 **MS. BENTLEY:** No objection, Your Honor.

11 **THE COURT:** All right. Very well.

12 (WHEREUPON, there is a pause.)

13 **MS. BENTLEY:** The victim, does she get to
14 stay in?

15 **THE COURT:** Uh-huh.

16 **MS. BENTLEY:** And the investigating officer?

17 **THE COURT:** Lead officer on the case.

18 (WHEREUPON, there is a pause.)

19 **THE COURT:** Your witness this afternoon, Ms.
20 Bentley, how long do you think this witness will be?

21 **MS. BENTLEY:** Not too long, Your Honor. I
22 think about 30 minutes on direct and about 30
23 minutes on cross.

24 **THE COURT:** Okay.

25 (WHEREUPON, there is a pause.)

1 **THE BAILIFF:** You ready, Your Honor?

2 **THE COURT:** Yes.

3 (WHEREUPON, the jury panel enters at approximately
4 3:04 p.m.)

5 **THE COURT:** Good afternoon, Ladies and
6 Gentlemen. Earlier today, I qualified you as,
7 generally, as jurors here in Greenville County for
8 this week. However, I need to more specifically
9 find if you are qualified to sit on trial of this
10 particular case. This case is the State of South
11 Carolina versus Albert Brandeberry.

12 I will ask first, Ms. Bentley, will you
13 introduce yourself?

14 **MS. BENTLEY:** Good afternoon, Ladies and
15 Gentlemen. My name is Lisa Bentley and I'm the
16 prosecutor for the State today. Seated at counsel
17 table is my investigator, Benny Moseley.

18 **THE COURT:** Now, when I asked you questions
19 earlier today, I asked you to wait until the end.
20 Now, on some of these questions, I'm just going to
21 ask you to stand and tell me your juror number --
22 name and juror number. We'll discuss whether or not
23 any of these questions specifically apply to you.
24 Is any member of the jury panel related by blood or
25 marriage or otherwise acquainted with Ms. Bentley of

P R O C E E D I N G S

(WHEREUPON, the Court resumes on the 7th day of August, 2012 at approximately 9:04 a.m. in the Jury Assembly Room.)

THE COURT: Thank y'all. Y'all be seated.

Good morning, Ladies and Gentlemen. Yesterday, I qualified you generally as jurors here in Greenville county. This morning, what I need to do is to find out if you are qualified to sit on the trial of the particular case that we will be trying today. That is the State versus Albert Brandeberry.

I'm going to begin by asking the Solicitor to introduce herself please.

MS. BENTLEY: Good morning, Ladies and Gentlemen. My name is Lisa Bentley. I'm the prosecutor for the State today. Seated with me is my investigator, Ms. Benny Moseley, and she will be seated with me throughout the trial.

THE COURT: All right. Ladies and Gentlemen, I'm going to ask you to stand if any of you know or are acquainted with in any way the prosecutor in this case or anyone in the 13th Circuit Solicitor's Office, which is Greenville and Pickens County Solicitor's Office. And if so, please stand.

Yes, ma'am. Tell me your name and juror

1 (WHEREUPON, the jury enters at approximately
2 10:29 a.m.)

3 **THE COURT:** All right. Ladies and Gentlemen,
4 we are now going to turn to jury selection in this
5 case. Let me tell you how this will go. You will
6 hear your name and juror number called. If you
7 would, come forward. You will stand -- these
8 bailiffs will show you exactly where you are going
9 to stand. But you will turn and face your fellow
10 jurors. Don't face me. Stand in this area between
11 the two attorneys.

12 Uh, you will hear the State say, uh, to please
13 present the juror or please excuse the juror. After
14 which, you will hear the defense say something like
15 please seat the juror or please excuse the juror.
16 If you are excused, you will return to your seat.
17 If you are seated as a juror on this case, the
18 bailiffs will show you. You will come over here and
19 take a seat in our jury box.

20 That being said, I will tell you two things.
21 When you come up here, bring everything you got with
22 you just in the event you do get picked so you won't
23 have to return to your seat to get your things.
24 And, uh, secondly, let me say if you are not picked
25 as a juror on this case, please do not take it

1 personally. I know you probably won't. But still,
2 there are a number of reasons that attorneys select
3 certain jurors. Very few of them are ever personal.
4 With that being said, we will start with jury
5 selection.

6 **THE CLERK:** Juror Number 91, William Hensley.
7 Sir, if you'd stand right there and face the
8 attorneys. Thank you.

9 What says the State?

10 **MS. BENTLEY:** Please present the juror.

11 **THE CLERK:** What says the Defendant?

12 **MR. BANNISTER:** Please seat Mr. Hensley.

13 **THE CLERK:** Mr. Hensley, would you please
14 have a seat in the jury box.

15 Juror 199, Bernard Vanderhost.

16 What says the State?

17 **MS. BENTLEY:** Please excuse Mr. Vanderhost.

18 **THE CLERK:** All right, sir. You may be
19 seated. You have been excused from this case.

20 Juror 90, Erin Henderson.

21 What says the State?

22 **MS. BENTLEY:** Please present Ms. Henderson.

23 **THE CLERK:** What says the Defendant?

24 **MR. BANNISTER:** Please seat Ms. Henderson.

25 **THE CLERK:** Ms. Henderson, please have a seat

1 **MR. BANNISTER:** You already strike --

2 **MS. BENTLEY:** I apologize.

3 **THE COURT:** Come forward, sir.

4 **MR. BANNISTER:** Almost.

5 **THE CLERK:** What says the defendant?

6 **MR. BANNISTER:** Please seat him.

7 **THE CLERK:** All right. Mr. Workman, please

8 have a seat.

9 All right. Second alternate, 209, Samuel

10 Wells.

11 What says the State?

12 **MS. BENTLEY:** Please present Mr. Wells.

13 **THE CLERK:** Thank you. What says the

14 Defendant?

15 **MR. BANNISTER:** Please seat Mr. Wells.

16 **THE CLERK:** All right. Mr. Wells, have a

17 seat in the jury box please.

18 **THE COURT:** Any objections to the manner in

19 which the jury was selected from the State?

20 **MS. BENTLEY:** Nothing from the State?

21 **THE COURT:** Any from the defense?

22 **MR. BANNISTER:** None, Your Honor.

23 **THE COURT:** All right then. Ladies and

24 Gentlemen who were not selected for this particular

25 jury, I'm going to ask you to return to your jury

1 assembly room. Thank you so much.

2 Mr. Allen, you'll stay in here with us please.

3 (WHEREUPON, the jury panel exits at approximately
4 10:46 a.m.)

5 THE COURT: Will you first swear the jury?

6 THE CLERK: Yes, of course.

7 All right. I'm going to ask you to stand and
8 raise your right hand for the oath in this case.
9 The proper response is "I will". Raise your right
10 hand please. Thank you.

11 You shall well and truly try the case 2011-GS-
12 23-3885, the State versus Albert L. Brandeberry
13 indicted for Lewd Act upon a Child and 3886 for
14 Criminal Sexual Conduct with a Minor in the first
15 degree and a true verdict render according to the
16 law and the evidence so help you God. I will?

17 (WHEREUPON, each juror responds.)

18 THE CLERK: Thank you. Please be seated.

19 THE COURT: Ladies and Gentlemen, you will
20 serve as jurors on this particular case. What I'm
21 going to say to you now is not intended to be a
22 charge on the law but is rather just an introduction
23 to the case so you will know the procedures we'll
24 follow during the trial of this case. I'm going to
25 instruct you on the law applicable to this case at

1 the end of the trial.

2 The defendant is charged in indictments filed
3 with this court with the crime of Lewd Act upon a
4 Child and Criminal Sexual Conduct with a Minor first
5 degree, the elements of which will be explained to
6 you later. The indictment is simply the document by
7 which someone is charged with a crime or brought
8 into court and it is not in any sense evidence of
9 any of the allegations it contains.

10 The defendant has pled not guilty to these
11 indictments. The State, therefore, has the burden
12 of proving each of the elements of the indictment
13 beyond a reasonable doubt. It will be your duty,
14 Ladies and Gentlemen, to decide whether or not the
15 State has met that burden.

16 Your purpose as jurors is to find and determine
17 the facts. You are the sole judge of the facts.
18 If, at any time, I make any comment on the facts in
19 this case, you are to disregard it. You are to
20 determine the facts from the testimony you hear and
21 other evidence introduced in court. It is up to you
22 to determine the inferences which you feel may be
23 properly drawn from the evidence. It is especially
24 important that you perform your duty of determining
25 the facts diligently and conscientiously because,

1 ordinarily, there is no way to correct and erroneous
2 determination of the facts by a jury.

3 On the other hand, the same law that makes you
4 the judge of the facts makes me the judge of the law
5 in this case. The law as given by the court is the
6 only law that you may consider. You must accept it
7 and follow it even though you may not agree with it.
8 I can't tell you what the facts are. And you can't
9 disagree with me about what the law is or what the
10 law should be. Your job is to take the law just as
11 I give it to you and apply it to the facts as you
12 find them from the testimony of the witnesses and
13 any other evidence that is introduced during the
14 trial of this case. After doing that, you will
15 render your verdict, a true and just verdict, under
16 the oath that you just took as jurors.

17 Until I advise you to begin your deliberations,
18 you must not discuss this case with anyone,
19 including your fellow jurors, you can not discuss it
20 with friends or family members or anyone involved in
21 the case. This includes, in this day and age -- I
22 have to say it -- this includes any discussion of
23 this case whatsoever on social media or on a blog or
24 anything of that nature.

25 After this case is submitted to you, you must

1 discuss it only in the jury room with your fellow
2 jurors. If you happen to run into any of the
3 parties involved in this case or witnesses or
4 attorneys in this case, if you, uh, -- and they do
5 not even speak to you, then don't think they are
6 being rude. They are just following my instructions
7 not to discuss this case or have any contact with
8 you.

9 If anyone does discuss this case with you, and
10 these are two excellent attorneys. I know that they
11 would not try to discuss this case with you in any
12 way, but if anyone did try to discuss this case with
13 you, if you would, identify yourself as a juror in
14 this case. If that person does not immediately stop
15 talking to you about the case, then I would like for
16 you to report it. You must report it to the bailiff
17 in this case who will report it to me. And I assure
18 you I will take care of it.

19 During this trial, do not read, listen to or
20 watch any news reports, if there are any, about this
21 case. This includes anything that may be on
22 newspapers or on the internet, radio or television.
23 You can not consider anything you may have heard
24 about the case outside of the courtroom, whether
25 before or during the trial. It is important that

Court Remarks

1 you keep an open mind and do not make -- do not
2 decide any issues in this case until all the
3 evidence has been presented, the parties have made
4 their closing arguments and I have instructed you on
5 the law in this case. It is your solemn
6 responsibility to determine the innocence or guilt
7 of the defendant. And your verdict must be based
8 solely on the evidence as it is presented to you
9 during trial.

10 In just a moment, the Solicitor will make what
11 is called an opening statement in which she will
12 explain to you what the issues in the case are or
13 what she believes them to be. The attorney for the
14 defendant may also make an opening statement
15 although he is not required to do so. What the
16 attorneys tell you during their opening statements
17 is not evidence in this case and is only their
18 contention as to what the issues are.

19 The evidence in this case will be presented to
20 you by testimony of sworn witnesses and exhibits
21 that may be introduced into evidence. From time to
22 time, you may hear lawyers say something like they
23 need to discuss a matter of law with me at the bench
24 or we might ask you to excuse yourselves to your
25 jury deliberation room while we take up a matter of

1 law.

2 I want to explain to you why we do that. We
3 are not trying to hide the ball from you in any way.
4 It is simply this. You heard me say earlier I can
5 not comment on the facts of this case in any way.
6 If I do, you must disregard it. Sometimes in making
7 a ruling of law, on a matter of law, I have to
8 discuss the facts with the attorneys. I do not want
9 to say anything that will influence you in any way
10 on the facts of this case and, therefore, we might
11 do it outside your presence.

12 If it's something we can take up shortly, we'll
13 do it at the bench. If it's something that might
14 take a few moments longer, I'll ask you to go to
15 your jury deliberation room while we discuss it. I
16 promise you that we will not trespass on your time
17 any more than is absolutely necessary. However, it
18 might be necessary to discuss some things outside
19 your presence.

20 In determining what the true facts are in the
21 case, you must decide whether or not the testimony
22 of witness is believable. It will be my
23 responsibility to rule on a matter of law as to
24 whether certain testimony is admissible. But you
25 must determine whether or not you believe the

1 testimony. You can believe one witness over many
2 witnesses or many witnesses over one witness. You
3 can believe all of a witness' testimony, you can
4 believe none of a witness' testimony or you can
5 believe part of a witness' testimony.

6 You will determine believability of witnesses
7 the same way that you do in your everyday lives.
8 That is by judging how someone acts when they are up
9 here testifying, maybe taking into account any bias
10 or motive they might have for their testimony. You
11 simply use your common sense to determine the
12 believability or credibility of a witness.

13 You may consider anything in the record that
14 will help you to evaluate the testimony of
15 witnesses. It will be your duty to pay close
16 attention and listen to these witnesses and give
17 strict attention to the attorneys when they make
18 their arguments to you. You will then be in a
19 position to determine what the true facts are, apply
20 the law to those facts and then render a true and
21 just verdict.

22 Now, our alternates, you will stay with us
23 throughout the course of this trial. If I have to
24 remove a juror for some reason or if there is some
25 unforeseen emergency that occurs, then you might be

1 called on to take the place of that juror. You will
2 have been with us throughout the trial, listened to
3 all the testimony and seen the evidence in this
4 case. You will be in a position to step into a
5 juror's shoes if that becomes absolutely necessary.
6 If, at the end of this trial, before the jury begins
7 their deliberation, if you are not needed to step in
8 the place of any juror, then I will most likely
9 excuse you at that time before deliberations begin
10 in this case.

11 Now, we are going to hear opening statements in
12 just a moment. Then we will hear some testimony.
13 We will take a break for lunch. At that point, when
14 you return from lunch, I'm going to ask you 12
15 jurors that are serving as jurors, not our
16 alternates, but you 12 jurors, to select a
17 foreperson from among your group.

18 When we return from lunch, Mr. Sanpedro, it may
19 be you, it may not be you. But the seat in which
20 you are in, that is where our foreperson will sit
21 for the remainder of this trial.

22 And our alternates, you are in the perfect
23 place. You will stay there throughout the remainder
24 of trial.

25 I will tell you that we do anticipate this

1 trial to take three days. That is not a precise
2 science in any way. And it may be slightly longer
3 than that. It might be slightly shorter than that.
4 But these are excellent attorneys. That is their,
5 uh, and my estimation of the length of time it will
6 take to try this particular case.

7 Now, in order to preserve everyone's rights, I
8 need to check with the attorneys. Does anyone have
9 an objection or anything from the State to my
10 opening charge to the jury?

11 **MS. BENTLEY:** Nothing from the State.

12 **THE COURT:** Any objection from the defense?

13 **MR. BANNISTER:** Your Honor, I might just ask
14 you to add to quick things.

15 **THE COURT:** Absolutely.

16 **MR. BANNISTER:** You talked about burden of
17 proof beyond a reasonable doubt, but you haven't
18 touched on presumption of innocence.

19 **THE COURT:** I will.

20 **MR. BANNISTER:** The second thing was if you
21 could just add no internet research on the cell
22 phones. That's become a problem.

23 **THE COURT:** Okay. And those are two
24 excellent points. Number one, and I will instruct
25 you on this more fully at the end of this trial, but

1 it is a cardinal rule of our law that a defendant is
2 presumed innocent until the State has proved his
3 guilt beyond a reasonable doubt. You are the ones
4 to determine whether or not the State has met its
5 burden. But the defendant is absolutely presumed
6 innocent. And I will go over that in much greater
7 detail in my closing, in my closing statement on the
8 law to you.

9 Furthermore, Mr. Bannister is exactly right.
10 You may not do any internet research on this case.
11 You can not research the attorneys involved in the
12 case. You can not research the law on this case.
13 As I said, I will instruct you on the law at the
14 end. You may not do any research whatsoever about
15 this case. In other words, when you go home this
16 evening, I want you to forget that you have been
17 jurors except you must avoid newspaper and any news
18 reports, radio news reports, if there are any. You
19 must avoid all of those things. And you must not
20 discuss the case with anyone whatsoever but do not
21 do any research, be it on the internet or on your
22 cell phone or anything like that.

23 All right. Does that --

24 **MR. BANNISTER:** Yes, Thank you, Your Honor.

25 **THE COURT:** All right. Very well. We're

1 ready to begin with opening statements.

2 MS. BENTLEY: May it please the Court.

3 THE COURT: Yes, ma'am.

4 MS. BENTLEY: Mr. Bannister.

5 Fear comes in many forms, especially for
6 children. The reason we are in trial this week is
7 that some children have a reason to be scared. The
8 reason is not imagined monsters that live under
9 their beds or hide in their closets. The reason's
10 not because of what might be lurking in the dark.

11 The reason children in Greenville County, one
12 child in particular, has to be scared is someone
13 that looks like a regular person, someone who plays
14 with them during the day and looks their parents in
15 the eye, someone who does not hide who they are or
16 what they do.

17 The fact that an adult could physically abuse a
18 child is not something that anybody wants to talk
19 about. The fact that an adult, especially an adult
20 family member, could sexually abuse a child is not
21 something anyone wants to believe, much less discuss
22 in detail. Unfortunately, child sexual abuse is a
23 reality in Greenville County and it is the subject
24 of our trial today.

25 My name is Lisa Bentley and the prosecutor for

1 the State in this case. I'll be presenting
2 evidence, sometimes in the form of graphic
3 testimony. The defendant, Albert Brandeberry,
4 committed the crimes Criminal Sexual Conduct with a
5 Minor in the first degree and committing a Lewd Act
6 on a Child.

7 As you heard from the judge, the defendant has
8 been charged with two counts. The victim was
9 identified by the initials C.J.B. You will soon
10 hear that C.J.B. are the initials of Minor 1 Jolene
11 Brandeberry. That is Albert's granddaughter. And
12 the evidence will show that from the time she was 6
13 years old until past her 11th birthday, the
14 defendant sexually abused her.

15 Due to the nature of these crimes and the
16 State's burden of proof, you will hear things that
17 you probably never wanted to hear. The State has to
18 prove that the defendant committed each of these
19 crimes beyond a reasonable doubt. The State must
20 leave you firmly convinced by the testimony
21 presented that he is guilty.

22 The defendant has been charged with two counts,
23 Criminal Sexual Conduct with a Minor in the first
24 degree and Lewd Act on a Minor. As the judge just
25 told you, you will not discuss the elements of these

1 crimes or the law of the case that you use to
2 deliberate until the end of the trial. But there
3 are certain elements or parts of the crimes that you
4 need to listen for as the testimony comes from the
5 stand.

6 As to the first count, Criminal Sexual Conduct
7 with a Minor in the first degree. What makes it
8 first degree is merely the age of the victim.
9 Evidence must show that the victim, Minor 1 was
10 under the age of 11 when the events occurred. The
11 events -- the event or events must be sexual
12 battery. The judge will instruct you later that a
13 sexual battery must involve penetration, no matter
14 how slight. Penetration, it includes penile/vaginal
15 intercourse. It includes oral sex. It includes
16 digital penetration. There will be evidence
17 presented that there was sexual battery of the
18 victim. Committing a lewd act on a minor, the
19 evidence must prove that the defendant, when he was
20 over the age of 14, committed a battery on the
21 victim who was under 16. Pardon me, not a battery,
22 a lewd act.

23 What is a lewd act? Lewd act is a touching, a
24 rubbing, a fondling, any action by the defendant on
25 the body of the victim that is met to arouse either

1 the defendant or the victim. Evidence will be
2 presented that the defendant gave the victim
3 massages, as he called them, over her -- on her
4 vagina, over and under her clothes.

5 Ladies and Gentlemen, the evidence in this case
6 will also show -- and you will hear from the very
7 beginning that Albert Brandeberry was not the last
8 person to sexually abuse Minor 1 Evidence will be
9 presented that Albert's son, Minor 1 father,
10 Harold Brandeberry sexually abused his daughter.
11 Harold's day in court has come and gone. You will
12 most likely meet him as a witness. But keep in mind
13 that the facts that you were charged with
14 determining, the truth that you are here to
15 determine is Albert's truth. You are here to
16 determine the case and the facts as they relate to
17 the defendant, Albert Brandeberry.

18 Now that you know what this case is about and
19 eventually what the State has to prove, I want to
20 tell you just briefly what you can expect during
21 this trial. You will hear from a number of
22 witnesses. You will hear from Minor 1 You will
23 hear from members of her family. You will hear from
24 police officers.

25 But keep in mind that child sexual abuse is a

1 secret crime. It is not performed out in the open.
2 It is not performed with an accomplice. You will
3 not have a video of the crime like you would expect
4 in a DUI. You will not have fingerprints like you
5 expect to find at a burglary scene. You will not
6 have photographs of injuries like you would expect
7 in a traditional physical assault case. Real life
8 crimes do not have the benefit of screen writers and
9 television editing. And because of that, the
10 testimony of the victim, the testimony of Minor 1 is
11 where you will hear the details of the crime.

12 At this point, I'm going to sit back and let
13 the witnesses and the evidence speak for itself. On
14 behalf of the State and each of our witnesses, I
15 want to thank you. I want to thank you for your
16 attention. I want to thank you for your patience
17 and I want to thank you for giving Minor 1 the
18 justice she deserves.

19 **THE COURT:** Mr. Bannister.

20 **MR. BANNISTER:** Thank you, Your Honor.

21 Madam Solicitor.

22 Ladies and Gentlemen of the jury, probably if
23 you had been asked what were the top two, maybe
24 three cases you really would not have wanted to
25 serve on a jury for, I suspect you would -- Criminal

1 Sexual Conduct, Lewd Act on a Minor would have been
2 either number 1 or number 2. And that is because of
3 the nature of those crimes and how heinous they are
4 and how much we, as individuals in the community,
5 feel for the victims of those crimes.

6 Let me talk to you first though about two
7 things that have happened that are different about
8 where you sit now and where you sat before out there
9 and downstairs. The primary one is that you have
10 now taken an oath to well and truly try the case.
11 That is an oath that has been in a number of oaths
12 that you have taken since the first day you showed
13 up to serve on a jury.

14 Why are those oaths important? Because we are,
15 in essence, taking your word, not just me and my
16 client, but the State and the judge, that you are
17 doing the best you can, one, to be honest with the
18 answers that you've giving us to the questions that
19 we've been asking you for the last two days. And
20 two, that when it comes to following the law, you
21 will follow those instructions as the judge has
22 given it.

23 You may have perceived that when you were in
24 what we call the fancy Latin word -- we can't use
25 regular stuff -- but anyway, when you were

1 downstairs, you were asked a bunch of questions, we
2 were trying to figure out if you had a passion or a
3 prejudice that would hurt or be for one side or the
4 other, either the State or the defendant. We were
5 just trying to see were you in the neutral. In
6 other words, were you occupying a space where you
7 could hear the facts either way and make a
8 determination without any passion or prejudice
9 against or for any of the parties.

10 That has changed. That has changed in this
11 sense, you have now been admitted to this jury. You
12 are now inside the jury box and you have taken an
13 oath to well and truly try the case. And the judge
14 has instructed you that you are to presume the
15 defendant innocent and that you are not allowed to
16 take away that presumption despite the indictment,
17 despite the nature of the crime. You are not
18 allowed to take away that presumption under any
19 circumstance except proof beyond a reasonable doubt.

20 We hear those words a lot. So let me just say,
21 what is a presumption? Well, my name is Jim
22 Bannister and I represent Albert Brandeberry. Now,
23 I'm in here. I'm in a suit. I'm standing in front
24 of you. We're in a courtroom. But you don't know
25 whether I passed the bar. You don't know whether

1 I'm licensed to practice law in the state of South
2 Carolina. Those are presumptions that you are
3 making almost without even knowing it.

4 You don't know whether the Solicitor has passed
5 the bar, whether she has her license. She has, and
6 she's also a lawyer. But you don't know that.
7 That's a presumption that you make. Again, you may
8 not realize it.

9 The same with the judge. You don't know
10 whether she's been elected to the legislature. You
11 don't know whether or not she has, in fact, her
12 license to practice law or whether she's graduated
13 from law school. All those presumptions are correct
14 but those presumptions are a good example of exactly
15 the same presumption that attaches to Albert
16 Brandeberry.

17 At this point, he is presumed innocent. So in
18 your eyes, regardless of any opinions or maybe just
19 the way he looks or things of that nature, you have
20 set anything aside that is opposite from that and
21 start from that point. That's according to your
22 oath. Now, if you find that you can't do that at
23 some point, because you have to maintain that
24 throughout the trial of the case, that's why we have
25 two alternates.

1 See it's important -- and I'll get to what the
2 burden of proof beyond a reasonable doubt is. But
3 somebody has to go first. That means somebody
4 doesn't get to go first and has to go second. What
5 happens is evidence has to come in in an orderly
6 fashion. The nature human tendency is to take that
7 evidence and you want to put it somewhere. You want
8 to put it in your mind maybe in the box for not
9 guilty or in the box for guilty. But the problem is
10 you can't really examine any one piece of evidence
11 until you've heard everything. You can't accept
12 something before the other party has had a chance to
13 cross-examine and finish their case. Does that make
14 sense?

15 So as tough as this will be, the reason the
16 judge is telling you you can't discuss the case and
17 you can't form any opinion until the case is
18 concluded is for that very reason. The evidence
19 that's coming in, you just got to hold it here. You
20 just got to listen, pay close attention, but make no
21 determination about it until all the evidence has
22 been presented.

23 Proof beyond a reasonable doubt is, again, one
24 of those things that we talk about a lot. But what
25 does it really mean? In the law, there are a number

1 of different levels of proof. If I could use the
2 scales as an analogy to how that level of proof
3 works, proof beyond a reasonable doubt, that means
4 that right now, in the presumption of innocence, the
5 scales are tipped all the way to the ground in favor
6 of the defendant. The State has to put evidence on
7 the other side.

8 In our law, we have a level of proof called
9 probable cause. Now, that means that there may be
10 probable cause that a crime has been committed.
11 It's the words we hear when an officer decides to
12 pull you over. He has probable cause to believe
13 that a traffic violation has occurred. If he
14 searches your car, it's because he has probable
15 cause to believe that some crime is afoot. But that
16 is what probable cause is. It's not proof beyond a
17 reasonable doubt.

18 So if you're following me, there can be
19 evidence of a crime and still you have to find a
20 defendant not guilty by virtue of the fact that it
21 hasn't reached the level of evidence necessary. So
22 if you were to find at the end of this case that
23 there was probable cause that a crime had been
24 committed by Mr. Brandeberry, your verdict would
25 still be not guilty because really that concept is

1 it's not proven. It hasn't been proven beyond a
2 reasonable doubt.

3 Take it a step further. Some of you may be
4 familiar with civil case where one side wants money
5 from the other side. In those types of cases, in
6 order for the plaintiff to prevail, they have to
7 submit proof that shows -- is called by
8 preponderance of the evidence. It's sometimes
9 called more likely than not. Back to my analogy of
10 the scales, it would mean that the scales had tipped
11 slightly in favor of the state. In other words,
12 they would have put enough evidence there to say by
13 preponderance of the evidence, the crime has been
14 committed by Mr. Brandeberry or more likely than not
15 that it has been committed by Mr. Brandeberry. Your
16 verdict would still be not guilty because it's not
17 proven.

18 One more step, fraud. Civil case. The level
19 of proof in those cases is clear and convincing
20 evidence. Clear and convincing. That's still not
21 proof beyond a reasonable doubt. But in our minds,
22 we can tilt the scales even farther down and say,
23 okay, if the evidence is clear and convincing, if
24 there's still a reasonable doubt, that's not
25 sufficient. Again, your verdict would be not guilty

1 because it's not proven.

2 When you are looking for reasonable doubt,
3 because that's what you're charged to do, each and
4 every one of you may have different reasonable
5 doubts and the State has to shut the door completely
6 on that reasonable doubt. In that sense, you are,
7 in some ways, an investigator of the facts yourself.
8 You are always looking for where is the reasonable
9 doubt in the case in my mind.

10 Of course, at the end of the case, I will have
11 -- right now, I have some things that I'm going to
12 suggest to you that the testimony is going to be
13 coming in in the case is going to create reasonable
14 doubt. Or, I should say it this way, there will be
15 reasonable doubt as to whether or not Albert
16 Brandeberry committed these crimes and the State has
17 proved it beyond their burden of proof.

18 All right. So turning to our case for just a
19 moment. Probably the most pervasive thing you're
20 going to hear in this case has to do with the fact
21 that **Minor 1** Brandeberry was raised in a household
22 with Harold Brandeberry who is a manipulative,
23 incestuous child molester. There's not going to
24 really be any disagreement about that. That was who
25 her father was from the time she was born until she

1 got out of the house -- or he was taken out of the
2 home. She was maybe 15, closer to 16.

3 Manipulative in this sense. I think you will
4 hear testimony -- as unbelievable as this will be,
5 testimony that in some way, shape or form, he
6 convinced Minor 1 that she bore some responsibility
7 for this, that she had some guilt for it. That's
8 one of the reasons she didn't tell her mother.

9 Manipulative in this sense. At some point, about a
10 year prior to the father being removed from the
11 home, he manipulated Minor 1 into believing that she
12 needed to apologize to her mother for the incestuous
13 conduct of her father. Manipulative in this sense.
14 That Kelly Brandeberry, the mother of Minor 1 a
15 year before she finally came to authorities was told
16 by the father that he was sexually assaulting
17 Minor 1 and that he repented and he was now going to
18 be accountable. You'll hear testimony that she
19 accepted that and, I guess, in a way, I believe, you
20 will see was turning a blind eye to what was going
21 on in the home right before her eyes.

22 The second thing that I want you to pay
23 attention to -- and I'll frankly say that we're
24 going to have some disagreement over how you should
25 interpret this. But you will hear testimony about

1 how the allegations came out against my client
2 Albert Brandeberry. September 21st, 2010, you will
3 hear that that's when Minor 1 first revealed and the
4 mother first came forward. And there was talk about
5 the father's sexual abuse of the daughter, Harold.
6 There's no mention of Albert Brandeberry. In fact,
7 there is an outright denial that anyone else had
8 perpetrated a crime against Minor 1

9 You will hear that the father was the sole
10 perpetrator at least on one, two, three occasions
11 when formal proceedings were taking place. You will
12 hear that the father was the sole perpetrator at
13 least during the first part of the counseling that
14 Minor 1 ultimately got into. You will also hear
15 that Minor 1 suffers from flashbacks of the
16 incidents that occurred which is certainly
17 understandable given the sexual abuse that she's
18 been subjected to, I say, most of her life.

19 The time frames that we are talking about in
20 the indictment are 2001 to 2005. Uh, one of the
21 things I want you to also pay attention to is that
22 Albert Brandeberry's access to Minor 1 Brandeberry
23 was very limited during the times alleged in the
24 indictment specifically because you will hear that
25 he lived in Ohio with his wife and Minor 1 lived

1 with her mother and father here in Greenville. You
2 will hear that he came down and he would visit
3 basically for one week each summer during those four
4 or five years that are in the indictment. I ask you
5 just to think about the access and how limited that
6 was and all the opportunities that were there for
7 Minor 1 to say something about that abuse.

8 You will hear from -- you will hear from Albert
9 Brandeberry's wife, Noreen. And what you will hear
10 is that he has a number of medical problems. Those
11 medical problems, I think you will hear, make it
12 unlikely that he would be able to perform the types
13 of acts that Minor 1 is ultimately going to describe
14 to you. Any one item, I would suggest, is
15 ultimately going to be reasonable doubt. But
16 putting those all together, at the end of this case,
17 I think you will know that you really only have one
18 choice if you're going to honor your oath, and that
19 would be to find a verdict of not guilty because the
20 case simply will not be proven. Thank you.

21 **THE COURT:** You ready to call your first
22 witness?

23 **MS. BENTLEY:** Yes, Your Honor. The State
24 calls Greta McCall.

25 **THE CLERK:** Ms. McCall, please come forward.

1 If you will, pause at the end of the bench please.
2 Place your left hand on the Bible. Over here
3 please. Left hand on the Bible and place raise your
4 right hand.

5 **GRETA McCALL**

6 having first been sworn, testifies as follows:

7 **THE CLERK:** Would you please state your full
8 name for the record?

9 **THE WITNESS:** My name is Greta Deana McCall.

10 **DIRECT EXAMINATION**

11 **BY MS. BENTLEY:**

12 **Q** Ms. McCall, what is your occupation?

13 **A** I am a licensed mental health counselor.

14 **Q** And are you employed by an agency?

15 **A** Uh, no, ma'am. I'm in private practice.

16 **Q** How long have you been a licensed counselor?

17 **A** I have been fully licensed since January and
18 I've held an LPCI status for two and a half years.

19 **Q** How long have you been in counseling all
20 together?

21 **A** It's been five to six years.

22 **Q** How long is the licensure process to get your
23 fully licensed status?

24 **A** You have to complete 1500 clinical hours as
25 well as at least two years of supervised practice and

1 that's post-Master's degree.

2 Q When did you develop an interest in counseling?

3 A I've been interested in psychology since high
4 school really and, you know, have people who influence me
5 like any young person to have a passion for it.

6 Q Do you have a speciality?

7 A Yes, ma'am. I specialize in sex abuse, all
8 areas of sex abuse as well as addictions.

9 Q What kind of training and experience do you
10 have in counseling victims of sexual abuse?

11 A Uh, I completed my internship and practicum at
12 the Julie Valentine Center, which is, uh, you know a
13 center for people who have been victimized. And I also
14 trained in trauma focus cognitive behavioral therapy as
15 well as EMDR therapy which are both evidence-based
16 treatments for people with trauma.

17 Q Ms. McCall, in your professional capacity, did
18 you meet the victim in this case, Minor 1 Brandeberry?

19 A Yes, I did.

20 Q What month and year did you first meet Minor 1

21 A Uh, it was November 2010.

22 Q How long did you continue to counsel her?

23 A It was over a year.

24 Q How often were you seeing her during that
25 period of time?

1 **A** Uh, mainly once a week.

2 **Q** Why were you counseling Minor 1

3 **A** She was referred to me by the Julie Valentine
4 Center for the sexual abuse that was perpetrated by her
5 father.

6 **Q** How are victims of sexual abuse different than
7 other patients you may see in your practice?

8 **A** Uh, when the people, uh, who have, you know,
9 sexual abuse come in, I usually do an intake, and then an
10 initial session where we kind of get to know each other.
11 Then we go right into something called psycho-education.
12 That's where I talk with the child or teen or adult about
13 sex abuse, uh, who sexually abuses children, what is a
14 normal reaction to sexual abuse for a child, what is
15 sexual abuse and so that's the psycho-education
16 component.

17 **Q** In the psycho-education, how do you define
18 sexual abuse?

19 **A** I define sexual abuse as any sexual contact
20 where consent can not occur and consent being defined by
21 that you have to know what you are consenting to and you
22 have to have the power and the ability to say yes or no.
23 Any sexual contact of an adult with a child, consent can
24 not occur. So I explain that to the children in terms
25 they can understand.

1 Q Why do you start counseling in this manner?

2 A Well, it helps the children know that what
3 their reactions were were normal and it kind of models
4 for them that this is a safe place to talk about things
5 that we don't normally talk about like sex abuse or what
6 is sexual. And it helps the children feel comfortable.
7 It helps them in therapy.

8 Q You stated you were seeing Minor 1 due to the
9 abuse of her father. Is that correct?

10 A That is correct.

11 Q How were you made aware of that abuse of her
12 father?

13 A With teenagers and children, I do the initial
14 session with the parent. So that's how I knew what she
15 was there for, which was the sexual abuse of her father.

16 Q Were you provided with any documents prior to
17 Minor 1 coming to your practice?

18 A Uh, no, I don't believe I was.

19 Q Did you discuss the sexual abuse of her father
20 with Minor 1

21 A Yes.

22 Q And without giving us any names or identifying
23 characteristics, did Minor 1 ever disclose additional
24 sexual abuse?

25 A Yes, she did.

1 Q When did she disclose that information to you?

2 A It was on December 2nd, 2010.

3 Q How many sessions have you had with Minor 1
4 prior to that date?

5 A It was on her third session with me.

6 Q Again, did Minor 1 tell you how old she was
7 when this abuse by someone other than her father
8 occurred?

9 A Yes. It was around 6 or 7 that it began and
10 ended around the age of 12.

11 Q Again, without giving us any names or
12 identification information, did she disclose to you the
13 place or places that this sexual abuse not related to her
14 father occurred?

15 A Not that I recall. The actual place.

16 Q Did you ask Minor 1 questions regarding this
17 new disclosure of abuse?

18 A I did not. When someone has been sexually
19 abused or had a trauma like that, I'll usually ask the
20 general, like, generally, what was it. You know, what
21 type of sexual contact it was. Other than that, I don't
22 question them. I ask questions about how its affected
23 their feelings or their thoughts. Uh, yeah.

24 Q Do you recall Minor 1 demeanor when she made
25 this disclosure to you?

1 **MR. BANNISTER:** Judge, I'm going to interpose
2 an objection here. I believe that gets beyond
3 801(d)(1). It's a backhanded way.

4 **THE COURT:** I'm going to ask you to approach
5 for just a moment.

6 **(WHEREUPON, a bench conference is held off the**
7 **record.)**

8 **BY MS. BENTLEY:**

9 **Q** I'll rephrase that question, Ms. McCall.

10 **A** Okay.

11 **Q** How did you react when Minor 1 made this
12 disclosure?

13 **A** I -- when she made the disclosure, I knew I'm
14 required as a licensed counselor to break HIPAA
15 confidentiality. So I felt very concerned. I wanted to
16 maintain the trust in this sort of new therapeutic
17 relationship, but I also knew that I had to break
18 confidentiality.

19 **Q** Did you ask Minor 1 whether she had made this
20 disclosure to anyone else?

21 **A** Uh, I did not ask her that specifically.
22 However, during treatment, it was a part of her treatment
23 that she had made that disclosure to her father.

24 **Q** Did you ask her if she disclosed this abuse to
25 anyone in law enforcement?

1 **A** No, I did not.

2 **Q** Without -- let me make sure I phrase this
3 correctly. Do you know -- do you have personal knowledge
4 that DSS and law enforcement did become involved with the
5 second disclosure?

6 **A** Yes.

7 **Q** You stated that she indicated that she told
8 someone else about this abuse?

9 **A** Yes.

10 **Q** Tell us about that.

11 **A** She -- well, it was a part of her treatment
12 that she had told her father about the abuse at the age
13 of 12. Can I just speak freely about that? I guess.
14 She had told her --

15 **Q** She had told her father at the age of 12?

16 **A** Yes.

17 **Q** Okay. How many sessions did you spend
18 counseling Minor 1 regarding this new disclosure of
19 abuse?

20 **A** Uh, looking over my notes, there are seven
21 notes. Six of those are sessions and one was a telephone
22 conversation that referenced the abuse.

23 **Q** How had Minor 1 been coping with the sexual
24 abuse that she had suffered as a whole?

25 **A** Not well. I was very concerned for her. It

1 was a very difficult case. I felt like the prognosis was
2 very poor. She had developed symptoms of anorexia and,
3 uh, -- which is a very potentially deadly mental health
4 disease. So I was very concerned for her.

5 Q I have no further questions. Please answer any
6 questions Mr. Bannister may have.

7 THE COURT: Mr. Bannister?

8 MR. BANNISTER: Thank you, Judge. Can I have
9 just a moment just to get myself?

10 THE COURT: Sure. Take your time.

11 CROSS-EXAMINATION

12 BY MR. BANNISTER

13 Q How are you doing?

14 A Good.

15 Q Not too nervous?

16 A I am nervous.

17 Q I ask that because we've had a chance to meet
18 one time, correct?

19 A Correct.

20 Q But you couldn't talk to me about anything that
21 has to do with Minor 1 because of HIPAA regulations,
22 correct?

23 A That's right.

24 Q Except here in court.

25 A That's right.

1 Q So forgive me. At this point, I've heard what
2 you had to say for the first time and I'm kind of working
3 my way through it a little bit. Okay.

4 A Uh-huh.

5 Q So I may jump around, but I'll try not to be --
6 try not to lose anybody if I can. Okay.. I want to get a
7 couple of dates first if I can. Okay?

8 A Okay.

9 Q All right. There is, in your practice, you
10 have just kind of a general intake form, correct?

11 A That is correct.

12 Q All right. And that intake form is to give you
13 some information from the patient or the person you're
14 going to be administering therapy to, correct? Just a
15 general idea of what's going on.

16 A Yes.

17 Q All right. I think you said in this case, you
18 weren't provided anything from the Department of Social
19 Services prior to meeting with Minor 1 is that fair?

20 A Not that I remember.

21 Q Uh, do you have anything in your file from the
22 Department of Social Services?

23 A Uh, I don't believe so.

24 Q Anything from law enforcement?

25 A Yes.

1 Q Did that come before or after you began meeting
2 with Minor 1 and working with her?

3 A After.

4 Q All right. So the intake form is your primary
5 source for kind of understanding what's going on, at
6 least at the first couple of sessions.

7 A That's correct.

8 Q Would that be a fair statement?

9 A Yes, definitely.

10 Q And is it your office policy to send that form
11 out to the patient prior to them coming in for their
12 first appointment?

13 A Yes, I generally mail it so they can have it
14 completed when they come in.

15 Q And did you do that in this case with Minor 1

16 A Uh, I don't remember specifically. But most
17 likely, yes.

18 Q Okay. If -- let me do this. Okay. Let me
19 hand you what I have marked as Defendant's Exhibit number
20 1.

21 A Okay.

22 Q And that was part of -- I'll tell you that's
23 part of an intake form that I got provided, uh, relating
24 to Minor 1 Can you identify that for me?

25 A Yes. This looks like a page of my intake.

1 Q Okay. Thank you. And so now can you say that
2 Minor 1 did or did not receive an intake form from your
3 office?

4 A Uh, I'm sure that -- I'm not -- I don't
5 understand the question. I'm sure I mailed the household
6 generally. And I can't say if this is Minor 1 or her
7 mother's handwriting. But a lot of times, the mother
8 will fill it out although I encourage them to include the
9 child.

10 Q Okay.

11 A So Minor 1 may or may not have seen this or
12 filled it out. The initial session is with the
13 caregiver, not the child.

14 Q Okay. Understood.

15 A Does that make sense?

16 Q It does, but let me just back up for a second.

17 A Yeah.

18 Q The first meeting with the caregiver, which
19 would be the mother, was November the 10th of 2010,
20 correct?

21 A I believe so. I will have to check my notes.

22 Q Okay.

23 A Do you want me to?

24 Q Yes, I do. The dates are --

25 A Yes, November 10th.

1 Q So the intake form would have been mailed to
2 Minor 1 some time prior to November 10th or mailed to the
3 family some time prior to November 10th, 2010?

4 A That's correct.

5 Q And so, uh, -- let's see. The intake went out
6 some time before that. All right. And then your first
7 session was not with Minor 1 it was with the mother, is
8 that correct?

9 A That's correct.

10 Q And that first session was November the 10th,
11 2010?

12 A That's correct.

13 Q Okay. So if I put pre-11/10/10 would be the
14 date that the intake form was mailed and you are
15 comfortable with that?

16 A Uh-huh.

17 Q Okay. At the time that -- well, let me ask
18 this. Do you know whether or not the mother brought the
19 intake form in or not?

20 A Most likely she did. I can't remember, but
21 that's almost always what happens. Bring it in and then
22 we go over the intake form together.

23 Q All right. Would it help you if you took a
24 look at your session records?

25 A Oh, yes, it would.

1 **(WHEREUPON, Defendant's Exhibit 1 and 2 are marked**
2 **for identification purposes.)**

3 **BY MR. BANNISTER:**

4 **Q** Okay. If you will, just go to November the
5 10th, 2010. Take a look at that maybe right above where
6 it says outcome of session and additional notes. Does it
7 say intake for daughter, does that look right?

8 **A** Yes.

9 **Q** Okay. Can we now say that on November the
10 10th, 2010, she brought the intake form with her?

11 **A** Yes.

12 **Q** Okay. And on that intake form, there is some
13 handwriting that's either the mother's or Minor 1 we
14 don't know which, is that correct?

15 **A** Uh-huh. That's correct.

16 **Q** And is that the intake form that she brought
17 in, Defendant's Exhibit number 2?

18 **A** Yes.

19 **Q** And on that form, there was some handwriting
20 that was in your handwriting, correct?

21 **A** That is correct.

22 **Q** So what I have done is I have marked out your
23 handwriting. Have I marked out anything that was either
24 Minor 1 or her mother's handwriting from what you can
25 tell from Defendant's Exhibit 2?

1 **A** Give me a second. I can look.

2 **Q** Sorry. I thought I had it in front of me.

3 There we go.

4 **A** No, it looks like you just marked out my
5 handwriting.

6 **Q** Okay. So what I have on Defendant's Exhibit
7 number 1 is the intake sheet with your handwriting on it.
8 This is what the mother brought in. Is that correct?

9 **A** Yes, it is.

10 **MR. BANNISTER:** Okay. I would move that into
11 evidence.

12 **MS. BENTLEY:** Without objection.

13 **MR. BANNISTER:** Thank you.

14 **THE COURT:** Defendant's Exhibit number 2 you
15 said?

16 **MR. BANNISTER:** Uh, number 1.

17 **THE COURT:** Number 1 is admitted.

18 **(WHEREUPON, Defendant's Exhibit 1 is admitted into**
19 **the record.)**

20 **BY MR. BANNISTER**

21 **Q** Okay. So after, uh, -- so you went over the
22 intake form with the mother, correct?

23 **A** Yes.

24 **Q** And then you had a session with Minor 1 -- and
25 I guess in going over the intake form with the mother,

1 there was no indication of a second perpetrator at that
2 point?

3 A That is correct.

4 Q So the sole perpetrator as far as the mother in
5 your conversation was just the father, Harold?

6 A Yes.

7 Q And then on November the 19th, 2010, you have
8 your first session with Minor 1

9 A That's right.

10 Q Then, if you will, take a look at your note.
11 Confirm for me that you went over the intake form with
12 her as well at that point.

13 A I can't confirm that I went over the intake
14 form. I have S/A which means sexual abuse and then
15 intake on my notes.

16 Q All right.

17 A Which could just mean that we, you know,
18 established rapport and did other things that are part of
19 intake. So I'm not -- I have not -- I can't remember if
20 I actually went through the form with her. I also have
21 -- yeah, I have "continue intake paperwork next session".
22 Then there was an issue related to another therapist that
23 she was seeing. Most of the time, you only see one
24 therapist at a time.

25 Q All right. So can you say yes or no that you

1 discussed the intake form with her?

2 **A** I can say yes.

3 **Q** Okay. So at that point, you would agree with
4 me that she still has not disclosed any other perpetrator
5 than her father on 11/19/2010?

6 **A** Yes.

7 **Q** Is that a fair statement?

8 **A** Yes.

9 **Q** Okay. And then I think you had a third session
10 on November the 22nd with Minor 1

11 **A** That's right.

12 **Q** I'm sorry. Second session with Minor 1 third
13 session total?

14 **A** That's right.

15 **Q** Sorry. All right. At that time, there's no
16 disclosure of any other perpetrator other than the father
17 as well.

18 **A** That's right.

19 **Q** And then we go to the third set of -- the third
20 session with Minor 1 That's on December 2nd, 2010?

21 **A** That's correct.

22 **Q** That is when she discloses a second
23 perpetrator?

24 **A** Uh-huh.

25 **Q** In your notes, it appears that you discussed

1 with her flashbacks on December the 10th.

2 **A** Yes.

3 **Q** December 2nd, 2010. I'm sorry.

4 **A** Yes.

5 **Q** Is that correct?

6 **A** Uh-huh.

7 **Q** And so I did get a chance to talk to you a
8 little bit about flashbacks and what those mean to you.
9 Let me ask this way. There's a technical definition of
10 flashbacks and then there is your view of what flashbacks
11 are. Is that fair way of characterizing how you view
12 that term?

13 **A** My idea of flashbacks come from my education
14 and from DSM and stuff like that.

15 **Q** Certainly.

16 **A** Yeah.

17 **Q** Well, let me put it this way. A flashback --
18 tell me if I'm accurate in this description. A flashback
19 can accurately be described as a moment where you, as a
20 patient, are reliving a past trauma or event.

21 **A** Yes.

22 **Q** And it's as if you are back in time. In other
23 words, your reality is you are back in that moment,
24 experienced the trauma, you potentially see the people
25 that traumatized you. You are unaware of the other folks

1 that are in reality around you. It's a real vivid type
2 thing that occurs.

3 A Yes.

4 Q Is that the kind of -- when you put flashbacks,
5 is that the sort of thing that we are describing with

6 Minor 1

7 A Yes. She reported having flashbacks.

8 Q And it looks like she reported flashbacks
9 basically from -- and that's -- let's see. December the
10 2nd, 2010, she's reporting flashbacks. She reports the
11 second perpetrator. And then, I think, December 10th,
12 2010, you had another session with her. She's reporting
13 flashbacks again. December 15th, she's reporting
14 flashbacks. Is that a fair statement?

15 A Uh, yes. I have a note for flashbacks.

16 Q Okay.

17 A Yes.

18 Q Then there was one more on the 15th, correct?

19 A That is correct.

20 Q All right. When you talked about in the direct
21 testimony about being very concerned about Minor 1 and
22 her prognosis was maybe not so good because of sexual
23 abuse she had been subjected to, would be another example
24 of how she was, I guess, wounded from the trauma of the
25 sexual abuse?

1 **A** Yes, most certainly.

2 **Q** And would also the anorexia you talked about,
3 you correlate those two?

4 **A** I would.

5 **Q** Were there any other things that you saw that
6 -- right now, we have the flashbacks to anorexia. Those
7 are pretty serious medical and emotional and mental
8 issues that are going on as a result of the sexual abuse.
9 Is that a fair statement?

10 **A** Yes.

11 **Q** All right. You saw her for a whole year,
12 correct?

13 **A** Yes.

14 **Q** We talked a little bit about this. In your
15 practice, success as a counselor, for you, at least in a
16 sexual assault case if I understood you correctly, was
17 when the patient or the person receiving the counseling
18 can accept what has happened and can look at it and while
19 they would never go through it again, they are thankful
20 for the things that they learned about themselves and the
21 maturity that they've reached and the lessons that they
22 learned?

23 **A** I mean, that would be ideal. But that's when I
24 see that someone has moved through the healing process
25 after any type of trauma would be an indication of that

1 -- that would be an indication that they have moved
2 through their trauma if that makes sense.

3 Q Sure. I think you described it is like a
4 cancer survivor.

5 A Yeah, it could be similar to health issues and
6 other kinds of things.

7 Q So the trauma as we've talked about, there are
8 different kinds of trauma, I guess. And you correct me
9 if I'm wrong, but there's physical trauma like a broken
10 arm or a cut or something of that nature. There's
11 emotional trauma which might include anger, feelings,
12 things of that nature.

13 A Uh-huh.

14 Q Would you agree with that? That the trauma can
15 be just emotional in some situations?

16 A I guess I don't agree with that.

17 Q Okay.

18 A I think that there is a very strong physical
19 component to traumatic events that also effect the
20 emotions and behaviors and thoughts. It also effects the
21 body.

22 Q Sure. I'm not trying to say that they are not
23 all connected.

24 A Sure.

25 Q But there are different parts of trauma, one

1 maybe being physical, the other being emotional, another
2 being mental and maybe even spiritual in some senses.

3 A Uh-huh.

4 Q Would you agree with that they kind of overlap
5 as far as the trauma?

6 A I think so.

7 Q Okay. And because trauma is like a wound to
8 any one or all four of those areas, that's what you're
9 trying to heal in the sense of counseling and moving them
10 through that. Is that a ---

11 A Yes.

12 Q --- fair statement?

13 A Yes.

14 Q And is it also fair that until those wounds are
15 healed, a lot of times, patients have problems like
16 flashbacks, anorexia, things of that nature?

17 A Yes, yes.

18 Q So those are indications that maybe the wound
19 is not healed yet and further counseling or therapy is
20 necessary to get there?

21 A Yes.

22 Q Okay. And would it also be a fair statement
23 that during the time period where you've got these issues
24 that are related to the wounds that are either physical,
25 emotional, mental, spiritual or a combination of all of

1 them is that it impacts how your patient sees the world
2 and reacts to what is going on around them.

3 **A** When someone is traumatized?

4 **Q** Yes.

5 **A** Absolutely.

6 **Q** So maybe I can put it this way. The prism that
7 they are sort of looking through has maybe got a fracture
8 or a dent or a chip until that healing can come together
9 and then they can --

10 **A** Well, to be more specific, one thing that can
11 happen is sort of a high-startle response or someone who
12 has, say, been held at gunpoint and they haven't worked
13 through the trauma. They can feel very unsafe. They can
14 perceive things that, you know, they have a heightened
15 sense of like they are unsafe. It could be one more
16 specifically what you are talking about.

17 **Q** And sometimes that can be unreasonable, for
18 instance, if Minor 1 is afraid of Harold. He's in jail
19 so he can't get to her, correct?

20 **A** Absolutely.

21 **Q** Did -- were you ever made aware by anybody from
22 the Department of Social Services, maybe not in writing
23 but just in conversations, that Minor 1 initially
24 indicated the abuse started with her dad when she was 10?

25 **A** No.

1 Q Were you aware -- and you can just tell me no
2 if you weren't. But, uh, when she went to the Julie --
3 did you know that she had been to the Julie Valentine
4 Center or at least been examined by some folks over
5 there.

6 A I knew she had been to the Julie Valentine
7 Center because they had referred her to me. Other than
8 that, you know, I didn't know.

9 Q Did you have any conversations with the lady
10 who first saw her there, I think a Dr. Mary Ann
11 Crosswell?

12 A No.

13 Q No? Okay. All right.

14 MR. BANNISTER: Your Honor, I don't have any
15 further ---

16 MS. BENTLEY: Brief re --

17 MR. BANNISTER: --- cross-examination.

18 MS. BENTLEY: Brief redirect, Your Honor.

19 THE COURT: Yes, ma'am.

20 REDIRECT EXAMINATION

21 BY MS. BENTLEY:

22 Q Ms. McCall, Mr. Bannister discussed flashbacks.
23 We saw that Minor 1 had some of those flashbacks. Did
24 someone -- can someone create a memory in a flashback?

25 A No, I've never --

1 **MR. BANNISTER:** I'm going to object to that
2 question. I don't know on what basis she has to make
3 that conclusion.

4 **MS. BENTLEY:** I believe it's fair rebuttal
5 based on question of Mr. Bannister's categorization
6 of what a flashback is.

7 **THE COURT:** I'm going to allow it. You can
8 answer the question.

9 **THE WITNESS:** Okay. The question was can
10 someone create a memory in a flashback?

11 **BY MS. BENTLEY:**

12 **Q** Correct.

13 **A** Not that I've ever been aware of.

14 **Q** Okay. How was Minor 1 memory when you were
15 counseling her?

16 **A** I did not notice any impaired memory.

17 **Q** Was Minor 1 -- without giving us any details,
18 was Minor 1 able to clearly distinguish between instances
19 of sexual abuse?

20 **A** Between the two different perpetrators? Yes.

21 **Q** Yes.

22 **A** There was never any blurring. Never any
23 blurring.

24 **Q** Okay. You discussed --

25 **MS. BENTLEY:** Can we approach, Your Honor?

1 **THE COURT:** Yes.

2 (WHEREUPON, a bench conference is held off the
3 record.)

4 **MS. BENTLEY:** I don't have any further
5 questions, Your Honor.

6 **THE COURT:** Mr. Bannister, anything further?

7 **MR. BANNISTER:** Yes, just really quick.

8 **RECROSS-EXAMINATION**

9 **BY MR. BANNISTER**

10 **Q** We talked about when we were asking questions
11 about impaired memory, the difference between sexual
12 abuse with the father starting when she was 12 versus
13 starting when she was 10. Wouldn't that be an example of
14 memory issues?

15 **MS. BENTLEY:** Objection. She said she had no
16 knowledge of a prior statement like that.

17 **THE COURT:** Well, I'm going to allow -- I'm
18 going to allow her to answer this question ---

19 **THE WITNESS:** Okay.

20 **THE COURT:** --- based on as you said ---

21 **THE WITNESS:** So you are asking if an
22 individual reported that abuse, what was it, started
23 at 10 --

24 **BY MR. BANNISTER**

25 **Q** Started at 10 and then --

1 A --- or started at 12, would that necessarily
2 indicate impaired memory? And I would say no, not
3 necessarily.

4 Q Okay. So sometimes differences in memory --

5 A When --

6 Q Sometimes differences in their memory, in your
7 view, is not necessarily indicative of impaired, is that
8 correct?

9 A When you sit with someone with impaired memory,
10 you notice it right off. They can't remember what they
11 did last weekend. There are huge lapses of time that are
12 completely missing.

13 Q Okay.

14 A There's other explanations for why there may be
15 a discrepancy there. So I wouldn't say no, this equals
16 impaired memory. I wouldn't say that.

17 Q Right.

18 A I didn't see a patterned of impaired memory.

19 Q So the definition of the term "impaired memory"
20 as you take it is a pretty significant inability to
21 remember stuff with blocks of time missing?

22 A Yes.

23 Q Fair enough. And you said that you're unaware
24 of any flashbacks having created memories in your
25 experience. How much, uh, -- would you feel competent to

1 -- let me ask it this way. Have you done any research on
2 flashbacks?

3 A Other than my training, uh, which includes
4 psychopathology and diagnostics, but I haven't done
5 specific research into flashbacks.

6 Q So if there was a significant body of
7 significant research out there --

8 A I would not call myself an expert on
9 flashbacks.

10 Q Thank you. No further questions.

11 MS. BENTLEY: Can Ms. McCall be excused?

12 THE COURT: Uh, any objection to that?

13 MR. BANNISTER: No, Your Honor.

14 THE COURT: I thank you so much for being
15 here.

16 THE WITNESS: Okay. Thank you.

17 THE COURT: Will the attorneys approach just
18 a brief moment for a scheduling matter?

19 (WHEREUPON, a bench conference is held off the
20 record.)

21 THE COURT: Ladies and Gentlemen, just
22 timing-wise, we're going to take a little bit
23 earlier lunch break than you can expect for the
24 remainder of the trial. We're going to go ahead and
25 break for lunch now. I'm going to ask you to be

1 (WHEREUPON, there is a pause.)

2 THE COURT: Juror Number 158, Jake Perry, is
3 our foreperson.

4 THE BAILIFF: You said you ready for them?

5 THE COURT: Yes, sir.

6 (WHEREUPON, a recess is taken.)

7 THE COURT: Ms. Bentley and Mr. Bannister, my
8 clerk would like to see -- and I told him and he
9 knows that these are two excellent attorneys who are
10 trying this case. And he would like to see two very
11 good attorneys try a case. If you have no objection
12 -- he and I are not discussing this case in any way.
13 If you would have no objection, he'd like to sit in
14 the back. But if either of you have an objection?

15 MS. BENTLEY: No, Your Honor.

16 THE COURT: All right then.

17 (WHEREUPON, the jury enters at approximately
18 1:44 p.m.)

19 THE COURT: All right. Mr. Perry, it's my
20 understanding that you're going to act as our
21 foreperson. I appreciate your service. All right.
22 We ready to proceed?

23 MS. BENTLEY: The State calls Investigator
24 Heather Hubert to the stand.

25 THE COURT: All right.

1 **THE CLERK:** Please place your left hand on
2 the Bible and raise your right hand.

3 **HEATHER HUBERT**
4 having first been sworn, testifies as follows:

5 **THE CLERK:** Thank you. Please be seated.
6 Please state your name for the record.

7 **THE WITNESS:** Heather Edwards Hubert.

8 **DIRECT EXAMINATION**

9 **BY MS. BENTLEY:**

10 **Q** Investigator Hubert, please tell us where you
11 are employed.

12 **A** Greenville County Sheriff's Office.

13 **Q** What is your title there?

14 **A** I'm an investigator in the Crimes Against
15 Children Unit.

16 **Q** Could you speak up just a little bit?

17 **A** Yes, ma'am.

18 **Q** How long have you been an investigator in the
19 Crimes Against Children Unit?

20 **A** Uh, the Crimes Against Children Unit was newly
21 formed not too terribly long ago. But prior to that,
22 I've been assigned to the Sex Crimes Unit, but with the
23 same primary responsibilities of child sexual assault
24 investigations. That's been for approximately 3 years.
25 I've been with the sheriff's office for 14.

1 **MR. BANNISTER:** Your Honor, I'm only
2 interrupting because I'm not sure that microphone's
3 on.

4 **THE COURT:** Okay. Let's see. Would you
5 check and see if it's plugged in.

6 **THE BAILIFF:** No, ma'am. It's not.

7 (WHEREUPON, there is a pause.)

8 **THE WITNESS:** Yes, ma'am.

9 **BY MS. BENTLEY:**

10 **Q** All right. Investigator Hubert, how long --
11 just tell us again, how long have been with the Crimes
12 Against Children Unit and how long have you been an
13 investigator?

14 **A** Uh, since the inception of the Crimes Against
15 Children Unit a little over a year ago. Prior that, I
16 was with the Sex Crimes Unit with the same primary
17 responsibilities of child sexual assault investigations
18 for approximately three years now. I been with the
19 sheriff's office for 14.

20 **Q** 14 years.

21 **THE COURT:** Can you hear, ma'am, back in the
22 corner? Okay.

23 We're having some problems with our volume
24 control here. I'm just going to ask you, ma'am, to
25 speak up as loud as you possibly can and we'll see

1 how that goes.

2 **THE WITNESS:** Yes, ma'am.

3 **BY MS. BENTLEY:**

4 **Q** Were you working in the Crimes Against Children
5 Unit in September of 2010?

6 **A** Uh, it was the Sex Crimes Unit at the time.
7 Yes, ma'am. I was investigating child sexual assaults.

8 **Q** And in your capacity as a sex crimes
9 investigator, did you meet the victim in this case,
10 Minor 1 Brandeberry?

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

12 **Q** Please tell us what day you met Minor 1

13 **A** Uh, September the 21st of 2010.

