

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Dorchester County

Maite Murphy, Circuit Court Judge

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S.C. Supreme Court

RODNEY ELLIOTT,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002323

APPENDIX

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA) IN THE
) COURT OF GENERAL SESSIONS
 COUNTY OF DORCHESTER) FOR THE FIRST JUDICIAL CIRCUIT
 STATE OF SOUTH CAROLINA,))
) PLAINTIFF,))
) - VS -) TRANSCRIPT OF RECORD
) #97-GS-18-238 & 239
 RODNEY ELLIOTT,))
) DEFENDANT.) ST. GEORGE, S.C.
) JULY 22-24, 1998

B E F O R E:

HONORABLE LUKE N. BROWN; JUDGE, AND A JURY

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

MARGARET MCDONALD, ASST. SOLICITOR
 ATTORNEY FOR THE STATE

GENE DUKES, PUBLIC DEFENDER
 ATTORNEY FOR THE DEFENDANT

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*Thursday, July 23, 1998***STATE'S WITNESSES**

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1 THE COURT: SOLICITOR, HOW ABOUT Y'ALL STEP
2 UP HERE, PLEASE. STEP UP HERE, COUNSELOR.
3 (AT THIS TIME, BENCH CONFERENCE IS HELD.)

4 THE COURT: ALL RIGHT, SOLICITOR. CALL YOUR
5 CASE, PLEASE.

6 MS. MCDONALD: YOUR HONOR, THIS IS THE STATE
7 VS. RODNEY ELLIOTT. HE'S CHARGED IN
8 INDICTMENT 97-GS-18-238, CHARGED WITH CRIMINAL
9 SEXUAL CONDUCT WITH A MINOR IN THE SECOND
10 DEGREE; AND 97-GS-18-239 CHARGED WITH CRIMINAL
11 CONDUCT WITH A MINOR IN THE FIRST DEGREE.

12 THE COURT: MEMBERS OF THE JURY PANEL; GIVE ME
13 YOUR ATTENTION, PLEASE. YOU KNOW THAT THE
14 DEFENDANT IS NOT HERE. SO WHAT I'M GOING TO
15 DO IS GO AHEAD AND DRAW THE JURY; AND THEN I'M
16 GOING TO HAVE SOME OPENING STATEMENTS; AND
17 THEN I'M GOING TO RECESS THIS CASE. I'LL
18 STILL BE WORKING, BUT I'M GOING TO RECESS THIS
19 CASE UNTIL TOMORROW MORNING SO WE CAN FIND OUT
20 WHAT OCCURRED. HE MIGHT BE BROKEN DOWN
21 SOMEWHERE; HIS AUTOMOBILE; WHATEVER. AND THEN
22 I'M GOING TO EXCUSE THE REST OF Y'ALL BECAUSE
23 THIS CASE WILL LAST AT LEAST A DAY. WE'LL
24 PROBABLY BE ABLE TO FINISH IT TOMORROW. AND
25 THEN THE REST OF YOU, I'LL JUST EXCUSE YOU.

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1 THE COURT: SOLICITOR, HOW ABOUT Y'ALL STEP
2 UP HERE, PLEASE. STEP UP HERE, COUNSELOR.

3 (AT THIS TIME, BENCH CONFERENCE IS HELD.)

4 THE COURT: ALL RIGHT, SOLICITOR. CALL YOUR
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10 DEGREE; AND 97-GS-18-239 CHARGED WITH CRIMINAL
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12 THE COURT: MEMBERS OF THE JURY PANEL; GIVE ME
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15 DO IS GO AHEAD AND DRAW THE JURY; AND THEN I'M
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22 I'M GOING TO EXCUSE THE REST OF Y'ALL BECAUSE
23 THIS CASE WILL LAST AT LEAST A DAY. WE'LL
24 PROBABLY BE ABLE TO FINISH IT TOMORROW. AND
25 THEN THE REST OF YOU, I'LL JUST EXCUSE YOU.

1 AND IF YOU'RE DRAWN ON A JURY IN---
2 (AT THIS TIME DEFENDANT COMES INTO OPEN COURT.)

3 MR. DUKES: YOUR HONOR?

4 THE COURT: ALL RIGHT. THE DEFENDANT IS
5 PRESENT. ALL RIGHT. MEMBERS OF THE JURY
6 PANEL, GIVE ME YOUR ATTENTION, PLEASE. WE'RE
7 ABOUT TO BEGIN A CASE ENTITLED THE STATE VS.
8 RODNEY ELLIOTT. MR. ELLIOTT IS THIS YOUNG
9 MAN. WOULD YOU LET THEM SEE WHAT YOU LOOK
10 LIKE, PLEASE, SIR? (DEFENDANT STANDS.) THANK
11 YOU. YOU MAY BE SEATED. (DEFENDANT COMPLIES.)
12 HE'S CHARGED IN TWO INDICTMENTS. THESE ARE
13 NOT -- THIS IS NOT EVIDENCE. THIS IS JUST
14 PIECES OF PAPER WHICH GETS IT INTO COURT AND
15 THE CHARGES. AND THE STATE IN ONE INDICTMENT
16 CHARGES THAT RODNEY ELLIOTT DID IN DORCHESTER
17 COUNTY BETWEEN THE DATES OF AUGUST THE 17TH,
18 1995, AND JUNE THE FIRST, 1996, WILLFULLY AND
19 UNLAWFULLY ENGAGE IN CRIMINAL SEXUAL CONDUCT
20 WITH A MINOR IN THE SECOND DEGREE IN THAT
21 RODNEY ELLIOTT ENGAGED IN SEXUAL BATTERY WITH
22 C.J. C.J. WHO WAS ELEVEN YEARS OF AGE.
23 AND ON THE OTHER INDICTMENT IT ALLEGES THAT HE
24 ENGAGED IN CRIMINAL SEXUAL CONDUCT WITH A
25 MINOR IN THE FIRST DEGREE AND THAT RODNEY

1 ELLIOTT ENGAGED IN SEXUAL BATTERY WITH C.J.
2 WHO WAS -- HOW ABOUT APPROACH THE
3 BENCH A MINUTE.

4 (AT THIS TIME BENCH CONFERENCE IS HELD.)

5 THE COURT: SHE WAS TEN YEARS OF AGE. NOW, TO
6 THESE INDICTMENTS HE PLEADS NOT GUILTY. AND
7 WHAT WE WANT TO DO IS DRAW A JURY THAT IS
8 TOTALLY IMPARTIAL. SO IF I ASK YOU SOME
9 QUESTIONS, IF IT APPLIES TO YOU, JUST STAND UP
10 AND TELL ME ABOUT IT. IF FOR ANY REASON I ASK
11 YOU A QUESTION AND YOU WANT TO TALK ABOUT IT
12 IN PERSON; I CAN BRING THE ATTORNEYS UP HERE;
13 FEEL FREE TO DO SO. I DON'T KNOW WHETHER OR
14 NOT THIS WAS EVER IN THE NEWS MEDIA OR WHETHER
15 ANY OF YOU DISCUSSED IT WITH ANYONE OR KNOW
16 ANYTHING ABOUT IT. IS THERE ANY MEMBER OF THE
17 JURY PANEL WHO KNOWS ANYTHING ABOUT THIS
18 EITHER THROUGH THE NEWS MEDIA OR A DISCUSSION
19 WITH ANYBODY? IF SO, PLEASE STAND. (NO
20 RESPONSE.) IS ANY MEMBER OF THE JURY PANEL
21 RELATED BY BLOOD OR CONNECTED BY MARRIAGE OR
22 CONNECTED IN ANY SOCIAL OR BUSINESS WAY WITH
23 RODNEY ELLIOTT? IF SO, PLEASE STAND. (NO
24 RESPONSE.) IS ANY MEMBER OF THE JURY PANEL
25 CONNECTED IN ANY WAY WITH SOLICITOR WALTER

1 BAILEY, THE SOLICITOR, OR ANY MEMBER OF HIS
2 STAFF OR OFFICE? AND THE SOLICITOR WHO'S
3 GOING TO TRY THIS CASE TODAY; I'M GOING TO LET
4 HER INTRODUCE HERSELF.

5 MS. MCDONALD: MY NAME IS MEG MCDONALD, AND
6 I'M AN ASSISTANT SOLICITOR WITH THE FIRST
7 CIRCUIT SOLICITOR'S OFFICE. AT THE TABLE WITH
8 ME ARE DEPUTY SOLICITOR ROBBIE ROBBINS.
9 HARRISON BELL IS ALSO A SENIOR ASSISTANT
10 SOLICITOR IN OUR OFFICE. THIS IS TOM MARSHALL
11 WITH THE SHERIFF'S OFFICE. JIMMY MESSERVEY IS
12 A PART-TIME ASSISTANT SOLICITOR IN OUR OFFICE;
13 AND ALSO VIRGIL DEAS WORKS IN OUR OFFICE.

14 THE COURT: IS ANY MEMBER OF THE JURY PANEL
15 CONNECTED IN ANY WAY WITH ANY MEMBER OF THE
16 PUBLIC DEFENDER'S OFFICE OR IN ANY WITH MR.
17 ELLIOTT'S ATTORNEY? WHY DON'T YOU INTRODUCE
18 YOURSELF, MR. DUKES?

19 MR. DUKES: OKAY. (JUROR STANDS.)

20 THE COURT: OR JUST A MINUTE. YES, SIR?

21 THE JUROR: MY STEPDAUGHTER WORKS FOR THE
22 SOLICITOR'S OFFICE, SIR.

23 THE COURT: YOUR STEPDAUGHTER?

24 THE JUROR: YES, SIR.

25 THE COURT: ALL RIGHT. WOULD THE FACT THAT

1 SHE WORKS FOR THE SOLICITOR'S OFFICE KEEP YOU
2 FROM GIVING EITHER SIDE A FAIR TRIAL?

3 THE JUROR: NO, SIR.

4 THE COURT: ALL RIGHT. I THINK HE'S
5 QUALIFIED.

6 THE JUROR: YOUR HONOR, I THINK ME AND MR.
7 ELLIOTT MAY HAVE WENT TO HIGH SCHOOL TOGETHER.

8 THE COURT: AND YOUR NAME?

9 THE JUROR: CLEVELAND.

10 THE COURT: CLEVELAND?

11 THE JUROR: YES.

12 THE COURT: YOU THINK YOU WENT TO HIGH SCHOOL
13 WITH HIM. ARE YOU SURE, OR DO YOU THINK YOU
14 DID?

15 THE JUROR: I'M ALMOST CERTAIN.

16 THE COURT: ALL RIGHT. THE FACT THAT YOU WENT
17 TO HIGH SCHOOL WITH HIM, WOULD THAT KEEP YOU
18 FROM GIVING EITHER SIDE A FAIR TRIAL?

19 THE JUROR: I THINK IT WOULD AFFECT MY
20 OPINION.

21 THE COURT: ALL RIGHT, SIR. I'LL EXCUSE YOU
22 FROM THIS CASE, MR. CLEVELAND. BUT KEEP YOUR
23 SEAT. I'LL GIVE YOU SOME INSTRUCTIONS IN A
24 FEW MINUTES. ANYBODY ELSE? (NO RESPONSE.)
25 ALL RIGHT, NOW. THESE ARE SOME OF THE

1 WITNESSES WHO MIGHT TESTIFY FOR THE STATE.

2 AND IF -- OH, MR. DUKES, YOU DIDN'T INTRODUCE
3 YOURSELF.

4 MR. DUKES: I'M GENE DUKES. I PRACTICE LAW
5 HERE IN ST. GEORGE; AND I ALSO WORK WITH THE
6 PUBLIC DEFENDER; AND MY PARTNER IN THE PUBLIC
7 DEFENDER'S OFFICE IS MRS. HARDEE-THOMAS.

8 THE COURT: THANK YOU VERY MUCH. NOW, HAS ANY
9 MEMBER OF THE JURY PANEL EVER USED MR. DUKES
10 IN THE PAST OR PRESENTLY USING HIM AS AN
11 ATTORNEY? IF SO, PLEASE STAND. (NO
12 RESPONSE.) ALL RIGHT. THESE ARE SOME OF THE
13 WITNESSES WHO MIGHT TESTIFY. AND I WANT TO
14 KNOW WHETHER OR NOT YOU'RE RELATED THE SAME
15 WAY WITH ANY OF THESE WITNESSES. AND IF
16 THEY'RE IN THE COURTROOM, JUST STAND UP
17 BRIEFLY. CHRISTEN JOHNSON? (NO RESPONSE.)
18 LAURA GUTMAN? (NO RESPONSE.) JEANIE
19 ATKINSON? (NO RESPONSE.) VIVIAN MOORE? (NO
20 RESPONSE.) TOM MARSHALL? (NO RESPONSE.) MR.
21 DUKES, DO YOU HAVE ANY WITNESSES YOU WANT TO
22 INTRODUCE?

23 MR. DUKES: I HAVE THE DEFENDANT'S WIFE HERE.
24 SHE WOULD BE A WITNESS.

25 THE COURT: WELL, I'VE ALREADY ASKED IF

1 THEY'RE RELATED BY BLOOD OR MARRIAGE TO HIM.

2 MR. DUKES: HAZEL NORWELL?

3 THE COURT: ANY MEMBER OF THE JURY PANEL

4 CONNECTED WITH HAZEL NORWELL? IF SO, PLEASE

5 STAND. (NO RESPONSE.) ALL RIGHT. MEMBERS OF

6 THE JURY PANEL; THIS IS CRIMINAL SEXUAL

7 CONDUCT IN THE SECOND DEGREE. IS ANY MEMBER

8 OF THE JURY PANEL CONNECTED IN ANY WAY AS A

9 MEMBER OF OR CONTRIBUTOR TO ANY OF THE

10 ORGANIZATIONS DEDICATED TO FIGHTING CRIME SUCH

11 AS MOTHERS AGAINST DRUNK DRIVING; PERSONS

12 AGAINST VIOLENT CRIME; D.A.R.; THOSE TYPES OF

13 THINGS? (NO RESPONSE.) NOW, BECAUSE OF THE

14 TYPE CRIME, CRIMINAL SEXUAL CONDUCT, IT'S WHAT

15 WE USED TO CALL YEARS AGO STATUTORY RAPE.

16 IT'S JUST AGAINST THE LAW TO HAVE SEX WITH A

17 CHILD TEN OR ELEVEN YEARS OLD EVEN BY

18 CONSENT. SO BECAUSE OF THE TYPE CRIME THAT

19 HE'S ALLEGED TO HAVE COMMITTED; IS ANY MEMBER

20 OF THE JURY PANEL BECAUSE OF RELIGION,

21 PERSONAL EXPERIENCE, FAMILY EXPERIENCE, CLOSE

22 PERSONAL FRIEND EXPERIENCE, FEEL THAT YOUR

23 ABILITY TO RENDER A FAIR TRIAL FOR EITHER SIDE

24 MIGHT BE IMPAIRED? IF SO, PLEASE STAND. (NO

25 RESPONSE.) IS ANY MEMBER OF THE JURY PANEL

1 CONNECTED WITH ANY POLICE ORGANIZATION, BLOOD
2 OR MARRIAGE OR BUSINESS OR SOCIAL? IF SO,
3 PLEASE STAND. (JUROR STANDS.) YES, SIR?

4 THE JUROR: MY NEPHEW WORKS FOR THE
5 SUMMERVILLE POLICE DEPARTMENT.

6 THE COURT: AND YOUR NAME IS?

7 THE JUROR: JACK WESTBROOK.

8 THE COURT: MR. WESTBROOK, WOULD THAT KEEP YOU
9 FROM GIVING EITHER SIDE A FAIR TRIAL?

10 THE JUROR: NO, SIR.

11 THE COURT: THANK YOU VERY MUCH. (JUROR
12 STANDS.) YES, MA'AM?

13 THE JUROR: YOU SAID BY MARRIAGE?

14 THE COURT: WHAT'S YOUR NAME?

15 THE JUROR: MARGARET CASON.

16 THE COURT: YES, MA'AM.

17 THE JUROR: MY HUSBAND IS A STATE POLICE
18 OFFICER.

19 THE COURT: THE FACT THAT HE IS; WOULD THAT
20 KEEP YOU FROM GIVING EITHER SIDE A FAIR
21 TRIAL?

22 THE JUROR: NO, SIR.

23 THE COURT: THANK YOU. DOES ANY MEMBER KNOW
24 OF ANY REASON WHY THEY COULD NOT GIVE BOTH THE
25 STATE AND MR. ELLIOTT A FAIR AND IMPARTIAL

1 TRIAL? IF SO, PLEASE STAND. (NO RESPONSE.)

2 ANYTHING FURTHER FROM THE STATE?

3 MS. MCDONALD: NOTHING FROM THE STATE, YOUR
4 HONOR.

5 THE COURT: DEFENSE?

6 MR. DUKES: NOTHING FROM THE DEFENSE, YOUR
7 HONOR.

8 THE COURT: ALL RIGHT. GIVE US A JURY. NOW,
9 MEMBERS OF THE JURY PANEL; AS I SAID EARLIER
10 THIS WEEK, WHEN YOUR NAME IS CALLED, JUST COME
11 RIGHT UP HERE, FACE THE BACK OF THE COURTROOM.
12 THEY'RE GOING TO BE TALKING ABOUT YOU, NOW.
13 IF THEY SAY THEY WANT YOU, JUST COME HAVE A
14 SEAT. IF THEY SAY THEY DON'T WANT YOU, DON'T
15 BE THE SLIGHTEST BIT EMBARRASSED.

16 (JUROR NO. 84, A WHITE FEMALE, WAS CALLED.)

17 THE CLERK: WHAT SAYS THE STATE?

18 MS. MCDONALD: PLEASE PRESENT THE JUROR.

19 THE CLERK: DEFENSE?

20 MR. DUKES: PLEASE SWEAR THE JUROR.

21 THE CLERK: HAVE A SEAT IN THE JURY BOX.

22 (JUROR NO. 164, A WHITE MALE, WAS CALLED.)

23 THE CLERK: WHAT SAYS THE STATE?

24 MS. MCDONALD: PLEASE EXCUSE THE JUROR.

25 THE COURT: HAVE A SEAT BACK IN THE COURTROOM.

JURY SELECTED

1 (JUROR NO. 145, A WHITE MALE, WAS CALLED.)

2 THE CLERK: WHAT SAYS THE STATE?

3 MS. MCDONALD: PLEASE PRESENT THE JUROR.

4 THE CLERK: DEFENSE?

5 MR. DUKES: PLEASE EXCUSE THE JUROR.

6 (JUROR NO. 79, A WHITE MALE, WAS CALLED.)

7 THE CLERK: WHAT SAYS THE STATE?

8 MS. MCDONALD: PRESENT THE JUROR.

9 THE CLERK: DEFENSE?

10 MR. DUKES: WE'LL EXCUSE THE JUROR.

11 (JUROR NO. 75, A WHITE FEMALE, WAS CALLED.)

12 THE CLERK: WHAT SAYS THE STATE?

13 MS. MCDONALD: PRESENT THE JUROR.

14 THE CLERK: DEFENSE?

15 MR. DUKES: PLEASE SWEAR THE JUROR.

16 (JUROR NO. 107, A WHITE FEMALE, WAS CALLED.)

17 THE CLERK: WHAT SAYS THE STATE?

18 MS. MCDONALD: PLEASE PRESENT THE JUROR.

19 THE CLERK: DEFENSE?

20 MR. DUKES: PLEASE SWEAR THE JUROR.

21 (JUROR NO. 160, A WHITE MALE, WAS CALLED.)

22 THE CLERK: WHAT SAYS THE STATE?

23 MS. MCDONALD: PLEASE EXCUSE THE JUROR.

24 (JUROR NO. 157, A WHITE FEMALE, WAS CALLED.)

25 THE CLERK: WHAT SAYS THE STATE?

JURY SELECTED

15

1 MS. MCDONALD: PRESENT THE JUROR.

2 THE CLERK: DEFENSE?

3 MR. DUKES: PLEASE EXCUSE THE JUROR.

4 (JUROR NO. 9, A WHITE FEMALE, WAS CALLED.)

5 THE CLERK: WHAT SAYS THE STATE?

6 MS. MCDONALD: PRESENT THE JUROR.

7 THE CLERK: DEFENSE?

8 MR. DUKES: PLEASE SWEAR THE JUROR.

9 (JUROR NO. 91, A WHITE FEMALE, WAS CALLED.)

10 THE CLERK: WHAT SAYS THE STATE?

11 MS. MCDONALD: PRESENT THE JUROR.

12 THE CLERK: DEFENSE?

13 MR. DUKES: WE'LL EXCUSE THE JUROR.

14 (JUROR NO. 61, A WHITE MALE, WAS CALLED.)

15 THE CLERK: WHAT SAYS THE STATE?

16 MS. MCDONALD: PRESENT THE JUROR.

17 THE CLERK: DEFENSE?

18 MR. DUKES: PLEASE SWEAR THE JUROR.

19 (JUROR NO. 130, A WHITE FEMALE, WAS CALLED.)

20 THE CLERK: WHAT SAYS THE STATE?

21 MS. MCDONALD: EXCUSE THE JUROR.

22 (JUROR NO. 122, A WHITE MALE, WAS CALLED.)

23 THE CLERK: WHAT SAYS THE STATE?

24 MS. MCDONALD: PRESENT THE JUROR.

25 THE CLERK: DEFENSE?

JURY SELECTED

1 MR. DUKES: PLEASE SWEAR THE JUROR.
2 (JUROR NO. 17, A WHITE MALE, WAS CALLED.)
3 THE CLERK: WHAT SAYS THE STATE?
4 MS. MCDONALD: PRESENT THE JUROR.
5 THE CLERK: DEFENSE?
6 MR. DUKES: WE'LL EXCUSE THE JUROR.
7 (JUROR NO. 163, A WHITE MALE, WAS CALLED.)
8 THE CLERK: WHAT SAYS THE STATE?
9 MS. MCDONALD: PRESENT THE JUROR.
10 THE CLERK: DEFENSE?
11 MR. DUKES: PLEASE SWEAR THE JUROR.
12 (JUROR NO. 63, A WHITE MALE, WAS CALLED.)
13 THE CLERK: WHAT SAYS THE STATE?
14 MS. MCDONALD: PRESENT THE JUROR.
15 THE CLERK: DEFENSE?
16 MR. DUKES: PLEASE SWEAR THE JUROR.
17 (JUROR NO. 37, A WHITE MALE, WAS CALLED.)
18 THE CLERK: WHAT SAYS THE STATE?
19 MS. MCDONALD: EXCUSE THE JUROR.
20 (JUROR NO. 142, A WHITE MALE, WAS CALLED.)
21 THE CLERK: WHAT SAYS THE STATE?
22 MS. MCDONALD: PRESENT THE JUROR.
23 THE CLERK: DEFENSE?
24 MR. DUKES: PLEASE EXCUSE THE JUROR.
25 (JUROR NO. 12, A WHITE MALE, WAS CALLED.)

JURY SELECTED

1 THE CLERK: WHAT SAYS THE STATE?

2 MS. MCDONALD: PRESENT THE JUROR.

3 THE CLERK: DEFENSE?

4 MR. DUKES: PLEASE EXCUSE THE JUROR.

5 (JUROR NO. 147, A WHITE MALE, WAS CALLED.)

6 THE CLERK: WHAT SAYS THE STATE?

7 MS. MCDONALD: PRESENT THE JUROR.

8 THE CLERK: DEFENSE?

9 MR. DUKES: WE'LL EXCUSE THE JUROR.

10 (JUROR NO. 106, A BLACK MALE, WAS CALLED.)

11 THE CLERK: WHAT SAYS THE STATE?

12 MS. MCDONALD: EXCUSE THE JUROR.

13 THE COURT: LET ME SEE IF I'VE GOT IT SO FAR
14 RIGHT. EIGHT FOR THE DEFENSE AND FIVE FOR THE
15 STATE; IS THAT CORRECT?

16 MS. MCDONALD: YES, YOUR HONOR.

17 MR. DUKES: THAT'S CORRECT.

18 THE COURT: ALL RIGHT. THANK YOU.

19 (JUROR NO. 71, A WHITE MALE, WAS CALLED.)

20 THE CLERK: WHAT SAYS THE STATE?

21 MS. MCDONALD: PRESENT THE JUROR.

22 THE CLERK: DEFENSE?

23 MR. DUKES: PLEASE SWEAR THE JUROR.

24 (JUROR NO. 167, A BLACK FEMALE, WAS CALLED.)

25 THE CLERK: WHAT SAYS THE STATE?

JURY SELECTED

JURY SELECTED

JURY SELECTED

1 MS. MCDONALD: PRESENT THE JUROR.

2 THE CLERK: DEFENSE?

3 MR. DUKES: PLEASE SWEAR THE JUROR.

4 (JUROR NO. 134, A WHITE MALE, WAS CALLED.)

5 THE CLERK: WHAT SAYS THE STATE?

6 MS. MCDONALD: PRESENT THE JUROR.

7 THE CLERK: DEFENSE?

8 MR. DUKES: PLEASE SWEAR THE JUROR.

9 (JUROR NO. 32, A BLACK FEMALE, WAS CALLED.)

10 THE CLERK: WHAT SAYS THE STATE?

11 MS. MCDONALD: PRESENT THE JUROR.

12 THE CLERK: DEFENSE?

13 MR. DUKES: PLEASE SWEAR THE JUROR.

14 THE COURT: TWO AND ONE.

15 (JUROR NO. 125, A BLACK MALE, WAS CALLED.)

16 THE CLERK: WHAT SAYS THE STATE?

17 MS. MCDONALD: PRESENT THE JUROR.

18 THE CLERK: DEFENSE?

19 MR. DUKES: SWEAR THE JUROR.

20 THE COURT: TWO AND ONE.

21 (JUROR NO. 129, A BLACK FEMALE, WAS CALLED.)

22 THE CLERK: WHAT SAYS THE STATE?

23 MS. MCDONALD: PRESENT THE JUROR.

24 THE CLERK: DEFENSE?

25 MR. DUKES: SWEAR THE JUROR.

MOTIONS

19

1 THE COURT: ANY MOTIONS FROM THE STATE
2 REGARDING THIS JURY?

3 MS. MCDONALD: NOTHING FROM THE STATE, YOUR
4 HONOR.

5 THE COURT: DEFENSE?

6 MR. DUKES: NOTHING FROM THE DEFENSE, YOUR
7 HONOR.

8 THE COURT: ALL RIGHT. NOW, MEMBERS OF THE
9 JURY PANEL NOT CONNECTED WITH THIS CASE, I'M
10 GOING TO EXCUSE YOU. FEEL FREE TO STAY IN THE
11 COURTROOM IF YOU'D LIKE; BUT IF YOU'D LIKE TO
12 BE EXCUSED; IF YOU'RE SERVED NOTICE TO BE ON A
13 JURY IN THE NEXT THREE YEARS, IT WOULD BE A
14 COMPUTER ERROR. ALL YOU'D HAVE TO DO IS CALL
15 IN AND TELL THEM ABOUT IT, AND THEY'D EXCUSE
16 YOU. ANY QUESTIONS OR ANYTHING? SUGGESTIONS?
17 (NO RESPONSE.) DON'T FORGET; I TOLD YOU THAT
18 YOU CAN WRITE OR CALL. YOU DON'T EVEN HAVE TO
19 GIVE ME YOUR NAME IF YOU'VE GOT SOMETHING.
20 WE'RE GOING TO MAIL YOU THAT CHECK, BUT IT'S
21 NOT MUCH MONEY. I HOPE YOU LEARNED A LITTLE
22 BIT ABOUT THE SYSTEM; AND DOWNSTAIRS WHEN YOU
23 GO BY THE CLERK'S OFFICE, THEY'LL GIVE YOU A
24 SLIP TO SHOW YOU WERE IN COURT THIS WEEK.
25 HOPE YOU HAVE A GOOD REST OF THE WEEK. (AT

MOTIONS

1 THIS TIME REMAINING JURY PANEL IS EXCUSED.)
2 NOW, LET'S SEE; WITH THIS JURY OVER HERE. MR.
3 SPALDING, HAVE YOU EVER SERVED ON A JURY
4 BEFORE?