14 **Q** Did you notice any mental or emotional defects
15 in Minor 1 that day?

16 **A** No, ma'am.

17 **Q** Did you notice any intelligence issues with
18 Minor 1 that day?

19 **A** No, ma'am.

20 **Q** Can you describe her demeanor that day?

21 **A** She was relatively calm. She was emotional at
22 times, weepy at times, and somewhat embarrassed at times.

23 **Q** How was it that you came to meet Minor 1 on
24 September 21st, 2010?

25 **A** We had received a report from the Department of

1 Social Services of sexual abuse allegation against
2 Minor 1 by her father, Harold Brandeberry.

3 Q Okay. Did members of the Brandeberry family
4 contact law enforcement?

5 A No, ma'am. They had contacted church
6 officials.

7 Q And those officials contacted you?

8 A No, ma'am. I was contacted by the Department
9 of Social Services.

10 Q Okay.

11 THE COURT: Wait just one second. I don't
12 think that microphone is working at all. I'm going
13 to ask you to do one thing and try to move it out of
14 your way just so it may be a little clearer. Let's
15 see how that goes for a minute.

16 Ma'am in the corner, if you can not hear, or
17 any of the jurors, if you can not hear her, will you
18 motion to me so we can do something about it? Okay.

19 BY MS. BENTLEY:

20 Q Please describe, if you will, your
21 investigation into Harold Brandeberry.

22 A Yes, ma'am. It was very straightforward. Went
23 out. The victim gave the allegation. Harold Brandeberry
24 confessed immediately to me. There was a third party
25 that had observed a portion of the act.

1 Q Who was -- Okay. Who was that third party that
2 observed the abuse?

3 A Uh, Kelly Brandeberry.

4 Q And who was that just for the record?

5 A That is Minor 1 Brandeberry's mother.

6 Q Okay. Was Minor 1 -- did Minor 1 provide you a
7 statement when you first -- pardon me. Where did you
8 first respond?

9 A To the family residence.

10 Q What is that address?

11 A [REDACTED]

12 Q Is that located within Greenville county?

13 A Yes, ma'am. It is.

14 Q Okay. Who was present when you first arrived?

15 A Uh, Kelly Brandeberry, Minor 1 Brandeberry and
16 Minor 2 Brandeberry.

17 Q Okay. Do you know approximately how long it
18 had been between the DSS report and you responding to the
19 home on September 21st?

20 A Uh, the same day.

21 Q The same day? Do you know approximately what
22 time you got there or what time of day?

23 A Uh, it would have been after school hours but
24 prior to the end of the business day. Harold Brandeberry
25 was expected home shortly.

1 Q Tell us what happened once you arrived at [REDACTED]
2 [REDACTED] on September 21st.

3 A Uh, I was there. There was also an
4 investigator from the Department of Social Services that
5 responded as well. We spoke briefly with Kelly
6 Brandeberry and also with Minor 1 Brandeberry. Uh, and
7 Mr. Harold Brandeberry arrived home. We knew that he was
8 expected home. He arrived home. I had -- at that point,
9 had some additional law enforcement respond out. I spoke
10 to Harold Brandeberry.

11 Q When you were talking with Minor 1 at her home,
12 did she disclose the time period of abuse with Harold
13 Brandeberry?

14 A Yes, ma'am. She did.

15 Q What did she tell you?

16 A Initially at the home, when we spoke with her
17 briefly, when we posed that question to her, she
18 approximated she was about 10 when the abuse began and
19 that it had run through -- it lasted up until September
20 of 2010.

21 Q Okay.

22 A Later in -- I had her respond to my office
23 where I could meet with her privately without any time
24 constraints to take a statement from her. She did -- in
25 having some time to think about it and sometimes we ask

1 them to think of other events that might have occurred
2 around the same time and to try to get us a good time
3 frame, she did say she thought that actually she was
4 approximately 12 when it began and it had run until
5 September of 2010.

6 Q You said you had time constraints when you were
7 initially at her house. Tell us what was going on that
8 day.

9 A Yes, ma'am. She had already, uh, disclosed the
10 abuse. I knew that Mr. Brandeberry was due home very
11 shortly. I wanted to speak with him as soon as he had
12 gotten home. There was time constraint on how much time
13 I had -- I was able to spend with them before he got
14 there.

15 Q When did Minor 1 come to your office?

16 A Later that evening.

17 Q Who accompanied her to your office?

18 A Kelly Brandeberry came. I don't recall if Minor 2
19 Brandeberry came. But when I interviewed her, it was
20 just Minor 1 and myself privately in my office.

21 Q Did Minor 1 disclose the place or places that
22 -- without giving us any of the details of the abuse, did
23 she tell you the place or places that her father sexually
24 abused her?

25 A Yes, ma'am. She did.

1 Q Could you please tell us where those place or
2 places were?

3 A Yes, ma'am. The family home, uh, to include
4 the, uh, her father's recliner located in the living
5 room, uh, and a camper when they would go on camping
6 trips, uh, inside a camper..

7 Q How heavily did you question Minor 1 regarding
8 her allegations of Harold Brandeberry?

9 A Uh, Minor 1 was able to give most of that
10 information in narrative form. Specific questioning
11 really centered around details, clarification of things,
12 relevant details.

13 Q Okay. Did you ask Minor 1 whether anyone else
14 had touched her in a sexual manner?

15 A Uh, she would have been asked. I don't recall
16 if it was myself or the CPS investigator, but she would
17 have been asked. She did not indicate any other visitors
18 at that time.

19 Q Okay. Was this the last contact you had with
20 Minor 1 Brandeberry?

21 A No, ma'am.

22 Q When did you next come into contact with
23 Minor 1

24 A Uh, I met with Minor 1 on December the 10th,
25 2010.

1 Q Without giving us any identifying information,
2 why did you meet with her?

3 A I had received a new report from the Department
4 of Social Services regarding sexual abuse of Minor 1
5 Brandeberry.

6 Q Without clarifying anymore, yes or no, did that
7 allegation of abuse -- was it regarding her father?

8 A No, ma'am.

9 Q Going back to December 10th, 2010, you spoke to
10 Minor 1 that day?

11 A Yes, ma'am.

12 Q Did you notice any mental or emotional defects
13 that day?

14 A No, ma'am.

15 Q Did you notice any intelligence issues that
16 day?

17 A No, ma'am.

18 Q Describe Minor 1 demeanor that day.

19 A Again, she was calm. She was reasonably
20 articulate. She seemed embarrassed at times at the
21 subject matter.

22 Q Okay. Who else did you speak to on December
23 10th?

24 A Uh, Kelly Brandeberry.

25 Q Did they both provide statements again that

1 day?

2 **A** I spoke with Kelly Brandeberry. And Minor 1
3 Brandeberry also gave a written statement.

4 **Q** Without giving any identifying information, did
5 Minor 1 Brandeberry disclose sexual abuse that day?

6 **A** Yes, ma'am.

7 **Q** By someone other than her father?

8 **A** Yes, ma'am.

9 **Q** Did she disclose the time frame that abuse took
10 place?

11 **A** Yes, ma'am.

12 **Q** Please tell us the time frame that abuse took
13 place during.

14 **A** From about age 12 -- correction, from about age
15 7 up until about age 12.

16 **Q** Did she disclose -- again, without any
17 identifying information, did she disclose the place or
18 places that this additional perpetrator perpetrated the
19 abuse?

20 **A** Yes, ma'am.

21 **Q** Please tell us where this abuse took place.

22 **A** In her family home.

23 **Q** Did you ask Minor 1 why she did not tell you
24 about this when you spoke to her in September?

25 **A** Uh, she did make --

1 **MR. BANNISTER:** Your Honor, I would object
2 to, uh, -- I don't mind her asking if she asked.
3 The answer is hearsay.

4 **THE COURT:** All right. Sustained.

5 **MS. BENTLEY:** Okay. Did you ask her if she
6 disclosed her -- did you ask her why she didn't
7 disclose it?

8 **MR. BANNISTER:** Yes. Just as long as the --

9 **THE COURT:** The answer. I'm sorry. You
10 phrased it correctly first.

11 **BY MS. BENTLEY:**

12 **Q** Did you ask her why she did not disclose that
13 abuse in September?

14 **A** Yes, ma'am.

15 **Q** Okay. Okay. Did she -- without providing us
16 the answer, did she tell you why?

17 **A** Yes, ma'am.

18 **Q** Did she indicate whether she had ever disclosed
19 this abuse to anyone?

20 **A** Yes, ma'am.

21 **MR. BANNISTER:** Judge, I'm going to object
22 to that question again. Hearsay.

23 **THE COURT:** Sustained.

24 **BY MS. BENTLEY:**

25 **Q** Did Minor 1 indicate whether the abuse of her

1 father and whether the abuse of the second individual
2 ever overlapped? Was that time frame --

3 THE COURT: I'll allow that. It --

4 MR. BANNISTER: Yeah, I'm waiting for the
5 question.

6 THE COURT: I'll allow it.

7 BY MS. BENTLEY:

8 Q Did Minor 1 indicate whether the times of abuse
9 with the different abusers overlapped?

10 A She did. She stated that they did not overlap.
11 That it --

12 Q That's okay. Sorry. As a result of this
13 second investigation, did you file criminal charges.

14 A Yes.

15 MR. BANNISTER: Judge, I'm going to object
16 to that as bolstering. If I need to approach, I can
17 on that issue.

18 THE COURT: Let's approach.

19 (WHEREUPON, a bench conference is held off the
20 record.)

21 BY MS. BENTLEY:

22 Q Did you file criminal charges after your
23 investigation after your investigation, after the second
24 investigation?

25 A Yes, ma'am.

1 Q Against whom?

2 A Albert Brandeberry.

3 Q I'm going to show you some items.

4 (WHEREUPON, State's Exhibits 1 through 6 are marked
5 for identification purposes.)

6 BY MS. BENTLEY:

7 Q Without telling us what these are, what they
8 say, do you recognize State's Exhibits 1 through 6? I'll
9 just let you look through those briefly.

10 A (Reviewing.) Yes, ma'am.

11 Q When did you come into contact with those six
12 documents?

13 A Uh, during my investigation into Harold
14 Brandeberry.

15 Q Okay. To your knowledge, where were they
16 found? Do you know where they were found?

17 A Yes, ma'am.

18 Q Where were they found?

19 A They were located in the laptop computer
20 belonging to Kelly and Harold Brandeberry.

21 Q Thank you very much. I have no further
22 questions. Please answer any questions Mr. Bannister may
23 have.

24 A Thank you.

25 THE COURT: Mr. Bannister.

1 **MR. BANNISTER:** Thank you, Your Honor.

2 **CROSS-EXAMINATION**

3 **BY MR. BANNISTER:**

4 **Q** Let's see. Investigator Hubert, let me touch
5 on a couple of dates if I could, just to kind of get a
6 little framework for us. All right. You said that the
7 first contact that you had with Minor 1 Brandeberry was
8 on September 21st, 2010?

9 **A** That's correct.

10 **Q** And it was really -- first contact was at her
11 home, correct?

12 **A** That's correct.

13 **Q** Okay. And then the second contact would have
14 been after you spoken with Harold Brandeberry at your
15 office later on that afternoon, correct?

16 **A** That's correct.

17 **Q** Okay. And I -- then the next time that you had
18 any contact with Minor 1 would have been December the
19 10th, 2010, is that correct?

20 **A** That's correct.

21 **Q** All right. And if I could, on September the
22 21st, when you first had the contact with Minor 1 at the
23 home, that was all in reference to the abuse by Harold
24 Brandeberry, correct?

25 **A** That's correct.

1 Q And, uh, at that point, uh, you and, I believe,
2 the DSS worker was a Pat Agudelo. Do I have that
3 correct?

4 A Yes, sir.

5 Q And y'all met with Minor 1 at least for some
6 period of time and her mother, Kelly, correct?

7 A Yes, sir.

8 Q And as you said on the record, at that time,
9 Minor 1 was indicating that the abuse with Harold
10 Brandeberry had started when she was approximately 10
11 years of age.

12 A Yes, sir.

13 Q And then part of your investigation, it
14 appeared, was not only into the allegations against
15 Harold Brandeberry but would it be fair to say that you
16 at least were looking into the facts as they surrounded
17 Minor 1 mother, Kelly Brandeberry?

18 A I'm not sure I understand the question.

19 Q Was it disclosed to you when you met with Kelly
20 Brandeberry that she had been made aware of some sexual
21 abuse by Harold Brandeberry about a year prior to
22 September 21st, 2010?

23 A Yes, sir.

24 Q And isn't it true that as part of your
25 investigation at that stage that you at least began to

1 look into whether or not Kelly Brandeberry had failed to
2 protect her daughter, Minor 1

3 A Failure to protect is an issue for the
4 Department of Social Services and Family Court. We do
5 look at those sorts of things if they rise to the level
6 of criminal neglect.

7 Q And so part of your investigation involved
8 looking to see whether or not you might determine to, uh,
9 -- if there was enough evidence for charge against Kelly
10 Brandeberry, correct?

11 A We would evaluate for that.

12 Q Right. And I'm asking you, that was something
13 you were doing, correct, in this case?

14 A Yes, sir.

15 Q In fact, tell me if I'm wrong. You spoke with
16 one of the forensic investigation officers, told him to
17 be sure to get some pictures of the camper where some of
18 the allegations of abuse had taken place between Harold
19 and Minor 1 correct?

20 A We did have the camper photographed.

21 Q But one of the specific things you wanted to
22 have photographed is the angle of view that the mother
23 would have had, correct?

24 A That she stated she had.

25 Q So --

1 A That's correct.

2 Q Okay. Just wanted to make sure. At -- in the
3 interview with Harold Brandeberry, initially -- and tell
4 me if I'm wrong -- he told you that the abuses started
5 when Minor 1 was 14.

6 A Yes, sir. That's correct.

7 Q Would you agree with me that he confirmed the
8 sexual abuse with Minor 1

9 A He did.

10 Q And he confirmed oral sex, digital penetration
11 and, to some extent, maybe not full blown, penile
12 penetration, but close enough?

13 A I don't recall the details of what he
14 confirmed. But he confirmed the basic allegations, yes,
15 sir.

16 Q Can you say that he did not include those
17 things I listed?

18 A No, sir.

19 Q Okay. Were you in the car when Harold used
20 words like repentance and accountability?

21 A I was standing just outside the car. I was
22 talking to him as he was seated in the car. I was
23 standing there with him.

24 Q And the conference or the talk with Harold,
25 that was on September 21st, 2010 also, wasn't it?

1 **A** That's correct.

2 **Q** Well, do you remember him using the words
3 repentance and accountability?

4 **A** I don't recall the words, but I do recall that
5 sentiment. It would be consistent with those words, yes,
6 sir.

7 **Q** Have you, uh, -- have you got your report from
8 September 21st, 2010?

9 **A** Yes, sir.

10 **Q** You got it with you?

11 **A** Can I review that?

12 **MS. BENTLEY:** If I may approach, Your Honor?

13 **MR. BANNISTER:** Please. Thank you.

14 **THE COURT:** Yes.

15 **BY MR. BANNISTER:**

16 **Q** All right. If you will look at page 2 of your
17 report, I'd say about eight-tenths of the way down in the
18 narrative. One, two, three, four, five, six lines up.
19 Let me ask you if that would refresh your recollection
20 about whether or not Harold mentioned the words
21 accountability for what he had done.

22 **A** (Reviewing.) Yes, sir.

23 **Q** Did that strike you as odd that he used those
24 words?

25 **A** No, sir.

1 Q It didn't. Did you receive the -- well, let me
2 ask this. Did you ultimately refer Minor 1 over to the
3 Julie Valentine Center?

4 A Yes, sir. I believe -- yes.

5 Q Whether it was you or not, she ended up going
6 to the Julie Valentine Center.

7 A Correct.

8 Q And do you, as the investigator, receive the
9 reports from the Julie Valentine Center?

10 A I do.

11 Q And did you get back a report from a Mary Ann
12 Crosswell?

13 A Mary Fran Crosswell.

14 Q Sorry. Mary Fran Crosswell.

15 A Yes, sir.

16 MR. BANNISTER: Lisa, I'm going to
17 introduce this now if that's okay with you.

18 MS. BENTLEY: Sure.

19 MR. BANNISTER: This is the one --

20 MS. BENTLEY: Okay.

21 MR. BANNISTER: All right. Let me get this
22 marked as Defendant's Exhibit 3.

23 (WHEREUPON, Defendant's Exhibit 3 is marked for
24 identification purposes.)

25 MR. BANNISTER: All right. Your Honor, by

1 stipulation with Solicitor, we have agreed to enter
2 Defendant's Exhibit 3 as an Exhibit in the case.

3 **THE COURT:** All right. Is that correct?

4 **MS. BENTLEY:** Yes, Your Honor.

5 **THE COURT:** All right. It's so admitted.

6 (WHEREUPON, Defendant's Exhibit 3 is admitted into
7 the record.)

8 **BY MR. BANNISTER:**

9 **Q** Let me show you what's been admitted into
10 evidence as Defendant's Exhibit 3.

11 **A** Thank you.

12 **Q** And ask you if that's a copy of one of the
13 reports you got from the Julie Valentine Center.

14 **A** Yes, sir.

15 **Q** And if you would go to page 4 of that report --

16 **A** Yes, sir.

17 **Q** In the bottom portion of the report, doesn't it
18 indicate that Dr. Crosswell asked Minor 1 Brandeberry
19 about other perpetrators?

20 **A** That's correct.

21 **Q** And in that, she said that the sole perpetrator
22 -- or told Ms. Crosswell that the sole perpetrator was
23 her father, correct?

24 **A** Uh, that's correct.

25 **Q** Did -- the date on that is September 28th,

1 2010, is that correct?

2 A It is.

3 Q So I wrote up here September 28th, 2010 Julie
4 Valentine referral. That's the document that we're
5 talking about that comes from Dr. Crosswell who worked
6 with them. Is that a fair statement?

7 A Yes, sir.

8 Q I don't want to put anything unfair on my board
9 when I'm writing.

10 A Yes, sir.

11 Q Okay. The initial statement that Minor 1 gave
12 to you as law enforcement, when she was describing how
13 things had started with her father, correct me if I'm
14 wrong, but I believe she described it that he would start
15 by using words like this is a pony ride?

16 A Early -- during the early parts of --

17 Q September 21st, 2010.

18 A Yes, she did mention that he would do some
19 things and say it's like a pony ride, yes.

20 Q And, uh, when -- did you discover that
21 Minor 1 mother had been informed in some way, shape or
22 form by Harold of the abuse about a year prior to
23 September 21st, 2010?

24 A Yes, sir.

25 Q And at that time, did you hear words about

1 repentance and accountability also?

2 A Correct. Same sentiment.

3 Q And did, uh, the mother indicate that she had
4 done anything between when she heard the report from
5 Harold and when she called y'all September 21st, 2010?

6 A Uh, yes.

7 Q And what was that?

8 A She was supposed to be watching them.

9 Q And watching them for what purpose?

10 A To ensure that no additional incidents
11 occurred.

12 Q Clearly that didn't happen.

13 A I would say that's accurate.

14 Q That was part of why you were looking, at
15 least, at Kelly Brandeberry for either neglect or
16 potentially criminal neglect?

17 A Yes, sir.

18 Q In addition, uh, were you given the
19 understanding that Minor 1 was required to apologize to
20 her mother?

21 A Not required.

22 Q Asked to apologize to her mother?

23 A Not asked.

24 Q Did apologize to her mother?

25 A Yes, sir.

1 Q And that apparently Harold also apologized?

2 A Yes, sir.

3 Q What we can say clearly is DSS did not get a
4 report a year prior when the father initially told the
5 mother?

6 A Correct.

7 Q And that law enforcement certainly did not get
8 a report a year prior when Harold told Kelly about the
9 abuse of Minor 1

10 A That's correct.

11 Q At some point, did you become aware that Harold
12 was writing letters to both Kelly and Minor 1 from
13 prison?

14 A Yes, sir.

15 Q And that would have been after his arrest, or
16 after he was taken into custody on the 21st, some time
17 after that?

18 A Yes, sir.

19 Q And did those cause you concern?

20 A To some degree.

21 Q Part of that concern, and I'm asking, was that
22 he was talking to Kelly and maybe even Minor 1 in the
23 sense of, hey, now that it's all out, we might can
24 potentially get -- I want to get back in your life once
25 we all get this taken care of.

1 **A** My understanding was that Minor 1 was not
2 viewing those letters.

3 **Q** Okay. But was one of those concerns that he
4 was attempting to exert some influence over Kelly and
5 Minor 1 or at least Kelly unrelated to the charges that
6 he was currently involved in?

7 **A** I would not characterize that as my chief
8 concern.

9 **Q** What was your chief concern with him writing
10 Kelly?

11 **A** Uh, the emotional well-being of the family.

12 **Q** Okay. You felt like that was not helpful that
13 he's writing letters to them?

14 **A** Correct.

15 **Q** Okay. Did you attend Harold's sentencing?

16 **A** No, sir.

17 **Q** You are -- are you aware that in South Carolina
18 we have a statute that permits an individual who has been
19 sentenced to a crime if they provide substantial
20 assistance to the prosecution --

21 **MS. BENTLEY:** Objection. Your Honor, what is
22 the relevance of this line of questioning here?

23 **MR. BANNISTER:** I got one more question to
24 go before I can tie it together.

25 **MS. BENTLEY:** This is all about Harold, Your

1 Honor, and he is not the one on trial here.

2 THE COURT: I'll allow it. Let's hear where
3 it's going.

4 BY MR. BANNISTER:

5 Q Let me just jump to it. Are you aware that
6 Harold has sought some benefit from the testimony that
7 he's potentially going to give in this case?

8 A No, sir.

9 Q You are unaware of that?

10 A No, sir.

11 Q All right. Then I -- just me just one minute.
12 Let me make sure I've got my timing all right. I don't
13 have any further questions.

14 MS. BENTLEY: May we approach briefly, Your
15 Honor?

16 THE COURT: Yes.

17 (WHEREUPON, a bench conference is held off the
18 record.)

19 THE COURT: Yes, ma'am.

20 MS. BENTLEY: I have no further questions.

21 THE COURT: Ma'am, you can step down.

22 MS. BENTLEY: May she be excused, Your Honor?

23 THE COURT: Any objections, Mr. Bannister?

24 MR. BANNISTER: None, Your Honor.

25 THE COURT: Thank you so much for being here.

1 **MS. BENTLEY:** The State calls Matthew Tuttle.

2 **THE CLERK:** Please come forward. If you
3 will, please pause at the end of the bench. Place
4 your left hand on the Bible and raise your right
5 hand.

6 **MATTHEW TUTTLE**
7 having first been sworn, testifies as follows:

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

10 **THE WITNESS:** Uh, it's Matthew Dale Tuttle.

11 **DIRECT EXAMINATION**

12 **BY MS. BENTLEY:**

13 **Q** Detective Tuttle, please tell us where you are
14 employed?

15 **A** I am employed by the City of Finley, Ohio,
16 Police Department.

17 **Q** What is your position there?

18 **A** I'm a detective.

19 **Q** How long have you been a detective in Finley,
20 Ohio?

21 **A** Since January of 2003.

22 **Q** In the course of your duties as an
23 investigator, did you begin an investigation into the
24 defendant in this case, Albert Brandeberry?

25 **A** I did.

1 Q When?

2 A It was roughly February of 2011.

3 Q Please tell us what prompted that
4 investigation.

5 A My supervisor at the time received a report
6 from the Greenville County Sheriff's Office, specifically
7 Detective Hubert, involving a sexual abuse allegation.

8 Q Did that allegation involve any crimes in Ohio?

9 A No.

10 Q To your knowledge, had a warrant been issued at
11 that time?

12 A It had not.

13 Q Did you have any indication that Mr.
14 Brandeberry had -- let me rephrase that. Would you have
15 had any probable cause to arrest Mr. Brandeberry at that
16 point?

17 A No.

18 Q What was the request from Heather Hubert?

19 A To do a courtesy interview on Albert.

20 Q Please tell us what a courtesy interview is.

21 A Courtesy interview, basically another
22 department -- obviously, we're nine hours away. So they
23 don't have the funds or the time to drive up. So they
24 will ask the agency in that area to do an interview.

25 Q Where did you attempt to speak to Mr. Albert

1 Brandeberry?

2 **A** At his residence.

3 **Q** What is the address of his residence?

4 **A** [REDACTED]. That's in Finley, Ohio.

5 **Q** Okay. Was he home?

6 **A** He was.

7 **Q** What day did you go to visit him?

8 **A** March 10th, 2011.

9 **Q** Okay. About how long after Investigator
10 Hubert's request did you make it to Mr. Brandeberry's
11 house?

12 **A** It was roughly a month.

13 **Q** Okay. Who was home with Mr. Brandeberry on
14 March 10th?

15 **A** Albert and his wife Noreen.

16 **Q** Was anyone else present?

17 **A** No, not that I'm aware of.

18 **Q** When did you first encounter Mr. Brandeberry at
19 his home?

20 **A** Uh, knocked on the door. Met him at his front
21 door.

22 **Q** What did you explain to him the purpose of your
23 visit was?

24 **A** I explained to him I was a detective at the
25 Finley, Ohio, Police Department and I was wanting to talk

1 to him in reference to a case from South Carolina.

2 Q Did he agree to speak with you?

3 A He did. He invited me in the house.

4 Q Did you advise him that he did not have to
5 speak to you?

6 A Yeah. Prior to getting into the entire
7 investigation, I explained to him that he was not under
8 arrest, he was not going to be arrested and if he did not
9 want to talk to me any further, he could tell me so and I
10 would leave at that time.

11 Q And what did he do?

12 A He indicated that that was okay with him.

13 Q He invited you inside?

14 A Yes.

15 Q Where did you go to speak with him?

16 A I was in his living room.

17 Q Do you recall where he was seated?

18 A The northeast corner in, I would describe,
19 like, his own chair.

20 Q Okay. Who else was present in the living room?

21 A His wife, Noreen.

22 Q Noreen. Was he restrained in any way?

23 A No.

24 Q Was he threatened in any way?

25 A No.

1 Q Did you advise him of his Miranda rights?

2 A I did not.

3 Q Tell us why.

4 A Again, like I stated before, he wasn't in
5 custody.

6 Q How did you begin your conversation with Mr.
7 Brandeberry?

8 A I explained to him the reason I was wanting to
9 talk to him was the investigation with the South Carolina
10 Sheriff's Office.

11 Q Did you explain the allegations against him?

12 A I did involving Albert against his
13 granddaughter Minor 1

14 Q Did he appear -- what was his demeanor when you
15 advised him of these allegations?

16 A He acted surprised initially.

17 Q You say initially. Please expand on that.

18 A Later on in talking to him, he said that he had
19 learned of the allegations a few years prior from his
20 son.

21 Q So he was aware of the allegations?

22 A He was.

23 Q Did he tell you who his son was?

24 A Uh, Harold Brandeberry.

25 Q To clarify, he told you that Harold had made

1 him aware of the allegations.

2 **A** Correct. There was some rubbing and some
3 things like that.

4 **Q** Okay. Without giving us any details about, uh,
5 what else might have been alleged, what else did Mr.
6 Brandeberry tell you?

7 **A** He indicated through the course of the
8 interview Harold and his family moved to South Carolina
9 roughly 10 years prior. During the summers, he would go
10 down and stay anywhere between a couple of days to a
11 week. When he was staying there, he would sleep on the
12 couch or sometimes he had his own room. Also denied the
13 allegations.

14 **Q** So he did not tell you -- did not admit any
15 wrongdoing?

16 **A** Correct.

17 **Q** Did you ask him what his opinion of Minor 1
18 was?

19 **A** Uh, as far as Minor 1 I had talked to him
20 about her being truthful. He had indicated that he got
21 along with her well. He said, for the most part, she was
22 truthful and honest except for this allegation where he
23 said she had lied.

24 **Q** How did your conversation with Mr. Brandeberry
25 end?

1 **A** Uh, we started talking about the allegations a
2 little more. At which point, Albert became upset and
3 started talking about killing himself. At one point,
4 even talked about putting a bullet in his head if he were
5 to get charged. So I ended the interview at that point.

6 **Q** What did you do at that point?

7 **A** At that point, in our county, if you are
8 threatening suicide, we request that you come up to the
9 police department and talk to a counselor for your
10 feelings. So that's ultimately what happened.

11 **Q** You arranged a counselor for him to talk to?

12 **A** Correct.

13 **Q** Did you question him any more on the way to the
14 police station or wherever the counselor was?

15 **A** No. Just took him directly to the police
16 station.

17 **Q** Uh, did you ever resume your interview with Mr.
18 Brandeberry?

19 **A** Once he was done with the counselor, I --

20 **MR. BANNISTER:** I interpose my objection.

21 **BY MS. BENTLEY:**

22 **Q** Just a yes or no.

23 **A** Oh, yes.

24 **THE COURT:** Okay. She fixed it. All right.

25 Very well.

1 BY MS. BENTLEY:

2 Q Did you say that you did resume your interview
3 with him?

4 A I did not.

5 Q You did not. Did that conclude your
6 involvement in this investigation?

7 A Yes, except for the warrant. Which was issued
8 later.

9 Q Tell us what that means.

10 A Uh, a warrant had been issued, I believe it was
11 a month or so after. And I had been contacted by
12 Detective Hubert and we went out and arrested Albert.

13 Q Is that typical protocol for out-of-state
14 warrants that are issued?

15 A Yes.

16 Q Okay. Did you interview him or question him
17 anymore about the charges at the time you served the
18 warrants?

19 A I did not.

20 Q I have no further questions. Please answer any
21 questions Mr. Bannister may have.

22 THE COURT: All right. Mr. Bannister.

23 CROSS-EXAMINATION

24 BY MR. BANNISTER:

25 Q All right. So some time in February, you

1 talked to Heather Hubert about the allegations against
2 Albert Brandeberry, correct?

3 A Yes.

4 Q Of 2011?

5 A Yes.

6 Q And it was, I think you said, a month before
7 you actually got to speak with Albert Brandeberry?

8 A Correct.

9 Q And in order to be able to speak with Mr.
10 Brandeberry, uh, you had to know something about the
11 crime that was being alleged in South Carolina, correct?

12 A Correct.

13 Q And, uh, I'm writing up here February 2011 was
14 the first contact from Greenville County Sheriff's Office
15 and on 3/11, you saw and spoke with Albert Brandeberry.
16 So, uh, between -- did you get all your information from
17 Ms. Hubert in just one phone call or was this something
18 that she gave to you over time before you went out there?

19 A I believe she faxed the report, an initial
20 report.

21 Q So you had some pretty good details of what the
22 allegations were from Minor 1 Brandeberry. Is that a
23 fair statement?

24 A Correct.

25 Q And that formed the basis of the questions that

1 you went to Mr. Brandeberry, Albert Brandeberry, with,
2 correct?

3 A Correct.

4 Q Had there been any discussion with you about
5 the prior allegations against Harold Brandeberry?

6 A I don't recall if that was before or from
7 speaking with Mr. Brandeberry.

8 Q Okay. When you first approached him, I think
9 the words that you said was you told him, you said, look,
10 I'm not here to arrest you today.

11 A I didn't say those words.

12 Q I'm here about a case from South Carolina.

13 A Uh-huh.

14 Q You're not going to be arrested?

15 A That's something I get into when we're in the
16 house.

17 Q Okay. I'm just -- at some point in the
18 conversation leading up to when you talked about the
19 actual subject matter, you made it clear to Mr.
20 Brandeberry that he was not going to be arrested.

21 A Correct.

22 Q And you told him that you -- or you told us
23 that at that point when you were getting ready to talk to
24 Mr. Brandeberry, you didn't have probable cause for an
25 arrest anyway.

1 A No, sir.

2 Q So there was -- and if you had, you have to
3 give him his Miranda rights, correct?

4 A Correct.

5 Q Everything you say can or will be held against
6 you, that litany that we're used to. So if I put no PC
7 there for no probable cause on March 11th, we can agree
8 with that, can't we?

9 A Yes.

10 -- Q All right. Initially when you talked to him
11 about the allegations, how did you first bring it up?
12 Did you say there was a young lady named Minor 1 your
13 granddaughter in Greenville, who alleged that there has
14 been something inappropriate?

15 A Through the investigation of the Greenville
16 Sheriff's Office, yes.

17 Q And when you said that to him, did he deny
18 those allegations immediately?

19 A Yes, sir.

20 Q So we can agree that he denied them that time.
21 Did you -- there was -- then you got into the
22 conversation about, uh, you know, him being with family
23 visiting down in Greenville for a week or two. At some
24 point, y'all got into an allegation that maybe Harold
25 said something to him several years back?

1 A Correct.

2 Q And he denied that those allegations, whatever
3 they were, were true?

4 A Correct.

5 Q And then at that point, he was not upset?

6 A Yeah. Just general conversation.

7 Q Would it be fair to say that you brought up the
8 allegations a third time to him trying to ask him about
9 Minor 1 saying this and truthful and that kind of thing?

10 A Yeah, it was brought up.

11 Q So again, he denied it the third time. That's
12 when he started getting upset and talking about -- I
13 think the specific words he said was, I can't do this.
14 I'd rather just put a bullet through my head.

15 A Yes.

16 Q And so under your office policy, whether that
17 statement "I can't do this, I'd rather just put a bullet
18 through my head" is figurative or literal, at that point,
19 you've got to stop and refer him to a counselor. Is that
20 a fair statement?

21 A Yes.

22 Q And that's exactly what you did.

23 A Exactly.

24 Q And then it was one month later that the
25 warrant was issued and you came and arrested Mr.

1 Brandeberry?

2 **A** Approximately. I'm not sure exact. Yes.

3 **Q** I'll just put a little squiggly line here and
4 say somewhere we'll agree in April of 2011, is that fair
5 enough?

6 **A** Yes, sir.

7 **Q** No further questions.

8 **THE COURT:** Anything else?

9 **REDIRECT EXAMINATION**

10 **BY MS. BENTLEY:**

11 **Q** Detective Tuttle, is it fair to characterize --
12 pardon. You asked the defendant about the allegation
13 several times, correct?

14 **A** Correct.

15 **Q** Did you ask him additional questions?

16 **A** Yes.

17 **Q** Did he respond to those questions?

18 **A** He did.

19 **Q** Did you just repeatedly ask him about the
20 allegations until he broke down?

21 **A** No.

22 **Q** Okay. No further questions.

23 **THE COURT:** Anything else, Mr. Bannister?

24 **MR. BANNISTER:** No, Your Honor.

25 **THE COURT:** Sir, you can step down.

1 **MS. BENTLEY:** Can Detective Tuttle be excused
2 for the remainder of this trial?

3 **THE COURT:** Any objection?

4 **MR. BANNISTER:** No, Your Honor.

5 **THE COURT:** Thank you, sir, for being here.

6 **MS. BENTLEY:** Your Honor, the State calls
7 Minor 1 Brandeberry.

8 **THE COURT:** All right.

9 **THE CLERK:** Ma'am, come forward and be sworn.

10 **THE COURT:** Come on.

11 **THE CLERK:** Please place your left hand on
12 the Bible and raise your right hand.

13 Minor 1 **BRANDEBERRY**

14 having first been sworn, testifies as follows:

15 **THE CLERK:** Please be seated. State your
16 name for the record please.

17 **THE WITNESS:** Minor 1 Brandeberry.

18 **MS. BENTLEY:** You want some water, Minor 1

19 **THE WITNESS:** Yes, please.

20 **THE BAILIFF:** I got it.

21 **THE COURT:** Ma'am, would you try to move that
22 microphone up to you? We're going to see if it
23 works. Okay. Would you state your name please.

24 **THE WITNESS:** Minor 1 Brandeberry.

25 **MS. BENTLEY:** Would you try it again?

1 **THE WITNESS:** Minor 1 Brandeberry.

2 **THE COURT:** Try again.

3 **THE WITNESS:** Minor 1 Brandeberry.

4 **THE COURT:** Ms. Brandeberry, I've got a
5 feeling that you've got a very soft voice and we've
6 got a problem with our speaker system today and I
7 apologize for that. I'm going to ask you to speak
8 up as much as you possibly can and maybe move that
9 microphone out of your face. This lady on that back
10 corner back there needs to hear you speaking. Okay?

11 **THE WITNESS:** Yes, ma'am.

12 **THE COURT:** So speak as loud as you can.

13 **THE WITNESS:** Okay.

14 **DIRECT EXAMINATION**

15 **BY MS. BENTLEY:**

16 **Q** Minor 1 what is your full name?

17 **A** Minor 1 Jolene Brandeberry.

18 **Q** How old are you?

19 **A** I'm 17.

20 **Q** When is your birthday?

21 **A** [REDACTED] [REDACTED].

22 **Q** Where did you last go to school?

23 **A** Wade Hampton High School.

24 **Q** And what grade were you in?

25 **A** I was in the 11th grade.

- 1 Q How long had you been attending Wade Hampton?
- 2 A That was my first year.
- 3 Q Where did you go to school before Wade Hampton?
- 4 A Bob Jones Academy.
- 5 Q How long were you at Bob Jones Academy?
- 6 A From 1st grade to 10th grade.
- 7 Q Minor 1 originally, were you born here?
- 8 A No.
- 9 Q Where were you born?
- 10 A Alabama.
- 11 Q Do you remember where or how long you lived in
- 12 Alabama?
- 13 A I think a year.
- 14 Q Where did you move after Alabama?
- 15 A Ohio.
- 16 Q How long did you live in Ohio?
- 17 A Until I was 6 or 7.
- 18 Q Do you know what year you moved to Ohio?
- 19 A 2001.
- 20 Q Why did you move from Alabama to Ohio?
- 21 A Uh, my dad wanted to go to school at Bob Jones
- 22 University.
- 23 Q That's why you moved to Ohio?
- 24 A Oh. Sorry. He -- I don't know.
- 25 Q That's okay. Are you nervous, Minor 1

1 A A little.

2 Q If you need a break or you need some water, let
3 us know. Okay. Minor 1 what are the names of your
4 parents?

5 A Kelly Brandeberry and Harold Brandeberry.

6 Q Do you have brothers and sisters?

7 A One brother.

8 Q What is your brother's name?

9 A Minor 2 Brandeberry.

10 Q How old is Minor 2

11 A 14.

12 Q Do you remember moving to South Carolina?

13 A I just remember the family gathering to say
14 goodbye.

15 Q Where did the family get together to say
16 goodbye?

17 A At my grandpa's house.

18 Q Who is your grandpa, Minor 1

19 A Albert Brandeberry.

20 Q Where did you move to in South Carolina?

21 A The address?

22 Q Yes please.

23 A ██████████ Taylors.

24 Q Taylors. Why did you start attending school at
25 Bob Jones Academy?

1 A Since both of my parents were working there, it
2 was free.

3 Q Where did your dad work at Bob Jones?

4 A He worked as the basement manager.

5 Q And what about your mom?

6 A She was a CDC worker.

7 Q What does that mean?

8 A She took care of the kids.

9 Q In the daycare?

10 A Yes.

11 Q Did you keep in contact with family members in
12 Ohio after you moved?

13 A Yes, ma'am.

14 Q Who did you keep in contact with?

15 A My grandma and grandpa from my mom's side and
16 my two aunts and my grandma from my dad's side.

17 Q What are the names of your aunts, Minor 1 on
18 your dad's side?

19 A Sylvia and Kay.

20 Q Okay. How often -- tell me how you would keep
21 in contact with all those family members in Ohio.

22 A Most of it was through cards. My grandfather
23 would send cards for every holiday and our birthday and
24 sometimes he would call.

25 Q Okay. Did anyone visit you in South Carolina?

1 A My aunt and my grandpa and one time my grandma.

2 Q I'm sorry. You're going to need to speak up
3 just a little bit. Your aunt and your grandpa and --

4 A My grandma one time.

5 Q Which grandma are you talking about?

6 A On my mom's side.

7 Q Your mom's side. Which aunt are you talking
8 about?

9 A Aunt Sylvia.

10 Q And which grandpa are you talking about?

11 A Albert Brandeberry.

12 Q Minor 1 in your own words, tell us why we are
13 here in this trial.

14 A To talk about my grandpa molesting me.

15 Q How old were you when that happened?

16 A I think I was 7.

17 Q Until when?

18 A I was 12.

19 Q When would this abuse occur?

20 A On his visits.

21 Q When would he visit?

22 A It was usually during the summer.

23 Q How long would he stay?

24 A For a week or two.

25 Q Where would he sleep when he was here?

1 A Usually on the sofa.

2 Q Would he just sleep on a regular couch?

3 A It pulled out to a bed.

4 Q Your parents worked at a school, correct? Did
5 they work in the summer?

6 A Yes, ma'am.

7 Q Normally during the summer, what did you and
8 your brother do during the day?

9 A We went to the day camp..

10 Q Okay. Would that change when your grandfather
11 was in town?

12 A Yes.

13 Q When I talk about your grandfather now, I'm
14 going to be talking about the defendant, Albert
15 Brandeberry.

16 A Yes.

17 Q Did anyone accompany him on his visits?

18 A Uh, two different times two different people.

19 Q Tell us about those times that other people
20 came.

21 A Once, my cousin Jacob came. Another time, my
22 mom's mom came.

23 Q Okay. How would your grandfather get to South
24 Carolina?

25 A He would drive his truck.

1 Q What kind of truck did he have?

2 A It was usually a big red truck.

3 Q Okay. When your grandfather was in town, what
4 would you and your brother do?

5 A We would stay home with him.

6 Q Do you remember the first summer your
7 grandmother came down?

8 A Yes.

9 Q What year was that? Do you remember?

10 A 2001.

11 Q That was the first summer you were here?

12 A Yes.

13 Q Tell me what you remember about your
14 grandfather's visit that summer.

15 A He came down on --

16 Q Would you speak up just a little bit louder.
17 I'm sorry.

18 A Uh, he -- I don't know if it started that
19 summer or the next summer.

20 Q Tell me about the first time the first instance
21 of abuse you remember.

22 A He came down on his truck and we were alone.
23 My brother was outside playing. And he would start
24 massaging me outside my clothes.

25 Q Was this the first thing that he would do when

1 he came down?

2 **A** No, we would usually hang out with the family,
3 eat dinner while my parents were at work during the day
4 and my brother was inside the house.

5 **Q** Where would your brother be?

6 **A** Outside playing with toys or friends.

7 **Q** Okay. You said the word massage. Describe
8 that for me.

9 **A** Uh, he would call it a massage. He would just
10 rub me outside my clothes on my vagina.

11 **Q** Okay. Did he rub you anywhere else?

12 **A** Not that summer.

13 **Q** You say that summer again. Do you remember
14 whether that was 2001 or 2002?

15 **A** No.

16 **Q** How old would you have been the summer of 2001?

17 **A** I think 6.

18 **Q** What about the summer of 2002?

19 **A** I think I would be 7.

20 **Q** Okay. How long would he give you those
21 massages outside of your clothes?

22 **A** Just for a little bit or until someone came
23 inside the house.

24 **Q** Okay. How many times during that first summer,
25 whether it was 2001 or 2002, do you remember getting

1 these massages?

2 A Almost every day.

3 Q Did your grandfather talk to you while he was
4 massaging you?

5 A Not that I remember.

6 Q Okay. Did you tell anyone about the massage?

7 A No.

8 Q Why not?

9 A I didn't think there was anything wrong.

10 Q Okay. Tell me about the next summer you
11 remember him visiting. Let's just say -- tell me about
12 the next time you remember him visiting.

13 A Again, he would come down on his truck. He --
14 he would -- we -- family were at work. My brother was
15 outside. He would still massage me outside my clothes.

16 Q Would you do other things with your
17 grandfather?

18 A We went to the store a lot and sometimes
19 hiking.

20 Q Okay. What kind of stores did you go to?

21 A Mostly stores that carried toys.

22 Q Okay. Would he buy you toys?

23 A Yes.

24 Q Do you remember any toys that he brought you in
25 particular?

1 **A** A couple of times, Brat dolls.

2 **Q** The second summer you were in South Carolina --

3 **THE COURT:** Would you speak up for me please?

4 I know it's difficult, but please speak up as much

5 as you can.

6 Go ahead.

7 **BY MS. BENTLEY:**

8 **Q** Did you ever visit Ohio? Did you ever go back
9 to visit?

10 **A** A couple of times.

11 **Q** Tell me about the first time you went to visit
12 Ohio?

13 **A** The end of my first grade year and the -- it
14 was the summer between my first grade and my second grade
15 year.

16 **Q** Do you remember how old you were or anything
17 about that summer?

18 **A** Uh, I had a broken arm.

19 **Q** Okay. How did you break your arm?

20 **A** We were playing the Human Knot and a girl fell
21 on it while it was twisted.

22 **Q** Okay. You went to Ohio that summer?

23 **A** Yes.

24 **Q** What do you remember about that trip?

25 **A** I was wearing a cast. My grandfather and my

1 dad were throwing my brother in his floaty and it flipped
2 over and he went over. Then one time, my cousin dragged
3 my aunt to the pool with her clothes on.

4 Q Okay. Did any massaging happen in Ohio?

5 A No, ma'am.

6 Q Was that the only time you saw your grandfather
7 that summer when you were seven?

8 A I think so.

9 Q He did not come to visit that summer?

10 A I can't remember.

11 Q Okay. Tell me about the next time you remember
12 him coming to South Carolina.

13 A It was either that summer or that Christmas.

14 Q Why do you say that summer of -- so the summer
15 of 2003 or the Christmas of 2002?

16 A Yes.

17 Q Tell me about -- how many times did he come
18 down at Christmas?

19 A Just one time.

20 Q Just one time. Do you remember exactly what
21 year that was?

22 A Uh, no.

23 Q What do you remember about his Christmas time
24 visit?

25 A It was the end of November because it was my

1 grandmother's birthday.

2 Q Which grandmother?

3 A On my dad's side.

4 Q Is that the defendant's wife?

5 A His ex-wife.

6 Q Okay. It was her birthday and he came down
7 that Christmas?

8 A Yes.

9 Q Tell me what you remember about the birthday.

10 A Uh, they had cake. Their birthdays are close
11 together so they shared a cake with their candles.

12 Q You say they. Could you be more specific?

13 A My grandfather and my grandma.

14 Q Your grandfather, Albert?

15 A Yes.

16 Q What else did you do that Christmas that he
17 came to visit?

18 A We went to the lighting ceremony at Bob Jones.

19 Q Do you remember when that was held?

20 A Usually the first week of December.

21 Q Who went to that ceremony?

22 A You mean my family? My whole family and there
23 would be a lot of Bob Jones students there.

24 Q You say your whole family. Could you name the
25 people that were there?

1 **A** My mom, my dad, my brother, me and my grandpa.

2 **Q** Okay. Tell me about the lighting ceremony.

3 **A** You would be Christmas caroling and then they
4 would have a lady usually sing "Holy Night". And as soon
5 as she hit the high pitch, the lights would all come on.

6 **Q** Okay. So the lights were off before the high
7 pitch?

8 **A** Yes.

9 **Q** Did anything happen during that lighting
10 ceremony?

11 **A** I was standing in front of my grandpa. And he
12 pulled my hand behind me and made me rub his penis.

13 **Q** Okay. Was that the first time you rubbed his
14 penis?

15 **A** No.

16 **Q** Tell me about the first time you remember
17 rubbing his penis.

18 **A** It was a summer. And I -- while he was rubbing
19 me, he put my hand on him. At first, he would just over
20 my hand, move my hand. After a while, that would be like
21 what he was wanting to do.

22 **Q** Did he ever speak to you when that was
23 happening?

24 **A** Not that I remember.

25 **Q** Did he tell you what to do?

1 A No.

2 Q He just showed you?

3 A Yes.

4 Q Tell me about the next summer he came to visit.
5 You would have been how old?

6 A I think eight or nine.

7 Q Okay.

8 A We just came back from a toy store and got some
9 toys. He was commenting on how the cash register lady
10 was attractive. He said he would like to do some things
11 to her.

12 Q I'm going to stop you right there. I want you
13 to speak up as loud as you can. You been in a toy store.
14 Then when you got home was he making these comments?
15 Where was he?

16 A It was at home.

17 Q Where at home were you?

18 A We were in the kitchen.

19 Q Who was in the kitchen?

20 A Just me and my grandpa.

21 Q Where was Minor 2

22 A He was outside playing with his new toy.

23 Q Tell me what your grandfather told you.

24 A He said he'd like to do some things to that
25 cash register girl. He then picked me up, put me on the

1 counter.

2 Q Okay. Minor 1 you are a petite girl.

3 A Yes.

4 Q How tall are you right now?

5 A Five foot.

6 Q Were you able to get on the counter on your
7 own?

8 A No, ma'am.

9 Q Okay. Tell me what happened after he put you
10 on the counter.

11 A He pulled my shorts down and he put his head
12 between my legs and he would lick my vagina.

13 Q Did you wear panties?

14 A (Nods head.)

15 Q Were your panties on or off?

16 A Off.

17 Q How long did he lick your vagina?

18 A I don't know.

19 Q Okay. When did he stop?

20 A I think my brother came in for a drink or
21 something, so he pulled me off the counter. I got down
22 so I could pull up my -- put on my clothes.

23 Q Okay. Is that all that you remember from that
24 summer?

25 A When my brother went back out, he sat at the

1 coffee -- I mean, at the table in the kitchen at the head
2 of the table.

3 Q You said he was sitting at the head of the
4 table, who?

5 A My grandpa.

6 Q Okay. Please continue.

7 A I then -- he told me to go underneath the table
8 and he pulled out his penis.

9 Q Take a deep breath.

10 A He made me, uh, -- he put his penis in my
11 mouth.

12 Q Okay. Did his -- did he take his pants off?

13 A It was just through the zipper.

14 Q What kind of pants was he wearing?

15 A Jeans.

16 Q Do you remember what kind of shirt he was
17 wearing?

18 A He would usually always wear snap shirts that
19 were plaid.

20 Q Snap shirts? What kind of shoes would he wear?

21 A Cowboy boots.

22 Q What did you do when he put his penis in your
23 mouth?

24 A Uh, I was crying because I didn't like it. I
25 was gagging. But he, uh, made me keep it in there until

1 he ejaculated.

2 Q How did he keep you there?

3 A He held my head there with his hand.

4 Q Did he speak to you?

5 A I don't remember.

6 Q When he had you on the counter, did he do
7 anything painful?

8 A Not that time.

9 Q Okay. How did it feel when he forced you --
10 your mouth on his penis?

11 A It hurt the back of my throat.

12 Q Did you tell him that?

13 A I asked to stop, but he wouldn't.

14 Q Did you tell anybody about that?

15 A No.

16 Q Why not?

17 A He basically said that if I told anyone, he
18 wouldn't be able to come down and visit and my brother
19 wouldn't be able to get anymore toys and neither would I.

20 Q Was that the last summer your grandfather
21 visited?

22 A No.

23 Q Tell me about the next summer he visited.

24 A The next time he visited, he touched inside my
25 clothes on my vagina. I remember because his fingers,

1 sometimes his nails would scratch me.

2 Q How would that feel?

3 A It hurt.

4 Q Did anything else happen that summer or was it
5 the touching and the finger penetration?

6 A We were playing teams and Checkers while my
7 parents were making food. My brother was outside. He
8 had me massage his penis underneath the table.

9 Q Over his clothes or under his clothes?

10 A Over.

11 Q What room were you in when that happened?

12 A The living room.

13 Q And your parents were in the kitchen?

14 A Yes.

15 Q Did you tell your parents?

16 A Not yet.

17 Q Okay. Was there any oral sex that you remember
18 that summer?

19 A Not that I remember.

20 Q How old do you think you were that summer,

21 Minor 1

22 A Nine or ten.

23 Q Okay. Tell me about the next time he visited.
24 Did he visit another time?

25 A Yes.

1 Q Speak up a little bit. Did he visit another
2 time?

3 A Yes.

4 Q Tell me when.

5 A The next summer.

6 Q So we would be at the summer of 2004?

7 A Yes.

8 Q Tell me what happened that summer.

9 A He would, uh, massage me inside my clothes. I
10 massaged him. He put my hand inside his pants sometimes.
11 Sometimes it's over his clothes. And then a couple of
12 times, he would lick me.

13 Q Okay. Did he ever make you put your mouth on
14 his penis again?

15 A A couple of other times.

16 Q When?

17 A Once it was, uh, -- I was on the floor in the
18 hallway from the back door to the kitchen. No one was
19 there.

20 Q Did he ever take his pants off?

21 A Not that I remember.

22 Q Did he ever take his shirt off?

23 A Yes.

24 Q Would he wear an undershirt or was he naked
25 underneath?

1 **A** Sometimes, he'd wear an undershirt, but he
2 would take that off too.

3 **Q** Would he keep his shoes off or on?

4 **A** Usually off in the house.

5 **Q** Minor 1 that summer, you said he was touching
6 you and licking you. Did he do anything painful that
7 summer?

8 **A** Not that I remember.

9 **Q** When was the last summer that you remember your
10 grandfather coming down?

11 **A** The summer when I was 11 and I had just turned
12 12.

13 **Q** Okay. You would have turned 12 that December?

14 **A** Yes.

15 **Q** And that would have been the year 2006, the
16 summer that you turned 12?

17 **A** I don't know.

18 **Q** Was there ever a summer your grandfather came
19 down and abuse, sexual abuse did not occur?

20 **A** No.

21 **Q** Did your -- did your parents teach you about
22 your body parts?

23 **A** Yes.

24 **Q** What body parts did they teach you about when
25 you were younger?

1 **A** We learned a song "Heads, Shoulders, Knees and
2 Toes".

3 **Q** Did your parents ever talk about private parts
4 with you?

5 **A** Not really.

6 **Q** Was sexual education part of the curriculum at
7 Bob Jones?

8 **A** There is a class for girls that I wasn't
9 allowed to go.

10 **Q** Do you know or did you hear what the class was
11 about?

12 **A** It was mainly about a girl's period and all.

13 **Q** Okay. Who would not let you go?

14 **A** My dad.

15 **Q** When did you learn about your period?

16 **A** I was at my mom's work and I found out.

17 **Q** Did you start your period?

18 **A** Yes.

19 **Q** And that's when you found out?

20 **A** (Nods head.)

21 **Q** When did you learn about sex and what sex was?

22 **A** I was at my mom's work and a girl was talking
23 about it. I got called to the principal's office. She
24 said that I told her about it, but I didn't know what it
25 was until then.

1 Q How old do you think you were when you got your
2 period?

3 A I was starting the eighth grade.

4 Q And how old were you, do you think, when you
5 learned about sex?

6 A Sixth grade.

7 Q Do you remember what grade you were the last
8 time your grandfather came down? You were 11?

9 A I have no idea.

10 Q Okay. When did you realize that what your
11 grandfather had been doing was wrong?

12 A I was 11. I was just kind of putting pieces
13 together. How he didn't want me to tell. I told my dad.

14 Q I want you to speak up as much as you can. You
15 said you put the pieces together. Talk to me more about
16 that.

17 A He would tell me if I told, my brother wouldn't
18 be able to come down, my brother wouldn't be able to see
19 him, I wouldn't be able to see him, we wouldn't be able
20 to get toys, my parents wouldn't be able to see him.

21 Q He would tell you those things?

22 A Yes.

23 Q When would he tell you those things?

24 A Either before or after the sexual abuse
25 occurred.

1 Q Did you love your grandfather?

2 A Yes.

3 Q Did you love your brother?

4 A Yes.

5 Q Did you love your parents?

6 A Yes.

7 Q Did you want him to keep visiting?

8 A Yes.

9 Q Why?

10 A Because my family love him and I liked to get
11 toys also.

12 Q Okay. You said you told your dad. When did
13 you tell your dad about what your grandfather had been
14 doing?

15 A Soon after my birthday, but before Christmas.

16 Q When is your birthday again?

17 A [REDACTED].

18 Q What year was this?

19 A Uh, --

20 Q Or what birthday was it?

21 A My 12th birthday.

22 Q 12th birthday. Had your grandfather visited
23 the summer before that?

24 A Yes.

25 Q Tell me how you told your father.

1 A I sat on his lap in the recliner.

2 Q Where was the recliner?

3 A It was in the corner between the outside wall
4 with windows and our bar..

5 Q Okay. Who else was in that room?

6 A Just me and him.

7 Q Okay. You climbed in his lap. Tell me what
8 happened next.

9 A I don't remember exactly. I told him what was
10 going on. And he promised me that would never happen
11 again.

12 Q Did he say anything to you?

13 A He said I'm sorry, baby girl. That never
14 should have happened.

15 Q Did he indicate that you were to blame?

16 A No.

17 Q Did he say anything else to you?

18 A He said he would take care of it and protect
19 me.

20 Q Okay. Did you ever hear him tell your mother?

21 A No.

22 Q Did you ever hear him tell anyone else?

23 A No.

24 Q Did anything change after you told your father?

25 A I stopped getting cards from my grandpa and the

1 visits had stopped.

2 Q When was the next time that you saw your
3 grandpa?

4 A The summer of 2010.

5 Q Where did you see him?

6 A In Ohio.

7 Q Why?

8 A My dad wanted to go on a vacation and we drove
9 the motor home up to Ohio.

10 Q Did you ever tell your mother about what your
11 grandpa had been doing?

12 A No.

13 Q Why not?

14 A Cause my dad said he had taken care of it.

15 Q Tell me about the relationship between your mom
16 and your dad. Are they still married?

17 A No.

18 Q Tell me about -- tell me about their marriage
19 or what you observed.

20 A My dad was verbally abusive and he made it
21 clear that we knew that he was the head of the house.

22 Q You said verbally abusive, what does that mean
23 to you?

24 A He was always yelling. He told me sometimes
25 when I kind of got him mad that I wasn't like him. I run

1 my mouth too much.

2 Q Okay. What about to your mom? How did he talk
3 to your mom?

4 A He yelled at her.

5 Q Was he ever physically abusive to you or your
6 brother?

7 A He would spank us too hard sometimes and leave
8 bruises on our back or bottom.

9 Q What about your mom? Did you ever see him hit
10 your mom?

11 A He threatened to a couple of times. Once, he
12 threw his shoe at her.

13 Q Did you ever tell anyone about that physical
14 abuse?

15 A I told some girls at my school.

16 Q Do you remember when that was?

17 A I -- I was in the fifth or sixth grade.

18 Q Did anything happen after you told them?

19 A It had gotten back to some members in the
20 church. They called my parents back to talk to them.

21 Q Did your parents ever talk to you about it?

22 A My dad, when we got home, he told me what's
23 happened in this house -- household, stayed in this
24 household.

25 Q Okay. Was he angry?

1 A Yes.

2 Q Did you get in trouble?

3 A Yes.

4 Q Do you remember what your punishment was?

5 A He yelled at me and I think he spanked me.

6 Q Was there any trusted adult that you could talk
7 to?

8 A My mom.

9 Q What kind of things would you talk to your mom
10 about?

11 A Just about the guys I liked at school. That's
12 about it.

13 Q Do you think your mom could have helped you if
14 you went to her?

15 A She helped me after I talked about my dad.

16 Q Why didn't you tell her about your granddad?

17 A Cause my dad said he had taken care of it.

18 Q Did anything else happen? You said that -- did
19 anything else happen -- what changed after you told your
20 dad? You stopped getting cards. Your grandpa stopped
21 visiting.

22 A About six months later, my dad started
23 molesting me.

24 Q You said about six months later. So that would
25 have been when?

1 A During the summer.

2 Q And how old would you have been?

3 A 12.

4 Q The things that your father did to you, were
5 they the same things that your grandfather did?

6 A No.

7 Q How were they different?

8 A My dad started off by straddling me across him
9 and bouncing up and down and calling it a pony ride.

10 Q Okay. Did your grandfather ever do that?

11 A No.

12 Q Where would the abuse with your father take
13 place?

14 A On the recliner and then the camper and the RV.

15 Q Did you ever go with your grandfather to the
16 camper or the RV?

17 A We didn't have one.

18 Q Did you ever get on the recliner with your
19 grandfather?

20 A We didn't have one then either.

21 Q Did you go through some legal procedures --
22 pardon me. Tell me how the sexual abuse of your father
23 came to light.

24 A When I was 15, uh, we were at a campground and
25 my mom saw us. That Monday when we got back, she asked

1 me and confronted me about it. I denied it. She told me
2 what she saw. And I broke down and I told her that it
3 was true.

4 Q Had you ever talked to your mother -- when was
5 that? Can you remember the month or the year?

6 A September 20th.

7 Q Before September 20th, had you ever talked with
8 your mom about the sexual abuse of your father?

9 A We were in the room and my dad said he was
10 having unclean thoughts about lots of stuff. He just
11 said he wasn't having good thoughts.

12 Q Did your mother talk to you about it at that
13 point?

14 A No. She just promised that she would keep us
15 off the recliner.

16 Q Did she follow through with that promise?

17 A Uh, she tried and my dad would yell at her.

18 Q Okay. You went through -- pardon me. Did you
19 go through legal procedures as part of the investigation
20 into your dad?

21 A Yes.

22 Q Did you talk to DSS?

23 A Yes.

24 Q Did you have a medical examine at the Julie
25 Valentine Center?

1 A Yes.

2 Q Did you talk to Investigator Hubert?

3 A Yes.

4 Q At each of those points, did people ask you if
5 your father was the only one that abused you?

6 A Yes. Two people had asked me.

7 Q Two people? Who were they?

8 A One of the ladies at the Julie Valentine Center
9 and Heather Hubert.

10 Q Okay. Did your mother ever ask you?

11 A No.

12 Q What did you tell Investigator Hubert and Dr.
13 Crosswell?

14 A I said no.

15 Q Why?

16 A I wasn't thinking about it at the time. I was
17 more concerned about my dad since he was living with me.

18 Q Did you feel safe talking to them?

19 A Yes.

20 Q Could you have told them about your
21 grandfather?

22 A Yes.

23 Q Was he still a threat to you in your mind?

24 A No.

25 Q Why not?

1 A He was all the way up in Ohio and I was in
2 South Carolina.

3 Q Had he abused you or even talked to you in any
4 way since you told your father?

5 A Only when we visited.

6 Q And that was when?

7 A December 2010.

8 Q Were you alone with him at any point?

9 A No.

10 Q Did he ever try to get you alone?

11 A No.

12 Q Did you ever tell anyone except for today about
13 the abuse of your grandfather?

14 A I told my counselor.

15 Q Who is your counselor?

16 A Greta McCall.

17 Q When did you start seeing Greta?

18 A I don't know when. It was through the Julie
19 Valentine Center.

20 Q Part of the investigation into your dad?

21 A Yes.

22 Q How did you feel with Greta?

23 A I felt safe that I could tell her anything.

24 Q Why did you feel like that?

25 A I mean, she told me none of it was my fault and

1 I wasn't to blame.

2 Q How long did you see Greta?

3 A Uh, I don't know.

4 Q You don't know, that's okay. How long into
5 therapy did you disclose the abuse of your grandfather?

6 A After a few visits.

7 Q Do you remember how you told her?

8 A Uh, no. I just know after I told her, she told
9 me that she would have to report it and asked me if I was
10 okay with that.

11 Q How did that make you feel?

12 A I kind of felt like I was betraying my grandpa.

13 Q Why did you feel like that?

14 A Because after my dad was arrested, he called me
15 and he really sounded concerned.

16 Q Who called you?

17 A My Grandpa Albert.

18 Q Okay. What kind of things did you and Greta
19 talk about in therapy?

20 A We talked about the abuse, how it felt.

21 Q Which abuse?

22 A Both. At first, it was just my dad and then we
23 talked about my grandfather. We talked about both.

24 Q Okay. How did you feel about your father's
25 sexual abuse?

1 **A** I felt really betrayed.

2 **Q** Why?

3 **A** He promised me he wouldn't let harm come to me
4 and he hurt me.

5 **Q** How did you feel about your grandfather's
6 abuse?

7 **A** After it all happened?

8 **Q** Uh, when you were talking to Greta, what did
9 y'all talk about?

10 **A** I felt hurt, like it was very wrong.

11 **Q** Okay. One moment. I have no further
12 questions. Please answer any questions Mr. Bannister may
13 have.

14 **THE COURT:** All right. Let's take a break.
15 Ladies and Gentlemen, I'm going to ask you to step
16 to your jury room. Let's take a quick break, about
17 10 minutes. Please don't discuss the case with
18 anyone.

19 **MS. BENTLEY:** Your Honor, could you please
20 instruct...

21 **(WHEREUPON, the jury exits at approximately**
22 **3:11 p.m.)**

23 **THE COURT:** Ma'am, on our break, you can't
24 discuss your testimony with anybody at all. All
25 right. It's just as if you were still sitting here

1 breaks, don't feel like you're chained to your seat.
2 If you need to get up and stretch, you get up and
3 stretch. If it will make you feel better, I'll get
4 up when witnesses start to change so everybody will
5 feel free to stand up.

6 All right. You ready to proceed?

7 **MR. BANNISTER:** Your Honor, actually, we've
8 got one of the witnesses that has just stepped into
9 the courtroom.

10 **THE COURT:** I'm sorry. All the witnesses,
11 listed witnesses in this case are sequestered. I
12 have to ask you to leave. (Pause.)

13 I need you to step out.

14 **MR. BANNISTER:** Thank you, Judge. Sorry.

15 **THE COURT:** No, no problem.

16 **CROSS-EXAMINATION**

17 **BY MR. BANNISTER:**

18 **Q** Good afternoon, Minor 1 Is it okay if I call
19 you Minor 1

20 **A** Yes.

21 **Q** Be sure to speak up so everybody can hear you.
22 Okay. First off, are you a little bit scared that I'm
23 sorta on the other side and I'm talking to you about the
24 case? Has that got you a little anxious?

25 **A** A little.

1 Q All right. If I promised you up front that I
2 don't intend to ask you any questions that deal with the
3 sexual abuse and describing that, will that make you a
4 little more at ease?

5 A Yes.

6 Q Okay. Then I'll do that. How many times have
7 you had a chance to speak with the prosecutor in this
8 case, Ms. Bentley?

9 A A handful of times.

10 Q How many times have you had a chance to speak
11 with Investigator Hubert?

12 A Just a couple of times when I gave my
13 statement.

14 Q Any times other than those statements?

15 A Not that I can recall.

16 Q Can I approach you just for a second?

17 A Yes.

18 Q I want to show you a piece of paper. This is
19 Defendant's Exhibit number 1. All I really want to ask
20 you is -- first off, do you recognize this as Ms.
21 McCall's intake form?

22 A Yes.

23 Q Okay. And is that your handwriting?

24 A Yes.

25 Q Where it says -- is the rest of it that's on

1 there your handwriting also?

2 **A** Except for --

3 **Q** Okay. All right. Thank you. Minor 1 was
4 there a time when either your father asked you to or you
5 did on your own apologize to your mother about some of
6 the sexual assault from your father to you?

7 **A** I don't remember.

8 **Q** Do you remember, uh, -- do you remember a
9 conversation where I think you were talking about your
10 dad let your mom know, I think said unclean thoughts he
11 was having about you?

12 **A** Yes.

13 **Q** And as part of that conversation, did you end
14 up apologizing to your mom?

15 **A** I might have.

16 **Q** Okay. Would that have been because of
17 something that your father had told you to do?

18 **A** Yes.

19 **Q** Did -- did he try or did he make you feel
20 somewhat responsible for what had been going on?

21 **A** Yes.

22 **Q** When he told your mother that he wasn't going
23 to do or abuse you anymore, did you want to believe him
24 at that point?

25 **A** He didn't say any of that. When we had that

1 meeting, he didn't -- I don't remember him saying he had
2 abused me.

3 Q I'm sorry. The unclean thoughts. He was going
4 to try not to do that anymore?

5 A Yes.

6 Q And it was agreed that your mom would hold him
7 accountable by keeping him off the couch with you and out
8 from under some covers. Is that a fair statement?

9 A Yes.

10 Q And did you believe that that might actually
11 stop your father?

12 A Yes.

13 Q That wasn't the first time that he told you
14 that he would stop, was it?

15 A (Shakes head.)

16 Q Would it be fair to say that he had told you
17 all along that this would be the last time? This would
18 be the last time?

19 A Yes.

20 Q And then he would maybe apologize and then say
21 this would be the last time?

22 A Yes.

23 Q At some point, uh, -- at some point, I think
24 you told your father that what he was doing was wrong.
25 Is that fair?

1 A I may have.

2 Q You remember talking to him about how you
3 wanted to save yourself for your marriage, that y'all
4 were Christians that that was what a good Christian would
5 do?

6 A Yes.

7 Q Was religion kind of caught up in how your
8 father treated you and dealt with what he was doing? Did
9 you feel that way?

10 A Yes.

11 Q And was that because of words he used like
12 accountability and repentance and things of that nature?

13 A Yes, sir.

14 Q Was that also part of him being, I think you
15 said, the head of the household?

16 A Yes.

17 Q We've heard some descriptions that you have had
18 some flashbacks. Is that an accurate statement?

19 A Yes.

20 Q Are you still having some flashbacks?

21 A I get done with a meeting or court, I have
22 been.

23 Q So even up to now, is that still a problem?

24 A Yes.

25 Q Did -- I want to take you to one specific thing

1 that you said. At some point, you told some of the girls
2 at your school about the physical abuse. Maybe I think
3 it was talking about throwing the -- your dad throwing
4 the shoe at your mother. Remember when we had that
5 discussion?

6 A Yes.

7 Q And then, I think some -- if I understood
8 correctly, some members of the church confronted your
9 parents about what you described to your schoolmates.

10 A Yes.

11 Q And at that point, your father said, look, what
12 happens in this house, stays in this house. And you got
13 in trouble, yelled and spanked?

14 A Yes.

15 Q Can you put some kind of time frame on that for
16 me? You know how old you were?

17 A I was either in the fifth or sixth grade.
18 That's about it.

19 Q At some point, you, uh, -- I can't remember
20 exactly where it is. But you said you were afraid maybe
21 to tell your mother because she might hate you.

22 A Yes.

23 Q Uh, is that something that had been influenced
24 by your father? Things he told you. Things he had said
25 to you?

1 **A** Sort of.

2 **Q** Okay. Maybe implying that somehow you had
3 something to do with all this. Somehow implying that,
4 uh, maybe he thought that you were giving him some
5 indication that you wanted this type of interaction.

6 **A** No.

7 **Q** He didn't ever tell you that he thought you
8 wanted to engage in that activity sometimes?

9 **A** No.

10 **Q** Let me just come up here. I want to show you.
11 You remember giving a statement to Heather Hubert on
12 September 21st, 2010? You remember talking with her?

13 **A** Yes.

14 **Q** Let me let you just look at this right quick.
15 I'll point you specifically to right here. Can you read
16 this line? Don't read it out loud. Just read it to
17 yourself. Does that help sort of refresh your memory?

18 **A** Yes.

19 **Q** So did he, in fact, tell you that he thought
20 sometimes that he thought you wanted to engage in that
21 activity?

22 **A** Yes.

23 **Q** Did that create some guilt for you?

24 **A** Yeah.

25 **Q** Were you there when your dad was talking to

1 your mom in that conversation where he says, Kelly, I
2 want you to hold me accountable. Keep us off the couch.
3 Or was that something that was a conversation that he had
4 with her and without you present?

5 A It was the three of us. We were in his
6 bedroom.

7 Q Did your mom, uh, ask any questions?

8 A I don't remember.

9 Q Did your mom report what he had said to anyone?

10 A No.

11 Q Did you attend the daycare at Bob Jones when
12 your mother was over the daycare or an assistant at the
13 daycare?

14 A A little bit.

15 Q So she would have been not only mom, but also
16 the person who was there in the daycare taking care of
17 you for at least a short period of time?

18 A She was more in the baby section and I was with
19 the older kids.

20 Q All right. Understood.

21 MR. BANNISTER: Your Honor, I don't have any
22 further questions.

23 THE COURT: All right.

24 MS. BENTLEY: Brief redirect.

25 THE COURT: Redirect? Uh-huh.

REDIRECT EXAMINATION**BY MS. BENTLEY:**

Q You said your father would apologize to you after he would abuse you. Did your grandfather apologize to you?

A No.

Q Did your grandfather ever tell you he would stop?

A No.

Q When he held your head down and forced you --

MR. BANNISTER: Judge, I'm going to object to being outside the scope of my cross.

THE COURT: All right.

MS. BENTLEY: We're discussing everything her father did. I think the -- may we approach?

THE COURT: Yes.

(WHEREUPON, a bench conference is held off the record.)

BY MS. BENTLEY:

Q Did your grandfather ever apologize to you after he put his fingers inside you?

A No.

Q After he gave you a massage?

A No.

Q Did he apologize to you after putting your

1 mouth on his penis?

2 **A** No.

3 **Q** Did he ever tell you he would stop after each
4 one of those actions?

5 **A** No.

6 **MS. BENTLEY:** I have no questions.

7 **THE COURT:** Anything else?

8 **MR. BANNISTER:** No, Your Honor.

9 **THE COURT:** Ma'am, you can step down.

10 **MS. BENTLEY:** The State's next witness is
11 Kelly Brandeberry. I think she'll be able to --

12 **THE COURT:** Okay. All right. Very well.

13 **MS. BENTLEY:** The State calls Kelly
14 Brandeberry.

15 **THE CLERK:** Ma'am, if you'll come forward.
16 If you will, please stop at the end of the bench.
17 Place your left hand on the Bible and raise your
18 right hand.

19 **KELLY WILKINSON**

20 having first been sworn, testifies as follows:

21 **THE CLERK:** Thank you. Please be seated.

22 **THE COURT:** Ma'am, I'm going to tell you that
23 our microphones are not working. I'm going to ask
24 you to speak up as much as you possibly can. All
25 right.

1 **THE WITNESS:** Yes, ma'am.

2 **THE COURT:** Thank you.

3 **THE CLERK:** Please state your name for the
4 record.

5 **THE WITNESS:** Kelly Wilkinson.

6 **DIRECT EXAMINATION**

7 **BY MS. BENTLEY:**

8 **Q** Ms. Wilkinson, are you currently married?

9 **A** No.

10 **Q** Are you divorced?

11 **A** Yes.

12 **Q** What was your married last name?

13 **A** Brandeberry.

14 **Q** When was your divorce finalized?

15 **A** June of 2012.

16 **Q** Is that when you adopted the last name
17 Wilkinson?

18 **A** Yes.

19 **Q** And that's your maiden name?

20 **A** Yes, ma'am.

21 **Q** Ms. Wilkinson, how old are you?

22 **A** 40.

23 **Q** Are you employed?

24 **A** Yes.

25 **Q** Where at?

1 A In Ohio.

2 Q Okay. What do you do there?

3 A I work at a hospital.

4 Q What do you do at the hospital?

5 A I clean.

6 Q Okay. Before working at this hospital in Ohio,
7 where were you employed?

8 A In Greer, South Carolina.

9 Q Doing what?

10 A Childcare. Cooking.

11 Q Where are you from originally?

12 A Ohio.

13 Q Where in Ohio?

14 A Canton, Ohio.

15 Q How long have you lived in Ohio?

16 A Uh, since birth until 2001. Uh, 1994. Sorry.

17 Q Where in 1994?

18 A Uh, moved to Alabama.

19 Q You moved by yourself?

20 A No, with my ex that I was married to.

21 Q And who is your ex-husband?

22 A Harold Brandeberry.

23 Q How long did you live in Alabama?

24 A For a year.

25 Q You have any children?

1 **A** I have two.

2 **Q** What are their names and ages?

3 **A** Minor 1 17, and Minor 2 14.

4 **Q** After you -- I'm sorry. Did you tell us how
5 long you lived in Alabama?

6 **A** A year.

7 **Q** Where did you move after Alabama?

8 **A** Back up to Ohio.

9 **Q** Why did you move back to Ohio?

10 **A** Uh, my ex wanted to be close to his dad.

11 **Q** Who is your ex-husband's father?

12 **A** Albert Brandeberry.

13 **Q** Is he sitting at that table right there?

14 **A** Yes, ma'am.

15 **Q** How long did you live in Ohio after he moved
16 back?

17 **A** From '95 to 2001.

18 **Q** Where did you move in 2001?

19 **A** Greenville, South Carolina.

20 **Q** Why?

21 **A** Uh, Harold wanted to go to school at Bob Jones.

22 **Q** When did you move to South Carolina? If you
23 recall the month.

24 **A** May of 2001.

25 **Q** Did you both find employment in South Carolina?

1 **A** Yes, we both worked at Bob Jones.

2 **Q** Where did you work?

3 **A** I worked at the daycare at Bob Jones.

4 **Q** And where did Harold work?

5 **A** At the dining com at Bob Jones.

6 **Q** Did he also attend classes there?

7 **A** Yes, ma'am.

8 **Q** What kind of classes did he attend?

9 **A** Uh, Bible classes cause he wanted to be a
10 preacher.

11 **Q** Were -- how did your family in Ohio, your
12 family and Harold's family feel about your move to South
13 Carolina?

14 **A** Uh, I guess okay. I know we were going to be
15 missed, but they were okay with it.

16 **Q** Did you and your children keep in contact with
17 any family members from Ohio?

18 **A** Yes, ma'am.

19 **Q** Who did you keep in contact -- who did your
20 children keep in contact with?

21 **A** Uh, my mom and his dad.

22 **Q** Okay. What about aunts and uncles?

23 **A** His sisters.

24 **Q** Whose sisters?

25 **A** Harold's sisters.

1 Q What are their names?

2 A Uh, Kay and Sylvia.

3 Q Okay. How would the defendant communicate with
4 your family and specifically Minor 1 and Minor 2

5 A Buy cards for the holidays and birthdays and
6 also sometimes phone calls.

7 Q Would any of -- would any relatives from Ohio
8 visit South Carolina?

9 A Yes, ma'am.

10 Q Which relatives?

11 A His dad Albert.

12 Q How often would Albert visit?

13 A About once. The summer each year.

14 Q You said each year. What year did he begin
15 visiting?

16 A 2001.

17 Q How old was Minor 1 that year?

18 A 7.

19 Q Okay. How old was Minor 2

20 A 3 or 4.

21 Q How long would the defendant stay when he
22 visited you?

23 A Approximately a week.

24 Q Where would he sleep?

25 A On our couch that comes out to a sofa.

1 Q Okay. How would he get to South Carolina?

2 A Drive.

3 Q What would he drive?

4 A His truck.

5 Q Okay. Did he ever bring his, uh, wife with

6 him?

7 A No.

8 Q What is his wife's name?

9 A Noreen.

10 Q Is that Harold's mother?

11 A Stepmom.

12 Q Okay. What is Harold's mother's name?

13 A Merrill.

14 Q Okay. Did y'all ever go back and visit Ohio?

15 A Occasionally.

16 Q When was the first time you visited Ohio after

17 moving to South Carolina?

18 A The first time, the visit was just Harold by

19 himself. He went to Ohio that same year.

20 Q Did you and the children ever accompany Harold

21 back to Ohio?

22 A In '98, we did. 2008, sorry.

23 Q Uh, do you remember the first summer that

24 Harold visited?

25 A 2001.

1 Q Where were you -- and you were working at Bob
2 Jones?

3 A Yes.

4 Q Ordinarily during the summers, you worked
5 during the summer. Did Harold work during the summer?

6 A Yes, ma'am.

7 Q What did you do with your children during the
8 day?

9 A They would usually go to day camp that they
10 have at Bob Jones.

11 Q Would that change when the defendant came to
12 visit?

13 A Yes.

14 Q What would happen then?

15 A They would stay home with him.

16 Q Do you know what kind of stuff they would do
17 together?

18 A I don't. I just hear when I get home what they
19 did.

20 Q Okay. Would the children ever have new toys
21 when you got home?

22 A Yes.

23 Q Did you ever observe anything unusual about the
24 defendant's behavior with Minor 1

25 A No.

1 Q Did you ever observe unusual behavior between
2 the defendant and Minor 2

3 A No.

4 Q How did the relationship between your children
5 and their grandfather appear?

6 A As grandchildren with grandpas. They love each
7 other.

8 Q You said Albert came every year for several
9 years. Did he ever come at other times of the year?

10 A I think it was one year he came for Christmas.

11 Q Do you remember what year that was?

12 A No, ma'am. I don't.

13 Q Okay. Do you remember how old the kids were?
14 Anything about it?

15 A Elementary age, Minor 1 was. And I think Minor 2
16 was in K-4.

17 Q Okay. When did Albert stop coming to visit?

18 A Around 2008.

19 Q Do you remember how old Minor 1 was at that
20 time?

21 A 12.

22 Q Okay. How did you learn that he -- do you
23 remember what time of year or when you found out he would
24 not be visiting anymore?

25 A Summertime.

1 Q And how did you find out about that?

2 A My ex, Harold, just said that he wasn't coming
3 down anymore.

4 Q Did he give you -- don't tell me what he said,
5 but did he give you a reason why?

6 A No.

7 Q Did you ask him why?

8 A I did.

9 Q What did he tell you?

10 MR. BANNISTER: I object.

11 BY MS. BENTLEY:

12 Q All right. Uh, did he give you -- without
13 telling us what it was, did he give you a response?

14 A He did.

15 Q Did you question him any further?

16 A No.

17 Q Why not?

18 A I typically wasn't allowed to question him any
19 further.

20 Q Okay. Were you concerned that Albert would not
21 be coming to visit?

22 A A little.

23 Q Did you ever voice those concerns?

24 A To my ex, yes.

25 Q Did he indicate that he cared about your

1 concerns?

2 **A** No.

3 **Q** Was there ever a point when -- pardon me. I'll
4 rephrase the question. Was Albert still sending Minor 1
5 and Minor 2 birthday and Christmas cards when Harold told
6 you he would not be visiting anymore?

7 **A** Yes.

8 **Q** Would you give those cards to the children?

9 **A** I wouldn't, no.

10 **Q** What was the typical procedure for handing out
11 mail to the children?

12 **A** They would have to go through Harold.

13 **Q** Okay. Did Harold give the defendant's cards to
14 the children?

15 **A** To Minor 2 yes. Minor 1 not for a while, no.

16 **Q** Okay. Was that odd to you?

17 **A** Yes.

18 **Q** Did you question Harold about it?

19 **A** I did.

20 **Q** Did he answer -- without giving us the details,
21 did he answer your questions?

22 **A** Yes, ma'am. He did.

23 **Q** Did that satisfy your concern?

24 **A** Not really.

25 **Q** Did you press him further?

1 **A** I did. He still wouldn't give me a straight
2 answer.

3 **Q** Okay. Did you and Harold make decisions
4 mutually in your marriage?

5 **A** No.

6 **Q** Tell me about that.

7 **A** Usually he was the head. Whatever decision was
8 to be made, he would make it. I'd have no say in it.

9 **Q** Were you allowed to question him?

10 **A** I could.

11 **Q** What would happen if you did?

12 **A** I would be verbally abusive by him.

13 **Q** Tell me -- explain that to me. Talk to me
14 about that a little bit. What does that mean?

15 **A** That if the question I asked, if he didn't want
16 to answer, he would tell me it's none of my business and
17 call me names and not to ask him anymore.

18 **Q** What kind of names did he call you?

19 **A** Fat. Every now and then, he would call me a
20 bitch.

21 **Q** Okay. Did he speak to your children that way?

22 **A** He would yell at the kids.

23 **Q** Did he ever physically abuse the children?

24 **A** He would spank them.

25 **Q** Was he -- did he ever strike you?

1 A No, but he threatened.

2 Q Did he ever throw things at you?

3 A Yes.

4 Q Do you consider that hitting?

5 A I would if it hit me, but it didn't hit me.

6 Q What did he throw at you?

7 A A shoe.

8 Q Who would pay the bills in your household?

9 A He would.

10 Q Did you have any knowledge of household
11 finances or expenses?

12 A No.

13 Q Were the children allowed to question their
14 father's decisions?

15 A No.

16 Q As a mother, did you try to make your children
17 comfortable with you?

18 A Yes.

19 Q How?

20 A Let them know I was there and I loved them.

21 Q Did you, or to your knowledge, Harold, ever
22 have the sex talk with Minor 1 or Minor 2

23 A No.

24 Q Did you ever teach Minor 1 or Minor 2 about
25 private parts?

1 A I haven't, no.

2 Q Did you ever teach them about or talk to them
3 about good touching versus bad touching?

4 A No.

5 Q To your knowledge, was that taught as part of
6 their school curriculum?

7 A There was at one time a little session for
8 girls in sixth grade to go and learn mainly about their
9 motherhood, the issue that comes up to being a mother
10 like their periods.

11 Q Did you let Minor 1 go to that class?

12 A No, but I wanted them -- wanted her to.

13 Q And what happened?

14 A Harold said no.

15 Q Why didn't you talk to your children about sex
16 or even periods?

17 A He wouldn't let me.

18 Q Harold wouldn't let you. What about touching?
19 Why didn't you talk to them about touching?

20 A Same thing. Harold wouldn't let me.

21 Q Were there any other adults that Minor 1 was
22 told she could trust?

23 A To my knowledge, no.

24 Q To your knowledge, when Harold disallowed
25 Albert's visitation, did he maintain a relationship with

1 his father?

2 A From the first couple of years, no.

3 Q Okay.

4 A That I know of.

5 Q If you know. That's okay. When was the next
6 time that you saw the defendant?

7 A 2010.

8 Q When did you see him?

9 A When we visit Ohio.

10 Q Okay. Whose decision was it to visit Ohio?

11 A Harold's.

12 Q Was anyone allowed to question that decision?

13 A No.

14 Q Was Minor 1 ever alone with the defendant at
15 that time?

16 A No.

17 Q Tell me about what happened in September 2010,
18 mid-September.

19 A The family and I went camping in Anderson.

20 Q You said the family. Tell who all went.

21 A Harold, Minor 1 ,Minor 2 and I.

22 Q Okay. Tell me what happened. Continue.

23 A We were all in the camper. I went to bed.

24 ,Minor 2 was asleep on the table that comes out to a bed. My
25 bedroom -- our bedroom -- Harold and I's bedroom was like

1 in the back of the camper. I pulled the camper shade. I
2 woke up. I thought a storm was coming. It was
3 completely dark. All we had was the TV playing. And I
4 looked out. And the couch comes out to a bed. And
5 Harold and Minor 1 were laying together in that bed
6 covered up.

7 Q Did that concern you?

8 A It did.

9 Q Did you say anything at that moment?

10 A At that moment, no.

11 Q When did you say something?

12 A Monday after we came back and the kids got out
13 of school, I questioned Minor 1 afterwards.

14 Q Where did you question her?

15 A At the house outside as we were taking our dog
16 out.

17 Q Was Harold home?

18 A No.

19 Q At that time, did Minor 1 disclose sexual abuse
20 to you?

21 A At first, she said no. But I told her what I
22 heard and seen. And then she admitted to it.

23 Q Okay. Did she tell you how long that had been
24 going on with Harold?

25 A Three years.

1 Q What did you do as a result of her disclosure?

2 A I called my pastor. I was shocked. I didn't
3 know what to do. And they called the law.

4 Q Why didn't you call police?

5 A I guess I was stunned.

6 Q Did you question Minor 1 about what had
7 happened?

8 A At that moment, I didn't know.

9 Q Were you present when Investigator Heather
10 Hubert and Pat Agudelo from DSS came to your home?

11 A Yes.

12 Q What day was that?

13 A It was Tuesday, the 21st.

14 Q The day after you talked to Minor 1

15 A Yeah.

16 Q How long did they speak to Minor 1 before
17 Harold arrived home?

18 A A few hours.

19 Q They talked to her for a few hours?

20 A They talked to all of us, me, Minor 1 and Minor 2

21 Q Was that the last time that you talked to
22 Investigator Hubert regarding Harold?

23 A We went down to her office to do a statement.

24 Q When did you do that?

25 A That same night.

1 Q Okay. Did Minor 1 -- without giving me any
2 names or identifying information, did Minor 1 ever
3 disclose any other sexual abuse to you?

4 A No.

5 Q Are you familiar -- what is "Unshackled"?

6 A It's a Christian broadcast on the radio that
7 Harold decided to put his testimony on.

8 Q Okay. Were you ever allowed to see his
9 testimony?

10 A What he sent in? No.

11 Q Were you allowed on his laptop?

12 A No.

13 Q One moment please. (Pause.)

14 I have no further questions, Mrs. Brandeberry.
15 Please answer anything that the defense attorney may
16 have.

17 THE COURT: Mr. Bannister.

18 MR. BANNISTER: May I have just a moment?

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. BANNISTER:

22 Q All right. Mrs. Wilkinson. I got that right?

23 A Yes, sir.

24 Q If I refer back to Mrs. Brandeberry, forgive
25 me. First time I've talked to you. I didn't realize you

1 were Mrs. Wilkinson until today, so just stop me and tell
2 me and I'll do better. I promise. Okay. The home where
3 you living during 2001 to 2006, that is the same home
4 where, uh, Heather Hubert, Pat Agudelo, everybody came
5 and Harold was arrested, is that correct? In other
6 words, you only lived in one home in Greenville pretty
7 much?

8 A Yes, sir.

9 Q And the house itself, is it two-story, one-
10 story, is it a ranch-style home, split-level? How would
11 you describe it?

12 A It's a one-story with an attic.

13 Q Is the attic a liveable attic?

14 A No.

15 Q Or just a regular attic?

16 A Just a regular attic.

17 Q Is it a loft or have a garage off of it in
18 either direction?

19 A There is a garage behind it.

20 Q If I'm facing the house -- where is the front
21 door if I'm facing the house in relation to my left or
22 the right?

23 A If you are facing the house, it's like dead
24 center.

25 Q Dead center. If I walk in the front door, what

1 room am I walking into?

2 A The living room.

3 Q And if I go, can I go through the living room
4 to the backside of the house?

5 A If you go straight through the living room, you
6 end up in the bathroom.

7 Q And if I go -- if I walk in the living room and
8 I go to the left, what's to my left?

9 A A hallway.

10 Q And what's on either side of the hallway as I
11 walk down that hallway?

12 A If you face the hallway, the right is the back
13 door to the outside and the left is the kitchen.

14 Q And if I go past the kitchen walking down the
15 hallway, is there another room on my left or is it --

16 A This is the kitchen.

17 Q Just the kitchen. Is it -- is the kitchen open
18 where you could look into the living room or is it you
19 got to walk through the door and there's walls
20 separating?

21 A There's no door standing -- you have to really
22 walk in the hallway to look in the living room from the
23 kitchen.

24 Q So it's not like one of those where the
25 cabinets are here and there's this open space underneath

1 that you can see through?

2 A No.

3 Q And if I walk in the opposite direction from
4 the kitchen going through the living room to the opposite
5 side of the house which would be if I came in and went to
6 the right, what's down -- what's on that side of the
7 house?

8 A If you go straight to the living room and pass
9 the doors, there's like a little din, like a study.

10 Q Okay. On my right, I guess.

11 A The right is the front door.

12 Q Okay.

13 A The left is the bathroom and the kids' bedroom.

14 Q Whose bedroom is first?

15 A They are kind of like -- Minor 2 is like -- if
16 you are standing looking straight to the bathroom, Minor 2
17 bedroom is on the left. Minor 1 is on the right.

18 Q Is there another bedroom past Minor 2 and
19 Minor 1 bedroom?

20 A No. Our bedroom is off the hallway to the back
21 door.

22 Q Which hallway? The one going pass the kitchen
23 or the one heading in the opposite direction?

24 A The one where -- if you leave the kitchen, go
25 down the hallway to go to the backdoor, our bedroom was

1 to the left.

2 Q All right. And the -- in the living room, is
3 that the couch upon which, uh, Albert Brandeberry would
4 stay when he would come to stay with y'all during the
5 summer?

6 A Yeah, it would pull out to a bed.

7 Q And the bathroom that he would use would be the
8 bathroom that was off the living room?

9 A Yeah, between the kids' bedrooms.

10 Q And did the kids have a different separate
11 bathroom that they used?

12 A That was theirs. We had a separate one off of
13 our bedroom.

14 Q So the living room bathroom was the one that
15 the kids also used?

16 A Yes, sir.

17 Q Is that a correct statement?

18 A Yeah.

19 Q So we got two bedrooms, Minor 2 we got

20 Minor 1 we got the parents -- I'm sorry -- you and
21 Harold's bedroom, then we got the kitchen and the living
22 room and the little den. Any other rooms that I'm
23 missing here?

24 A Not unless you want to consider the laundry
25 room before you go outside.

1 Q Okay. Is there -- so there is a back door that
2 goes ---

3 A Yeah.

4 Q --- out the back. And what is that off of?
5 You may have told me already.

6 A It's, uh, --

7 Q Is it close to the kitchen, is it close to the
8 living room, is it closer to your bedroom?

9 A Actually, our bedroom.

10 Q The, uh, -- let me take you to the -- do you
11 have your statement that you gave to Investigator Hubert?

12 A No, sir.

13 Q If you've got an extra one, I'll let you use it
14 for a moment. Just in case you need to refer to it. It
15 will make things quicker. All right. I may ask you a
16 couple of questions off of there. This is the statement
17 that you gave to Investigator Hubert on September 21st,
18 2010, correct?

19 A Yes, sir.

20 Q All right. And in that statement, I think you
21 talked about, uh, at that time you said, uh, that it was
22 about a year ago that Minor 1 and your husband Harold
23 came to you to discuss some prior improper touching
24 between Harold and Minor 1 is that correct?

25 A That's what it says.

1 Q Do you disagree that Investigator Hubert's --
2 sorry. Do you disagree that that's what you told
3 Investigator Hubert?

4 A No.

5 Q So if I were to say since that's September 21st
6 of 2010, the year before, that would have been roughly
7 September of 2009, correct?

8 A Yes.

9 Q So I will just put 9/09. Maybe we'll say
10 approximately -- that's your memory -- that was when
11 Minor 1 and Harold told you about Harold's improper
12 touching with Minor 1 Correct? That's what you said in
13 your statement?

14 A Yeah.

15 Q So the date of the statement was September of
16 2000 -- September 21st of 2010. That was the statement
17 to Investigator Hubert, right?

18 A Yes, sir. Yes.

19 Q Okay. So let me go back to this, uh, time when
20 Harold comes in and talks to you about this improper
21 touching of Minor 1 I think you said that, uh, Minor 1
22 actually apologized to you for Harold's improper touching
23 of her, correct?

24 A Yes.

25 Q And of course, you told her that that was

1 nothing that she needed to be apologizing for, correct?

2 A No, I didn't.

3 Q Okay. Did you accept her apology?

4 A I did.

5 Q And did you accept Harold's apology?

6 A I did.

7 Q Did Harold ask you -- let me ask it this way.

8 Did Harold tell you that he had repented?

9 A I don't recall.

10 Q Okay. Did he tell you that, uh, he wanted you
11 to hold him accountable in some way?

12 A Yes.

13 Q And was that by keeping him from being on the
14 couch with Minor 1 under a blanket?

15 A Yes.

16 Q And he told you that he would never do that
17 again?.

18 A Yes.

19 Q At that time, you believed him?

20 A Yes.

21 Q And you had any suspicions up to that moment
22 that he had been sexually abusing Minor 1

23 A Up to the moment 2009, no.

24 Q Uh, you said that you worked as a daycare
25 worker or assistant with Bob Jones University, correct?

1 A Yes.

2 Q And did they, uh, make you undergo any training
3 of any sort for that?

4 A We did.

5 Q Did they ever talk to you about potentially
6 what could happen if there were allegations of child
7 abuse or sex abuse or anything like that?

8 A Not at Bob Jones, no.

9 Q Did they ever talk to you about mandatory
10 reporting?

11 A No.

12 Q Were you aware that daycare workers have to
13 have a duty to report if they were aware of any sexual
14 abuse?

15 A Yes.

16 Q In this case, would you agree with me that
17 after Harold apologized, uh, -- I don't want to put words
18 in your mouth, but at least in your mind, you believed
19 that whatever the problem was, it could be solved?

20 A Yes.

21 Q And, uh, you believed that he had honestly
22 repented of this improper touching?

23 A Yes.

24 Q You believed that he was going to have another
25 person that was going to hold him accountable as well if

1 I understood your statement correctly.

2 A I think so. If he did, he didn't tell me.

3 Q Didn't he tell you that he was going to have
4 someone else hold him accountable, he was going to have
5 someone to go and talk about, talk about it with?

6 A I don't recall him telling me he was going to
7 talk to someone about him.

8 Q I see. Let me just -- I'm sorry I'm belaboring
9 things here just a little bit. But let's see. Start
10 about right there. Read that to yourself for just a
11 second.

12 A (Reading.)

13 Q Does that refresh your memory?

14 A Yes.

15 Q So let me ask again. Did he tell you that --
16 did Harold tell you that he was going to have somebody to
17 go talk about these improper thoughts as they came up
18 again, somebody that would hold him accountable?

19 A Yes.

20 Q But he didn't tell you who that person was
21 going to be?

22 A No.

23 Q That was something that you trusted he was
24 telling the truth about?

25 A Yes.

1 Q Did you assume that that would be somebody in
2 the church?

3 A Yes.

4 Q I realize he didn't tell you who it was going
5 to be. But knowing Harold like you did, was that an
6 assumption that you made?

7 A Yes.

8 Q Did you also assume after Minor 1 apologized
9 and Harold told you what he had done that Minor 1 was
10 going to be okay?

11 A Yes.

12 Q Did you, uh, -- did you ultimately decide that
13 the best thing for everyone was to deal with it within
14 the family?

15 A Yes.

16 Q Was that part of or because of the fact that
17 Harold made himself out to be the head of the household,
18 what he said was what went?

19 A It was always like that at the beginning of our
20 marriage.

21 Q Did he ever try to base that on religious
22 principles?

23 A Yes.

24 Q Uh, I think also, did he not, he asked you to
25 take away his access to his computers as part of this

1 accountability for him and keeping his thought process
2 pure?

3 **A** No, he did not.

4 **Q** He did not? He didn't ask you to change the
5 password?

6 **A** No, I was not allowed to be on his computer.

7 **Q** You, uh, -- I may have just been mistaken about
8 that. As a result of this conversation with Harold, you
9 did not seek advice from anybody else about what you
10 should do and whether you should accept Harold's apology
11 or issues related to his improper touching of Minor 1
12 did you?

13 **A** No.

14 **Q** Uh, you did not report the abuse to anybody at
15 your church at that time?

16 **A** No.

17 **Q** You did not report the abuse to DSS?

18 **A** No.

19 **Q** You did not separate from Harold, leave him for
20 a time or take the kids or get out of here?

21 **A** No.

22 **Q** And you clearly did not seek a divorce or seek
23 to report it to the police in any way, shape or form ---

24 **A** No.

25 **Q** --- at that time? The -- there was -- let's

1 see, there were two camping trips after he came to you in
2 September of '09 between when you gave your statement and
3 came forward about the abuse. One was at Paris Mountain
4 Park and the other one was at Sadler Creek State Park,
5 correct?

6 **A** Yes.

7 **Q** And at Paris Mountain Park, while you and the
8 family were camping, you saw Minor 1 covered up with
9 Harold, correct?

10 **A** No.

11 **Q** You did not. Uh, didn't you tell Investigator
12 Hubert or Pat Agudelo, one of those two, that you had
13 some concerns from that time that they were camping in
14 Paris Mountain, that there were two camping trips. I
15 thought you had concerns about both of them.

16 **A** I did.

17 **Q** And part of the concern from the first camping
18 trip was Harold said don't let us get under the covers
19 together or blanket, but they were?

20 **MS. BENTLEY:** Objection. Your Honor, it is
21 well established that Harold abused Minor 1 This
22 trial is about Albert. We're spending way too much
23 time. The question has been asked and answered.

24 **THE COURT:** I'm going to allow it.

25 **MR. BANNISTER:** Thank you, Your Honor. I'll

1 tell you what, Judge, I'll just move on from that.

2 THE COURT: All right.

3 BY MR. BANNISTER:

4 Q Did you have a chance to talk to Minor 1 before
5 the police arrived on September 21st, 2010 about the
6 police coming?

7 A I did tell her that they would be coming to
8 talk to her.

9 Q Did you tell her to be as forthright as she
10 could and tell them everything?

11 A Yes.

12 Q And is that something you maintain from at
13 least September 21st forward, to tell them everything?

14 A Yes.

15 Q In the, uh, -- at some point, you went back and
16 met with Investigator Hubert about a second allegation of
17 abuse, correct?

18 A Yes.

19 Q And that would have been December 10th, 2010,
20 correct?

21 A Yes.

22 Q At that time, you got some questions from
23 Investigator Hubert about, uh, how -- Harold Brandeberry
24 cutting off contact with his father, Albert, correct?

25 A Yes.

1 Q Uh, isn't it true that you told Investigator
2 Hubert that they had cut off contact some four to five
3 years ago?

4 A Yes.

5 Q And four to five years from December 10th, 2010
6 would have been 2005, 2006, correct?

7 A Yes.

8 Q We all agree that Albert Brandeberry only came
9 to Greenville to visit about once a year.

10 A Yes.

11 Q Right. And that that was, generally speaking,
12 usually in the summer, correct?

13 A Yes.

14 Q And, uh, the other 51 weeks out of the year,
15 uh, Albert really didn't have any physical contact with
16 Minor 1 Minor 2 you or Harold, correct?

17 A Yes.

18 Q Do you know how far it is to Finley, Ohio? How
19 long does it take to get there driving? Eight or nine
20 hours?

21 A Uh-huh. Yes, sir.

22 **MR. BANNISTER:** Your Honor, if I could just
23 have one moment, I think I'm done. (Pause.)

24 **BY MR. BANNISTER:**

25 Q Did Harold attempt to contact you from the jail

1 by letter after he was arrested?

2 A Yes.

3 Q Did you end up turning those letters over to
4 Investigator Hubert?

5 A Yes.

6 Q Was that unwanted contact at that point?

7 A Yes.

8 Q Was he trying to assert himself or -- I'm
9 sorry. Bad question. Did you feel like Harold was, once
10 again, trying to assert some influence over you even from
11 jail through those letters?

12 A Yes.

13 Q To maybe reduce the charges or --

14 A Nothing about the charges.

15 Q Wanting to get back with the family, in
16 essence?

17 A Typically, mainly, trying to get me to forgive
18 him and apologizing.

19 Q How far did Harold get in becoming a minister?

20 A I couldn't tell you.

21 Q No question it was Harold's decision not to let
22 Minor 1 go to, uh, learn about the little sex education
23 class that they had?

24 A That was his decision. No, she couldn't go.

25 Q No further questions, Judge.

1 **THE COURT:** All right. Any redirect?

2 **MS. BENTLEY:** No redirect. Your Honor, may
3 we approach.

4 **THE COURT:** Ma'am, you can step down.

5 **(WHEREUPON, a bench conference is held off the**
6 **record.)**

7 **THE COURT:** Ladies and Gentlemen, uh, we've
8 come to a good point to break for the evening. If
9 you will, be back in your jury room just before nine
10 o'clock tomorrow morning. We will try to begin
11 promptly at nine o'clock.

12 I say to you again, please do not discuss this
13 case with anyone or do any kind of independent
14 research. Otherwise, I hope you have a very good
15 evening. Thank you.

16 **(WHEREUPON, the jury exits at approximately**
17 **4:33 p.m.)**

18 **THE COURT:** Let's talk a little bit about Ms.
19 Shauna Galloway-Williams. I know it's going to come
20 up fairly quickly this morning. Uh, go over with me
21 again what you anticipate her testimony -- or what
22 you would ideally like her testimony to be.

23 **MS. BENTLEY:** Yes, Your Honor. I would
24 likely discuss sexual abuse trauma, how victims cope
25 and respond. I would like to talk to her about

1 family dynamics and sexual abuse. I feel like
2 that's completely relevant in this case. I would
3 like to talk to her about delayed disclosure,
4 reasons why children may not tell anybody right
5 away. And I would also like to talk about the
6 escalation of sexual abuse, how it can ultimately
7 begin with a confusing touch and then escalate into
8 full-on sexual abuse.

9 **THE COURT:** Well, here's my question. Uh, in
10 just discussing this and I'll hear arguments again
11 but, I mean, we've heard some testimony as to, uh,
12 her -- the victim's therapist as to the sexual abuse
13 trauma that was actually inflicted on this
14 particular victim. Who its from, she didn't say.
15 At least we definitely know from her father. We had
16 testimony about that. Uh, the victim went through
17 delayed disclosure in why she didn't tell. I just
18 want to know from you how you believe this is going
19 to assist the trier of fact when we've heard
20 testimony on what I see are probably the two biggest
21 things that normally I think Mrs. Galloway-Williams
22 testifies on.

23 **MR. BANNISTER:** I believe that Mrs. Galloway-
24 Williams has got so much experience, she's been
25 doing this for so long, she has been qualified as an

1 expert numerous times and, honestly, child sexual
2 abuse, that it happens, how it happens, how it could
3 happen and nobody in the family could realize it, I
4 think is outside the scope of the average person and
5 juror's knowledge. I think hearing from somebody
6 who lives that day-in and day-out, who studies it
7 day-in and day-out will help them understand this
8 cry. I don't think they have any idea. I believe
9 that it's relevant.

10 I think under State v. Weaverling, I think the
11 Court specifically said that expert testimony
12 concerning common behavioral characteristics of
13 sexual assault victims and the range of responses to
14 sexual assaults, assault encountered by experts is
15 admissible. It is relevant and helpful in
16 explaining to the jury the typical behavior patterns
17 of adolescent victims of sexual assault.

18 **THE COURT:** Okay. Give me a cite on that.

19 **MS. BENTLEY:** Sure. That's State v.
20 Weaverling, Your Honor, and I've got copies.

21 **THE COURT:** All right. So -- so she -- so --
22 and I'll take a look at Weaverling. And I've looked
23 at it before. But just to go over it again. But
24 what you're talking about there is that expert
25 testimony is okay to say that this -- to explain

1 maybe the victim's behavior in this particular case?

2 MS. BENTLEY: Correct. I think I would
3 encompass things such as delayed disclosure at the
4 very minimum.

5 THE COURT: Okay. Escalation of sexual abuse
6 and grieving. Let's move on to that one. I want to
7 explain how that is simply not testimony that says
8 that this defendant acted in conformity with a
9 pedophile's behavior.

10 MS. BENTLEY: Correct. I believe that we
11 could -- I called Mrs. Galloway-Williams after our
12 pretrial questions. I said talk to me about -- that
13 word seems to -- that terminology seems to be
14 problematic. And her response was it is the term in
15 all the literature. It is the term that is used by
16 all sexual abuse counselors. I think that she would
17 be better equipped to answer questions regarding it
18 and to explain why that term is used. I asked her
19 if the escalation of touching could be said instead.
20 She believed that grooming was the appropriate
21 terminology used.

22 THE COURT: All right.

23 MS. BENTLEY: But I believe what she would
24 testify to is starting off with innocuous touching
25 or confusing touching. So just back rubs or

1 messages can confuse a child to the point that they
2 do not tell. And it could also play a part in
3 delayed disclosure, which is the part that I would
4 actually be asking her about as opposed to the
5 defendant's conformity with classic pedophile
6 traits.

7 **THE COURT:** All right. I see the distinction
8 on what you just -- on that last part. I see that
9 distinction.

10 Mr. Bannister, anything you want to say about
11 that now?

12 **MR. BANNISTER:** I do. That -- sort of
13 permeating all of this is two things. One is, I
14 think the difference in this case is that Mrs.
15 Williams is not a -- she's not treating Minor 1
16 Brandeberry, which makes a difference because, as an
17 expert, assuming she gets qualified in the fields,
18 then those fields cover what we're talking about
19 here. What she's basing everything on is her
20 experience with other sexual assault victims and
21 their descriptions of the things that other
22 perpetrators are doing to them. How do you get to
23 describing that children often describe massaging
24 and that kind of thing that is confusing without
25 implicitly saying that's what perpetrators typically

1 do in all these cases that I'm working on? So you
2 are lumping what has been described in the testimony
3 elicited by the State into a category that now
4 encompasses all the other perpetrators that she's
5 dealt with the other sexual assault victims.

6 Who is that -- it doesn't require expert
7 testimony to figure out -- exposure when the child
8 says, look, I didn't know that was wrong, that's
9 what Minor 1 said. It doesn't require expert
10 testimony to figure out that a massage -- on a young
11 child, that may be confusing. They may not know
12 it's wrong because of their age and that kind of
13 thing. My answer inherently makes sense to me. I
14 don't think it's necessary for an expert opinion.
15 I'm -- it's a little bit of a pig in a poke. Again,
16 I don't really have her here and haven't heard her.

17 **THE COURT:** Right.

18 **MR. BANNISTER:** But I would just -- I believe
19 each and every one of the topics that was going to
20 be discussed is a way of saying, in essence, because
21 of the way the allegations against Albert
22 Brandeberry were revealed, or despite how the
23 allegations against Mr. Brandeberry were revealed,
24 it's credible, it's typical of sexual assault
25 victims. And in that way, you are, in essence,

1 corroborating the victim's testimony. You're not
2 coming out and saying, hey, we believe her. You're
3 saying everything but. Does that make sense?

4 **THE COURT:** Yes.

5 **MR. BANNISTER:** All right. Thank you.

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

7 **MS. BENTLEY:** And, Your Honor, I think Mr.
8 Bannister sort of hit the nail on the head that it
9 made common sense to him. He reads the case law.
10 He has read the studies. He's heard the witnesses
11 day in and day out. That's not something the jury
12 has. They are not legal experts. They are not
13 experts of child sexual abuse. As we heard from the
14 pool this morning, these are people that have no
15 idea about that. It's never touched their lives in
16 any way. And I feel like while it may make sense to
17 all of us that hear it day in and day out, to a
18 juror, I don't know that they don't need to hear it
19 from a psychological expert that delayed disclosure
20 -- it is what the victim said it is. I just believe
21 it's relevant, Your Honor, and I believe it's
22 admissible.

23 **THE COURT:** I'm going to take a look at it in
24 light of some of the recent case law.

25 **MR. BANNISTER:** I was going to suggest

1 Weaverling is a 1999 case. What we've got as recent
2 is State versus Jennings. And going back, I don't
3 think I cited a case that's younger than maybe 2001
4 unless it was a long string cite.

5 **THE COURT:** Well, --

6 **MR. BANNISTER:** I'd just rely on -- the cases
7 I cite in my motion, I think, are most pertinent to
8 what we're talking about. I just ask the court to
9 review those.

10 **MS. BENTLEY:** And Your Honor, I also have
11 State v. Tapp which is from June of this year.

12 **THE COURT:** Okay.

13 **MS. BENTLEY:** And it's not reported yet, but
14 we would be prepared to comply with Tapp, which
15 would require Your Honor to find that her testimony
16 is reliable and relevant before she continued on
17 after trying to qualify her.

18 **THE COURT:** All right. Tomorrow morning,
19 when, uh, Harold Brandeberry comes and testifies,
20 I'm going to advise him of the Court's contempt
21 powers beforehand. I'm going to advise him -- I'm
22 going to advise him that if he decides to go into
23 this, these allegations against the defendant in
24 this case, that I would refer the case, that, in
25 addition, I'm going to refer the case to the

1 Solicitor's office for possible obstruction of
2 justice. I don't know what else to do. I'm also
3 going to speak with the deputies beforehand about a
4 way and manner to get him out if we have to.

5 **MS. BENTLEY:** Your Honor, just to advise the
6 Court, I know he maintains that he has an attorney,
7 which would be Mr. Mike Barcroft. Our office
8 notified Mr. Barcroft that this defendant wanted to
9 be present. This defendant still considered him his
10 attorney. Mr. Barcroft refused to respond and has
11 not shown up so far. I just want to let the Court
12 be aware of that. They might want to advise Mr.
13 Brandeberry that he no longer has a right to an
14 attorney.

15 **THE COURT:** Uh-huh.

16 **MR. BANNISTER:** Just as a general
17 proposition, Mr. Barcroft's representation probably
18 ended the day of the sentencing. If his contract
19 looks anything like that, that was it.

20 **THE COURT:** I'm sure, knowing Mr. Barcroft,
21 if he has been advised of it and he still
22 represented him, he would definitely want to be here
23 and we would have already heard from him by now.
24 All right. Well, uh, we'll see what happens
25 tomorrow morning. We're going to start with Mr.

1 Brandeberry?

2 **MS. BENTLEY:** We have ^{Minor 2} Brandeberry. He
3 is the younger brother.

4 **THE COURT:** Okay.

5 **MS. BENTLEY:** He's about 20 minutes.

6 **THE COURT:** Okay. All right then.

7 **(WHEREUPON, the Court recesses for the day at**
8 **approximately 4:50 p.m.)**

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 8th day of August, 2012 at approximately 9:56 a.m.)

THE COURT: All right. Yes, ma'am.

MS. BENTLEY: Your Honor, the State would call for the testimony of Shauna Galloway-Williams. I would proceed to call her as an expert at this time.

THE COURT: All right. Ma'am, if you will, come forward and be sworn.

THE CLERK: Ma'am, if you will, place your left hand on the Bible and raise your right hand.

SHAUNA GALLOWAY-WILLIAMS

having first been sworn, testifies as follows:

THE CLERK: Thank you. Please be seated. Please state your name for the record.

THE WITNESS: Shauna Galloway-Williams.

DIRECT EXAMINATION

BY MS. BENTLEY:

Q Mrs. Galloway-Williams, where are you currently employed?

A I'm the Executive Director of the Julie Valentine Center.

Q How long have you been Executive Director?

A I've been Executive Director for three years.

1 Q And what other positions have you held at the
2 Julie Valentine Center?

3 A Prior to becoming the Executive Director, I
4 served as the Clinical Director. Prior to that, I was a
5 forensic interviewer. I provided interviews both as a
6 contract employee, but also through the South Carolina
7 Department of Mental Health.

8 Q What is the Julie Valentine Center?

9 A The Julie Valentine Center is a child abuse and
10 sexual assault recovery center. We provide services
11 related to anything related to child abuse and sexual
12 assault from prevention and education services,
13 investigative forensic services, therapeutic services,
14 including individual and group counseling.

15 Q What -- pardon me. Where does the Julie
16 Valentine Center get its funding?

17 A Well, about a third of our funding is through
18 the Greenville United Way. Another third of our funding
19 comes from federal funds, the Violence Against Women Act,
20 Victims of Crime Act, National Children's Alliance,
21 Department of Health and Environmental Control or DHEC.
22 And then the other third of our funding is through fund-
23 raising and, uh, personal donations.

24 Q What did you do prior to working at the Julie
25 Valentine Center?

1 **A** Uh, prior to working at the Julie Valentine
2 Center, I was employed by the Department of Mental Health
3 and I also had a small private practice. And through
4 both of those positions, I conducted forensic interviews
5 at the Julie Valentine Center. It was then called the
6 Greenville Rape Crisis and Child Abuse Center. I also
7 provided individual and family counseling to children and
8 adolescents.

9 **Q** Are you -- do you hold any licenses or degrees?

10 **A** I do. I have a Bachelors degree in Psychology,
11 a Masters degree in Counseling, and I'm licensed in the
12 state of South Carolina as a Licensed Professional
13 Counselor.

14 **Q** Are you a member of any professional
15 organizations or affiliations?

16 **A** Uh, yes. I currently serve as the Vice
17 President of the board for the South Carolina Network of
18 Children Advocacy Centers. Prior to serving as Vice
19 President, I was Secretary of that Board of Directors.
20 I'm also on the Board of the South Carolina Professional
21 Society on the Abuse of Children or SCPSAC.

22 **Q** Are you required to attend continuing education
23 courses or seminars to maintain any of your licenses?

24 **A** Yes. We are required to obtain, I believe it's
25 around 22 CEUs every two years.

1 Q And how long have you been attending those?

2 A Uh, I've been licensed since 2004. But even
3 prior to that, I was attending conferences and workshops
4 and trainings.

5 Q Have you done any training and/or personally
6 taught -- have you conducted any training and/or
7 personally taught any seminars or courses?

8 A Uh, yes. Most recently, I presented at the
9 Children's Law Conference in -- the South Carolina
10 Children's Law Conference on expert witness testimony
11 relating to trauma. I also presented at the National
12 Children's Symposium in Alabama on working with
13 nonoffending caregivers of children who have been
14 sexually abused.

15 Q How many years of experience do you have
16 counseling child victims of sexual assault or abuse?

17 A I've been working specifically with children,
18 adolescents for around 11 years. And during that time,
19 the vast majority of the children and families that I've
20 worked with have had some allegation or actual history of
21 abuse, neglect or witness to some sort of trauma.

22 Q Can you estimate the number of courses or
23 seminars you have attended on child sexual abuse in the
24 past, let's just say decade?

25 A I have somewhere around 145 hours specifically

1 related to forensic interviewing. And those would be
2 skills-based hours, not just attending workshops. And
3 additionally, I have attended numerous workshops,
4 conferences and most of my, uh, training is specific to
5 child abuse, child sexual abuse and forensic
6 interviewing.

7 Q How many children who allege sexual abuse do
8 you see over the year on average?

9 A Uh, --

10 Q That's since becoming Executive Director and
11 then prior to what you are doing, forensic interviewing.

12 A Right. As Executive Director, I do not have
13 the opportunity to interview as many children as I did
14 previously. I generally schedule one forensic interview
15 a week. Sometimes it's one or two. Prior to that, I
16 would see, on average, 80 to 100 children each year for
17 forensic interviews. I have conducted somewhere around
18 750 or more forensic interviews since I have been trained
19 as an interviewer.

20 Q How many children who allege sexual abuse does
21 the Julie Valentine Center see each year?

22 A Last year, we saw somewhere around 600 cases
23 of -- new cases of allegations of child abuse. That
24 could include sexual abuse, physical abuse and neglect.
25 This year already, we have seen close to 800 new clients.

1 Some of those have been children, some adults, some
2 caregivers.

3 Q Tell me about the different specialities of
4 child sexual abuse treatment and trauma that are
5 recognized in your field. Does that make sense? Talk to
6 me about the reliability of the courses you attend, the
7 classes you attend, reading material.

8 A Well, all of the services we provided our
9 center. And, uh, all of the training that I attend is
10 based on research and evidence-based practice. So as a
11 forensic interviewer, one of the requirements of all the
12 forensic interviewers at our center and really across the
13 state at the Children's Advocacy Centers is that
14 interviewers be trained in one of the nationally
15 recognized protocols in forensic interviewing which would
16 either be through Child First, which was formerly known
17 as Finding Words through the National Child Protection
18 Training Center and CornerHouse or through the National
19 Children's Advocacy Center or through ABSAC. I've been
20 trained in both National Children's Advocacy Center, as
21 well as Finding Words.

22 Q Okay. Matters of sexual abuse -- pardon me.
23 How many times have you been -- have you been previously
24 qualified as an expert witness in Circuit Court in South
25 Carolina?

1 **A** I have.

2 **Q** What have you been qualified as an expert in
3 specifically?

4 **A** Forensic interviewing and counseling children
5 who have been abused or working with children or families
6 who have been abused or neglected or allegations of that.

7 **Q** Do you know approximately how many times you've
8 been qualified as an expert witness?

9 **A** Uh, 15 times.

10 **Q** When was the most recent?

11 **A** Yesterday.

12 **Q** In matters relating to child sexual abuse and
13 trauma that you testified about in the past and are
14 prepared to testify about today, have they been published
15 in professional journals and things like that?

16 **A** Yes.

17 **Q** The principles that you base your knowledge off
18 of, have they been subject to peer review?

19 **A** Yes.

20 **Q** Are these principles uniformly accepted and
21 recognized within the field of sexual abuse counselors
22 and professionals?

23 **A** Yes.

24 **Q** Are they reasonably relied upon by
25 professionals in the field of child sexual abuse and

1 treatment?

2 A Yes.

3 Q Have counselors and child abuse professionals
4 relied on these principles when treating children who had
5 been sexually abused?

6 A Yes.

7 Q Do you know for approximately how many years?

8 A Well, the field of, uh, child abuse -- and
9 child sexual abuse is somewhat new. Some of the research
10 -- most of the research that we base our interviewing
11 techniques and the work that we do, I would say, is 20
12 years old or more which is somewhat new, I would say.

13 MS. BENTLEY: Your Honor, at this time, the
14 State would seek to qualify Mrs. Galloway-Williams
15 in child sexual abuse and treatment and request a
16 finding that her treatment and knowledge are
17 reliable pursuant to State v. Tapp.

18 THE COURT: Mr. Bannister.

19 MR. BANNISTER: Your Honor, could we do it
20 this way since we don't have a jury here.

21 THE COURT: Right.

22 MR. BANNISTER: My inclination is to go ahead
23 and go through the testimony and then let me come
24 back and then I can just go through it completely.
25 Then we can see what the opinion is going to be and

1 how that relates back to, uh, her expertise and that
2 kind of thing.

3 **THE COURT:** All right. Very well.
4 Certainly.

5 **BY MS. BENTLEY:**

6 **Q** Mrs. Galloway-Williams, do you know the victim
7 in this case, Minor 1 Brandeberry?

8 **A** I do not.

9 **Q** Have you ever met her before?

10 **A** I did meet her in the elevator on the way up.

11 **Q** Okay. Prior to that, have you ever seen
12 Minor 1 before?

13 **A** No.

14 **Q** Have you ever discussed -- has anyone ever
15 discussed the factual allegations in this case with you?

16 **A** No.

17 **Q** Have you met any member, aside from the
18 elevator, of Minor 1 family?

19 **A** No.

20 **Q** Have you ever counseled Minor 1 or any members
21 of her family?

22 **A** No.

23 **Q** So you have no personal knowledge regarding the
24 case that we are trying today?

25 **A** No.

1 Q Can you tell the jury what you understand your
2 -- can you tell us what you understand your purpose in
3 testifying today would be?

4 A Uh, my purpose in being here is to speak to the
5 dynamics of child sexual abuse. So in essence, as an
6 educator to provide information about a subject that is
7 not necessarily considered common knowledge.

8 Q Among child abuse professionals, what is meant
9 by the term "delayed disclosure" or "delayed reporting"?

10 A That refers to a child not telling right after
11 something's happened. The vast majority of children, and
12 even adults, don't tell right away. Most children don't
13 tell. It could be days. It could be weeks. It could be
14 months later. Like I said, many adults live their adult
15 lives and may never tell or may wait until they are
16 adults to tell.

17 Q In your experience and in your training, how
18 common is delayed reporting among victims of child sexual
19 abuse?

20 A It's very common for children not to tell right
21 away. There are numerous reasons why children don't tell
22 right away. The number one reason that they don't is for
23 fear. Fear that something is going to happen to them or
24 someone else, the person that has committed the act on
25 them. Oftentimes, children don't even have the words to

1 describe what's happened. So they may not be able to
2 tell depending on the age of the child. A child may have
3 been threatened or again, may be just very fearful about
4 telling. There may be consequences that they fear will
5 happen if they do tell.

6 Q What is meant by piecemeal or partial
7 disclosure?

8 A Well, when we're talking about children
9 disclosing abuse, most children don't tell right away.
10 They also don't tell all of the facts right up front.
11 It's a process.

12 You know, a lot of times children don't
13 necessarily know what information is important to
14 different individuals who may need that information. And
15 so it's often asking them the questions and them feeling
16 comfortable to share that information before all of the
17 information comes out. And that may -- again, that's a
18 process and it may take time for -- generally takes time
19 for a child or an adult to share their entire disclosure
20 if they ever even do that.

21 Q And based upon your training and experience,
22 can you give us some examples of different time spans
23 you've seen involving delayed disclosure piecemeal
24 disclosure?

25 A I mean, it just varies. It can be -- like I

1 said, it could be days. It could be weeks. It could be
2 years before a child may tell. Like I said, we often see
3 adults, many of the adult caregivers of the children that
4 I work with, many of them disclose for the first time in
5 our nonoffending caregiver group once their own children
6 have disclosed. So it can really vary.

7 Q How does language and knowledge of sexual
8 batterers come into play with disclosure?

9 A Like I referred to earlier, with younger
10 children or children who have no sexual knowledge, they
11 just may not have the words to say what happened to them.
12 A lot of time, children know that what happened to them
13 is not okay because it feels uncomfortable or they've
14 been touched on a part of their body that they know
15 someone is not supposed to touch, but they just may not
16 have the words to describe that.