5 MR. SPALDING: IN MAGISTRATE'S COURT, YOUR
6 HONOR.

7 THE COURT: YOU'VE GOT SOME EXPERIENCE. HOW
8 ABOUT COME DOWN HERE AND SWAP WITH THIS LADY,
9 WILL YOU? OR SHE CAN KEEP HER SEAT, AND YOU
10 CAN JUST COME AND TAKE THE END SEAT. NOW,
11 YOU'LL ALWAYS KEEP THAT SEAT. NOW, MR.
12 SUMMERS, YOU'RE MY FIRST ALTERNATE. THAT
13 MEANS IF SOMEBODY GOT SICK OR SOMETHING, YOU'D
14 TAKE THEIR PLACE. AND, MRS. THOMPSON, YOU'RE
15 MY SECOND ALTERNATE. AND YOU ALL ARE
16 IMPORTANT BECAUSE IF SOMEBODY BECAME
17 INCAPACITATED, YOU SEE, YOU'D JUST TAKE THEIR
18 PLACE. MR. FOREMAN, YOU KEEP THAT SEAT. THE
19 REST OF Y'ALL KEEP THAT SEAT. THE REST OF YOU
20 CAN SIT ANYWHERE YOU WANT TO. HOW ABOUT SWEAR
21 THIS JURY FOR ME.

22 THE CLERK: LADIES AND GENTLEMEN, PLEASE STAND
23 AND RAISE YOUR RIGHT HAND AND BE SWORN.

24 (AT THIS TIME JURY IS SWORN.)

25 THE COURT: NOW, MR. FOREMAN AND MEMBERS OF

MOTIONS

21

1 THE JURY; LET ME TELL YOU WHAT THIS IS ALL
2 ABOUT. HOW MANY HAVE NEVER SERVED ON A JURY
3 BEFORE? A GOOD MANY OF YOU. LET ME TELL YOU
4 WHAT'S ABOUT TO HAPPEN. THE STATE CHARGES --
5 WERE THERE ANY MOTIONS, SOLICITOR?

6 MS. MCDONALD: I DON'T HAVE ANY MOTIONS.

7 THE COURT: WERE THERE ANY MOTIONS, MR. DUKES?

8 MR. DUKES: NO, SIR, YOUR HONOR.

9 THE COURT: ALL RIGHT. THE STATE CHARGES
10 RODNEY ELLIOTT WITH TWO OFFENSES; CRIMINAL
11 SEXUAL CONDUCT, WHICH WE CALL STATUTORY RAPE,
12 WITH Minor WHO WAS TEN YEARS OLD.
13 AND THEN AGAIN HE'S CHARGED WITH Minor

14 WHEN SHE IS ELEVEN YEARS OLD. NOW, I
15 TELL YOU THAT CRIMINAL SEXUAL CONDUCT WITH A
16 MINOR IN THE SECOND DEGREE SUCH AS THIS --
17 I'LL BE TELLING YOU MORE ABOUT IT LATER -- BUT
18 IT DOESN'T MAKE ANY DIFFERENCE WHETHER IT'S
19 CONSENSUAL OR NOT. YOU CAN'T HAVE SEX WITH A
20 CHILD OF THAT AGE. BUT TO THESE INDICTMENTS
21 MR. ELLIOTT PLEADS NOT GUILTY. AND SITTING AT
22 THAT TABLE HE IS JUST AS INNOCENT AS YOU AND I
23 UNTIL THE STATE, IF INDEED THEY CAN, SATISFIES
24 TWELVE OF YOU OF HIS GUILT BEYOND A REASONABLE
25 DOUBT. WELL REASONABLE DOUBT IS WHAT YOU'RE

MOTIONS

1 LOOKING FOR, BUT IT'S NOT SOME KIND OF
2 FANCIFUL DOUBT, SOME KIND OF IMAGINARY DOUBT.
3 IT'S SAID THAT A REASONABLE DOUBT IS A DOUBT
4 WHICH WOULD MAKE A REASONABLE PERSON HESITATE
5 TO ACT IN HIS OR HER MOST IMPORTANT AFFAIRS.
6 BUT I'LL BE TELLING YOU MORE ABOUT REASONABLE
7 DOUBT LATER ON. AND WHAT'S GOING TO HAPPEN IS
8 BECAUSE THE STATE HAS THE BURDEN OF PROVING
9 THEIR CASE, THE SOLICITOR IS GOING TO GET UP
10 FIRST; AND SHE'S GOING TO TELL YOU WHAT THIS
11 CASE IS ALL ABOUT. SHE'S GOING TO EXPLAIN TO
12 YOU KIND OF LIKE WHAT A BOOK'S ALL ABOUT OR
13 WHAT A MOVIE IS ALL ABOUT. THEN WHEN SHE SITS
14 DOWN, MR. DUKES WILL GET UP AND MAKE SOME
15 OPENING REMARKS TO YOU. AND WHEN HE SITS
16 DOWN, THEN THE STATE PUTS UP THEIR WITNESSES
17 AND EACH SIDE EXAMINES THEM. THE SAME THING
18 HAPPENS. THE DEFENSE WILL HAVE THE SAME
19 OPPORTUNITY. WHEN ALL THAT'S COMPLETED, THEN
20 EACH SIDE GETS A RIGHT TO SUMMARIZE THEIR CASE
21 TO YOU. AND WHEN THAT'S COMPLETED, THEN I
22 TELL YOU WHAT THE LAW IS. BECAUSE ALL I'M
23 GOING TO DO IS PRESIDE AT THIS CASE AND TELL
24 YOU WHAT THE LAW IS. YOU ALL HAVE THE MOST
25 IMPORTANT JOB. OUR CONSTITUTION MAKES JURIES

MOTIONS

23

1 THE JUDGE OF FACTS. SO YOU MUST DETERMINE THE
2 CREDIBILITY, THE BELIEVABILITY, OF THESE
3 WITNESSES. DON'T LET ANYTHING I SAY OR DO
4 GIVE YOU AN IDEA I'M TRYING TO TAKE THAT JOB
5 AWAY FROM YOU BECAUSE YOU CAN SEE HOW
6 IMPORTANT IT IS TO PAY CAREFUL ATTENTION.
7 YOU'VE GOT TO DECIDE WHAT WEIGHT YOU'RE GOING
8 TO GIVE THAT TESTIMONY; WHO TO BELIEVE OR WHO
9 NOT TO BELIEVE. NOW, THERE ARE TWO OR THREE
10 IMPORTANT THINGS I WANT TO TELL YOU ABOUT. IN
11 THE FIRST PLACE, DON'T TALK ABOUT THIS CASE.
12 DON'T EVEN TALK ABOUT IT WHEN YOU'RE IN YOUR
13 ROOM BACK THERE. DON'T TALK ABOUT IT WHEN YOU
14 GO HOME TONIGHT OR WHEN YOU READ THE NEWSPAPER
15 OR ANYTHING. DON'T READ ANYTHING ABOUT IT;
16 DON'T LISTEN TO ANYBODY ABOUT IT; AND
17 CERTAINLY DON'T LET ANYBODY TALK ABOUT IT WITH
18 YOU OR IN YOUR PRESENCE. IF THEY ATTEMPT TO
19 DO SO, YOU TELL ME ABOUT IT. NOW, YOU MIGHT
20 SAY "WELL, JUDGE BROWN, WHY CAN'T WE TALK
21 ABOUT IT; WE'VE GOT TO DECIDE IT." AND WHEN
22 YOU THINK ABOUT IT, IT'S PRETTY CLEAR, YOU
23 CAN'T DISCUSS ANYTHING UNTIL YOU KNOW BOTH
24 SIDES. SO WAIT UNTIL YOU HEAR ALL THE
25 TESTIMONY; THEN YOU CAN BEGIN DISCUSSING IT.

MOTIONS

1 NOW, FROM TIME TO TIME I MIGHT SEND YOU OUT,
2 AND YOU MIGHT FEEL LIKE YOU'RE UP AND DOWN, UP
3 AND DOWN. BUT IT'S THE ONLY WAY WE CAN
4 OPERATE. AND SOMETIMES I TELL MY JURY; FOR
5 INSTANCE, SUPPOSE ONE OF THE ATTORNEYS GOT UP
6 DURING THE TRIAL AND SAID, "JUDGE BROWN, I
7 OBJECT; I DON'T THINK THAT TESTIMONY OUGHT TO
8 COME IN;" AND IF YOU ALL SAT RIGHT THERE AND
9 LISTENED AND LATER ON I SAID IT COULDN'T COME
10 IN, YOU WOULD HAVE ALREADY HEARD IT. SO
11 THAT'S WHY I SEND YOU OUT. AND, MR. FOREMAN,
12 IF I TELL YOU TO COME BACK AFTER SENDING YOU
13 OUT AND YOU'RE NOT READY, YOU JUST SEND WORD
14 YOU'RE NOT READY AND WE'LL WAIT UNTIL ALL OF
15 Y'ALL ARE READY TO COME OUT. ALSO, I DON'T
16 KNOW WHETHER THERE'S ANY SMOKERS OR NOT; BUT
17 IF THERE ARE SMOKERS, AT LEAST ONCE AN HOUR --
18 NOT ANY MORE -- YOU TELL THE BAILIFF AND
19 THEY'LL TAKE YOU DOWN WHERE YOU CAN SMOKE. I
20 USED TO SMOKE. I QUIT. I REMEMBER HOW GOOD
21 IT WAS. BUT I QUIT THE HARD WAY. SOMETIMES
22 YOU DON'T HAVE ANY SMOKERS, AND SOMETIMES YOU
23 HAVE TWO OR THREE. BUT I DIDN'T ASK YOU WHO
24 SMOKED BECAUSE ANY MORE EVERYBODY DOSEN'T WANT
25 TO RAISE THEIR HAND IF I SAY "DO YOU SMOKE;"

MOTIONS

25

1 AND THEY DON'T WANT TO RAISE THEIR HAND. BUT
2 BE THAT AS IT MAY, IF YOU NEED TO SMOKE THE
3 BAILIFF WILL TAKE CARE OF IT FOR YOU. AND IF
4 YOU NEED ANYTHING TO MAKE YOU COMFORTABLE, MR.
5 FOREMAN, JUST ASK THE BAILIFFS; THEY'LL BE
6 DELIGHTED TO GET IT FOR YOU. AND ALSO THIS
7 BAILIFF RIGHT HERE IS AN EXPERT IN COOKING
8 LITTLE SNACKS FOR YOUR BREAKFAST IN THE
9 MORNING, BUT SHE WRAPS THEM, FOR SOME REASON,
10 IN HARDEE WRAPPERS. SO WHEN YOU GET HERE IN
11 THE MORNING IT WILL BE WRAPPED IN A HARDEE
12 WRAPPER. NOW, WE'RE GOING TO TAKE SOME
13 TESTIMONY THIS AFTERNOON. WE'LL QUIT AT LEAST
14 BY 5:30; PERHAPS A LITTLE BEFORE THAT. I'VE
15 GOT SOME THINGS I NEED TO DO. BUT IF FOR ANY
16 REASON ANY OF YOU NEED TO TAKE A BREAK, MR.
17 FOREMAN, YOU JUST TELL ME AND WE'LL TAKE A
18 BREAK WHEN YOU'RE READY.

19 MS. MCDONALD: IF IT PLEASE THE COURT?

20 THE COURT: LET ME TELL YOU WHAT I'M GOING TO
21 DO BEFORE YOU DO THAT, SOLICITOR. FORGIVE ME.
22 MY OTHER JURY HAS GOT A VERDICT; AND I NEED
23 THAT ROOM FOR YOU ALL ANYWAY. SO I WANT YOU
24 TO JUST GO OUT HERE AND KIND OF STAND OVER IN
25 A CORNER SOMEWHERE WHILE I BRING THAT JURY

MOTIONS

1 IN. JUST GO IN THE GRAND JURY ROOM FOR JUST A
2 SECOND. THEY'LL BE GETTING THAT OTHER ROOM
3 FIXED UP FOR YOU. I'LL BRING YOU BACK IN JUST
4 A MOMENT.

5 (AT THIS TIME JURY RETIRES TO JURY ROOM.)

6 (BRIEF RECESS.)

7 THE COURT: ALL RIGHT. I WANT TO TELL YOU
8 THAT IF I KEEP Y'ALL BACK THERE, I PROMISE YOU
9 I WON'T BE TELLING JOKES AND DRINKING COFFEE.
10 WE'RE REALLY WORKING. THAT LAST JURY HAD
11 REACHED A DECISION IN THE CASE, AND I HAD TO
12 GO AHEAD AND SENTENCE HIM AND HEAR THE MOTIONS
13 AND EVERYTHING. AND THAT'S WHY I KEPT YOU
14 BACK THERE. NOW, THIS AFTERNOON, SO YOU MEN
15 CAN COOK SUPPER, WE'RE GOING TO JUST HAVE THE
16 OPENING REMARKS BY THE ATTORNEYS. AND THEN
17 I'M GOING TO RECESS BECAUSE I'VE GOT SOME
18 LEGAL MATTERS TO TAKE CARE OF. I'M GOING TO
19 RECESS. I'M GOING TO SEND YOU HOME. AND
20 DON'T TALK ABOUT, AND DON'T READ ANYTHING. DO
21 YOU REMEMBER WHAT I TOLD YOU ABOUT YOU BEING
22 IN YOUR JURY ROOM TOMORROW MORNING AT 9:30.
23 SO WE'RE JUST GOING TO HAVE THOSE OPENING
24 REMARKS. ALL RIGHT. SOLICITOR?

25 - - - - -

OPENING REMARKS BY MS. MCDONALD

OPENING REMARKS

BY MS. MCDONALD

THE FIRST THING THAT I WANT TO GO
AHEAD AND DISCUSS WITH Y'ALL TODAY IS THAT THE TOPIC
INVOLVED IN THE TRIAL OF THIS CASE IS ONE THAT REPELS
MOST PEOPLE. IT'S ABOUT CHILD SEXUAL ABUSE WITHIN A
FAMILY. AND MOST PEOPLE ARE DISGUSTED AND APPALLED BY
THAT VERY TOPIC, JUST THE MENTION OF CHILD SEXUAL ABUSE
OR CHILD MOLESTATION. IT MAKES MOST PEOPLE VERY
UNCOMFORTABLE. BUT THAT IS WHAT THE CASE IS ABOUT.
THAT'S WHAT THE TWO CHARGES INDICTED IN THESE TWO
INDICTMENTS ARE. AND SO THE TESTIMONY AND THE EVIDENCE
IN THIS CASE IS GOING TO BE ABOUT THE ABUSE OF A SEXUAL
NATURE THAT THE VICTIM IN THIS CASE, ^{Minor}
SUFFERED AT THE HANDS OF HER BIOLOGICAL FATHER, MR.
ELLIOTT, AND THE CORROBORATING EVIDENCE THAT WAS FOUND
BY A MEDICAL DOCTOR, DR. GUTMAN, FROM DUKE UNIVERSITY
MEDICAL CENTER WHO EXAMINED ^{Minor} AND
SHE'S GOING TO TELL YOU ABOUT THE STATE OF THE CHILD'S
GENITALIA. AND I WILL GO AHEAD AND TELL YOU THAT THE
EVIDENCE IN THIS CASE IS ABOUT AS CONCLUSIVE AS
EVIDENCE GETS THAT THIS CHILD HAS BEEN SEXUALLY
MOLESTED. SHE WAS DIAGNOSED WITH A VENEREAL DISEASE
AND WITH PHYSICAL FINDINGS THAT ARE DIAGNOSTIC OF
HAVING BEEN MOLESTED. AND I'M TELLING YOU THAT IN GOOD

OPENING REMARKS BY MS. MCDONALD

1 FAITH BECAUSE I KNOW THAT IS WHAT THE EVIDENCE THAT
2 WILL BE PRESENTED TO THE COURT IS. BUT, OF COURSE,
3 YOU'RE TO HEAR THE EVIDENCE AND MAKE FACTUAL FINDINGS
4 AS YOU, AND ONLY YOU, THE TWELVE SWORN JURORS IN THIS
5 CASE, CAN DO. BUT I'M CONVINCED THAT AT THE END OF THE
6 CASE YOU'LL BE CONVINCED THAT THIS IS A SEXUALLY ABUSED
7 CHILD. THE ONLY QUESTION THAT YOU'RE GOING TO HAVE TO
8 DETERMINE BEYOND A REASONABLE DOUBT IS GOING TO BE WHO
9 DID IT. AND FOR THAT YOU'RE GOING TO HAVE THE
10 TESTIMONY OF THE ONLY WITNESS TO THIS CRIME, THE CHILD
11 ON WHOSE BODY WAS SEXUALLY BATTERED BY THE DEFENDANT.

12 SHE'S GOING TO TELL YOU HOW AND WHEN
13 AND WHERE AND WHO DID IT TO HER. AND WITH ALL THAT
14 EVIDENCE YOU'RE GOING TO HAVE THE OPPORTUNITY TO
15 DELIBERATE AND REACH A VERDICT. AND JUDGE BROWN IS
16 GOING TO TELL YOU ALL ABOUT THE DELIBERATION PROCESS
17 AND HOW YOUR VERDICT MUST BE ARRIVED AT AND THAT IT
18 MUST BE UNANIMOUS AND HOW YOU VOTE AND THE FORM OF THE
19 VERDICT ON THESE INDICTMENTS.

20 THE CHARGES THAT MR. ELLIOTT IS
21 FACING ARE EMBODIED IN THESE INDICTMENTS. AND ALL
22 THESE ARE ARE CHARGING PAPERS. THIS IS HOW THE
23 SOLICITOR'S OFFICE CHARGES AN INDIVIDUAL WITH A CRIME.
24 LAW ENFORCEMENT DRAWS UP A WARRANT AND ARRESTS
25 SOMEBODY. AND THEN THE PROSECUTOR'S OFFICE WHICH IS

OPENING REMARKS BY MS. MCDONALD

1 WHERE I WORK DECIDES EXACTLY WHAT CRIME HAS BEEN
2 COMMITTED AND IF THERE'S SUFFICIENT EVIDENCE TO
3 PROCEED. AND THEN THEY PREPARE THESE CHARGING PAPERS
4 WHICH ARE CALLED INDICTMENTS.

5 THE CRIME IS BASICALLY THE SAME.
6 IT'S CALLED CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE
7 FIRST DEGREE AND CRIMINAL SEXUAL CONDUCT WITH A MINOR
8 SECOND DEGREE. THE ACTS COMPLAINED OF IN THESE
9 INDICTMENTS ARE THE SAME. THE ONLY THING THAT CHANGED
10 DURING THE TIME PERIOD OF THESE INDICTMENTS WAS THE
11 CHILD'S AGE. SHE CHANGED FROM TEN TO ELEVEN, AND THAT
12 CHANGED THE STATUTORY SECTION THAT WAS BEING VIOLATED
13 WHEN SHE WAS BEING SEXUALLY ABUSED BY HER FATHER DURING
14 THIS TIME PERIOD. SO I DON'T WANT YOU TO THINK THAT
15 THESE ARE TWO COMPLETELY DIFFERENT THINGS. THEY'RE THE
16 SAME BUT FOR THE AGE OF THE VICTIM. THE LAW IS THAT
17 CRIMINAL SEXUAL CONDUCT WITH A MINOR IN THE FIRST
18 DEGREE IS UP TO ELEVEN, OR UNDER ELEVEN. SO ZERO
19 THROUGH TEN; AND THEN ELEVEN THROUGH FOURTEEN IS
20 CRIMINAL SEXUAL CONDUCT WITH A MINOR SECOND DEGREE. SO
21 THAT'S WHY THERE ARE TWO PIECES OF PAPER, BUT THE
22 EVIDENCE IS GOING TO BE THE SAME EXCEPT FOR THE CHILD'S
23 BIRTHDAY IS GOING TO CHANGE THE NAME OF THE CHARGE.

24 THIS IS A SHORT TRIAL. THERE ARE
25 NOT A LOT OF WITNESSES IN THIS CASE. AND THE REASON IS

OPENING REMARKS BY MS. MCDONALD

1 THAT THE OUTCRY WHICH IS WHAT PEOPLE IN CHILD SEXUAL
2 ABUSE -- THAT FIELD CALLED -- THE PEOPLE THAT THE CHILD
3 TOLD WAS BASICALLY HER MOTHER WHO IS HERE TO TESTIFY.
4 THAT'S MRS. VIVIAN LAWRENCE OVER THERE WHO'S SITTING
5 WITH Mino SHE'S THE CHILD NAMED IN THE
6 INDICTMENTS. ALTHOUGH SHE'S CALLED Minor IN THE
7 INDICTMENTS, SHE GOES BY Minor THAT'S KIND OF A
8 TYPO.

9 SHE COMPLAINED OF THE SEXUAL ASSAULT
10 WHEN SHE GOT BACK FROM STAYING A WHOLE SCHOOL YEAR WITH
11 HER DAD DOWN HERE IN SOUTH CAROLINA IN THE SUMMERVILLE
12 AREA, AND WENT BACK TO RALEIGH, NORTH CAROLINA, WHERE
13 SHE LIVES WITH HER MOM AND TOLD HER MOM WHAT HAD
14 HAPPENED AND THAT SHE HAD SOME PROBLEMS. AND SHE WENT
15 TO THE DOCTOR AND WAS DIAGNOSED WITH GENITAL WARTS AND
16 LOOKED AT FURTHER BY A CLINICAL SOCIAL WORKER WHO ARE
17 BOTH COMING DOWN FROM -- THE DOCTOR AND THE SOCIAL
18 WORKER ARE BOTH COMING DOWN FROM DUKE UNIVERSITY
19 MEDICAL CENTER, CHILDREN'S MEDICAL, TO TESTIFY. SO
20 THERE WILL NOT BE A LONG LIST OF WITNESSES. IT'S VERY
21 SHORT, BUT EVERY WITNESS IS IMPORTANT AND HAS SOMETHING
22 IMPORTANT TO TELL YOU. SO I'M ASKING YOU -- AND I KNOW
23 THAT YOU WILL -- PAY CLOSE ATTENTION TO WHAT ALL THOSE
24 FOUR OR FIVE WITNESSES THAT I'M GOING TO CALL FOR THIS
25 TRIAL WILL HAVE TO TELL YOU.

OPENING REMARKS BY MS. MCDONALD

1 REGARDLESS OF THE FACT THAT IT'S NOT
2 A REAL LENGTHY LIST OF WITNESSES, THAT'S WHAT YOU'RE
3 GOING TO HAVE TO WORK WITH. AND THEY'RE GOING TO GIVE
4 YOU THE ENTIRE PUZZLE PICTURE, THE ENTIRE PICTURE THAT
5 THE PUZZLE -- EACH PIECE OF EVIDENCE THAT FITS TOGETHER
6 TO CREATE THE WHOLE PICTURE THAT YOU'RE GOING TO HAVE
7 WHEN YOU GO BACK TO JURY ROOM TO START DELIBERATING.

8 THE JUDGE HAS INSTRUCTED YOU NOT TO
9 TALK ABOUT THE CASE, AND THAT'S WHY BECAUSE YOU CAN'T
10 MAKE YOUR DECISION UNTIL YOU HAVE ALL THE INFORMATION.
11 YOU CAN FORM IDEAS; BUT YOU WON'T KNOW WHAT YOUR
12 VERDICT IS GOING TO BE UNTIL AFTER YOU'VE GOTTEN ALL
13 THE INFORMATION. SO YOU HAVE TO LISTEN TO EACH AND
14 EVERY WITNESS AND TO WHAT THEY HAVE TO SAY. AND I'LL
15 TALK TO YOU IN MORE DETAIL ABOUT THE INFORMATION LATER
16 AFTER IT'S BEEN PRESENTED TO YOU AND WE CAN ALL DISCUSS
17 IT WITH THE SAME DEGREE OF KNOWLEDGE AS TO WHAT HAS
18 BEEN SAID AND WHAT WE'VE ALL HEARD IN THE COURTROOM.

19 AGAIN, MY NAME IS MEG MCDONALD, AND
20 I'M AN ASSISTANT SOLICITOR IN DORCHESTER COUNTY. THE
21 ONLY KIND OF LAW I'VE EVER PRACTICED IS CRIMINAL
22 PROSECUTION. I GOT OUT OF LAW SCHOOL IN 1994, AND ALL
23 I'VE DONE IS PROSECUTE CASES INVOLVING CHILD SEXUAL
24 ABUSE AND OTHER KINDS OF SEXUAL ASSAULTS FOR THE LAST
25 FOUR YEARS. SO I DON'T HAVE A WHOLE LOT OF EXPERIENCE

OPENING REMARKS BY MS. MCDONALD

1 OUTSIDE OF THE PROSECUTION FIELD. BUT I HOPE TO MAKE
2 THIS AS PALATABLE FOR YOU AS I CAN. I KNOW THAT IT'S A
3 TOUGH SUBJECT; AND I KNOW YOU MAY BE A LITTLE
4 UNCOMFORTABLE AT HAVING BEEN CALLED TO SIT ON A TRIAL
5 OF THIS NATURE. BUT IT'S IMPORTANT. IT'S IMPORTANT
6 FOR C.J. SHE'S COME ALL THE WAY FROM
7 NORTH CAROLINA TO TELL YOU HER STORY, AND I KNOW THAT
8 YOU'LL LISTEN TO HER; AND I THANK YOU.

9 THE COURT: MR. DUKES?

10 - - - - -

11 OPENING REMARKS

12 BY MR. DUKES

13 MR. FOREMAN AND LADIES AND GENTLEMEN
14 OF THE JURY; AS YOU'VE HEARD BEFORE MY NAME IS GENE
15 DUKES, AND I PRACTICE LAW HERE IN ST. GEORGE. AND
16 TODAY I HAVE A HEAVY RESPONSIBILITY. I REPRESENT THE
17 YOUNG MAN SEATED NEXT TO HIS WIFE OVER THERE AT WHAT WE
18 CALL THE DEFENSE TABLE; AND HE'S CHARGED WITH -- IN ALL
19 KIND OF WORDS -- THEY'VE CHANGED THE LAW AROUND IN A
20 NUMBER OF WAYS. CRIMINAL SEXUAL CONDUCT FIRST DEGREE,
21 SECOND DEGREE. HE'S CHARGED WITH RAPE. THE SECOND
22 MOST HEINOUS CRIME, I THINK, TO MANKIND AFTER MURDER.

23 YOU KNOW, PEOPLE THAT STARTED THIS
24 JUSTICE SYSTEM; IT'S LOT OF PEOPLE. OUR CRIMINAL LAW
25 IS BASED ON A LATIN TERM; AND IT MEANS YOU'VE GOT TO

OPENING REMARKS BY MR. DUKES

1 HAVE GUILTY MINDS; THAT YOU DO THINGS IN YOUR GUILTY
2 MIND WHEREIN YOU CREATE CRIMES. AND CERTAINLY RAPE IS
3 A CRIME OF A GUILTY MIND. IT'S HARD TO TALK ABOUT.
4 BUT I'VE GOT TO TALK ABOUT IT BECAUSE MY CLIENT IS
5 ACCUSED OF DOING THAT TO HIS DAUGHTER.

6 YOU KNOW, WE ASK WHY; WHY DID
7 SOMEBODY GET UP AND TESTIFY? WHY IS IT A TOUGH
8 QUESTION? WHY WOULD SOMEBODY COME HERE AND TESTIFY TO
9 THAT AND LISTEN TO THAT OR THAT OR THAT. WELL, THERE
10 ARE REASONS FOR DIFFERENT THINGS. AND AS WE GO THROUGH
11 THIS TESTIMONY, YOU'VE GOT TO PICK OUT AND FIND THE
12 TRUTH. NOW, WHERE DOES THE TRUTH COME FROM? THE TRUTH
13 HAS GOT TO COME FROM THE MOUTHS OF THESE WITNESSES IN
14 THIS COURTROOM AND ANY DOCUMENTS THAT THEY PUT INTO
15 EVIDENCE BECAUSE YOU ARE THE FINDERS OF THE TRUTH, AND
16 THAT'S YOUR JOB. YOU TRY TO FIND THE TRUTH THE BEST
17 YOU CAN. IT'S THE WAY EVERYBODY TRIES TO FIND IT. BUT
18 THEN YOU HAVE SOME OTHER BASIC PRINCIPLES.

19 IN THIS SYSTEM OF JUSTICE, OUR
20 CRIMINAL SYSTEM IS BENT ON REASONABLE DOUBT; A TRIAL BY
21 A JURY OF YOUR PEERS. TO CONFRONT THE WITNESSES WHO
22 TESTIFY AGAINST YOU. AND I'M SURE YOU'RE FAMILIAR WITH
23 THE BILL OF RIGHTS OR THE FIRST TEN AMENDMENTS OF THE
24 UNITED STATES CONSTITUTION. AND THEY SET FORTH YOUR
25 BASIC RIGHTS. AND SO MANY OF THEM DEAL -- IN FACT MOST

OPENING REMARKS BY MR. DUKES

1 OF THEM, EXCEPT THE TENTH ONE, DEALS WITH YOUR RIGHTS
2 RIGHT IN HERE IN THE COURTROOM, THE SYSTEM OF JUSTICE.

3 IT'S NOT GOING TO BE A LENGTHY
4 TRIAL; NOTHING LIKE O.J. SIMPSON; BUT I GUARANTEE YOU,
5 IT WILL BE JUST AS IMPORTANT TO MY CLIENT AS ANY CASE
6 THAT'S EVER BEEN TRIED BECAUSE HIS LIFE IS ON THE LINE
7 HERE. AND I KNOW -- NO QUESTION ABOUT IT -- I KNOW
8 THAT Y'ALL ARE GOING TO LISTEN AT THE EVIDENCE,
9 CONSIDER THE TESTIMONY AND THE EVIDENCE; AND I KNOW YOU
10 ALL WILL DELIBERATE AND REACH A VERDICT THAT WILL SPEAK
11 THE TRUTH; AND THAT'S ALL WE ASK. I HOPE YOU HAVE A
12 GOOD NIGHT.

13 THE COURT: ALL RIGHT. I'M GOING TO SEND YOU
14 HOME. REMEMBER WHAT I TOLD YOU ABOUT IT.
15 COME IN EARLY IN THE MORNING. WE'LL GIVE YOU
16 SOME LITTLE SNACKS. WE'LL START THE TRIAL
17 PROMPTLY AT 9:30. HAVE A GOOD NIGHT. AND
18 SHE'LL SHOW YOU WHERE THE JURY ROOM IS. I
19 DON'T KNOW WHETHER Y'ALL WENT IN THERE OR NOT.

20 THE FOREMAN: NO, SIR.

21 THE COURT: THEY'LL HAVE IT ALL STRAIGHTENED
22 OUT FOR YOU.

23 (AT THIS TIME JURY IS EXCUSED FOR THE DAY.)

24 THE COURT: SOLICITOR, ARE THERE ANY EXHIBITS
25 OR ANYTHING Y'ALL NEED TO EXCHANGE?

MOTIONS

35

1 MS. MCDONALD: YOUR HONOR, I THINK WE'RE
2 FAMILIAR WITH ALL THE EXHIBITS INVOLVED IN
3 THIS CASE.

4 THE COURT: ALL RIGHT. IS THERE ANYTHING I
5 CAN DO TO HASTEN THIS TRIAL?

6 MS. MCDONALD: YOUR HONOR, THERE ARE SO FEW
7 EXHIBITS. I DON'T THINK IT'S GOING TO HOLD
8 US UP MUCH IF WE MARK THEM AS WE GO. I HAVE
9 MAYBE TWO. WE HAVE A STIPULATION WE'RE
10 WORKING ON; AND WE'LL TRY TO HAVE THAT READY
11 BY IN THE MORNING.

12 THE COURT: ALL RIGHT. LET ME SEE THE
13 INDICTMENT, SOLICITOR. ALL RIGHT. MR.
14 ELLIOTT, YOU WEREN'T HERE, AND YOU HELD UP
15 COURT ALL AFTERNOON. AND I'M INCLINED TO PUT
16 YOU IN JAIL AND JUST KEEP YOU THERE BECAUSE I
17 KNOW YOU'LL BE HERE. BUT I'M GOING TO PUT YOU
18 IN JAIL IF YOUR BONDSMAN WANTS TO STAY ON THIS
19 BOND AND TELLS US IN OPEN COURT, OR IN
20 WRITING, I'LL ALLOW YOU TO STAY OUT ON BOND.
21 ONE OF THE STIPULATIONS IS YOU CANNOT CONTACT
22 IN ANY WAY THE WITNESSES FOR THE STATE, OKAY?

23 THE DEFENDANT: YES, SIR.

24 THE COURT: SO IF YOUR BONDSMAN IS WILLING TO
25 STAY ON IT AND GIVES THE JAIL THAT IN WRITING,

MOTIONS

1 THEN YOU CAN GET OUT ON BOND. ANYTHING ELSE?

2 MS. MCDONALD: NOTHING FROM THE STATE, YOUR
3 HONOR.

4 THE COURT: ALL RIGHT.

5

6 (WHEREUPON AT 6:00 P.M. COURT WAS ADJOURNED
7 FOR THE DAY.)

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THURSDAY, JULY 23, 1998

THE COURT: ALL RIGHT. ANYTHING BEFORE WE
BRING THE JURY OUT, SOLICITOR?

MS. MCDONALD: NO, SIR.

THE COURT: ANYTHING FURTHER, MR. DUKES,
BEFORE WE BRING THE JURY OUT? LET'S SEE.
WHERE WERE WE YESTERDAY? THEY HAD THE
SUMMATIONS.

THE COURT REPORTER: WE ARE TO START THE
TESTIMONY, YOUR HONOR.

THE COURT: OKAY. ANYTHING BEFORE I BRING THE
JURY OUT, SOLICITOR?

MS. MCDONALD: NOTHING FROM THE STATE, YOUR
HONOR.

THE COURT: ALL RIGHT. BRING THE JURY OUT.

(AT THIS TIME JURY RETURNS TO OPEN COURT.)

(AT THIS TIME THE FOREMAN STANDS.)

THE COURT: YES, SIR?

THE FOREMAN: GOOD MORNING, YOUR HONOR.
SEVERAL OF THE JURORS HAVE ASKED WHETHER OR
NOT THEY WOULD BE PERMITTED TO MAKE ANY NOTES
DURING THE TRIAL.

THE COURT: IF YOU FEEL LIKE -- I TELL YOU
WHAT I HAVE TO DO, IF YOU WANT THEM, WHICH I
HAVE NO OBJECTION AT ALL. I'LL GIVE ALL OF

Minor

- DIRECT/MS. MCDONALD

1 YOU A PAD AND PENCIL; BUT I CAN'T LET JUST ONE
2 TAKE NOTES, AND YOU CAN SEE WHY BECAUSE YOU
3 MIGHT -- EVERYBODY LOOKS AT SOMETHING
4 DIFFERENT. WOULD YOU LIKE ME TO GET PADS AND
5 PENCILS FOR YOU?

6 THE FOREMAN: YES, SIR.

7 THE COURT: ALL RIGHT. I'LL GET IT. WHO IS
8 YOUR FIRST WITNESS, SOLICITOR?

9 MS. MCDONALD: IT'S GOING TO BE Minor
10 YOUR HONOR.

11 THE COURT: ALL RIGHT. LET ME GET THE PADS
12 AND PENCILS. IT WON'T TAKE BUT JUST A
13 MINUTE. ALL RIGHT. BRING IN YOUR FIRST
14 WITNESS.

15 - - - - -

16 WHEREUPON,

17 Minor WHO AFTER BEING FIRST
18 DULY SWORN TO TELL THE TRUTH, TESTIFIED
19 AS FOLLOWS:

20 DIRECT EXAMINATION

21 BY MS. MCDONALD:

22 Q. YOU'RE Minor

23 A. YES.

24 THE COURT: Minor LET ME SEE. IS THAT
25 MICROPHONE ON? KIND OF TAP IT FOR ME.

Minor

- DIRECT/MS. MCDONALD

39

1 THE BAILIFF: YES; IT'S ON.

2 THE COURT: TALK A LITTLE LOUDER FOR ME. WILL
3 YOU DO THAT?

4 MISS JOHNSON: OKAY.

5 Q. Minor HOW OLD ARE YOU?

6 A. I'M THIRTEEN.

7 Q. WHEN'S YOUR BIRTHDAY?

8 A. AUGUST THE TH.

9 Q. IN WHAT YEAR WERE YOU BORN?

10 A. IN .

11 Q. AND YOU'RE RIGHT NOW?

12 A. YES.

13 Q. SO YOU'RE GOING TO BE THIS COMING AUGUST;
14 NEXT AUGUST?

15 A. YES, MA'AM.

16 Q. Minor WHERE DO YOU LIVE?

17 A. I LIVE IN NORTH CAROLINA.

18 Q. WHERE? WHAT TOWN IN NORTH CAROLINA?

19 A. DURHAM.

20 Q. WHO DO YOU LIVE WITH IN DURHAM?

21 A. I LIVE WITH MY MOTHER.

22 Q. WHAT'S YOUR MOM'S NAME?

23 A. VIVIAN MORRIS.

24 Q. DO YOU HAVE ANY OTHER BROTHERS AND SISTERS THAT
25 LIVE WITH YOU AND YOUR MOM?

Minor

40

- DIRECT/MS. MCDONALD

1 A. I HAVE TWO BROTHERS THAT LIVE WITH MY MOM AND ME.

2 Q. AND WHAT ARE YOUR BROTHER'S NAMES IN NORTH

3 CAROLINA?

4 A. THE OLDEST ONE IS AND THE YOUNGEST ONE IS

5

6 Q. HOW OLD IS

7 A. HE'S .

8 Q. TEN? AND HOW OLD IS

9 A.

10 Q. DO YOU AND AND ALL HAVE THE SAME

11 DAD?

12 A. NO, WE DON'T.

13 Q. WHO IS YOUR DAD?

14 A. MY DAD IS OVER THERE. (INDICATING.)

15 Q. WHAT'S HIS NAME?

16 A. RODNEY ELLIOTT.

17 Q. AND WHAT'S THE NAME OF THE MAN WHO WAS AND

18 DAD?

19 A. MORRIS.

20 Q. MORRIS?

21 A. UH-HUH (INDICATING YES.)

22 Q. AND THAT'S YOUR MOM'S LAST NAME NOW?

23 A. YES.

24 Q. DO YOU HAVE ANY OTHER BROTHERS AND SISTERS THAT

25 LIVE IN SOUTH CAROLINA?

Minor

- DIRECT/MS. MCDONALD

41

- 1 A. I HAVE TWO SISTERS THAT LIVE IN SOUTH CAROLINA AND
2 ONE BROTHER.
- 3 Q. WHAT ARE THE SISTER'S NAME?
- 4 A. THE OLDEST IS , AND THE YOUNGEST IS .
- 5 Q. HOW OLD IS
- 6 A. I THINK SHE'S FIFTEEN RIGHT NOW OR FOURTEEN.
- 7 Q. AND HOW OLD IS
- 8 A. SHE'S FOUR; ABOUT TO GO ON FIVE.
- 9 Q. DO YOU HAVE ANOTHER BROTHER THAT LIVES IN SOUTH
10 CAROLINA?
- 11 A. YES.
- 12 Q. WHAT'S HIS NAME?
- 13 A.
- 14 Q.
- 15 A. YES.
- 16 Q. HOW OLD IS
- 17 A. HE'S FIVE.
- 18 Q. AND WHO IS . MOM AND DAD? HOW IS SHE
19 RELATED TO YOU?
- 20 A. SHE HAS ANOTHER MOTHER THAN THEY DO.
- 21 Q. ANOTHER MOTHER THAN YOU?
- 22 A. YES.
- 23 Q. AND ANOTHER MOTHER THAN AND
- 24 A. YES.
- 25 Q. WHO IS HER FATHER?

Minor

- DIRECT/MS. MCDONALD

- 1 A. RODNEY.
- 2 Q. WHO DOES SHE LIVE WITH?
- 3 A. HER MOTHER, I THINK.
- 4 Q. HAS SHE EVER LIVED WITH YOU?
- 5 A. PROBABLY IN THE VERY, VERY BACK IN THE PAST.
- 6 Q. BUT NOT THAT YOU CAN REMEMBER?
- 7 A. RIGHT.
- 8 Q. OKAY. AND WHO IS THEIR
- 9 MOTHER?
- 10 A. GERALDINE.
- 11 Q. WHO IS GERALDINE?
- 12 A. SHE'S OVER THERE. (INDICATING.)
- 13 Q. SHE'S THE LADY THAT'S SITTING NEXT TO YOUR DAD?
- 14 A. YES.
- 15 Q. OKAY. SHE'S MARRIED TO HIM NOW?
- 16 A. RIGHT.
- 17 Q. SO SHE IS DAD?
- 18 A. YES.
- 19 Q. AND RODNEY ELLIOTT IS DAD?
- 20 A. YES.
- 21 Q. OKAY. I WANT TO GO BACK TO ABOUT THE FIFTH GRADE.
- 22 YOU'VE GONE TO DIFFERENT SCHOOLS ALONG THE WAY,
- 23 HAVEN'T YOU?
- 24 A. UH-HUH. (INDICATING YES.)
- 25 Q. OKAY. GO BACK TO A
BOUT THE FIFTH GRADE AND TELL ME

JOHNSON - DIRECT/MS. MCDONALD

43

Minor

1 WHERE YOU WENT TO SCHOOL IN THE FIFTH GRADE.

2 A. IN THE FIFTH GRADE I WAS IN NORTH CAROLINA WITH MY
3 MOTHER. I WENT TO HENRIETTA.

4 Q. YOU WENT TO HENRIETTA FOR THE SECOND PART OF THE
5 YEAR; ISN'T THAT RIGHT?

6 A. YES.

7 Q. DO YOU REMEMBER GOING TO SCHOOL IN AMITYVILLE, NEW
8 YORK, FOR PART OF THE FIFTH GRADE?

9 A. YES.

10 Q. WHAT WAS THE NAME OF THE SCHOOL THAT YOU WENT TO IN
11 AMITYVILLE?

12 A. PARK AVENUE.

13 Q. AND SO SOME TIME AFTER CHRISTMAS YOU WENT TO NORTH
14 CAROLINA AND WENT TO HENRIETTA?

15 A. YES.

16 Q. AND WHERE DID YOU GO TO SCHOOL -- WHAT DID YOU DO
17 FOR THE SUMMER BETWEEN FIFTH AND SIXTH GRADE? CAN
18 YOU REMEMBER?

19 A. I THINK I WENT WITH MY DAD THEN.

20 Q. AND WHAT DID YOU DO FOR THE SIXTH GRADE? WHERE DID
21 YOU GO TO SCHOOL?

22 A. THE SIXTH GRADE I WENT TO CLAY HILL ELEMENTARY AND
23 ALSTON MIDDLE SCHOOL.

24 Q. AND WHAT STATE ARE THOSE TWO SCHOOLS IN?

25 A. SOUTH CAROLINA.

Minor

- DIRECT/MS. MCDONALD

- 1 Q. DO YOU KNOW WHAT TOWNS THOSE SCHOOLS ARE IN? WHAT
2 TOWN IS ALSTON IN?
3 A. SUMMERVILLE.
4 Q. WHERE WERE YOU LIVING WHEN YOU WENT TO ALSTON
5 MIDDLE SCHOOL?
6 A. UM---
7 Q. WHAT WAS THE NAME OF THE AREA?
8 A. IT WAS EITHER GERMANTOWN OR SIMMONS AVENUE.
9 Q. YOU THINK YOU LIVED ON SIMMONS AVENUE?
10 A. UH-HUH. (INDICATING YES.)
11 Q. WAS IT A HOUSE OR A TRAILER HOUSE, OR WHAT KIND OF
12 BUILDING WAS IT THAT YOU WERE LIVING IN THEN?
13 A. WELL, IT WAS LIKE A HOUSE; AND THEN LIKE A LITTLE
14 COMPLEX WHERE SOMEBODY LIVES NEXT TO IT.
15 Q. SO LIKE TWO PEOPLE LIVE IN THE SAME HOUSE LIKE A
16 DUPLEX OR SOMETHING?
17 A. RIGHT.
18 Q. DO YOU REMEMBER WHAT COLOR THE HOUSE WAS? WHAT DID
19 THE HOUSE LOOK LIKE?
20 A. IT WAS BLUE AND WHITE, AND IT WAS KIND OF SMALL.
21 Q. HOW MANY ROOMS WERE IN THE HOUSE? HOW MANY
22 BEDROOMS WERE THERE?
23 A. TWO BEDROOMS.
24 Q. DID YOU HAVE YOUR OWN BEDROOM IN THIS HOUSE?
25 A. NO.

Minor

- DIRECT/MS. MCDONALD

45

- 1 Q. WHO DID YOU SHARE WITH?
- 2 A. I SHARED WITH MY BROTHER AND SISTER.
- 3 Q. WHO SLEPT IN THE OTHER BEDROOM?
- 4 A. MY MOTHER AND MY FATHER.
- 5 Q. WHICH MOTHER AND WHICH FATHER? CAN YOU CALL THEM
- 6 BY AT LEAST THEIR FIRST NAMES?
- 7 A.
- 8 Q.
- 9 A. YES.
- 10 Q. AND YOU WENT TO ANOTHER SCHOOL DURING SIXTH GRADE
- 11 ALSO. WHAT WAS THE OTHER SCHOOL, YOU SAID?
- 12 A. CLAY HILL ELEMENTARY.
- 13 Q. WHERE IS CLAY HILL?
- 14 A. IN RIDGEVILLE.
- 15 Q. DID YOU LIVE IN ANOTHER HOUSE WHEN YOU WENT TO CLAY
- 16 HILL ELEMENTARY IN RIDGEVILLE?
- 17 A. YES.
- 18 Q. WHERE WAS THAT HOUSE?
- 19 A. THAT HOUSE WAS ON CAMPBELL THICKET ROAD.
- 20 Q. CAMPBELL THICKET ROAD?
- 21 A. YES.
- 22 Q. AND WAS THAT A HOUSE OR A TRAILER HOUSE OR AN
- 23 APARTMENT, OR WHAT KIND OF HOUSE WAS THAT?
- 24 A. A HOUSE.
- 25 Q. WHAT DID IT LOOK LIKE?

Minor

46

- DIRECT/MS. MCDONALD

- 1 A. THAT WAS BLUE AND WHITE, BUT IT WAS MORE BLUE.
- 2 Q. MORE BLUE THAN WHITE?
- 3 A. YES.
- 4 Q. WAS THIS HOUSE BIGGER THAN THE OTHER HOUSE OR ABOUT
- 5 THE SAME SIZE, OR WHAT?
- 6 A. THIS HOUSE WAS BIGGER.
- 7 Q. BIGGER? HOW MANY BEDROOMS DID IT HAVE?
- 8 A. IT ALSO HAD TWO BEDROOMS.
- 9 Q. AND, AGAIN, WHERE DID YOU SLEEP IN THIS HOUSE?
- 10 A. I SLEPT WITH MY BROTHER AND SISTER.
- 11 Q. DID YOU GUYS HAVE BUNK BEDS? HOW WERE THE SLEEPING
- 12 ARRANGEMENTS IN THAT ROOM?
- 13 A. THE BUNK BED WOULD BE ON THE LEFT SIDE; AND ONE
- 14 SINGLE BED WOULD BE ON THE RIGHT SIDE.
- 15 Q. SO THERE WERE TWO BUNK BEDS?
- 16 A. NO; IT WAS ONE BUNK BED.
- 17 Q. ONE BUNK BED WITH TWO BEDS ON IT?
- 18 A. YES.
- 19 Q. OKAY. WHO SLEPT IN THE BUNK BEDS?
- 20 A. ME AND MY SISTER.
- 21 Q. WHO SLEPT ON THE TOP, AND WHO SLEPT ON THE BOTTOM?
- 22 A. I SLEPT ON THE TOP, AND SLEPT ON THE
- 23 BOTTOM.
- 24 Q. AND WHO SLEPT IN THE TWIN BED?
- 25 A. MY BROTHER.

Minor

- DIRECT/MS. MCDONALD

47

- 1 Q. DO YOU REMEMBER WHO YOUR FAVORITE TEACHER WAS WHEN
2 YOU WERE AT ALSTON? DID YOU HAVE A FAVORITE
3 TEACHER AT ALSTON?
- 4 A. NO.
- 5 Q. OKAY. WHAT WAS YOUR FAVORITE SUBJECT AT ALSTON?
- 6 A. ENGLISH.
- 7 Q. IS ENGLISH ALWAYS YOUR FAVORITE SUBJECT?
- 8 A. NO; SCIENCE IS.
- 9 Q. SCIENCE IS ONE OF YOUR FAVORITES, TOO?
- 10 A. YES.
- 11 Q. AND AT CLAY HILL, DO YOU REMEMBER A FAVORITE
12 TEACHER THERE?
- 13 A. I ONLY HAD ONE TEACHER.
- 14 Q. WHAT WAS HER NAME OR HIS NAME?
- 15 A. IT WAS MRS. TURNER.
- 16 Q. DO YOU REMEMBER VERY MUCH ABOUT MRS. TURNER? HOW
17 WAS SHE TO HAVE AS A TEACHER?
- 18 A. SHE WAS OKAY.
- 19 Q. OKAY. DO YOU REMEMBER WHAT YOUR FAVORITE SUBJECT
20 AT CLAY HILL WAS?
- 21 A. IT WAS SCIENCE.
- 22 Q. SCIENCE THERE?
- 23 A. YES.
- 24 Q. AND FOR THE SUMMER AFTER THE SIXTH GRADE, WHAT DID
25 YOU DO FOR THAT SUMMER?

Minor

- DIRECT/MS. MCDONALD

48

1 A. THAT SUMMER I WENT WITH MY MOTHER.

2 Q. AND WHEN YOU SAY YOU WENT WITH YOUR MOTHER, WHERE
3 DID Y'ALL GO?

4 A. WE WENT TO NORTH CAROLINA.

5 Q. AND THIS IS THE HOUSE, OR THE HOME, THAT YOU SHARED
6 WITH YOUR MOTHER AND YOUR TWO BROTHERS?

7 A. YES.

8 Q. OKAY. WHERE DID YOU GO TO THE SEVENTH GRADE WHEN
9 THAT SUMMER WAS OVER?

10 A. I STAYED WITH MY MOTHER.

11 Q. WHAT'S THE NAME OF THE SCHOOL YOU ATTENDED IN NORTH
12 CAROLINA THAT YEAR FOR THE SEVENTH GRADE?

13 A. IT WAS KERRINGTON MIDDLE SCHOOL.

14 Q. KERRINGTON MIDDLE SCHOOL?

15 A. YES.

16 Q. AND SINCE SEVENTH GRADE HAS BEEN OVER, HAVE YOU
17 GONE THROUGH ANOTHER SCHOOL YEAR?

18 A. YES; I STAYED AT KERRINGTON FOR EIGHTH GRADE.

19 Q. AND IS EIGHTH GRADE THE SCHOOL YEAR THAT YOU JUST
20 FINISHED THIS PAST SPRING?

21 A. YES.

22 Q. SO YOU'RE IN A SUMMER BETWEEN EIGHTH AND NINTH
23 RIGHT NOW?

24 A. RIGHT.

25 Q. WHERE ARE YOU GOING TO GO TO THE NINTH? DO YOU

Minor

- DIRECT/MS. MCDONALD

49

1 KNOW?

2 A. NO; I'M GOING TO GO BACK TO THE EIGHTH IN LARAMORE.

3 Q. OKAY. SO YOU'RE GOING TO DO EIGHTH GRADE AGAIN?

4 A. UH-HUH. (INDICATING YES.)

5 Q. DO YOU THINK THAT'S A GOOD IDEA?

6 A. UH-HUH. (INDICATING YES.)

7 Q. SO IS THAT GOING TO BE ONE MORE YEAR AT KERRINGTON
8 THEN?

9 A. NO.

10 Q. ARE YOU GOING TO ANOTHER SCHOOL?

11 A. I'M GOING TO GO TO ANOTHER SCHOOL.

12 Q. HOW COME YOU'RE GOING TO GO TO ANOTHER SCHOOL?

13 A. OUT OF DISTRICT.

14 Q. SO YOU GUYS MOVED AGAIN?

15 A. YES.

16 Q. C.J. I WANT TO FOCUS BACK ON WHEN YOU WERE A
17 LITTLE GIRL. CAN YOU REMEMBER WHERE YOU LIVED WHEN
18 YOU WERE ABOUT FIVE AND SIX?

19 A. NO.

20 Q. YOU CAN'T REMEMBER THAT? CAN YOU REMEMBER WHEN YOU
21 WERE ABOUT IN THE THIRD GRADE? CAN YOU REMEMBER
22 WHERE YOU WERE IN SCHOOL THEN?

23 A. THIRD GRADE; I WAS WITH MY FATHER.

24 Q. DO YOU REMEMBER GOING TO FLOWER TOWN ELEMENTARY?

25 A. YES.

Minor

- DIRECT/MS. MCDONALD

- 1 Q. DO YOU KNOW IF THAT'S IN SOUTH CAROLINA OR NORTH
2 CAROLINA?
- 3 A. THAT'S IN SOUTH CAROLINA.
- 4 Q. AND THEN DO YOU REMEMBER LIVING IN VIRGINIA AT ALL?
- 5 A. YES.
- 6 Q. WHO LIVED IN VIRGINIA?
- 7 A. ME, MY BROTHER, AND MY MOTHER.
- 8 Q. AND DID YOU LIVE IN NEW YORK FOR VERY LONG?
- 9 A. WELL, NOT THAT LONG; A YEAR.
- 10 Q. SO YOU'VE LIVED IN SOUTH CAROLINA WITH YOUR DAD ON
11 AND OFF; IS THAT RIGHT?
- 12 A. RIGHT.
- 13 Q. AND YOU'VE LIVED WITH YOUR MOM WHENEVER SHE WAS ON
14 AND OFF; IS THAT RIGHT?
- 15 A. RIGHT.
- 16 Q. AND YOU'VE HAD SIBLINGS EVERYWHERE YOU WERE, BOTH
17 PLACES; IS THAT RIGHT?
- 18 A. RIGHT.
- 19 Q. AND YOU KNOW A SIBLING IS A BROTHER OR A SISTER?
- 20 A. RIGHT.
- 21 Q. I WANT TO TALK ABOUT GOOD TOUCH AND BAD TOUCH. AND
22 I THINK WE'VE DISCUSSED THAT BEFORE, HAVEN'T WE?
- 23 A. YES.
- 24 Q. AND CAN YOU TELL US AN EXAMPLE OF A GOOD TOUCH FOR
25 EXAMPLE?

Minor

- DIRECT/MS. MCDONALD

51

1 A. LIKE A HUG, OR JUST MAINLY SHAKING HANDS OR JUST
2 TALKING.

3 Q. SO IF YOU PLAYED A SOFTBALL GAME AND YOU HIT A HOME
4 RUN AND EVERYBODY WAS HAPPY, AND THE COACH GAVE YOU
5 A PAT ON THE SHOULDER AND SAID, YOU KNOW, "GOOD
6 JOB, Minor WOULD THAT BE A GOOD TOUCH OR A
7 BAD TOUCH?

8 A. A GOOD TOUCH.

9 Q. AND IF YOU WENT AND GOT YOUR HAIR DONE AND THE
10 HAIRDRESSER HAD TO PUT HER HANDS ON YOUR NECK AND
11 STRAIGHTEN YOUR HEAD UP AND YOU KEPT SLUMPING OVER,
12 WOULD THAT BE A GOOD TOUCH OR BAD TOUCH?

13 A. A GOOD TOUCH.

14 Q. NOW, CAN YOU TELL US AN EXAMPLE OF A BAD TOUCH?

15 A. WHEN A PERSON TOUCHES YOUR BODY PART.

16 Q. NOW, IS IT ANY BODY PART, BECAUSE THE SHOULDER IS A
17 BODY PART, ISN'T IT?

18 A. YOUR PRIVATE PARTS.

19 Q. OKAY. AND TELL ME WHAT YOUR PRIVATE PARTS ARE.

20 A. YOUR BREASTS AND YOUR VAGINA.

21 Q. THOSE ARE PRIVATE PARTS ON A GIRL?

22 A. RIGHT.

23 Q. DO BOYS HAVE THE SAME OR DIFFERENT PRIVATE PARTS?

24 A. DIFFERENT.

25 Q. DO YOU KNOW A NAME FOR A BOY'S PRIVATE PART?

Minor

- DIRECT/MS. MCDONALD

52

1 A. PENIS.

2 Q. SAY IT LOUDER.

3 A. PENIS.

4 Q. PENIS?

5 A. YES.

6 Q. SO YOU'VE BEEN TAUGHT THAT IT'S BAD WHEN SOMEBODY
7 TOUCHES YOUR PRIVATE PARTS; IS THAT RIGHT?

8 A. RIGHT.

9 Q. OKAY. AND IN YOUR LIFE, SINCE YOU'VE BEEN A LITTLE
10 GIRL, CAN YOU REMEMBER ANYBODY, OR IF ANYBODY HAS
11 EVER TOUCHED YOU IN A WAY THAT YOU FELT WAS GOOD?