17 So sometimes what we see is that as children do
18 develop those language skills or they come to understand
19 more about their bodies, their sexuality, then at that
20 time, they may disclose more. So, you know, when
21 children reach an age where they have an understanding
22 about private touch, sometimes when children participate
23 in a sexual education course, if they participate in one
24 of the education courses at their school that the Julie
25 Valentine Center presents, if they hit puberty, they may

1 have, at that point, more information, knowledge and
2 understanding about what's happened to them and they may
3 be more likely to tell.

4 Q Can the type of abuse or progression of abuse
5 affect disclosure?

6 A The type of abuse or progression of abuse?

7 Q I guess specific instances of abuse, touch
8 versus, I guess, sexual intercourse, for example.

9 A Well, again, that can affect the child a
10 different way. I mean, a child being fondled on their
11 genital area may be as traumatic or more traumatic for
12 them than intercourse or anal intercourse of another
13 child. It really depends on all the other circumstances
14 surrounding that, you know, the person who committed the
15 act, everything else. Just that in isolation may not
16 necessarily affect whether the child tells or not.
17 However, the language may be a barrier, you know, the way
18 that a child describes that or talks about it may vary.

19 Q Okay. Do children necessarily recall, uh, a
20 complete chronological order of events?

21 A Uh, again, depending on the age and development
22 of a child, time is a real abstract concept. A lot of
23 children don't necessarily understand. They might
24 understand before, during and after, but they may not
25 necessarily understand that something happened on Sunday,

1 then Monday, then Tuesday and that that happened in
2 January and then February. We might not expect that a
3 child is going to remember specific dates. But
4 generally, they would remember -- attach a memory to a
5 specific event. Maybe what grade they were in in school,
6 what house their family was living in, that this happened
7 around this particular holiday, that they were in school
8 or on summer break. Those kinds of things. So we don't
9 necessarily expect that the child's going to remember
10 that something happened on January 1st, 2012 at 2:45.
11 Many adults might not remember that level of detail as
12 well.

13 Q What factors ultimately encourage a child to
14 disclose sexual abuse?

15 A Uh, there can be lots of things that might lead
16 a child to disclose sexual abuse. A lot of disclosures
17 are accidental disclosures, meaning that a child does
18 not, uh, consciously make the effort to tell. With a lot
19 of children, an adult may notice behavior that is
20 concerning. Maybe that child is masturbating or that
21 child is engaging in sexual behavior with another child
22 and an adult ask them a question and the child then
23 discloses. That would be an accidental disclosure.

24 There may be a significant change in a child's
25 behavior. A child who is happy-go-lucky, very outgoing,

1 uh, participating in lots of activities and then, all of
2 a sudden, they are isolating and they don't want to do
3 anything and a caregiver or a teacher or someone asks
4 them what's going on. They might disclose. A lot of
5 times, disclosures are not made when a child just says
6 I'm going to tell.

7 However, there are certain things that might
8 make it easier for a child to tell if they have not told
9 because of fear, they have not told because of the
10 concern of consequences. If some of those fears are, uh,
11 alleviated or some of those threats are lessened, then
12 they might feel more empowered to tell and may make that
13 decision to tell.

14 You know, if the person that -- I've seen
15 sometimes where the person that has been abusing the
16 child has been removed from the child's life and that
17 distance from that person allowed that child to feel
18 comfortable to tell. On the flip side of that, I've seen
19 where a child has not had contact with someone and then
20 they find out they are going to have contact with them
21 and then they tell them because they don't want to be
22 around that person. So there are lots of different
23 scenarios that come about.

24 Q What symptoms of trauma may follow sexual
25 abuse?

1 **A** Uh, sometimes children have absolutely no
2 symptoms on the outside. You may have a child who has no
3 symptoms whatsoever. You can't tell that anything's
4 happened. You may have a child who is having trouble
5 sleeping, eating. They regress in their behavior.
6 Sometimes children who were fully potty-trained, all of a
7 sudden, are not. Children may start wetting the bed.
8 You may have children who are anxious, depressed. You
9 could have a full range of symptoms. You may have a
10 child, like I said before, who is very outgoing and
11 social, all of a sudden, become very isolated and not
12 want to do all the things that they normally do.

13 **Q** Is it common or uncommon in your experience for
14 a perpetrator of sexual abuse to be a family member?

15 **A** It's much more common for the perpetrator of
16 sexual abuse or any type of abuse to be someone that is
17 known, loved and trusted by the child. A lot of times,
18 it is a family member or family friend, someone that's
19 involved in the child's life who has gained that child's
20 trust.

21 **Q** Is there any particular reason for that?

22 **A** Well, I mean, a lot of times, it is because of
23 proximity. I mean, they are close to these people and
24 they have those relationships and, you know, the person
25 who is committing the act, she is someone that they are

1 close to and that they have trusted. Children are
2 vulnerable in those situations just by virtue of the fact
3 that they are children and these are adults. And we
4 teach our children to respect adults and do what adults
5 tell them to do. And children just naturally believe
6 that adults have their best interest in mind. So it's
7 really set up that way. Maybe not even intentionally.
8 It just is.

9 Q Can you explain how family dynamics may affect
10 a child's delay in reporting physical or sexual abuse if
11 the perpetrator is present in the home?

12 A Uh, well, in any instance where the child knows
13 or loves the perpetrator that is committing the abuse,
14 there usually are other things about that relationship
15 that are desirable. The abuse is one part of that
16 relationship and then there are all these other pieces,
17 not to minimize sexual abuse to this example. But all of
18 us have friends or family members that have one thing
19 that they do that we really don't like, an irritating
20 habit or something they do to us that we don't
21 appreciate, and yet we still continue those relationships
22 and those friendships and live with those people.

23 It's the same thing with a child in a sexual
24 abuse scenario. This is one thing that they do not want
25 to happen. It's an unwelcome thing, but they may

1 tolerate that because of all the other good things that
2 are involved in that relationship or because they don't
3 feel that they can tell someone.

4 Q How would the perpetrator not being a constant
5 presence affect disclosure?

6 A It could go either way. The person not being
7 there could make the child feel safer to tell. This
8 person that's a threat to them is not there. Then, at
9 the same time, if there is a threat that that person is
10 going to return, then the child might tell as a way to
11 avoid having to have contact with that person to protect
12 themselves.

13 Q What factors may prompt a child to disclose to
14 one person over another?

15 A Generally children are going to disclose to
16 someone that they trust, that they believe is going to
17 believe them. That may be, a lot of times with
18 adolescents, they are going to -- their peers are
19 everything to them. So they may tell a peer first. Even
20 with younger children, we see a lot of younger children
21 that tell their same-age peers, six-year-olds, seven-
22 year-olds, eight-year-olds, disclosing to their friends.
23 They might tell a teacher. It's generally going to be
24 someone that they trust or the person that asked them the
25 question of what's going on, did something happen and

1 they will disclose to them.

2 Q My final question is, are children that are
3 victims of sexual abuse any more or less likely to be re-
4 victimized in the future?

5 A Children who have already been abused are more
6 vulnerable to future instances of abuse, which is why
7 treatment is so incredibly helpful and why it is so
8 important that the response to a child's disclosure be
9 addressed right away and that that response be an
10 appropriate one.

11 MS. BENTLEY: Okay. I have no further
12 questions.

13 THE COURT: All right. Mr. Bannister.

14 MR. BANNISTER: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. BANNISTER:

17 Q Mrs. Williams, uh, when you were a Clinical
18 Director, did that impact your ability to have forensic
19 interviews?

20 A No, I continued to conduct forensic interviews.
21 If I am ever conducting a forensic interview, I do not
22 then provide counseling to that same child. All of our
23 interviewers -- if you are conducting -- well, right now,
24 all of our interviewers are strictly forensic
25 interviewers and did not provide therapy as well. We

1 clearly separate those two roles.

2 Q So you can't both be a forensic interviewer and
3 a treating counselor?

4 A Not for the same client. But you can be a
5 clinician that provides therapy as well as forensic
6 interviews, just not to the same child.

7 Q What years were you the Clinical Director?

8 A I was Clinical Director from 2007 to 2009. I
9 still provide clinical supervision to the staff at the
10 center now as well. I supervise the forensic
11 interviewers and I also supervise the adult therapist who
12 has responsibility for the child therapist as well.

13 Q Just in terms of the number of forensic
14 interviews you were doing between 2007 and 2009, uh, as a
15 clinical director, does your duties as a clinical
16 director impact how many children you can see either in
17 treatment or in forensic interviews?

18 A Certainly as my administrative responsibilities
19 have increased, then the number of clients that I see has
20 decreased.

21 Q And working backwards in time, you were a
22 forensic interviewer for what -- I may be messing up the
23 names here, but Julie Valentine Center and the previous
24 one where you were working independent.

25 A Right.

1 Q I'm just looking for what years were you
2 primarily a forensic interviewer?

3 A Well, I still consider myself a forensic
4 interviewer. I began conducting forensic interviews in
5 2004.

6 Q Are you licensed in psychology in any way?

7 A Yeah, I'm a Licensed Professional Counselor. I
8 have a Bachelors degree in Psychology, not a Masters
9 degree in Psychology.

10 Q And, uh, I'm sorry. I missed what you were
11 licensed in specifically when you were testifying on
12 direct.

13 A I'm a Licensed Professional Counselor.

14 Q And any other licenses?

15 A Nope.

16 Q In terms of the majority of the training you
17 had received, it appeared to me that you were you
18 testifying that that's been primarily in the neighborhood
19 of the forensic -- how to do it, how to access
20 information from the child in an appropriate way. Is
21 that a fair statement?

22 A A lot of my recent training has been specific
23 to conducting forensic interviews and working with
24 investigations of child abuse.

25 Q Has your training been in any other capacity

1 that you might consider more of a subspecialty of your
2 counseling?

3 **A** My subspecialty would be child abuse and
4 specifically child sexual abuse and working with children
5 and families where there are allegations of that and
6 conducting forensic interviews.

7 **Q** So if we had to kind of separate how much time
8 you spend in terms of your training as it relates to
9 forensic interviewing verse how much time you spend as it
10 relates to the treatment of counseling, can you give me
11 some quantification of that?

12 **A** I can if I can refer back to my CV, I can
13 probably give you exact numbers. Give me just a sec.
14 (Pause.)

15 If you look at my CV, any of the trainings that
16 are symposiums or any of the National Leadership
17 Conference, things that are really more generalized, the
18 APSAC colloquiums, most of those have some combination of
19 both forensic and clinical training. Those are really
20 more -- not necessarily skills-based trainings. They are
21 more colloquium and workshop where you go and listen to a
22 lecture.

23 The skills-based training that I referred
24 earlier as the 145 hours or more that I participated in
25 is specific to forensic interviewing. As part of

1 forensic interviewing training, we address issues
2 specific to child development, how sexual abuse affects a
3 child or family. It really encompasses not just the
4 interviewing techniques and specifically asking questions
5 and talking to children, but it encompasses all of the
6 other pieces that are related to that as well.

7 Q The counseling part of your training, if I -- I
8 hear you say that we don't both counsel and do the
9 forensic interview for the same client.

10 A Right.

11 Q Would it be a fair statement to say that the
12 idea of counseling is to, uh, help heal the child or
13 whoever it is through counseling, the purpose is to treat
14 them?

15 A Yes.

16 Q And the focus is how to help them work through
17 whatever issue it is that they've got, sexual abuse, or,
18 in her case, specializing in child abuse?

19 A Yes.

20 Q Do you participate individually or through the
21 Julie Valentine Center in research that goes into
22 developing ideas that relate to forensic interviewing or
23 ideas that relate to treating individual patients?

24 A Well, right now, we are, uh, in the process of
25 participating in what's called Project BEST, which is a

1 community learning collaborative funded by the Duke
2 Endowment. And it's a collaborative with MUSC out of
3 Charleston and the Dee Norton Lowcountry Children's
4 Center. And as a participating agency and really a
5 community participating in that, we are being trained in
6 trauma focus cognitive behavioral therapy. As part of
7 that, we are also part of the researching information
8 that's gathered around that. That is considered one of
9 the best practices of treating children who have been
10 abused.

11 Q So other than that research project you are
12 currently involved in, can you name any other research
13 projects that you personally have been a part of with the
14 Julie Valentine Center?

15 A I don't conduct research, but we also are the
16 lead agency in the Silent Tears Initiative, which is a
17 project that's funded privately by a donor here in town.
18 And the idea behind that is to conduct a statewide needs
19 assessment, a needs assessment of South Carolina. What
20 we have done is, this particular donor approached me as
21 well as some other members of our multi-disciplinary team
22 and said he really wanted to make an impact in our
23 investigating and prosecuting and treating child sexual
24 abuse.

25 So we have contracted with Victor Vieth, who is

1 the Executive Director of the National Child Protection
2 Training Center in Winona, Minnesota to put together a
3 team that's coming to South Carolina to, uh, -- in a
4 couple of different phases -- conduct interviews and
5 gather research around what we are doing, well, where our
6 shortcomings are and develop an action plan for how to
7 make changes in our system here. That's, again, another
8 research project that we are participating in and we
9 really are the lead agency doing that. We're not
10 actually gathering the information and analyzing the
11 statistics. That will be done in collaboration with USC
12 Upstate and their research team there. And then also
13 Victor Vieth and his team are really taking the lead in
14 it. We are really liaisons and collaborators in that
15 project.

16 Q In terms of Silent Tears then, it sounds like
17 this project is beginning.

18 A We are about halfway through. We started in
19 January of this year. We began planning for the project
20 a year prior to that.

21 Q All right. Project BEST, where is that in
22 terms of its --

23 A We will finish up our third learning
24 collaborative in September. So the idea would be that
25 you would be fully complete in October.

1 Q And as part of these research projects, do you
2 provide and statistical information about the clients
3 that y'all see at the Julie Valentine Center?

4 A Uh, in Project BEST, yes. In Silent Tears, we
5 may not provide specific information about our clients.
6 We really would be speaking more to the service
7 providers. We do keep statistics and do keep data
8 related to the clients that we serve primarily for
9 funding purposes. It's a requirement by United Way, the
10 National Children's Alliance, anyone who is providing
11 funding to us or any other non-profit and wants to see
12 how they are impacting or making a difference. So we
13 conduct or track that. We use a system called the NCA
14 track, which is developed and created by, uh, the
15 National Children's Alliance. And that's who we are
16 accredited through. We maintain all of our data in that
17 database and provide all our reports through that system.

18 Q What data goes into the NCA track? Other than
19 the number of patients that you or counsel or conduct
20 forensic interviews, what else goes into that?

21 A Uh, we track the demographic information, age,
22 gender, uh, obviously date of birth, all of the general
23 information. We track the contacts we had with a child
24 or family. We track what services we've provided to that
25 child or family. We track when a multi-disciplinary team

1 staffing would have taken place for that family. We
2 would track if the child were involved in a trial, a
3 prosecution. We would track when that would happen and
4 the outcome of that. Those are statics, again, that are
5 required by our accrediting agency, the National
6 Children's Alliance. They want to see all of that
7 information annually. And then we're up for re-
8 accreditation right now, so they want to see that as
9 well.

10 Q All right. Part of any of these projects or
11 the stats that you keep for the NCA, can you go back and
12 pull up how many cases -- you said you did 750 or more
13 forensic interviews. Is it a way to go back and pull up
14 and say, okay, out of 750, these many involved delayed
15 reporting?

16 A Uh, that would not be in the database. I could
17 manually pull each of those cases and read the reports
18 and tell you the specifics of those. In general terms,
19 most of the kids that I have seen and most of the kids
20 that walked through our doors have not told right after
21 something happened.

22 Q In terms of the delayed reporting, are there
23 any stats, even in the file itself, that indicate how
24 long the delay had been? I mean, you say delay, I'm sure
25 there are some instances where the abuse happens and

1 there is a delay and then within moments later, there is
2 some sort of disclosure. But I would think typically
3 that there is some -- even if it's 12 hours, 24 hours,
4 every -- in order to report, you got to report what is in
5 the past. With that said, is there some information that
6 y'all keep statistically to say, okay, this report was a
7 month after, this was two months, this was six months,
8 this was 12 months.

9 **A** We don't really track it that way. There would
10 be information in the file, the background information,
11 the incident report. And you could look at that and
12 identify, uh, in general when the child reported. When
13 I'm referring to a delayed report, I mean that the child
14 didn't tell them right after it happened. Not within --
15 usually, if a child tells within 72 hours of it
16 happening, I sort of consider that is it happened -- they
17 are sort of telling after it happened. Within that
18 window of time, generally, a child would be taken to the
19 emergency room or an adult would be referred there for an
20 examination and investigation. Outside of that, you
21 know, weeks, days, months is what I'm referring to.

22 **Q** Okay. So when you offered the testimony that
23 in general delayed reporting is common, that is based
24 primarily on your memory of the interviews that you've
25 gone through?

1 **A** No, that's based on research, uh, research,
2 training and in my own experience.

3 **Q** Okay. And as it relates to your experience,
4 we're talking about your memory of the forensic
5 interviews that you've done. Is that fair? If you don't
6 have it in a statistical model, where else can it come
7 from?

8 **A** Well, I could pull all those charts and we
9 could track them if we needed to. But yes, it is based
10 on my experience and knowledge of the children that I
11 have worked with and the interviews that are being
12 conducted daily in our center that I am aware of.

13 **Q** And the research and the training, that is
14 information that other people are giving to you about the
15 general status of -- in this case, we're talking about
16 delayed reporting.

17 **A** That's the research that our field is based on,
18 research that, uh, we base what we do and how we conduct
19 interviews on. There are a number of studies that have
20 looked at delayed reporting, the incidents of that,
21 reasons behind why children would delay reporting.

22 **Q** And how do you typically become aware of the
23 research about delayed reporting?

24 **A** Well, as part of my training, uh, we review
25 articles. We're given reading and materials to review at

1 that time. But I also receive publications that I read.
2 I also am part of a Listserv that generates information
3 about relevant, uh, studies or articles. And most
4 recently, our forensic interview team has started a, for
5 lack of a better term, a journal club where once a month,
6 over lunch, we take turns choosing an article and we
7 review that and discuss it. But most of those articles
8 come from if there's been a particular issue or subject
9 that we have struggled with or that we want more
10 information about, one of us will research and find
11 something related to that.

12 Q Can you give me some idea of if you were going
13 to an article on a particular issue, where do you go?
14 How do you obtain those articles? Is there a particular
15 source you like or is it -- could it be anything in
16 the --

17 A Well, the easiest way for me to find it is to
18 pull it off my shelf, the American Professional Society
19 on the Abuse of Children publishes the journal of Child
20 Maltreatment. So I receive that on a regular basis.
21 That's probably the one I read most often. Also,
22 belonging to, uh, National Children's Alliance, they send
23 out a newsletter. Their Executive Director sends out a
24 newsletter and sort of an email blast on a regular basis
25 that also has articles on relevant topics. So, often, I

1 would just go straight to those.

2 Through the National Children's Advocacy
3 Center, they have a library that's called Calio, C-A-L-I-
4 O -- I don't know what that stands for. But they have a
5 very vast, uh, network of publications, gives you access
6 to, uh, journals. It's really sort of like an online
7 library that you have access to research.

8 Also if there are specific topics that I know
9 other professionals in the field might have information
10 on, I sometimes will just call someone and ask them if
11 they have that information, if they can recommend
12 something, Victor Vieth being a wonderful resource of
13 information for that or through the Children's Law
14 Center.

15 Q Do you specifically subscribe other than to,
16 uh, -- other journals other than the Journal of Child
17 Maltreatment?

18 A I don't.

19 Q And when you go through the National Children's
20 Alliance -- is that what you said? The Calio library.

21 A That would be the National Children's Advocacy
22 Center, NCAC. There are a lot of acronyms in our field.

23 Q Sure. I assume that there are lots of
24 different journals that you can potentially access
25 through Calio library.

1 A Yes.

2 Q If you did like a word search or something, you
3 might could pull up 10 or 12 different journals that
4 might give you some information about whatever various
5 topic you are looking at?

6 A Right.

7 Q Uh, --

8 A We also keep a library of articles at our
9 center. So between the therapists and the forensic
10 interviewers, any time any of us go to training, we
11 usually come home or come back with, you know, a wealth
12 of resources. And we maintain those at our center as
13 well.

14 Q All right. So when -- we talking about things
15 that are published as the basis for being my often
16 opinion as it relates to delayed reporting as kind of
17 where you are getting the principles from that related to
18 this particular case, delayed reporting. Can you point
19 me to any journals or particular research articles that
20 form the basis for?

21 A I can. Can I refer --

22 Q Sure.

23 A I actually can -- yeah. Let's see. Tom Lyon
24 has done a lot of research and has published information.
25 This particular article is very helpful. It's L-Y-O-N,

1 Thomas D. Lyon. The title of the article is "Scientific
2 Support for Expert Testimony on Child Abuse Accommodation
3 Syndrome". And it was published in Critical Issues and
4 Child Abuse, which was actually, I guess, a book in 2002.
5 And within that, he references, uh, numerous articles and
6 research that was conducted. For instance -- give me
7 just a second.

8 Q If you're looking at your CV for Thomas Lyon,
9 could you just point me to the page?

10 A Oh, he's not on my CV.

11 Q Oh, I'm sorry.

12 A You're talking -- I'm referencing an article.
13 You asked me to give you an article.

14 Q That's right. I thought you said let me look
15 back at my --

16 A No, I was just looking at my -- I have some
17 articles here with me.

18 Q Oh, okay.

19 A Within that article, he references researches
20 and other articles that were published. Uh, Elliott and
21 Brear [phonetic spelling] in 1994. Wait just a second.
22 I have to cross-reference. His reference list is
23 omitted. If we pull the full article, we would have it.
24 But Elliott and Brear discovered or found that 75 percent
25 of subjects in their study failed to disclose within a

1 year.

2 Roland Summit has also done research in this
3 area. He argued that even when children do reveal or do
4 disclose, that they often are conflicted or delayed. Uh,
5 Summit also in some of his other research found that
6 rates of nondisclosure among women range from 33 percent
7 to 92 percent and among men from 42 percent to 85
8 percent.

9 Q I'm sorry. 33 to 92 percent?

10 A Rates of nondisclosure can range from 33
11 percent to 92 percent and among men from 42 to 85
12 percent. In --

13 Q How is that statistically helpful if it ranges
14 between 1/3 or 90 percent? I mean, somebody has to
15 interpret this stuff.

16 A Right. Again, in that particular study, that
17 is what Roland Summit found. But again, I said, on the
18 other side, he also argue that even when children do
19 reveal their disclosures, they are often conflicted and
20 delayed. Elliott and Brear discovered that 75 percent of
21 their studied subjects failed to disclose within one year
22 of it having occurred.

23 Q Okay.

24 A Would you like for me to continue with the
25 statistics?

1 Q Well, if you --

2 A My point is just that there, uh, -- you know,
3 there is a wealth of research out there. Certainly when
4 we are looking at it, we are looking at the vast majority
5 of research and those that are respected in the field and
6 all of these journals and these articles are peer
7 reviewed. They are -- Thomas Lyon is a well-respected
8 professional in the field. Many of these studies are the
9 basis of other studies and other research that has gone
10 on to even be on that.

11 Q All right. Let me move forward a little bit on
12 one of the questions you got asked on direct in terms of
13 -- you talking about time frames may vary as it relates
14 to delayed reporting. It could be days. It could be
15 weeks. It could be years. Would this be the same type of
16 information that you are relying on that you just kind of
17 went through with us, these articles and --

18 A Yeah, that's based again on my training, the
19 research that's out there as well as my own personal
20 experience and experience of the others that I supervised
21 and others that work in the field.

22 Q Does, uh, -- parts of the opinion that is more
23 common for a perpetrator to be a family member, what's
24 the basis of that opinion?

25 A That's also based on experience, research and

1 the literature.

2 Q All right.. So not to rehash. But experience
3 -- let me just ask it this way. Statistically speaking,
4 can the Julie Valentine Center say we saw --

5 A We can say that.

6 Q We can say it was a family member here or
7 outside family member?

8 A We could give you that information if you
9 needed it.

10 Q Okay. And are there any -- do you know what
11 that statistic is?

12 A I don't know off the top of my head what that
13 is. I would just say that the vast majority of
14 individuals that we've seen have been abused by a close
15 family member or friend, someone known to the child.
16 There are very few cases that we see where a child has
17 been abused by a stranger or someone that's unknown to
18 them.

19 Q Okay. So when you say vast majority, if we've
20 got the statistics, what can we expect to see at least
21 from the Julie Valentine Center? 51 percent, 27, 85?

22 A If you want an exact number, I'd have to call
23 back to the office and have someone run that report. I'd
24 be glad to do that. I'd really rather not, you know, say
25 that there's a certain percentage. When I say vast

1 majority, that's what I mean. I mean most of the cases
2 that we see, uh, are those children who had been abused
3 by someone that's known and loved and trusted.

4 Q You are uncomfortable quantifying that
5 specifically?

6 A Well, the fact that I could give you an exact
7 number if we needed it ---

8 Q Right.

9 A --- I would be more comfortable giving you that
10 exact number than --

11 Q To be more accurate?

12 A Yes.

13 Q Okay.

14 A And it looks like that's what we're wanting is
15 accuracy here.

16 Q Yes. In terms of symptoms, you were talking
17 about some symptoms of sexually abused children. You
18 said there's wetting the bed, they can be anxious,
19 depressed, they can go from outgoing to isolated. There
20 are statistics that the Julie Valentine Center keeps on
21 that, like what are the symptoms you are seeing with each
22 particular individual?

23 A Well, the therapist would in their -- in their
24 clinical documentation would note a child's symptoms.
25 You would really be looking at that as a way to measure

1 treatment and their progress in treatment. It would not
2 be something that we would keep a statistic on that, you
3 know, 20 children presented with bed-wetting and five
4 didn't. That's not the way that we would track that. It
5 would be entered more as a clinical note or something
6 that would be in that child's medical record but would
7 not necessarily be a statistic that we would keep.

8 Q How about the -- I think you did say that you
9 keep statistics about which cases go to court?

10 A Yes.

11 Q Is it just which cases actually end up in a
12 trial or is it which cases end up in maybe a guilty plea
13 in some instances?

14 A We track all of that.

15 Q Okay.

16 A And that's at the request of our funders and
17 our accreditation agency.

18 Q Okay. So we would have some solid numbers that
19 would show, say, out of the, say, 750 forensic interviews
20 that you've done, how many of those ended up with a plea?
21 How many of those ended up with a trial? How many of
22 those ended up with what we know whether there was not
23 guilty verdicts or whether we know whether there were
24 some that were dismissed?

25 A Yes, we could track that. We became

1 accredited in 2007. At that point, that's when we
2 begin tracking -- uh, more rigorously tracking that
3 information. And really over the past two to three
4 years, we would have the most accurate information
5 relating to the number of cases that had gone to trial,
6 which ones had pleas, which ones were not guilty,
7 mistrials, those kind of things.

8 Q Would it also indicate which ones were not
9 referred over for a criminal action?

10 A In our records, you would know which ones were
11 involved with law enforcement, which ones actually made
12 it -- or had a trial, whether the case was indicated with
13 DSS or not. We track all of that information.

14 Q Okay. So anything -- sorry. Maybe I'm not
15 asking these questions very artfully. I'm trying to get
16 kind of the total of the different entries that there
17 would be for a case as it came in in the legal sense.
18 There's indicated for DSS, not indicated for DSS.
19 There's referred to law enforcement. There's guilty
20 plea. There's trial. There's verdict. Is there
21 anything else I'm missing from this?

22 A I don't know.

23 Q Would it be a fair statement that there would
24 be -- and I'm not asking for a number, but some cases
25 where there's been a forensic interview where it's not

1 indicated for DSS?

2 **A** Yes.

3 **Q** Statistically, there's something out there?

4 **A** Yes.

5 **Q** There would be some cases where there's law
6 enforcement involvement where there is no guilty plea and
7 no trial?

8 **A** Yes.

9 **Q** And there would be some cases that have been
10 referred to law enforcement or law enforcement
11 involvement where there are either guilty or not guilty
12 verdicts after trial?

13 **A** Yes. You have the full range of that.

14 **Q** Sure.

15 **A** You could have some where we've had an
16 interview and there's been no prosecution, no DSS
17 indication. You know, the child made no disclosure.

18 **Q** Has there been any correlation between -- let
19 me back up. When I was asking you about the symptoms and
20 that sort of thing, then the impression I got is
21 cataloging the symptoms is much more about treatment of
22 the individual than it is about trying to draw any
23 conclusions from what their symptoms are.

24 **A** Right. We don't -- when we conduct a forensic
25 interview, we will ask about any symptoms or any changes

1 in behavior, but that's really not diagnostic. It's
2 really just to gather that background information and
3 information about the child and family. Again, that's --
4 that information is gathered and it's reported. But it's
5 not tracked in our system in the same way that other
6 statistics would be tracked. It's not really a
7 statistic. It's not something that we would track.

8 Q In terms of on direct when you were talking
9 about children disclosing to someone they trust, any
10 statistics at Julie Valentine Center on that?

11 A On who they disclosed to?

12 Q Yeah, on who they disclosed to.

13 A We do, uh, -- on our records, we would keep who
14 the child disclosed to if we know who that is. It may
15 not be tracked in the NCA track system. Our records are
16 not completely electronic records.

17 Q Sure.

18 A We keep a paper file. So on an intake form
19 that comes in, it might indicate who the child disclosed
20 to. Or if we're getting background information from law
21 enforcement or DSS or from a family member, they would
22 indicate who the child initially disclosed to. If a
23 forensic report is generated, then in that report, it
24 would note who the child had initially disclosed to.

25 Q Sure. I'm talking about not -- is the

1 information somewhere in the individual trial of each
2 forensic interview but hasn't been coalesced into a, uh,
3 -- into something that is accessible to see how many
4 people fit the same category, disclosed to father,
5 disclosed to mother. That's what I'm looking for when I
6 say do you keep statistics on that to generate some idea
7 of what's going on with the 750 people that you --

8 **A** We don't keep that statistic, but if someone
9 were to request that, we could manually provide that
10 information. We could go through our records and
11 identify who a child had disclosed to. We could provide
12 that statistical information. Do we do that on a regular
13 basis? No.

14 **Q** That's what I'm getting at. And then the
15 statement, he said that the victims of sexual abuse, uh,
16 are more likely to be abused or more vulnerable I think
17 was actually -- more vulnerable to future abuse. Again,
18 I realize that in the files there's probably whether
19 there's one, two, three perpetrators in terms of
20 statistics that the Julie Valentine Center keeps, can we
21 hit a button and say, okay, we've met all these people.
22 These are the ones that had multiple abusers or this is a
23 number.

24 **A** Yeah, we can't hit a button and find that. But
25 again, we would have that information. That statement is

1 based again on research and experience as far as where
2 that information comes from, the vulnerability of someone
3 who was victimized being a victim again.

4 **MR. BANNISTER:** Thank you. All right. Your
5 Honor, I don't have any further questions.

6 **THE COURT:** Any redirect?

7 **MS. BENTLEY:** No redirect, Your Honor.

8 **THE COURT:** I'm going to go ahead and say
9 I've got two problems, two problems with two of the
10 questions you asked. I'm sure you're going to have
11 some other argument in just a moment. But the
12 question regarding is it more common for a family
13 member to sexually abuse a child, I'm not going to
14 allow you to ask that question.

15 **MS. BENTLEY:** Okay.

16 **THE COURT:** And is it more common -- is a
17 child who's been victimized once more likely to be a
18 victim later, I'm not going to allow you to ask that
19 question either. So far as -- it didn't sound to me
20 like you asked her any questions with regards to
21 grooming.

22 **MS. BENTLEY:** No, Your Honor.

23 **THE COURT:** Those are the only two questions
24 that I heard that I thought came close to victim
25 selection ---

Remarks

1 **MS. BENTLEY:** Okay.

2 **THE COURT:** --- type traits. All right.

3 Mr. Bannister?

4 **MR. BANNISTER:** Thank you, Judge. Going back
5 to my general opposition to this testimony, it
6 simply is that in describing what is couched in
7 terms of this happens oftentimes, this is common and
8 then ultimately overlaying in her opinion that that
9 is common and normal for children to disclose in
10 various ways, shapes or forms, it is a backhanded
11 way of saying that because **Minor 1** fits into what we
12 understand to be kind of the common way that
13 children disclose, then she should be given
14 credibility. Although the expert is not saying
15 that, that's the clear inference that's trying to be
16 drawn. That's where I think that we get into a
17 bolstering of the child's disclosure that is
18 improper.

19 **THE COURT:** All right. I did some -- y'all
20 will be impressed. I did some legal research on my
21 own. And I don't find anything that says that State
22 v. Weaverling, or however you say that case, has
23 been overruled. The line of cases that have come
24 out have certainly narrowed what can be talked
25 about. But I still believe that the case law stands

1 for the principle that an expert in this field, if
2 properly qualified can give testimony as to the
3 effects of sexual abuse on a child and some delayed
4 disclosure may be explaining some of the behavior.
5 It might not be in common knowledge to the jury.

6 I'm going to allow the testimony with regards
7 to delayed disclosure. I don't think you asked her
8 really anything other than -- and I could be wrong
9 -- but I didn't hear anything other than really
10 explaining delayed disclosure other than those two
11 other questions that I'm not allowing you to ask.

12 **MS. BENTLEY:** Yes, Your Honor. The State is
13 completely okay with that. I spoke with Mr.
14 Bannister this morning and told him that we'd rather
15 just keep it clean and above water without question.

16 **THE COURT:** Okay. All right. Very well.
17 All right. Yes, sir.

18 **MR. BANNISTER:** Your Honor, one last thing.
19 Mrs. Williams, I didn't know if she was on the
20 witness -- was going to be a witness for the state.
21 She's not a treating counselor or forensic
22 interviewer until basically Monday a week ago. I
23 tried to see if I could meet with her and speak with
24 her, but correct me if I'm wrong, but I was told
25 that she didn't have any time to meet with me last

1 week because her schedule was full.

2 What I would like is an opportunity to take a
3 look at at least some of the research that she's
4 brought with her. I need to spend a little bit of
5 time with that. This will be my proposal ---

6 THE COURT: Okay..

7 MR. BANNISTER: --- cause I don't want to
8 delay it too long.

9 THE COURT: Sure.

10 MR. BANNISTER: But it strikes me that at 11
11 o'clock, we've got, if I understand correctly, two
12 witnesses, Harold and -- Harold Brandeberry and Minor 2
13 Brandeberry ---

14 THE COURT: Okay.

15 MR. BANNISTER: --- and then Mrs. Williams.

16 THE COURT: All right.

17 MR. BANNISTER: If we can -- I think Harold
18 and Minor 2 will be fairly quick. I don't know. But
19 if we could deal with them, that will give me the
20 lunch break to review what I need to review and come
21 back after that.

22 THE COURT: All right.

23 MR. BANNISTER: I would request that as kind
24 of, just a due process kind of thing.

25 THE COURT: Yes, ma'am.

1 **MR. BANNISTER:** Just to state the State's
2 position, we did provide our witness list well in
3 advance. I did provide a copy of Mrs. Galloway-
4 Williams CV. I did let him know topics that I would
5 be questioning her on which the State was not
6 required to do until the day of trial.

7 **THE COURT:** I didn't --

8 **MR. BANNISTER:** I'm not saying they did
9 anything wrong. I'm just --

10 **THE COURT:** I didn't see that Mr. Bannister
11 was in any way criticizing -- and I'm not critical
12 of -- I've disclosed experts in a much shorter
13 period of time. But on the other hand, I do
14 understand that her schedule is extremely busy.

15 Mrs. Galloway-Williams, I'm going to ask you to
16 make yourself available over the lunch hour so that,
17 uh, Mr. Bannister can speak with you about, uh, any
18 materials that you've got with you here today. We
19 will, uh, -- we'll have your testimony right after
20 lunch and we will do it as quickly as we can right
21 after the lunch hour. Thank you. All right. If
22 you want to say there for a minute, let's take --
23 let's take about a five-minute -- just a real quick
24 five-minute recess. Then we'll come back in and
25 bring the jury back in.

1 **MS. BENTLEY:** Your Honor, are we going to
2 have -- we're trying to get the testimony of Minor 2
3 and Harold right now?

4 **THE COURT:** We're going to do it just as soon
5 as we return.

6 Yes, sir. Mr. Barcroft, good to see you today.

7 **MR. BARCROFT:** Can the three of us just step up
8 here real quick?

9 **THE COURT:** You sure can.

10 (WHEREUPON, a short recess is taken.)

11 **THE COURT:** Any matters we need to take up
12 before we bring the jury back in?

13 **MS. BENTLEY:** Nothing from the State, Your
14 Honor.

15 **THE COURT:** All right. Anything from the
16 defense?

17 **MS. BENTLEY:** Nothing from the defense, Your
18 Honor.

19 **THE COURT:** All right. Bring them in.

20 (WHEREUPON, the jury enters at approximately
21 11:15 a.m.)

22 **THE COURT:** Ladies and Gentlemen, I want to
23 tell you that the thing I hate the very most is to
24 ever keep a jury waiting. It was not in any way
25 these attorneys' faults whatsoever, but a scheduling

1 decision by me. And I apologize that we had to keep
2 you waiting. We will try everything we can not to
3 do that any longer. I do understand that Mr.
4 Anderson looked out for you. I hope he does, uh, --
5 I hope he does and continues to. He has commented
6 several times just what a nice jury you are to deal
7 with. And he doesn't very often say that. But
8 anyway, all right.

9 We ready to proceed?

10 **MS. BENTLEY:** Yes, Your Honor.

11 **THE COURT:** Okay.

12 **MS. BENTLEY:** May it please the Court. The
13 State calls Minor 2 Brandeberry.

14 **THE CLERK:** Sir, please come forward. If you
15 will, pause at the end of the bench. Please place
16 your left hand on the Bible and raise your right
17 hand.

18 Minor 2 **BRANDEBERRY**
19 having first been sworn, testifies as follows:

20 **THE CLERK:** Thank you. You may be seated.
21 Will you tell us your name for the record.

22 **THE WITNESS:** Minor 2 Brandeberry.

23 **DIRECT EXAMINATION**

24 **BY MS. BENTLEY:**

25 **Q** May I call you Minor 2

1 A Yes.

2 Q Minor 2 how old are you?

3 A 14.

4 Q What are the names of your parents?

5 A Kelly Wilkinson and Harold Brandeberry.

6 Q Are you nervous today, Minor 2

7 A A little bit.

8 Q Have you ever been in a courtroom before?

9 A No.

10 Q Minor 2 do you have brothers or sisters?

11 A I have a sister.

12 Q Is she older or younger?

13 A Older.

14 Q How old is she?

15 A She's 17.

16 Q What is her name?

17 A Minor 1 Brandeberry.

18 Q Minor 2 where do you live right now?

19 A In Ohio.

20 Q How long have you lived in Ohio?

21 A For about a month and a half.

22 Q Where did you live before that?

23 A In South Carolina.

24 Q What was your address in South Carolina?

25 A [REDACTED]

1 Q Where -- do you remember the city that was in?

2 A Taylors.

3 Q Did you go to school in South Carolina?

4 A Yes, I did.

5 Q Tell me where you went to school.

6 A Severe Middle School.

7 Q How long did you go to Severe Middle School?

8 A One year.

9 Q Where did you go to school before that?

10 A Bob Jones.

11 Q Minor 2 do you remember how long you've lived in
12 South Carolina before moving to Ohio?

13 A 11 years.

14 Q Okay. And did you live in Ohio at all before
15 moving to South Carolina?

16 A Yes.

17 Q How long did you live there?

18 A About two years.

19 Q Do you remember any of it?

20 A No.

21 Q Do you remember the move to South Carolina?

22 A No.

23 Q When do you start having -- do you know who --
24 tell me who your grandparents are on your dad's side.

25 A Albert Brandeberry and, uh, -- I really don't

1 know his wife that well.

2 Q Okay. When you talking about his wife, are you
3 talking about your dad's mom or are you talking about
4 Albert's current wife?

5 A Yes.

6 Q Okay. And you don't know her name?

7 A I knew it before, but --

8 Q It's okay. It's okay. What about your mom's
9 parents? Do you know the name of your mom's parents?

10 A Yes.

11 Q What are their names?

12 A Sandy and Rudy Wilkinson.

13 Q Okay. And do you ever remember either of your
14 grandparents visiting you in South Carolina?

15 A Yes.

16 Q Who do you remember visiting?

17 A Albert Brandeberry.

18 Q Was he the only grandparent you remember
19 visiting?

20 A Yes.

21 Q Do you remember when he started visiting?

22 A I don't remember the exact year, but...

23 Q Do you remember what grade you were in?

24 A Around the fifth grade.

25 Q What grade are you in now?

1 **A** Eighth.

2 **Q** Tell me what kind of things your granddad would
3 do when he came and visit you.

4 **A** Sometimes we go and visit my grandma who lives
5 -- used to live with us. Just stay around the house
6 sometimes.

7 **Q** Okay. You said you used to visit your
8 grandmother. Is that your dad's mom?

9 **A** Yes.

10 **Q** Okay. You said you went to the store. What
11 kind of store would you go to?

12 **A** Wal-Mart, K-Mart.

13 **Q** What would you there?

14 **A** Get groceries and sometimes buy stuff.

15 **Q** What kind of stuff would he buy you?

16 **A** Toys.

17 **Q** Uh, do you remember any toys in particular that
18 your granddad bought you?

19 **A** Uh, we had a battery-operated little jeep and
20 motorcycle.

21 **Q** Okay. And where would you play with those
22 toys?

23 **A** Outside.

24 **Q** Minor 2 when your granddad stayed or when your
25 granddad visited, how did he get to South Carolina? Do

1 you know?

2 A He drove.

3 Q What did he drive?

4 A His truck.

5 Q What kind of truck did he have?

6 A Dodge Ram.

7 Q What color was it?

8 A Red.

9 Q Where did he stay in South Carolina?

10 A We had a couch that pulled out into a bed.

11 Q And is that where he stayed?

12 A Yes.

13 Q Do you remember how many summers your granddad

14 came down?

15 A Probably about four or five.

16 Q Do you remember when he stopped coming down?

17 A Yes.

18 Q Do you remember when that was?

19 A Three years ago.

20 Q Okay. Did you ever go back and visit Ohio?

21 A Yes.

22 Q When did you go back and visit Ohio?

23 A A year ago.

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

25 A 2011.

1 Q After your grandfather stopped visiting, did he
2 keep in touch?

3 A He sent us cards.

4 Q What kind of cards?

5 A Birthday cards, Christmas cards.

6 Q Did you and Minor 1 continue to get cards?

7 A Yes.

8 Q Would you talk to your grandfather on the
9 phone?

10 A Not very often.

11 Q Do you like your grandfather, Minor 2

12 A Yes.

13 Q Do you still talk to him today?

14 A No.

15 Q Okay. One moment please. (Pause.)

16 One moment, Your Honor.

17 Minor 2 where have you been the past couple of
18 days? Have you been in the courthouse?

19 A Yesterday, I was.

20 Q Where were you?

21 A In the room.

22 Q In what room?

23 A The waiting room outside the courthouse.

24 Q Did you hear anybody else's testimony?

25 A No, ma'am.

1 Q I have no further questions for you. Answer
2 any questions Mr. Bannister may have.

3 THE COURT: Mr. Bannister.

4 CROSS-EXAMINATION

5 BY MR. BANNISTER:

6 Q Minor 2 my name is Mr. Bannister. This is the
7 first time we've met, correct?

8 A Yes.

9 Q The first time I've had an opportunity to talk
10 with you, correct?

11 A Yes.

12 Q Minor 2 when your grandfather would come to
13 visit, were there some occasions when other people came
14 with him, like Jacob?

15 A Yes.

16 Q Do you remember other people that came with him
17 other than Jacob?

18 A Yes, my grandmother on my mom's side.

19 Q And what -- do you remember her name?

20 A Sandy Smith.

21 Q Sandy. So we know that Sandy and Jacob would
22 come visit with Albert when he would come down. Is that
23 a fair statement?

24 A Sometimes, yes.

25 Q Did, uh, -- hang on just a second. (Pause.)

1 Is Minor 1 living with y'all in Ohio right now?

2 **A** No, sir.

3 **Q** Has -- I know you couldn't remember Albert's
4 wife's name. But has Albert and his wife that he's got
5 right now, have they been together the whole time that
6 you've been alive or do you know?

7 **A** Yes.

8 **Q** So if we go back as far as you can remember,
9 his current wife was still there. Is that a fair
10 statement?

11 **A** Yes.

12 **Q** And Jacob, that is -- is that your cousin?

13 **A** Yes.

14 **Q** And is that Mr. -- sorry. Is that Sylvia's
15 son?

16 **A** Yes.

17 **Q** And Sylvia is your grandfather's daughter,
18 correct?

19 **A** Yes.

20 **Q** When Jacob would come to stay, what room would
21 he stay in the house? I mean, what room would he stay?
22 Would he stay in your room or would he stay somewhere
23 else?

24 **A** Uh, we had an air mattress. He stayed there.

25 **Q** And where was the air mattress?

1 **A** The study.

2 **Q** Is the study the same room where the pullout
3 couch was?

4 **A** No.

5 **Q** It's a different room?

6 **A** Yes.

7 **Q** And how about, uh, -- how about your parents?

8 All right. And your -- let's see. The other person, is
9 that your mom's mom?

10 **A** Yes.

11 **Q** Okay. Where would she stay when she came to
12 visit?

13 **A** She stayed on the couch.

14 **Q** The same place where Mr. Brandeberry was?

15 **A** No.

16 **Q** Okay. Different couch.

17 **A** Yes.

18 **MR. BANNISTER:** All right. Thank you. I

19 don't have any further questions, Your Honor.

20 **THE COURT:** All right. Any redirect?

21 **MS. BENTLEY:** No redirect, Your Honor.

22 **THE COURT:** Sir, you can step down.

23 **MS. BENTLEY:** Your Honor, can Mr. Minor 2

24 Brandeberry be excused?

25 **THE COURT:** Any objection?

1 **MR. BANNISTER:** No.

2 **THE COURT:** Thank you for being here.

3 Ladies and Gentlemen, I told you that we're not
4 going to have any more unnecessary delays. I need
5 to take one minute to do something. If you would,
6 please step to your jury room. We will be straight
7 back with you.

8 **(WHEREUPON, the jury exits at approximately**
9 11:26 a.m.)

10 **THE COURT:** Y'all going to be ready to start
11 with him?

12 **MR. BANNISTER:** Yes, ma'am.

13 **MS. BENTLEY:** Yes, Your Honor.

14 **MR. BANNISTER:** Unless Mr. Barcroft tells us
15 different.

16 **(WHEREUPON, there is a pause.)**

17 **THE COURT:** Before you bring him out, let me
18 take just one second.

19 Mrs. Wilkinson, just so I'm sure that you know,
20 Mr. Brandeberry is going to be our next witness. I
21 just wanted to make you aware of that in case anyone
22 did not want to be in the courtroom for that
23 testimony. All right.

24 All right. You can bring him in.

25 **THE CLERK:** Sir, best you can, please place

1 your left hand on the Bible and try to raise your
2 right hand.

3 **HAROLD BRANDEBERRY**

4 having first been sworn, testifies as follows:

5 **THE CLERK:** Thank you. Please be seated.

6 **THE COURT:** Mr. Brandeberry, it's my
7 understanding that your attorney, Mr. Barcroft, has
8 -- or at least your former attorney, Mr.
9 Brandeberry, has spoken with you about the fact that
10 there are certain things you can say in this
11 courtroom and certain things you ca not say in this
12 courtroom and that certain things might cause a
13 mistrial of this particular case. Have you gone
14 over that with him?

15 **THE WITNESS:** Yes, ma'am. I have.

16 **THE COURT:** And do you understand that if you
17 want to get into anything other than the questions
18 that are specifically asked of you and if you want
19 to go into anything extraneous about something that
20 might have happened between you and your father,
21 then if you want to go into that and you draw a
22 mistrial, this court has contempt powers and I will
23 give it to you as consecutive time. And I'll also
24 refer the case to the Solicitor's office for the
25 prosecution of obstruction of justice. And I will

1 insist that that be consecutive time as well. Do you
2 understand?

3 **THE WITNESS:** I understand.

4 **THE COURT:** Okay. But I'm pretty sure you're
5 not going to go into anything like that and we've
6 got an agreement. All right?

7 **THE WITNESS:** Yes, ma'am.

8 **THE COURT:** All right. Very well. Anything
9 else I need to advise him of?

10 **MR. BANNISTER:** No, Your Honor. I don't
11 believe so.

12 **THE COURT:** All right. All right.
13 You can bring the jury back in.

14 **(WHEREUPON, the jury enters at approximately**
15 11:33 a.m.)

16 **THE COURT:** Thank you so much, Ladies and
17 Gentlemen.

18 Yes, ma'am.

19 **MS. BENTLEY:** May it please the Court. The
20 State has called Harold Brandeberry to the stand.

21 **DIRECT EXAMINATION**

22 **BY MS. BENTLEY:**

23 **Q** Mr. Brandeberry, did you just take an oath?

24 **A** Yes, ma'am.

25 **Q** What did that oath state?

1 **A** That I'll tell the full truth.

2 **Q** So help you God?

3 **A** Yes, ma'am.

4 **Q** And you believe in oaths?

5 **A** Yes, I do.

6 **Q** And you're going to tell the truth today?

7 **A** Absolutely.

8 **MR. BANNISTER:** Your Honor, I don't think
9 that's proper direct.

10 **THE COURT:** Well, in light of the
11 circumstances, your objection is overruled. But
12 let's move on from that.

13 **BY MS. BENTLEY:**

14 **Q** Mr. Brandeberry, state your full name please.

15 **A** Harold Novee Brandeberry.

16 **Q** How old are you?

17 **A** I'm 39.

18 **Q** Mr. Brandeberry, where do you currently reside?

19 **A** Turbeville Correctional Facility.

20 **Q** And where is that located?

21 **A** It's Turbeville, South Carolina.

22 **Q** Prior to residing in Turbeville, where did you
23 live?

24 **A** [REDACTED]

25 **Q** And where is that?

- 1 **A** Taylors, South Carolina.
- 2 **Q** Mr. Brandeberry, are you married?
- 3 **A** Uh, no longer. No, ma'am. I'm divorced.
- 4 **Q** When did you become divorced?
- 5 **A** June 7th of this year.
- 6 **Q** Who is your former spouse?
- 7 **A** Kelly Brandeberry.
- 8 **Q** And do you have children, Mr. Brandeberry?
- 9 **A** Yes, ma'am. We do.
- 10 **Q** How many children do you have?
- 11 **A** We have two children.
- 12 **Q** What are their names and ages please?
- 13 **A** Minor 1 Brandeberry is 17 and Minor 2 Brandeberry
- 14 is 14.
- 15 **Q** Mr. Brandeberry, why are you in Turbeville
- 16 Correctional Facility?
- 17 **A** I am currently serving a sentence for Criminal
- 18 Sexual Conduct with a Minor in the second degree.
- 19 **Q** Okay. And who is the victim in that case?
- 20 **A** Minor 1 Brandeberry.
- 21 **Q** And she is?
- 22 **A** My daughter.
- 23 **Q** Mr. Brandeberry, was I the prosecutor in that
- 24 case?
- 25 **A** No, ma'am.

1 Q Have we met before?

2 A Only on one occasion.

3 Q Where was that and when was that?

4 A That was at my divorce hearing with me and my
5 wife.

6 Q Who was present?

7 A My attorney.

8 Q And?

9 A And myself and a room full of inmates. One
10 other occasion on that same day, my attorney was not
11 present and I had said this was not a good time to talk
12 without him being there.

13 Q But we did speak with your attorney present?

14 A That's correct.

15 Q Did you or your attorney request something in
16 exchange for your testimony today?

17 A We did.

18 Q What did you request?

19 A If you would help me in any way, uh, if this
20 come to a trial.

21 Q What do you -- what did you mean by help you?

22 A Uh, reduction in a sentence.

23 Q How many -- what is your current sentence?

24 A It is 12 years.

25 Q Do you know the maximum possible penalty for

1 your sentence was?

2 A I believe it was 20 years.

3 Q Did I offer to reduce your sentence?

4 A Absolutely not.

5 Q Did I indicate that I might reduce your
6 sentence?

7 A No, ma'am.

8 Q Did we speak again until right now?

9 A We have not.

10 Q Mr. Brandeberry, I want to talk about your life
11 just a little bit. Where were you born?

12 A Dothan, Alabama.

13 Q What year?

14 A 1972.

15 Q How long did you live in Alabama?

16 A Only for a brief period of time. When I was
17 born in Alabama, my family was not residing there.

18 Q Okay. Where did you primarily grow up?

19 A In Ohio.

20 Q Where in Ohio?

21 A Finley, Ohio.

22 Q Did you go to school there?

23 A Part of the time, yes, ma'am.

24 Q Okay. Did you move from Finley at some point?

25 A Yes, ma'am. I did.

- 1 Q Where did you move?
- 2 A We moved back to Dothan, Alabama.
- 3 Q You said "we", who is we?
- 4 A Me, my mother and my sisters.
- 5 Q Mr. Brandeberry, what are the names of your
6 parents?
- 7 A Albert and Merrill Brandeberry.
- 8 Q That is your father seated at the defense
9 table?
- 10 A That's correct.
- 11 Q How long did you live in Alabama when you moved
12 back there with your mother and your sisters?
- 13 A For about three years.
- 14 Q Where did you go after that?
- 15 A I moved back to Ohio.
- 16 Q Who did you live with when you moved back to
17 Ohio?
- 18 A With my father.
- 19 Q When did you get married, Mr. Brandeberry?
- 20 A We were married in 1994, May the 3rd.
- 21 Q Did you continue to reside in Ohio?
- 22 A For a brief period of time, we did.
- 23 Q And then where did you go?
- 24 A We moved to Alabama again.
- 25 Q How long did you stay in Alabama that time?

1 A About a year.

2 Q When was your daughter born?

3 A She was born on [REDACTED]

4 Q At some point, Mr. Brandeberry, did you move --
5 did you and your family move to South Carolina?

6 A Yes, ma'am.

7 Q When was that?

8 A I believe it was in 2000.

9 Q Why did you move to South Carolina?

10 A For employment.

11 Q Where were you -- where did you become
12 employed?

13 A Bob Jones University.

14 Q What was your position there?

15 A I was a basement manager, which is an inventory
16 clerk.

17 Q Was your wife employed at that time?

18 A Yes, ma'am.

19 Q Doing what?

20 A She was a day care provider at the same, at the
21 same place.

22 Q Did your children -- where did your children
23 attend school?

24 A At Bob Jones University.

25 Q Mr. Brandeberry, after moving to South

1 Carolina, did your family keep in contact with any
2 relatives from Ohio?

3 A Yes, ma'am. We did.

4 Q Tell me who all you kept in contact with.

5 A We kept in contact with both of my in-laws and
6 my father and my mother and our siblings.

7 Q You say your mother. Is that Mr. Brandeberry's

8 ---

9 A Former wife.

10 Q --- former wife. Did your in-laws or your
11 father visit?

12 A Yes, they did.

13 Q Who visited?

14 A My father visited and my mother-in-law visited.

15 Q How often did your mother-in-law visit?

16 A I think maybe she visited on three occasions.
17 Two or three.

18 Q How often did your father visit?

19 A At least once a year up until about 2006 or
20 2007. 2007 was the last time he visited.

21 Q Okay. What time of year would he visit?

22 A Primarily in the summer.

23 Q Mr. Brandeberry, I want to take you to December
24 2006. How old did Minor 1 turn [REDACTED]? Can
25 you do the math?

1 **A** She would have been -- at that time, she would
2 have been 12.

3 **Q** She would have turned 12?

4 **A** She would have turned 12.

5 **Q** Without providing me -- this is a yes or no
6 answer, okay. Around Minor 1 12th birthday, did she
7 disclose sexual abuse to you?

8 **A** She did.

9 **Q** Without giving me any additional information,
10 yes or no, did she disclose the time frame that the abuse
11 had been going on?

12 **A** She did.

13 **Q** Tell me only the time frame.

14 **A** She had said it had occurred at least up to
15 three years prior to that.

16 **Q** Okay. Did she tell you when it began?

17 **A** An approximate time, yes.

18 **Q** Can you give me that approximate time?

19 **A** About three years prior to that.

20 **Q** Okay. Did she tell you only the place or
21 places that it occurred?

22 **A** She did.

23 **Q** Where did she tell you -- again, no identifying
24 information about the perpetrator, did she tell you --
25 where did she tell you that abuse occurred?

1 **A** It had taken place in our house.

2 **Q** Mr. Brandeberry, as a result of this disclosure
3 of sexual abuse, did you tell your wife?

4 **A** Yes, I did.

5 **Q** You told your wife about the abuse?

6 **A** Yes, I did.

7 **Q** Did you notify police?

8 **A** Initially, we only no -- I notified my pastor
9 to see what we needed to do first. We didn't know what
10 to do.

11 **Q** Did you do anything else as a result of your
12 daughter's disclosure?

13 **A** Yes, I did.

14 **Q** What did you do?

15 **A** I confronted the person that she had said.

16 **Q** Well, let me stop you right there.

17 **MS. BENTLEY:** May we approach, Your Honor?

18 **THE COURT:** Yes.

19 **(WHEREUPON, a bench conference is held off the**
20 **record.)**

21 **BY MS. BENTLEY:**

22 **Q** Mr. Brandeberry, aside from your wife and
23 pastor, who else did you call or talk to? And don't tell
24 us why you called or spoke to that person. Just tell us
25 who.

1 **A** A handful of people.

2 **Q** Name those people please.

3 **A** Okay. I had spoke to Tom Genevies, Mark Reed,
4 Gary Dooby and those are the ones that come to mind.

5 **Q** You said this happened -- tell me when in
6 December **Minor 1** made this disclosure to you.

7 **A** This was during Christmas break and prior to
8 **Minor 1**

9 **Q** Was it after your birthday or before? Do you
10 remember?

11 **A** I believe it was -- it may have been even the
12 day of her birthday.

13 **Q** Where were you when she told you?

14 **A** We were in the living room.

15 **Q** Do you remember where in the living room you
16 were?

17 **A** Yes. We were on the recliner watching a movie.

18 **Q** Tell me your reaction when **Minor 1** made this
19 disclosure to you.

20 **A** We were -- I was very struck by it, I mean,
21 broken. I was more concerned with her making sure that I
22 was hearing everything correctly.

23 **Q** Did you make any promises to **Minor 1** that day?

24 **A** I don't recall.

25 **Q** Did **Minor 1** and **Minor 2** receive cards or gifts

1 from any relatives in Ohio on a regular basis?

2 **A** Yes, ma'am.

3 **Q** From whom did they receive cards and gifts?

4 **A** From the grandparents.

5 **Q** All grandparents?

6 **A** Yes.

7 **Q** Did both Minor 1 and Minor 2 receive Christmas
8 cards from Albert Brandeberry in Christmas 2006?

9 **A** Yes.

10 **Q** What about the following year?

11 **A** I believe so. No, I take that back. I don't
12 think so. I can't recall precisely on that because, as I
13 recall, we had said no relations. So I don't believe we
14 did.

15 **Q** Mr. Brandeberry, who made decisions in your
16 household?

17 **A** Primarily, I did. But this decision was one
18 that both my wife and I agreed upon.

19 **Q** Without giving us any basis or explanation of
20 the decision, tell what decision you are referring to.

21 **A** The decision to, uh, make the confrontation and
22 handle -- handle it exactly the way we did.

23 **Q** Without giving me any explanation or further
24 information, who did you confront? Just a name.

25 **A** My father.

1 Q Albert Brandeberry?

2 A Correct.

3 MS. BENTLEY: One moment please. Beg the
4 Court's indulgence.

5 BY MS. BENTLEY:

6 Q When did you make this confrontation?

7 A Within the next day or two.

8 Q How did you communicate this confrontation?

9 A I --

10 Q What mode did you use?

11 A The telephone.

12 Q Mr. Brandeberry, when did you begin your sexual
13 relationship with your daughter?

14 A She was about 14, 15 years old.

15 Q Do you recall the month or season when you
16 begin that?

17 A The summer.

18 Q This confrontation with your father that you
19 spoke of, did you tell other people about that
20 confrontation?

21 A I did.

22 Q Who did you tell?

23 A My pastor was present during the time of the
24 confrontation, also my wife -- I told her -- and the
25 others that I mentioned to, Tom Genevies, Gary Dooby and

1 Mark Crink.

2 Q In the course of the investigation into your
3 criminal charges, Mr. Brandeberry, did you meet Dr. Carl
4 Bodtdorf?

5 A Yes, ma'am. I did.

6 Q Did you tell Dr. Bodtdorf about this
7 disclosure?

8 A I did.

9 Q When you pled guilty, Mr. Brandeberry, do you
10 remember the name of the judge?

11 A I do.

12 Q What was it?

13 A Judge Stilwell.

14 Q Did you tell Judge Stilwell about Minor 1
15 disclosure?

16 A I didn't have that communication with him.
17 Mine was open plea and that was all in the report from
18 Dr. Bodtdorf.

19 Q Okay. Did you or your attorney -- strike that
20 question, Your Honor.

21 Mr. Brandeberry, I have no further questions
22 for you. Please answer any questions Mr. Bannister may
23 have.

24 THE COURT: Mr. Bannister?

25 CROSS-EXAMINATION

1 BY MR. BANNISTER:

2 Q Just to be clear, you are stating today that
3 your abuse started during the summer when Minor 1 was 14
4 or 15 years old?

5 A That's correct.

6 Q Do you agree with me that Investigator Hubert
7 met with you on, let's see, September 21st, 2010 when she
8 came to your home?

9 A That's correct.

10 Q Do you agree with me within moments of her
11 arrival or shortly thereafter that you had confessed to
12 sexually abusing your daughter?

13 A I did.

14 Q And at that time, were you aware that Minor 1
15 had made allegations going back to when she was 10 years
16 old?

17 A Against me?

18 Q Yes.

19 A Uh, no, sir.

20 Q Did you recall or do you recall telling
21 Investigator Hubert that you disclosed to your wife
22 approximately a year prior that you had been sexually
23 molesting your daughter?