12 A. ALMOST EVERYBODY.

13 Q. OKAY. SO LOTS OF PEOPLE HAVE TOUCHED YOU IN A GOOD
14 WAY?

15 A. YES.

16 Q. HAS ANYBODY EVER TOUCHED YOU IN A WAY THAT YOU
17 THOUGHT WAS BAD?

18 A. JUST MY FATHER.

19 Q. OKAY. NOW, TELL ME EXACTLY WHAT KIND OF TOUCH YOUR
20 FATHER GAVE YOU THAT WAS BAD.

21 A. A SEXUAL TOUCH.

22 Q. AND TELL ME EXACTLY WHAT PART OF YOUR BODY WAS
23 TOUCHED BY YOUR FATHER?

24 A. BOTH PARTS.

25 Q. NAME THEM FOR ME, PLEASE.

Minor

- DIRECT/MS. MCDONALD

53

1 A. BREASTS AND VAGINA.

2 Q. WHAT PART OF HIS BODY DID HE USE WHEN HE TOUCHED
3 YOUR PRIVATE PARTS?

4 A. HIS PENIS.

5 Q. OKAY. TELL ME EXACTLY HOW HE TOUCHED YOUR PRIVATE
6 PARTS WITH HIS PENIS.

7 A. HE WOULD RUB THEM AGAINST MY VAGINA AND TRY TO
8 STICK HIS PENIS INSIDE.

9 Q. DID HE EVER STICK IT INSIDE?

10 A. NOT ALL THE WAY.

11 Q. BUT PART THE WAY, MAYBE?

12 A. YES.

13 Q. IS THAT WHAT YOU'RE TRYING TO SAY?

14 A. YES.

15 Q. CAN YOU REMEMBER HOW IT FELT WHEN HE PUT HIS PENIS
16 INSIDE YOUR PRIVATE PART?

17 A. IT HURT A LITTLE, BUT IT WAS THE FACT THAT IT WAS
18 HURTING THAT MY FATHER DID---

19 Q. DO YOU MEAN IT HURT INSIDE?

20 A. YES.

21 Q. CAN YOU REMEMBER WHAT HOUSE YOU WERE LIVING IN THE
22 FIRST TIME THIS HAPPENED?

23 A. I WAS LIVING ON SIMMONS AVENUE.

24 Q. I THINK THAT'S THE HOUSE THAT YOU TALKED ABOUT
25 EARLIER THAT WAS SMALL AND IT WAS BLUE AND WHITE?

Minor

- DIRECT/MS. MCDONALD

54

- 1 A. YES.
- 2 Q. DO YOU REMEMBER WHAT ROOM OF THE HOUSE IT WAS IN?
- 3 A. HIS.
- 4 Q. HIS ROOM?
- 5 A. YES.
- 6 Q. WAS IT -- WHERE WERE YOU IN THE ROOM? WERE YOU ON
- 7 FLOOR?
- 8 A. IN THE BED.
- 9 Q. IN THE BED?
- 10 A. YES.
- 11 Q. CAN YOU REMEMBER ANYTHING ABOUT THE BED? WHAT SIZE
- 12 WAS THE BED?
- 13 A. PROBABLY KING SIZE.
- 14 Q. WAS IT BIGGER THAN THE BED THAT YOU SLEPT IN?
- 15 A. YES.
- 16 Q. CAN YOU REMEMBER ANYTHING SPECIFIC THAT HAPPENED?
- 17 WHERE WERE YOU? YOU SAID YOU WERE ON THE BED. HOW
- 18 WERE YOU SITUATED? WERE YOU SITTING UP? LYING
- 19 DOWN?
- 20 A. I WAS LYING DOWN.
- 21 Q. WERE YOU LYING DOWN ON YOUR TUMMY OR ON YOUR BACK?
- 22 A. MY BACK.
- 23 Q. AND WHERE WAS YOUR FATHER? HOW WAS HE SITUATED?
- 24 A. HE WAS ON TOP OF ME.
- 25 Q. WAS HE FACING YOU OR LYING DOWN WITH HIS BACK

Minor

- DIRECT/MS. MCDONALD

55

1 FACING YOU?

2 A. HE WAS LYING DOWN FACING ME.

3 Q. AND WHAT HAPPENED AFTER HE LAID DOWN ON TOP OF YOU?

4 A. HE STARTED RUBBING HIS PENIS AGAINST MY VAGINA.

5 Q. AND?

6 A. AND HE WAS RUBBING HIS HAND DOWN THERE; AND HE WAS

7 TRYING TO PUT IT IN, BUT I WOULD NEVER LET HIM.

8 Q. OKAY. DID THAT HAPPEN ONE TIME OR MORE THAN ONE
9 TIME?

10 A. THAT HE TRIED TO PUT IT IN OR---

11 Q. YOU TELL ME.

12 A. HE TRIED TO PUT IT IN ONCE BECAUSE I SAID IT
13 REALLY, REALLY DID HURT. AND OTHER TIMES HE JUST
14 RUBBED IT AGAINST WITH HIS PENIS IN HIS HAND.

15 Q. AND CAN YOU REMEMBER -- DID THE RUBBING THING
16 HAPPEN MORE THAN ONE TIME?

17 A. YES.

18 Q. WOULD YOU SAY -- CAN YOU GIVE US ANY IDEA HOW MANY
19 TIMES? A LOT OF TIMES? A FEW TIMES?

20 A. A LOT.

21 Q. NOW, DO YOU REMEMBER EVER TOUCHING YOUR FATHER'S
22 PRIVATE PART?

23 A. NO.

24 Q. DO YOU REMEMBER WHO WAS IN THE HOUSE WHEN THIS
25 STUFF WOULD GO ON?

Minor

- DIRECT/MS. MCDONALD

- 1 A. MY BROTHERS AND MY SISTER.
- 2 Q. WHERE WOULD ----- BE?
- 3 A. SHE HAD TO BE AT WORK.
- 4 Q. DID SHE WORK OUT OF THE HOME?
- 5 A. UH-HUH. (INDICATING YES.)
- 6 Q. WHERE DID SHE WORK; DO YOU REMEMBER?
- 7 A. AT THAT POINT SHE WORKED AT WINN-DIXIE.
- 8 Q. DO YOU KNOW WHAT SHE DID AT THE WINN-DIXIE?
- 9 A. SHE WAS A PERSON THAT WORKED IN THE DELI.
- 10 Q. WOULD IT BE DAYTIME OR NIGHTTIME, OR DID THIS
- 11 HAPPEN DURING THE DAY AND THE NIGHT?
- 12 A. BOTH TIMES.
- 13 Q. SORRY?
- 14 A. BOTH TIMES.
- 15 Q. BY BOTH TIMES, YOU MEAN IT WOULD HAPPEN WHEN IT WAS
- 16 LIGHT OUTSIDE AND WHEN IT WAS DARK OUTSIDE?
- 17 A. YES.
- 18 Q. OKAY. DO YOU REMEMBER THIS SORT OF THING EVER
- 19 HAPPENING ANYWHERE BUT IN YOUR DAD'S BEDROOM? DID
- 20 IT HAPPEN IN OTHER PARTS OF THE HOUSE?
- 21 A. IN THE LIVING ROOM.
- 22 Q. SAY IT LOUDER FOR ME.
- 23 A. IN THE LIVING ROOM.
- 24 Q. WHERE IN THE LIVING ROOM?
- 25 A. ON THE FLOOR.

Minor

57

- DIRECT/MS. MCDONALD

1 Q. YOU SAID THAT AND : WERE IN THE
2 HOUSE. WHERE WERE THEY?

3 A. THEY WERE IN THE BED ASLEEP.

4 Q. WHEN YOUR FATHER TRIED TO PUT HIS PENIS IN YOUR
5 PRIVATE PART, WAS THAT THE FIRST TIME THAT HAD EVER
6 HAPPENED TO YOU; THAT ANYBODY HAD TRIED TO DO THAT
7 TO YOU?

8 A. YES.

9 Q. AND IF THIS HAD HAPPENED TO YOU WITH SOMEBODY ELSE,
10 DO YOU THINK YOU WOULD REMEMBER IT?

11 A. YES.

12 Q. HAS ANYBODY OF YOUR OWN AGE EVER TOUCHED YOU IN
13 YOUR PRIVATE PARTS?

14 A. NO.

15 Q. HAS YOUR STEPFATHER, MR. MORRIS; DID HE EVER TOUCH
16 YOU THIS WAY?

17 A. NO.

18 Q. DID ANY FRIEND OF YOUR MOTHER'S EVER TOUCH YOU THIS
19 WAY?

20 A. NO.

21 Q. C.J. YOU WENT TO THE DOCTOR AFTER YOU TOLD
22 YOUR MOM ABOUT THIS; RIGHT?

23 A. RIGHT.

24 Q. AND DO YOU REMEMBER THAT THE DOCTOR SAID THAT YOU
25 HAD A MEDICAL SITUATION ON YOUR PRIVATE PARTS AND

Minor

- DIRECT/MS. MCDONALD

1 IT NEEDED TO BE TAKEN CARE OF?

2 A. YES.

3 Q. OKAY. WHAT WAS THAT? WHAT HAPPENED WITH THAT?

4 A. SHE GAVE ME LASER SURGERY.

5 Q. YOU HAD LASER SURGERY?

6 A. YES.

7 Q. DO YOU KNOW WHY YOU HAD TO HAVE LASER SURGERY?

8 A. YES.

9 Q. WHY?

10 A. BECAUSE I HAD GENITAL WARTS.

11 Q. DID YOU EVER FEEL THE GENITAL WARTS ON YOUR OWN?

12 A. YES.

13 Q. AND CAN YOU REMEMBER IF YOU NOTICED THEM BEFORE
14 YOUR FATHER TOUCHED YOU OR AFTER?

15 A. AFTER.

16 Q. AND HOW DID YOU NOTICE THEM THE FIRST TIME?

17 A. I WAS WIPING AND WASHING, AND I WAS JUST NOTICING.

18 Q. AND SINCE YOU HAD THE LASER SURGERY, HAVE YOU HAD
19 ANY MORE PROBLEMS?

20 A. NO.

21 Q. WHO WAS THE FIRST PERSON -- DID YOU EVER TELL

22 ~~ANYONE~~ WHAT WAS GOING ON WHEN SHE WAS AT WORK?

23 A. NO.

24 Q. AND WHY WAS THAT? DO YOU REMEMBER?

25 A. I WAS AFRAID.

Minor

- DIRECT/MS. MCDONALD

59

1 Q. DID YOUR DAD EVER TELL YOU ANYTHING ABOUT THE
2 THINGS THAT WENT ON BETWEEN THE TWO OF YOU WHEN NO
3 ONE ELSE WAS AROUND?

4 A. NO; OTHER THAN HE LOVES ME, AND HE WAS JUST DOING
5 IT OUT OF LOVE.

6 Q. DID HE TELL YOU ANYTHING WOULD HAPPEN IF YOU TOLD
7 PEOPLE ABOUT THIS?

8 A. YES. HE SAID THAT HE WOULD GO TO JAIL AND THAT I
9 WOULD NEVER BE ABLE TO SEE HIM AGAIN.

10 Q. AND DID HE TELL YOU ANYTHING ABOUT GOING TO JAIL
11 AND NOT SEEING HIM AGAIN RECENTLY?

12 A. YES.

13 Q. TELL ME ABOUT THAT.

14 A. YESTERDAY HE SAID HE LOVED ME AND THAT I WILL
15 NEVER, NEVER SEE HIM AGAIN.

16 Q. DOES THAT MAKE YOU SAD?

17 A. YES.

18 Q. Minor WHO WAS THE FIRST PERSON THAT YOU TOLD
19 ABOUT WHAT WAS GOING ON?

20 A. MY BEST FRIEND, JESSIE. (PHONETICALLY SPELLED).

21 Q. IS JESSIE A LITTLE OLDER THAN YOU?

22 A. YES.

23 Q. AND WHAT HAPPENED? DID SHE HELP YOU WITH YOUR
24 SITUATION?

25 A. YES. SHE GOT ME THROUGH IT AND NOT LET ME THINK

Minor

60

- CROSS/MR. DUKES

1 ABOUT IT. AND THEN LIKE WEEKS AFTER THAT SHE TOLD
2 MY MOTHER. SO WHEN I WAS SUPPOSED TO TELL MY
3 MOTHER, SHE WOULD EXPECT IT.

4 Q. DO YOU THINK SHE TRIED TO PREPARE YOUR MOM FOR WHAT
5 YOU WERE GOING TO TELL HER? IS THAT WHAT YOU'RE
6 SAYING?

7 A. YES.

8 Q. DID YOU FINALLY TELL YOUR MOTHER?

9 A. YES.

10 Q. AND THEN THAT'S WHEN YOU WENT TO THE DOCTOR AND
11 TALKED TO THE THERAPIST AND EVERYTHING?

12 A. RIGHT.

13 Q. AND Minor HAVE YOU ALWAYS TRIED TO -- YOU KNOW
14 WHEN YOU SWORE THAT YOU'RE SUPPOSED TO TELL THE
15 TRUTH; RIGHT?

16 A. RIGHT.

17 Q. AND HAVE YOU ALWAYS TOLD THE TRUTH ABOUT WHAT'S
18 HAPPENED WITH YOUR FATHER?

19 A. YES.

20 Q. I DON'T HAVE ANY MORE QUESTIONS RIGHT NOW. I WANT
21 YOU TO ANSWER MR. DUKES' QUESTIONS THE SAME WAY YOU
22 ANSWERED MINE?

23 A. OKAY.

24 CROSS-EXAMINATION

25 BY MR. DUKES:

Minor

61

- CROSS/MR. DUKES

Minor

- 1 Q. YOU KNOW THE LADY SEATED AT THE END OF
2 THE TABLE OVER THERE?
3 A. YES.
4 Q. AND THAT'S RODNEY'S MOTHER?
5 A. YES.
6 Q. AND YOU'VE LIVED A GOOD PORTION OF YOUR LIFE WITH
7 HER, HAVEN'T YOU?
8 A. YES.
9 Q. HAS SHE ALWAYS BEEN GOOD TO YOU?
10 A. YES.
11 Q. WHEN YOU FIRST CAN REMEMBER, YOU WERE LIVING WITH
12 RODNEY AT HIS MOTHER'S?
13 A. RIGHT.
14 Q. AND YOU WENT TO SCHOOL FOR A COUPLE OF YEARS WHILE
15 YOU WERE LIVING WITH THEM; RIGHT?
16 A. YES.
17 Q. AND THEN YOUR FATHER MARRIED GERALDINE WHO'S SEATED
18 NEXT TO HIM, AND YOU LIVED WITH THEM FOR A WHILE,
19 DIDN'T YOU?
20 A. RIGHT.
21 Q. AND THEN YOU WENT OFF TO NEW YORK OR VIRGINIA
22 FIRST?
23 A. I DON'T REMEMBER.
24 Q. DID YOU GO TO ROANOKE, VIRGINIA?
25 A. I WENT THERE.

Minor

62

- CROSS/MR. DUKES

- 1 Q. AND YOU WENT TO SCHOOL THERE FOR A WHILE, DIDN'T
2 YOU?
- 3 A. YES.
- 4 Q. AND WHO ALL LIVED WITH YOU IN VIRGINIA?
- 5 A. MY BROTHERS AND MY MOTHER.
- 6 Q. WEREN'T THERE OTHER PEOPLE IN THE APARTMENT, TOO?
- 7 A. THEY WOULD COME AND STAY FOR WEEKENDS AND VISIT.
- 8 Q. WHO WERE SOME OF THESE PEOPLE?
- 9 A. SOME OF MY MOM'S FAMILY MEMBERS, A LADY, AND TWO
10 MEN. THAT WAS IT.
- 11 Q. TWO MEN?
- 12 A. YES. THEY WERE GUESTS.
- 13 Q. AND WHAT ABOUT -- YOUR MOTHER WAS MARRIED DURING
14 THIS PERIOD OF TIME?
- 15 A. NO, SHE WASN'T.
- 16 Q. AND MR. MORRIS; SHE WAS MARRIED TO A MORRIS AT ONE
17 TIME, WASN'T SHE?
- 18 A. YES.
- 19 Q. WHAT HAPPENED TO HIM?
- 20 A. HE DIED.
- 21 Q. AND YOU MOVED BACK FROM VIRGINIA BACK TO SOUTH
22 CAROLINA?
- 23 A. YES.
- 24 Q. AND THEN YOU WENT BACK TO NEW YORK?
- 25 A. YES.

Minor

- CROSS/MR. DUKES

63

- 1 Q. AND WHO LIVED WITH YOU IN NEW YORK?
- 2 A. MY UNCLE, MY AUNT, AND THEIR KIDS.
- 3 Q. HOW MANY KIDS DID THEY HAVE?
- 4 A. THEY HAD TWO AT THE TIME.
- 5 Q. AND Y'ALL ALL STAYED IN ONE APARTMENT?
- 6 A. IT WAS A HOUSE.
- 7 Q. OKAY. SO IT WAS YOUR AUNT, YOUR UNCLE, AND THEIR
- 8 TWO CHILDREN?
- 9 A. YES.
- 10 Q. AND YOUR MOTHER, YOU, AND---
- 11 A. MY BROTHERS.
- 12 Q. HOW MANY BROTHERS IS IT?
- 13 A. I HAD TWO.
- 14 Q. TWO BROTHERS?
- 15 A. YES.
- 16 Q. THEN YOU CAME BACK TO SOUTH CAROLINA AGAIN?
- 17 A. AFTER -- NO. I WENT TO NORTH CAROLINA.
- 18 Q. OKAY. WELL, LET'S SEE. IN 1994 OR 1995 YOU LIVED
- 19 IN NORTH CAROLINA?
- 20 A. (NO RESPONSE.)
- 21 Q. DO YOU REMEMBER LIVING IN NORTH CAROLINA AND GOING
- 22 TO ADAMS ELEMENTARY SCHOOL?
- 23 A. YES.
- 24 Q. WHERE DID YOU LIVE AT THAT TIME?
- 25 A. I LIVED IN AN APARTMENT WITH MY AUNT.

Minor

- CROSS/MR. DUKES

- 1 Q. WITH YOUR AUNT?
- 2 A. YES.
- 3 Q. YOUR MOTHER?
- 4 A. YES.
- 5 Q. ANYBODY ELSE?
- 6 A. AND MY BROTHERS.
- 7 Q. HOW ABOUT A MAN NAMED MARK MAGWOOD?
- 8 A. WE LIVED WITH HIM AFTER THAT HAPPENED. I CAME TO
- 9 SOUTH CAROLINA.
- 10 Q. DO YOU KNOW MARK MAGWOOD?
- 11 A. YES.
- 12 Q. DOES HE STILL LIVE IN THE APARTMENT WITH YOU?
- 13 A. NO.
- 14 Q. BUT HE DID LIVE WITH YOU IN NORTH CAROLINA?
- 15 A. YES.
- 16 Q. AND WHO IS HE?
- 17 A. HE IS MY MOTHER'S FRIEND.
- 18 Q. HE'S YOUR MOTHER'S FRIEND?
- 19 A. YES.
- 20 Q. DID ANY OTHER OF YOUR MOTHER'S FRIENDS LIVE WITH
- 21 YOU?
- 22 A. NO.
- 23 Q. JUST MR. MAGWOOD?
- 24 A. YES.
- 25 Q. BACK IN THE SIXTH GRADE, YOU WENT TO ALSTON SCHOOL?

Minor

- CROSS/MR. DUKES

65

1 A. ALSTON AND CLAY HILL.

2 Q. YOU WENT TO ALSTON PART OF THE YEAR AND THEN CLAY
3 HILL PART OF THE YEAR?

4 A. YES.

5 Q. A HALF A YEAR AT ALSTON AND A HALF A YEAR AT CLAY
6 HILL. AND DURING THAT PERIOD OF TIME, YOU WERE
7 LIVING WITH YOUR FATHER, RODNEY ELLIOTT?

8 A. YES.

9 Q. AND YOUR STEPMOTHER?

10 A. YES.

11 Q. AND THEY HAVE TWO CHILDREN?

12 A. YES.

13 Q. ; AND THEY LIVED THERE WITH YOU,
14 TOO?

15 A. YES.

16 Q. NOBODY ELSE LIVED THERE, DID THEY?

17 A. NO.

18 Q. AND YOU'RE SAYING DURING THIS PERIOD OF TIME YOUR
19 FATHER MESSED WITH YOU?

20 A. YES.

21 Q. DO YOU REMEMBER TESTIFYING HERE IN THIS COURT
22 BEFORE?

23 A. YES.

24 Q. DIDN'T YOU TELL US DURING THAT---

25 THE COURT: JUST A MINUTE. MR. FOREMAN, GO TO

Minor

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CROSS/MR. DUKES

1 THE JURY ROOM. WE'LL BE BACK WITH YOU IN JUST
2 A MINUTE.

3 (AT THIS TIME JURY RETIRES TO JURY ROOM.)

4 THE COURT: THE SOLICITOR IS TRYING TO MAKE AN
5 OBJECTION. AND I WANTED TO STOP YOU RIGHT
6 THERE. DO YOU HAVE THE TRANSCRIPT OF THE LAST
7 TRIAL?

8 MR. DUKES: NO.

9 THE COURT: ALL RIGHT, SIR. WELL, I ASSUME
10 THAT HER MOTION IS YOU'D HAVE TO IMPEACH HER
11 JUST LIKE ANY OTHER WITNESS. WHAT'S YOUR
12 POSITION ON THAT, SOLICITOR?

13 MS. MCDONALD: YOUR HONOR, MY POSITION FIRST
14 OF ALL IS THAT IT'S NOT APPROPRIATE FOR THIS
15 JURY TO KNOW ABOUT A PRIOR TRIAL.

16 THE COURT: THAT'S CORRECT; AND MR. DUKES
17 ALREADY KNOWS THAT. BUT BESIDES THAT, HE
18 DOESN'T EVEN HAVE THE TRANSCRIPT OF THE OTHER
19 TRIAL. AND HE COULDN'T IMPEACH HER UNLESS HE
20 HAD IT IF HE COULD DO IT. SO KEEP THAT IN
21 MIND. YOU DON'T -- THIS IS A NEW JURY. YOU
22 ASK THIS YOUNG LADY QUESTIONS. LET HER ANSWER
23 YOUR QUESTIONS. AND LET THIS JURY HEAR THE
24 TESTIMONY. THE OTHER TRIAL DOESN'T HAVE
25 ANYTHING TO DO WITH IT UNLESS YOU HAD THAT

Minor

- CROSS/MR. DUKES

67

1 TRANSCRIPT, AND PERHAPS SHOULD BE
2 IMPEACHABLE. ALL RIGHT.

3 MR. DUKES: WELL, YOUR HONOR, SHE HAD CHANGED
4 HER STORY.

5 THE COURT: WELL, I DON'T RECALL. I TRIED THE
6 CASE, AND I DON'T RECALL IT. WHAT SHE'S
7 TELLING ME -- I'LL LISTEN TO IT. BUT JUST
8 FROM MY OBSERVATION, IT SOUNDS LIKE THE SAME
9 THING TO ME. BUT IF SHE CHANGED HER STORY,
10 YOU'D HAVE TO DO IT, IF YOU COULD DO IT, BY
11 IMPEACHING HER WITH THE TRANSCRIPT. ALL
12 RIGHT, SIR. LET'S DON'T TALK ABOUT THE OTHER
13 TRIAL AT ALL. LET THIS JURY WEIGH THIS
14 CHILD'S TESTIMONY. ALL RIGHT. BRING THE JURY
15 IN. SOLICITOR, DO YOU WANT ME TO TRY TO
16 CORRECT THAT; OR WOULD YOU RATHER JUST LEAVE
17 IT ALONE?

18 MS. MCDONALD: AT THIS POINT, YOUR HONOR, I
19 WOULD LIKE TO JUST LEAVE IT ALONE.

20 THE COURT: ALL RIGHT. GO AHEAD.

21 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

22 THE FOREMAN: YOUR HONOR, MAY I APPROACH WITH
23 A QUESTION?

24 THE COURT: YOU CAN'T APPROACH ME, BUT YOU CAN
25 ASK ANY QUESTION.

Minor

- CROSS/MR. DUKES

1 THE FOREMAN: ONE OF THE JURORS HAS REPORTED
2 RECOGNIZING THE DEFENDANT'S MOTHER AT THE
3 TABLE AS A CUSTOMER AT HER BUSINESS.

4 THE COURT: ALL RIGHT. HOW ABOUT STAND UP
5 JUST A MINUTE. (AT THIS TIME JUROR STANDS.)
6 YOU JUST RECOGNIZED THAT THE MOTHER IS ONE OF
7 YOUR CUSTOMERS.

8 THE JUROR: SHE'S A BANK CUSTOMER.

9 THE COURT: A BANK CUSTOMER?

10 THE JUROR: YES, SIR.

11 THE COURT: WOULD THAT KIND YOU FROM GIVING
12 EITHER SIDE A FAIR TRIAL?

13 THE COURT: NO, YOUR HONOR.

14 THE COURT: THANK YOU. JUST HAVE A SEAT. I
15 APPRECIATE THAT INFORMATION. IF YOU'RE IN A
16 SMALL TOWN, VERY OFTEN YOU CAN RECOGNIZE
17 PEOPLE BY FACE AND NOT BY NAME. SO I
18 UNDERSTAND THAT. GO AHEAD, MR. DUKES.

19 MR. DUKES: THANK YOU.

20 CONTINUED CROSS-EXAMINATION

21 BY MR. DUKES:

22 Q. YOU SAID YOUR FATHER TOUCHED YOU INAPPROPRIATELY?

23 A. YES.

24 Q. AND HE DID THAT IN SUMMERVILLE?

25 A. YES; AND IN RIDGEVILLE.

Minor

CROSS/MR. DUKES

69

- 1 Q. AND IN RIDGEVILLE?
- 2 A. YES.
- 3 Q. AND HOW MANY TIMES?
- 4 A. MORE THAN FIVE.
- 5 Q. MORE THAN FIVE?
- 6 A. YES.
- 7 Q. CAN YOU TELL US ON WHAT DATES?
- 8 A. ON WHAT?
- 9 Q. WHERE IT WAS?
- 10 A. BETWEEN WHEN I WAS TEN AND ELEVEN.
- 11 Q. TEN AND ELEVEN?
- 12 A. YES.
- 13 Q. AND WHERE WAS YOUR STEPMOTHER AT THAT TIME?
- 14 A. SOMETIMES SHE'D BE AT WORK.
- 15 Q. AND SHE WORKED AT THE PIGGLY-WIGGLY?
- 16 A. SHE WORKED AT WINN-DIXIE.
- 17 Q. WINN-DIXIE?
- 18 A. YES.
- 19 Q. AND YOU SAID HE TRIED TO PENETRATE YOU ONE TIME?
- 20 A. (NO RESPONSE.)
- 21 Q. WITH HIS PENIS?
- 22 A. YES.
- 23 Q. HE GOT ON TOP OF YOU?
- 24 A. YES, SIR.
- 25 Q. WAS ANYBODY PRESENT THEN?

Minor

- CROSS/MR. DUKES

70

- 1 A. NO.
- 2 Q. THAT WAS IN THE BEDROOM?
- 3 A. YES.
- 4 Q. AND ALSO IN THE LIVING ROOM?
- 5 A. YES.
- 6 Q. AND THE OTHER TWO CHILDREN WERE AT HOME THEN?
- 7 A. YES.
- 8 Q. THAT WAS NIGHT OR DAY?
- 9 A. IT WAS DAYTIME.
- 10 Q. DURING THE DAYTIME?
- 11 A. YES.
- 12 Q. SO IT WAS ALWAYS WHEN SHE WAS AT WORK?
- 13 A. NOT ALWAYS.
- 14 Q. WHAT OTHER TIMES?
- 15 A. OTHER TIMES SHE'D BE IN THE BEDROOM ASLEEP.
- 16 Q. BUT SOMETIMES SHE WAS IN THE HOUSE?
- 17 A. YES.
- 18 Q. DID YOU EVER HOLLER?
- 19 A. NO.
- 20 Q. DID YOU EVER TRY TO TELL ANYBODY?
- 21 A. NOT AT THAT POINT.
- 22 Q. YOU NEVER DID TELL YOUR STEPMOTHER?
- 23 A. NO.
- 24 Q. SOMEONE ELSE WAS ALWAYS IN THE HOUSE?
- 25 A. YES.