24 A Yes, sir.

25 Q Would that take us approximately back to

1 September of 2009?

2 A That would be correct.

3 Q Do you agree with me that the sexual abuse with
4 Minor 1 had been occurring prior to September of '09?

5 A Just prior.

6 Q Are you aware that Minor 1 has accused or
7 alleged that you started abusing her very shortly after
8 her disclosure of the other perpetrator?

9 A Could you ask that question again?

10 Q Yes. Are you aware that Minor 1 has asserted
11 that you began sexually abusing her very shortly after
12 she made a disclosure to you about the sexual abuse?

13 A I understand that correctly.

14 Q Do you disagree with that?

15 A I disagree with the time frame.

16 Q So you still assert that the only time or the
17 only ages in which you sexually abused Minor 1 was when
18 she was 14 and 15?

19 A You know, what I did was completely wrong. I
20 am guilty of what I did. I wouldn't question what she
21 had to say.

22 Q So if she accused you of having abused her
23 since she was 10 or 12, you would have -- you would take
24 no issue with that?

25 A I would, because that didn't happen at that

1 time.

2 Q Criminal Sexual Conduct second degree, you
3 would agree with me, has as part of its elements that the
4 child must be 12 or older, is that fair?

5 A I understand that to be true.

6 Q You have only pled to Criminal Sexual Conduct
7 as it relates to Minor 1 from the time she was 12 or
8 older, correct?

9 A Correct.

10 Q Criminal Sexual Conduct first degree, you are
11 aware, is going to be 11 and under, correct?

12 A That's correct.

13 Q And so that would create a second crime
14 potentially for you, would it not?

15 A If it was true.

16 Q You agree that when you first started sexually
17 abuse Minor 1 that you described it as a pony ride?

18 A That's right.

19 Q When you went to Kelly to disclose to her that
20 you had been abusing Minor 1 uh, was Minor 1 in the room
21 with you and your wife?

22 A No.

23 Q She was not?

24 A No.

25 Q Are you aware that Minor 1 apologized to your

1 wife?

2 **A** Yes.

3 **Q** Was that at your direction?

4 **A** No, ma'am. No, sir.

5 **Q** On occasions, or at least on one occasion in
6 particular -- well, I'm going to ask it this way. Do you
7 deny that you told Minor 1 that you thought that maybe on
8 some of the occasions you sexually abused her that she
9 wanted to?

10 **A** No. I am the one -- it doesn't matter what she
11 said. I was the one that was wrong for this, not her.

12 **Q** Yes, but did you tell her that you believed she
13 wanted to?

14 **A** I don't recall that conversation.

15 **Q** Do you deny it?

16 **A** I'm not going to deny anything like that so I
17 don't recall it.

18 **Q** When you met with your wife to talk about the
19 abuse, did you use words like repentance and
20 accountability?

21 **A** I did.

22 **Q** Did you tell her that you had an accountability
23 partner, somebody who was going to help you?

24 **A** Yes.

25 **Q** Did you, in fact?

1 **A** Yes.

2 **Q** Who was that?

3 **A** Gary Dooby. Glen Pope was another one and my
4 pastor.

5 **Q** These were individuals you had also divulged
6 your sexual abuse to Minor 1 to?

7 **A** No, sir.

8 **Q** Did you also wanted Kelly to help hold you
9 accountable?

10 **A** I did.

11 **Q** You wanted her to help keep you out from under
12 the blanket with Minor 1 correct?

13 **A** That's correct.

14 **Q** And it would be fair to say that on a number of
15 occasions you were, in fact, under the blanket with
16 Minor 1 after that request to Kelly, correct?

17 **A** It would be.

18 **Q** And that -- did she ever confront you about
19 that?

20 **A** That was never when she was in the presence.

21 **Q** I see. So she wasn't in the camper on the
22 night that she caught y'all?

23 **A** She was in the camper.

24 **Q** Uh-huh.

25 **A** But we weren't together when she was in the

1 presence. She went to bed prior to that. We were
2 watching television.

3 Q Your wife's response, would you character --
4 when you told her about that, would you characterize her
5 response as upset, mad, disappointing, accepting,
6 trusting or what. How would you characterize that?

7 A She did not confront me.

8 Q No, no. When you told her about your abuse of
9 Kelly?

10 A Very heartbroken.

11 Q Part of your conversation with her, I'm
12 assuming, was you ultimately convinced her that this was
13 a problem you would be able to handle, correct?

14 A As a family, we would be able to handle this
15 with help, yes.

16 Q And that you would be able to resist the urges
17 that have led you to that point, correct?

18 A Yes, sir.

19 Q Would you agree with me that you were unable to
20 resist those urges ultimately?

21 A I was.

22 Q Okay. Do you agree that as a result of your
23 conversation that you convinced Kelly that she didn't
24 need to go outside of the family for help? In other
25 words, you were going to handle it, so everything was

1 going to be okay.

2 **A** We would handle it together.

3 **Q** Let me ask it this way, Kelly did not go to law
4 enforcement about the issue, did she?

5 **A** Not at that time.

6 **Q** She did not go to seek counseling for Minor 1
7 at that time?

8 **A** No, sir.

9 **Q** She didn't go to the Department of Social
10 Services, did she?

11 **A** Not that I'm aware of.

12 **Q** She didn't take the children and leave
13 immediately, did she?

14 **A** No, sir.

15 **Q** She didn't even move out, did she?

16 **A** No, sir.

17 **Q** Were there any help for Kelly after your
18 disclosure -- I'm sorry -- any help for Minor 1 after
19 your disclosure of abuse prior to your arrest?

20 **A** All of that we had worked with our pastor
21 about.

22 **Q** Okay. And so still though, the abuse was not
23 being disclosed to the extent to which you were actually
24 doing anything?

25 **A** That's correct.

1 Q Do you deny that you physically abused both
2 Minor 2 and Minor 1

3 A I did not physically abuse either one.

4 Q You didn't use excessive corporal punishment on
5 either one of them?

6 A No, sir.

7 Q Do you deny that you threatened physical abuse
8 to Kelly?

9 A No, I did not.

10 Q Never threw a shoe at her?

11 A Not that I recall.

12 Q Do you deny that you threw a shoe at her?

13 A I would, because I don't recall ever doing such
14 a thing.

15 Q Okay. Do you, uh, -- do you deny ever spanking
16 Minor 1 for having disclosed to her schoolmates that you
17 had thrown a shoe at Kelly?

18 A I recall that but I did not spank her for that.

19 Q I see.

20 A The punishment she was spanked for was for
21 lying at the time.

22 Q I see. So Minor 1 lied about you throwing a
23 shoe at your wife?

24 A You know, I don't recall it being about the
25 shoe. But you said about -- you --

1 Q All right. You believe she lied and that's why
2 you spank her?

3 A That's correct.

4 Q What did she lie about?

5 A She told others that we were abusing her as a
6 child. My wife and myself were abusing her.

7 Q I see. And that was a lie?

8 A That was a lie.

9 Q Absolutely certain that you had conversations
10 with your wife, Kelly, about the allegations from the
11 first perpetrator?

12 A Correct.

13 Q Absolutely certain you had a pastor, your
14 friend, everybody was there when you had both
15 confrontations?

16 A Everyone was not there on the confrontation,
17 just my pastor and myself.

18 Q Okay. I thought you said Kelly was there also.

19 A No, I told her.

20 Q I see.

21 A And then my pastor and I made the phone call.

22 Q So no question that the fact that Minor 1 had
23 alleged abuse by somebody other than you, that
24 information was available to Kelly from '06 when you were
25 talking about it forward? You understand my question?

1 **A** Say it again please.

2 **Q** Let me put it this way. You didn't keep it a
3 secret as to Minor 1 initial revelation about sexual
4 abuse, did you?

5 **A** No.

6 **Q** Especially not from Kelly?

7 **A** That's correct.

8 **Q** Uh-huh. Do you deny that you moved to South
9 Carolina to avoid issues that were coming up in Ohio
10 about your physical abuse of Minor 1

11 **A** We didn't move for that reason.

12 **Q** Have you been made aware of what Minor 1
13 allegations are in this case against Albert Brandeberry?

14 **A** I have.

15 **Q** Have you had a chance to see the reports, the
16 statements that -- or the allegations from Minor 1
17 against Albert Brandeberry?

18 **A** No, I have not.

19 **Q** Have you discussed what those allegations are
20 and what she has alleged?

21 **A** I only know of these charges.

22 **Q** I see. Who is Jacob in your family?

23 **A** Jacob would be my nephew.

24 **Q** And Kelly's mom, what's her name?

25 **A** Sandy Smith.

1 **Q** And did they both, on occasions, come with your
2 father to visit at the home in Greenville?

3 **A** They came each on one occasion, as I recall,
4 with him.

5 **MR. BANNISTER:** Your Honor, I don't think I
6 have any further questions.

7 **THE COURT:** All right. Any redirect?

8 **MS. BENTLEY:** No redirect, Your Honor.

9 **THE COURT:** All right then. Sir, you can
10 step down.

11 Ladies and Gentlemen, two days in a row we're
12 going to break about 12 o'clock for lunch. I'm
13 going to ask you to be back in your jury room about
14 1:15 please. So be back in your jury room about
15 1:15. Thank you.

16 **(WHEREUPON, the jury exits at approximately**
17 **12:03 p.m.)**

18 **THE COURT:** Uh, before we break, Mr.
19 Brandeberry, over -- you've got an excellent
20 attorney and I know you probably discussed this with
21 him at great length. However, I do want to tell you
22 that it looks like some time over the lunch hour, we
23 might -- or after the lunch hour, we might come to
24 the point in the trial where I need to talk to you
25 about whether or not you intend to testify in the

1 trial of this case. I do not want that to be a
2 surprise to you that it will be coming up that
3 quickly. And just so that I said it, if you have
4 any further discussions you need to have with your
5 attorney about this matter, then I want you to do
6 that over the lunch hour. Do you understand?

7 **MR. BRANDEBERRY:** Yes, ma'am.

8 **THE COURT:** All right. Thank you.
9 All right. We'll be in recess until 1:15.

10 **MR. BANNISTER:** Thank you, Judge.

11 (WHEREUPON, a lunch recess is taken.)

12 (WHEREUPON, the jury enters at approximately
13 1:32 p.m.)

14 **THE COURT:** All right, Ladies and Gentlemen.
15 I hope you had a good lunch.

16 State, you ready to call your next witness?

17 **MS. BENTLEY:** Your Honor, the State calls
18 Shauna Galloway-Williams.

19 **THE CLERK:** Please place your left hand on
20 the Bible and raise your right hand.

21 **SHAUNA GALLOWAY-WILLIAMS**
22 having first been sworn, testifies as follows:

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

25 **THE WITNESS:** Shauna Galloway-Williams.

DIRECT EXAMINATION

BY MS. BENTLEY:

Q Mrs. Galloway-Williams, where are you currently employed?

A I'm the Executive Director of the Julie Valentine Center.

Q How long have you been the Executive Director?

A I been the Executive Director for three years.

Q And what position did you hold prior to becoming an Executive Director?

A I was the Clinical Director for the center.

Q What position did you hold -- what other positions have you held at the Julie Valentine Center?

A Uh, prior to serving as Clinical Director, I provided forensic interviews for the center either as a contract employee through my private practice or as an employee of the Department of Mental Health, the Greenville Mental Health Center.

Q What is the Julie Valentine Center?

A The Julie Valentine Center is a child abuse and sexual assault recovery center. We provide services related -- anything related to child abuse and sexual assault. So that includes education and prevention services, investigative services, forensic interviews, medical exams, individual and group therapy for anyone

1 who's been impacted by child abuse and/or sexual assault.

2 Q Does the Julie Valentine Center hold any
3 accreditations or licenses?

4 A Yes, we are a nationally accredited Children's
5 Advocacy Center through the National Children's Alliance.

6 Q And where does the Julie Valentine Center get
7 its funding?

8 A We are funded -- about a third of our funding
9 comes from the Greenville United Way; another third of
10 our funding comes from federal funding sources that
11 include the Violence against Woman Act, the Victims of
12 Crime Act, National Children's Alliance, DHEC; and then
13 the other third of our funding comes from fund-raisers --
14 we have two fund-raisers a year -- and then private
15 donations.

16 Q What types of information does the Julie
17 Valentine Center track in regards to patients that are
18 seen there?

19 A We track information, demographic information,
20 the names of those that we serve, their ages, gender,
21 ethnicity, if we can get that information, uh, addresses,
22 zip codes. That's something that's required.

23 Q Do you keep records of disclosures?

24 A Uh, we do keep records of disclosures and
25 information that our clients share with us.

1 **Q** I want to talk a little bit about your training
2 and experience. What did you do prior to joining the
3 Julie Valentine Center?

4 **A** I worked as a counselor in the Child and
5 Adolescent Unit of the Greenville Mental Health Center.

6 **Q** Do you have any degrees or licenses?

7 **A** I do. I have a Bachelors degree in Psychology,
8 a Masters degree in Counseling. And I'm licensed as a
9 Licensed Professional Counselor in the state of South
10 Carolina.

11 **Q** How many years total have you worked with child
12 victims of sexual assault?

13 **A** I worked specifically with children and
14 adolescents for about 11 years. And most of my
15 experience has been with children who have some history
16 of abuse or neglect or some combination of that.

17 **Q** Are you a member of any professional
18 organizations or affiliations?

19 **A** Yes. I'm currently the Vice President of the
20 Board of Directors for the South Carolina Network of
21 Children's Advocacy Centers. And prior to serving as
22 Vice President, I was Secretary for that organization. I
23 also serve on the Board of the South Carolina
24 Professional Society on the Abuse of Children.

25 **Q** Do you subscribe to any trade publications?

1 **A** Along with the Board membership with the South
2 Carolina Professional Society on the Abuse of Children,
3 there is a publication that is distributed called the
4 Journal of Child Maltreatment.

5 **Q** And do you read other journal articles on a
6 regular basis?

7 **A** I do.

8 **Q** Are you required to attend continuing education
9 classes or seminars in order to keep up your licensure?

10 **A** Yes.

11 **Q** Please tell me what kind of classes you've
12 taken in the past few years.

13 **A** Uh, in the past few years, most of my, uh,
14 training has been specifically related to child sexual
15 abuse and conducting forensic interviews or some
16 combination of that. I've had somewhere around 145, uh,
17 actual skills based training hours specifically related
18 to forensic interviewing. In addition to that, I've
19 attended other trainings related to the investigation,
20 treatment and working with children and families who have
21 been impacted by abuse.

22 **Q** What exactly is forensic interviewing?

23 **A** Forensic interviews are investigative
24 interviews that are conducted with children. They are
25 conducted by trained professionals. At our center, you

1 have to be a licensed professional counselor or hold a
2 license in social work or some other related field and
3 have a Masters degree and have completed one of the
4 nationally recognized trainings and forensic
5 interviewing. The purpose of the interview is to gather
6 a child's -- gather information from a child when there
7 has been some sort of allegation of abuse or neglect and
8 to do that in a way that doesn't lead or suggest a child.

9 Q Tell me what kind of information you might
10 learn in a seminar or class on forensic interviewing. Do
11 you just talk about the interview?

12 A No. In our training, in forensic interview
13 training, we often talk about the dynamics of child
14 sexual abuse, child development. We talk about how
15 children share information. Uh, we talk about different
16 types of questioning and how to elicit information
17 without suggesting children. We talk about symptoms of
18 abuse, kind of what to expect before, during and after an
19 interview and how to work with families around those
20 issues as well.

21 Q You previously testified in court proceedings
22 about child sexual abuse, trauma and treatment symptoms?

23 A I have.

24 Q These matters of child sexual abuse that you've
25 testified about, have they been published in professional

1 journals, trade publications and the like?

2 A Yes.

3 Q Are these principles or matters subject to peer
4 review?

5 A Yes.

6 Q Have long have people been researching child
7 sexual abuse and its related issues?

8 A Most of the research that I rely on or that we
9 rely on probably over the past 20 or 30 years.

10 Q Okay. And are these principles that all that
11 information is based on, are they recognized and accepted
12 by all members of the child sexual abuse field?

13 A Yes.

14 Q Are the principles that you based your
15 testimony on reasonably relied upon by other
16 professionals in the field of child sexual abuse?

17 A Yes.

18 Q Have you done any training and/or personally
19 taught any seminars or courses?

20 A I have. Most recently, I have presented at the
21 National Children Symposium. There, I presented -- I'm
22 working with non-offending caregivers. That would be
23 caregivers of children who have been sexually abused. I
24 also presented at the Children's Law Conference, the
25 South Carolina Children's Law Conference on expert

1 witness testimony related to trial.

2 Q Over your years at the Julie Valentine Center,
3 how many children who allege sexual abuse do you
4 currently see in an average year?

5 A Currently, as an Executive Director, I can't
6 see as many children as I used to for forensic
7 interviews. Currently, I schedule one interview a week.
8 I also supervise the forensic interviewers. We have two
9 of those at our center. I also supervise the clinical
10 staff and provide therapy.

11 Q Prior to becoming Executive Director, how many
12 forensic interviews did you conduct per year on average?

13 A On average, I would conduct somewhere around
14 100 interviews per year.

15 Q How many children do the Julie Valentine Center
16 help or counsel annually?

17 A Last year, we served more than 600 children.
18 This year, already, we've seen more than 800 clients.
19 The vast majority of them have been children.

20 Q Have you been qualified previously as an expert
21 in child sexual abuse and treatment?

22 A I have.

23 Q How many times and in what courts?

24 A Uh, 15 times and in General Sessions in
25 Greenville and Pickens county.

1 **MS. BENTLEY:** Your Honor, at this time, the
2 State seeks to qualify Mrs. Galloway-Williams as an
3 expert in child sexual abuse and treatment and
4 request a finding that the training and knowledge
5 are reliable pursuant to State versus Tapp.

6 **THE COURT:** All right. Mr. Bannister?

7 **MR. BANNISTER:** Your Honor, subject to my
8 previous motion.

9 **THE COURT:** All right. All right. I will
10 find that she's an expert in the area of child
11 sexual abuse and treatment. Ladies and Gentlemen,
12 normally, a person can not give opinion testimony.
13 Normally, when a person testifies, he or she must
14 testify as to something they seen, heard, smelled,
15 something like that. However, there is an exception
16 when someone is qualified because of education or
17 experience they are permitted to give their opinion
18 in certain areas if the Court qualifies them that
19 way. This witness will be qualified in the area of
20 child sexual abuse and treatment to give opinion
21 testimony in that area. That does not mean that you
22 must accept the opinion but it is evidence for you
23 to use in any way you see fit. Yes, ma'am.

24 **BY MS. BENTLEY:**

25 **Q** Ms. Galloway-Williams, do you know the victim

1 in this case, Minor 1 Brandeberry?

2 A No.

3 Q Have you ever met Minor 1 Brandeberry?

4 A I met her in the elevator today.

5 Q Did you speak to her regarding this case in the
6 elevator?

7 A No, I did not.

8 Q Had you ever spoken to her prior to that chance
9 encounter in the elevator?

10 A No.

11 Q Have you reviewed any documents, police reports
12 or testimony related to the case that we're in today?

13 A No.

14 Q Have you ever met any member of Minor 1
15 family?

16 A No.

17 Q So you have no personal knowledge regarding the
18 State versus Albert Brandeberry?

19 A No.

20 Q Can you tell the jury what you understand your
21 purpose in testifying is?

22 A My purpose in testifying is to share
23 information about child sexual abuse and the dynamics
24 associated with that, being that it is a subject that,
25 uh, is not really of common knowledge.

1 **Q** Ms. Galloway-Williams, among child abuse
2 professionals, what does the term "delayed disclosure"
3 mean?

4 **A** Delayed disclosure refers to children not
5 telling about the abuse right away. Most times, children
6 do not tell right away. That delay may be a day, a week,
7 a year, months. That delay can be caused for many
8 reasons. There are many reasons why children don't tell
9 right away.

10 **Q** In your experience, how common is delayed
11 disclosure in child sexual abuse cases?

12 **A** In my experience, it's very common. Most
13 children that I have worked with have not told right
14 away. Again, the time frames vary from days to months to
15 years. And some may never have told had someone not
16 asked them about it.

17 **Q** Based on your training and experience, the
18 research you conducted, can you give us some examples of
19 why or what prevents a child from disclosing.

20 **A** One of the main reasons why children don't
21 disclose right away is because of fear. They fear that
22 something will happen to them, something will happen to
23 someone that they know. They may fear that something may
24 happen to the person that has committed this act or a
25 family member. They may fear that they are not going to

1 be believed. Children often feel like adults question
2 everything that they say. So they may not, uh, feel that
3 what they have to say will really be taken as truth.
4 Children also may not have the words to really describe
5 what's happened to them. A lot of times, children are
6 exposed to something that they know is not right. It's
7 uncomfortable. They don't like it. But they may not
8 have the actual words to be able to say what it is
9 exactly that's happened to them.

10 Q What is meant by the term partial or piecemeal
11 disclosure?

12 A Well, disclosure, we really consider it a
13 process. We don't expect that when a child first tells
14 someone what's happened to them that they'll be able to
15 tell every single detail of what it is that happened. We
16 expect that children are going to have a partial
17 disclosure or sort of a piecemeal disclosure.

18 Children also don't know what is relevant
19 information to share about what has happened to them.
20 What their parents want to know about what happened may
21 be very different from what a law enforcement
22 investigator or, uh, a DSS worker or someone else might
23 need to know or want to know about it. So a child may
24 disclose bits and pieces of it over time.

25 Q Do children necessarily reveal events in

1 chronological order?

2 **A** Uh, not necessarily. Children, dependent on
3 how old they and their developmental level, uh, a lot of
4 children just don't really understand the concept of
5 time. It's really abstract concept. So children may not
6 be able to tell the specific date, time, month, year that
7 something happened. They may be able to tell. Usually
8 can tell you that something happened before, during and
9 after. We would expect that they can connect it to some
10 sort of relevant event in their life. You know, what
11 school they were going to when it happened, which house
12 they were living in. Whether it happened near a holiday,
13 their birthday, how old they were, who their teacher was.
14 They may not be able to tell you all those very specific
15 times and dates when things happened.

16 **Q** How does knowledge of sexuality come into play
17 with disclosure?

18 **A** As I stated earlier, a lot of times children,
19 younger children who had been abused may not have sexual
20 language. They may not have the words to describe what
21 it is that's happened to them. As children become more
22 informed and educated about sexuality, they may be better
23 able to understand what it is that's happened to them and
24 can put those words to that. Sometimes when children
25 approach puberty, they begin to have a clearer

1 understanding of what's happened to them. They may be
2 better able to explain what's happened.

3 Q I want to talk to you a little bit about family
4 dynamics. How would or how could a perpetrator being a
5 family member affect disclosure?

6 A A lot of times, children are abused by someone
7 that is known, loved and trusted by them. That may be a
8 family member. That often makes it even harder for a
9 child to disclose because often, they have -- there are
10 also usually positive relationship characteristics aside
11 from the abuse. And that may keep a child from telling.
12 They may really enjoy certain parts of that relationship
13 with that person and just not like the abuse.

14 In the same way that we have relationships with
15 family and friends and there are things about them that
16 they do that we don't like, we still tolerate that and
17 still carry that relationship on with them, the same may
18 happen with a child.

19 A child may also fear the consequences of
20 disclosing to themselves or to the family if it's a
21 family member. In particular, if it's someone that lives
22 in the household, how is that going to impact the rest of
23 our family if this person has to leave, if this is
24 somebody else that other members of the family are close
25 to.

1 Q How would a perpetrator not being in the home
2 possibly affect disclosure?

3 A A couple of things could happen with the
4 proximity that the child has to the perpetrator. That
5 person being away from the home may allow the child to
6 feel safer to disclose. If that person's gone and the
7 fear that they have that that person is going to do
8 something or that there is some consequence may allow the
9 child to feel safer about disclosing. Also if the child,
10 uh, -- if that person is gone and then comes back into
11 their lives, that may prompt a child to disclose for fear
12 that they're going to be around this person again and
13 that safety would not be there anymore.

14 Q Finally, Mrs. Galloway-Williams, what may
15 prompt a child to finally disclose abuse after a period
16 of time?

17 A Uh, there are a number of things that could
18 prompt a child to disclose. One, just going back to what
19 we were just talking about might be if a child is, uh, --
20 if there's an upcoming visit with this person that has
21 abused them and they don't want to be around that person.
22 Uh, sometimes what prompts a child to disclose is just
23 somebody asking. If there are some behavioral changes in
24 a child, a child who is normally very social and outgoing
25 and, all of a sudden, they are isolating and someone

1 asked what happened, has something happened to you,
2 sometimes it just takes someone asking that question and
3 recognizing that there is a change in behavior or mood or
4 something else.

5 Q I have no further questions. Please answer any
6 questions Mr. Bannister may have.

7 THE COURT: Mr. Bannister?

8 MR. BANNISTER: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. BANNISTER:

11 Q Mrs. Galloway-Williams, let me ask you a couple
12 of quick questions about the, uh, Julie Valentine Center.
13 Is it a fair statement that when forensic interviews are
14 conducted at the Julie Valentine Center, at least most
15 recently, that, uh, y'all would try to videotape those
16 interviews at least up to age 12? Have I got that right?

17 A We videotape every interview that we conduct at
18 the center. We have been doing that since we've been
19 doing forensic interviews.

20 Q All right. Do you know Mary Fran Crosswell?

21 A I do.

22 Q Okay. And, uh, are you familiar with -- let me
23 ask you this. Is she part of the Julie Valentine Center?

24 A She works for the Julie Valentine Center but
25 she provides forensic medical exams at the Julie

1 Valentine Center.

2 Q All right. Are you familiar with her methods
3 and how she works with the children?

4 A Yes.

5 Q And do you trust her reports as being accurate
6 whatever findings she makes?

7 A Yes, I trust her opinions and her reports.

8 Q Okay. Thank you. All right. So let me go
9 first to delayed disclosure. Delayed disclosure, unless
10 a child could say it's happening to me right now, no
11 matter how long they wait, that's some period of delay.
12 But is there a period you consider to be sort of an
13 immediate disclosure?

14 A Yeah. If a child tells right away and if the
15 child tells within a 72-hour period of time. During that
16 time, a child would still be able to -- a child or any
17 victim of sexual assault would be able to go and have an
18 exam at the emergency room or something to that effect.
19 So that initial window of time.

20 Q I'm not saying that there aren't children who
21 don't disclose after 72 hours. But in your experience,
22 is it more often than not that a lot of children do
23 disclose within that 72-hour period?

24 A In my experience, most of the children that I
25 have interviewed or worked with and also in the

1 literature, many of them do not disclose right away
2 within -- right after something's happened and often not
3 right after the first incident, particularly children who
4 may have more than one abuse incident.

5 Q I'm sorry. I thought you -- you might have
6 told me a little earlier when we were having our
7 interview that children usually tell some time within --
8 a significant portion of children tell within 72 hours.
9 Did I just get that wrong?

10 A Yeah, you got that wrong.

11 Q That's okay. It won't be the first time I'm
12 sure.

13 A Sorry.

14 Q And you said the children, one of the reasons
15 for the delayed reporting is the fear of something. It
16 could be a number of different things.

17 A Yes.

18 Q But in certain instances, they are afraid of
19 the perpetrator, correct?

20 A They could be.

21 Q They could be. And that if -- sometimes with
22 delayed reporting, it's because it takes some time for
23 the perpetrator to be away from the child so that they'll
24 feel safe disclosing at that point?

25 A That could happen, yes.

1 Q Yes. And I think you also said that sometimes
2 the child will disclose because they perceive that the
3 perpetrator is getting ready to come back into their life
4 and they don't want to have to deal with the
5 uncomfortable touching and other things.

6 A Yes, and the possibility of that happening.

7 Q All right. And that oftentimes, once the
8 threat, whatever it is, or the fear is removed, that
9 opens up the opportunity for a child to disclose,
10 correct?

11 A It can for some children.

12 Q And sometimes there are accidental disclosures?

13 A Yes.

14 Q And those can occur where the child's not
15 making an intentional effort to disclose?

16 A Yes.

17 Q And those happened with their peers?

18 A Yes.

19 Q And with teachers?

20 A They can happen with a peer, a teacher, a
21 family member. An accidental disclosure would be one of
22 those disclosures where the child is not purposefully
23 making an effort to tell someone what has happened.

24 Q All right. I think, uh, you had -- talking
25 about your experience and training and how y'all deal

1 with, uh, -- sorry. That's a bad question. When you
2 were going over some of the things that you relied on in
3 reaching your conclusions, you were saying that part of
4 that is your training, the peer-reviewed articles, the
5 journals that you take a look at, correct?

6 A Yes.

7 Q Let me let you take a look at the article I
8 think you are familiar with. Tell me if you're not. Let
9 me let you take a look at that and tell me if you are
10 familiar with that article.

11 A Yes.

12 Q That one is called "Why Children Tell - Model
13 of Children's Disclosure of Sexual Abuse", correct?

14 A Yes.

15 Q I'm going to summarize a little bit here. Give
16 me a little bit of leeway.

17 A Okay.

18 Q In this article, it's examining actual patients
19 or children and taking that group and trying to extract
20 from that some information to be generally helpful on why
21 children tell when they do?

22 A Yes.

23 Q Is that a fair statement?

24 A Uh-huh.

25 Q All right. If you will, just go to page 533.

1 Let's see. You stop me if I get this wrong. On -- there
2 is a table that is in the article that is talking about
3 the times from the last assault to the disclosure. That
4 is, whoever the victim was, that is the times when they
5 disclosed.

6 A Uh-huh.

7 Q And they are trying to break it down in the
8 various hours, weeks and months between when the last
9 abuse occurred and when the, uh, disclosure occurred. So
10 in the table, tell me if I'm wrong, we've got one, two,
11 three, four, five. We've got basically six categories in
12 that table.

13 A Uh-huh.

14 Q One of them was in less than 48 hours of the
15 first one. That, the conclusion was 42 percent of the
16 children had revealed or disclosed less than 48 hours.

17 A In their sample, yes.

18 Q Yes, in their sample. And the next is 48 hours
19 to two weeks, 17 percent. Tell me if I get this wrong.
20 The next is two weeks to one month, that was five
21 percent. The next is one month to six months. One month
22 to six months was 14 percent. Then there was greater
23 than six months. That was 15 percent. Then there was
24 unknown, which made up eight percent. I got that right?

25 A Uh-huh.

1 Q And then one of the conclusions that they
2 reached, and again this is on 533. This is right when it
3 says time to disclosure, about the one, two, three, maybe
4 the fourth sentence down if you will permit me. One of
5 the conclusions was that age was significantly associated
6 with time to disclosure with older compared to younger
7 children taking longer to disclose. That was one of the
8 conclusions, right?

9 A Yes, that's stated there.

10 Q And then on page 534, the very last -- very
11 last sentence and it doesn't end on 534, it carries over.
12 Sort of the same thing. Age and fear of negative
13 consequences to others were significantly related such
14 that older children perceived more negative consequences
15 to disclosure than did younger children, right?

16 A Yes.

17 Q The type of abuse was also directly related to
18 the children's fears of negative consequences, victims of
19 interfamilial abuse fear greater negative consequences to
20 others compared to the victims of extrafamilial abuse.
21 And then finally, age was significantly related to
22 perceived responsibility. It says contrary to
23 prediction, older, rather than younger children felt a
24 greater responsibility for the abuse, right?

25 A Yes.

1 Q And I guess in terms of delayed disclosures,
2 which the emphasis was, that was a little bit surprising
3 that older children tend to be less likely to disclose
4 than younger children.

5 A You are asking if I --

6 Q I'm just asking if that was, you know, while
7 this article is being written, is that a conclusion that
8 you found surprising or not?

9 A Not necessarily.

10 Q Okay.

11 A The first statement in the article is children
12 who have been sexually abused often do not tell.

13 Q All right. Let me ask you about -- this
14 article, you may -- let me get -- you brought a, uh, --
15 oh, no, I don't want to get that. Sorry. Let's see.
16 Let me hand you this article right quick. What I really
17 want to do is -- no, no. It's actually a different one.
18 I know I'm handing you this for the first time today. I
19 want to ask a couple of quick questions about the
20 article. If the article -- an article that is submitted
21 for peer review, would you agree with me it's another
22 article that other researchers, scientists, people in
23 that field get a chance to look at, talk about and then
24 if everybody agrees that it's okay for publication, then
25 it goes to publication. Is that --

1 A That's the purpose of peer review.

2 Q Exactly.

3 A Yeah.

4 Q And, uh, would you consider the American
5 Academy of Child Adolescent Psychiatry to be one of those
6 kind of journals that you look at, can use, research,
7 rely upon as an expert?

8 A Right. It is.

9 Q Great. All right. I want to just quickly --
10 the title of this article is False Statements and then
11 Differential Diagnoses of Abuse Allegation. Differential
12 diagnosis. When you are treating children, a
13 differential diagnosis, would I be correct in saying that
14 that's a term that's used to figure out what the problem
15 is. And by doing that, you are eliminating other
16 possibilities until you kind of get down to a final
17 conclusion to say, all right, since we have eliminated
18 these various possibilities and this is all that's left,
19 that is our appropriate diagnosis. Have I captured the
20 essence of that? Tell me if I'm wrong.

21 A Of what differential diagnosis means?

22 Q Differential -- yes.

23 A That's what that means.

24 Q There are a couple of terms in this paper, uh,
25 -- and we'll jump around just a little bit. If you can,

1 go over to page 905. All right. In talking about
2 differential diagnoses, this article refers to a term
3 called "parental indoctrination". Are you familiar with
4 that term?

5 A I am not familiar with the term "parental
6 indoctrination".

7 Q Okay. Fair enough.

8 A That's not a term that I use.

9 Q All right. Are you familiar with the term
10 "interviewer's suggestion"?

11 A Yes.

12 Q And let's see. If you're going over to page
13 905 -- sorry. 908 at number 17, are you familiar with
14 the term "perpetrator substitution"?

15 A Not familiar with that term. Let me see.

16 Q All right. Fair enough. All right. Then, if
17 I could, let me do this. Your journal -- what would you
18 call this?

19 A A training manual that has a couple of articles
20 in it.

21 Q All right. Training manual. And that is a
22 training manual for a course that you actually took,
23 correct?

24 A Yes.

25 Q And that course, you mentioned earlier that one

1 of the things you'd like to watch out for as a forensic
2 interviewer is suggestibility, correct?

3 A Yes.

4 Q And that is at least as part of that training
5 in the, uh, training manual you got, there was some
6 issues in there talking about suggestibility and how to
7 avoid that as a forensic interviewer. If you don't know,
8 go to page 65. Forgive me. I'm talking about some
9 factors that affect young children and how suggestibility
10 can come involved in their allegations of sexual abuse.
11 One of the factors that says that affects young children
12 that makes them particularly vulnerable to suggestive
13 interviewing is that they are particularly differential
14 to adult belief. Right? That's what it's talking about.

15 A It's listed there.

16 Q And so that's one of the things as a forensic
17 interviewer that y'all are trained to avoid?

18 A Yes.

19 Q You want to be sure whatever you get is an
20 accurate representation of what really happened.

21 A Yes. We're very careful not to introduce our
22 own beliefs into the interview.

23 Q And if you will go to page 66, and specifically
24 one of the dangers -- I'm going to read a little bit.
25 Danger that suggested information can be incorporated

1 into the child's memory is raised if the child can not
2 distinguish between memory of the original event and the
3 memory of the suggested question. So if a forensic
4 interview is not conducted correctly, the suggested, I
5 guess in this case, sexual abuse, can actually become the
6 child's memory or the child believes that that's their
7 memory. That's what you're trying to avoid.

8 **A** You are trying to avoid introducing information
9 to the child or suggesting anything to the child in that
10 interview that is not their own.

11 **Q** Okay.

12 **A** What that means is -- we're very careful about
13 -- is the basis for why we ask questions the way we do or
14 don't ask questions in the interview. We wouldn't ask
15 question that actually identified the allegation in the
16 interview had the child not brought that information out
17 themselves. That's really what that sort of speaks to.

18 **Q** You don't want it to get incorporated into the
19 child's recitation of that being their memory going
20 forward. Is that a fair way to put it?

21 **A** Right. It's not our role to -- it's our role
22 to allow the child to share their information and to
23 elicit those memories, but not to create those or
24 generate those ourselves.

25 **Q** Okay. And then if you'll go to page 93, uh, in

1 the right-hand column, at the top full paragraph -- you
2 with me?

3 A Yes.

4 Q It's describing studies about interviewer bias.
5 It's talking about studies where interviewers were given
6 facts that create a bias. This is a study that they did
7 to see how that might impact how a child would respond to
8 that interview. And the conclusion they reached was that
9 in both types of studies when questioned by interviewers
10 with false beliefs, children often make inaccurate
11 reports that are consistent with the biased interviewer
12 description. I'm asking again, that is what forensic
13 interviewing is designed to avoid. That's why y'all
14 learn this stuff.

15 A Correct.

16 Q And then on page 123, in talking about
17 different variables that affect disclosure patterns, over
18 on the right-hand column in the top paragraph, it talked
19 about things that could affect disclosure patterns or
20 cognitive disabilities caused by damage to the central
21 nervous system and brain are associated with numerous
22 studies with histories of severe child maltreatment and
23 early childhood. And those deficiencies may interfere with
24 children's ability to recall and describe real-life
25 experiences. Okay. And that was in an article talking

1 about disassociation and post-traumatic stress, right?

2 A Yes.

3 Q All right. Thank you.

4 MR. BANNISTER: I don't think I have any
5 other questions, Your Honor.

6 THE COURT: All right. Ms. Bentley?

7 MS. BENTLEY: Yes, brief redirect, Your
8 Honor.

9 REDIRECT EXAMINATION

10 BY MS. BENTLEY:

11 Q Mrs. Galloway-Williams, regarding the first
12 question Mr. Bannister asked, your response was -- your
13 answer was most children do not talk after the first
14 incidence of abuse, correct?

15 A That most children don't tell right away.

16 Q After the first incidence of abuse?

17 A Right.

18 Q How would intermittent abuse affect disclosure?

19 A Well, any time there are a multiple incidents
20 of abuse, that could impact whether a child discloses or
21 not. There are numerous things that would impact that,
22 not just the frequency of it but also who is perpetrating
23 the abuse, the other factors of has a child told already
24 and were they believed or not believed, has there ever
25 been a disclosure made in between those intermittent

1 experiences.

2 Q Okay. And would the type -- for a young child,
3 would the type of abuse be it touching versus
4 intercourse, would that affect disclosure potentially?

5 A Uh, you know, it could. For some children, a
6 fondling incident is going to be just as traumatic as
7 intercourse or vice versa. One may be -- there's really
8 -- you can't compare how that's going to impact the
9 child. For younger children or for any child, again,
10 they may not have the language skills to describe what it
11 is that's happening to them. So that -- the type of
12 abuse that's being committed on them may -- them being
13 able to actually describe what that is may affect whether
14 they disclose that or not.

15 Q Going back to this article that Mr. Bannister
16 referenced, "Why Children Tell: A Model of Children's
17 Disclosure of Sexual Abuse", this study found that 42
18 percent of children did not delay disclosure, is that
19 correct?

20 A Yes, they told within 48 hours.

21 Q And that's 42 percent?

22 A Yes.

23 Q And then 58 percent of children, more than
24 half, do delay to some extent?

25 A Yes.

1 **Q** And the basis of this article, as you said, it
2 starts off who have been sexually abused often do not
3 tell. In fact, many children fail to disclose their
4 abuse into adulthood?

5 **A** Yes.

6 **Q** It also states that fear of retribution --

7 **MR. BANNISTER:** Your Honor, leading questions

8 --

9 **THE COURT:** Sustained.

10 **BY MS. BENTLEY:**

11 **Q** Would you please read me the second line of the
12 introduction?

13 **MR. BANNISTER:** Your Honor, I don't believe
14 that's appropriate on redirect pursuant to the
15 rules.

16 **MS. BENTLEY:** I believe that it's fair
17 considering that Mr. Bannister had her read --

18 **THE COURT:** I'm going to allow her to read
19 this, but let's kind of move on. We don't need to
20 rego -- we don't need to read through the whole
21 article again.

22 **BY MS. BENTLEY:**

23 **Q** I'll move to the second article. This second
24 article, "False Statements and the Differential Diagnose
25 of Abuse Allegations". Would you please turn to page

1 904. When it talks about -- why don't you read me, under
2 "Differential Diagnoses of Abuse Allegations", that
3 little snippet.

4 **MR. BANNISTER:** Your Honor, I'm going to
5 submit an objection under Rule 801.18. My questions
6 were based on 801.18, as learned treatise which
7 deals with cross-examination only. We're now on
8 redirect. I don't believe that's correct.

9 **THE COURT:** I believe he's correct. That
10 rule does apply strictly to cross-examination. But
11 I'll allow -- certainly you can ask questions in
12 response to it. I don't think you can go through
13 that treatise and have her read.

14 **BY MS. BENTLEY:**

15 **Q** Okay. Mr. Bannister drew your attention you
16 page 905 where it said parental indoctrination.

17 **A** Yes.

18 **Q** Does it give any percentage of times where that
19 happens?

20 **A** In that particular session?

21 **Q** Yes.

22 **A** There's not a specific percentage listed.

23 **Q** Back to page 904 or if you look through the
24 article, is there any amount of time where they can
25 quantify -- no further questions.

1 **THE COURT:** All right. Mr. Bannister, you
2 have any followup?

3 **MR. BANNISTER:** I do not.

4 **THE COURT:** Ma'am, you can step down. Thank
5 you for being here.

6 Yes, ma'am.

7 **MS. BENTLEY:** That concludes the State's
8 case.

9 **THE COURT:** All right. Ladies and Gentlemen,
10 I need to take up a short matter of law with the
11 attorneys. I'll ask you to please step to your jury
12 room for just a moment.

13 **(WHEREUPON, the jury exits at approximately**
14 2:14 p.m.)

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

16 **MR. BANNISTER:** All right. I'm scared to do
17 anything with Paul in here. Your Honor, uh, let's
18 see. A couple of things we need to take up at this
19 point. First off, I would move for directed verdict
20 as to both charges, CSC first and Lewd Act.

21 Second, I would renew the motions I have made
22 previously and my objections previously.
23 Specifically, I think in this case, uh, the
24 indictment itself covers a time here from 2001 to
25 2006. You're going to have to forgive me. I was

1 writing fast.

2 **THE COURT:** That's fine.

3 **MR. BANNISTER:** There were a number of
4 different witnesses who all seem to -- dates seems
5 to move around. But I don't think we had any
6 testimony that there was an allegation of sexual
7 misconduct in 2001, any sexual misconduct. If I'm
8 wrong about that, I'm at least right about the fact
9 that I don't believe there was an allegation of
10 Criminal Sexual Conduct first offense in 2001. Uh,
11 so I would at least put in a motion for a partial
12 directed verdict on those times as it relates to
13 that. And then we were back and forth about whether
14 2006 by virtue of the information that we're getting
15 from the victim herself and some of the others.

16 **THE COURT:** All right. Yes, sir.

17 Ms. Bentley?

18 **MS. BENTLEY:** Specific indictments for sexual
19 assault cases give a lot of leeway to the State
20 because of the fact that the victims not often
21 remember exact dates. The victim herself, I recall,
22 got on the stand and stated that it was either the
23 first or second summer that the abuse occurred. She
24 did not indicate penetration that first or second
25 summer. She did say that it was outside the

1 clothes. However, I don't believe the indictment is
2 inappropriate or invalid in any way just because of
3 the length of time. She did testify that 2006, the
4 summer was the last time that he visited. So 2006
5 conclusive. We just covered it to the date that she
6 said she disclosed which was December of 2006.

7 **THE COURT:** All right. Your motion for
8 directed verdict is denied. Your previous
9 objections are all noted.

10 **MR. BANNISTER:** Thank you, Your Honor.

11 **THE COURT:** All right. Do we need to take a
12 break before you begin your case?

13 **MR. BANNISTER:** I just need to make sure my
14 witness is here. I'm pretty sure she's ready to go.
15 I'm ready to talk about jury charges at least
16 briefly.

17 **THE COURT:** Sure. Let's do that.

18 **MR. BANNISTER:** I figure I can hand up what
19 I've got.

20 **THE COURT:** Okay.

21 **MR. BANNISTER:** Just to give you a heads up.

22 **THE COURT:** Sure. Yes, sir.

23 **MR. BANNISTER:** Okay. In looking at the jury
24 charge, I saw as part of the charge was South
25 Carolina Code 16-3-657. This is for the clerk's

1 office. And that, as you will recall, Your Honor,
2 is the statute that says that, uh, it's sufficient
3 for a conviction to have the uncorroborated
4 testimony of a victim of a CSC case or words to that
5 effect. I will tell you candidly that I am aware of
6 State versus Rayfield which contradicts my position
7 significantly.

8 **THE COURT:** Sure.

9 **MR. BANNISTER:** But I did feel like I needed
10 to get on the record that I believe that charge
11 violates a number of pretty substantial rights, not
12 the least of which is defendant's due process right,
13 the right to fair and impartial jury and 6th
14 Amendment right to trial by jury, South Carolina
15 Constitution Article 5, section 17.

16 Uh, Your Honor, in addition to that, I would
17 point out to the court that one of the cases relied
18 upon by the State, our Supreme Court in making the
19 decision to allow that to be a jury charge has since
20 been overturned, that being -- that case was
21 overturned, but basically the State had that as a
22 proposition, the Supreme Court opinion changed its
23 mind later and reversed that decision. It is not
24 required that you charge 16-3-657. It is simply
25 permitted. So I would ask you not to permit in this

1 case since it is not required.

2 THE COURT: All right. Well, I will take
3 this under advisement. I'll issue a ruling on that
4 in plenty of time for you to be prepared on closing
5 arguments.

6 MR. BANNISTER: All right. And Judge, maybe
7 just some more ---

8 THE COURT: Sure.

9 MR. BANNISTER: --- more general requests to
10 charge. Although we will be presenting evidence, I
11 would, of course, like a charge on defendant's right
12 not to testify. I'm assuming you intend on doing
13 that.

14 THE COURT: Yes. I do. I did. Again, I
15 think I may have mentioned this was just a charge
16 from another case.

17 MR. BANNISTER: I took a close look at your
18 reasonable doubt charge. I would request that the
19 charge for reasonable doubt includes a doubt that
20 would cause a reasonable person to hesitate to act.

21 THE COURT: I have included that in the past.
22 I will include it ---

23 MR. BANNISTER: All right. Thank you, Your
24 Honor.

25 THE COURT: --- since you have requested it.

1 **MR. BANNISTER:** All right. And then on
2 circumstantial evidence, uh, I'm looking for the
3 charge that says each and every circumstantial
4 evidence -- circumstance must be proved beyond a
5 reasonable doubt and must only be proved towards the
6 theory of guilt versus innocence.

7 **THE COURT:** All right. I'll take a look at
8 this in a little more detail. As I said, I'll let
9 you know in plenty of time to craft your closing
10 argument if so desired. All right.

11 **MR. BANNISTER:** All right. Thank you, Your
12 Honor. With that, I think we need to advise the
13 defendant about his right to testify.

14 **THE COURT:** All right. Sir, will you stand
15 and raise your right hand. Well, let me ask you
16 this, sir. Are you able to stand and raise your
17 right hand?

18 **MR. BRANDEBERRY:** Yes.

19 **THE COURT:** All right. Raise your right hand
20 for me.

21 (WHEREUPON, the defendant is first duly sworn.)

22 **THE COURT:** All right. You can put your hand
23 down. If you'd be more comfortable, feel free to
24 sit down. You understand that you have a right to
25 testify in this trial today, you understand that?

1 (WHEREUPON, there is a pause.)

2 THE COURT: All right. Bring the jury back.

3 Just by way of planning, Mr. Bannister, when do
4 you anticipate finishing up your case?

5 MR. BANNISTER: It will be after this
6 witness.

7 THE COURT: Oh, okay.

8 MR. BANNISTER: This will be my last witness,
9 I think.

10 THE COURT: Okay. I guess you have no way of
11 knowing, at this point, if you'll have any reply
12 testimony. We'll cross that bridge when we come to
13 it. We at least know we've have some time with the
14 charge.

15 MR. BANNISTER: Yes.

16 (WHEREUPON, the jury enters at approximately
17 2:27 p.m.)

18 THE COURT: Mr. Bannister.

19 MR. BANNISTER: Thank you, Your Honor. The
20 defense calls Noreen Brandeberry.

21 THE CLERK: Ma'am, would you please come
22 forward. Please pause at the end of the bench.
23 Place your left hand on the Bible and raise your
24 right hand.

25 NOREEN BRANDEBERRY

1 having first been sworn, testifies as follows:

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

3 Please state your name for the record.

4 **THE WITNESS:** I am Noreen K. Brandeberry.

5 **DIRECT EXAMINATION**

6 **BY MR. BANNISTER:**

7 **Q** All right. Mrs. Brandeberry, actually the
8 microphone is not really working at all, so speak loud
9 enough so that I can hear you back here ---

10 **A** Okay.

11 **Q** --- and so that all the members of the jury can
12 hear. Okay?

13 **A** Okay.

14 **Q** Okay. Thank you. Mrs. Brandeberry, what is
15 your relation to Albert Brandeberry?

16 **A** He's my husband.

17 **Q** When did you get married?

18 **A** 1983.

19 **Q** Are you still married?

20 **A** Yes, we are.

21 **Q** Where have you lived?

22 **A** [REDACTED] in Finley, Ohio.

23 **Q** And how long have you lived there?

24 **A** 28 years.

25 **Q** So the entire time you've been married?

1 A Yes.

2 Q Is that the same residence where Officer Tuttle
3 came and visited y'all that day in March?

4 A Yes, it is.

5 Q Let me jump right to what's maybe the most
6 pertinent issue in this case which is the physical
7 condition of Albert, particularly as it relates to the
8 marital bed. Okay.

9 A Okay.

10 Q Okay. Has -- have you seen or witnessed some
11 problems that Albert has performing sexually?

12 A Yes, I have.

13 Q What specifically?

14 A Uh, he can not perform sex.

15 Q In what way?

16 A He can not get an erection.

17 Q Since 1983 when you were married, how long has
18 that been a problem?

19 A Uh, almost from the beginning.

20 Q Were you aware of -- did y'all decide to try to
21 do something about that?

22 A Yes, we did.

23 Q What was that decision?

24 A We decided to check into a penile implant for
25 him.

1 Q Did you go to various doctors to talk about
2 that?

3 A Yes, we did.

4 Q Do you know how many different doctors you saw
5 about that?

6 A We went to a couple in Finley, then they
7 referred us to one up at Toledo Medical College.

8 Q And ultimately, is that where you and Albert
9 went?

10 A Yes, it is.

11 Q And was a surgery performed?

12 A Yes, it was.

13 Q And did he receive a penile implant?

14 A Yes, he did.

15 Q And roughly what time period is this?

16 A Pardon?

17 Q About when was this? What year?

18 A 19 -- late '80s. I'm not sure exactly what
19 year, '85, '87.

20 Q All right. As part of preparing for our -- for
21 your testimony, have you obtained some of Harold's -- I'm
22 sorry -- some of Albert's medical records?

23 A Yes, I have.

24 Q Did you go to various doctors' offices?

25 A Yes, I have.

1 Q And can you use those to kind of refresh your
2 recollection about dates?

3 A Yes.

4 Q So in the late '80s, he had the penile implant.
5 Roughly, how long did he have that?

6 A I would say probably, maybe 10 years, 9 years.

7 Q All right. Then tell me what you recall
8 happening.

9 A He got real sore down in his testicles. It was
10 all inflamed. So we called the doctor. I had to take
11 him up there.

12 Q All right. And when you said you had to take
13 him up there, was he in pain?

14 A Yes, he was in pain.

15 Q From what you could tell? Was it mild,
16 moderate, severe?

17 A It was pretty severe.

18 Q Was he in a wheelchair or walking funny?

19 A He was walking very slow.

20 Q And so what was the -- so you took him to the
21 hospital?

22 A Yes.

23 Q And how long did he stay in the hospital?

24 A I think he was there about a week.

25 Q Okay. And did he have another surgical

1 procedure?

2 **A** Yes, he did.

3 **Q** And what happened to the penile implant?

4 **A** Uh, they removed it.

5 **Q** Had there been some malfunction with the thing?

6 **A** Yeah, it erupted inside.

7 **Q** After that, I'm assuming there was some period
8 of recovery for him.

9 **A** Yes, there was.

10 **Q** And roughly how long was that?

11 **A** Well, he was in the hospital about a week after
12 they took it out. So when he came home, he was still
13 recovering. I would say roughly about three weeks.

14 **Q** Did -- at some point, did you and Albert
15 revisit potentially trying to get another penile implant
16 for Albert?

17 **A** Yes, we talked about it.

18 **Q** All right. Did you visit some doctors?

19 **A** Yes.

20 **Q** And did you take the information -- did both
21 you and Albert listen to what they had to say about
22 whether that procedure could be done?

23 **A** Yes.

24 **Q** And ultimately, was it done?

25 **A** No, it was not.

1 Q What was your understanding of why not?

2 A It was, uh, -- he had dead tissue in there.

3 They said it wouldn't work.

4 MS. BENTLEY: Objection, Your Honor. I've
5 let this go a little bit, but we do we have these --
6 I don't think the -- I feel like this is hearsay
7 testimony. She's not the patient.

8 MR. BANNISTER: I didn't intend for her to
9 talk about what the doctor said. It won't happen
10 again.

11 THE COURT: All right. All right. Yes, it
12 was hearsay. Yes, you can proceed.

13 BY MR. BANNISTER:

14 Q In any event, he ultimately did not have
15 another penile implant?

16 A No, he did not.

17 Q Were there any attempts in the marital bed to
18 see if he still might have a possibility of an erection?

19 A Yes, we tried.

20 Q And when did the penile implant come out?

21 A In '96.

22 Q So no question -- there's not going to be any
23 issue that he did not have a penile implant between 2001
24 and 2006?

25 A No, he did not have one.

1 Q All right. Are you aware and have you seen any
2 physical problems that Albert has.

3 A Well, he's had heart attacks.

4 Q And you've seen them?

5 A Well, yes.

6 Q What have you witnessed?

7 A Uh, he was having chest pains and he was real
8 ashy and sweaty and stuff. He was just in a lot of pain.

9 Q Did you help get him to the hospital on
10 occasions?

11 A I did on occasions, yes, I did.

12 Q How many different occasions did he go to the
13 hospital with heart issues?

14 A Three, maybe four.

15 Q From about what time period?

16 A From about '95 to 2001.

17 Q And each of -- let's see. About three or four
18 you said?

19 A Yes.

20 Q Okay. On each of those three or four
21 occasions, would Albert stay in the hospital?

22 A Yes.

23 Q For roughly how long?

24 A Three to five days.

25 Q Do you know what part of the hospital he was

1 in?

2 **A** He was in, uh, Intensive Care. One time, they
3 flew him up to the medical college.

4 **Q** Where is the medical college?

5 **A** Up in Toledo.

6 **Q** The Intensive Care Unit, is that somewhere
7 where you actually visited him?

8 **A** Yes.

9 **Q** Was that on each of the three or four occasions
10 he'd been in ICU?

11 **A** I visited him on each of the occasions. He
12 didn't go to Toledo each time.

13 **Q** Okay. I see you glancing down. Are you
14 looking at -- what have you got over there? Notes that
15 will help you?

16 **A** Yeah, cause it's been a long time.

17 **Q** Did, uh, -- let's see. When he would come back
18 from the hospital, how long would you be with him during
19 his recovery?

20 **A** Uh, usually about three weeks, I take FLMA off
21 work.

22 **Q** All right. When you say FLMA, what are we
23 talking about?

24 **A** Family medical leave.

25 **Q** And that was work with who? Who were you

1 working for?

2 A Whirlpool Corporation in Finley, Ohio.

3 Q How long did you work for Whirlpool Corporation
4 in Finley, Ohio?

5 A 32 years.

6 Q So each time you had to stay home with Albert
7 was through the Family Medical Leave Act?

8 A Yes, it was.

9 Q Did, uh, -- how many weeks would it typically
10 take him to get over these episodes?

11 A Usually about three weeks.

12 Q Okay. Uh, of your own personal knowledge, do
13 you help monitor Albert's medications?

14 A Yes, I do.

15 Q Does he regularly go to the doctor or the
16 clinic, hospital for blood work?

17 A Yes, he does.

18 Q And do you review that for the results?

19 A Yes, I do.

20 Q And does that -- based on what you look at and
21 see, does that change what medications you give out?

22 A Right.

23 Q Does that go up and down?

24 A Yes, it does.

25 Q How do you know whether to give him more or

1 less?

2 A By how much of a tablet. They mark on there a
3 whole tablet, half a tablet.

4 Q And, uh, let me take you back in time a little
5 bit in Finley, Ohio. Was there a time period where
6 Harold Brandeberry, Kelly Brandeberry and Minor 1
7 Brandeberry were in Finley, Ohio?

8 A Yes, it was.

9 Q And did they live close to you?

10 A Yes, they did.

11 Q And would you see them on a fairly regular
12 basis?

13 A Yes.

14 Q At some point, would they move a little
15 distance away?

16 A Yes, they did.

17 Q And when they moved a little distance away,
18 where did they move?

19 A To Dunkirk.

20 Q And by car, how far is that from your home?

21 A I'd say maybe 25 minutes.

22 Q Did you have sort of a regular time when you
23 would you see Harold, Kelly and Minor 1

24 A Yes, they would stop over usually for Sunday
25 dinner after they got out of church.

1 Q And when you say dinner, we're talking about a
2 big lunch?

3 A Yes.

4 Q About how long would they be around?

5 A They would stay there until they had to go to
6 church on Sunday night.

7 Q What time would they have to be at church on
8 Sunday night?

9 A I think it was six o'clock they had to be
10 there.

11 Q Did you have an opportunity to interact with
12 Harold, Kelly and Minor 1 at least when they would come
13 over?

14 A Yes, I did.

15 Q I don't want to leave Minor 2 out. But during the
16 time period we're talking about, had he been born yet?

17 A No.

18 Q How old was Minor 1

19 A I would say maybe three. Three, four,
20 somewhere in that.

21 Q Did there come a time when you had some
22 concerns about, uh, about Harold and his interaction with
23 Minor 1

24 A Yes, I did.

25 Q Can you relay one of those to us?

1 A (No response.)

2 Q Take your time.

3 A They had ate dinner there. Me and Minor 1 were
4 playing with toys.

5 Q Who? Who and Minor 1

6 A Minor 1 me.

7 Q Okay.

8 A And I think a ball hit Harold's glass of tea or
9 whatever and maybe knocked it over. And he picked her
10 up, grabbed her by the arm and spanked her little bottom
11 and threw her on my couch. I went to sit beside her. He
12 made me get away from her.

13 Q Was he mad?

14 A Pardon?

15 Q Was he mad?

16 A Yes, he was mad.

17 Q Did that -- clearly, it upset you.

18 A Yes, it still does to this day.

19 Q What was your perception of Minor 1 reaction?

20 A She was very scared of her dad.

21 Q Was that something that you perceived
22 throughout the time that Minor 1 and Harold and Kelly
23 were in Ohio with y'all?

24 A Yes.

25 Q Did Kelly appear to be the same way to you?

1 **A** Pardon?

2 **Q** Let me ask this way. Was Kelly in the room
3 when that happened?

4 **A** Yes, she was.

5 **Q** Did she do anything to interfere?

6 **A** Nothing. Absolutely nothing.

7 **Q** What was your perception of her demeanor or her
8 reaction?

9 **A** I thought she should be protecting her baby.

10 **Q** Did she appear afraid also?

11 **A** I think she was.

12 **Q** Ultimately, did you have some conversation with
13 Albert about how Harold then treated **Minor 1** at least on
14 that occasion?

15 **A** Yes, I did.

16 **Q** What did you tell -- what did you say to
17 Albert?

18 **A** I told him he better have a talk with him or I
19 was going to call Children's Services.

20 **Q** Let me jump forward now in time a little bit to
21 March of 2011 when Detective or Officer Tuttle came to
22 your house. Do you remember that?

23 **A** Yes, I do.

24 **Q** Where you there when he came in?

25 **A** Yes, I was.

1 Q And if you can, why was he there?

2 A As you said he was talking to Al about some
3 charges that were filed or something down here in South
4 Carolina about, uh, touching Minor 1 sexually abused
5 her.

6 Q And what was Albert's response?

7 A He was shocked as I was.

8 Q What did he say?

9 A He said that he didn't do it. He said he might
10 as well shoot his brains out.

11 Q When he said that, did you take him to mean
12 that he really was going to shoot his brains out?

13 A No.

14 Q Did you take it as a figure of speech?

15 A Yes, I did.

16 Q Was there more than one denial was Detective or
17 Officer Tuttle was there?

18 A Yes, there was.

19 Q Did Albert ever admit any of the allegations of
20 sexual abuse?

21 A No, no, he did not.

22 Q Did Albert tell them that it was, in fact, true
23 that he had been to South Carolina during the summer
24 every now and again?

25 A Yes.

1 Q And did he tell them that he did remember a
2 phone conversation with, I guess, Harold about some
3 allegations from South Carolina?

4 A Yes, he did.

5 Q Do you remember a time period when Albert was
6 not going to South Carolina?

7 A Yes.

8 Q Did you ultimately find out why Albert quit
9 going to South Carolina?

10 A Yes, I did.

11 Q And why was that?

12 A He said that --

13 Q Can't -- well, I guess you can go ahead. Go
14 ahead. I'm sorry. What did Albert say?

15 A He said that he was supposed to have touched
16 Minor 1 or he was supposed to have rubbed by her.

17 Q All right. And so he was no longer going down
18 there?

19 A He said he didn't want anymore to do with them
20 if they are going to be making allegations like that
21 which weren't true.

22 MR. BANNISTER: I don't have any further
23 questions, Your Honor.

24 THE COURT: Ms. Bentley.

25 MS. BENTLEY: Thank you, Your Honor.

CROSS-EXAMINATION

BY MS. BENTLEY:

Q Mrs. Brandeberry, the first time you learned of these allegations was March 2011, correct?

A Yes.

Q When Detective Tuttle came to your house?

A Yes.

Q And you were shocked?

A Absolutely.

Q You state that you did not take Albert's suicidal threats seriously, correct?

A Right.