Minor

- CROSS/MR. DUKES

71

1 Q. AND YOU FINISHED THE SIXTH GRADE AT CLAY HILL
2 ELEMENTARY?

3 A. YES.

4 Q. AND YOU WENT BACK TO LIVE WITH YOUR MOTHER AFTER
5 THE FIFTH GRADE?

6 A. YES.

7 Q. AND YOU STARTED THE SEVENTH GRADE, I GUESS, UP IN
8 NORTH CAROLINA SCHOOLS?

9 A. RIGHT.

10 Q. AND YOU DIDN'T TELL ANYBODY UNTIL, WHAT, SEPTEMBER
11 OR OCTOBER OF THAT YEAR?

12 A. YES.

13 Q. AND YOU TOLD A LITTLE FRIEND OF YOURS?

14 A. YES.

15 Q. YOU NEVER DID TELL YOUR MOTHER UNTIL THAT FALL?

16 A. LATER ON; YES.

17 Q. AND SINCE THEN HAVE YOU TALKED WITH YOUR FATHER?

18 A. YES; OTHER THAN YESTERDAY.

19 Q. MA'AM?

20 A. YES; OTHER THAN YESTERDAY.

21 Q. AND HOW ABOUT YOUR GRANDMOTHER?

22 A. I SPOKE TO HER OUT IN THE HALLWAY.

23 Q. I'M SORRY; I CAN'T HEAR YOU.

24 A. I SPOKE TO HER IN THE HALLWAY.

25 Q. WHEN; TODAY?

Minor

- CROSS/MR. DUKES

- 1 A. TODAY.
- 2 Q. ARE YOU FRIENDS WITH HER?
- 3 A. YES.
- 4 Q. WOULD YOU LIKE TO GO LIVE WITH HER?
- 5 A. SOMETIME IN MY LIFE; YES.
- 6 Q. HOW DO YOU FEEL ABOUT YOUR FATHER?
- 7 A. I STILL LOVE MY FATHER.
- 8 Q. YOU DON'T HAVE ANY BOYFRIENDS?
- 9 A. NO.
- 10 Q. HOW ARE YOU DOING IN SCHOOL?
- 11 A. OKAY.
- 12 Q. YOU'RE HAVING TO REPEAT THE EIGHTH GRADE?
- 13 A. YES.
- 14 Q. HAVE YOU MOVED -- IN NORTH CAROLINA DID YOU MOVE
- 15 FROM PLACE TO PLACE?
- 16 A. YES.
- 17 Q. DO YOU REMEMBER ABOUT HOW MANY TIMES?
- 18 A. THAT I KNOW OF, THREE.
- 19 Q. THREE TIMES?
- 20 A. THREE OR FOUR.
- 21 Q. FOUR?
- 22 A. YES.
- 23 Q. AND YOU DO REMEMBER LIVING IN VIRGINIA?
- 24 A. YES.
- 25 Q. ROANOKE?

Minor

- CROSS/MR. DUKES

1 A. YES.

2 Q. THAT WAS AROUND THE FOURTH GRADE?

3 A. YES.

4 Q. AND THERE WAS A NUMBER OF PEOPLE IN AND OUT OF THAT
5 APARTMENT?

6 A. IT WAS A HOUSE.

7 Q. A HOUSE?

8 A. YES.

9 Q. A NUMBER OF PEOPLE LIVED THERE?

10 A. YES.

11 Q. AND MARK MAGWOOD; DID HE LIVE WITH Y'ALL FOR A GOOD
12 WHILE?

13 A. YES; BUT NOT IN VIRGINIA.

14 Q. BUT IN NORTH CAROLINA?

15 A. YES.

16 Q. AND HE WAS A FRIEND OF YOUR MOTHER'S?

17 A. YES, SIR.

18 Q. HOW OLD A FELLOW WAS HE; DO YOU KNOW?

19 A. NO.

20 Q. HAS ANYBODY ELSE LIVED WITH Y'ALL?

21 A. IN NORTH CAROLINA?

22 Q. YES.

23 A. OTHER THAN MY FRIEND AND HER MOTHER AND HER SISTER.

24 Q. A FRIEND, HER MOTHER, AND HER SISTER?

25 A. MY BEST FRIEND, ., AND HER MOTHER AND HER

Minor

- CROSS/MR. DUKES

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1 LITTLE SISTER.

2 Q. AND ANY OTHER MALE ADULTS?

3 A. NO.

4 Q. MR. MAGWOOD?

5 A. YES. AT THAT TIME HE WAS NOT LIVING WITH US. WE
6 HAD MOVED.

7 Q. YOU HAD MOVED NOW?

8 A. YEAH; WE HAD MOVED; AND WE WERE LIVING WITH ;
9 MOTHER AND HER SISTER.

10 Q. SO YOU'VE LIVED A NUMBER OF PLACES?

11 A. YES.

12 Q. AND YOU'VE MOVED PRETTY OFTEN?

13 A. YES.

14 Q. THANK YOU.

15 THE COURT: ANYTHING FURTHER?

16 MS. MCDONALD: NO, YOUR HONOR. I WOULD
17 RESERVE THE RIGHT TO RECALL THIS WITNESS. I
18 MAY RECALL HER. BUT FOR NOW, I HAVE NOTHING.

19 THE COURT: ALL RIGHT. YOU CAN COME DOWN.
20 THANK YOU. WHERE DO YOU WANT HER?

21 MS. MCDONALD: I THINK THAT SHE'D BE MORE
22 COMFORTABLE IN THE BACK WITH THE COMPUTER
23 GAMES.

24 THE COURT: ALL RIGHT. CALL YOUR NEXT
25 WITNESS.

LAURA GUTMAN, M.D. - DIRECT/MS. MCDONALD

1 MS. MCDONALD: DR. GUTMAN; LAURA GUTMAN.

2 THE COURT: COME AROUND, DOCTOR. COME RIGHT
3 UP HERE, PLEASE, MA'AM AND PUT YOUR LEFT HAND
4 ON THE BIBLE AND RAISE YOUR RIGHT HAND FOR ME.

5 - - - - -

6 WHEREUPON,

7 LAURA THURSTON GUTMAN, M.D., WHO AFTER
8 BEING FIRST DULY SWORN TO TELL THE TRUTH,
9 TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MS. MCDONALD:

12 Q. DR. GUTMAN, WHAT DO YOU DO FOR A LIVING?

13 A. I'M A PHYSICIAN.

14 Q. ANY PARTICULAR TYPE OF PHYSICIAN?

15 A. I'M A PEDIATRICIAN. I HAVE TWO MAJOR FIELDS;
16 INFECTIOUS DISEASES AND CHILD MALTREATMENT.

17 Q. AND BEFORE YOU GOT YOUR MEDICAL DEGREE, DID YOU GET
18 AN UNDERGRADUATE DEGREE?

19 A. I HAVE A B.A. IN ENGLISH FROM SCRIPTS COLLEGE.

20 Q. WHAT IS YOUR POST-GRADUATE EDUCATION?

21 A. I HAVE MY M.D. DEGREE FROM STAMFORD UNIVERSITY IN
22 CALIFORNIA. AND THEN MY RESIDENCY WAS DONE AT THE
23 UNIVERSITY OF WASHINGTON IN SEATTLE. AND MY
24 FELLOWSHIP WAS DONE AT THE UNIVERSITY OF WASHINGTON
25 ALSO.

LAURA GUTMAN, M.D. - DIRECT/MS. MCDONALD

1 Q. WHAT IS A FELLOWSHIP? IS THAT A MORE FOCUSED TYPE
2 RESIDENCY?

3 A. THAT'S FOLLOWING YOUR RESIDENCY WHICH MY RESIDENCY
4 WAS IN PEDIATRICS. YOU GO THROUGH MEDICAL SCHOOL
5 WHICH IS FOUR YEARS. THEN YOU GO THROUGH YOUR
6 RESIDENCY AND PEDIATRICS WHICH WAS THREE YEARS.
7 AND THEN AFTER THAT, YOU'RE CERTIFIED IN GENERAL
8 PEDIATRICS. AND THEN AFTER THAT IF YOU'RE STUDYING
9 SOME PARTICULAR SUB-SPECIALTY; AND FOR ME IT WAS
10 INFECTIOUS DISEASES; YOU GO THROUGH A FELLOWSHIP.
11 AND SO I FINISHED THAT; AND ALSO AT THE UNIVERSITY
12 OF WASHINGTON; AND THEN CAME TO -- I JOINED THE
13 FACULTY AT THE UNIVERSITY OF WASHINGTON IN SEATTLE;
14 AND THEN IN 1971 MOVED TO DUKE WHERE I JOINED THE
15 FACULTY.

16 Q. AND IN ADDITION TO BEING ON THE FACULTY AT DUKE
17 UNIVERSITY, YOU'RE ALSO PRACTICING MEDICINE; IS
18 THAT RIGHT?

19 A. YES; THAT'S CORRECT.

20 Q. WHAT CLINIC OR HOSPITAL OR MEDICAL CARE FACILITY
21 HAVE YOU PRIMARILY BEEN AFFILIATED WITH?

22 A. IT'S BEEN THROUGH DUKE UNIVERSITY; TWO MAIN CLINICS
23 ONE; OR WHICH WAS THE INFECTIOUS DISEASES CLINIC
24 WHICH I'M STILL AFFILIATED WITH. AND THEN THE
25 CHILD PROTECTION SERVICE WHICH WAS ESTABLISHED IN

LAURA GUTMAN, M.D. - DIRECT/MS. MCDONALD

1 THE EARLY SEVENTIES AT DUKE. I JOINED IT WHEN IT
2 WAS ESTABLISHED AND WORKED WITH THEM THROUGH THE
3 EARLY NINETIES -- I'VE FORGOTTEN EXACTLY WHEN --
4 WHEN I JOINED THE CHILD PROTECTION TEAM IN A MORE
5 FULL-TIME WAY. AND THEN I BECAME THE DIRECTOR OF
6 THE CHILD PROTECTION TEAM.

7 Q. OKAY. AND AS OF NOW HOW LONG HAVE YOU BEEN THE
8 DIRECTOR? ARE YOU NOT ANY MORE IN YOUR WORK RIGHT
9 NOW?

10 A. I RESIGNED FROM THAT POSITION AND RETURNED TO
11 INFECTIOUS DISEASES JUST OVER A YEAR AGO. I WAS
12 THE DIRECTOR FOR, I THINK, ABOUT THREE YEARS. AND
13 I WAS WORKING ON A REASONABLY FULL-TIME BASIS FOR
14 ABOUT FIVE OR SIX YEARS. AND THEN PRIOR TO THAT
15 I'VE BEEN WORKING WITH THEM FOR ABOUT TEN YEARS.

16 Q. OKAY. AND THE WHOLE TIME YOU'VE BEEN ON THIS
17 FACULTY AT DUKE UNIVERSITY?

18 A. YES; THAT'S RIGHT.

19 Q. OKAY. AND AS PART OF YOUR BEING ON THE FACULTY AT
20 DUKE UNIVERSITY, DO YOU TEACH MEDICAL STUDENTS?

21 A. I TEACH MEDICAL STUDENTS. WE TEACH RESIDENTS. OF
22 COURSE WE HAVE OTHER FELLOWS. AND THEN IN ADDITION
23 TO THAT, BECAUSE MY FIELD IN INFECTIOUS DISEASES IS
24 FOCUSED AMONG OTHER THINGS ON SEXUALLY TRANSMITTED
25 DISEASES IN CHILDREN, I SIT ON A NUMBER OF NATIONAL

LAURA GUTMAN, M.D. - DIRECT/MS. MCDONALD

- 1 COMMITTEES AND SOCIETIES WORKING ON THAT. AND IN
2 PARTICULAR I'M THE PEDIATRICIAN WHO ADVISES THE
3 CENTER FOR DISEASE CONTROL ON THE RECOMMENDATIONS
4 FOR THE EVALUATION AND TREATMENT OF SEXUALLY
5 TRANSMITTED DISEASES IN CHILDREN. SO THIS IS THE
6 NATIONAL STANDARDS WHICH ARE USED. I'M THE
7 PEDIATRICIAN THAT WORKS EVERY -- THESE ARE UPDATED
8 EVERY FOUR YEARS, AND I'M THE PEDIATRICIAN THAT
9 ORGANIZES THAT.
- 10 Q. SO, IN OTHER WORDS, PEOPLE COME TO YOU FOR ADVICE
11 ON DEVELOPING STANDARDS ABOUT PROTOCOLS AND WHATNOT
12 FOR TREATING OR EVALUATING CHILDREN WITH SEXUALLY
13 TRANSMITTED DISEASES?
- 14 A. THAT'S CORRECT. I'VE WRITTEN MOST OF THE CHAPTERS
15 IN MOST OF THE MAJOR TEXTBOOKS ON THIS ISSUE.
- 16 Q. IN ADDITION TO BEING PUBLISHED IN TEXTBOOKS, HAVE
17 YOU ALSO PUBLISHED IN JOURNALS?
- 18 A. YES; WIDELY.
- 19 Q. AND I WOULD ASSUME THAT YOUR OPINIONS AND YOUR WORK
20 IS BASED ON YOUR OWN RESEARCH AS WELL AS STUDYING
21 THE WORK OF OTHERS?
- 22 A. YES. I HAVE ABOUT 70 PUBLISHED ARTICLES ON THE
23 FIELD OF INFECTIOUS DISEASES AND S.T.D.S AND
24 MALTREATMENT AND RELATED ISSUES; PLUS A LARGE
25 NUMBER OF TEXT AND CHAPTERS AND THINGS LIKE THAT.

LAURA GUTMAN, M.D. - DIRECT/MS. MCDONALD

1 Q. OKAY. LET'S GO BACK TO THE CHILD PROTECTION TEAM
2 AT DUKE UNIVERSITY. WHAT'S THE MENTION OF THE
3 CHILD PROTECTION TEAM? WHY WAS IT ESTABLISHED IN
4 THE -- I THINK YOU SAID THE EARLY SEVENTIES?

5 A. IT WAS IN THE EARLY SEVENTIES. IT WAS ESTABLISHED
6 AS PART OF THE -- THERE'S A GROUP CALLED GENERAL
7 PEDIATRICS IN THE PEDIATRIC DEPARTMENT; AND THAT'S
8 LIKE A PEDIATRIC CLINIC FOR WHOEVER COMES IN; YOU
9 KNOW, BRING YOUR CHILDREN IN THERE FOR THEIR EAR
10 INFECTIONS AND THEIR STOMACH ACHES AND, YOU KNOW,
11 WHATEVER. AND IT WAS NOTICED THAT THERE WAS A
12 GROUP OF CHILDREN SEEN IN THAT CLINIC WHO HAD BEEN
13 MALTREATED. THESE WERE CHILDREN WHO HAD BEEN
14 BEATEN UP OR WERE BEING NEGLECTED, OR IN SOME WAY
15 THEY WERE NOT BEING ADEQUATELY TAKEN CARE OF BY
16 THEIR PARENTS OR CARE TAKERS. AND IT APPEARED THAT
17 THE CARE OF THESE CHILDREN WAS PARTICULARLY
18 DIFFICULT; AND BY LEAVING IT TO SORT OF GENERAL
19 PEDIATRICS, IT DIDN'T SEEM TO BE VERY SUCCESSFUL.
20 THEY NEEDED A LOT MORE FOLLOW-UP. AND OVER A
21 PERIOD OF A FEW YEARS IN THE SEVENTIES, IT WAS
22 CLEAR THAT THIS WAS BECOMING A FIELD IN WHICH THERE
23 WAS INFORMATION; THERE WERE TECHNIQUES THAT SHOULD
24 BE USED. AND IT WAS BECOMING SORT OF A LITTLE
25 SPECIALTY OF ITS OWN. AND, SO, ONE OF THE NURSE

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1 PRACTITIONERS WAS ASKED IF SHE WOULD PLEASE BEGIN
2 TO FORMULATE SOME IDEAS ABOUT A GROUP THAT MIGHT
3 BEGIN TO SEE IF WE COULDN'T TAKE CARE OF THESE
4 CHILDREN A LITTLE MORE EFFECTIVELY. AND SO SHE DID
5 THAT AND INVITED ME AS AN INFECTIOUS DISEASES
6 PERSON TO ADVISE THEM AND BE A PART OF THEIR TEAM
7 WHEN IT WAS ESTABLISHED. SO I WAS VERY HAPPY TO DO
8 THAT, OF COURSE AND VERY ENTHUSED BY THIS. I
9 THOUGHT THIS WAS A BIG IMPROVEMENT. AND THEN IN
10 THE MID EIGHTIES, INSTEAD OF JUST BEING SORT OF A
11 CASUAL PART OF GENERAL PEDIATRICS, IT BECAME A MUCH
12 MORE FOCUSED GROUP WITH ITS OWN LITTLE CLINIC SO
13 THAT IT'S NOT PART OF THE GENERAL CLINIC. IT HAD
14 ITS OWN SPACE. IT HAD IT OWN SECRETARY, ITS OWN
15 SCHEDULING. IT HAD IT OWN SOCIAL WORKERS, OWN
16 PHYSICIAN, AND BECAME RECOGNIZED AS A PARTICULAR
17 SERVICE TO DUKE AND THE CHILDREN WHO WERE SEEN AT
18 DUKE. AND OF COURSE BECAUSE WE SEE CHILDREN FROM
19 ALL AROUND THE SOUTHEAST, CHILDREN WERE REFERRED TO
20 US FROM A WIDE AREA. AND THEN IN THE EARLY
21 NINETIES THERE WAS AN OPPORTUNITY FOR ME TO JOIN IT
22 AND THEN BECOME THE DIRECTOR WHICH I WAS HAPPY TO
23 DO.

24 MS. MCDONALD: YOUR HONOR, AT THIS TIME I
25 WOULD TENDER DR. GUTMAN AS AN EXPERT IN THE

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1 FIELD OF PEDIATRICS WITH A SUB-SPECIALTY IN
2 CHILD SEXUAL ABUSE AND INFECTIOUS VENEREAL
3 DISEASE IN CHILDREN.

4 THE COURT: ANY OBJECTION?

5 MR. DUKES: I HAVE NO OBJECTION TO THAT, YOUR
6 HONOR.

7 THE COURT: THANK YOU. GO AHEAD.

8 Q. DR. GUTMAN, BEFORE WE SPEAK ABOUT THE SPECIFICS OF
9 THIS CASE, I WOULD LIKE FOR YOU TO GIVE US AN IDEA
10 OF THE GENERAL WAY THAT A CHILD IS TREATED WHEN HE
11 OR SHE COMES IN WITH AN ALLEGATION OR COMPLAINING
12 OF HAVING BEEN SEXUALLY ABUSED. WHAT HAPPENS
13 FIRST?

14 A. MOST OF THE CHILDREN WE SEE, WE DON'T SEE ACUTELY.
15 THEY'RE NOT CHILDREN WHO, FOR INSTANCE, HAVE JUST
16 BEEN RAPED AND ARE SEEN IN THE EMERGENCY ROOM.
17 THEY ARE USUALLY REFERRED TO US BECAUSE THE CHILD
18 HAS MADE, OR THE PARENTS HAVE A CONCERN, THAT
19 SOMETHING HAS HAPPENED AT SOME TIME BUT NOT JUST
20 LAST NIGHT. SO WE SEE THEM NOT WHEN THEY HAVE JUST
21 BEEN INJURED USUALLY. SO WE WOULD SEE THEM IN OUR
22 CLINIC. NOW, REMEMBER WE ARE A PEDIATRIC CLINIC,
23 SO THIS IS A MEDICAL SERVICE. AND WE'RE PROVIDING
24 BASICALLY A DIAGNOSIS. BUT THAT'S OUR PRIMARY GOAL
25 IS A DIAGNOSIS OF WHAT HAS HAPPENED TO THE CHILD.

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1 WE WOULD GET THE PREVIOUS MEDICAL HISTORY FROM THE
2 CHILD. WE PULL THE RECORDS; AND IF THE CHILD WAS
3 BEING SEEN FROM SOMEONE ELSE, WE'D BE IN CONTACT
4 WITH THAT DOCTOR REGARDING THE CHILD'S GENERAL
5 HEALTH AND PAST HISTORY. WE WOULD ASK THAT THE
6 CHILD BE BROUGHT BY A CARE TAKER WHO IS THOUGHT TO
7 BE A SAFE PERSON; NOT THE PERPETRATOR -- NOT
8 BELIEVED TO BE THE PERPETRATOR -- AND GET A MEDICAL
9 HISTORY THEN FROM USUALLY THE MOTHER, OR WHATEVER
10 CARETAKER. THEN IN GENERAL THE CHILD IS FIRST
11 INTERVIEWED BY OUR DIAGNOSTIC SOCIAL WORKER. IT IS
12 A SOCIAL WORKER WHO IS ESPECIALLY TRAINED AND
13 SKILLED IN THE CAREFUL COLLECTION OF THE HISTORY
14 FROM THE CHILD AND FROM THE MOTHER ALSO, BUT
15 PARTICULARLY FROM THE CHILD, REGARDING WHAT HAS
16 HAPPENED TO THE CHILD. AND IT'S WHAT WE SOMETIMES
17 CALL A POLY-TRAUMA ASSESSMENT WHICH IS TO SAY WHAT
18 ARE THE CHILD'S LIVING CIRCUMSTANCES, THE CHILD'S
19 SAFETY ISSUES, THE WAYS IN WHICH THE CHILD HAS OR
20 HASN'T BEEN MALTREATED OR INJURED; THINGS THE CHILD
21 FEARS. AND YOU GATHER A FAIRLY WIDE HISTORY FROM
22 THE CHILD, OR FROM THE POINT OF VIEW OF THE CHILD,
23 OF WHAT HAS HAPPENED. THEN FROM THE MOTHER YOU
24 ALSO ARE LOOKING FOR SYMPTOMS THAT THE CHILD HAS
25 HAD BOTH AT HOME AS WELL AS AT SCHOOL THAT THE

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1 PARENTS KNOW ABOUT. AND THEN AFTER THE CHILD HAS
2 BEEN INTERVIEWED, I WOULD DO -- OR THE PHYSICIAN
3 WHO IS THERE -- WOULD DO A PHYSICAL EXAMINATION
4 WITH GENERAL PEDIATRICIANS. SO YOU DO A COMPLETE
5 PHYSICAL EXAMINATION OF THE CHILD. YOU'RE LOOKING
6 FOR ALL FINDINGS; AND YOU'RE LOOKING FOR PHYSICAL
7 ABUSE AS WELL AS SEXUAL ABUSE ISSUES. AND AFTER
8 YOU DO A GENERAL PHYSICAL, YOU WOULD THEN DO A MORE
9 TARGETED SPECIFIC EXAMINATION OF THE CHILD'S ANAL
10 AND GENITAL AREA USUALLY INCLUDING A COLPOSCOPE
11 WHICH IS A NICE OBJECT. IT ALLOWS YOU TO HAVE
12 BETTER VISUALIZATION. YOU CAN SEE BETTER. IT
13 GIVES YOU MAGNIFICATION AND GOOD LIGHTING SO THAT
14 YOU CAN SEE THE CHILD'S GENITAL AREA MUCH MORE
15 CLEARLY THAN YOU COULD JUST WITH AN INSPECTION; AND
16 ALSO THE ANAL AREA. AND THEN, DEPENDING UPON WHAT
17 THE FINDINGS ARE AND THE HISTORY IS, YOU MIGHT
18 EXAMINE THE CHILD ALSO FOR SEXUALLY TRANSMITTED
19 DISEASES INCLUDING BOTH CULTURES AND BLOOD-WORK
20 THAT YOU MIGHT FEEL THAT YOU SHOULD DO. AND THEN
21 WHEN YOU'RE FINISHED WITH THAT, WHAT WE WOULD
22 NORMALLY DO IS TO COORDINATE THE FINDINGS OF THE
23 DIAGNOSTIC SOCIAL WORKER AND THE PHYSICIAN. WE
24 USUALLY LET THE PARENTS KNOW WHAT OUR FINDINGS ARE
25 UNLESS WE HAVE SOME REASON FOR WITHHOLDING IT.

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1 SOME CHILDREN HAVE MORE THAN ONE INTERVIEW. THAT'S
2 VERY COMMON FOR A CHILD TO HAVE SEVERAL
3 INTERVIEWS. AND OFTEN WE WOULD WITHHOLD OUR
4 INFORMATION UNTIL THE END OF THE INTERVIEW WHEN WE
5 FELT THAT WE HAD AS COMPLETE AN UNDERSTANDING AS WE
6 COULD GET OF WHAT HAD HAPPENED. AND THEN,
7 DEPENDING UPON THE CIRCUMSTANCES, WE MIGHT -- IF
8 THE CHILD ALREADY DOESN'T HAVE A LOCAL SOCIAL
9 WORKER INVOLVED IN THE SITUATION, IF WE FELT THAT
10 THERE WERE CONCERNS, WE WOULD INVOLVE THE SOCIAL
11 WORKER AND LAW ENFORCEMENT IF WE FELT THAT A
12 CRIMINAL ACT HAD OCCURRED.

13 Q. YOU MENTIONED EARLIER THAT YOUR GOAL IS TO COME TO
14 A DIAGNOSIS?

15 A. RIGHT.

16 Q. AS NEAR AS HUMANLY POSSIBLE?

17 A. RIGHT.

18 Q. ARE THERE DIFFERENT DEGREES OF DIAGNOSES IN THE
19 FIELD OF CHILD SEXUAL ABUSE? ARE THERE DIFFERENT
20 LEVELS OF CERTAINTY?

21 A. YES. WE HAVE FOUR BASIC DIAGNOSES. AND MOST
22 EVALUATIONS CAN FIT INTO ONE OF THEM. EACH OF THE
23 DIAGNOSTIC CATEGORIES ARE VERY WELL DEFINED. WE'VE
24 WRITTEN THEM OUT, YOU KNOW, WHAT IT TAKES TO FIT
25 INTO THE VARIOUS CATEGORIES. ONE DIAGNOSTIC

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1 CATEGORY IS CONFIRMED; CONFIRMED MALTREATMENT. AND
2 THAT MEANS THAT WE FEEL THAT THERE IS A VIRTUAL
3 CERTAINTY FROM THE MEDICAL POINT OF VIEW THAT THE
4 CHILD HAS BEEN MISTREATED IN WHATEVER WAY THAT
5 WE'RE EXAMINING THE CHILD FOR. THE SECOND CATEGORY
6 IS SUSPECTED. AND BY SUSPECTED WE FEEL THAT IT IS
7 VERY LIKELY THAT THERE HAS BEEN A MALTREATMENT BUT
8 THAT THERE IS SOME LEVEL OF POSSIBILITY THAT THERE
9 IS ANOTHER EXPLANATION FOR THE FINDINGS. THE THIRD
10 LEVEL IS AN UNKNOWN. THAT INCLUDES SITUATIONS IN
11 WHICH THERE ARE REASONS TO BE CONCERNED ABOUT THE
12 CHILD'S WELFARE BUT THAT WE REALLY DON'T HAVE
13 ENOUGH EVIDENCE TO FEEL THAT WE CAN HAVE ANY LEVEL
14 OF CERTAINTY ABOUT EXACTLY WHAT HAS HAPPENED. AND
15 THE FOURTH IS NO EVIDENCE IN WHICH WE FEEL THAT
16 THERE HAS BEEN AN ADEQUATE EXPLANATION FOR THE
17 CONCERNS AND THAT MALTREATMENT IS A VERY UNLIKELY
18 EXPLANATION, AND THAT WE FEEL THAT THE CHILD IS
19 SAFE. THE FIRST TWO CATEGORIES SUSPECTED AND
20 CONFIRMED ARE ONES IN WHICH WE WOULD ALWAYS REFER
21 THE CHILD TO THE COUNTY DEPARTMENT OF SOCIAL
22 SERVICES FOR FURTHER ASSISTANCE IN MANAGING. IT'S
23 WHAT WE CALL REPORTING THE CHILD. WE WOULD ALWAYS
24 REPORT THE CHILDREN IN THE CONFIRMED AND SUSPECTED
25 CATEGORY. THE UNKNOWN CATEGORY, WE WOULD NORMALLY

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1 COUNSEL THE CARETAKER ABOUT HOW THEY MIGHT TRY TO
2 GET MORE INFORMATION, PROVIDE FOR BETTER SAFETY,
3 AND WHAT WE THINK THEY MIGHT DO TO IMPROVE THE
4 CHILD'S LIFE.