Q The counselor that he spoke to -- he spoke to a counselor, didn't he?

A Yes, he did.

Q And she took that threat seriously, didn't she?

MR. BANNISTER: I object to that.

THE WITNESS: I don't think so.

THE COURT: Sustained.

BY MS. BENTLEY:

Q Did the counselor -- to your knowledge, did the counselor direct that all the guns be removed from your home?

A Yes.

Q She did. You and Albert had been married, you

1 said since 1983?

2 A Yes.

3 Q So 28, 29 years now?

4 A Yes.

5 Q And Albert had three children when you were
6 married?

7 A Yes, he did.

8 Q He did. At some point in time, his
9 reproductive equipment worked just fine?

10 A Yeah. Yeah.

11 Q And Harold was only 11 when you got married,
12 correct?

13 A Yes.

14 Q And you stated that he had sexual dysfunction
15 from the time you got married?

16 A Yeah.

17 Q So you never had -- I don't know my -- would
18 you characterize your sex life with your husband as ever
19 being normal?

20 A Uh, it was, uh, normal when he had the penile
21 implant.

22 Q So the penile implant did work?

23 A Yeah.

24 Q Until it --

25 A Until it erupted.

1 Q Okay. Now, you said you got notes with you.

2 A It's his medical records.

3 Q And did you prepare his medical records?

4 A I went and picked them up and --

5 Q Did you prepare them?

6 A No.

7 Q No, and you're not a doctor?

8 A No.

9 Q Were you a nurse ever?

10 A No.

11 Q Tell me what kind of work you did.

12 A Who did?

13 Q You.

14 A I worked at Whirlpool.

15 Q Okay. And did you -- at whose direction did

16 you pick up those records? Who told you to go get those?

17 A Our lawyer in Finley.

18 Q You have a lawyer in Finley?

19 A Well, he was arrested in Finley.

20 Q Okay. And did you get those right away?

21 A I went over a period of time and got them all

22 together.

23 Q Okay. Did you hear your husband tell Detective

24 Tuttle -- you heard your husband tell Detective Tuttle

25 that he was aware of these allegations, correct, in March

1 of 2011?

2 **A** He wasn't aware of them until Mr. Tuttle came.

3 **Q** Right.

4 **A** Right.

5 **Q** So however he later told Detective Tuttle that
6 he known about them, that Harold made those allegations
7 years before.

8 **A** I did not hear that.

9 **Q** I believe you just testified that --

10 **A** That he said that Harold had said that he
11 brushed up against Kelly -- Minor 1

12 **Q** And that was all that was alleged?

13 **A** Pardon?

14 **Q** You said -- you also said that you and Albert
15 cut off contact with Harold and his family.

16 **A** I never had much contact with them.

17 **Q** What about Albert?

18 **A** He did.

19 **Q** He did. He went down every summer?

20 **A** Just about.

21 **Q** He was well enough to drive nine hours to South
22 Carolina, wasn't he?

23 **A** Yeah.

24 **Q** Every summer from 2001 to 2006, 2007?

25 **A** I don't think he went every summer.

1 Q Okay. But he was well enough the summers that
2 he went to drive down there?

3 A Yeah.

4 Q And you never accompanied him?

5 A No.

6 Q Why not?

7 A Cause I did not care for Harold.

8 Q You never cared for Harold, did you?

9 A No, I didn't.

10 Q No, you didn't. You -- when Harold would stay
11 with you in the summer, you would hide food from Harold,
12 wouldn't you?

13 A Hide what?

14 Q You would hide food from him?

15 A Hide what? Food from him?

16 Q Yeah. You would mark food "do not eat".

17 A Unless I was using it for a supper.

18 Q So there were notes on some food in your house
19 that said do not eat?

20 A I do not ever remember doing that. I used to
21 buy him clothes and he would put them in the drawer with
22 the tags on the stuff. He left them there forever and
23 never wore them.

24 Q What does that have to do with food?

25 **MR. BANNISTER:** Judge, I'm going to object to

1 what food or clothes have to do with anything that's
2 relevant at this point.

3 **THE WITNESS:** Well, she's saying I didn't
4 never care for Harold.

5 **THE COURT:** Hold on just one second. Wait
6 one second.

7 **MR. BANNISTER:** Hold on.

8 **THE COURT:** Ms. Bentley, what's the relevance
9 here?

10 **MS. BENTLEY:** Establishing the fact that Mrs.
11 Brandeberry never cared for Harold, which she just
12 admitted. I was going to go into that.

13 **THE COURT:** All right. I'll allow you. Go
14 ahead.

15 **BY MS. BENTLEY:**

16 **Q** So you never liked Harold? You basically just
17 told us that.

18 **A** I'll tell you I never liked Harold since he
19 was ---

20 **Q** You never liked Harold?

21 **A** --- since he was treating Minor 1 bad.

22 **Q** You never liked Harold?

23 **A** Yes, I did. I tried to treat him decent.

24 **Q** Tell me about your marriage to the defendant
25 aside from the sexual problems that you've experienced.

1 You both worked?

2 A Yep.

3 Q Did you make decisions mutually?

4 A Yes, we did.

5 Q You did? Who would pay the mortgage?

6 A Albert usually did.

7 Q Okay. Who would decide what kind of car to
8 buy?

9 A We both did.

10 Q You both did. Were there any decisions that
11 you had to run by Albert before you made them on your
12 own?

13 A We'd talk about them. I didn't run them by
14 him.

15 Q You had three children when you married the
16 defendant, correct?

17 A Yes, I did.

18 Q They are all older than Harold, correct?

19 A Yes, they are.

20 Q He was the youngest of all the children?

21 A I think him and my youngest boy are about the
22 same age.

23 Q Okay. Let's go back to your husband's visit to
24 South Carolina. You will admit that he did go to South
25 Carolina?

1 **A** Yes.

2 **Q** And he drove to South Carolina?

3 **A** Yes, he did.

4 **Q** Did he ever report any concerns when he came
5 back?

6 **A** No.

7 **Q** No, he didn't. You been married to him for how
8 long? 28 years?

9 **A** Yes.

10 **Q** And you love him?

11 **A** Yes, I do.

12 **Q** Is there anything you would not do for him?

13 **A** I wouldn't lie.

14 **Q** Okay. Aside from that?

15 **A** Probably just about not nothing.

16 **Q** Okay. Can you imagine life with out him?

17 **A** No.

18 **MS. BENTLEY:** One moment.

19 **THE COURT:** Yes, ma'am.

20 **(WHEREUPON, there is a pause.)**

21 **BY MS. BENTLEY:**

22 **Q** Ms. Brandeberry, you testified that your
23 husband was unable to sustain an erection, is that
24 correct?

25 **A** Yes.

1 Q And when did that begin?

2 A Uh, I'd say probably in the late '80s.

3 Q Late '80s, until he had the penile implant?

4 A Right.

5 Q And how long did he have that?

6 A Uh, I'd say maybe 9, 10 years.

7 Q When he -- are you a doctor?

8 A No.

9 Q Do you have any medical training?

10 A No.

11 Q Do you have any knowledge as to whether you can
12 ejaculate without an erection?

13 A I think you can.

14 Q Okay. No further questions.

15 **MR. BANNISTER:** One brief followup.

16 **THE COURT:** Sure. Certainly.

17 **REDIRECT EXAMINATION**

18 **BY MR. BANNISTER:**

19 Q I hate to ask you this. But in the marital
20 bed, was -- have Albert ever ejaculated without an
21 erection?

22 A No.

23 Q Thank you.

24 **THE COURT:** Ma'am, you can step down.

25 **THE WITNESS:** Thank you.

1 **THE COURT:** Mr. Bannister.

2 **MR. BANNISTER:** That would be the defendant's
3 case, Your Honor.

4 **THE COURT:** All right. Ladies and Gentlemen,
5 I'll need you to step to your jury room for just one
6 moment.

7 **(WHEREUPON, the jury exits at approximately**
8 2:54 p.m.)

9 **THE COURT:** You going to have any reply
10 testimony?

11 **MS. BENTLEY:** I think we're going to leave it
12 alone, Your Honor.

13 **THE COURT:** Okay. That sounds good. All
14 right. Anything else?

15 **MR. BANNISTER:** Just an inquiry as to kind of
16 the timing. I mean, I was looking at the clock.

17 **THE COURT:** It's getting -- I mean, for me,
18 I'll just be honest, it's getting kind of late for
19 me to want to argue and charge in this case unless
20 there is some compelling reason that we need to try
21 to get it done today. Okay. I'll just say that
22 let's reconvene tomorrow morning at 9:30 for
23 argument. We can go back through jury charge for
24 just a moment.

25 **MR. BANNISTER:** Okay.

1 **THE COURT:** Of course, I'll add the
2 defendant's right not to testify. I will add this
3 definition of reasonable doubt. I may reword my
4 circumstantial evidence charge just slightly. But
5 for the most part, I like the one that I normally
6 use better. I want to take a look at it and see if
7 there's some of this language we can work in. And
8 if we do, I'll let you know.

9 So far as charging 16-3-657, your objection is
10 noted on that. And I'll make your motion a part of
11 the record. But I'm going to deny your motion. I'm
12 going to charge that code section anyway.

13 **MR. BANNISTER:** All right. Might I?

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

15 **MR. BANNISTER:** And I hear your ruling. I
16 understand it. Uh, might I make a suggestion that
17 may come a little closer to a meeting in the middle?
18 Uh, could we do it -- I'll just hand it up. I don't
19 know what all this stuff, the request for charge,
20 motion to charge. I was looking at your jury
21 charge. I thought if it's got to come in, can't it
22 just come in in the context of the standard charge
23 of the witness.

24 I put some language together where I'm kind of
25 starting with your charge on witnesses. You may

1 believe one witness over several witnesses or
2 several witnesses over one. That's in your charge.
3 Then what comes next, for example, you may determine
4 the alleged victim's testimony without any other
5 evidence is sufficient and meet the burden of proof
6 beyond a reasonable doubt.

7 Then what I'm putting in is, on the other hand,
8 you may determine that inconsistencies and conflicts
9 in the evidence in the victim's testimony are
10 insufficient to meet the burden of proof beyond a
11 reasonable doubt. Then it goes back in your charge
12 giving the part of the testimony of a witness or all
13 of it or none of it.

14 **THE COURT:** I will consider it. Right now, I
15 -- if I have to answer your question at this moment,
16 I would probably stick to it. But that's a pretty
17 creative way to work that in.

18 **MR. BANNISTER:** All right.

19 **THE COURT:** And I will consider it.

20 **MR. BANNISTER:** I have one more try.

21 **THE COURT:** All right.

22 **MR. BANNISTER:** Could we at least define --
23 define the term "uncorroborated"? In the case law I
24 cited in my original motion, one of the things that
25 other courts have pointed out is that for lay

1 people, the term "uncorroborated" is one of those
2 terms that has a lot of significant to us and is
3 subject to a lot of different interpretations and
4 incorrect ones for them. I will tell you that the
5 definition I have suggested for the term
6 uncorroborated basically comes from the case law
7 that Judge Pleicones is citing his dissent for
8 allowing this type of jury charge in the first
9 place.

10 **THE COURT:** Okay.

11 **MR. BANNISTER:** My argument would be just
12 from the standpoint of logic would be that if the
13 idea here is that it is not to mislead the jury into
14 something that they shouldn't do, which is not
15 consider everything else in conjunction with the
16 testimony of the victim ---

17 **THE COURT:** Uh-huh.

18 **MR. BANNISTER:** --- then why wouldn't a
19 definition of uncorroborated be appropriate?
20 Because you are simply eliminating the possibility
21 that they could do all the things that would be
22 potentially violative of the requirement that they
23 consider all the evidence in total.

24 **THE COURT:** All right. Without a question, I
25 think this first sentence is completely appropriate.

1 I'll have to consider whether or not I'll go further
2 with the furthermore and on. I do believe that this
3 first sentence is completely appropriate. I do
4 think that, uh, -- I do think saying this term does
5 not permit as jurors to violate your obligation to
6 consider all the evidence. It's perfectly
7 appropriate as well too. I will consider that
8 middle sentence a little bit further.

9 **MR. BANNISTER:** All right. That's all I can
10 ask Your Honor.

11 **THE COURT:** Okay. Okay. That's pretty good.
12 That's pretty good. Okay. I give you credit on
13 that. Uh, I will let you know for sure any changes
14 I make to my circumstantial evidence charge. If
15 there are any, I don't expect them to be huge. I
16 make take some of this language and incorporate it.
17 Yes, sir.

18 **MR. BANNISTER:** One other. This came up
19 primarily because of the testimony from Harold
20 Brandeberry. I need to go back and look at my
21 standard charges. The fact that Harold is
22 indicating that at one of the critical moments for
23 us in this case, that is where Harold called Albert
24 and confronted him about the disclosure of the abuse
25 from Minor 1 in 2006, 2005, whenever that happened,

1 that there were other witnesses present, in
2 particular, a pastor or member of the church, the
3 fact that those individuals have not been called by
4 the State, I think I'm entitled to a charge on that
5 to say that the jury can take that into
6 consideration. Failure to call a witness can have
7 an adverse inference. I'm sorry I don't have the
8 exact language.

9 **THE COURT:** Sure.

10 **MR. BANNISTER:** I didn't anticipate that
11 being part of potential request to charge. But I
12 wanted both the Solicitor and Your Honor to know I
13 will have that language tomorrow.

14 **THE COURT:** I will consider it. I think you
15 can argue it well. Whether I include it in my
16 charge on the law to the jury, uh, I don't know if
17 I'll include that in my charge to the jury, but I
18 think you are certainly permitted and I expect and
19 anticipated when those witnesses weren't here that
20 you would be all over that. So anything else?

21 Any request for charge from the State?

22 **MS. BENTLEY:** No, Your Honor. I'd like a
23 brief moment once you do decide your non-
24 corroboration charge ---

25 **THE COURT:** Sure.

1 **MS. BENTLEY:** --- to reply at that time.

2 **THE COURT:** Okay. All right. I'll let y'all
3 know that. Why don't we plan on being here maybe
4 about 9:15 or so tomorrow morning just to have a few
5 minutes to kind of go over some last minute things.
6 All right. Let's bring the jury back in. I'll let
7 them go for the evening.

8 **(WHEREUPON, the jury exits at approximately**
9 3:05 p.m.)

10 **THE COURT:** Ladies and Gentlemen, I told you
11 at the beginning of this trial that we thought this
12 trial would be about three days long. That turned
13 out to be a pretty fair estimate. I also told you
14 at the beginning of this trial that we have two of
15 the most excellent attorneys in our state trying
16 this case this week. And we are fortunate to have
17 that. Excellent, in a lot of ways in the legal
18 world, means efficient. They have been very
19 efficient. In fact, we have come to the close of
20 the testimony and evidence in this case.

21 Uh, we could do arguments and charge on the law
22 this afternoon, but we would be very, very late in
23 getting you to your families this evening. Very
24 late. So this is what we're going to do. I'm going
25 to let you have the rest of the afternoon off.

1 Please do not discuss this case with anyone. We're
2 going to come back tomorrow morning at 9:30. If you
3 will, be in your jury room right at 9:30. 9:30,
4 hear final arguments from the attorneys and I will
5 have my charge on the law. Then, some time probably
6 mid-morning, the case will be in your hands to
7 decide and deliberate.

8 To our alternates, I do need you to show back
9 up tomorrow morning. Then we'll see what to do from
10 there. Hopefully, we won't have any mishaps
11 overnight and we will be able to release you at that
12 time. All right. I hope you have a good evening.
13 I will see you tomorrow morning at 9:30. Thank you.

14 **THE BAILIFF:** Come with me please.

15 (WHEREUPON, the jury exits at approximately
16 3:06 p.m.)

17 **THE COURT:** Anything else?

18 **MS. BENTLEY:** Nothing from the State.

19 **THE COURT:** All right then.

20 **MR. BANNISTER:** Nothing from the defense.

21 **THE COURT:** All right then. I'll see you all
22 tomorrow morning at 9:15 then.

23 (WHEREUPON, the Court recesses for the day at
24 approximately 3:07 p.m.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 9th day of August, 2012 at approximately 9:36 a.m.)

THE COURT: I'm going to tell you I didn't write the title on my part about the defendant's right to remain silent. It said defendant's failure to testify. I felt that sent the wrong message. So I said defendant's right not to testify. Just to let you know. It's a little housekeeping matter. I did not change my, uh, circumstantial evidence charge in any manner. I did add, of course, his right not to testify. I included your portion on reasonable doubt. I included, Mr. Bannister, your definition of uncorroborated in its entirety. Anything else we need to --

MR. BANNISTER: No, Your Honor.

THE COURT: All right then. Ms. Bentley, are you planning on opening on the law?

MS. BENTLEY: No, ma'am.

THE COURT: You going to make her open on the law?

MR. BANNISTER: No, ma'am.

THE COURT: The very first trial I ever had, Kim Varner said I want the Solicitor to have to open on the law. I had no idea what that meant.

1 **MS. BENTLEY:** Mr. Bannister just explained
2 that to me a few minutes ago.

3 **THE COURT:** Oh, really. Oh, what about them
4 having a copy of the charge?

5 **MR. BANNISTER:** I don't think I have a
6 problem. I'd like to read it. I'd like to see what
7 it is before I agree to send it back. But I don't
8 think that is going to be a problem.

9 **THE COURT:** Sure. I'll just say I'll give
10 you a copy. I know you want to read it in its
11 entirety. I'll give you a copy of these
12 instructions in written form during your
13 deliberations. You may refer to the instructions to
14 guide your decision-making. You must consider the
15 instructions as a whole and not follow some and
16 ignore others. Please return the instructions to
17 the Court at the time your verdict is rendered.

18 **(WHEREUPON, the jury enters at approximately**
19 9:42 a.m.)

20 **THE COURT:** Ladies and Gentlemen, I hope you
21 had a good evening. We are now ready to hear the
22 closing arguments at this time.

23 Mr. Bannister.

24 **MR. BANNISTER:** Thank you, Your Honor.

25 This is a dangerous case. A dangerous case in

1 this sense. Uh, I am not unaware of the fact that
2 after Minor 1 testified that it was like the oxygen
3 had left the room. The emotional impact of her
4 testimony can't be lessened in any way. It
5 shouldn't be questioned. I mean, she went through
6 some horrible, horrible things. I got to tell you
7 that I felt like maybe I had lost some of you in a
8 sense that you had shut down a little bit after that
9 testimony. That's understandable because of the
10 emotional impact that that would have on anybody.

11 But I want to just take a moment to remind you
12 again of the oath you took and the position that you
13 are occupying right now. You took an oath to truly
14 try the case, which means you follow the judge's
15 instructions and the instructions in the beginning,
16 which were that Albert Brandeberry is presumed
17 innocent, are just as applicable at this moment as
18 they were at the beginning of the trial, as they
19 were after Minor 1 testified and as it will be until
20 you all have an opportunity to discuss whether or
21 not the State has proved their case beyond a
22 reasonable doubt.

23 Some of you may have wondered how you ended up
24 on this jury based on some of the information that
25 you gave us in the questions that we asked you.

1 Point of fact, you took an oath. We accepted that
2 oath. I knew that there would be some places in
3 this trial all along the way where it might feel
4 difficult to come back to presumption of innocence.
5 But if -- if you have gotten past that point where
6 you just can't in good conscious say -- conscience
7 say at this moment that you still can follow the
8 judge's instructions to presume Albert Brandeberry
9 innocent, then you'd be compelled under your oath to
10 let the judge know I just can't be a juror in this
11 case. That's why we have two alternates. So that
12 presumption of innocence is going to stay right
13 where it is up until the moment that you all
14 collectively agree that proof had been offered
15 beyond a reasonable doubt.

16 So what is the evidence in this case? What are
17 the worse things that the State has produced to show
18 or meet their burden of proof? I don't want to shy
19 away from them. One is clearly Minor 1 testimony
20 and her allegations. Two is Albert's admission that
21 he came to Greenville each summer. And then three
22 would be the phone call that took place between
23 Albert and Harold. Everything else that's evidence
24 in the case kind of falls into these three pieces of
25 evidence.

1 So let me just jump into it and attack what I
2 think is maybe the toughest argument that I would
3 face when I would suggest to you that reasonable
4 doubt exists in this case. So you say to me, Mr.
5 Bannister, I find Minor 1 Brandeberry's testimony to
6 be credible. I believe her. I don't think she's
7 lying. Why shouldn't I vote guilty?

8 Well, let me face that head on. There are
9 three possibilities. She believes she's telling the
10 truth, and she is telling the truth. Possibility
11 number two, she looks believable, appears
12 believable, but she's intentionally falsifying her
13 testimony. Possibility number three, she looks
14 credible, she believes her testimony, but her
15 testimony is simply inaccurate. Without knowing it,
16 she has substituted one perpetrator for another.

17 This is where I want to talk to you about the
18 reasonable doubt in this case. She believes what
19 she's saying, but factually, she's inaccurate. Let
20 me give you a couple of real world examples of how
21 that works. Don't forget. She's 17 now, but we're
22 talking about a child and children are just a little
23 bit different.

24 If I were to ask a kindergartner, a first-
25 grader or a second-grader or a third-grader who

1 bought them their presents for Christmas, what are
2 they going to say? Santa Claus. Are they lying?
3 No. Is that factually accurate? No. We know
4 that's not the -- we know that's not where it's
5 coming from.

6 Finally, another example, maybe around
7 Christmas -- and one that has been a little perfect
8 to me personally. You may be familiar with the elf
9 on the shelf. It's a little elf that children get.
10 Write to Santa Claus. Put the letter in the
11 fireplace. The elf appears for some cases six weeks
12 prior to Christmas. The elf every night goes and
13 does something in the house that's sometimes
14 mischievous, sometimes funny, things of that nature.
15 The children wake up in the morning and say, oh,
16 look what the elf did last night. They believed
17 that elf had magical powers and had a marshmallow
18 war, put the parents underwear on the chandelier,
19 all those kind of things that have been sort of the
20 funny things that the elf on the shelf does. Now,
21 if you ask the child about that, is the child lying?
22 No, because they believe that's what happened. But
23 is it accurate? No, it's not accurate.

24 It's important to talk about her age. So let
25 me go back to what I was asking Minor 1 mother

1 about her statements. When she first spoke with
2 Investigator Hubert about Albert, what she said was
3 we cut off contact with him four or five years ago.
4 Well, we know the statement was on December the 2nd,
5 2010. Four or five years back would be 2005.

6 Just to use round numbers. She's 15 when she
7 gave the statement on September 21st, 2010. Five
8 years back, she's 10 years old. If the abuse
9 started when she was seven and they cut off contact
10 with Albert when she was 10, then we're talking
11 about seven, eight, nine and ten-year-old. We're
12 talking about maybe K-6 through third, possibly
13 fourth grade. If the last visit that Albert had to
14 her was the summer before 2010 when the contact was
15 cut off, then we're maybe between third and fourth
16 grade. Somewhere in that neighborhood. So we're
17 talking about a child, a child who at that point in
18 her age, uh, has a particular perception of the
19 father figure.

20 Relate that back to your own experiences,
21 either as a daughter or with daughters that you know
22 or with fathers and their children. There's kind of
23 this magical age in a healthy family. There's this
24 sweet time between when you're not so worried about
25 changing the diapers, about having to brush their

1 teeth, about all the things that you have to do just
2 to keep the child moving and get a little more self-
3 sufficient. They can do some things for themselves,
4 but they haven't hit the 'tween years, the hormones
5 haven't kicked in. You are not into the teenage
6 years.

7 It's during that time period that I would
8 suggest to you that a daughter idolizes her father.
9 They come back to their daddies after the teenage
10 years. They get back into that close-knit
11 relationship but in an unhealthy relationship, the
12 one that Minor 1 found herself in through no fault
13 of her own. She's at the most vulnerable. She's at
14 the most innocent with a man that we know is a
15 manipulative, incestuous pedophile.

16 So you say, wait a minute, hold on. You're
17 telling that, as a juror, that there's a reasonable
18 doubt that's based on the assertion that Harold
19 could manipulate Minor 1 into believing that sexual
20 abuse was by someone else. Yep. That's what I'm
21 telling you.

22 Let me give you some examples that might help
23 you understand how manipulation can work, not only
24 against children, but also against adults. I'll
25 just pick two examples that are sort of in the

1 public domain. Y'all remember a while back the
2 Hale-Bopp comet was coming across the United States?
3 There was a mass suicide out in California because
4 they believed that they were going to get on the
5 spaceship that was in the tail of the comet and be
6 transported to another world. That was led by a
7 particular individual who started a group called
8 Heaven's Gate.

9 More recently, how about Warren Jeffs out in
10 Texas, West Texas? A religious sect where he
11 convinced mothers to give up their children to the
12 men in that group to satisfy their pedophile
13 desires. So not only can it happen, it does happen.

14 Let me bring it maybe a little closer to home.
15 Some of you may have heard of the term "parental
16 alienation". In divorces, oftentimes one parent
17 will try to manipulate the child to believe that the
18 other parent is the enemy. For whatever purpose,
19 either custody disputes or things or a way to get
20 back at the offending spouse, but it happens. "Co-
21 dependency", perhaps you've heard that term. In an
22 addictive --

23 **MS. BENTLEY:** Objection, Your Honor. None of
24 this testimony is in evidence or was testified to by
25 anybody.

1 **THE COURT:** It's argument. Overruled.

2 Go ahead.

3 **MR. BANNISTER:** Co-dependency. That's a term
4 you may be familiar with where in an addictive
5 relationship or an addiction, one person is the
6 enabler, the other one is the one that's constantly
7 needing help. That is a manipulation that works
8 between family members and between people.

9 So let's -- maybe to the point get to Harold's
10 manipulation. He manipulates one through
11 intimidation. At least one solid example of the
12 physical abuse that he exerted over Minor 1 was what
13 we heard from Noreen about him beating Minor 1
14 because at three years old, she knocked over his
15 drink.

16 How about the throwing of the shoe at his wife?
17 Kelly testified that he was verbally abusive to her.
18 Intertwined in this manipulation was his role in the
19 household as the spiritual leader. Sort of using
20 the Bible, Christianity as a way to justify his
21 domineerance, his absolute control over everything
22 that was going on in that household. Mental and
23 emotional manipulation, telling his wife that she
24 was fat. Telling her that she was a bitch. Making
25 her in essence completely subservient to his wishes

1 and afraid to do anything to contradict what he
2 wanted to have done.

3 How about his confession in '09? When he and
4 Minor 1 came to Kelly and he told her, he said to,
5 uh, Kelly, I been sexually abusing our daughter.
6 Can you imagine? He convinced her that it was a
7 problem he was going to fix. He convinced her that
8 she could help him by holding him accountable, by
9 keeping him off the couch away from her and out from
10 under the blanket. He convinced her that Minor 1
11 would be okay. He convinced her that she didn't
12 need to go to any counseling. He convinced her that
13 they didn't need to go to any church members. He
14 convinced her that that was the appropriate way to
15 handle his incest with his daughter.

16 He also in that same meeting, whether he asked
17 Minor 1 to do it, whether he told her to do or
18 whether his manipulation of Minor 1 during all this
19 time frame, she actually apologized to her mother
20 for the incest with her father. The guilt that he
21 made her feel by telling her that somehow she had
22 something to do with it, somehow she had invited
23 this type of contact. It's disgusting. It's an
24 abomination. But it's also a real example we have
25 in this case of whether he is manipulating Minor 1

1 and the mother. It comes straight from the
2 testimony of those witnesses.

3 I'll give you an example of yesterday's
4 manipulation or attempt at it at least. I hope you
5 didn't buy this. He said he started when she was 14
6 years of age. Does anyone really believe that?
7 Minor 1 said initially it was 10, then it became 12.
8 Does anybody really believe that that is when he
9 started? Of course, you got to remember he's making
10 sure he doesn't catch any more time for Criminal
11 Sexual Conduct first offense. He testified, yeah, I
12 know CSC second is after the age of 12, which he
13 pled guilty to. Therefore, that charge is resolved.
14 But CSC first, prior to 12, that would be a new
15 crime. The last thing he wants to do is admit that.
16 He tried to trade his testimony for a reduction in
17 the sentence that he so richly deserves.

18 Remember, he didn't throw the shoe. He didn't
19 remember it so he denied that. Remember he told --
20 he testified he told Kelly about the reasons that
21 Albert quit coming down which is in direct
22 contradiction to what Kelly told us. He told us
23 that there was -- I liked this part -- he said there
24 was a pastor and maybe even one or two friends that
25 were there with him when he made the phone call to

1 Albert. They were there and they heard that
2 conversation. Let me tell you something, you can
3 absolutely believe that that didn't happen. If it
4 had, those witnesses would have been here. In fact,
5 I don't think the State believes that any more than
6 I do. Because those people would have been
7 obligated to report sexual abuse just like they were
8 when Kelly went to them in September of 2010.

9 He told us he didn't tell **Minor 1** that he
10 thought she had wanted to have that -- sexual
11 advances and told us he didn't leave Ohio because of
12 the growing evidence of his physical abuse up there.
13 He is a manipulative, incestuous pedophile who only
14 because he can't get around it was forced to admit
15 that he can't resist his sexual desires.

16 So how do I get from he's manipulative to
17 reasonable doubt? Let me -- I'm going to go just a
18 second to remember when the expert was here, Ms.
19 Shauna Galloway-Williams and she testified about
20 delayed reporting and forensic interviews and things
21 of that nature. And I'm sitting there. We were
22 talking about a table that was in one of the reports
23 that she found to be credible and reliable. The
24 study that was done in that particular one, look at
25 the time frames here that we're talking about. 42

1 percent of children would report within 48 hours.
2 17 percent between 48 hours and two weeks. The
3 first out that we have in that research is greater
4 than six months.

5 In this case, if it started in the summer of
6 2001 for the one week when Albert was there, then
7 we've got 12 months before he was back. We go to
8 summer of 2002, summer of 2003, summer of 2004,
9 summer of 2005. If you do 12, 12, 12 and 12, you've
10 got a total of 60 months before any report was made.
11 That's uncontradicted. That's 10 times the amount
12 of time that we were talking about in this study.
13 Maybe it fits in the unknown. This is -- you know,
14 it's a study. Statistics are what they are. But
15 the point is it gives you -- I think it deserves
16 some explanation, the 60 months, the missing time.

17 So let me go back to some of the questions that
18 I asked Ms. Galloway-Williams about. Now, she was
19 not familiar with the term "parental
20 indoctrination". She was not familiar with the term
21 "perpetrator substitution", but she was familiar
22 with the term of "suggestibility". Now, remember
23 the position that she occupies at the Julie
24 Valentine Center. She is a professional
25 interviewer. She does this or has up until she

1 became Executive Director primarily. So we're
2 talking about 750 forensic interviews. So she knows
3 what are the problems that you can create if you
4 interview a child incorrectly or inappropriately.
5 That falls under the category generally of
6 suggestibility.

7 What does that mean? She told you you got to
8 be careful not to say something or ask questions in
9 a way that cause a child to repeat it back to you to
10 incorporate what you said into their memory. I was
11 asking her, I said, you know, let's take a look at
12 your training manual for a second. I said what are
13 some of the things that we're talking about. And
14 let's see, it was factors that affect young children
15 that make them particularly vulnerable to suggestive
16 interview. Now, the children are particularly
17 deferential to adult beliefs. The danger is that
18 suggested information will be incorporated into the
19 child's memory.

20 When they were talking about the studies, there
21 were two studies that were done. Remember? I was
22 asking her about it. It was a study where they
23 purposefully gave interviewers, professionals now,
24 wrong information and had them interview the
25 children. In both studies, when questioned by the

1 interviewers with false beliefs, children often made
2 inaccurate reports that were consistent with the
3 biased interviewers scripts.

4 So when I say to you he's manipulative and that
5 in this case, she has substituted one perpetrator
6 for another, that she believes it and that she got
7 that from Harold Brandeberry, the research that the
8 expert testified to backs that up. -- It says that
9 when you are a child, when you are seven, eight,
10 nine and ten years old, just an adult authority
11 figure, not a family member but just an adult, like
12 a forensic interviewer who is professional but
13 unrelated to a client, the things they say can
14 impact what the child then will tell you that they
15 believe.

16 We talked also about delayed disclosure and,
17 uh, went back to -- you know, this was still the
18 same studies we were talking about when you said age
19 was a factor. If you recall, I asked Ms. Galloway-
20 Williams, I said, did you find it surprising that
21 the conclusion from the study was that older
22 children perceived more negative consequences to
23 disclosure than did younger children. She said no,
24 not really. I mean, that was based on her
25 experience in a practical way. Well, what that

1 means for our case is that the likelihood of
2 disclosure was when Minor 1 was younger, seven,
3 eight, nine and ten. And it was after she got older
4 that the likelihood of disclosure would have gone
5 down because now she perceives in a more real way
6 the negative consequences that could impact her.

7 The other big factor was fear. Older children
8 understand the consequences they have of fear of
9 that. The younger children may not understand those
10 consequences of revealing. And so what you get is
11 accidental disclosures, little kids telling their
12 peers, telling their friends or a teacher or
13 something -- somebody of that nature in a way that
14 they don't even know that's what they are doing.

15 Fear is also a factor that played across the
16 lines. And fear was that there was a threat, a
17 threat. Where was the threat in this case? Under
18 the State's theory, the threat was in Ohio with the
19 exception of one week each summer and maybe the
20 visit over Christmas. Where do I say the threat
21 was? I say the threat was the monster that she was
22 living with that was in the home with her on a day-
23 to-day basis, the man that she looked up to as her
24 father.

25 When will disclosure occur sometimes? Delayed

1 disclosures occur when the threat is removed. If
2 Albert Brandeberry was a threat, he was removed for
3 12 months each year from 2001 to 2005 or '6,
4 whichever date you want to pick. What threat was
5 not removed? The threat that was not removed was
6 Harold Brandeberry. When did we find out about
7 Harold Brandeberry in an official capacity? Found
8 out about Harold Brandeberry when he was arrested
9 and taken away.

10 What happens in this house stays in this house.
11 Remember that testimony? That's why we've got a
12 delayed disclosure. What happened was -- well,
13 also, just as a side note, doesn't that explain a
14 little bit while Harold was so opposed to allowing
15 Minor 1 to go to sex education class just to learn
16 about the changes that were coming up in her body.
17 Doesn't that indicate to you that the last thing he
18 wants to do is for the child that he's sexually
19 molesting to start finding out about improper
20 touching and what sex really is, how our bodies
21 really are supposed to be used. It's a -- I suggest
22 to you it's a pattern of manipulation.

23 Harold is a lot of things. And one of those, I
24 believe, is he is conflicted inside. He can't
25 resist his pedophile lust, but he knows at the same

1 time that its an abomination. So his outward
2 appearance is I'm going to study to be a preacher
3 and I'm the spiritual leader of my household and I
4 go to church every day. But inside the family home,
5 he's something completely different. He is a
6 monster. He is verbally, physically and sexually
7 abusing his family members. He apologizes to
8 Minor 1 after he molest her. And he tells her he
9 won't do it again.

10 He physically abuses his children in Ohio. As
11 Noreen said, she went to Albert to try to do
12 something about that. I find it significant that
13 it's not too long after that that he moves to
14 Greenville. He creates distance and time between
15 what was maybe the repercussions that were getting
16 ready to come on him. Then he's in Greenville with
17 Minor 1 and the allegation that Albert has touched
18 Minor 1 inappropriately comes up. We'll come back
19 to that in a second.

20 But then, three, we've got him when he actually
21 gets arrested on September 21st. He says the sexual
22 abuse started -- well, I'll take that back. Number
23 three is when he goes to his wife and says, look,
24 I'm going to be good from now on. In '09, he says
25 I'm going to quit. This is it. I'm done. Hold me

1 accountable. I've got somebody who's going to watch
2 over me. You just keep me off the couch with her
3 and it's all going to be okay.

4 And then in '09, when he actually tells Kelly
5 about, uh, -- sorry. In '09 when he was arrested,
6 he tried to make it sound like it only started when
7 she was 14. We know that can't be true. Let me go
8 back to when we have the evidence of Minor 1 coming
9 to her dad and saying that grandpa is touching me
10 inappropriately. I still suggest that she's
11 substituting the perpetrator out of fear at that
12 point. Why isn't it a reasonable doubt that if she
13 said that to him -- at that moment when she's 10
14 that that is a way for a 10-year-old that idolizes
15 your father, who is afraid of the physical abuse and
16 the sexual abuse that she's already undergone, why
17 isn't that a cry to help? Why isn't that a way that
18 she's saying, look, this is the only way I feel
19 comfortable letting you know about the fact that
20 what you're doing to me, I don't like?

21 Or what if it didn't happen that way? What if
22 the reasonable doubt is that, uh, she actually said,
23 daddy, I don't like what you're doing to me? Well,
24 we know he apologized. Baby girl, this never should
25 have happened. You got to remember that Harold was

1 probably recognizing his ability to keep this secret
2 was getting harder as Minor 1 got older. Why isn't
3 it a reasonable doubt that he took this 10-year-old
4 child, he made a phone call to Albert and creates a
5 point in time where he can have some evidence that
6 he hasn't done anything. He takes the position that
7 I'm not going to do it again and he tries his best.
8 but he can't because he can't resist those desires.

9 It was devastating to hear Minor 1 say that my
10 dad started molesting me after I told him about
11 Albert. Okay. What is so special -- well, I'll go
12 back to that. But that creates a point in time
13 where Harold, if it comes out, has got somebody to
14 blame it on. Somebody to say, okay, that's what
15 happened. So, he can't stop. He starts abusing her
16 again.

17 So let me make three points right here about
18 this little moment in time. One is Minor 1
19 described the way it started with her dad as a pony
20 ride. A pony ride. Do any of y'all remember the
21 time when either you were a child or had a child or
22 had seen a child ride the pony, ride to town, ride
23 the horsy, don't fall down? It suggests that we are
24 talking about a much younger child. Her daddy
25 started with a pony ride. I think that given time,

1 we're only 24 months from the last abuse that
2 Minor 1 had. I think that given time, counseling,
3 healing, I think her memories are going to go way
4 further back than 14 or 10. There's going to be a
5 moment where the pony ride is suddenly realized by
6 everybody that that is a whole lot earlier in her
7 life. And that's her dad.

8 What is the second point here? At that moment,
9 if she's 10 or if she's 12, what is magical about
10 that age? I mean, he's either an incestuous
11 pedophile or he's not. He can either resist his
12 urges or he can not. What do we know for a fact?
13 We know he can't resist his urges. We know he's a
14 pedophile. You are telling me that at 12, somehow,
15 he managed to keep his hands off up until that
16 moment? That doesn't hold water.

17 Three, uh, don't forget that when she -- at
18 this moment, she's 10 years of age. She talks about
19 Albert. Harold has five years to work on her before
20 it comes out where she believes that Albert is the
21 one that molest her. Five years. It wasn't until
22 December the 2nd, 2010 when she's in her third
23 session with her therapist and is having flashbacks
24 that it comes out. Five years he had to work on
25 her. Five years for terms like parental

1 indoctrination, perpetrator substitution,
2 suggestibility. Remember, in both studies, when
3 questioned by interviewers with false belief,
4 children often make inaccurate reports that are
5 consistent with the biased interviewers' scripts.
6 Children are particularly deferential to adult
7 beliefs.

8 Ladies and Gentlemen of the jury, if the only
9 evidence in this case, uh, on the defense's side is
10 what I just described to you, then I would agree
11 that it would be a much closer call as to whether or
12 not the State has proved their case beyond a
13 reasonable doubt. But that is not the only evidence
14 in the case that adds weight to other reasonable
15 doubt.

16 Let me talk first about some little things. The
17 dates, the ages, the number of visits, those tend to
18 go a little bit all over the place. Maybe not a big
19 thing. He wore cowboy boots. He took her hiking.
20 Struck me as odd. Also, Albert wasn't alone when he
21 came down to visit. We have testimony that Jacob
22 and Kelly's mom came with him on at least two
23 occasions. Well, if we're only talking about five
24 at most, even under the State's theory, one, two,
25 three, four, 2001 to 2005. So there are other

1 people that were there.

2 The thing I want to say is the picture that has
3 been presented is that he's there in the camper, in
4 the home with the children for a week each summer
5 all by himself. But that's not necessarily true.
6 We know that Jacob's down there and her mom's mom is
7 there. What are they doing? I mean, yeah, okay,
8 the parents are off working. But if they've come
9 down from Ohio to visit the children, aren't they
10 visiting the children? It just limits the
11 opportunity, I think.

12 Anyway, one of the things that struck me too --
13 and this may not have been as big a deal for you as
14 it was for me -- but when Harold -- when asked --
15 when asked, Harold said -- sorry -- when asked when
16 did you start abusing your daughter, Harold said
17 summer. Isn't that consistent with the allegations
18 that go back to 2001?

19 Why keep Albert's alleged abuse from Kelly?
20 Why do that? You're not implicated. Why is the
21 father, even if you are messed up in the head, why
22 do you not want Kelly to know about the fact that
23 your father has abused Minor 1 or touched her
24 inappropriately? I'll tell you why, because the
25 last thing Albert wanted. Sorry. The last thing

1 Harold wanted was for church members, counselors,
2 other people to get involved with Minor 1 He was
3 afraid that what was going to come out was actually
4 his own abuse. You heard Kelly testify. He didn't
5 want Albert's Christmas cards going to the kids.
6 That was part of the manipulation to create this
7 perpetrator substitution, I suggest to you.

8 The other small thing I would point out, uh,
9 Kelly's description of Albert versus Kelly's
10 description of Harold. Albert is described as a
11 doting and loving grandfather. Harold is described
12 as a physically, sexually abusive father. Look at
13 the difference. Albert is married to Noreen for 28
14 years. Harold is divorced and in prison. Okay.

15 Let's talk about big things. Big things. One
16 of those is Albert's denial of the accusations. As
17 a housekeeping matter, let me just say that the
18 judge is going to instruct you that at the end of
19 this case that under no circumstances are you to
20 hold the fact that the defendant did not testify
21 against him. As a practical matter, what else can
22 he say other than that he didn't do it. The time
23 frames are so broad, you can't come up with an
24 alibi. I mean, summer? You can't go back, nobody
25 can go back and say here's what I did every single

1 day during the summer.

2 So Albert's denial is when Officer Tuttle --
3 remember Officer Tuttle? He goes to Ohio. He walks
4 in the house. He's talking to Albert and to his
5 wife. And he talks to him three different times.
6 He asked about whether or not, uh, Albert had
7 anything to say about the allegations from Minor 1
8 Contrast this with what happened with Harold.

9 Harold is arrested or put into the police car
10 and confesses within minutes of being confronted
11 with what he has done. Albert, on the other hand,
12 denies it three different times. Albert didn't make
13 any excuses about going to South Carolina. He
14 didn't try to say, no, I didn't go down there.
15 There wouldn't be any evidence but testimony from
16 other people. He could have taken the position he
17 denied ever going down there during those summers.

18 He also didn't take the opportunity when the
19 investigator asked him did he believe Minor 1 He
20 said, yeah, you know, normally, she's pretty
21 truthful. But in this case, she's just not telling
22 the truth. He could have said a whole lot of other
23 things at that point. You can't trust that child
24 for anything. She's got problems. She's mental.
25 She's got all these other issues. Don't believe

1 her.

2 This is a subtle point, but it has big
3 implications for the decision that you've got to
4 make about whether or not the scales have tipped
5 beyond a reasonable doubt. Okay. So time is
6 important here. The, uh, investigator said when he
7 went to Ohio -- excuse me -- that he found out in
8 February that he was requesting that there was -- an
9 interview being requested. February of 2011.

10 In order to be prepared to go to the interview
11 in March, he had to know about the case. So he knew
12 about Minor 1 allegations. He had talked to
13 Investigator Hubert about it. We know that
14 Minor 1 allegations were back in December the 2nd
15 of 2010. So this is some two or three months after
16 Minor 1 has come forward, after Kelly has talked
17 about Albert's not going down there. So when he
18 goes in on March the 11th, prepared with the
19 information that he has, he tells you that I didn't
20 have probable cause to arrest.

21 Remember we talked at the beginning of the case
22 about the scales and about how there are some levels
23 of proof and probable cause is like one of the
24 lowest levels in the law? Think about this. At the
25 moment when he goes to see Albert, he's telling you

1 he didn't have probable cause. What did they have?
2 What was in this basket for the state? Minor 1
3 allegations. You get three denials and you get two
4 potential admissions. Then he went to Greenville and
5 admitted he had a phone call with Harold. From no
6 probable cause on March the 11th to probable cause
7 on April the 11th.

8 Now, when I stop talking -- and I will. I
9 promise -- the Solicitor gets up. I want you to, in
10 your mind, ask the question what really changed
11 between March the 11th and April the 11th, what new
12 evidence came to light other than Albert's two
13 admissions that he had gone to Greenville and that
14 he had a conversation with Harold. Ladies and
15 Gentlemen, it is a long way from probable cause to
16 proof beyond a reasonable doubt.

17 The other big thing, I think, here if I can go
18 back to -- if I can go back to Greta McCall when she
19 was testifying about the different times that she
20 was talking to Minor 1 she was counseling her. And
21 12/2/2010, the third session, Minor 1 was having
22 flashbacks. That's when the first allegation from
23 Minor 1 comes out about the grandfather. We've got
24 flashbacks going forward even to, as Minor 1
25 testified, very recently.

1 What does that mean? Well, flashback,
2 according to Ms. McCall, her definition of it is
3 when you are literally, your mind takes you back in
4 time to a place and experience something, it feels
5 real, but it's not. What does that mean? That
6 means that the trauma that she suffered, the impact
7 that it's had on her ability to perceive things
8 accurately has been impaired. If it was like a
9 glass frame that she's looking at, there's a defect
10 in it. That impacts how she sees the world. The
11 other example is the fact that Greta told us that
12 she has anorexia. Understandably so. Truly, I hope
13 she gets healed completely. But it doesn't change
14 the fact that her perception of reality is impacted
15 by the sexual trauma that she has gone through for
16 most of her life. It impacts her such that she can
17 believe something wholeheartedly and it is still the
18 product of a view that is misaligned because of the
19 trauma.

20 The other thing that I think is a big issue for
21 reasonable doubt in this case is the different
22 statements that we get during the time frames when
23 Minor 1 is in a formal process. So if we go to
24 September 21st, 2010 when the first allegations come
25 out, what do we have? We have the first interview

1 takes place at the home. And we know that she was
2 asked at that point has anybody else abused you.
3 The answer was no. The sole perpetrator was my
4 father.

5 Later that day, at the interviewer's office,
6 she is asked a second time, has anybody else abused
7 you. Her answer is no. The sole perpetrator is my
8 father.

9 We have a third time which is September the
10 28th. September the 28th, 2010. This is a document
11 that's in evidence. If you recall, I asked Susan
12 Galloway-Williams about Mary Fran Crosswell, the
13 doctor that works for the Julie Valentine Center.
14 She said, yes, I trust her work. She uses the
15 appropriate methods that we use. Anything she says
16 would be an accurate representation from what
17 happened and what she did on page 4, on page of 13.
18 And I've blown this up so that you can see it.

19 The child's statement. Quoting the child's
20 word -- words, she's going through what, in essence,
21 is a form of forensic interview for this child about
22 what has happened. Let's see. Just in case you
23 miss that. After each incident, Harold would tell
24 her he was sorry and wouldn't do it again. But here
25 is an important part. She denies that anyone else

1 hurt her or touched her in a way that she didn't
2 like. Now, that's an interviewer using the proper
3 and appropriate methods to get information from a
4 child.

5 Let me see. So then we come to -- so that's
6 September 28th. Now we have one, two, this is the
7 third time that she said in a formal capacity nobody
8 but my father. We get back to the intake, which you
9 will also have with Greta McCall at the counseling
10 services. You will see on here that was blacked
11 out. That's Greta's handwriting. The other stuff
12 is Minor 1 handwriting. She filled this out. She
13 said, describe the eating problems. I can't eat
14 breakfast because it makes me sick. She said, in
15 the history of abuse, the assault and trauma, she
16 says my dad is listed as the perpetrator. He raped
17 and molested me for three years. That's what she
18 brought on November the 10th or that's what her
19 mother brought for her to the first session for the
20 mother.

21 Well, we know that she went over the intake.
22 We know that Greta McCall went over the intake with
23 her on 11/19/2010. No allegation there. Again,
24 we've got sole perpetrator is the father.
25 11/22/2010, the father doesn't -- I mean, the father

1 is the sole perpetrator. It's not until December
2 the 2nd, several denials later. So we've got
3 Minor 1 statement that it happened. But we've
4 also got her statement that it was the father.

5 So in a case where it's a criminal case and
6 it's proof beyond a reasonable doubt, why is one
7 statement going to be given sufficiency to meet that
8 burden over the other statement? That standing
9 alone is reasonable doubt where you have a complete
10 denial of what it was by the person who then alleges
11 that that's what happened.

12 Finally, uh, -- finally, we come to what may
13 be, in my opinion, one of the most, uh, prominent
14 pieces of evidence for the defense. And that is the
15 testimony you heard about Albert's penile implant in
16 the mid-80s, it's literal implosion around '95, it's
17 surgical removal, the dead scar tissue that is
18 there. There are two choices here for the State, I
19 think. So I want you to be thinking about this.
20 One, I suspect that either the type of abuse will be
21 downplayed to make it sound like it wasn't necessary
22 to have an erect penis. But that's not what the
23 testimony was from Minor 1

24 Two, is that it doesn't necessarily have to be
25 an erect penis for there to have been abuse which I

1 technically agree with. But they sure are sliding
2 off of where we were when we started on the case.
3 If you can't believe part of it, then I suggest to
4 you the other part of it is exactly what I said
5 which is it's Harold's abuse. The fact that Albert
6 doesn't have the physical ability to do what he is
7 alleged to have done is enough to make any
8 reasonable person hesitate to act.

9 The judge will charge you that that is what
10 reasonable doubt is. It's a doubt that makes you
11 hesitate to act. This is one of those cases where
12 maybe for you individually this is going to be a
13 hard thing to do, but you know is the right thing to
14 do. Reasonable doubt is sometimes the only thing
15 that stands between an innocent person and the lost
16 of his liberty.

17 Deliberate. Take your time. Go through it.
18 But I would suggest to you that any one piece of
19 what I brought to you would be enough, but putting
20 them all together is just unassailable. The State
21 hasn't proved their case beyond a reasonable doubt.
22 They've got the probable cause on April the 11th
23 with his two omissions -- admissions. But they just
24 have not never got past that. Frankly, I think they
25 know that, but this is the process and we have to go

1 through it.

2 So know that when you return your verdict of
3 not guilty, that it doesn't mean that you are
4 telling Minor 1 that she's a liar. It doesn't mean
5 that you are somehow saying it's okay in our
6 community for a child to be molested. Know that
7 your verdict of not guilty is nothing more than a
8 recognition of you are jurors, you have taken an
9 oath, you followed the law of our Constitution in
10 our state and you have done your duty as hard as it
11 was. Thank you.

12 **MS. BENTLEY:** Good morning, Ladies and
13 Gentlemen. At the beginning of this trial, I told
14 you that some children have a reason to be scared.
15 Without a doubt, Minor 1 Brandeberry had many
16 reasons to be scared. And unfortunately, when the
17 nightmare with her grandfather ended, a more present
18 nightmare, a more daily nightmare began with her
19 father. I'm going to talk about that.

20 The State does not deny that Harold Brandeberry
21 is -- I can't recall the exact words -- an
22 incestuous, manipulative child molester. That's
23 putting it eloquently. And that's the truth.

24 Throughout the closing argument and then at the
25 beginning of trial, Mr. Bannister and I talked about

1 reasonable doubt. The judge is going to instruct
2 you on a reasonable doubt momentarily when I finish.
3 But I want to talk to you about it right now because
4 proof beyond a reasonable doubt is the foundation on
5 which the criminal justice system is based. 100
6 percent. The State bears the burden of proof. The
7 State must prove Albert Brandeberry guilty beyond a
8 reasonable doubt.

9 What is reasonable doubt? The judge will
10 instruct you that proof beyond a reasonable doubt is
11 not reached when you are not firmly convinced of the
12 evidence. Proof beyond a reasonable doubt is not a
13 proof beyond a reasonable doubt beyond mere
14 speculation, beyond a mere possibility. That is not
15 how the criminal justice system works.

16 If you go back to that jury room and do what
17 you swore you would, you deliberate, you talk
18 witness by witness, you look at the pieces of
19 evidence that are in evidence, you think back on the
20 testimony, that's deliberation. That is not a sign
21 that you have reasonable doubt or any doubt in your
22 mind. That's doing your job. It's a hard job and
23 nobody in this room envies you. But if you go back
24 there, if you review all the testimony, if you think
25 back about the witnesses, how they behaved, their

1 credibility, their bias or motive to lie, if you
2 analyze all that and you are firmly convinced that
3 Minor 1 Brandeberry remembered Albert Brandeberry
4 molesting her because that's what happened, then you
5 must find him guilty. If, in your hearts, you
6 firmly believe that her memory is as accurate as it
7 sounded on that stand, then you return a verdict of
8 guilty.

9 If you don't, if you go back there and you
10 believe that it is not just possible, but if it's a
11 reasonable conclusion that her father manipulated
12 her into telling everybody it was her grandfather,
13 if you believe that it's a real possibility that
14 Albert could not have done what Minor 1 said he did,
15 then you let him walk right out that door and you
16 find him not guilty. That's the law. I'm not going
17 to reword that.

18 I also touched on the elements of the crime at
19 the beginning of the trial. The judge is actually
20 going to thoroughly explain what Criminal Sexual
21 Conduct and what Lewd Act are. She'll give you a
22 formal charge. You can take it back with you and
23 look at what the State had to prove. But one thing
24 that is central to Criminal Sexual Conduct with a
25 Minor in the first degree and Lewd Act on a Minor

1 are the age of the victim.

2 Criminal Sexual Conduct with a Minor in the
3 first degree, as I told you, means that the victim
4 was under the age of 11 when the abuse occurred.
5 The abuse had to be a sexual battery. Sexual
6 battery is penetration, however slight. Penetration
7 by any part of the defendant into the body of the
8 victim. Her mouth, her vagina, any of those,
9 penetration, however slight, is a sexual battery.

10 A lewd act. A lewd act required that the
11 victim be under 16, the defendant be over 14. Lewd
12 act, as I said, was touching, rubbing, fondling, as
13 the defendant told the victim, massaging over her
14 vagina. Anything done on the body of the victim
15 intended to arouse her or arouse the defendant.

16 Let's look at ages and some dates that are
17 uncontested. May 2001, Harold Brandeberry and his
18 family moved to Greenville. Albert comes down that
19 summer. Minor 1 is six years old. We know that
20 Albert came down every summer. So let's look at
21 some of the pertinent dates. Summer of 2002,
22 Minor 1 would be seven years old. Her birthday is
23 [REDACTED]. She's seven. You will recall
24 that she had a broken arm that summer, which is also
25 referenced in Dr. Crosswell's report. You will get

1 to take that back with you. There's something else
2 for you to remember about that summer. Albert
3 visits. She also goes to Ohio that summer. She
4 remembered swimming in the pool with her cast on.

5 Minor 1 remembers that either that Christmas or
6 the Christmas after, so either Christmas 2002 or
7 Christmas 2003, her grandfather came down. He
8 celebrated his birthday, the end of November, with
9 her father's mother's birthday. They had a joint
10 cake with candles. They went to the Bob Jones
11 lighting ceremony. It was Christmas 2002. Minor 1
12 would still be seven. She said it was the first
13 week in December when he came down. If it was
14 Christmas 2003, she would be eight. That date was
15 significant in her mind because she remembered that
16 it was the summer after that that the sexual battery
17 began.

18 Let's say it's Christmas 2003. Let's say it's
19 a year ahead. Minor 1 is, at most, nine years old
20 when her grandfather visits that summer. And he
21 does visit that summer. And we're going to talk
22 about what Minor 1 tells you he did later on. But
23 if you believe the allegations, the age requirement
24 is met.

25 The reason you're here, the reason it will take

1 you the most time to deliberate is whether the State
2 has proven beyond a reasonable doubt that it was
3 Albert Brandeberry that committed the sexual battery
4 and the lewd act. The defense has done an excellent
5 job taking your eye off the ball, taking your eye
6 off of Albert and the facts surrounding Albert.

7 There's been a lot to look at because we've got
8 Harold. We have got Harold Brandeberry, Minor 1
9 father and admitted and incarcerated incestuous
10 child molester. He is here in this case. He was
11 here in Minor 1 life. We can't avoid it. But you
12 can't concentrate solely on Harold and neglect
13 everything that, everything that has proven to you
14 that Albert is just as guilty as his son.

15 I want to take you through the witnesses. I'll
16 try to do it in a mostly chronological order so
17 we're not going to back and forth. The first person
18 the State called was Greta McCall. Greta McCall was
19 Minor 1 appointed therapist. As soon as the -- as
20 soon as everyone realized in September 2010 that
21 Harold had been abusing his own daughter, they were
22 like, we have to help her. She has to go to
23 counseling. And it will tell you on this sheet what
24 brought you to therapy required by DSS and the
25 State.

1 Minor 1 is in therapy with Greta McCall. She
2 initially tells Greta right here from the ages, from
3 the ages of 12 to 15, my dad raped and molested me
4 for three years. Three years back from 2010 would
5 be 2007. Exactly when she told you that the abuse
6 with her father happened. That's what she told
7 Greta.

8 Three sessions in, December 2nd, 2010, Minor 1
9 discloses additional abuse to Greta. Greta did not
10 exactly remember Minor 1 demeanor because she was
11 so taken aback. She had the police report. She
12 knew that Minor 1 had been sexually abused by her
13 father. That's what they were working through. As
14 part of that therapy, she's asking her did you ever
15 disclose this. Minor 1 reveals that she had and
16 she's working -- pardon me. That's not -- Minor 1
17 is going through her disclosure of abuse. And it
18 comes up that her father started after she had
19 disclosed to him other abuse, abuse that happened
20 before.

21 Mr. Bannister asked Ms. McCall about
22 flashbacks. What he just told you she defined as a
23 flashback is not in my memory. That is not what I
24 remember her saying at all. I remember Ms. McCall
25 saying that a flashback is a memory. She clearly

1 stated that a person does not create or correct
2 memories in a flashback. A flashback is a memory.
3 Was Minor 1 traumatized by the abuse of her father?
4 Of course. Would that affect her memory? No. And
5 if you got questions about what her definition was,
6 re-listen to her testimony. You have every right
7 and every ability to do that.

8 It came through Greta McCall's testimony, Dr.
9 Crosswell's report. Yes, Minor 1 denied that anyone
10 else has hurt or touched her in ways she didn't
11 like. You heard that Greta asked her about that and
12 that she gave an explanation which Greta was not
13 allowed to tell you. We heard from Minor 1 What
14 did Minor 1 tell Greta the reason that she told them
15 that was? She was scared. She was scared. But
16 what else did she say in Dr. Crosswell's report that
17 Mr. Bannister did not highlight? Police report
18 indicates that patient disclosed that her father had
19 been sexually abusing her from two to three years.
20 That timeline is consistent with what Minor 1 has
21 maintained all along, the abuse with her father
22 started in the summer of 2007 after she disclosed to
23 her father that her grandfather had been sexually
24 abusing her. In his twisted mind, he saw that as a
25 green light and he took advantage of her.

1 We heard from Investigator Heather Hubert. She
2 first met Minor 1 on September 21st, 2010. If you
3 will recall, she said it was kind of a hectic day.
4 It was a Tuesday. DSS had called her because an
5 allegation of abuse against Harold Brandeberry had
6 been made. She had to go out there. She was
7 investigating that. It's in the brief amount of
8 time between the time the kids get home from school
9 and Harold gets home from work. She was there. DSS
10 was there. Kelly was there. Minor 2 was there. It
11 was kind of hectic. She talked to everybody in the
12 room. She got the basic facts down and then she
13 went out to wait for Harold to get home.

14 What does she do? She confronts Harold who
15 immediately confesses. Does he try to make it look
16 better by saying Minor 1 was 14 when it started?
17 Sure he does. He's manipulative.

18 Later that afternoon, Minor 1 goes to provide a
19 statement. She states again that her father was the
20 only perpetrator. Her father had been arrested that
21 afternoon. The fear of him was foremost in her
22 mind. That's what she told you. Did you believe
23 that the police and DSS were there to help you?
24 Yes. Why didn't you tell them? I was scared. My
25 dad was doing it. He lived with me. He was there

1 all the time. That was her concern.

2 And what else? Her dad had taken care of
3 granddad. She had not seen him. He had not come to
4 visit since she told her dad in December 2006. Her
5 issue on September 21st was the fact that her father
6 was molesting her on a regular basis. That was her
7 problem on that day. And it wasn't until she felt
8 comfortable with her therapist, til her father had
9 been in jail for at least three months, til she knew
10 that her mother would take her side that she felt
11 comfortable disclosing her grandfather's abuse
12 again.

13 You briefly heard from Detective Tuttle. He's
14 the investigator in Finley, Ohio. And because
15 Finley, Ohio is nine hours from Greenville, South
16 Carolina, Investigator Hubert said, hey, can you
17 just go out and check on this guy. Detective Tuttle
18 himself --

19 **MR. BANNISTER:** That was it. That was it.
20 You just flipped past it.

21 **MS. BENTLEY:** Oh. Okay. Thank you. Okay.
22 Yes. Detective Tuttle went out. Detective Tuttle
23 had no probable cause or information that a crime
24 occurred in Ohio. A warrant had not been issued.
25 So he could not arrest Albert Brandeberry that day.

1 He was there to talk to him, to figure out what he
2 would say.

3 What did he say? Of course, he denied abuse.
4 Sure. He denied molesting his granddaughter. Is
5 that surprising? Is that reasonable doubt? I would
6 submit that it's not. What did he tell you? What
7 did he admit to Detective Tuttle? Well, that he had
8 visited every summer since 2001 until several years
9 prior to 2011.

10 Harold called him. Harold called him in
11 December of 2006. Albert could not remember the
12 exact date. It was several years prior to when
13 Detective Tuttle was there. Several years would
14 encompass 2006, the end of 2006. Harold had
15 confronted him about the allegations. He told
16 Detective Tuttle he was aware that Minor 1 had told
17 her father that he had been sexually abusing her.
18 Noreen said that she was shocked to hear that and
19 Albert initially appeared shocked according to
20 Detective Tuttle, but then it came out that he knew.
21 He knew because his son had told him. That was the
22 reason he stopped going down to visit. You heard
23 that from the defendant and you heard that from his
24 wife. Why would they go down and visit these people
25 that are saying, that are making up these

1 accusations? So she knew all along too. But they
2 both sat there and acted surprised.

3 You next heard from Minor 1 and her family. I
4 told you at the beginning of this case that there's
5 not going to be a video. There's not going to be
6 fingerprints. There's not going to be pictures of
7 physical injury. Minor 1 testimony is of the
8 utmost importance. I'm going to save hers for a
9 little bit.

10 Let's look at her family. You heard from every
11 member of her immediate family. We'll start with
12 her little brother Minor 2 He's 14 years old.
13 Clearly scared. Never seen the inside of a
14 courtroom before. What did he tell you? He, who
15 has no motive, clearly not under any influence came
16 in and said granddad -- granddad visited every
17 summer. I don't remember a lot of it. I remember he
18 drove down. I remember he drove down in a truck. I
19 remember we'd do stuff together, including to go buy
20 toys..

21 Minor 2 got such great toys that he even
22 remembered two of them. What were they? Battery-
23 operated jeep and a remote control motor cycle. And
24 where would he play with those toys? Outside. Just
25 like Minor 1 said. Minor 2 would get toys. He'd go

1 outside to play and she'd be left inside with her
2 grandfather giving him access to her.

3 Something else about Minor 2 testimony. Minor 2 is
4 14, 14 and a half. He's about the same age, he's
5 just a little bit younger than Minor 1 was when the
6 police came out to investigate the allegations into
7 her father. And Minor 2 estimated to you that his
8 grandfather stopped coming in 2008. That was his
9 estimation. He's two years off. He was first
10 confronted with the question and he guesses it was
11 2008. He's 14. That doesn't -- did that bother any
12 of you? It didn't bother me. We know through other
13 evidence it was 2006. That was the last year he
14 came.

15 Minor 1 tells police the first time she was
16 ever asked when it started, the police are there.
17 They are there to arrest her father. DSS was in her
18 house. She's just told the biggest secret she ever
19 had and they ask her when it starts and she says 10
20 to 12, about 10. Now, later, when she's been able
21 to calm down and isn't confronted by a barrage, she
22 says 12. I was 12. That's what she's maintained
23 ever since. She knows the difference between her
24 father and her grandfather.

25 You heard from Kelly Brandeberry. She

1 confirmed some of the things everybody else
2 confirmed. They moved to South Carolina in May 2001
3 because Harold wanted to attend Bob Jones. They
4 both worked there. The children went to school
5 there. She confirmed that Harold was manipulative.
6 Without a doubt. She also confirmed that Minor 1
7 had no knowledge, no tools to even disclose abuse if
8 it had happened to her.

9 She wasn't even allowed to go to a class about
10 getting her period. They kept her completely in the
11 dark. They never talked about good touching, bad
12 touching, except for head, shoulders, knees and
13 toes. They didn't teach her any of that. And that
14 was at the advice of Harold.

15 You heard from Kelly that she failed to protect
16 her daughter, that Harold came to her in 2009 and
17 said that he had been having inappropriate contact
18 with Minor 1 You heard from Kelly that she did not
19 inquire as to what it was, that Harold had come to
20 her and told her he wanted help. He had gotten
21 someone to help him. That he was sorry. She
22 believed it. Why did she believe it? Maybe she
23 wanted to believe it. She believed that would be
24 the end.

25 Mr. Bannister would have you believe that

1 Harold Brandeberry is a Warren Jeffs. He is like a
2 cult leader. He is so manipulative he could
3 convince a swarm of people to kill themselves over a
4 comet. You met Harold Brandeberry. He is
5 manipulative. He's an incestuous child molester.
6 He's a liar. You know, he wants to do anything he
7 can to make himself look better, but he is no Warren
8 Jeffs. He is no cult leader.

9 He had control over Kelly cause it made her
10 life easier. He paid the bills. He made all the
11 hard decisions. She could follow along and not make
12 waves. However, in September of 2010, when she saw
13 for herself what was going on with Harold and
14 Minor 1 she stood up. She had a backbone and she
15 showed it. She called a pastor first, which, in
16 their household, would not have been uncommon. When
17 the police came, she gave 100 percent cooperation.
18 She supported her daughter all the way despite any
19 religious convictions. She divorced her husband.
20 It was finalized just this past summer. She sided
21 with her daughter.

22 Mr. Bannister asked why not tell Kelly. Why
23 not tell Kelly about the disclosure about Albert?
24 Because Kelly did have a backbone. Harold knew that
25 his grip was tenuous. He fancied himself the head

1 of the household. He did wear the pants, but he was
2 not a mastermind by any sort. We all saw right
3 through him. And he knew, he knew that if his wife
4 knew that Albert had been molesting their daughter,
5 she would have been gone. Kelly told you that
6 herself.

7 Let's talk about Harold. He is the biggest
8 shiniest distraction in the room. Let's talk about
9 Harold. Why would I put a convicted child molester
10 on the stand? We know he is manipulative. We know
11 that probably he's not going to tell 100 percent of
12 the truth. Why? You had to meet with him, Ladies
13 and Gentlemen. You had to see for yourself what
14 we're dealing with and we had to give him a chance
15 to try to tell you what could not be contested.
16 Things that could be backed up by other evidence.

17 Did he try to manipulate y'all and the court by
18 saying, oh, she was 14? Sure, he did. Cause in his
19 warped, twisted mind, if you molest your 14-year-old
20 daughter, that's better than your 12-year-old
21 daughter. In his mind, if it only happened for a
22 year, that makes it better. That's the type of
23 manipulation Harold is capable of.

24 As the judge is going to tell you -- it's part
25 of her charge -- you can believe part of what a

1 witness says, all of what a witness says, nothing
2 that a witness says. You can believe some witnesses
3 over other witnesses. You can believe one witness
4 over all witnesses. You are the sole finders of the
5 fact in this case.

6 Why don't you look at Harold Brandeberry in
7 exactly that light? What did he tell you that he
8 didn't try to qualify, that he didn't try to explain
9 away, that he didn't try to manipulate? Minor 1
10 disclosure of sexual abuse. What did Harold tell
11 you? Harold told you he remembered clearly. He
12 remembered that it was right after Minor 1 turned
13 12. It was after the birthday, but before
14 Christmas. He was in his recliner in the living
15 room. Nobody else was in the room. Minor 1 crawled
16 in his lap and disclosed sexual abuse to him. He
17 told you he was heartbroken and that he said -- he
18 apologized. It should never have happened and he
19 was so sorry.

20 I would submit to you that if you had a child
21 disclose something like sexual abuse to you, you
22 would remember it like it was yesterday. That is
23 the only thing Harold told you without hesitation.
24 He told you it happened in the exact way that
25 Minor 1 told you it happened. The exact way. I

1 would submit to you that he's telling you the truth.
2 She came to him in December of 2006. She sat on his
3 lap and she told him that her grandfather had been
4 abusing her.

5 Harold said Minor 1 told him it had been
6 happening for approximately three years. That it
7 had been happening for at least three years. That
8 makes sense for a lot of reasons. Remember that it
9 was not until the summer of 2003 or 2004 that Albert
10 was alleged to have done anything that was painful
11 or uncomfortable for Minor 1

12 Shauna Galloway-Williams told you when children
13 disclose, they will often partially disclose. They
14 don't have the knowledge, the words or the
15 understanding to disclose everything that an adult
16 needs to hear. She did not understand that the
17 massaging was just as bad as the oral sex, the
18 digital penetration. She told her dad what she felt
19 was wrong. That's what she told you. She did not
20 have an understanding of sex. She felt like -- she
21 just felt like it was wrong.

22 Let's talk about Shauna Galloway-Williams'
23 testimony a little bit. She's an expert. All that
24 means, and the judge will tell you, is that she's
25 allowed to talk to you about this case, talk to you

1 about child sexual abuse without having met anyone
2 involved. She's never met Minor 1 She doesn't
3 know the facts of this case. She's talking
4 generally about child sexual abuse. It's not
5 something that anybody talks about in the real
6 world. People don't know about it. They know it
7 exists. Nobody talks about it. Nobody discusses
8 it. People don't think about it if they don't have
9 to. That's why she was here.

10 What did she tell you? She told you that there
11 are a variety of reasons why children don't tell.
12 There's a variety of reasons that they tell a little
13 bit at a time. She told you that a majority of
14 children do not disclose sexual abuse right away.

15 If I can find -- sorry. Mr. Bannister cross-
16 examined her on one article and it gave this table.
17 Now, he didn't write the heading of the table on
18 here. But I'm pretty sure he said it. And it was
19 time from last assault to disclosure. Not first
20 assault, last assault. The last time Albert
21 Brandeberry was in South Carolina would have been
22 summer 2006. She discloses in December 2006 that's
23 one to six months. Maybe it's a little over six
24 months. Well within the normal time frame.

25 This is not anything but smoke and mirrors.

1 The vast majority, 58 percent -- according to these
2 numbers, this one study, 58 percent of children do
3 not tell right away. They just don't. Whether they
4 don't understand, whether they're scared, whether
5 they don't have the knowledge or the language, they
6 don't tell right away.

7 He also cross-examined her on one article that
8 had one blurb about parental indoctrination,
9 perpetrator substitution. She said she wasn't
10 overly familiar with that, but she conceded that,
11 yeah, it's a scholarly article. Events have
12 happened. Sure they have. That would be in
13 reputable literature. They are not going to hide
14 the facts. Otherwise, if they did, it wouldn't be
15 reputable. So that has happened before. But as Mr.
16 Bannister told you in his closing argument, if
17 that's what they are relying on, that is scant.
18 That is scant, scant possibility of what happened
19 here.

20 What's different? Did Mr. Bannister ask her --
21 did he give her the facts of those cases? Did he
22 ask her about the facts of this case? Did he ask
23 her if you could see that when a child identifies
24 not one, but two different perpetrators? Two
25 different perpetrators, two different types of

1 abuse, two different time frames. As Greta McCall
2 told you, Minor 1 was clearly able to distinguish
3 between the types of abuse that Albert put her
4 through and Harold put her through. Different.

5 With that, it's time to talk about Minor 1
6 testimony. Take it for the words and not the
7 emotional impact. Minor 1 17 years old now, she
8 first disclosed sexual abuse to authorities in 2010.
9 She was 15. She first disclosed sexual abuse to her
10 father in December 2006. She told that -- she told
11 everyone that she told her father. She told Ms.
12 McCall. She told Heather Hubert. She told all of
13 y'all today, yesterday. She told her father.

14 What happened when she disclosed sexual abuse
15 to her father? The most unimaginable betrayal I'm
16 sure anyone has ever heard. She tells her father
17 that her grandfather is sexually molesting her.
18 Harold tells you he confronted his father the next
19 day. That backs up with what everybody told you.
20 December 2006, the summer before that, the summer of
21 2006 was the last time Albert came down. Harold
22 said he thinks that Christmas, Minor 1 might have
23 already got her cards from Albert. That's the last
24 year. No more birthday cards. No more contact.

25 Summer of 2007 rolls around and what happens?

1 Harold begins sexually abusing Minor 1. He takes
2 the place of his father. He sees an easy target and
3 he slips right in. Does it surprise you? Does it
4 create a reasonable doubt in your mind that she
5 would ever hesitate to tell anyone again? It
6 shouldn't.

7 Let's talk about Minor 1 testimony regarding
8 abuse because it's important. Her clear, clear
9 memories of what her grandfather did versus what her
10 father did are important. Mr. Bannister didn't even
11 cross-examine her on her memory. She tells you that
12 summer of 2001 or summer of 2002, she doesn't
13 remember if it's the first or second summer he
14 begins the massaging. He begins the touching.
15 She's only six or seven years old.

16 It's not until the summer of 2003 or summer of
17 2004 that her memories become more vivid. She
18 remembers that it was after the Christmas that he
19 came down, the next summer, be it 2003 or 2004 they
20 had gone out to get toys. Minor 2 was playing with his
21 toys outside.

22 Her grandfather was talking about what he
23 wanted to do to the checkout girl. He picked her
24 up. He put her on the counter. You saw how petite
25 Minor 1 was. Does it surprise you that at eight or

1 nine she couldn't climb up there herself? He picked
2 her up. He took off her shorts. He took off her
3 panties and he began performing oral sex on her.
4 She clearly remembered that. She remembered that
5 her brother came in and her grandfather quickly put
6 her up -- picked her up, put her down behind the
7 counter so she could put her clothes back on.

8 And then what happened? He sat down at the
9 head of the kitchen table. She remembered exactly
10 where he sat and put her underneath the table. Told
11 her to come underneath the table. He unzipped his
12 pants, pulled his penis through and he forced her by
13 holding her head over it to put his penis in her
14 mouth. And he ejaculated. You heard her say that
15 it hurt her throat, that she was crying and that she
16 was gagging and she told him that she wanted to
17 stop.

18 He told her that it was their secret. That if
19 she told, that he couldn't come down anymore. Minor 2
20 her little brother, wouldn't be allowed to see his
21 granddad. She wouldn't get any more toys. She's
22 honest. She told you, I liked getting toys. I
23 wanted my brother to see my granddad. And she
24 didn't fully understand it was wrong.

25 Was that the only vivid memory she had of that?

1 No. So the next summer, in the back hallway, he
2 pulled his penis through his zipper again and again
3 held her head there. She had a vivid memory -- I
4 think this is most important -- of playing a game
5 with her grandfather in the living room. It
6 happened in the living room. Both of her parents,
7 mom and dad are in the kitchen. They are not
8 playing just checkers, they are playing Kings. She
9 remembers exactly what he was teaching her to play.
10 And he put her hand over his penis, over his
11 clothes. She's not substituting dad for granddad.
12 Dad's in that memory. Dad's in the kitchen.
13 Granddad has her hand over his penis. She remembers
14 it clearly.

15 Mr. Bannister tried to tell you that because
16 her father wanted her to think of a pony ride, she
17 must have been younger than 12 when he told her
18 that. **Minor 1** -- we didn't get fully into the abuse
19 of Harold cause Harold's not on trial. Again,
20 taking your eye off the ball. But we did talk a
21 little bit about Harold.

22 When was the first time your father sexually
23 abused you? It was in his recliner in the living
24 room. The same recliner where she had disclosed
25 sexual abuse. He told her to straddle her legs. He

1 had her straddle her legs and he bounced her up and
2 down and said think of it as a pony ride. That
3 doesn't sound like something you would do. That's
4 what she remembered.

5 He apologized afterwards. Her father
6 apologized every time. Did she ever tell you that
7 anybody apologized to her in the summers when she
8 was younger? No. Her grandfather didn't do that.
9 Her grandfather didn't apologize. Her father would
10 do it in the living room in the recliner and in the
11 camper in the back yard.

12 They didn't have that camper when she was
13 younger. She remembered the camper. She remembered
14 the recliner. She remembered the pony ride. She
15 remembered her dad. She remembered the apologies.
16 She remembered the toys. She remembered the
17 massages. She remembered the game of Kings. She
18 remembered the kitchen counter. She remembered the
19 back hallway. She remembered her grandfather.

20 Ladies and Gentlemen, finally, you heard from
21 Noreen Brandeberry, the defendant's obviously loving
22 wife of 29 years. I don't think any of us envy her
23 or judge her for anything that she said yesterday.
24 Nobody wants to be in her position. But you did
25 hear her testimony and you saw her testimony. It

1 was rehearsed to a T with Mr. Bannister down to the
2 tears she cried for Minor 1 Then when I was ask
3 her questions, she couldn't remember as clearly, she
4 changed her story. She never liked Minor 1 or
5 Harold. So where were the tears there?

6 In the end, what mattered and the only reason
7 that she testified was to tell you about Albert's
8 sexual dysfunction and erupting penile implant. He
9 didn't have to put up a defense of any kind. But he
10 did. Who testified about those things? Noreen
11 Brandeberry. Where's the doctor? Where are one of
12 the myriad specialists that I'm sure he went to?
13 Where are they to talk about what he medically could
14 and could not do? I won't question that that
15 happened to him. I can't fathom that anyone would
16 fabricate that story. And she seemed completely
17 believable when she testified about it.

18 But, Ladies and Gentlemen, Mrs. Brandeberry
19 testified that for the entirety of their marriage,
20 Harold suffered from sexual dysfunction. Since 1983
21 when they got married, they never had a normal sex
22 life. For most of us, the thought of being sexually
23 aroused by a child is not confusing, it's not just
24 unthinkable, it's disgusting. But we know it
25 happens. Does it surprise you? Does it create

1 reasonable doubt in your mind that someone who is
2 accused of being sexually involved with a child may
3 experience sexual dysfunction with a person of his
4 own age? That's a fair question.

5 Mr. Bannister also touched on this and he said
6 that I would try to minimize it, but it's just the
7 way it is. Nothing that Minor 1 said her
8 grandfather did required an erection. It didn't.
9 We said oral sex on Minor 1 We said digital
10 penetration. You recall that she said she
11 remembered it because he had longer fingernails and
12 they hurt her and that she was forced to put her
13 hand over his penis, over the clothing and that she
14 was forced to put her mouth on his penis until he
15 ejaculated. Even Noreen Brandeberry, who is not a
16 doctor or nurse, knows that because a man suffers
17 from erectile dysfunction doesn't mean that he is
18 unable to ejaculate, doesn't mean he no longer has
19 feeling. It doesn't mean he no longer has feelings
20 of arousal. It's the signs of arousal, the
21 erection, that could be problematic.

22 Ladies and Gentlemen, I know you are exhausted.
23 I know that the hardest part of your job is just
24 about to begin. You have every piece of evidence --
25 you've heard everything you need to know that

1 Minor 1 Brandeberry sounded truthful, acted truthful
2 because she was telling you the truth. As horrible
3 as it is and as much as nobody wants to believe that
4 it could happen, she was sexually abused by her
5 grandfather and then her father. I want you to find
6 justice in this case. I want you to return verdicts
7 of guilty because that's what the facts have proven.

8 THE COURT: Ladies and Gentlemen, I'm going
9 to instruct you on the law. My instruction will
10 take about 20 or so minutes. I want you to take a
11 brief break before we start with that, so I'll ask
12 you to step to your jury room. Please don't discuss
13 the case with anyone.

14 (WHEREUPON, the jury exits at approximately
15 11:21 a.m.)

16 THE COURT: Let's take about a ten-minute
17 break. Uh, during that time, do y'all want to look
18 at my final version of the charge just to decide
19 whether or not you want it back in the written form?

20 MR. BANNISTER: Okay.

21 (WHEREUPON, a short recess is taken.)

22 THE COURT: Anything else?

23 MR. BANNISTER: Your Honor, I think we both
24 agree that the portion of the charge of the
25 statement of the defendant, there's never been any

Remarks

1 allegations that the statement wasn't voluntary. So
2 where it goes into you've got to find that he wasn't
3 coerced and all that stuff, we both thought that
4 might be a little confusing and unnecessary and
5 anything that might reduce the length of the charge
6 might be --

7 **THE COURT:** Sure.

8 **MS. BENTLEY:** That's exactly correct.

9 **THE COURT:** All right. No problem.

10 **MR. BANNISTER:** All right. So just for the
11 record, I reincorporate my initial motion on
12 anything that has to do with uncorroborated
13 testimony of a witness.

14 **THE COURT:** Certainly. Oh, certainly. I
15 said I was going to make that, uh, motion part of
16 the record. (Pause.)

17 What about it going back to the jury?

18 **MR. BANNISTER:** I have no objection to that.

19 **THE COURT:** All right. I'm just waiting for
20 the charge with that section taken out. (Pause.)

21 Y'all both tried an excellent case. Just in
22 case I forget to tell you that later. (Pause.)

23 All right. Bring the jury back in.

24 **(WHEREUPON, the jury enters at approximately**
25 11:38 a.m.)

1 **THE COURT:** Ladies and Gentlemen, I'm now
2 going to instruct you on the law. Just to tell you,
3 I read my charge on the law to juries. And there
4 are two reasons for that. First of all, I want to
5 make sure I get it right and I don't leave anything
6 out. But then secondly, because I'm going to give
7 you a copy of this charge in written form to use
8 during your deliberations. I will give you some
9 instruction on how to use the written charge in the
10 jury room. But I will do that at the end of my
11 charge.

12 Mr. Foreperson, Ladies and Gentlemen of the
13 jury, you have seen and heard the evidence presented
14 as well as the arguments of counsel. It now,
15 therefore, becomes my duty and obligation to
16 instruct you on the law that is applicable in this
17 case. It will be your duty and obligation to begin
18 your deliberations through which process you will
19 decide the facts, apply the law as instructed by me
20 and render fair and impartial decisions.

21 It is your exclusive duty to determine what the
22 facts are. You do that based upon your own
23 commonsense examination and evaluation of the
24 testimony and other evidence received during the
25 trial of this case. You twelve jurors alone will

Jury Charge

1 decide what weight, value and effect that is to be
2 given to any particular testimony or evidence
3 received. Your ultimate goal is to simply reach the
4 truth in this matter and, by doing so, you will have
5 fulfilled your obligation as jurors to give both the
6 State and the defendant a fair and impartial trial
7 based upon the evidence presented and the law
8 applicable to this case.

9 In this case, the State of South Carolina
10 through the Circuit Solicitor has charged the
11 defendant with the following criminal offenses:
12 Criminal Sexual Conduct with a minor first degree
13 and Lewd Act upon a child. The allegations charging
14 the defendant with these crimes are set forth in the
15 indictments that have been previously explained to
16 you.

17 The indictments are not evidence in this case
18 and may not be considered by you as evidence against
19 the defendant. The indictments will be in the jury
20 room with you but serve only one purpose and that is
21 to serve as the verdict forms on which your
22 unanimous decision will be written. Each indictment
23 charges a separate and distinct offense. You must
24 decide each indictment separately on the evidence
25 and the law applicable to it uninfluenced by your

1 decision as to any other indictment. The defendant
2 may be convicted or acquitted on any or all of the
3 offenses charged. It will -- excuse me -- you will
4 be asked to write a separate verdict of guilty or
5 not guilty for each indictment.

6 The defendant has entered a plea of not guilty
7 as to each of the charges set forth in the
8 indictments. That plea of not guilty has therefore
9 placed upon the State the burden of proving the
10 allegations that are set forth in the indictments
11 the burden of proving each of the essential elements
12 of the crime charged and, therefore, the burden of
13 proving the guilt of the defendant to the
14 satisfaction of you 12 jurors beyond a reasonable
15 doubt before a verdict of guilty could be returned
16 as to any of the indictments.

17 The burden is never upon a defendant to prove
18 that he is not guilty or to prove that he is
19 innocent because in some cases, that might not be
20 possible. The burden is always upon the State
21 because they have made the allegations to prove the
22 defendant guilty beyond a reasonable doubt.

23 You are further instructed that it is a vital,
24 important and cardinal rule of law that every
25 defendant in a criminal trial, no matter how serious

Jury Charge

1 the offenses might be for which he stands charged
2 shall always be presumed innocent of those charges
3 and that presumption of innocence shall be with the
4 defendant from the moment of his arrest and even
5 throughout the course of the actual trial. The
6 presumption of innocence shall be with the defendant
7 even as you go into the jury room to begin your
8 deliberations and that presumption of innocence
9 shall be with him there and be with him forever
10 unless you 12 jurors determine that he is no longer
11 entitled to that presumption of innocence. It is
12 only if, unless and until you are satisfied of the
13 defendant's guilt beyond a reasonable doubt that he
14 would no longer be entitled to the presumption of
15 innocence.

16 I remind you that during this trial, you and I
17 have certain duties to perform. As the trial judge,
18 it is my responsibility to preside over the trial of
19 this case. I also have the duty to rule on the
20 admissibility of evidence offered during this trial.
21 You are to consider only the competent evidence
22 before you. If there was any testimony ordered
23 stricken from the record in this case during this
24 trial, you must disregard that testimony. You are
25 to consider only the testimony which has been

1 presented from this witness stand and any exhibits
2 which have been made a part of the record in this
3 case along with any stipulations that may have been
4 made.

5 I have the additional duty to charge you on the
6 law applicable to this case. As the presiding
7 judge, I am the sole judge of the law in this case.
8 It is your duty as jurors to accept and apply the
9 law as I now state it to you. If you already have
10 any idea as to what the law is or what the law ought
11 to be and it does not agree with what I tell you now
12 the law is, you must abandon this idea because you
13 are sworn to accept the law and apply the law
14 exactly as I state it to you.

15 In every case tried in this court before a
16 jury, the jury becomes the sole and exclusive judge
17 of the facts in a case. A trial judge can not
18 comment on in any way about the facts in the case.
19 Since you, the jury, are the sole judge of the facts
20 in this case, you are not to infer from anything
21 that I might have said during the progress of this
22 trial in ruling upon the admissibility of evidence
23 or otherwise or anything that I say now during the
24 course of this instruction to you that I have any
25 opinion about the facts in this case. I do not.

Jury Charge

1 The law does not allow me to have an opinion about
2 the facts in this case. This is a matter solely for
3 you, the jury, to determine.

4 As jurors, it is your duty to determine the
5 effect, value and weight and truth of the evidence
6 presented during the trial. The State has the
7 burden of proving the defendant guilty beyond a
8 reasonable doubt. Some of you may have served as
9 jurors in civil cases where you were told that it is
10 only necessary to prove that a fact is more likely
11 true than not true, such as by the greater weight or
12 preponderance of the evidence. In criminal cases,
13 the State's proof must be more powerful than that.
14 It must be beyond a reasonable doubt.

15 A reasonable doubt is the kind of doubt that
16 would cause a reasonable person to hesitate to act.
17 It is doubt from which you can give a reason. Proof
18 beyond a reasonable doubt is proof that leaves you
19 firmly convinced of the defendant's guilt.

20 There are very few things in this world that we
21 know with absolute certainty. In criminal cases,
22 the law does not require proof that overcomes every
23 possible doubt. If, based on your consideration of
24 the evidence, you are firmly convinced that the
25 defendant is guilty of the crimes charged, you must

1 find the defendant guilty. If, on the other hand,
2 you think there is a real possibility that the
3 defendant is not guilty, you must give the defendant
4 the benefit of the doubt and find him not guilty.

5 There are two types of evidence which are
6 generally presented during a trial, direct evidence
7 and circumstantial evidence. Direct evidence is the
8 testimony of a person who claims to have actual
9 knowledge of a fact such as an eyewitness. It is
10 evidence which immediately establishes the main fact
11 to be proved.

12 Circumstantial evidence is proof of a chain of
13 facts and circumstances indicating the existence of
14 a fact. It is evidence which immediately
15 establishes collateral facts from which the main
16 fact may be inferred. Circumstantial evidence is
17 based on inference and not on personal knowledge or
18 observation.

19 The law makes absolutely no distinction between
20 the weight or value to be given to either direct or
21 circumstantial evidence, nor is a greater degree of
22 certainty required of circumstantial evidence than
23 of direct evidence. You should weigh all the
24 evidence in this case. After weighing all the
25 evidence, if you are not convinced of the guilt of

Jury Charge

1 the defendant beyond a reasonable doubt, you must
2 find the defendant not guilty.

3 Necessarily, you must determine the credibility
4 of the witnesses who have testified in this case.
5 Credibility simply means believability. It becomes
6 your duty as jurors to analyze and to evaluate the
7 evidence and to determine which evidence convinces
8 you of its truth. In determining the believability
9 of witnesses who have testified in this case, you
10 may believe one witness over several witnesses or
11 several witnesses over one witness. You may believe
12 a part of the testimony of a witness and reject the
13 remaining part of the testimony of that same
14 witness. You may believe the testimony of a witness
15 in its entirety or reject the testimony of a witness
16 in its entirety.

17 You may consider whether any witness has
18 exhibited to you any interest, bias, prejudice or
19 other motive in this case. You may also consider
20 the appearance and manner of a witness while on the
21 witness stand. In other words, you are to judge a
22 witness' credibility in the same way you would judge
23 a person's credibility in your daily life.

24 The rules of evidence ordinarily do not permit
25 witnesses to testify to opinions or conclusions. An

1 exception to this rule exists for a witness we call
2 an expert witness. A witness who, by education and
3 experience, has become an expert in some art,
4 science, profession or calling may state an opinion
5 as to relevant and material matter in which the
6 witness claims to be an expert and may also state
7 the reasons for that opinion.

8 You should consider any expert opinion received
9 in evidence in this case and like any other evidence
10 give it the weight you think it deserves. If you
11 decide that the opinion of an expert witness is not
12 based on sufficient education and experience or if
13 you conclude that the reasons given in support of
14 the opinion are not sound or that the opinion is
15 outweighed by other evidence, you may disregard the
16 opinion entirely. An expert witness' testimony is
17 to be given no greater weight than that of other
18 witnesses simply because the witness is an expert.
19 Further, you are not required to accept an expert's
20 opinion even though it is not contradicted.

21 I instruct you and I emphasize that the fact
22 that the defendant did not testify is not a factor
23 to be considered by you in any way in your
24 deliberation and in your consideration on the
25 question of the guilt or innocence of the defendant.

Jury Charge

1 It must not be considered by you in any manner
2 whatsoever. A defendant has the constitutional
3 right to remain silent and the assertion of this
4 right must not be considered by you in your
5 deliberations. I repeat that, under your oath, you
6 are to draw no conclusion whatsoever from the fact
7 that the defendant did not testify in this case.
8 The fact that the defendant did not testify should
9 not even be discussed in the jury room. The burden
10 of proof, as I have stated to you, is on the State.
11 The defendant is not required to prove his
12 innocence. The burden of proof remains on the State
13 to prove guilty beyond a reasonable doubt.

14 In order to establish criminal liability,
15 criminal intent is required. For example, the
16 mental state required to be proven by the State for
17 a particular crime might be purpose, intent,
18 knowledge, recklessness or criminal negligence.
19 Criminal intent must be proven by the State beyond a
20 reasonable doubt. Criminal intent is always a
21 matter that must be determined by the jury from the
22 circumstances surrounding the situation. There is
23 no way to prove criminal intent to a mathematical
24 certainty. So the law says that criminal intent may
25 be inferred from the circumstances shown to have

1 existed. This is how you make a determination of
2 whether or not the element requiring intent was
3 present. It is not necessary to establish intent by
4 direct evidence but intent may be established by
5 inference in the same way as any other fact, by
6 taking under consideration the acts of the parties
7 and all the facts and circumstances of the case.

8 Criminal intent is a mental state of conscious
9 wrongdoing. It is up to you to determine what the
10 defendant intended to do based on the circumstances
11 shown to have existed. Criminal intent can arise
12 from action or a failure to act and may arise from
13 negligence, recklessness or an indifference to duty
14 or to consequences that are considered by the law to
15 be the equivalent of criminal intent.

16 The defendant is charged with first degree
17 Criminal Sexual Conduct with a minor. In order to
18 prove first degree Criminal Sexual Conduct, the
19 first -- excuse me -- the State must first prove
20 beyond a reasonable doubt that the defendant engaged
21 in a sexual battery with the victim. A sexual
22 battery is sexual intercourse, cunnilingus,
23 fellatio, anal intercourse or any other intrusion,
24 however slight of any part of a person's body or of
25 any object into the genital or anal openings of

Jury Charge

1 another person's body except when the intrusion is
2 accomplished for medically recognized treatment or
3 diagnose -- diagnostic purposes. The State must
4 then prove beyond a reasonable doubt that the victim
5 was less than 11 years old at the time of the sexual
6 battery. Consent, willingness, indifference or
7 ignorance on the part of the minor, if any, as to
8 what was taking place does not in any way affect a
9 charge of Criminal Sexual Conduct with a minor
10 because an unmarried woman under the age of 14 can
11 not legally consent to sexual intercourse.

12 The specific date and time is not an element of
13 the offense of first degree Criminal Sexual Conduct
14 of a minor. The testimony of a victim need not be
15 corroborated and the defendant may be convicted
16 solely on the basis of the victim's testimony. The
17 term "uncorroborated" as used in this instruction
18 does not mean that baseless testimony should be
19 given credit and that you should ignore
20 inconsistencies. Furthermore, it does not mean that
21 you should accept without question the victim's
22 testimony and ignore evidence that conflicts with
23 her version of events. In other words, this term
24 does not permit you as jurors to violate your
25 obligation to consider all the evidence.

1 The defendant is charged with Lewd Act on a
2 minor. A minor is a person under the age of 18.
3 The State must first prove beyond a reasonable doubt
4 that the defendant was over the age of 14. Next,
5 the State must prove that the defendant willfully
6 and lewdly committed or attempted a lewd or
7 lascivious act on or with the body or its parts of a
8 child under the age of 16 years with the intent to
9 arouse, appeal to or gratify the lust, passions or
10 sexual desires of the defendant or the child.

11 "Willfully" means voluntarily and intentionally with
12 the specific act to do something the law forbids.

13 "Lewd" means obscene, lustful, indecent or
14 lascivious. "Lascivious" means tending to incite,
15 lust, lewd, indecent, obscene or tending to deprave
16 the morals in respect to sexual relations.

17 I will give you a copy of these instructions in
18 written form. During your deliberations, you may
19 refer to the instructions to guide your decision
20 making. You must consider the instructions as a
21 whole and not follow some and ignore others. Please
22 return the instructions to the court at the time
23 your verdict is rendered.

24 Ladies and Gentlemen, your verdict must be a
25 unanimous one.

Jury Charge

1 Mr. Foreperson, when the jury agrees on the
2 verdict, you will write the verdict on the back of
3 these indictments and sign your name as foreperson
4 and date it. At that time, you will knock on the
5 jury room door and inform the bailiff that you have
6 a verdict. We will receive you back into the
7 courtroom for your verdict.

8 I ask that you now return to your jury
9 deliberation room but do not begin your
10 deliberations until you were told by the bailiff to
11 do so. There are some matters that I need to take
12 up with the attorneys before you begin your
13 deliberations. Uh, you will know that it is your
14 sign to begin deliberating when you receive the
15 evidence in this case, the written charge on the
16 law in this case and the indictments. I thank you
17 so much for your service.

18 (WHEREUPON, the jury exits at approximately
19 11:55 a.m.)

20 **THE COURT:** The defendant's only charged
21 with one count of Lewd Act on a minor, is that
22 right?

23 **MS. BENTLEY:** Yes, Your Honor.

24 **THE COURT:** Okay. I found a mistake in my
25 written charge and I'll correct it before it goes.

1 That's obviously what happens when you recycle a
2 jury charge. I say the defendant is charged with
3 two counts of committing Lewd Act on a Minor. I
4 did not say that to the jury, but I'll have that
5 taken out before they get a copy of the charge.
6 All right. Any objection to my charge on the law
7 from the State?

8 **MS. BENTLEY:** None from the State.

9 **THE COURT:** Any from the defense?

10 **MR. BANNISTER:** Nothing I haven't already
11 raised, Your Honor.

12 **THE COURT:** All right then. All right.
13 Will y'all -- while I'm getting this fixed, will
14 y'all take a minute to get together the exhibits in
15 this case? And I'll be right back in with the
16 charge.

17 **MS. BENTLEY:** And Your Honor, what about the
18 alternates?

19 **THE COURT:** I'll let them go in just a
20 moment. Thank you.

21 **(WHEREUPON, the alternate jurors are released.)**

22 **(WHEREUPON, deliberation of the jury from**
23 approximately 12:04 p.m. to 1:00 p.m.)

24 **(WHEREUPON, the Court resumes at approximately**
25 1:17 p.m.)

1 **THE COURT:** All right. It's my understanding
2 that we've got a verdict. Y'all ready to bring the
3 jury back in, the State?

4 **MS. BENTLEY:** Yes, Your Honor.

5 **THE COURT:** And the defense. Y'all ready to
6 bring the jury back in?

7 **MR. BANNISTER:** Yes, Your Honor.

8 **THE COURT:** All right then.

9 **(WHEREUPON, the jury enters at approximately**
10 **1:18 p.m.)**

11 **THE COURT:** Mr. Foreperson, it's my
12 understanding that the jury has reached a verdict.
13 Is that correct?

14 **THE JUROR:** Yes, ma'am.

15 **THE COURT:** All right. Would you hand the
16 indictments to the bailiff please?

17 **(WHEREUPON, the verdict forms are passed to the**
18 **Court.)**

19 **THE COURT:** All right. The verdict forms
20 appear to be in order. If you would, publish them.

21 **THE CLERK:** Your Honor, in the case of 2011-
22 GS-23-3886, the State versus Albert L. Brandeberry
23 indicted for Criminal Sexual Conduct with a minor in
24 the first degree, the verdict is guilty. In the
25 case of 2011-GS-23-3885, the State versus Albert L.

1 Brandeberry, he's indicted for Lewd Act upon a
2 Child, the verdict is guilty. These are signed by
3 Jake Perry, our foreman.

4 Ladies and Gentlemen, if you agree these are
5 the verdicts you reached in your deliberation room,
6 would you please raise your right hand.

7 (WHEREUPON, each juror responds.)

8 **THE COURT:** Anything else from the State
9 before we release the jury?

10 **MS. BENTLEY:** Nothing from the State, Your
11 Honor.

12 **THE COURT:** Anything from the defense?

13 **MR. BANNISTER:** No, Your Honor.

14 **THE COURT:** All right then. Very well.

15 Ladies and Gentlemen, I speak on behalf of everyone
16 involved in this case. We thank you so much for
17 your service. I'm going to ask you to step to your
18 jury deliberation room. I want to speak to you
19 before you leave. Of course, you need to get your
20 cell phones back and all that kind of thing too.
21 Again, thank you so much.

22 (WHEREUPON, the jury exits at approximately
23 1:19 p.m.)

24 **THE COURT:** All right. We'll proceed with
25 sentencing just momentarily, but I am going to go

1 verdict, his advanced age makes him less of a
2 threat. That's what I'm trying to say.

3 **THE COURT:** All right.

4 **MR. BANNISTER:** Thank you, Your Honor.

5 **THE COURT:** And I do take his age into
6 consideration when I sentence him, although frankly
7 not that much. The sentence of the court, sir, is
8 20 years on the Criminal Sexual Conduct with a minor
9 first degree. On Lewd Act, 15 years. Best of luck
10 to you, sir.

11 **MS. BENTLEY:** Thank you, Your Honor.

12 **MR. BANNISTER:** Thank you, Your Honor.

13 **THE COURT:** Thank you.

14 (WHEREUPON, the proceedings conclude at
15 approximately 1:31 p.m.)

16

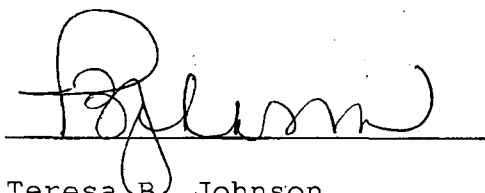
17

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 3rd day of January, 2012.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

A handwritten signature in black ink, appearing to read 'T. Johnson', is written over a horizontal line.

Teresa B. Johnson

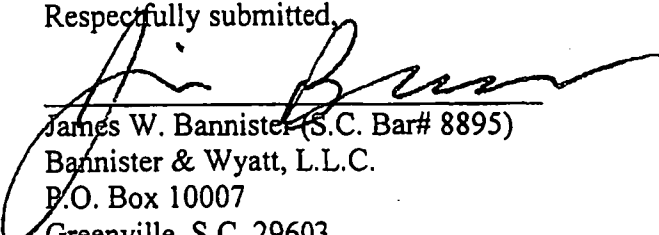
Circuit Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
v.	)	MOTION TO PROHIBIT CHARGE
	)	TO JURY OF SC CODE § 16-3-657
Albert Brandeberry,	)	WITHOUT EXPLAINING THE
	)	TERM "UNCORROBORATED"
Defendant.	)	

The Defendant, by and through the undersigned attorney, requests the Court to charge the following:

The term "uncorroborated" as used in this instruction does not mean that baseless testimony should be given credit and that you should ignore inconsistencies. Furthermore, it does not mean that you should accept without question the victim's testimony, and ignore evidence that conflicts with her version of events. In other words, this term does not permit you, as jurors, to violate your obligation to consider all the evidence.

Respectfully submitted,



James W. Bannister (S.C. Bar# 8895)
 Bannister & Wyatt, L.L.C.
 P.O. Box 10007
 Greenville, S.C. 29603
 (864) 298-0084

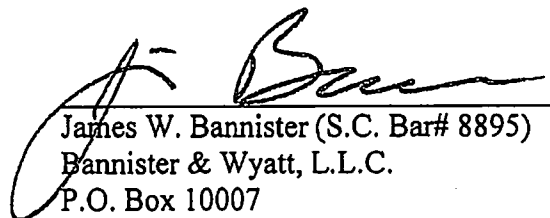
STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	
	)	
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
v.	)	MOTION TO EXCLUDE TESTIMONY
	)	OF NON-TREATING EXPERT
Albert Brandeberry,	)	
	)	
Defendant.	)	

The Defendant, by and through the undersigned attorney, hereby moves the Court, at a time convenient to be heard, for an Order of the Court excluding testimony from Mrs. Galloway-Williams. Specifically, the Defendant seeks an Order prohibiting the State from eliciting testimony from this expert to corroborate the truthfulness of the prosecutrix. Such testimony should be excluded because the expert is not qualified to render an opinion on this particular subject, the expert's testimony is not necessary to the trier of fact, and the reliability of the bases for the opinion is not sufficient to support the opinion. Rule 702, SCRE; *State v. Council*, 335 S.C. 1, (1999); *Watson v. Ford Motor Co., Inc.*, 389 S.C. 434 (2010); *State v. Douglas*, 380 S.C. 499 (2009); and *State v. White*, 382 S.C. 265 (2009).

In addition, this testimony is violative of Rule 801(d)(1)(D), SCRE, and the holdings in *State v. Jennings*, 394 S.C. 473, 716 S.E.2d 91 (2011); *Smith v. State*, 386 S.C. 562, 689 S.E.2d 629 (2010); *Dawkins v. State*, 346 S.C. 151, 551 S.E.2d 260 (2001), *State v. Dempsey*, 340 S.C. 565, 532 S.E.2d 306 (2000); *Jolly v. State*, 314 S.C. 17, 443 S.E.2d 566 (1994).

Finally, the testimony's prejudice outweighs its probative value pursuant to Rule 403,
SCRE.

Respectfully submitted,



James W. Bannister (S.C. Bar# 8895)
Bannister & Wyatt, L.L.C.
P.O. Box 10007
Greenville, S.C. 29603
(864) 298-0084

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
	)	WARRANT NOS.: I432091, I432092
State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	MOTION TO RECONSIDER SENTENCE
v.	)	AND MOTION FOR A NEW TRIAL
	)	
Albert Brandeberry,	)	
	)	
Defendant.	)	

The Defendant, by and through the undersigned attorney, moves the Court for a new trial, pursuant to the Rules of Criminal Procedure. Specifically, the Defendant would renew and incorporate his previous objections at trial and ask that the Court grant a new trial based on those objections and requests for jury charge.

In addition, the Defendant seeks reconsideration of the sentence imposed. The Defendant would respectfully request that the Court consider a sentence less than twenty years imposed on August 9, 2012.

WHEREFORE, Defendant seeks an order granting a new trial or, in the alternative, an Order reducing Defendant's sentence.

Respectfully submitted,

James W. Bannister
 James W. Bannister (S.C. Bar# 8895)
 Bannister & Wyatt, L.L.C.
 P.O. Box 10007
 Greenville, S.C. 29603
 (864) 298-0084

August 17, 2012

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT

COUNTY OF GREENVILLE)

WARRANT NOS.: I432091, I432092

State of South Carolina,)

Plaintiff,)

v.)

Albert Brandeberry,)

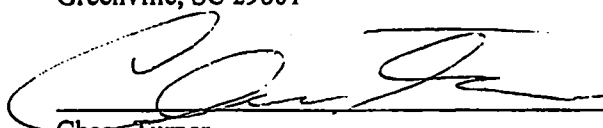
Defendant.)

AFFIDAVIT OF SERVICE

The undersigned certifies that a true copy of the foregoing:

1. Motion To Reconsider Sentence and Motion For A New Trial

was this the 17th day August, 2012, hand delivered, to:

Lisa Bentley, Esq.
13th Circuit Solicitor's Office
305 E. North Street, Suite 325
Greenville, SC 29601The Hon. Letitia Verdin
Greenville County Courthouse
305 E. North Street, Suite 318
Greenville, SC 29601SWORN TO before me this
17th day of August, 2012.
NOTARY PUBLIC for South Carolina
My Commission Expires: 4/30/2018
Chase Turner
P. O. Box 10007
Greenville, SC 29603
864-298-0084

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS
THIRTEENTH JUDICIAL CIRCUIT

COUNTY OF GREENVILLE)

WARRANT NOS.: I432091, I432092

State of South Carolina,)

Plaintiff,)

MOTION TO RECONSIDER SENTENCE
AND MOTION FOR A NEW TRIAL

v.)

Albert Brandeberry,)

Defendant.)

The Defendant, by and through the undersigned attorney, moves the Court for a new trial, pursuant to the Rules of Criminal Procedure. Specifically, the Defendant would renew and incorporate his previous objections at trial and ask that the Court grant a new trial based on those objections and requests for jury charge.

In addition, the Defendant seeks reconsideration of the sentence imposed. The Defendant would respectfully request that the Court consider a sentence less than twenty years imposed on August 9, 2012.

WHEREFORE, Defendant seeks an order granting a new trial or, in the alternative, an Order reducing Defendant's sentence.

Respectfully submitted,

James W. Bannister
James W. Bannister (S.C. Bar# 8895)
Bannister & Wyatt, L.L.C.
P.O. Box 10007
Greenville, S.C. 29603
(864) 298-0084

August 17, 2012

Denied
8/23/12

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

**INDICTMENT FOR
CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST DEGREE**

At a Court of General Sessions, convened on

JUN 12 2012

the Grand Jurors of Greenville

County present upon their oath:

That ALBERT L BRANDEBERRY did in Greenville County, between the 16th day of December 2001. and the 15th day of December, 2006, commit a sexual battery on C.J.B., who was less than eleven years of age. This is in violation of §16-3-655(A)(1)[formerly 16-3-655(1)] of the South Carolina Code of Laws (1976) as amended

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Bryna S. Jantz
SOLICITOR

WITNESSES

H E Hubert

Greenville County Sheriffs Office

4/27/2011

ARREST WARRANT NUMBER
1432091ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury

Date: 08/09/12

DOCKET NO. 2011-GS-23-
BSO
The State of South Carolina
County of Greenville

003006

COURT OF GENERAL SESSIONS

8-9-12

June

TERM 2011

THE STATE

vs.

ALBERT L BRANDEBERRY

Indictment for

0385

CRIMINAL SEXUAL CONDUCT WITH A MINOR
FIRST DEGREE

VIOLATION §16-3-655(A)(1)[formerly 16-3-655(1)]

ENTERED
ACCT.

RECEIVED

12/13/12

CLERK OF COURT
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
LEWD ACT UPON A CHILD

At a Court of General Sessions, convened on

JUN 12 2012

the Grand Jurors of Greenville

County present upon their oath:

That ALBERT L BRANDEBERRY did in Greenville County, between the 16th day of December, 2001, and the 15th day of December, 2006, being over the age of fourteen years, willfully and lewdly commit or attempt a lewd and lascivious act upon or with the body, or its parts, of C.J.B., a child under the age of sixteen years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of himself or such child. This is in violation of §16-15-140 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


SOLICITOR

WITNESSES

H E Hubert

Greenville County Sheriffs Office

4/27/2011

ARREST WARRANT NUMBER
1432092ACTION OF GRAND JURY
TRUE BILL

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Guilty

Foreperson of Petit Jury

Date: 08/09/12

DOCKET NO. 2011-GS-23-
The State of South Carolina

BSD

003085

County of Greenville

COURT OF GENERAL SESSIONS

8-9-12.

June

TERM 2011

THE STATE

vs.

ALBERT L BRANDEBERRY

Indictment for

2468

LEWD ACT UPON A CHILD

VIOLATION § 16-15-140

RECEIVED

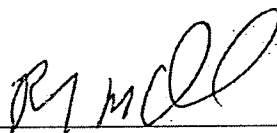
JUL 23 2011

Clk & of Court
Greenville County

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

May 28th, 2014



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Letitia H. Verdin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ALBERT BRANDEBERRY,

APPELLANT

APPELLATE CASE NO. 2012-212841

FINAL BRIEF OF APPELLANT

ROBERT M. DUDEK
Chief Appellate Defender

South Carolina Commission on Indigent Defense
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ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUES ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	

The court erred by qualifying Shauna Galloway-Williams as an expert in “child abuse and treatment” so she could testify about “delayed disclosure” and common traits of sexually abused children since her testimony improperly bolstered the child’s testimony by raising the improper spurious inference that the alleged victim in this case was acting in conformity with those common traits.....5

The court erred by instructing the jury that it could convict appellant based on the alleged victim’s uncorroborated testimony since this instruction improperly emphasized the testimony of one witness, it was a charge on the facts, and it was fundamentally unfair and infringed on appellant’s right to a fair trial as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution 12

CONCLUSION	16

TABLE OF AUTHORITIES

Cases

<u>State v. White</u> 382 S.C. 265, 676 S.E.2d 684 (2009).....	5
<u>State v. Bagwell</u> , 201 S.C. 387, 23 S.E.2d 244, 249, (1942).....	14
<u>State v. Council</u> 335 S.C. 1, 515 S.E.2d 508 (1999).....	5
<u>State v. Douglas</u> 380 S.C. 499, 671, S.E.2d 606 (2009).....	5, 10
<u>State v. Hill</u> , 394 S.C. 280, 298, 715 S.E.2d 368, 378 (Ct.App. 2011).....	14
<u>State v. Jennings</u> , 394 S.C. 473, 716 S.E.2d 91 (2011).....	7, 10, 11
<u>State v. Kromah</u> , 401 S.C. 340, 737 S.E.2d 490 (2013).....	9, 10
<u>State v. McKerley</u> 397 S.C. 461, 725 S.E.2d 139 (2012).....	10, 11
<u>State v. Rayfield</u> 369 S.C. 106, 631, S.E.2d 244 (2006)	12, 14
<u>State v. Tapp</u> , 398 S.C. 376, 728, S.E.2d 468 (2012).....	7
<u>Watson v. Ford Motor Company Inc.</u> , 389 S.C. 434, 699 S.E.2d 169 (2010)	5

Rules

Rule 703, SCORE.....	5

Constitutional Provisions

S.C. Code §16-3-657	12

STATEMENT OF ISSUE ON APPEAL

1.

Whether the court erred by qualifying Shauna Galloway-Williams as an expert in “child abuse and treatment” so she could testify about “delayed disclosure” and common traits of sexually abused children since her testimony improperly bolstered the child’s testimony by raising the improper spurious inference that the alleged victim in this case was acting in conformity with those common traits?

2.

Whether the court erred by instructing the jury that it could convict appellant based on the alleged victim’s uncorroborated testimony since this instruction improperly emphasized the testimony of one witness, it was a charge on the facts, and it was fundamentally unfair and infringed on appellant’s right to a fair trial under the Sixth and Fourteenth Amendments to the United States Constitution?

STATEMENT OF THE CASE

Appellant was indicted by the Greenville County Grand Jury for the offenses of criminal sexual conduct with a minor in the first degree, and lewd act upon a minor. R. 459 His case came on for trial on August 6, 2012 before the Honorable Letitia H. Verdin, and a jury. Jim Bannister represented appellant and Lisa Bentley was the assistant solicitor. R. 1

On August 9, 2012 the jury found appellant guilty of both offenses. R. 449, 1. 21-450, 1. 3. Judge Verdin sentenced appellant to twenty years imprisonment for criminal sexual conduct with a minor, and fifteen years imprisonment for committing a lewd act upon a minor. R. 451, 11.5-10.

This appeal follows.

ARGUMENT

1.

The court erred by qualifying Shauna Galloway-Williams as an expert in “child abuse and treatment” so she could testify about “delayed disclosure” and common traits of sexually abused children since her testimony improperly bolstered the child’s testimony by raising the improper spurious inference that the alleged victim in this case was acting in conformity with those common traits

Motion

Appellant filed a “motion to exclude testimony of non-treating expert.” R. 454. Appellant asserted the testimony of Galloway-Williams¹ should be excluded because the expert was not qualified to render an opinion on this particular subject, the expert’s testimony is not necessary to the trier of fact, and the reliability of the basis for the opinion is not sufficient to support the opinion. Appellant cited Rule 703, SCORE: State v. Council 335 S.C. 1, 515 S.E.2d 508 (1999) Watson v. Ford Motor Company Inc., 389 S.C. 434, 699 S.E.2d 169 (2010) ; State v. Douglas 380 S.C. 499, 671, S.E.2d 606 (2009); State v White 382 S.C. 265, 676 S.E.2d 684 (2009). R. 454.

Trial Facts

Detective Matthew Tuttle of the Finley, Ohio Police Department testified that Greenville County Sheriff Detective Heather Hubert asked him to interview appellant at appellant’s home in Ohio. R. 117, 1.13- 119, 1.21. Tuttle said he explained to appellant he wanted to talk to him about an investigation in South Carolina. Appellant readily agreed, and invited Tuttle into his house. The alleged victim in this case was appellant’s minor

¹ Galloway-Williams is hereinafter referred to as “Williams” for ease of reference.

niece. Her father, Harold, had confessed to Detective Hubert in Greenville that he sexually assaulted his daughter, appellant's niece. R. 95, 1.20- 96, 1.5.; R. 121, 11.6-10.

Tuttle recalled that appellant denied he had done anything improper with the alleged victim. R. 122, 11.4-13. Appellant said the niece was usually "truthful and honest except for this allegation where he said she had lied." R. 122, 11.4-23.

Tuttle maintained that the more he talked to appellant about the allegations the more upset appellant became. Tuttle said at one point appellant started talking "about killing himself" so Tuttle ended the interview. Tuttle testified that he had appellant talk to a counselor about "his feelings. So that is ultimately what happened." R. 123, 11.1-12

The niece -- and alleged victim -- testified that appellant came down from Ohio to South Carolina in his truck to visit a few times. She claimed in the summer of 2001 and the summer of 2002 when she was six or seven-years-old that appellant began touching her improperly. R. 137, 1. 20- 139, 1. 2. She said: "I didn't think there was anything wrong," and she maintained the improper touching continued. R. 139, 1.3- 143, 1.12; R. 145, 1.6- 147, 1.5. However, she stated that she wanted appellant to continue visiting because "my family loved him and I liked to get toys also." R. 153, 11. 1-11.

"Expert" Testimony

The court heard the testimony Williams and legal arguments out of the presence of the jury. The solicitor stated that witness would testify that the abuse starts off with "innocuous touching or confusing touching. So just back rubs or massages [that] confused the child to the point that they do not tell. And it could also play a part in the way disclosure...." R. 209, 1. 23- 210, 1. 6.

Defense counsel Bannister noted that the proposed witness, Williams, was not treating the alleged victim, and she was going to testify about other sexual assault victims in generalities. Counsel said her testimony was “implicitly saying that’s what perpetrators typically do in all cases that I am working on.” Counsel said this lumped all perpetrators and victims into one category. “I don’t think it’s necessary for an expert opinion. I’m – it’s a little bit of a pig in a poke.” R. 210, l. 12- 212, l. 4.

The solicitor argued that unlike defense counsel the jurors were “not legal experts. They are not experts of child sexual abuse.” The solicitor argued the testimony was necessary, and the judge said she would review the case law on the subject before ruling. R. 212, ll. 7- 24.

Defense counsel then noted the more recent cases of State v. Jennings, 394 S.C. 473, 716 S.E.2d 91 (2011); State v. Tapp, 398 S.C. 376, 728, S.E.2d 468 (2012), as the now controlling case law. R. 212, l.23- 213, l.17.

Williams then testified in camera. Williams admitted she had no personal knowledge about this case. R. 224, ll. 23-25. She said the “time spans” involved in “delayed disclosure” . . . “just varies.” R. 226, l. 1- 227, l. 2. Williams speculated “it could be days. It could be weeks. It could be years before a child may tell.” R. 227, ll. 1-2

On cross-examination Williams said she continues to conduct forensic interviews but acknowledged “I don’t conduct research...” R. 234, l. 17- 239, l. 24. Her opinions were “based on my experience and knowledge of the children that I have worked with and the interviews that are being conducted daily in our center that I am aware of.” R. 243, l. 24- 244, l. 12. However, Williams maintained that she did read writings in the area of child abuse R. 245, l. 12- 249, l. 1.

Williams testified that nondisclosure rates among women range from thirty-three to ninety-two percent “and among men from among forty-two to eighty-five percent.” R. 249, ll. 2-12. The “vast majority” of individuals that “we have seen have been abused by a close family member or a friend, someone known to the child. There are very few cases we see where the child has been abused by a stranger or someone that is unknown to them.” R.251, ll. 10-18

When questioned about any follow-up to determine which of the cases ever led to a conviction, Williams could only respond: “We could track that. We became accredited in 2007.” R. 253, l. 18- 254, l. 7. Williams admitted she was not aware of any statistics on how many accused people were “indicated for DSS,” had their cases dismissed, or referred to law enforcement. She was also not aware of how many of those accused pled guilty or went to trial. Regarding those that went to trial she was not sure of any statistics on what verdicts were rendered. R. 254, ll. 14-22.

After hearing the testimony the judge ruled that she would not allow any questioning about whether it was more common for a family member to abuse a child than a stranger. She would also not allow testimony about whether a child who had been victimized was likely to become again become “a victim later.” R. 258, ll. 8-22. It was undisputed that the father of this minor admitted he abused her.

Defense counsel objected that this testimony constituted improper bolstering of the child’s disclosure. He argued that the “expert” opinion in essence was that the alleged victim in this case “fits into what we understand to be a kind of the common way that children disclose, [therefore] she should be given credibility.” R. 259, l. 4- 260, l .5. The judge ruled she would allow this testimony about “delayed disclosure.” R. 260, ll. 6-11.

Defense counsel then stated that Williams had maintained she did not have time to talk with the defense prior to her testimony. He therefore asked for an opportunity to review her notes. The judge asked Williams to make herself available “over the lunch hour” to talk to defense counsel. R. 260, l. 16- 262, l. 25.

Williams agreed in the presence of the jury that she had never met the alleged victim or her family. She did not know anything about this case. R. 310, ll. 11-19. She was qualified as an expert in “child abuse and treatment” over appellant’s objection. R. 309, ll. 1-23.

Williams then offered her opinions on the subject. “Children do not tell right away.” She said the delay could be “a day, a week, a year, or months.” “There are many reasons why children don’t tell right away.” R. 311, l. 1- 312, l.9.

Williams maintained that disclosure was “a process,” and that “a lot of times, children are abused by someone that is known, loved, and trusted by them. That may be a family member.” R. 312, l. 10- 314, l. 25. She then testified about how the “proximity that the child has to the perpetrator” could play a part. She added that once the perpetrator was away the child may feel “safer to disclose.” R. 315, l. 1- 316, l. 4.

Williams offered that forty-two percent of children did not delay disclosure but that fifty-eight percent of children did delay telling anyone. R. 330, ll. 15-25.

Discussion

In State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013), our Supreme Court noted that while forensic interviewers may be useful as a tool to aid law enforcement their work is “not appropriate for use in a courtroom.” Appellant understands that in this case Williams was not testifying as a forensic interviewer, although she is one. Regardless, what occurred

in this case was not occurring in a vacuum. The approach for the state, given the case law from this Court and the Supreme Court, is to now have the witness, here Williams, not appear as a forensic interviewer but as an expert in “delayed disclosure” or some other “child abuse” expert title. Here, Williams allegedly did not know anything about the case, and had not even interviewed the alleged victim. Nonetheless, defense counsel here correctly argued this was simply a backdoor attempt to improperly bolster the child’s testimony.

In State v. Douglas 380 S.C. 499, 671 S.E.2d 606 (2009), our Supreme Court held there was no need for the testifying witness to be qualified as an expert. The Court then noted the impropriety of such a witness testifying that she believed the child.² The Supreme Court and this Court have warned of “expert” testimony on “a compelling disclosure of abuse.” See State v. Jennings 394 S.C. 473, 716 S.E.2d 91 (2011). See, also, State v. McKerley 397 S.C. 461, 725 S.E.2d 139 (2012).

Williams here testified with the aura of an expert. She largely admitted her conclusions and opinions were based on her own experience. She did, as seen above, claim that statistics showed that 58% of abused children delayed telling anyone. This could be “for a day, months, years.”

Further, as defense counsel correctly argued, the purpose of this testimony was to improperly bolster the credibility of the accusing witness. It was meant to have the jury conclude that the accusing witness in this case fit into a “normal pattern” of an abused person. That was improper, and it was highly prejudicial. Appellant should be granted a new trial. State v. Kromah, 401 S.C. 340, 737 S.E.2d 490 (2013); State v. Jennings 394 S.C.

473, 716 S.E.2d 91 (2011). See, also, State v. McKerley 397 S.C. 461, 725 S.E.2d 139 (2012)

² In Douglas, the Supreme Court determined that witness Herod did not convey to the jury that she believed the child was telling the truth.

The court erred by instructing the jury that it could convict appellant based on the alleged victim's uncorroborated testimony since this instruction improperly emphasized the testimony of one witness, it was a charge on the facts, and it was fundamentally unfair and infringed on appellant's right to a fair trial as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution

Relevant Facts

Appellant filed a motion to preclude the court from charging the jury instruction contained in S.C. Code §16-3-657 that the testimony of the alleged victim need not be corroborated. R. 453. Appellant wrote in the motion that he was aware of State v. Rayfield 369 S.C. 106, 631, S.E.2d 244 (2006) which permitted, but did not require, the court to instruct based on this statute. The motion noted that the alleged victim's allegation was the sole evidence in this case, and that the appellant is, and has been, impotent since 1996. R. 453.

The defense further argued in the motion that the instruction would be an impermissible comment on the facts, it would improperly emphasize the testimony of one witness, it would unfairly bias the jury against the appellant and detract from the presumption of innocence and the requirement that the state prove its case beyond a reasonable doubt. This denied appellant his due process right to a fair trial under the Sixth and Fourteenth Amendments to the United States Constitution. R. 453.