5 Q. DR. GUTMAN, TURNING TO THE CASE THAT WE'RE HERE FOR
6 TODAY, THE CHILD'S NAME IS ^{Minor}
7 DURING YOUR WORK AT DUKE UNIVERSITY AT THE CHILD
8 PROTECTION TEAM, DID YOU HAVE OCCASION TO TREAT AND
9 EXAMINE ^{Minor}

10 A. YES, I DID.

11 Q. WHAT WAS THE DATE THAT YOU MET WITH ^{C.J.}

12 A. I MET ^{Minor} ON 10/17/96, OCTOBER THE 17TH,
13 1996, AND OCTOBER THE 22ND, 1996.

14 Q. WHAT OCCURRED THE FIRST DAY, THE 10/17?

15 A. ON 10/17 I BASICALLY MET HER. ON THAT DAY SHE WAS
16 HAVING A MENSTRUAL PERIOD, AND I INTRODUCED MYSELF,
17 AND WE DISCUSSED THAT SHE WAS HAVING HER PERIOD
18 THAT DAY. AND WE AGREED THAT I WOULD SEE HER BACK
19 THE NEXT WEEK AND THAT WE'D HAVE A PHYSICAL
20 EXAMINATION ON THAT DAY. SO SHE AGREED WITH THAT.

21 Q. SO THEN YOU DID YOUR PHYSICAL EXAM ON OCTOBER THE
22 22ND?

23 A. THAT'S CORRECT.

24 Q. HOW OLD WAS ^{Minor} ON THE DATE THAT YOU EXAMINED
25 HER?

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1 A. SHE WAS TWELVE YEARS OLD.

2 Q. AND I BELIEVE YOUR INFORMATION IS THAT HER BIRTHDAY
3 IS IN AUGUST?

4 A. MY RECORD SAYS

5 Q. OKAY.

6 A. SO SHE WAS JUST OVER TWELVE.

7 Q. OKAY. AND DID YOU DO THE EXAM ON Minor THE
8 PHYSICAL EXAM THAT YOU'VE ALREADY DESCRIBED FOR THE
9 JURY?

10 A. YES.

11 Q. OKAY. AND I BELIEVE AT THAT TIME SHE HAD ALREADY
12 BEEN INTERVIEWED BY JEANIE---

13 A. SHE HAD ALREADY SEEN JEANIE; THAT'S RIGHT.

14 Q. OKAY. TELL THE JURY A LITTLE BIT ABOUT -- AND DR.
15 GUTMAN, IT MAY HELP YOU WHEN WE TALK ABOUT YOUR
16 FINDINGS IF YOU'D ILLUSTRATE THEM FOR THE JURY.
17 WOULD YOU FEEL COMFORTABLE DOING THAT FOR THEM?

18 A. I WOULD.

19 Q. OKAY. I'VE GOT A COUPLE OF PENS.

20 A. MAYBE I SHOULD DESCRIBE IN GENERAL HOW WE DO A
21 GENITAL EXAM.

22 Q. OKAY.

23 A. THIS ISN'T THE WAY ADULT WOMEN ARE EXAMINED. WE
24 DON'T USE A SPECULUM, AND WE DON'T DO ANY INSERTING
25 OF ANY DEVICES FOR CHILDREN. THIS IS AN

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1 INSPECTION. IT'S AN EXTERNAL INSPECTION OF THE
2 GENITAL AREA OF CHILDREN SO THAT IT DOESN'T HURT
3 CHILDREN TO DO THE EXAMINATION. WHAT WE NORMALLY
4 DO IS, OF COURSE, IS TO DESCRIBE TO THE CHILD WHAT
5 WE'RE GOING TO DO. WE HAVE A POLICY THAT WE NEVER
6 DO A FORCED EXAMINATION; SO IF THE CHILD CAN'T
7 COOPERATE, THEN WE DON'T PROCEED. WE DON'T DO AN
8 EXAMINATION IF A CHILD IS OBJECTING. SO WE EXPLAIN
9 TO THE CHILD WHAT WE'RE GOING TO DO. WE SHOW THE
10 CHILD THE COLPOSCOPE. IT'S LIKE A LITTLE
11 MICROSCOPE. IT'S GOT TWO EYE PIECES; AND YOU CAN
12 LOOK THROUGH IT AND SEE. SO WE ALWAYS HAVE THE
13 CHILD LOOK THROUGH AND, YOU KNOW, MAYBE LOOK AT
14 THEIR HAND OR A RING OR SOMETHING LIKE THAT SO THEY
15 CAN SEE WHAT IT'S GOING TO DO. AND THEN WE EXPLAIN
16 THE POSITIONS. THERE ARE TWO POSITIONS THAT WE
17 EXAMINE CHILDREN IN. ONE IS SUPINE WHERE THEY'RE
18 LYING ON THE EXAMINING TABLE ON THEIR BACK WITH
19 THEIR KNEES APART SO THAT YOU CAN SEE THE GENITAL
20 AREA. AND THAT ALLOWS YOU TO SEE CERTAIN
21 STRUCTURES VERY WELL. YOU CAN SEE INTO THE VAGINAL
22 VAULT. AND YOU CAN SEE THE EXTERNAL STRUCTURES
23 WHICH I'LL DESCRIBE IN A MINUTE. AND THEN WE HAVE
24 THE CHILDREN ON THEIR KNEES SO THAT -- WHAT WE CALL
25 A KNEE/CHEST WITH THEIR KNEES SORT OF TUCKED UP AND

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1 THEIR BUTT UP. AND EVERYBODY DOESN'T LIKE TO DO
2 THAT. BUT IT SEEMS -- YOU KNOW, IT WOULD APPEAR TO
3 BE A -- IT'S SORT OF A HUMILIATING POSITION. BUT
4 THE REASON FOR THAT IS BECAUSE THERE ARE CERTAIN
5 STRUCTURES IN THE VAGINAL AREA WHICH YOU CAN ONLY
6 SEE WHEN YOU'RE IN THAT POSITION. SO WE, OF
7 COURSE, HAVE THE DOOR LOCKED AND THIS IS VERY
8 PRIVATE. AND IF THE CHILDREN WANT DRAPES, THEY
9 HAVE DRAPES. AND THEY HAVE WHOEVER THEY WANT WITH
10 THEM IN THE EXAMINATION. IF THEY WANT THEIR MOTHER
11 OR WHOEVER, SHE ACCOMPANIES THEM ALSO.

12 Q. OKAY. AND IS THAT THE SAME SORT OF EXAM THAT YOU
13 WOULD HAVE DONE WHEN YOU SAW ^{Minor}

14 A. YES; THAT'S RIGHT.

15 Q. AND AFTER YOU EXAMINED ^{Minor} VAGINAL
16 STRUCTURES, DID YOU OBSERVE ANYTHING ABOUT HER
17 STRUCTURES THAT WENT INTO YOUR DIAGNOSIS?

18 A. YES. THERE WERE TWO MAJOR PARTS OF THE DIAGNOSIS.
19 ONE IS THAT SHE HAD CHANGES IN THE GENITAL
20 STRUCTURES WHICH INDICATED THAT SHE HAD HAD
21 PENETRATED TRAUMA TO THE VAGINAL AREA WHICH I'LL
22 DESCRIBE IN A MINUTE. AND THEN IN ADDITION TO
23 THAT, SHE HAD GENITAL WARTS WHICH IS A SEXUALLY
24 TRANSMITTED DISEASE. SO SHE HAD TWO BIG FINDINGS
25 THAT WERE VERY NOTABLE.

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1 Q. OKAY. WHAT IN PARTICULAR -- LET'S GO AHEAD AND
2 MOVE OVER HERE IF YOU WOULD AND DRAW. FIRST, IF
3 YOU'LL ILLUSTRATE FOR US THE NORMAL VAGINAL
4 STRUCTURES OF A CHILD, A FEMALE CHILD.

5 A. C.J. BY THE WAY, IS A MATURING YOUNG GIRL SO
6 BECAUSE AS YOU KNOW SHE'S BEEN HAVING MENSTRUAL
7 PERIODS ALREADY; HAD JUST STARTED. AND YOUR
8 GENITAL STRUCTURES CHANGE A LITTLE BIT WITH
9 MATURITY. SO YOU HAVE TO ALWAYS TAKE THAT INTO
10 ACCOUNT. SO IF THIS IS THE TABLE HERE; AND THIS IS
11 HER ANAL AREA HERE. (INDICATING.) SHE'S GOT HER
12 LEGS UP TO THE SIDE LIKE THIS. SO, IF YOU'RE
13 LOOKING AT HER LIKE THIS, WHAT YOU SEE IS -- THIS
14 IS CALLED THE LABIA MAJORA HERE. THIS IS SORT OF
15 THE OUTSIDE STRUCTURES THAT USUALLY SORT OF FIT
16 TOGETHER IF YOU'RE STANDING UP. THIS IS THE
17 OUTSIDE TISSUE HERE. (INDICATING.) AND WHEN YOU'RE
18 IN THIS POSITION, WHAT YOU DO IS YOU'RE GLOVED; AND
19 THE DOCTOR HOLDS THESE TWO PIECES OF TISSUE AND
20 SORT OF PULLS GENTLY; AND THAT ALLOWS THESE TISSUES
21 TO OPEN UP SO THAT YOU CAN SEE THE INNER
22 STRUCTURES. SO I'M DRAWING THIS AS IF I HAVE THIS
23 TRACTION SO THAT I'M ABLE TO SEE INSIDE HERE. IF I
24 HADN'T DONE THAT, WHAT YOU WOULD SEE IS YOU WOULD
25 SEE THE TWO LABIA JUST SITTING RIGHT NEXT TO EACH

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1 OTHER LIKE THAT. (INDICATING.) AND THAT WOULD BE A
2 NORMAL POSITION. SO THIS IS THE OUTSIDE LABIA
3 MAJORA. AND HERE IS THE URETHRA. THIS IS WHERE
4 YOU VOID FROM, YOUR URINE. AND THEN YOU HAVE AN
5 OPENING INTO THE VAGINA HERE WITH A HYMEN WHICH
6 SORT OF GUARDS THE OPENING OF THE VAGINA. SO THIS
7 IS A SPACE LOOKING INTO THE VAGINA; AND THIS IS THE
8 HYMEN WHICH IS A VERY THIN, DELICATE PIECE OF
9 TISSUE WHICH EVERY WOMAN HAS ONE -- HAS A HYMEN.
10 AND IT JUST SITS ACROSS THE OPENING OF THE VAGINA.
11 THIS IS -- THERE ARE SEVERAL THINGS ABOUT A HYMEN
12 THAT WE LOOK AT. THIS IS CALLED THE POSTERIOR PART
13 HERE FROM THE OPENING DOWN TO THE TISSUE AT THE
14 BOTTOM HERE; THAT'S THE POSTERIOR PART. THE
15 POSTERIOR PART IS USUALLY MORE WIDER THAN THE
16 LATERAL SIDES, THE TWO SIDES. THAT'S JUST THE WAY
17 IT IS. THIS NORMALLY IS MUCH WIDER. ALSO THE LEFT
18 SIDE IS USUALLY THE SAME AS THE RIGHT SIDE. YOU
19 KNOW HOW PEOPLE ARE SYMMETRIC FROM ONE SIDE TO THE
20 OTHER. SO THAT IF YOU LOOK AT THIS SIDE OF THE
21 HYMEN OVER HERE, IT'S USUALLY THE SAME AS THIS SIDE
22 OF THE HYMEN OVER HERE. AND HYMENS COME IN
23 DIFFERENT SHAPES. SOMETIMES THEY'RE BROADER;
24 SOMETIMES THEY'RE NARROWER. BUT THERE'S BEEN A LOT
25 OF STUDY ON WHAT IS A NORMAL HYMEN IN A LITTLE GIRL

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1 INCLUDING^{Minor} AGE. SO THAT WE KNOW A LOT
2 ABOUT WHAT A NORMAL HYMEN LOOKS LIKE. SO YOU CAN
3 SAY, FOR INSTANCE, HOW WIDE THIS NORMALLY IS, HOW
4 WIDE THE SIDES ARE. AND THERE'S BEEN A LOT OF
5 STUDIES AND EXPERIENCE WITH THAT.

6 Q. OKAY. THIS IS NORMAL? (INDICATING.)

7 A. YES.

8 Q. NOW, WILL CAN YOU ILLUSTRATE FOR THE JURY, PLEASE,
9 AND DESCRIBE AS YOU DO SO WHAT YOUR FINDINGS WERE
10 WHEN YOU EXAMINED^{Minor}

11 A. HERE'S THE TABLE. HERE'S HER ANAL AREA. (WITNESS
12 DRAWS DIAGRAM.) FOR^{Minor} ON THE ANATOMIC
13 SIDE, THIS IS SORT OF THE ENDS OF THE TISSUE HERE.
14 AND THIS IS THE END OF THE HYMEN. SO YOU HAD -- IT
15 WAS ASYMMETRIC. YOU HAD A BIG NOTCH AT WHAT WE
16 CALL FOUR O'CLOCK. WE DESCRIBE THIS IN TERMS OF A
17 CLOCK. SO THIS IS TWELVE O'CLOCK HERE, AND THIS IS
18 SIX O'CLOCK DOWN HERE. AND AT FOUR O'CLOCK HERE,
19 SHE HAD -- WHERE NORMALLY YOU SHOULD HAVE THE
20 HYMENAL TISSUE SHOULD BE GOING ALL THE WAY AROUND
21 HERE -- SHE HAD A BIG BROAD NOTCH HERE GOING ALL
22 THE WAY TO THE EDGE OF VAGINAL VAULT WHERE THERE
23 WAS NO HYMEN. SO BASICALLY THE HYMEN HAS
24 DISAPPEARED IN THIS AREA HERE. (INDICATING.) AND
25 THEN IN THE POSTERIOR PART; REMEMBER I SAID THAT'S

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1 NORMALLY MUCH WIDER THAN A LATERAL PART. FOR
2 Minor THE POSTERIOR PART IS MUCH NARROWER THAN
3 IN THE LATERAL PART. SO BOTH OF THESE THINGS ARE
4 CONSIDERED TO BE ABOUT NORMAL. THIS NOTCH HERE,
5 AGAIN, INDICATES THAT THERE'S BEEN PENETRATIVE
6 TRAUMA TO THIS AREA SUCH THAT IT'S COMPLETELY
7 DISRUPTED THE HYMEN ALL THE WAY TO THE EDGE OF THE
8 VAGINA. AND WHEN THERE IS SEXUAL TRAUMA TO GIRLS,
9 USUALLY THE TRAUMA IS GREATEST TO THE POSTERIOR
10 AREA. AND WE VIEW THIS EROSION TO THE POSTERIOR
11 AREA ALSO TO BE VERY CONCERNING. BUT THIS NOTCH
12 HERE IS REALLY DIAGNOSTIC AND IS NOT FOUND IN
13 NORMAL GIRLS. THEN, THE OTHER THING THAT WAS FOUND
14 FOR HER -- AS I SAID, SHE HAD GENITAL WARTS. SHE
15 HAD WART LESIONS AROUND THE ANUS AND ALSO AROUND
16 THE LABIA ON A NUMBER OF DIFFERENT SITES AROUND
17 HERE. AND GENITAL WARTS ARE A SEXUALLY TRANSMITTED
18 DISEASE; AND SHE HAD THIS DISEASE.

19 Q. AND, AGAIN, YOUR DIAGNOSIS OF Minor EXAM WAS?

20 A. IT WAS ABNORMAL AND CONFIRMING PENETRATIVE TRAUMA.
21 AND ALSO THAT IT WAS DIAGNOSTIC OF THIS SEXUALLY
22 TRANSMITTED DISEASE.

23 Q. DR. GUTMAN, YOU CAN SIT DOWN NOW.

24 A. OKAY; THANK YOU.

25 Q. DR. GUTMAN, YOU TESTIFIED EARLIER ABOUT FOUR LEVELS

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1 OF CERTAINTY?

2 A. YES.

3 Q. DIAGNOSES? AND YOU SAID THAT CONFIRMED THE VIRTUAL
4 CERTAINTY?

5 A. YES.

6 Q. AND THAT WAS YOUR DIAGNOSIS?

7 A. THAT WAS OUR DIAGNOSIS; THAT'S RIGHT.

8 Q. ABOUT THE GENITAL WARTS THAT YOU OBSERVED ON

Minor

9 YOU'VE DONE SOME WORK IN THE FIELD OF
10 THE TRANSMISSION OF GENITAL WARTS. WHAT IS THE
11 AGENT? IS IT A BACTERIAL INFECTION; OR WHAT IS THE
12 AGENT THAT CAUSES GENITAL WARTS TO APPEAR?

13 A. IT'S A VIRUS. IT'S A VIRUS INFECTION. IT'S
14 RESTRICTED TO HUMANS. ONLY HUMANS GET GENITAL
15 WARTS. AND THERE ARE ABOUT 70 DIFFERENT TYPES OF
16 WART VIRUSES THAT HUMANS CAN GET. BUT IN THE
17 GENITAL AREA THERE ARE ONLY REALLY FOUR THAT ARE
18 COMMON. THERE ARE TWO THAT ARE VERY COMMON AND A
19 COUPLE OF OTHERS THAT ARE SOMEWHAT COMMON. AND ALL
20 THE OTHERS ARE RARE IN THE GENITAL AREA.

21 Q. AND OF THE FOUR TYPES OF WARTS THAT APPEAR IN HUMAN
22 GENITAL AREAS; ARE THOSE ALL TRANSMITTED BY
23 CONTACT?

24 A. YES; BY SEXUAL CONTACT.

25 Q. BY SEXUAL CONTACT?

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1 A. YES.

2 Q. SO GENITAL WARTS CAN ONLY BE TRANSMITTED FROM ONE
3 PERSON'S GENITAL AREA TO ANOTHER PERSON'S GENITAL
4 AREA?

5 A. THERE IS -- YOU CAN'T SAY ALL TOGETHER THAT THERE
6 IS NO OTHER MEANS OF TRANSMISSION EVER. THERE ARE
7 OTHER MEANS OCCASIONALLY, AT LEAST IN THEORY. IN
8 ACTUALITY, OTHER MEANS OF TRANSMISSION HAVE NOT
9 BEEN DEMONSTRATED TO OCCUR. AND FROM THE
10 STANDPOINT OF ADULT INFECTIOUS DISEASES, THIS ISSUE
11 NEVER COMES UP AMONG ADULT PATIENTS WITH GENITAL
12 WARTS. THERE IS VIRTUALLY NO EVIDENCE THAT THERE
13 IS ANY OTHER MEANS OF TRANSMISSION OTHER THAN
14 THROUGH SEXUAL CONTACT DURING SEX.

15 Q. AND ARE GENITAL WARTS, IF YOU HAD TO RANK ALL THE
16 S.T.D.S THAT WE KNOW OF AMONG SEXUALLY ACTIVE
17 PEOPLE; HOW COMMON -- ON A SCALE OF COMMON TO RARE
18 -- HOW RARE ARE GENITAL WARTS?

19 A. GENITAL WARTS IS PROBABLY THE MOST COMMON OF THE
20 S.T.D.S. AND SOMEWHERE BETWEEN TWO AND TEN
21 PERCENT OF MOST POPULATIONS OF SEXUALLY ACTIVE
22 ADULTS WHO HAVE MORE THAN ONE PARTNER WILL HAVE
23 GENITAL WARTS. IF YOU ARE A SEXUALLY ACTIVE ADULT
24 WHO HAS HAD MORE THAN ONE PARTNER IN THE LAST FIVE
25 YEARS, THEN AS I SAID SOMEWHERE BETWEEN TWO AND TEN

LAURA GUTMAN, M.D. - DIRECT/MS. MCDONALD

1 PERCENT OF PERSONS WILL HAVE GENITAL WARTS; AND
2 SOMETIMES IT'S MUCH HIGHER THAN THAT ALSO.

3 Q. OKAY. AMONG CHILDREN HOW COMMON IS GENITAL WARTS?

4 A. AMONG NON-ABUSED CHILDREN, YOU HAVE TO -- BECAUSE
5 CHILD ABUSE IS A FAIRLY COMMON EVENT -- YOU HAVE TO
6 SCREEN FOR -- IF YOU'RE LOOKING FOR A NORMAL
7 POPULATION OF CHILDREN BY WHICH YOU MEAN
8 NON-ABUSED, YOU HAVE TO DO A LITTLE BIT OF
9 SCREENING TO TRY TO ELIMINATE CHILDREN WHO ARE
10 LIKELY TO HAVE BEEN ABUSED. IF YOU DO SUCH A
11 SCREENING, YOU FIND THAT THERE ARE -- IT'S ZERO.
12 THIS IS NOT A NORMAL FORM OF CHILDHOOD. THIS IS --
13 NOW, IN CHILDREN UNDER TWO, THERE ARE -- SOME
14 CHILDREN CAN GET THIS VIRUS FROM PASSAGE THROUGH AN
15 INFECTED MATERNAL BIRTH CANAL. SO A BABY WHO IS
16 BORN TO A MOTHER WHO HAS GENITAL WARTS, THAT BABY
17 CAN DEVELOP LESIONS ALSO. AND THOSE LESIONS
18 USUALLY COME UP WITHIN A FEW MONTHS OF BIRTH. AND
19 SOME PEOPLE ALLOW, YOU KNOW, CHILDREN UP TO ABOUT
20 TWO, ALLOW THAT THAT'S AN ADEQUATE EXPLANATION.
21 AND, SO, IF YOU'RE NOT CONSIDERING CHILDREN UNDER
22 AGE TWO, FOR INSTANCE, YOU VIRTUALLY DON'T HAVE ANY
23 INCIDENTS OF GENITAL WARTS IN CHILDREN. IF YOU
24 LOOK AT CHILDREN WHO ARE BEING EVALUATED FOR SEXUAL
25 ABUSE, NOT BECAUSE OF THE WARTS BUT FOR OTHER

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1 REASONS, THE INCIDENTS OF GENITAL WARTS IS PRETTY
2 APPRECIABLE. IT CERTAINLY IS ONE PERCENT. AND IT
3 MAY BE IN SOME GROUPS CONSIDERABLY HIGHER THAN THAT
4 ALSO.

5 Q. SO TO KIND OF BOIL DOWN WHAT YOU SAID?

6 A. YES.

7 Q. YOU DON'T FIND THEM IN NON-ABUSED CHILDREN OVER
8 TWO?

9 A. THAT'S RIGHT. YOU DO NOT FIND THEM IN NON-ABUSED
10 CHILDREN OVER TWO. AND THE INCIDENTS IN CHILDREN
11 WHO ARE BEING EVALUATED FOR SEXUAL ABUSE IS VERY
12 APPRECIABLE. THERE IS ONE THING I SHOULD SAY WHICH
13 IS THAT THEN IF YOU LOOK AT CHILDREN WHO DO HAVE
14 GENITAL WARTS, OLDER CHILDREN WITH GENITAL WARTS;
15 NOT ALL CHILDREN WITH GENITAL WARTS -- YOU CAN'T
16 MAKE THE DIAGNOSIS OF ABUSE IN ALL OF THEM. BUT,
17 OF COURSE, THAT IS ALSO TRUE OF EVERY OTHER S.T.D.
18 I MEAN, OUR ABILITY TO IDENTIFY SEXUAL ABUSE IS NOT
19 100 PERCENT BY ANY MEANS. AND SOME CHILDREN WILL
20 NOT DISCLOSE. AND WHEN THAT HAPPENS, YOU SIMPLY
21 CANNOT MAKE A DIAGNOSIS SOMETIMES. SO, I DON'T
22 MEAN TO SAY THAT EVERY CHILD WITH GENITAL WARTS --
23 YOU CAN'T MAKE THAT DIAGNOSES IN EVERY INSTANCE.
24 Q. BUT WITH Minor SHE DISCLOSED HER HISTORY OF
25 SEXUAL ABUSE; IS THAT RIGHT?

LAURA GUTMAN, M.D. - DIRECT/MS. McDONALD

1 A. SHE DISCLOSED; ABSOLUTELY.

2 Q. AND SHE ALSO HAD SIGNIFICANT -- OR WOULD YOU TERM
3 THEM SIGNIFICANT PHYSICAL FINDINGS?

4 A. YES; I WOULD CONSIDER THE, DEFINING PHYSICAL
5 FINDINGS; YES. SO QUITE APART FROM THE GENITAL
6 WARTS, WE WOULD HAVE MADE THE DIAGNOSIS ALSO OF
7 CONFIRMED SEXUAL ABUSE.

8 Q. NOW, DR. GUTMAN, IS THERE A BLOOD TEST THAT CAN BE
9 DONE TO SCREEN PEOPLE TO SEE IF THEY HAVE GENITAL
10 WARTS?

11 A. NO; THERE IS NOT.

12 Q. OKAY. AND IS THERE -- YOU MENTIONED THE OTHER WAY
13 OF SCREENING FOR S.T.D.S; ONE WAS BLOOD WORK AND
14 THE OTHER WAS CULTURES. CAN YOU DO A CULTURE?

15 A. NOT FOR WARTS. WHEN YOU HAVE ONE SEXUALLY
16 TRANSMITTED DISEASE, YOU SHOULD ALWAYS EXAMINE THE
17 CHILDREN FOR THE OTHER MAJOR SEXUALLY TRANSMITTED
18 DISEASES. YOU KNOW, SYPHILIS, GONORRHEA, AND SO
19 FORTH, H.I.V. SO WE EXAMINED HER FOR THE OTHER
20 DISEASES AND DID NOT FIND ANY OTHER SEXUALLY
21 TRANSMITTED DISEASES.

22 Q. OKAY. SO WHAT IS THE WAY THAT ONE IS DIAGNOSED
23 WITH GENITAL WARTS?

24 A. THE AMERICAN MEDICAL ASSOCIATION HAS JUST HAD A
25 CONSENSUS CONFERENCE. THIS IS A MAJOR NATIONAL

LAURA GUTMAN, M.D. - DIRECT/MS. MCDONALD

1 CONFERENCE TO DISCUSS THE EVALUATION OF EXTERNAL
2 GENITAL WARTS, JUST WHAT^{Minor} HAS. AND THE
3 DIAGNOSIS OF EXTERNAL GENITAL WARTS IS AN ADEQUATE
4 DIAGNOSIS. IT'S MADE BY A MEDICAL PRACTITIONER WHO
5 IS EXPERIENCED IN THE RECOGNITION OF WARTS BY
6 INSPECTION. THAT IS TO SAY LOOKING AT THE WART, A
7 PHYSICIAN WHO IS EXPERIENCED IN THIS AREA BUT DOES
8 NOT HAVE TO DO ANYTHING FURTHER FOR THE DIAGNOSES.
9 YOU HAVE MADE A DIAGNOSIS IF THEY'RE TYPICAL. IF
10 THEY'RE ATYPICAL, THEN YOU CAN DO A BIOPSY; BUT
11 NOTHING ELSE IS REQUIRED.

12 Q. NOTHING ELSE IS REALLY POSSIBLE, IS THERE? I MEAN,
13 IF THERE'S NO BLOOD TEST AND NO CULTURE, YOU
14 COULDN'T---

15 A. YOU COULD CUT ONE OFF. YOU CAN EXCISE IT AND THEN
16 LOOK AT IT PATHOLOGICALLY. AND THAT WOULD BE THE
17 OTHER THING THAT YOU CAN DO.

18 Q. OKAY.

19 A. BUT HER LESIONS WERE TYPICAL; AND THE CONSENSUS
20 CONFERENCE WAS ABSOLUTELY UNANIMOUS THAT THAT IS
21 NOT NECESSARY. A BIOPSY IS NOT NECESSARY UNLESS
22 THEY DON'T LOOK TYPICAL.

23 Q. YOU WOULD SAY, THEN, THAT YOU'RE A -- WE KNOW
24 YOU'RE A MEDICAL PRACTITIONER?

25 A. YES.

LAURA GUTMAN, M.D. - DIRECT/MS. MCDONALD

1 Q. YOU'RE ALSO EXPERIENCED IN RECOGNIZING GENITAL
2 WARTS?

3 A. YES; THAT'S RIGHT.

4 Q. WHAT IS THE TREATMENT FOR A CHILD OR ANYBODY, I
5 GUESS, WITH GENITAL WARTS? WHAT IS DONE TO RESOLVE
6 THE SITUATION?