Defense counsel renewed his objection at trial. He again argued that the "uncorroborated testimony of the alleged victim alone was enough to conviction" jury instruction violated appellant's "substantial rights" including his Sixth Amendment right to

a fair trial. Defense counsel argued judge did **not have to instruct** the jury under the statute. R. 335, l. 23- 337, l.1.

Once the judge stated she would charge the statute over appellants objection, appellant asked that the judge include some other language that other evidence did not need to be ignored merely because the statue stated the alleged victim's testimony did not have to be corroborated. The judge did agree to that limited damage control after overruling the objection, inadequate on the facts here. R. 445, ll. 14-25.

As seen above, appellant's niece testified that appellant improperly touched her, and had oral sex with her. Appellant's wife, Noreen Brandeberry, had been married to appellant since 1983. R. 340, ll.5-20. Mrs. Brandeberry said appellant never admitted to any abuse and that he ultimately said he wanted nothing more to do with that portion of his family because of the untrue allegation. R. 352, l. 16- 354, l. 11. Mrs. Brandeberry also said that appellant told the investigator that he did not abuse his niece and "he said he might as well shoot his brains out" because of the untrue allegations. R. 353, ll. 1-10.

Mrs. Brandeberry testified appellant had been unable to perform sexually since the beginning of their marriage in 1983. R. 341, ll.10-19. Mrs. Brandeberry said they attempted surgery in the mid-1980's but that it caused appellant a great deal of pain, and the surgery apparently had to be reversed. R. 342, l. 4 - 348, l. 11.

As stated, the judge ruled she was charging South Carolina Code Section 16-3-657 over appellant's objections. She did add some language that was requested by appellant if she charged this code section over his objection. R. 365, l. 1 - 369, l. 2; R. 445, ll. 14-25. The judge flatly instructed the jurors "the testimony need not be corroborated and the defendant can be convicted solely on the basis of the victim's testimony." R. 445, ll.12-16.

The judge added that “uncorroborated” does not mean the jury should ignore inconsistencies and testimony or credit baseless testimony. R. 445, ll.12-25.

Discussion

In State v. Rayfield 369 S.C. 106, 631, S.E.2d 244 (2006), the Supreme Court held that the judge could, but was not required to charge South Carolina Code Section 16-3-657, that the alleged victim need not be corroborated. Appellant noted that in Rayfield the defendant had argued the instruction was a charge on the facts, it improperly emphasized the testimony of one witness, and it carried a strong possibility of unfairly biasing the jury against the defendant. See, State v. Hill, 394 S.C. 280, 298, 715 S.E.2d 368, 378 (Ct.App. 2011). The dissenters in State v. Rayfield noted this jury instruction did not assist the jury in fulfilling its function of deciding whether the state had proven the charge beyond a reasonable doubt. In fact, they observed, the instruction created more problems than solutions, and it was confusing as a whole.

Appellant Brandeberry is not aware of any other jury instruction that favors the testimony of one witness. That is true particularly where the jury is instructed under its oath that it can convict a defendant based merely on the uncorroborated testimony of the alleged victim. It is anathema to our criminal justice system wherein a defendant is presumed innocent and he may only be convicted by evidence beyond a reasonable doubt. This instruction favors the testimony of a single witness over all others and unfairly prejudices the defendant in the eyes of the jury. It was a charge on the facts and it denied appellant his Sixth Amendment right to a fair trial. See State v. Bagwell, 201 S.C. 387, 23 S.E.2d 244, 249, (1942) (similar instruction on “uncorroborated” statements of accomplices should be

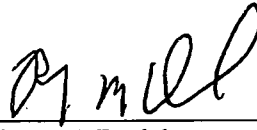
received with caution and should be scrutinized by the jury with great caution was a charge on the facts which violated the state constitution).

A judge should not direct a verdict of acquittal because the alleged victim's testimony is not corroborated, but charging a jury this language denied appellant a fair trial. Appellant should be granted a new trial.

CONCLUSION

By reason of the foregoing arguments, appellant's convictions should be reversed in this case remanded to the Greenville County Court of General Sessions for a new trial.

Respectfully submitted,

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

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

This 17th day of June, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Letitia H. Verdin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

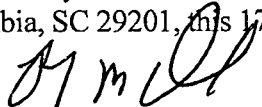
ALBERT BRANDEBERRY,

APPELLANT

APPELLATE CASE NO. 2012-212841

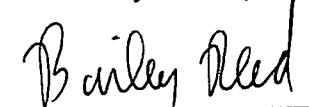
CERTIFICATE OF SERVICE

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 17th day of June, 2014.


Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 17th day of June, 2014.


_____(L.S.)
Notary Public for South Carolina

My Commission Expires: October 24, 2021



SCCID

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June 17, 2014

Salley W. Elliott, Esquire
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Columbia, SC 29211

Re: The State v. Albert Brandeberry

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

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2012-212841

THE STATE, ...RESPONDENT,

v.

ALBERT BRANDEBERRY, ...APPELLANT.

FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

	Page
Table of Contents.....	i
Table of Authorities	ii
Respondent's Statement of Issues on Appeal	1
Statement of the Case.....	2
Statement of Facts.....	3
Argument:	
I. The trial court properly overruled Appellant's objection to expert testimony concerning delayed disclosure by victims of child sexual abuse where that expert testimony was helpful to the jury and was not unfairly prejudicial to Appellant.....	21
II. The trial court properly charged the jury, pursuant to § 16-3-657 of the South Carolina Code, that the testimony of a sexual assault victim need not be corroborated.	34
Conclusion	37

TABLE OF AUTHORITIES

Cases:

Federal:

United States v. Jones, 471 F.3d 535 (4th Cir. 2006) 21

Alabama:

W.R.C. v. State, 69 So.3d 933 (Ala. Crim. App. 2010)..... 29

Arizona:

State v. Moran, 728 P.2d 248 (Ariz. 1986)..... 28

Hawaii:

State v. Batangan, 799 P.2d 48 (Haw. 1990) (28, 29)

State v. Castro, 756 P.2d 1033 (Haw. 1988)..... 28

Massachusetts:

Commonwealth v. Bougas, 795 N.E.2d 1230 (Mass. App. Ct. 2003)..... 29

Michigan:

People v. Beckley, 456 N.W.2d 391 (Mich. 1990)..... 30

Minnesota:

State v. Myers, 359 N.W.2d 604 (Minn. 1984) 29

New Jersey:

State v. J.Q., 617 A.2d 1196 (N.J. 1993)..... 29

New York:

People v. Carroll, 740 N.E.2d 1084 (N.Y. 2000)..... 27

People v. Spicola, 947 N.E.2d 620 (N.Y. 2011)..... 30

North Carolina:

State v. Carpenter, 556 S.E.2d 316 (N.C. Ct. App. 2001)..... 30

Oregon:

State v. Middleton, 657 P.2d 1215 (Or. 1983)..... 28

South Carolina:

Brown v. Carolina Emergency Physicians, P.A., 348 S.C. 569, 560 S.E.2d 624 (Ct. App. 2001)..... 25

Crawford v. Henderson, 356 S.C. 389, 589 S.E.2d 204 (Ct. App. 2003)..... 25

Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 487 S.E.2d 596 (1997)..... 23, 25, 26

<u>Honea v. Prior</u> , 295 S.C. 526, 369 S.E.2d 846 (Ct. App. 1988)	25
<u>Lee v. Suess</u> , 318 S.C. 283, 457 S.E.2d 344 (1995)	23
<u>Mizell v. Glover</u> , 351 S.C. 392, 570 S.E.2d 176 (2002)	24
<u>State v. Adams</u> , 354 S.C. 361, 580 S.E.2d 785 (Ct. App. 2003)	31
<u>State v. Bridges</u> , 278 S.C. 447, 298 S.E.2d 212 (1982)	23
<u>State v. Commander</u> , 396 S.C. 254, 721 S.E.2d 413 (2011)	23
<u>State v. Douglas</u> , 380 S.C. 499, 671 S.E.2d 606 (2009)	27
<u>State v. Goode</u> , 305 S.C. 176, 406 S.E.2d 391 (Ct. App. 1991)	24, 26
<u>State v. Hamilton</u> , 344 S.C. 344, 543 S.E.2d 586 (Ct. App. 2001)	31
<u>State v. Henry</u> , 329 S.C. 266, 495 S.E.2d 463 (Ct. App. 1997)	24, 25, 26
<u>State v. Holland</u> , 385 S.C. 159, 682 S.E.2d 898 (Ct. App. 2009)	34
<u>State v. Jennings</u> , 394 S.C. 473, 716 S.E.2d 91 (2011)	32
<u>State v. Kromah</u> , 401 S.C. 340, 737 S.E.2d 490 (2013)	32
<u>State v. Lee</u> , 399 S.C. 521, 732 S.E.2d 225 (Ct. App. 2012)	30, 31
<u>State v. Martin</u> , 391 S.C. 508, 706 S.E.2d 40 (Ct. App. 2011)	24, 26
<u>State v. McKerley</u> , 397 S.C. 461, 725 S.E.2d 139 (Ct. App. 2012)	32
<u>State v. Mitchell</u> , 286 S.C. 572, 336 S.E.2d 150 (1985)	33
<u>State v. Morris</u> , 376 S.C. 189, 656 S.E.2d 359 (2008)	23, 26
<u>State v. Orozco</u> , 392 S.C. 212, 708 S.E.2d 227 (Ct. App. 2011)	35
<u>State v. Price</u> , 368 S.C. 494, 629 S.E.2d 363 (2006)	23
<u>State v. Rayfield</u> , 369 S.C. 106, 631 S.E.2d 244 (2006)	35
<u>State v. Schumpert</u> , 312 S.C. 502, 435 S.E.2d 859 (1993)	25, 34, 35
<u>State v. Shuler</u> , 353 S.C. 176, 577 S.E.2d 438 (2003)	31

<u>State v. Von Dohlen</u> , 322 S.C. 234, 471 S.E.2d 689 (1996).....	25
<u>State v. Wharton</u> , 381 S.C. 209, 672 S.E.2d 786 (2009)	34
<u>State v. White</u> , 382 S.C. 265, 676 S.E.2d 684 (2009).....	23, 24
<u>State v. Wilson</u> , 345 S.C. 1, 545 S.E.2d 827 (2001).....	23
<u>State v. Weaverling</u> , 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999).....	27
<u>Thomas Sand Co. v. Colonial Pipeline Co.</u> , 349 S.C. 402, 563 S.E.2d 109 (Ct. App. 2002)	25
<u>Wilson v. Rivers</u> , 357 S.C. 447, 593 S.E.2d 603 (2004)	24
<u>Statutes:</u>	
S.C. Code Ann. § 16-3-655 (Supp. 2013).....	34
S.C. Code Ann. § 16-3-657.....	i, 1, 17, 34, 35
<u>Rules:</u>	
Rule 403, SCRE	30, 31
Rule 702 SCRE	passim
Rule 801(d)(1)(D) , SCRE	3

RESPONDENT'S STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court properly overruled Appellant's objection to expert testimony concerning delayed disclosure by victims of child sexual abuse where that expert testimony was helpful to the jury and was not unfairly prejudicial to Appellant?
2. Whether the trial court properly charged the jury, pursuant to § 16-3-657 of the South Carolina Code, that the testimony of a sexual assault victim need not be corroborated?

STATEMENT OF THE CASE

Albert Brandeberry (Appellant) was indicted at the June 12, 2012, term of the grand jury for Greenville County for lewd act upon a child (2011-GS-23-3885) and criminal sexual conduct (CSC) with a minor – first degree (2011-GS-23-3886). He was represented by Jim Bannister, Esquire, of the Greenville County Bar. The State was represented by Assistant Solicitor Lisa A. Bentley, of the Thirteenth Circuit Solicitor's Office. (R.p.1). On August 6-9, 2012, Appellant proceeded to trial by jury before the Honorable Letitia H. Verdin pursuant to which he was found guilty as indicted. He was sentenced to twenty (20) years' imprisonment for CSC with a minor – first degree and fifteen (15) years' concurrent imprisonment for lewd act upon a minor. (R.p.459-462; SROA.p.1-2; R.p.541, lines 4-10). On August 17, 2012, Appellant timely served and filed a "Motion to Reconsider Sentence and Motion for a New Trial." In the motion he renewed his objections from trial, asked the trial court to grant a new trial, and alternatively asked the court to reduce his sentence. On August 23, 2012, the trial court denied the requests. (R.p.458). Appellant timely filed a notice of intent to appeal his conviction and sentence and subsequently submitted a Brief in support of his appeal. This Brief of Respondent (the State) follows.

STATEMENT OF FACTS

The victim was sexually abused by her grandfather, Appellant, from the time she was seven years old until she was eleven. (R.p.130, line 13-p.150, line 20). She disclosed the abuse to her father, Harold Brandeberry, who ended Appellant's contact with the victim; however, he did not report the abuse to authorities and six months later began sexually abusing the victim himself. (R.p.152, line 10-p.159, line 17). Harold Brandeberry was convicted of CSC with a minor in the second degree for the sexual abuse of his daughter and is currently serving a twelve-year sentence in the South Carolina Department of Corrections. (R.p.278, line 15-p.280, line 9). In the case now on appeal before this Court, Appellant was tried and convicted of CSC with a minor in the first degree and lewd act upon a minor, and is currently serving a twenty-year sentence.

Pretrial

On August 6, 2012, the trial court convened a hearing to address a number of pretrial motions, several of which concerned issues particularly related to cases involving the alleged sexual abuse of a child. (R.p.2-p.34). First, Appellant moved to limit any testimony which would corroborate the victim's account of the sexual assaults to only "the time and place" of the incidents pursuant to Rule 801(d)(1)(D) of the South Carolina Rules of Evidence. The solicitor said the State intended to comply with the limitations in the Rules. (R.p.6, line 23-p.7, line 7). Next, Appellant moved to prohibit "any bolstering of statements of credibility as it relates to the victim's disclosure." He specifically mentioned possible expert testimony about "delayed disclosure," arguing it was "sort of a backhanded way of bolstering credibility by saying, okay, credible cases involve children who report in a delayed fashion. This child reported in a delayed fashion." The solicitor acknowledged the State intended to call Shauna Galloway-Williams as an expert witness

and hoped to have her testify about child sexual abuse trauma, the reasons children delay disclosure, and family dynamics; however, she noted Galloway-Williams would not discuss the "compelling nature of disclosure" because the victim never disclosed the abuse to her. The solicitor then explained that the State also planned to call the victim's therapist as a witness, but would not seek to qualify her as an expert and did not intend to elicit testimony about credibility, believability, or the compelling nature of the victim's disclosure. Appellant said he might have some objections to Galloway-Williams's expertise, whether or not her testimony was needed to assist the trier of fact, and whether the type of evidence being offered could serve as a basis for a reliable opinion under a Rule 702 [SCRE] analysis. The trial judge said she would allow ample time for further arguments and for Appellant to conduct voir dire on Galloway-Williams when she was called as a witness at trial. (R.p.8, line 9-p.11, line 22).

Trial – Opening Statements and State's Case

The following morning, the jury was qualified, selected, and sworn. (R.p.35, lines 1-13; p.36, line 1-p. 37, line 5; p.39, lines 5-17). The trial judge then gave a preliminary jury charge which included detailed instructions on the jury's duty to determine the believability or credibility of each witness. (R.p.39, line 19-p.48, line 24). During opening statements, the solicitor told the jury that because of the secretive nature of child sexual abuse there would be no video of the crime, no fingerprints from a crime scene, and no photographs of injuries, so the testimony from the victim is where they would "hear the details of the crime." (R.p.53, lines 5-11). In response, Appellant told the jury the most pervasive thing they would hear in the case was the fact that the victim was raised in a household with Harold Brandeberry (the victim's father and Appellant's

son), who is a "manipulative, incestuous, child molester." Appellant described several ways Harold Brandeberry had been manipulative and asked the jury to pay attention to testimony about how the allegations "came out" against Appellant, particularly the date and manner in which they were "first revealed." (R.p.60, lines 18-23; p.61, line 22-p.62, line 8).

The State then presented testimony and evidence from a series of witnesses, including the victim. First, the State called Greta McCall, a licensed mental health counselor, to the stand. She testified she met the victim in her professional capacity in November of 2010 and counseled her for over a year. The victim had been referred for counseling in regard to sexual abuse that was perpetrated by her father (Harold Brandeberry). During the course of counseling, at their third session on December 2, 2010, the victim disclosed additional sexual abuse from someone other than her father. The victim told McCall the prior incidents of abuse started when she was six or seven years old and ended around the age of twelve, but McCall did not remember the victim disclosing a place where the abuse occurred. McCall testified the victim said she had disclosed the prior abuse to her father when she was twelve years old. (R.p.64, line 5-p.71, line 6). On re-direct examination, McCall testified the victim was able to clearly distinguish the sexual abuse by two different perpetrators and there was never any blurring between the two. (R.p.87, lines 14-23).

Next, the State called Greenville County Sheriff's Office Investigator Heather Hubert to the stand. Hubert first met with the victim at the victim's house on September 21, 2010, after receiving a report from the Department of Social Services (DSS) of sexual abuse involving her father, Harold Brandeberry. The victim told Hubert her mother,

Kelly Brandeberry, had observed some of that abuse. She initially told Hubert it began when she was about ten years old and lasted until September of 2010, but she later stated it didn't begin until she was twelve years old. The victim described the abuse in narrative form and said it happened both in the family home and inside a camper when they went on camping trips. (R.p.91, line 23-p.99, line 18). Hubert met with the victim a second time on December 10, 2010, after receiving a new report from DSS about sexual abuse involving someone other than her father. The victim told Hubert the abuse happened from age seven up until age twelve, that it occurred in her family home, and that it did not overlap with the sexual abuse committed by her father. (R.p.99, line 22-p.104, line 2).

The State then called Detective Matthew Tuttle from the Finley, Ohio, Police Department. In February of 2011, Tuttle received a report from the Greenville County Sheriff's Office involving a sexual abuse allegation and agreed to conduct a courtesy interview of Appellant in Finley, Ohio. On March 10, 2011, Tuttle went to Appellant's house and met with Appellant and his wife Noreen. He advised Appellant of the allegations and though Appellant initially acted surprised, he later said he had first learned of the allegations a few years earlier from his son Harold. Appellant told Tuttle that after Harold's family moved to South Carolina Appellant would come down during the summers to visit for a couple of days to a week and would sleep on the couch or sometimes in his own room. Appellant denied the allegations and did not admit any wrongdoing. He said the victim was generally truthful and honest, but not about these allegations. Tuttle ended the interview when Appellant became upset and started talking about killing himself. (R.p.117, line 6-p.123, line 16).

Next, the victim took the stand. Now seventeen years old, she described her family and the period of time they lived together in Greenville after moving to South Carolina from Ohio. She then described the sexual abuse she suffered at the hands of Appellant from the time she was seven until she was twelve. The victim explained the abuse occurred when Appellant visited, usually for a week or two during the summer. She testified Appellant slept on a sofa bed while he was visiting, and that during the day she and her younger brother stayed home with him instead of going to day camp like they did the rest of the summer. The victim described escalating sexual abuse over the course of several summers which included Appellant rubbing the victim's vagina through her clothes, Appellant making the victim rub his penis, Appellant performing oral sex on the victim, Appellant making the victim perform oral sex on him until he ejaculated, and Appellant penetrating the victim's vagina with his fingers. She testified the sexual abuse ended the summer before she turned twelve. (R.p.130, line 13-p.150, line 20). The victim testified she was eleven when she finally realized what Appellant was doing was wrong. She reported the abuse to her father in December of 2006, sometime after her 12th birthday but before Christmas. The victim testified her father said he was sorry, said he would take care of it and protect her, and promised it would never happen again. She did not see Appellant again until 2010. (R.p.152, line 10-p.155, line 9). The victim testified she did not tell her mother what Appellant had been doing to her because her father said he had taken care of it. (R.p.155, line 10-p.157, line 17).

The victim testified that during the summer she was twelve, six months after disclosing Appellant's sexual abuse to her father, her father then started molesting her. She said the sexual abuse perpetrated by her father was different from the abuse

perpetrated by Appellant. The victim's father abused her at home in his recliner and in the family camper, neither of which the family owned when Appellant previously came to visit. She testified the sexual abuse from her father came to light when her mother saw them together at a campground and confronted her. The victim first denied the abuse but on September 20, 2010, she broke down and admitted to her mother it was true. She testified she had previously talked to her mother about sexual abuse by her father because he admitted he was having "unclean thoughts" about the victim, but her mother simply promised she would keep them off the recliner and apart. (R.p.157, line 18-p.159, line 17).

The State then called the victim's mother, Kelly Wilkinson, to the stand. Wilkinson explained her married name had been Kelly Brandeberry, but she reverted to her maiden name when her divorce from Harold Brandeberry was finalized in June of 2012. She testified Appellant started coming from Ohio to South Carolina to visit the family in 2001 when the victim was seven. He normally came for a week during the summer and slept on the couch, but also came one year for Christmas. Usually the victim and her younger brother John went to day camp during the summer, but when Appellant came to visit, they would stay home with him instead. Wilkinson didn't observe anything unusual about Appellant's behavior with the victim when he visited. She testified Appellant stopped coming to visit around 2008 when the victim was twelve. Wilkinson testified Harold made all the decisions in their family and she had no say. If she questioned him, he became verbally abusive, calling her "fat" and "bitch." Wilkinson said the children were not allowed to question their father's decisions. She said she never had a "sex talk" with the kids because Harold would not let her. Wilkinson recounted the

September, 2010 camping trip when she discovered her husband and the victim in bed together under the covers. After the trip, she confronted the victim, who first denied any sexual contact but later admitted sexual abuse had been going on for three years.

Wilkinson first called her pastor, who then called the police. She testified the victim never disclosed any other sexual abuse besides from her father. (R.p.173, line 19-p.190 line 4). On cross-examination, Wilkinson acknowledged giving a statement to police that Harold and the victim told her Harold had engaged in inappropriate touching with the victim approximately a year before the 2010 camping trip. She said at the time they both apologized, and Harold asked her to hold him accountable by keeping him from ever being with the victim under a blanket. Wilkinson testified Harold promised never to do it again, and she believed him. She said she ultimately decided the best thing for everyone was to deal with the issue within the family. (R.p.195, line 10-p.200, line 23).

Expert Witness – State's Proffer

After Wilkinson completed her testimony, the trial judge excused the jury and asked the solicitor to describe the expert testimony the State sought to elicit from Galloway-Williams. The solicitor said she wanted Galloway-Williams to discuss sexual abuse trauma and how victims cope and respond. Specifically, she sought testimony on: (1) family dynamics and sexual abuse; (2) delayed disclosure; and (3) the escalation of sexual abuse, from confusing touches to actual abuse. The judge asked how the solicitor believed the testimony would assist the trier of fact. The solicitor argued that child sexual abuse is outside the scope of the average person and average juror's knowledge, and that hearing from someone who lives with it and studies it on a daily basis would

help them understand. Relying on this Court's opinion in State v. Weaverling,¹ she argued it was appropriate to have Galloway-Williams offer expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assaults. The solicitor argued the testimony would be relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault. The trial judge questioned the propriety of testimony about escalation of sexual abuse and asked how it would not simply be testimony to suggest Appellant acted in conformity with a typical pedophile's behavior. The solicitor argued testimony about such "grooming" behavior and a pedophile's initial innocuous touching, such as a massage or back rub, could confuse a child to the point he or she would not disclose actual abuse when it eventually occurred, which relates to delayed disclosure. The court asked Appellant to respond. (R.p.206, line 18-p.210, line 11).

Appellant complained that Galloway-Williams was not actually treating the victim in this case and would be basing her opinions on experiences with other child sexual assault victims who gave common descriptions of patterns of abuse. He argued this would amount to her implicitly saying that since Appellant's actions fit into this pattern, he also committed sexual abuse. Appellant argued he did not think the concept of escalating abuse required expert testimony because the jury would understand confusing touching. He then argued that each and every one of the topics the State wanted Galloway-Williams to discuss was equivalent to testimony that the victim was credible simply because she disclosed in a way that is typical of sexual assault victims. Appellant argued that such testimony essentially corroborates the victim's testimony, and

¹ 337 S.C. 460, 523 S.E.2d 787 (Ct. App. 1999).

should not be allowed. The trial judge took the matter under advisement. (R.p.210, line 12-p.213, line 17).

The following morning, still outside the presence of the jury, the State sought to qualify Galloway-Williams as an expert witness. Galloway-Williams testified she is Executive Director of the Julie Valentine Center, a child abuse and sexual assault recovery center in Greenville. Before becoming Executive Director she served as Clinical Director, and before that was a forensic interviewer both for the center and the Department of Mental Health. She holds a bachelor's degree in psychology, a master's degree in counseling, and is a Licensed Professional Counselor. Galloway-Williams testified she serves as the vice president of the board for the SC Network of Children Advocacy Centers and serves on the board of the SC Professional Society on the Abuse of Children. She is required to complete at least 22 hours of continuing education credits every two years and has personally taught seminars and courses on expert witness testimony relating to trauma. She has been working specifically with children and adolescents for eleven years and has completed approximately 145 hours of training specifically related to child sexual abuse and forensic interviewing. Galloway-Williams testified the matters relating to child sexual abuse that she intended to testify about in Appellant's trial had been published in professional journals. She said the principles have been subject to peer review, are uniformly accepted and recognized within the field of sexual abuse counselors and professionals, and are reasonably relied upon in the field of child sexual abuse and treatment. Based on this testimony, the State sought to qualify Galloway-Williams as an expert in "child sexual abuse and treatment" and asked for a

finding that her treatment and knowledge are reliable under Rule 702, SCRE. (R.p.216, line 1-p.223,line 17).

Appellant asked if the trial court would have the State proffer the testimony before Appellant conducted voir dire so he could cross-examine Galloway-Williams on both her qualifications and her proposed testimony as it relates back to her expertise. The judge agreed and the State proffered the expert testimony. Galloway-Williams testified she did not previously know the victim in this case and met her for the first time in the elevator that morning. She said she had never discussed the factual allegations in Appellant's case with anyone, had never counseled the victim, and had no personal knowledge regarding the case. Galloway-Williams explained "delayed disclosure" or "delayed reporting" as the behavioral phenomenon of a child not telling anyone immediately after a sexual assault. She said it is very common for children not to tell right away, with the primary reason being fear, either that something bad will happen to them, or something bad will happen to someone else when they tell. Galloway-Williams also described "piecemeal or partial" disclosure as a common characteristic where child sexual abuse victims fail to reveal all of the facts at the initial disclosure, and reveal more details the more comfortable they get with the person they have told. She testified that when it comes to delayed disclosure, it could be days, weeks, or years before a child may tell. Galloway-Williams went on to describe other factors that contribute or relate to delayed disclosure in child sexual abuse victims including lack of sexual language or knowledge, inability to provide a complete chronology of events, accidental disclosure, family dynamics, and access to someone they trust. (R.p.223, line 18-p.234, line 12).

On cross-examination, Galloway-Williams acknowledged she does not actually conduct the research projects on which she relies, but noted the Julie Valentine Center tracks and maintains data which is shared with national groups who compile statistics which are used in the research. She explained that all of her testimony about delayed disclosure and behavioral traits of child sexual abuse victims was based on this research, her training, and her own extensive experience with victims. (R.p.234, line 13-p.258, line 5). After hearing the testimony, the trial court ruled it would not allow the State to ask whether it was more common for a family member to sexually abuse a child, or whether a child who has been victimized once is more likely to be a victim again later, and noted the State did not ask any questions about "grooming." (R.p.258, lines 8-24). Appellant argued:

Thank you, Judge. Going back to my general opposition to this testimony, it simply is that in describing what is couched in terms of this happens oftentimes, this is common and then ultimately overlaying in her opinion that that is common and normal for children to disclose in various ways, shapes or forms, it is a backhanded way of saying that because [the victim] fits into what we understand to be kind of the common way that children disclose, then she should be given credibility. Although the expert is not saying that, that's the clear inference that's trying to be drawn. That's where I think we get into bolstering of the child's disclosure is improper.

(R.p.259, lines 4-18). Ultimately, the trial court referred to State v. Weaverling and ruled that a properly qualified expert in the field could give testimony as to the effects of sexual abuse on a child, including delayed disclosure. The court found such information might not be in the common knowledge of the jurors and decided to allow testimony in Appellant's case with regard to delayed disclosure. The solicitor noted the State was okay with the ruling and wanted to simply "keep it clean and above water without question." (R.p.259, line 19-p.260, line 16).

Trial - Continued

Following the ruling on Galloway-Williams, the jury returned to the courtroom and the trial resumed. The State called the victim's fourteen-year-old brother John Brandeberry to the stand. He testified he remembered Appellant coming to their house to visit over four or five summers before he stopped visiting three years before the trial, and he described how Appellant drove a red truck, bought them toys, and slept on the couch. (R.p.264, line 18-p.271, line 3).

Next, the State called Harold Brandeberry to the stand. Harold testified he currently lived in the Turbeville Correctional Facility where he was serving a twelve-year sentence for CSC with a minor – second degree, for the sexual abuse of his daughter, the victim in this case. He identified Appellant sitting at the defense table in the courtroom and said Appellant, who is his father, visited the family at least once a year up until 2007. Harold testified that in December of 2006, the victim disclosed to him that she had been sexually abused. He said the victim told him the abuse had been going on for three years, in their house. Harold reported the disclosure to his wife, Kelly, and they agreed to confront the person the victim said had abused her. He testified he and Kelly confronted Appellant by way of a telephone call, and that their pastor was present during the call; however, Harold did not report the abuse to the police or anyone else. Harold testified he started his own sexual relationship with the victim after the disclosure, when she was 14 or 15 years old. (R.p.275, line 3-p.289, line 1).

Finally, the State called Galloway-Williams to the stand and presented nearly identical testimony about her qualifications as was previously proffered. Over Appellant's objection, the court qualified Galloway-Williams as "an expert in the area of

child sexual abuse and treatment.” (R.p.301, line 17-p.309, line 11). The trial judge then gave the following instruction:

Ladies and Gentlemen, normally, a person cannot give opinion testimony. Normally, when a person testifies, he or she must testify as to something they have seen, heard, smelled, something like that. However, there is an exception when someone is qualified because of education or experience they are permitted to give their opinion in certain areas if the Court qualifies them that way. This witness will be qualified in the area of child sexual abuse and treatment to give opinion testimony in that area. That does not mean that you must accept the opinion but it is evidence for you to use in any way you see fit.

(R.p.309, lines 11-23).

Galloway-Williams then testified she did not previously know the victim in this case and met her for the first time in the elevator that morning. She said she had no personal knowledge regarding the case and explained her purpose in testifying was to share information about child sexual abuse and the dynamics associated with it, which are not of common knowledge. Galloway-Williams explained “delayed disclosure” as referring to children not telling about sexual abuse right away. She said in her experience, delayed disclosure was very common, with the primary reason being fear that something will happen to them, something will happen to someone else, or that they will not be believed. Galloway-Williams also described “partial or piecemeal disclosure” as a common characteristic where child sexual abuse victims fail to reveal all of the facts at the initial disclosure, and reveal more details the more comfortable they get with the person they have told. Galloway-Williams testified child victims do not necessarily reveal events in chronological order because they do not really understand the concept of time, and instead relate events to a specific event or period in their lives, like a birthday or holiday, or when they had a particular teacher. She testified children also often lack

sexual language which makes it difficult to describe what has happened to them.

Galloway-Williams testified that when a family member is committing the abuse it often makes it harder to disclose because there are positive relationship characteristics aside from the abuse. She testified that when the perpetrator is in the home the child also may not feel safe to disclose the sexual abuse, but that a variety of factors can prompt disclosure after a period of time, such as an upcoming visit from the abuser, or someone simply asking. (R.p.309, line 24-p.316, line 6).

On cross-examination, Appellant used various studies and statistics to challenge Galloway-Williams' personal experiences and opinions about delayed disclosure. She acknowledged one study which concluded that within known responses, 42 percent of the children disclosed the abuse in less than 48 hours, and only 15 percent delayed disclosure by more than six months. Appellant also successfully elicited testimony regarding "parental indoctrination" and "suggestibility" to support the defense theory that Harold Brandeberry was a manipulative child molester who coerced or convinced the victim to make up the abuse allegations against Appellant. (R.p.316, line 7-p.329, line 5). On re-direct examination, Galloway-Williams testified that even though the study showed 42 percent of sexually abused children did not delay disclosure, this mean 58 percent delayed to some extent. (R.p.329, line 7-p.330, line 25). At the close of Galloway-Williams' testimony, the State rested and the jury exited the courtroom. Appellant moved for a directed verdict and renewed his previous motions and objections. The trial court denied the motion for a directed verdict and noted all prior objections. (R.p.333, line 7-p.334, line 9).

Discussion of Jury Charges

Appellant next asked to address the trial court's jury charges. He said he had been looking at the charge and noticed it included language from South Carolina Code Section 16-3-657 in regard to uncorroborated testimony of a victim of a CSC case. Appellant advised the trial judge he was aware of State v. Rayfield,² which contradicts his position, but nevertheless argued the language should not be charged. He argued it violated a number of substantial rights, including his due process right, his right to a fair and impartial jury, and his 6th Amendment right to a fair and impartial jury. Appellant further noted that pursuant to Rayfield, the trial court is not required to charge section 16-3-657 and that it is simply a permissible charge. He asked the trial court not to charge the statutory language. The trial judge took the matter under advisement. (R.p.335, line 13-p.337, line 5).

Trial – Appellant's Defense

Appellant elected not to testify; however, he called one witness in his defense. Appellant's wife, Noreen Brandeberry, testified that almost from the beginning of their marriage in 1983 Appellant was unable to perform sexually because he could not get an erection. She testified he got a penile implant in the late 1980's, which he had for nine or ten years, but later had it removed after suffering severe pain in his testicles and discovering it had erupted. Noreen claimed the implant was removed in 1996 and Appellant never got a replacement. She testified after the implant was removed, he was again unable to get an erection despite their attempts, and that he did not have a penile implant between 2001 and 2006. Noreen testified she once saw the victim's father, Harold Brandeberry, spank the victim and throw her on the couch when he got mad. She

² 369 S.C. 106, 631 S.E.2d 244 (2006).

testified the victim seemed to be very scared of her father and that the victim's mother also seemed scared of Harold. (R.p.339, line 19-p.354, line 21).

After the defense rested, the trial court found: "So far as charging 16-3-657, your objection is noted on that. And I'll make your motion a part of the record. But I'm going to deny your motion. I'm going to charge that code section anyway." Based on the ruling, Appellant asked the court to consider additional charges about the burden of proof and defining "uncorroborated." The judge took the additional requests under advisement. (R.p.364, line 2-p.370, line 1). The following morning the trial court announced it was including Appellant's requested definition of uncorroborated in its entirety in the jury charge.

The parties then made closing arguments. Appellant thoroughly presented his theory of defense, arguing that Harold Brandeberry was the only person to sexually abuse the victim. He argued Harold is a manipulative, controlling pedophile who had "five years to work on [the victim] before it comes out where she believes that [Appellant] is the one that molested her." He focused on the delay in the victim's disclosure to attack her credibility, noting it was "10 times the amount of time that we were talking about in this study." Appellant also attacked the victim's credibility by arguing Harold's sexual abuse must have had an impact on her ability to perceive things accurately and that the sexual trauma impacted her perception of reality. (R.p.373, line 24-p.405, line 11). Next, the solicitor argued the State's theory of the case. She briefly mentioned Galloway-Williams and her general explanation of delayed disclosure, but spent the vast majority of her closing argument discussing testimony from the victim and other fact witnesses. (R.p.405, line 12-p.432, line 7).

Prior to the jury charge, Appellant renewed his motion in regard to the instruction on uncorroborated testimony of a witness. (R.p.433, lines 9-13). The trial judge then charged the jury on the law, starting with an instruction that it was the jury's exclusive duty to determine the facts. The trial court then charged the jury on the State's burden of proof, the presumption of innocence, the roles of the judge and jury, reasonable doubt, direct evidence, circumstantial evidence, and credibility of witnesses. (R.p.434, line 1). In regard to expert witnesses, the trial judge specifically charged the jury as follows:

The rules of evidence ordinarily do not permit witnesses to testify to opinions or conclusions. An exception to this rule exists for a witness we call an expert witness. A witness who, by education and experience, has become an expert in some art, science, profession or calling may state an opinion as to relevant and material matter in which the witness claims to be an expert and may also state the reasons for that opinion.

You should consider any expert opinion received in evidence in this case and like any other evidence give it the weight you think it deserves. If you decide that the opinion of an expert witness is not based on sufficient education or experience or if you conclude that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence, you may disregard the opinion entirely. An expert witness' testimony is to be given no greater weight than that of other witnesses simply because the witness is an expert. Further, you are not required to accept an expert's opinion even though it is not contradicted.

(R.p.441, line 24-p.442, line 20). In regard to the victim's testimony, the trial court charged:

The testimony of a victim need not be corroborated and the defendant may be convicted solely on the basis of the victim's testimony. The term "uncorroborated" as used in this instruction does not mean that baseless testimony should be given credit and that you should ignore inconsistencies. Furthermore, it does not mean that you should accept without question the victim's testimony and ignore evidence that conflicts with her version of events. In other words, this term does not permit you as jurors to violate your obligation to consider all the evidence.

(R.p.445, lines 14-25).

At the end of the charge, Appellant noted he had no objection to the charge other than what he already raised. After deliberating for approximately an hour and a half, the jury found Appellant guilty as indicted. He was sentenced to twenty (20) years' imprisonment for CSC with a minor – first degree, and fifteen (15) years' concurrent imprisonment for lewd act upon a minor. (R.p.459-462; SROA.p.1-2; R.p.451, lines 4-10).

ARGUMENT

I.

The trial court properly overruled Appellant's objection to expert testimony concerning delayed disclosure by victims of child sexual abuse where that expert testimony was helpful to the jury and was not unfairly prejudicial to Appellant.

Appellant argues the trial court erred in qualifying Galloway-Williams as an expert in "child abuse and treatment" and in allowing her to explain "delayed disclosure" as a common behavioral characteristic of sexually abused children, because her testimony "improperly bolstered the child's testimony by raising the improper spurious inference that the alleged victim in this case was acting in conformity with those common traits."³ He contends this was a deliberate "approach" taken by the State to circumvent the principles explained by our supreme court's recent decision in State v. Kromah.⁴ Appellant claims "the purpose of this testimony was to improperly bolster the credibility of the accusing witness" and that "it was meant to have the jury conclude that the accusing witness in this case fit into a 'normal pattern' of an abused person." (Brief of Appellant p.10) (emphasis added). The State disagrees and submits Appellant's argument is entirely without merit.

Appellant seems to argue that during the trial in his case, the State was attempting to introduce the exact type of testimony prohibited by Kromah by simply using a title

³ Appellant seems to confuse "bolstering" with "vouching." While vouching constitutes an expression of belief or opinion regarding the credibility or honesty of a witness, bolstering is an implication by the government that the testimony of a witness is corroborated by evidence known to the government but not known to the jury. United States v. Jones, 471 F.3d 535, 544 n.3 (4th Cir. 2006).

⁴ 401 S.C. 340, 737 S.E.2d 490 (2013). In Kromah, the supreme court held a forensic interviewer should not have been allowed to testify about a "compelling finding" of child abuse, as that was the equivalent of stating the child was telling the truth. Id. at 359, 737 S.E.2d at 500. In a footnote, the court also found: "we can envision no circumstance where [a forensic interviewer's] qualification as an expert at trial would be appropriate."

other than "forensic interviewer" to describe Galloway-Williams' expert qualifications, and then eliciting testimony from her that would effectively vouch for the victim's credibility. Nothing could be further from the truth. There is simply no evidence in the record to suggest the State was engaged in any sort of strategy, "backdoor attempt," or deliberate "approach" to elicit improper testimony intended to vouch for the victim's credibility. To the contrary, the solicitor repeatedly expressed her intent to limit all of the State's evidence, including testimony from expert witness Galloway-Williams, to that which was appropriate and admissible under the South Carolina Rules of Evidence. The State submits Appellant has either mistakenly misrepresented the solicitor's motivations to be something other than what is reflected in the record, or he has intentionally manufactured nefarious motivations where none exist. In either case, there is no support for the contention that the State was deliberately seeking to bypass or otherwise avoid the precedent recognized by our supreme court in Kromah. Therefore, the State initially asks this Court to reject Appellant's contentions about the State's motives outright, and to rebuke Appellant for advancing such an argument.

Additionally, the State asks this Court to find the substance of Appellant's argument to be without merit. The State submits the trial court acted well within its broad discretion in qualifying Galloway-Williams as an expert in child sexual abuse and treatment based on her education, training, and experience. Furthermore, the trial court properly admitted Galloway-Williams' expert testimony pursuant to Rule 702, SCRE, because she possessed technical or specialized knowledge which could assist the jury to understand the evidence or determine a fact in issue, namely what delay in the victim's

disclosure might say about her credibility, particularly in light of each party's theory of the case. Appellant's convictions should be affirmed.

Standard of Review

In criminal cases, the appellate court sits to review errors of law only and is bound by the trial court's factual findings unless they are clearly erroneous. State v. Wilson, 345 S.C. 1, 5-6, 545 S.E.2d 827, 829 (2001). The conduct of a criminal trial is left largely to the sound discretion of the presiding judge and the appellate court will not interfere unless it clearly appears that the rights of the complaining party were abused or prejudiced in some way. State v. Commander, 396 S.C. 254, 262, 721 S.E.2d 413, 417 (2011) (quoting State v. Bridges, 278 S.C. 447, 448, 298 S.E.2d 212, 212 (1982)). Thus, the admission or exclusion of evidence is left to the sound discretion of the trial court, and the court's decision will not be reversed absent an abuse of discretion. State v. Morris, 376 S.C. 189, 205-06, 656 S.E.2d 359, 368 (2008). Indeed, the qualification of an expert witness and the admissibility of the expert's testimony are matters within the trial court's discretion. Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252, 487 S.E.2d 596, 598 (1997). A trial court's decision to admit or exclude expert testimony will not be reversed absent a prejudicial abuse of that discretion. State v. White, 382 S.C. 265, 269, 676 S.E.2d 684, 686 (2009); State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006). An abuse of discretion occurs when there is an error of law or a factual conclusion which is without evidentiary support. Morris, 376 S.C. at 206, 656 S.E.2d at 368; Gooding, 326 S.C. at 252, 487 S.E.2d at 598; Lee v. Suess, 318 S.C. 283, 457 S.E.2d 344 (1995).

Analysis / Discussion

The South Carolina Rules of Evidence provide:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 702, SCRE. Thus, there are several criteria that must be considered by the court in deciding whether to admit expert testimony. First, the court must determine if the scientific, technical, or specialized knowledge purportedly held by the witness would assist the jury to understand the evidence or determine a fact in issue. Second, the court must determine if the proffered witness in fact possesses scientific, technical, or specialized knowledge to qualify as an expert. Finally, in its general gatekeeping function, the court must determine if the type of expert testimony offered meets a “reliability threshold” for the jury’s ultimate consideration. White, 382 S.C. at 269-70, 676 S.E.2d at 686; State v. Martin, 391 S.C. 508, 513, 706 S.E.2d 40, 42 (Ct. App. 2011).

There is no abuse of discretion as long as the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury in resolving a factual issue which is beyond the scope of the jury’s good judgment and common knowledge. State v. Henry, 329 S.C. 266, 495 S.E.2d 463 (Ct. App. 1997); State v. Goode, 305 S.C. 176, 406 S.E.2d 391 (Ct. App. 1991). The test for qualification of an expert is a relative one that is dependent on the particular witness’s reference to the subject. Wilson v. Rivers, 357 S.C. 447, 593 S.E.2d 603 (2004). For a court to find a witness competent to testify as an expert, the witness must be better qualified than the fact finder to form an opinion on the particular subject of the testimony. Mizell v. Glover, 351 S.C. 392, 570 S.E.2d 176

(2002); Crawford v. Henderson, 356 S.C. 389, 589 S.E.2d 204 (Ct. App.2003); see also Gooding, 326 S.C. at 252-53, 487 S.E.2d at 598 (“To be considered competent to testify as an expert, ‘a witness must have acquired by reason of study or experience or both such knowledge and skill in a profession or science that he is better qualified than the jury to form an opinion on the particular subject of his testimony.’”). An expert is not limited to any class of persons acting professionally. Gooding, 326 S.C. at 253, 487 S.E.2d at 598; Thomas Sand Co. v. Colonial Pipeline Co., 349 S.C. 402, 563 S.E.2d 109 (Ct. App. 2002). There is no exact requirement concerning how knowledge or skill must be acquired. Honea v. Prior, 295 S.C. 526, 369 S.E.2d 846 (Ct. App. 1988).

The party offering the expert testimony has the burden of showing the witness possesses the necessary learning, skill, or practical experience to enable the witness to give opinion testimony. State v. Von Dohlen, 322 S.C. 234, 471 S.E.2d 689 (1996); State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993); Henry, 329 S.C. at 274, 495 S.E.2d at 466. Generally, however, defects in the amount and quality of the expert’s education or experience go to the weight to be accorded the expert’s testimony and not to its admissibility. Id.; Morris, 376 S.C. at 203, 656 S.E.2d at 366; Brown v. Carolina Emergency Physicians, P.A., 348 S.C. 569, 580, 560 S.E.2d 624, 629 (Ct. App. 2001).

During the State’s proffer, Galloway-Williams testified extensively about her experience, education, training, and continuing education. She explained the matters relating to child sexual abuse that she intended to testify about in Appellant’s trial had been published in professional journals. She said the principles have been subject to peer review, are uniformly accepted and recognized within the field of sexual abuse counselors and professionals, and are reasonably relied upon in the field of child sexual

abuse and treatment. The trial court found that she qualified as an expert under Rule 702 because her specialized knowledge and opinions could assist the jury to understand the evidence or determine a fact at issue. The State submits that in light of the evidence proffered, the trial court clearly did not abuse its discretion in qualifying Galloway-Williams as an expert in child sexual abuse and treatment.

As to the general nature of the testimony, behavioral characteristics of child sexual assault victims are not within the range of knowledge of the average juror. Indeed, Galloway-Williams had acquired by study or practical experience such knowledge of such behavioral characteristics as would enable her to give guidance and assistance to the jury in resolving a factual issue which was beyond the scope of the jury's good judgment and common knowledge, namely whether, as argued by Appellant, the victim's delayed disclosure eroded her credibility. Henry, supra; Goode, supra. In other words, Galloway-Williams was better qualified than the fact finder to form an opinion on the subject of the victim's behavior as a reaction to sexual assault. This is all that was required for the trial court to qualify her as an expert and to admit her testimony. Ellis, supra; Mizzell, supra; Gooding, supra. It was simply a judgment call made in the trial court's sound discretion. It does not rise to the level of an abuse of that discretion simply because Galloway-Williams based some of her knowledge on personal experience. Indeed, nothing in the record shows the trial court's decision was based on a factual conclusion without evidentiary support. Morris, supra; Gooding, supra; Seuss, supra. Furthermore, because Galloway-Williams was properly qualified as an expert witness, any further objections to her qualifications went to the weight of her testimony, not its admissibility. Martin, 391 S.C. at 515-16, 706 S.E.2d at 44. Finally, the State

submits that in light of the trial court's jury charge on expert witnesses, Galloway-Williams' testimony could not have been given greater weight than that of a lay witness and, therefore, could not have been unduly prejudicial to Appellant. State v. Douglas, 380 S.C. 499, 503, 671 S.E.2d 606, 609 (2009).

For all of these reasons, the State submits the trial court's qualification of Galloway-Williams as an expert in child sexual abuse and treatment, and admission of her testimony under Rule 702, SCRE, did not constitute an abuse of discretion. Additionally, to the extent Galloway-Williams should not have been qualified as an expert, Appellant suffered no prejudice from her testimony because she described general behavioral characteristics and did not directly or indirectly vouch for the victim's credibility.

As to the specific testimony about delayed disclosure, the State submits the trial court likewise exercised appropriate discretion in allowing testimony concerning delayed disclosure. Expert testimony on common behavior by victims of sexual abuse is allowed in South Carolina. Weaverling, 337 S.C. at 474, 523 S.E.2d at 794 ("Expert testimony concerning common behavioral characteristics of sexual assault victims and the range of responses to sexual assault encountered by experts is admissible."). "Such testimony is relevant and helpful in explaining to the jury the typical behavior patterns of adolescent victims of sexual assault." Id., at 475, 523 S.E.2d at 794; see also People v. Carroll, 740 N.E.2d 1084, 1090 (N.Y. 2000) ("We have long held that expert testimony regarding rape trauma syndrome, abused child syndrome or similar conditions may be admitted to explain behavior of a victim that might appear unusual or that jurors may not be expected to understand[.]"). Indeed, this kind of testimony has been accepted by courts in many

jurisdictions for approximately a quarter of a century. The Supreme Court of Hawaii observed in 1990 that "sexual abuse of children 'is a particularly mysterious phenomenon.'" State v. Batangan, 799 P.2d 48, 51 (Haw. 1990) (quoting State v. Castro, 756 P.2d 1033, 1044 (Haw. 1988)).

The Hawaii Supreme Court quoted with approval the observations of other courts as follows:

While jurors may be capable of personalizing the emotions of victims of physical assault generally, and of assessing witness credibility accordingly, tensions unique to trauma experienced by a child sexually abused by a family member have remained largely unknown to the public. . . . [T]he routine indicia of witness credibility – consistency, willingness to aid the prosecution, straight forward rendition of the facts – may, for good reason be lacking. As a result jurors may impose standards of normalcy on child victim/witnesses who consistently respond in distinctly abnormal fashion.

Batangan, at 51 (quoting State v. Moran, 728 P.2d 248, 251 (Ariz. 1986) and State v. Middleton, 657 P.2d 1215, 1222 (Or. 1983) (Roberts, J., concurring)).

The Batangan court further observed:

Child victims of sexual abuse have exhibited some patterns of behavior which are seemingly inconsistent with behavioral norms of other victims of assault. Two such types of behavior are delayed reporting of the offenses and recantation of allegations of abuse. Normally, such behavior would be attributed to inaccuracy or prevarication. . . . In these situations it is helpful for the jury to know that many child victims of sexual abuse behave in the same manner. Expert testimony exposing jurors to the unique interpersonal dynamics involved in prosecutions for intrafamily child sexual abuse . . . may play a particularly useful role by disabusing the jury of some widely held misconceptions . . . so that it may evaluate the evidence free of the constraints of popular myths.

Batangan, at 51-52 (citations and internal quotation marks omitted). The Minnesota Supreme Court found: "Background data providing a relevant insight into the puzzling aspects of the child's conduct and demeanor which the jury could not otherwise bring to its evaluation of her credibility is helpful and appropriate in cases of sexual abuse of children." State v. Myers, 359 N.W.2d 604, 610 (Minn. 1984).

The Alabama Criminal Court of Appeals found that an expert's testimony on delayed disclosure based on her specialized knowledge was admissible and "clearly assisted the jury to understand the evidence presented" regarding the victim's ten year delay in disclosing abuse. W.R.C. v. State, 69 So.3d 933, 939 (Ala. Crim. App. 2010) (noting "other jurisdictions have held similar testimony to be admissible in child-sexual-abuse cases"). The New Jersey Supreme Court declared the following: "There does not appear to be a dispute about acceptance within the scientific community of the clinical theory that CSAAS [Child Sexual Abuse Accommodation Syndrome] identifies or describes behavioral traits commonly found in child abuse victims." State v. J.Q., 617 A.2d 1196, 1206 (N.J. 1993) (finding testimony about CSAAS is admissible to show victim displayed symptoms of child abuse or to explain delayed disclosure or recantation, but not to establish guilt or innocence).

The State called Galloway-Williams as an expert because the victim disclosed the sexual abuse to others several years after it first occurred. Generally, "[e]xpert testimony that abused children often delay reporting the abuse . . . informs the jury that the victim's failure to disclose in a timely fashion does not necessarily exonerate the defendant without suggesting that the particular child witness in the case was or was not abused." Commonwealth v. Bougas, 795 N.E.2d 1230, 1236 (Mass. App. Ct. 2003). Further,

“[D]isclosure in child abuse cases is generally delayed because of coercion, guilt, or some other reason, [and thus] there will be no physical evidence to corroborate the victim’s allegations. Therefore . . . expert testimony will . . . assist the jury in understanding the evidence.” People v. Beckley, 456 N.W.2d 391, 402 (Mich. 1990). Galloway-Williams’s testimony focused primarily on the occurrence and reasons for delayed disclosures in victims of child sexual abuse, information typically beyond the knowledge of a lay juror. See State v. Carpenter, 556 S.E.2d 316, 321 (N.C. Ct. App. 2001) (finding expert testimony on delayed disclosure is “clearly instructive and helpful to the jury in understanding the evidence since the nature of the sexual abuse of children places lay jurors at a disadvantage”). “Indeed, the majority of states permit expert testimony to explain delayed reporting, recantation, and inconsistency” People v. Spicola, 947 N.E.2d 620, 635 (N.Y. 2011). The trial court did not abuse its discretion in admitting this testimony as it is clearly admissible under Weaverling and case law from the majority of jurisdictions that goes back decades.

Appellant argues Galloway-Williams’ testimony nevertheless should have been excluded as prejudicial to him because the effect of this testimony on the jury was to show that the victim acted in the same manner as other children had acted who had been sexually abused. Appellant’s argument lacks merit because Galloway-Williams’s testimony was not prejudicial to Appellant in the manner that Appellant argues.

Under Rule 403, SCRE, in order for evidence to be excluded as prejudicial, the probative value of the evidence must be substantially outweighed by the danger of unfair prejudice. “To show prejudice, there must be a reasonable probability that the jury’s verdict was influenced by the challenged evidence.” State v. Lee, 399 S.C. 521, 527, 732

S.E.2d 225, 228 (Ct. App. 2012). Further, Rule 403, SCRE, requires there to be unfair prejudice before the evidence will be excluded. "Unfair prejudice does not mean the damage to a defendant's case that results from the legitimate probative force of the evidence; rather it refers to evidence which tends to suggest a decision on an improper basis." Id. at 529, 732 S.E.2d at 229.

"The relevance, materiality, and admissibility of evidence are matters within the sound discretion of the trial court and a ruling will be disturbed only upon a showing of an abuse of discretion." State v. Shuler, 353 S.C. 176, 184, 577 S.E.2d 438, 442 (2003). Thus a trial court's decision regarding the comparative probative value and prejudicial effect of relevant evidence will be reversed only in exceptional circumstances. State v. Adams, 354 S.C. 361, 378, 580 S.E.2d 785, 794 (Ct. App. 2003). "If judicial self-restraint is ever desirable, it is when a Rule 403 analysis of a trial court is reviewed by an appellate tribunal." State v. Hamilton, 344 S.C. 344, 358, 543 S.E.2d 586, 598 (Ct. App. 2001) overruled on other grounds by State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005).

In the instant case, for the reasons discussed above, the testimony had tremendous probative value. As is obvious to those involved in the criminal justice system, the phenomenon of delayed disclosure by sexually abused children really does exist. Appellant fails to show otherwise. However, this information is not within the knowledge of laymen and is proper general information to provide in the form of expert testimony.

On the other hand, Galloway-Williams' testimony cannot be found to have been unfairly prejudicial to Appellant's case. As explained above, Galloway-Williams'

testimony was admissible and proper in this case. Galloway-Williams did not compare the victim to other child victims during her testimony. In fact, Galloway-Williams never even mentioned the victim's case while testifying. The Supreme Court recently explained: "[I]t is improper for a witness to testify as to his or her opinion about the credibility of a child victim in a sexual abuse matter." State v. Kromah, 401 S.C. 340, 358-59, 737 S.E.2d 490, 500 (2013). In this case Galloway-Williams did not opine on Victim's veracity. Accordingly, this case is readily distinguishable from Kromah and other cases where the expert testimony was found to be unfairly prejudicial to the defendant. See State v. Jennings, 394 S.C. 473, 480, 716 S.E.2d 91, 94 (2011) (finding the admission of the forensic interviewer's written report into testimony to be error because the reports stated that each child "provided a compelling disclosure of abuse by appellant."); State v. McKerley, 397 S.C. 461, 465, 725 S.E.2d 139, 142 (Ct. App. 2012) (finding the forensic interviewer's "opinion as to whether she thinks something happened [was] nothing other than her inadmissible opinion as to whether the victim was telling the truth").

Accordingly, Galloway-Williams' expert testimony was proper in this case because it aided the trier of fact in understanding the victim's behavior in the case. Galloway-Williams was not required to know or testify to any facts of this case in order to testify as an expert. The testimony also was not unfairly prejudicial to Appellant because the testimony was presented in a general manner and never touched upon the victim's truthfulness or even discussed the victim's version of events.

Further, given the corroborating testimony regarding the time and place of the sexual abuse and the trial court's charge to the jury to give no greater weight to the

testimony of the expert, any error from admission of Galloway-Williams' testimony was harmless. State v. Mitchell, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (holding whether an error is harmless depends on the circumstances of the case, but it is harmless where it could not reasonably have changed the outcome of the trial). For all of these reasons, Appellant's conviction should be affirmed.

II.

The trial court properly charged the jury, pursuant to § 16-3-657 of the South Carolina Code, that the testimony of a sexual assault victim need not be corroborated.

Appellant argues the trial court erred by instructing the jury that it could convict him based on uncorroborated testimony from the victim. He contends the jury instruction improperly emphasized the testimony of one witness, was an improper charge on the facts, and was fundamentally unfair and infringed on his right to a fair trial as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitutions. The State disagrees and submits Appellant's arguments are without merit because they have previously been raised to and rejected by both this Court and the South Carolina Supreme Court.

Standard of Review

The law to be charged is determined by the evidence presented at trial. State v. Holland, 385 S.C. 159, 165, 682 S.E.2d 898, 901 (Ct. App. 2009). A trial court's decision regarding jury charges will not be reversed where the charges, as a whole, properly charged the law to be applied. State v. Wharton, 381 S.C. 209, 213, 672 S.E.2d 786, 788 (2009).

Analysis / Discussion

Section 16-3-657 of the South Carolina Code (2003) provides: "The testimony of the victim need not be corroborated in prosecutions under §§ 16-3-652 through 16-3-658." These criminal statutes, which encompass various forms and degrees of criminal sexual conduct, include criminal sexual conduct with a minor in the first degree for which Appellant was charged. S.C. Code Ann. § 16-3-655 (Supp. 2013). In State v.

Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993), our supreme court held it was not error to charge § 16-3-657 to the jury as long as the charge as a whole comports with the law. Id. at 509, 435 S.E.2d at 863. In State v. Rayfield, 369 S.C. 106, 631 S.E.2d 244 (2006), the court recognized Schumpert and concluded that while a trial judge is not required to charge § 16-3-657, when the judge chooses to do so, giving the charge does not constitute reversible error when “this single instruction is not unduly emphasized and the charge as a whole comports with the law.” Id. at 118, 631 S.E.2d at 250. Because the jury in Rayfield was thoroughly instructed on the State’s burden of proof and the jury’s duty to find the facts and judge the credibility of witnesses, the court determined the trial judge fully and properly instructed the jury on those principles, and found the charge on § 16-3-657 was not error. In State v. Orozco, 392 S.C. 212, 708 S.E.2d 227 (Ct. App. 2011) this Court recognized the continuing validity of Schumpert and Rayfield, and the propriety of the § 16-3-657 jury charge.

The arguments made by Appellant are essentially the same as those raised and rejected by our courts in Rayfield and Orozco. As in those cases, the trial court here properly charged the jury that the State had the burden of proving the defendant guilty beyond a reasonable doubt, that the jury had the duty to find the facts and determine the credibility of the witnesses, and that the jury should disregard any indication from the trial judge that she might believe a fact to be true or not. Thus, the trial court thoroughly instructed the jury on the State’s burden of proof and the jury’s duty to determine the facts and judge the credibility of witnesses. Further, the only charge given by the trial court in regard to the corroboration of the victim’s testimony was in regard to CSC with a minor and was that “the testimony of a victim need not be corroborated and the defendant

may be convicted solely on the basis of the victim's testimony." (R.p.445, lines 12-16).

Thus, this single instruction was not unduly emphasized. Not only was it not emphasized, it was tempered by the additional instruction specifically requested by

Appellant that:

The term "uncorroborated" as used in this instruction does not mean that baseless testimony should be given credit and that you should ignore inconsistencies. Furthermore, it does not mean that you should accept without question the victim's testimony and ignore evidence that conflicts with her version of events. In other words, this term does not permit you as jurors to violate your obligation to consider all the evidence.

(R.p.445, lines 16-25). Given these instructions as a whole, there was no reversible error and appellant's convictions should be affirmed.

CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

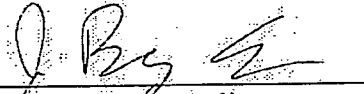
Respectfully submitted,

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Columbia, South Carolina
June 10, 2014

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Edgar W. Dickson, Circuit Court Judge

Appellate Case No. 2012-212841

THE STATE,.....RESPONDENT

v.

ALBERT BRANDEBERRY,.....APPELLANT.

CERTIFICATE OF COUNSEL

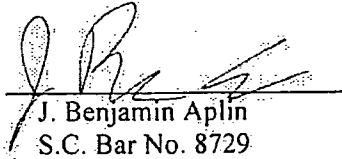
The undersigned that the Final Brief of Respondent complies with Rule 211(b), SCACR.

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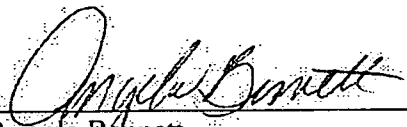
ALBERT BRANDEBERRY, ...APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, Administrative Assistant, hereby certify that I have served the within *Final Brief of Respondent*, dated June 10, 2014, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record;

Robert M. Dudek, Appellate Defender
S.C. Commission on Indigent Defense
Division of Appellate Defense
Post Office Box 11589
Columbia, SC 29211-1589

I further certified that all parties required by Rule to be served have been served.
This 10th, day of June, 2014.


Angela Bennett
Administrative Assistant

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