7 A. THERE ARE A LOT OF TREATMENTS. ALL OF THEM ARE
8 BASED ON DESTRUCTION OF THE SKIN THAT THE WART IS
9 LIVING IN. SO YOU CAN FREEZE THEM OFF; YOU CAN CUT
10 THEM OFF; YOU CAN BURN THEM OFF; AND THERE ARE A
11 BUNCH OF CHEMICALS WHICH BASICALLY ALSO BURN THEM
12 OFF. SO ALL OF THOSE ARE TECHNIQUES. WE'VE HAD
13 EXTENSIVE EXPERIENCE WITH THIS AT DUKE IN
14 CHILDREN. AND BY FAR THE MOST SUCCESSFUL MEANS IS
15 GENERALIZED ANESTHESIA AND REMOVAL USING A LASER
16 WHICH IS A FORM OF BURNING THEM OFF. AND IT'S THE
17 LEAST PAINFUL AND THE MOST ACCEPTED FOR CHILDREN.
18 SO THAT WAS THE TREATMENT THAT WE ARRANGED FOR

19 Minor

20 Q. SO Minor DID HAVE THE LASER TREATMENT?

21 A. SHE HAD THE LASER EXCISION; YES.

22 Q. WOULD YOU SAY NOW THAT SHE'S CURED OF GENITAL
23 WARTS?

24 A. YES. SHE DIDN'T -- ABOUT A THIRD OF CHILDREN WHO
25 HAVE LASER THERAPY, OR ANY OTHER THERAPY, HAVE A

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1 RECURRENCE. SHE DID NOT HAVE A RECURRENCE, AT
2 LEAST NOT THAT I KNOW OF. AND SO, YES; I WOULD SAY
3 THAT SHE'S HAD A GOOD RESPONSE.

4 Q. OKAY. GOOD. LET'S GO BACK TO THE TRANSMISSION OF
5 GENITAL WARTS. YOU SAID THAT IT WAS SEXUAL
6 CONTACT?

7 A. YES.

8 Q. AND IF ^{Minor} GAVE A HISTORY OF SEXUAL ABUSE,
9 WOULD THAT THEN BE THE MOST LIKELY WAY THAT SHE
10 CONTRACTED THIS?

11 A. BY FAR; YES.

12 Q. YOU NOTED THAT SHE HAD SOME AROUND HER ANAL AREA.
13 DOES THAT MEAN THAT SHE WOULD HAVE HAD TO HAVE ANAL
14 INTERCOURSE OR WOULD SIMPLY RUBBING AN INFECTED
15 BODY PART AGAINST THAT AREA BE SUFFICIENT TO
16 TRANSMIT THIS?

17 A. RUBBING WOULD BE SUFFICIENT.

18 Q. SO IF A CHILD GAVE A HISTORY OF SOME PENETRATION
19 WITH A LOT OF RUBBING, WOULD THAT BE A WAY IN WHICH
20 THEY COULD HAVE CONTRACTED THIS?

21 A. THAT WOULD BE STANDARD. THAT WOULD BE THE MOST
22 COMMON WAY.

23 Q. IF A LAW ENFORCEMENT OFFICER WERE INVESTIGATING A
24 CASE WHERE A CHILD WAS DIAGNOSED SIMILAR WITH
25 ^{Minor} WITH SAY HYMENAL FINDINGS DAMAGE AND

LAURA GUTMAN, M.D. - DIRECT/MS. MCDONALD

1 ALSO GENITAL WARTS; WOULD THE PERPETRATOR, THE
2 NAMED PERPETRATOR, NECESSARILY HAVE VISIBLE LESIONS
3 IF ONE WERE TO GO LOOK AT HIM?

4 A. IN A CIRCUMSTANCE LIKE THIS, PARTICULARLY WHERE THE
5 INJURY OR THE CONTACT MAY HAVE OCCURRED AT SOME
6 DISTANT TIME, RELATIVELY DISTANT TIME, THE
7 PERPETRATOR MAY VERY WELL NOT HAVE LESIONS.

8 Q. IS SURGERY THE ONLY WAY THAT LESIONS WILL GO AWAY
9 ON AN INFECTED ADULT, SAY?

10 A. PARTICULARLY IN ADULTS THERE ARE WHAT WE CALL HOST
11 DEFENSES. THAT MEANS THAT YOU PROTECT YOURSELF
12 AGAINST WARTS. AND SMALL WARTS IN PARTICULAR WILL
13 GO AWAY BY THEMSELVES OVER A PERIOD OF SOMETIMES A
14 FAIRLY SHORT PERIOD OF TIME. AND SO MANY PEOPLE
15 WITH WARTS AREN'T TREATED, AND THEY DO GO AWAY.

16 Q. COULD YOU---

17 A. CHILDREN HAVE MORE TROUBLE THAN ADULTS DO.

18 Q. OKAY. IS IT PART OF AN ADULT IMMUNE SYSTEM THAT
19 WOULD HELP TAKE CARE OF AN ADULT?

20 A. YES; DEFINITELY. NORMAL ADULTS HAVE A POWERFUL
21 IMMUNE SYSTEM DIRECTED AT THE CONTROL OF WARTS.
22 AND SMALL LESIONS, AS I SAID, OFTEN ARE -- WELL,
23 REALLY USUALLY -- RESOLVE THEMSELVES WITHOUT ANY
24 MEDICAL INTERVENTION.

25 Q. DOES YOUR RESEARCH, AND DO THE STUDIES IN THIS

LAURA GUTMAN, M.D. - DIRECT/MS. McDONALD

1 AREA; DO THEY INDICATE THAT THERE ARE INFECTED
2 ADULTS IN THE POPULATION THAT ARE NOT REPORTED OR
3 DON'T KNOW -- NEVER KNEW -- THAT THEY HAD THE
4 LESIONS?

5 A. YES. THE MAJORITY OF PEOPLE WHO HAVE THE VIRUS --
6 IF YOU'RE JUST LOOKING FOR VIRUS; NOT LOOKING FOR
7 WART LESIONS THAT YOU CAN SEE -- BUT IF YOU'RE
8 DOING A STUDY FOR THE VIRUS, YOU'LL FIND THAT THE
9 MAJORITY OF PEOPLE WHO HAVE THE VIRUS ARE UNAWARE
10 OF HAVING THE VIRUS AND DON'T HAVE LESIONS THAT YOU
11 CAN SEE.

12 Q. AND ARE THOSE PEOPLE CAPABLE OF TRANSMITTING THE
13 VIRUS?

14 A. YES, THEY ARE.

15 Q. SO IT'S NOT NECESSARILY SO THAT IF A CHILD HAS
16 GENITAL WARTS THAT YOU CAN GO TO THE NAMED
17 PERPETRATOR AND LOOK AT THEM AND MAKE A MATCH?

18 A. NO. THAT'S BEEN -- YOU KNOW, EVERY PEDIATRICIAN
19 WORKING IN CHILD MALTREATMENT ISSUES, YOU KNOW,
20 WOULD LIKE TO BE ABLE TO MATCH UP A POTENTIAL
21 PERPETRATOR WITH A CHILD AND HAVE A PIECE OF
22 EVIDENCE. IN GENITAL WART ISSUES, THIS MATCHING IS
23 PARTICULARLY UNSUCCESSFUL FOR SEVERAL REASONS; ONE
24 OF WHICH AGAIN IS THAT THIS IS NOT AN ACUTE
25 INFECTION WHICH COMES ON SLOWLY, USUALLY WEEKS, AND

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1 SOMETIMES MONTHS AFTER THE CONTACT OCCURRED. AND
2 THE PATIENT, THE CHILD, IS OFTEN UNAWARE OF HAVING
3 ANY LESIONS BECAUSE OF COURSE AS A GIRL SHE CAN'T
4 SEE HER OWN GENITALS ANYWAY; SO SHE HAS NO WAY OF
5 LOOKING AND KNOWING THAT THERE'S A PROBLEM THERE.
6 AND, SO, OFTEN QUITE A LOT OF TIME PASSES BEFORE
7 THE CHILD HAPPENS TO COME TO MEDICAL ATTENTION.
8 DURING THAT PERIOD OF TIME, THAT'S THE SORT OF
9 PERIOD OF TIME IN WHICH THE PERPETRATOR, IF THEY
10 HAVE SMALL LESIONS, ARE VERY LIKELY TO HAVE ALREADY
11 DISAPPEARED. FURTHERMORE THE PERPETRATOR, IF
12 THEY'RE SEXUALLY ACTIVE, MAY HAVE A NEW INFECTION.
13 I MEAN, HE MAY HAVE ANOTHER TYPE WHICH HE'S
14 ACQUIRED IN THE MEANTIME WHICH WOULD FURTHER, YOU
15 KNOW, CONFUSE THE BUSINESS OF TRYING TO MAKE A
16 MATCH. SO NONE OF THE PEDIATRIC SERVICES WORKING
17 IN THIS AREA RECOMMEND THAT MUCH OF AN EFFORT BE
18 MADE TO MATCH A PERPETRATOR WITH A CHILD AS FAR AS,
19 YOU KNOW, LOOKING FOR MATCHING STRAINS. AND THE
20 OTHER THING, OF COURSE, THAT MAKES THIS DIFFICULT
21 IS, AS I SAID, THERE ARE ONLY A FEW TYPES THAT ARE
22 COMMON IN GENITAL WARTS. AND AMONG SEXUALLY ACTIVE
23 ADULTS THEY ARE VERY, VERY COMMON, SO THAT EVEN IF
24 YOU WERE TO FIND THAT THE PRESUMED PERPETRATOR HAD
25 THE SAME LESIONS; WELL, SO DO MANY OTHER PEOPLE,

LAURA GUTMAN, M.D. - CROSS/MR. DUKES

1 VERY MANY OTHER PEOPLE, IN THE COMMUNITY. SO IT
2 WOULDN'T REALLY BE MUCH IN THE WAY OF EVIDENCE
3 RIGHT.

4 | Q. | OKAY.

5 A. YOU KNOW, IT WOULD BE SORT OF LIKE HAVING BROWN
6 HAIR OR SOMETHING. I MEAN, IT JUST DOESN'T HELP
7 DISTINGUISH THEM VERY MUCH FROM ANYBODY ELSE.

8 Q. OKAY. DR. GUTMAN, I DON'T HAVE ANY MORE QUESTIONS
9 FOR YOU AT THIS TIME. WOULD YOU PLEASE ANSWER MR.
10 DUKES' QUESTIONS.

CROSS-EXAMINATION

12 BY MR. DUKES:

13 Q. YOU EXAMINED Minor ON 10/22 OF '96?

14 A. YES; THAT'S CORRECT.

15 Q. HAVE YOU DONE SUBSEQUENT EXAMINATIONS OF HER?

16	A.	NO.

17 Q. JUST THAT ONE TIME?

18 A. JUST THE ONE TIME.

19 Q. BASICALLY YOUR FINDINGS SHOW THERE WAS A NOTCH IN
20 THE HYMEN AT ABOUT FOUR O'CLOCK?

21 A. FOUR O'CLOCK; AND A VERY SIGNIFICANT NARROWING OF
22 THE HYMEN IN THE POSTERIOR AREA AND THE GENITAL
23 WARTS.

24 O. BUT SHE DID HAVE A HYMEN?

25 A. SHE HAD A HYMEN; YES.

LAURA GUTMAN, M.D. - CROSS/MR. DUKES

1 Q. IT WASN'T COMPLETELY RUPTURED?

2 A. IN THE POSTERIOR AREA, THERE WERE REMNANTS OF A
3 HYMEN PRESENT; YES.

4 Q. THAT COULD HAVE BEEN CAUSED BY A NUMBER OF OBJECTS;
5 ANY OBJECT?

6 A. YES. YOU CANNOT SAY WHAT IT WAS -- JUST FROM THE
7 PHYSICAL EXAMINATION, YOU CANNOT SAY WHAT CAUSED
8 THE INJURY.

9 Q. AND GENITAL WARTS; CAN THEY BE INHERITED?

10 A. WELL, NOT EXACTLY INHERITED, ALTHOUGH AMONG INFANTS
11 THEY CAN OCCUR; AS I SAID, IF THE BABY IS BORN
12 THROUGH AN INFECTED BIRTH CANAL, THEY CAN OCCUR.
13 BUT LESIONS THAT OCCUR LATER IN LIFE ARE NOT
14 CONSIDERED TO BE INHERITED; NO.

15 Q. ARE THEY HIGHLY INFECTIOUS?

16 A. NOT HIGHLY INFECTIOUS; NO. FOR INSTANCE, IF YOU
17 LOOK AT COUPLES, YOU FIND THAT THERE ARE A FAIR
18 NUMBER OF COUPLES WHERE ONE PERSON IS INFECTED AND
19 THE OTHER ISN'T. SO IT'S NOT CONSIDERED TO BE
20 HIGHLY INFECTIOUS; NO. I MEAN, THEY ARE
21 INFECTIOUS; BUT IT'S NOT LIKE THE MEASLES OR
22 SOMETHING WHERE AN INFECTED PERSON WOULD DEFINITELY
23 GET IT.

24 Q. IT DOESN'T HAPPEN 100 PERCENT OF THE TIME?

25 A. NO; NOT 100 PERCENT; NO; BY NO MEANS.

LAURA GUTMAN, M.D. - CROSS/MR. DUKES

1 Q. BUT ON MOST OCCASIONS IT DOES?

2 A. WELL, AGAIN, IF YOU -- CHILDREN ARE NOT
3 IMMUNOLOGICALLY VERY PROTECTED. CHILDREN HAVE A
4 GREATER TENDENCY TO BECOME INFECTED WHEN THEY'RE
5 EXPOSED. ADULTS DEVELOP AN IMMUNE RESPONSE TO
6 WARTS IN GENERAL INCLUDING GENITAL WARTS. SO THAT
7 ADULTS HAVE A FAIRLY ROBUST AND STRONG DEFENSE
8 AGAINST SO THAT AS ADULTS BECOME MORE AND MORE
9 EXPERIENCED WITH WARTS, THEY ARE LESS AND LESS
10 LIKELY TO DEVELOP LESIONS IF THEY ARE EXPOSED.

11 Q. THANK YOU VERY MUCH.

12 A. YOU'RE WELCOME.

13 THE COURT: ANYTHING FURTHER?

14 MS. MCDONALD: NO, YOUR HONOR.

15 THE COURT: CAN THE DOCTOR BE EXCUSED? DO YOU
16 HAVE ANY OBJECTION?

17 MR. DUKES: NO OBJECTION; YOUR HONOR.

18 THE COURT: YOU'RE FREE TO STAY OR GO, DOCTOR.
19 THANK YOU VERY MUCH.

20 DR. GUTMAN: THANK YOU SO MUCH.

21 THE COURT: LET'S TAKE A FEW MINUTES, MR.
22 FOREMAN. LET ME KNOW WHEN YOU'RE READY.

23 (AT THIS TIME JURY RETIRES TO JURY ROOM.)

24 THE COURT: ANYTHING BEFORE WE TAKE A BREAK?

25 MS. MCDONALD: YOUR HONOR, I WANTED TO GO

JEANIE N. ARNTS - DIRECT/MS. MCDONALD

1 AHEAD AND ASK MADAM COURT REPORTER TO MARK
2 THESE.

3 THE COURT: ALL RIGHT. YOU'RE GOING TO
4 INTRODUCE THOSE AS EXHIBITS?

5 MS. MCDONALD: YES, YOUR HONOR.

6 THE COURT: ANY OBJECTION?

7 MR. DUKES: NO OBJECTION; YOUR HONOR.

8 THE COURT: ALL RIGHT. GIVE IT TO THE
9 SOLICITOR. JUST TAKE IT UP THERE. ALL RIGHT.
10 COURT'S IN RECESS.

11 (BRIEF RECESS.)

12 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

13 THE COURT: ALL RIGHT. CALL YOUR NEXT
14 WITNESS.

15 MS. MCDONALD: JEANIE ARNTS.

16 - - - - -

17 WHEREUPON,

18 JEANIE N. ARNTS, WHO AFTER BEING FIRST
19 DULY SWORN TO TELL THE TRUTH, TESTIFIED
20 AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MS. MCDONALD:

23 Q. MRS. ARNTS, WHERE ARE YOU EMPLOYED?

24 A. I AM EMPLOYED AT THE CENTER FOR CHILD AND FAMILY
25 HEALTH WHICH IS A COLLABORATIVE CHILD ABUSE PROGRAM

JEANIE N. ARNTS - DIRECT/MS. MCDONALD

1 BETWEEN DUKE UNIVERSITY MEDICAL CENTER, THE
2 UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL AND
3 NORTH CAROLINA CENTRAL UNIVERSITY.

4 Q. SO YOU ARE EMPLOYED AND YOU WORK UP IN DURHAM, OR
5 IN THE TRIANGLE?

6 A. YES, MA'AM.

7 Q. IN NORTH CAROLINA. AND YOU WORK IN THE SAME
8 ORGANIZATION, OR YOU USED TO WORK IN THE SAME
9 ORGANIZATION, AS DR. GUTMAN; IS THAT CORRECT?

10 A. YES. I'M STILL AN EMPLOYEE OF DUKE UNIVERSITY
11 MEDICAL CENTER AND WORKED WITH THE DUKE CHILD
12 PROTECTION TEAM FOR TEN YEARS PRIOR TO THE DUKE
13 CHILD PROTECTION TEAM COLLABORATING WITH THE OTHER
14 UNIVERSITY TO BECOME PART OF THE CENTER FOR CHILD
15 AND FAMILY HEALTH; A MORE COORDINATED EFFORT TO
16 ADDRESS CHILD ABUSE ISSUES IN THE TRIANGLE
17 COMMUNITY.

18 Q. SO, IS THERE A PARTICULAR CLINIC OR SET OF OFFICES
19 THAT YOU WORK IN?

20 A. YES.

21 Q. I MEAN, DO PEOPLE COME ALL OVER TO ONE OFFICE?

22 A. YES.

23 Q. AND THAT'S AT OR NEAR DUKE UNIVERSITY?

24 A. YES; IT'S SITUATED BETWEEN DURHAM OR DUKE AND NORTH
25 CAROLINA CENTRAL AND CHAPEL HILL WHERE THE

JEANIE N. ARNTS - DIRECT/MS. MCDONALD

1 UNIVERSITY OF NORTH CAROLINA IS. IT'S SITUATED
2 BETWEEN THE TWO CITIES.

3 Q. AND LET'S GO BACK TO THE CHILD -- YOU SAID YOU WERE
4 WITH THE DUKE UNIVERSITY CHILD PROTECTION TEAM FOR
5 TEN YEARS?

6 A. YES, MA'AM.

7 Q. WHAT DID YOU DO FOR THAT TEN YEARS THAT YOU WERE
8 WITH THAT ORGANIZATION?

9 A. I AM EMPLOYED AS A CLINICAL SOCIAL WORKER. MY
10 PRIMARY RESPONSIBILITIES ARE PARTICIPATING IN
11 EVALUATIONS WHEN CHILDREN COME TO THE CLINIC WITH
12 CONCERNS OF CHILD MALTREATMENT. AND THAT INCLUDED
13 INTERVIEWING THE PARENTS OR THE CARETAKERS OF THE
14 CHILD, INTERVIEWING THE CHILD, AND SOMETIMES
15 INTERVIEWING COLLATERAL SOURCES INCLUDING OTHER
16 PROFESSIONALS INVOLVED IN THE CASES, AND
17 PARTICIPATING IN OUR TEAM CASE CONFERENCES WHERE
18 THE DETAILS OF THE CASE WERE DISCUSSED AND THE
19 DIAGNOSIS WAS ARRIVED AT.

20 Q. SO IN 1996 YOU WERE WORKING ON THE DUKE CHILD
21 PROTECTION TEAM; IS THAT CORRECT?

22 A. YES.

23 Q. AND SINCE THAT TIME YOU'VE GONE TO THE OTHER---

24 A. YES. IN NOVEMBER OF '96. THE DUKE CHILD
25 PROTECTION TEAM WAS MERGED WITH A FEW OTHER

JEANIE N. ARNTS - DIRECT/MS. MCDONALD

1 PROGRAMS.

2 Q. OKAY. AND WHAT EDUCATIONAL BACKGROUND DID YOU
3 ACQUIRE BEFORE YOU BECAME A CLINICAL SOCIAL WORKER?

4 A. I HAVE A BACHELOR'S DEGREE IN CHILD DEVELOPMENT
5 FROM OHIO UNIVERSITY AND A MASTER'S DEGREE IN
6 SOCIAL WORK FROM THE UNIVERSITY OF NORTH CAROLINA
7 AT CHAPEL HILL.

8 Q. AND SINCE YOU'VE GOT YOUR MASTER'S DEGREE, OR
9 DURING THE COURSE OF GETTING YOUR MASTER'S DEGREE,
10 DID YOU DO ANY CLINICAL TRAINING, DO ANY INTERVIEWS
11 IN ASSESSING CHILDREN ESPECIALLY?

12 A. MY CLINICAL TRAINING WAS ACTUALLY AFTER I HAD
13 GOTTEN MY DEGREE AND HAD WORKED FIVE YEARS WITH THE
14 CHILD ABUSE PREVENTION AND TREATMENT PROGRAM AND
15 THEN JOINED THE CHILD PROTECTION TEAM AT DUKE AND
16 WAS TRAINED IN THAT PROGRAM, AS WELL AS CONTINUING
17 TO ATTEND NATIONAL AND REGIONAL CONFERENCES IN
18 REGARD TO CHILD MALTREATMENT ISSUES INCLUDING
19 SPECIFIC INTERVIEWING AND DIAGNOSTIC AND ASSESSMENT
20 TECHNIQUES.

21 Q. SO HOW MANY YEARS TOTAL HAVE YOU BEEN WORKING WITH
22 CHILDREN VICTIMS OF ABUSE AND NEGLIGENT?

23 A. SEVENTEEN YEARS.

24 Q. SEVENTEEN YEARS? AND IT MAY BE IMPOSSIBLE TO DO;
25 BUT CAN YOU GIVE ME AN IDEA OF HOW MANY CHILDREN

JEANIE N. ARNTS - DIRECT/MS. MCDONALD

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1 YOU'VE INTERVIEWED DURING THE COURSE OF YOUR
2 CAREER?

3 A. APPROXIMATELY 200 CHILDREN A YEAR AT DUKE; SO
4 APPROXIMATELY 2,200 CHILDREN.

5 Q. AND IS THERE SPECIAL TRAINING THAT CLINICAL SOCIAL
6 WORKERS UNDERGO ABOUT CONDUCTING INTERVIEWS WITH
7 CHILDREN WHO ARE ALLEGED TO HAVE BEEN VICTIMS OF
8 SEXUAL ABUSE?

9 A. THERE ARE MULTIPLE TRAINING SESSIONS AND WORKSHOPS
10 AT CONFERENCES THAT I'VE ATTENDED WHERE
11 INTERVIEWING TECHNIQUES ARE DISCUSSED AND SORT OF
12 THE LATEST RESEARCH IN THIS AREA IS PRESENTED.

13 Q. OKAY. AND WHEN YOU SAY INTERVIEWING TECHNIQUES; IS
14 THERE A CERTAIN WAY THAT CHILDREN ARE INTERVIEWED
15 THAT THE AVERAGE PERSON MAY NOT BE ABLE TO
16 ACHIEVE? ARE THERE SPECIAL TECHNIQUES? YOU JUST
17 SAID THERE WERE; BUT---

18 A. WELL, THERE ARE CERTAIN GUIDELINES THAT ARE
19 FOLLOWED IN INTERVIEWING CHILDREN. YOU KNOW, ONE
20 EXAMPLE IS ASSESSING A CHILD'S ABILITY TO
21 PARTICIPATE IN THE INTERVIEW PROCESS. BEING
22 CAREFUL IN WHICH THE QUESTIONS ARE PRESENTED. FOR
23 EXAMPLE, NEVER ASKING WHAT IS CONSIDERED A PERSON
24 ORIENTED QUESTION WITH A ACTION ORIENTED QUESTION.
25 SO, FOR EXAMPLE, YOU WOULD NEVER SAY "DID JOE SMITH

JEANIE N. ARNTS - DIRECT/MS. MCDONALD

1 TOUCH YOUR GENITAL AREA." YOU MIGHT SAY "WHAT DID
2 JOE SMITH DO;" OR "DID ANYONE TOUCH YOUR GENITAL
3 AREA." BUT YOU WOULD NEVER PUT THOSE TWO QUESTIONS
4 TOGETHER. SO THERE ARE CERTAIN GUIDELINES THAT ARE
5 FOLLOWED.

6 Q. AND YOU'VE BEEN PRACTICING WITHIN THESE GUIDELINES,
7 AGAIN, FOR ABOUT 17 YEARS?

8 A. ACTUALLY FOR ABOUT TEN YEARS. PRIOR TO THAT I WAS
9 DOING MORE GENERAL WORK WITH CHILDREN AND FAMILIES.

10 Q. SO YOU'VE BEEN DOING THESE INTERVIEW ASSESSMENTS
11 FOR TEN YEARS, THEN, WITH THE CHILD PROTECTION
12 TEAM?

13 A. YES; ABOUT TEN YEARS FOR THE CHILD PROTECTION TEAM;
14 AND ABOUT A YEAR-AND-A-HALF WITH THE CENTER FOR
15 CHILD AND FAMILY HEALTH.

16 MS. MCDONALD: YOUR HONOR, I WOULD TENDER MRS.
17 ARNTS AT THIS TIME AS AN EXPERT IN CLINICAL
18 SOCIAL WORK WITH THE SUB SPECIALTY IN CHILD
19 SEXUAL ABUSE.

20 THE COURT: ANY OBJECTION?

21 MR. DUKES: NO OBJECTION, YOUR HONOR.

22 Q. MRS. ARNTS, WE'VE ALREADY COVERED THAT IN 1996 YOU
23 WERE WORKING AT DUKE UNIVERSITY. DURING THE FALL
24 OF 1996 DID YOU HAVE OCCASION TO MEET A GIRL NAMED

25 Minor

JEANIE N. ARNTS - DIRECT/MS. MCDONALD

1 A. YES, I DID.

2 Q. OKAY. AND WHAT WAS THE NATURE -- FIRST WHAT WAS
3 THE DATE THAT YOU FIRST CAME IN CONTACT WITH
4 Minor

5 A. OCTOBER THE 17TH, 1996.

6 Q. WHAT WAS THE NATURE OF THAT FIRST CONTACT WITH
7 Minor WHY WAS SHE THERE?

8 A. SHE WAS REFERRED TO OUR PROGRAM FOR AN EVALUATION
9 BY THE DURHAM COUNTY DEPARTMENT OF SOCIAL
10 SERVICES. THEY WERE INVESTIGATING ALLEGATIONS OF
11 SEXUAL ABUSE.

12 Q. IT WAS YOUR UNDERSTANDING, THEN, THAT THE CASE HAD
13 BEEN REPORTED IN NORTH CAROLINA?

14 A. YES.

15 Q. AND DID YOU DO AN INTERVIEW LIKE WE'VE BRIEFLY
16 DISCUSSED ALREADY IN YOUR TESTIMONY WITH Minor
17 JOHNSON?

18 A. YES. IT WAS, OF COURSE, MORE EXTENSIVE THAN WHAT
19 WE DISCUSSED.

20 Q. RIGHT.

21 A. BUT, YES, I DID INTERVIEW HER; YES.

22 Q. YOU DID DO A FORENSIC TYPE ASSESSMENT?

23 A. YES, MA'AM.

24 Q. OKAY. FIRST, IS Minor THE ONLY PERSON YOU
25 TALKED TO ON OCTOBER THE 17TH, OR DID YOU ALSO TALK

JEANIE N. ARNTS - DIRECT/MS. MCDONALD

1 WITH ANOTHER FAMILY MEMBER?

2 A. I TALKED WITH ^{Minor} MOTHER ALSO.

3 Q. AND WHEN YOU TALKED WITH ^{Minor} WERE THE
4 ALLEGATIONS OF SEXUAL ABUSE DISCUSSED DURING THAT
5 INTERVIEW?

6 A. YES.

7 Q. AND WOULD YOU CHARACTERIZE FOR US THE WAY YOU
8 REMEMBER ^{Minor} AFFECT OR HER DEMEANOR WHEN
9 YOU INTERVIEWED HER?

10 A. ^{Minor} HAD A FAIRLY FLAT AFFECT.

11 Q. BEFORE WE GO ON, CAN YOU DEFINE A FLAT AFFECT FOR
12 US, PLEASE?

13 A. FLAT; WHERE SHE DIDN'T SHOW A LOT OF EMOTION ONE
14 WAY OR ANOTHER. SHE WAS VERY SUBDUED. HER TONE OF
15 VOICE WAS LOW. SHE PRESENTED AS A CHILD WHERE IT
16 -- SHE WASN'T VERY FORTHCOMING THAT SHE PRESENTED
17 AS A CHILD WHAT WAS DIFFICULT FOR HER TO TALK ABOUT
18 THIS. AND, AGAIN, JUST A LOW TONE OF VOICE; A FLAT
19 AFFECT. NOW AT ONE POINT IN THE INTERVIEW, SHE DID
20 BECOME MORE ANIMATED.

21 Q. WHEN SHE BECAME ANIMATED, WAS THE TOPIC STILL
22 SEXUAL ABUSE OR HAD IT CHANGED TO OTHER INTERESTS
23 OF HERS?

24 A. IT HAD CHANGED INTO A SYMPTOM WHICH SHE HAS.

25 Q. BEFORE WE GO INTO SYMPTOMS AND DIAGNOSES, I'M GOING

JEANIE N. ARNTS - DIRECT/MS. MCDONALD

1 TO BRIEFLY, WITHIN THE PARAMETERS OF SOUTH CAROLINA
2 LAW NOW; MRS. ARNTS, WE CAN'T DISCUSS THE DETAILS
3 IN THE STATE'S CASE OF WHAT ^{Minor} TOLD YOU.
4 BUT IF SHE TOLD YOU THE TIME OR TIMES AND THE PLACE
5 OR PLACES OF THE ASSAULT THAT SHE WAS TELLING YOU
6 ABOUT, YOU CAN TELL THE COURT. SO DID ^{Minor}
7 TELL YOU WHERE SHE HAD BEEN SEXUALLY ASSAULTED?

8 A. YES.

9 Q. WHERE WAS THAT?

10 A. IT WAS IN HER FATHER'S HOME, BOTH IN THE BEDROOM
11 AND THE LIVING ROOM OF HER FATHER'S HOME IN SOUTH
12 CAROLINA.

13 Q. DID SHE TELL YOU WHEN; A TIME FRAME? WAS THE TIME
14 FRAME GIVEN OR A SPECIFIC TIME?

15 A. SHE INDICATED THAT A TIME FRAME AROUND, I BELIEVE,
16 IN THE SIXTH GRADE AND PRIOR TO WHEN SHE RETURNED
17 TO HER MOTHER'S HOME IN JUNE OF '96.

18 Q. OKAY. AND OTHER THAN ACTUAL SPECIFICS OF THE
19 SEXUAL ABUSE THAT SHE WAS ALLEGING, WERE YOU ABLE
20 TO DISCERN ANY FEATURES OF A PARTICULAR DISORDER OR
21 SYMPTOMATIC KIND OF BEHAVIOR THAT YOU WERE ABLE TO
22 DIAGNOSE ^{Minor} AS HAVING?

23 A. THERE WERE A NUMBER OF THINGS THAT I LOOKED AT IN
24 TERMS OF LOOKING AT HER SYMPTOMS. ONE WAS ASKING
25 ^{Minor} MOTHER ABOUT ^{Minor} BEHAVIOR.

JEANIE N. ARNTS - DIRECT/MS. McDONALD

1 ANOTHER WAS ASKING Minor HERSELF ABOUT
2 SYMPTOMS. AND THEN WE ALSO HAD THE MOTHER COMPLETE
3 AN INSTRUMENT WHICH IS STANDARDLY USED IN
4 PSYCHIATRIC CLINICS ACROSS THE COUNTY WHICH IS THE
5 CHILD BEHAVIOR CHECKLIST. AND Minor THEN ALSO
6 COMPLETED A CHECKLIST OF HER OWN WHICH IS
7 ASSOCIATED WITH THE CHILD BEHAVIOR CHECKLIST. IT'S
8 PUT OUT BY THE SAME PROFESSOR AND BY THE SAME
9 COMPANY. IT'S IS CALLED THE YOUTH SELF REPORT
10 WHERE CHILDREN ELEVEN AND ABOVE REPORT ON THEIR OWN
11 SYMPTOMS BY CHECKING OFF SYMPTOMS AND THE DEGREE OF
12 SEVERITY OF THE SYMPTOMS THEY'RE EXPERIENCING. SO
13 WE USED THOSE FOUR METHODS OF LOOKING AT SYMPTOMS
14 WHICH Minor WAS PRESENTING WITH.

15 Q. AND BASED ON THIS REPORTING FROM THE MOTHER AND
16 FROM Minor DID YOU NOTICE OR TAKE NOTE OF ANY
17 SYMPTOMS THAT YOU BELIEVE WERE SIGNIFICANT IN
18 Minor CASE?

19 A. YES. THERE WERE QUITE A FEW. SHE WAS VERY
20 SYMPTOMATIC.

21 Q. CAN YOU TELL US ABOUT THOSE SYMPTOMS, PLEASE?

22 A. SHE PRESENTED WITH A LOT OF SYMPTOMS WHICH ARE
23 CONSISTENT WITH THOSE SEEN IN PEOPLE WITH POST
24 TRAUMATIC STRESS SYNDROME. SHE HAD A LOT OF FEARS,
25 ANGER. SHE ENDORSED A LOT OF ANXIETY. AND THERE

JEANIE N. ARNTS - DIRECT/MS. MCDONALD

1 WAS IRRITABILITY. BOTH SHE AND HER MOTHER BOTH
2 ENDORSED SYMPTOMS THAT ^{Minor} SEEMED TO BE IN A
3 FOG; THAT SHE HAD TROUBLE CONCENTRATING. SHE HAD
4 NIGHTMARES. SHE WAS EXPRESSING SADNESS. SHE WAS
5 SLEEPING A LOT. THE SLEEPING A LOT MAY HAVE BEEN
6 ASSOCIATED WITH SADNESS AND DEPRESSION, AND MAY
7 HAVE ALSO BEEN ASSOCIATED WITH AVOIDANCE; THAT IF
8 SHE'S ASLEEP, SHE'S NOT THINKING ABOUT WHAT
9 HAPPENED. SO SHE PRESENTED AS A CHILD -- AND THE
10 MOST TRAUMATIC SYMPTOM, AND ONE OF THE MOST
11 DANGEROUS SYMPTOMS, WAS THE FIRE SETTING WHICH SHE
12 DESCRIBED AND HER MOTHER DESCRIBED. SO SHE
13 PRESENTED WITH MULTIPLE SYMPTOMS THAT PRESENTED A
14 VERY CONCERNING PICTURE ABOUT---

15 Q. YOU SAID EARLIER IN YOUR TESTIMONY THAT SHE BECAME
16 ANIMATED DURING PART OF THE DISCUSSION, OR PART OF
17 YOUR INTERVIEW. WAS IT DISCUSSING ANY OF THOSE
18 THINGS THAT YOU JUST LISTED THAT SHE BECAME
19 ANIMATED?

20 A. IT WAS WHEN SHE TALKED ABOUT THE FIRE SETTING
21 BEHAVIOR.

22 Q. AND YOU SAID YOU THOUGHT FIRE SETTING WAS
23 SIGNIFICANT. DID THEY GIVE YOU A TIME FRAME DURING
24 WHICH THE FIRE SETTING HAD MANIFESTED? I MEAN, WAS
25 IT SOMETHING THAT YOU UNDERSTOOD THAT HAD BEEN

JEANIE N. ARNTS - DIRECT/MS. MCDONALD

1 GOING ON HER WHOLE LIFE?

2 A. NO.

3 Q. OR WAS IT A RECENT DEVELOPMENT?

4 A. NO; MY UNDERSTANDING IS THAT IT WAS RECENT; THAT IT
5 BEGAN OCCURRING AFTER SHE RETURNED TO HER MOTHER'S
6 HOME IN 1996.

7 Q. AND YOU SAID EARLIER THAT SHE HAD SYMPTOMS OF FEAR,
8 ANGER, ANXIETY, IRRITABILITY; THAT YOU SAID WERE
9 SYMPTOMATIC OR PART OF THE DIAGNOSIS OF POST
10 TRAUMATIC STRESS DISORDER. NOW, WILL YOU TELL THE
11 JURY A LITTLE BIT ABOUT POST TRAUMATIC STRESS
12 DISORDER? WHAT IS IT, FIRST OF ALL?

13 A. WELL, POST TRAUMATIC STRESS; ONE OF THE PRIMARY
14 BASES FOR DIAGNOSING IT IS THAT THERE HAS TO BE AN
15 IDENTIFIED STRESSOR, AN IDENTIFIED TRAUMATIC EVENT
16 WHICH THE PERSON WHO EXPERIENCED THAT EVENT
17 EXPERIENCED, YOU KNOW, SIGNIFICANT FEELINGS OF FEAR
18 FOR THEIR OWN SAFETY. AND THAT CAN BE A CAR
19 ACCIDENT. IT CAN BE, YOU KNOW, WITNESSING SOMEONE
20 ELSE BEING SEVERELY TRAUMATIZED. OR IT CAN BE, YOU
21 KNOW, EXPERIENCING A SEVERE TRAUMA OF ONE'S SELF.

22 Q. AND IN INTERVIEWING Minor WERE YOU ABLE TO
23 IDENTIFY AN EVENT THAT YOU FELT AS A TRAINED
24 PROFESSIONAL WAS A STRESSOR OR AN EVENT THAT WAS
25 SIGNIFICANTLY FEARFUL OR UPSETTING ENOUGH TO

JEANIE N. ARNTS - DIRECT/MS. MCDONALD

- 1 Minor THAT WOULD HAVE CAUSED HER TO EXHIBIT
2 THESE SYMPTOMS THAT YOU NOTED IN YOUR REPORT?
- 3 A. YES.
- 4 Q. OKAY. AND WHAT WAS THAT? WITHOUT SPECIFICS,
5 PLEASE; JUST WHAT WAS THE EVENT THAT SHE TOLD YOU
6 ABOUT?
- 7 A. SHE DESCRIBED MULTIPLE INCIDENTS OF---
- 8 Q. WITHOUT NAMING A PERPETRATOR, PLEASE. JUST STAY
9 WITHIN---
- 10 A. YES, MA'AM. JUST MULTIPLE INCIDENTS OF SEXUAL
11 ABUSE.
- 12 Q. AND IN YOUR EXPERIENCE, IS THAT AN IMPORTANT ENOUGH
13 EVENT IN A CHILD'S LIFE TO CAUSE THEM TO SUFFER
14 SUFFICIENT FROM SOME OR ALL OF THE SYMPTOMS OF POST
15 TRAUMATIC STRESS DISORDER?
- 16 A. YES. NOT ONLY IN MY EXPERIENCE, BUT ALSO IN THE
17 PROFESSIONAL LITERATURE, AND IT'S WIDELY ACCEPTED
18 IN THE PSYCHIATRIC COMMUNITY THAT CHILD SEXUAL
19 ABUSE IS OFTEN A CAUSE OF POST TRAUMATIC STRESS IN
20 CHILDREN.
- 21 Q. HOW ABOUT THE FIRE STARTING? IS THAT PART OF POST
22 TRAUMATIC STRESS, OR IS THAT ANOTHER SEPARATE SORT
23 OF SYMPTOM?
- 24 A. WELL, IT COULD CERTAINLY BE RELATED TO THOSE
25 SYMPTOMS. IT WAS A WAY OF^{Minor} CHANNELING HER

JEANIE N. ARNTS - DIRECT/MS. MCDONALD

1 ANGER AND RAGE ABOUT WHAT HAPPENED. AND IT IS WHAT
2 IS OFTEN REFERRED TO AS SHE SEEMED TO EXPERIENCE A
3 CATHARSIS WHEN SHE WOULD SEE FLAMES GOING UP, THE
4 FIRE THAT SHE HAD STARTED. IT WAS LIKE A WAY OF
5 RELEASING HER FEELINGS, YOU KNOW, THAT OTHER PEOPLE
6 MAY PUNCH SOMEBODY OUT AND THAT RELEASES THEIR
7 FEELING. IT MAY NOT BE THE PERSON THEY'RE REALLY
8 ANGRY ABOUT. THEY MAY BE TAKING THEIR ANGER OUT ON
9 SOMEBODY ELSE, BUT THEY'RE RELEASING THOSE FEELINGS
10 BY AGGRESSIVELY ACTING OUT AGAINST SOMEONE. AND IT
11 APPEARED THAT THE WAY THAT ^{Minor} FOUND AN
12 EFFECTIVE WAY OF COPING WITH THOSE FEELINGS WAS
13 THROUGH SETTING THE FIRES AND, YOU KNOW, SEEING THE
14 FLAMES. AND THEN SHE WOULD GET SORT OF A MOMENTARY
15 RELIEF FROM A LOT OF HER ANXIETY AND ANGER.

16 Q. BUT I'M CORRECT IF I ASSUME THAT THE REASON THAT
17 YOU NOTED THE FIRE STARTING IN YOUR REPORT IS
18 BECAUSE YOU FELT THAT IT WAS A SIGNIFICANT ASPECT
19 OF ^{Minor} OWN PERSONAL MAKE-UP?

20 A. SHE RELATED IT TO THE TRAUMA. SHE VERBALLY RELATED
21 IT TO THE TRAUMA SHE EXPERIENCED.

22 Q. OKAY. MRS. ARNTS, YOU'VE BEEN DOING THIS FOR A
23 LONG TIME AS YOU TESTIFIED. HAVE YOU ALSO DONE A
24 LOT OF RESEARCH AND READ THE STUDIES THAT HAVE BEEN
25 DONE ABOUT OUTCRY OR THE WAY CHILDREN DISCLOSE

JEANIE N. ARNTS - DIRECT/MS. MCDONALD

1 SEXUAL ABUSE?

2 A. PATTERNS OF DISCLOSURE?

3 Q. YES.

4 A. YES, MA'AM.

5 Q. OKAY. I WANT TO ASK YOU TO DEFINE A COUPLE OF
6 THINGS FOR US, PLEASE. FIRST, WHAT IS A DELAYED
7 DISCLOSURE?

8 A. DELAYED DISCLOSURE IS WHEN A CHILD HAS EXPERIENCED
9 MALTREATMENT BUT DOESN'T TELL ABOUT THE
10 MALTREATMENT UNTIL DAYS OR WEEKS OR MONTHS LATER.
11 AND, OF COURSE, WE KNOW THAT THERE ARE SOME PERSONS
12 WHO WERE MALTREATED AS CHILDREN WHO NEVER TELL
13 ABOUT THE MALTREATMENT UNTIL THEY'RE ADULTS.

14 Q. DOES THE RESEARCH AND IN YOUR EXPERIENCE; IS IT
15 COMMON OR UNCOMMON FOR CHILDREN TO DISCLOSE SEXUAL
16 ABUSE AT A LATER TIME AFTER THE ABUSE HAS OCCURRED?

17 A. IT'S QUITE COMMON. AND IN FACT, ONE FEATURE OF --
18 ONE OF THE CLASSIC RESEARCH PIECES ON CHILD SEXUAL
19 ABUSE BY A CHILD PSYCHOLOGIST, DR. ROLAND SUMMITT,
20 THE CHILD SEXUAL ABUSE ACCOMMODATION SYNDROME; ONE
21 FEATURE OF THE CHILD SEXUAL ACCOMMODATION SYNDROME
22 IS THAT WHEN CHILDREN DO DISCLOSE IT, IT'S OFTEN A
23 DELAYED AND CONFLICTED DISCLOSURE.

24 Q. IS THAT TRUE FOR CHILDREN OF A VERY YOUNG AGE, FIVE
25 OR SIX AS WELL AS OLDER CHILDREN, ALMOST

JEANIE N. ARNTS - DIRECT/MS. MCDONALD

1 ADOLESCENTS?

2 A. IT'S TRUE FOR BOTH. I THINK OLDER CHILDREN ARE
3 MORE LIKELY TO GIVE A DELAYED DISCLOSURE BECAUSE
4 THEY'RE MORE AWARE OF THE CONSEQUENCES OF THEIR
5 DISCLOSURE.

6 Q. IF A CHILD WERE SPECIFICALLY TOLD OF THE
7 CONSEQUENCES, THAT THEY WOULD BE BAD FOR THE FAMILY
8 AND FOR THE CHILD, WOULD THAT BE A REASON FROM THEM
9 TO HOLD ONTO DISCLOSING A WHILE?

10 A. YES.

11 Q. AND IS IT ANOTHER PATTERN OF DISCLOSURE FOR A CHILD
12 TO TELL A PEER BEFORE APPROACHING AN ADULT WITH THE
13 INFORMATION?

14 A. I THINK OLDER CHILDREN; HER BECOMING MORE TRUSTING
15 IN PEERS AND HAVING MORE AFFILIATION WITH PEERS.
16 IT'S UNUSUAL FOR YOUNGER CHILDREN, CHILDREN UNDER
17 THE AGE OF SEVEN OR EIGHT. BUT AS CHILDREN GET
18 OLDER, NINE, TEN, ELEVEN, TWELVE, AND ADOLESCENTS,
19 THE MOST TYPICAL PATTERN OF DISCLOSURE THAT WE SEE
20 IN OLDER CHILDREN IS THAT THEY WILL INITIALLY TELL
21 A PEER. AND OFTEN TIMES WHAT HAPPENS IS THE PEER
22 WILL ENCOURAGE THEM TO TELL SOMEONE ELSE; NOT
23 ALWAYS; BUT OFTEN TIMES CHILDREN REPORT THAT THE
24 FIRST PERSON THEY TOLD WAS A PEER.

25 Q. WAS THAT THE CASE IN ^{Minor} CASE?

JEANIE N. ARNTS - DIRECT/MS. MCDONALD

1 A. YES.

2 Q. SHE HAD TOLD A FRIEND?

3 A. YES.

4 Q. MRS. ARNTS, IN CASES OF INCEST OR WHERE THE ABUSER
5 IS A FAMILY MEMBER, IS IT UNCOMMON IN YOUR
6 EXPERIENCE OR IN YOUR OPINION FOR THE CHILD TO
7 CONTINUE TO EXPRESS AFFECTION AND LOVE FOR THE
8 OFFENDING PARENT OR CARETAKER?

9 A. NO. I THINK THAT'S VERY TYPICAL THAT CHILDREN LOVE
10 THEIR PARENTS NO MATTER WHAT. AND THE FACT THAT A
11 PARENT HAS MALTREATED A CHILD IN SOME WAY DOESN'T
12 ERASE THE CHILD'S LOVE FOR THAT PARENT. YOU KNOW,
13 THEY MAY FEEL ANGER ABOUT THE PARENTS. THEY MAY
14 HAVE AMBIVALENT FEELINGS. BUT IT CERTAINLY DOESN'T
15 ERASE THE FACT THAT THE CHILD HAS ALSO HAS POSITIVE
16 EXPERIENCES AND POSITIVE BONDING WITH THEIR PARENT
17 AND THAT THEY STILL LOVE THEIR PARENT.

18 Q. SO IN YOUR EXPERIENCE, THEN, IT'S NOT NECESSARILY A
19 CONFLICT TO HAVE A CHILD REPORTING SEXUAL ABUSE
20 WHILE AT THE SAME TIME SAYING "I LOVE MY FATHER OR
21 MY MOTHER?"

22 A. I THINK IT'S VERY TYPICAL. IT WOULD BE MUCH MORE
23 UNUSUAL FOR A CHILD TO SAY THEY HATED THE PARENT OR
24 NEVER WANTED TO SEE THE PARENT AGAIN. I MEAN,
25 THAT'S A VERY UNUSUAL PRESENTATION OF A CHILD.

JEANIE N. ARNTS - DIRECT/MS. MCDONALD

1 IT'S VERY TYPICAL FOR THE CHILD TO CONTINUE TO LOVE
2 THE PARENT AND TO CONTINUE TO WANT TO HAVE CONTACT
3 WITH THE PARENT.

4 Q. NOW, THE INTERVIEW THAT YOU DO AND THE TRAINING
5 THAT YOU'VE RECEIVED TO EVALUATE A CHILD WHERE
6 THEIR ABILITY TO TELL THE TRUTH AND TO KNOW THAT
7 THERE'S A DIFFERENCE BETWEEN REALITY AND FANTASY?

8 A. YES; ESPECIALLY WITH VERY YOUNG CHILDREN WHERE VERY
9 YOUNG CHILDREN HAVE MORE DIFFICULTY DIFFERENTIATING
10 BETWEEN REALITY AND FANTASY KNOWING THAT SOMETHING
11 THEY SEE ON A CARTOON OR T.V. ISN'T REAL. WITH
12 OLDER CHILDREN, THAT USUALLY ISN'T MUCH OF AN ISSUE
13 UNLESS THERE IS A SIGNIFICANT PSYCHIATRIC THOUGHT
14 DISORDER WHICH WOULD COME THROUGH DURING THE
15 INTERVIEW PROCESS.

16 Q. DID YOU FIND A PSYCHIATRIC THOUGHT DISORDER WHEN
17 YOU INTERVIEWED ^{Minor}

18 A. NO. ^{Minor} SEEMED ALERT AND ORIENTED AND
19 COHERENT. SHE ANSWERED QUESTIONS DIRECTLY RATHER
20 THAN GOING OFF IN A TANGENT AND TALKING ABOUT
21 SOMETHING COMPLETELY DIFFERENT OR THINGS THAT WERE
22 IRRELEVANT. I DIDN'T HAVE ANY CONCERNS ABOUT A
23 THOUGHT DISORDER.

24 Q. WOULD YOU EXPECT A 10, 11, OR 12 YEAR OLD CHILD TO
25 KNOW THE DIFFERENCE BETWEEN DIFFERENT HUMAN BEINGS,

JEANIE N. ARNTS - DIRECT/MS. MCDONALD

1 SAY, THEIR UNCLES, THEIR GRANDFATHER, THEIR FATHER,
2 THEIR NEXT DOOR NEIGHBOR I MEAN, IN A CHILD OF THAT
3 AGE?

4 A. WELL, USUALLY KIDS BY THREE AND FOUR ARE PRETTY
5 CLEARLY DIFFERENTIATING BETWEEN THE PRIMARY PEOPLE
6 IN THEIR LIVES. THEY CAN TELL ME, YOU KNOW, WHO
7 PAPA BILL IS AND WHO PAPA JOE AND WHO'S MEE-MAW AND
8 WHO'S NANNY; AND, OF COURSE, YOU KNOW, MOMMY AND
9 DADDY. SO, YOU KNOW, CHILDREN ARE PRETTY CLEAR
10 ABOUT THAT. DEVELOPMENTALLY AGE APPROPRIATE
11 CHILDREN ARE PRETTY CLEAR ABOUT THAT, AT LEAST BY
12 THREE OR FOUR.

13 Q. SO A DEVELOPMENTALLY AGE APPROPRIATE CHILD WOULD
14 HAVE LEARNED THAT AND KNOW THAT A LONG TIME AGO?

15 A. YES.

16 Q. SO BY THE TIME THEY WERE ELEVEN OR TWELVE THERE
17 SHOULDN'T BE ANY---

18 A. THERE'S NO QUESTION.

19 Q. WAS ^{Minor} FOUND TO BE DEVELOPMENTALLY AGE
20 APPROPRIATE?

21 A. YES.

22 Q. A REPORT WAS MADE A PART OF DR. GUTMAN AND YOUR
23 FINDING. YOU BOTH SIGNED THE REPORT; ISN'T THAT
24 RIGHT?

25 A. YES.

JEANIE N. ARNTS - DIRECT/MS. MCDONALD

1 Q. OKAY. AND YOU GUYS ARE MANDATED REPORTERS, AREN'T
2 YOU?

3 A. IN THE STATE OF NORTH CAROLINA ANYONE WHO SUSPECTS
4 ABUSE IS A MANDATED REPORTER.

5 Q. OKAY.

6 A. IT'S NOT JUST PROFESSIONALS. IT'S ANYONE. BUT WE
7 CERTAINLY WOULD BE INCLUDED; YES.

8 Q. YOU AND DR. GUTMAN COOPERATED WITH DETECTIVE
9 MARSHALL IN THE INVESTIGATION OF THIS CASE? I
10 MEAN, YOUR REPORT -- YOU KNOW THAT YOUR REPORT
11 WAS---

12 A. OUR REPORT WAS SENT TO DETECTIVE MARSHALL WITH
13 RELEASE OF INFORMATION; YES, MA'AM.

14 Q. AND IS THAT COMMONLY A PART OF -- NOT COMMONLY A
15 PART OF WHAT YOU DO; BUT ARE YOUR INTERVIEWS USED
16 AS A BASIS FOR CRIMINAL ACTIONS IN NORTH CAROLINA
17 AS WELL?

18 A. AS ONE BASIS; YES, MA'AM.

19 Q. PART OF AN INVESTIGATION?

20 A. YES; PART OF AN INVESTIGATION, ONE BASIS; YES.

21 Q. SO IT'S YOUR JOB, THEN, OR A PART OF YOUR JOB, TO
22 FIND OUT EVERY SIGNIFICANT THING THAT THIS CHILD
23 HAS TO TELL YOU; IS THAT RIGHT -- ABOUT THE ALLEGED
24 ABUSE.

25 A. YES.

JEANIE N. ARNTS - DIRECT/MS. MCDONALD

1 Q. DO CHILDREN, EVEN 11, 12, AND 13 YEAR OLD CHILDREN;
2 DO THEY REMEMBER TIMES AND EVENTS THE SAME WAY AS
3 AN ADULT IN THE WORKING WORLD WOULD?

4 A. THAT IS STILL A LITTLE BIT MORE COMPLEX FOR ELEVEN
5 AND TWELVE YEAR OLD CHILDREN, ESPECIALLY IF THEY'RE
6 TALKING ABOUT TRAUMATIC EVENTS. CHILDREN, AS WELL
7 AS ADULTS -- I THINK CHILDREN MORE SO -- OFTEN HAVE
8 DIFFICULTY RECALLING TRAUMATIC EVENTS. THAT'S PART
9 OF THE P.T.S.D. DIAGNOSIS; THE POST TRAUMATIC
10 STRESS DIAGNOSIS IN THAT YOU MAY FORGET SIGNIFICANT
11 PARTS, OR GET CONFUSED ABOUT WHAT HAPPENED. IT'S
12 JUST LIKE IF THERE'S A BAD ACCIDENT, YOU MAY BE A
13 LITTLE BIT CONFUSED ABOUT ALL THE EXACT DETAILS OF
14 THAT BAD ACCIDENT. BUT DEVELOPMENTAL EXPERTS SAY
15 THAT IT'S AROUND TWELVE YEARS OLD THAT CHILDREN
16 START TO BECOME MORE CLEAR ABOUT TIME FRAME. BUT,
17 OF COURSE, THAT WOULD BE AMELIORATED BY THE FACT
18 THAT IF IT'S A TRAUMATIC EVENT, IT COULD GET MORE
19 CONFUSING FOR A CHILD.

20 Q. SO WOULD YOUR INTERVIEW, IF YOU WERE CONDUCTING AN
21 INTERVIEW WITH A CHILD WHO SAID THAT THEY HAD BEEN
22 SEXUALLY ABUSED, IS IT PART OF YOUR GOAL TO PIN THE
23 CHILD DOWN TO A PARTICULAR DATE? IS THAT NECESSARY
24 FOR A DIAGNOSIS?

25 A. IT'S NOT NECESSARY FOR A DIAGNOSIS. I MEAN,

JEANIE N. ARNTS - DIRECT/MS. MCDONALD

1 CERTAINLY YOU WANT TO LOOK AT A GENERAL TIME FRAME;
2 ALTHOUGH, AGAIN, WITH VERY YOUNG CHILDREN, THEY'RE
3 OFTEN NOT ABLE TO GIVE US A GENERAL TYPE -- THEY
4 MIGHT REMEMBER THAT IT WAS JULY THE FOURTH BECAUSE
5 THEY WENT TO SEE THE FIREWORKS. SO IF THERE'S A
6 SPECIFIC EVENT, OR THAT IT WAS CHRISTMAS OR IT WAS
7 THEIR BIRTHDAY OR WHEN THEY WERE AT THE SWIMMING
8 POOL. SO THEY MIGHT BE ABLE TO DESCRIBE CONTEXTUAL
9 DETAILS THAN ALLOW SOMEONE TO IDENTIFY A SPECIFIC
10 DATE. BUT THEY ARE OFTEN TIMES UNABLE TO -- THEY
11 JUST CLEARLY AREN'T ABLE TO DO THAT THEMSELVES, YOU
12 KNOW, UNTIL THEY ARE OLDER.

13 Q. WHAT IS COACHING?

14 A. COACHING---

15 Q. IN THE CONTEXT OF WHAT YOU DO. NOT FOOTBALL
16 COACHING, BUT IN THE CONTEXT---

17 A. I UNDERSTAND. IN TERMS OF COACHING A DISCLOSURE OF
18 ABUSE?

19 Q. RIGHT?

20 A. SOMETIMES PURPOSELY, OR SOMETIMES NOT PURPOSELY;
21 INADVERTENTLY, A CARETAKER OF A CHILD MAY COACH A
22 CHILD TO SAY THINGS THAT AREN'T TRUE.

23 Q. OKAY. AND IS IT PART OF YOUR INTERVIEW, THE THINGS
24 THAT YOU LOOK FOR, TO LOOK FOR A POTENTIALLY
25 COACHED ALLEGATION OR DISCLOSURE?

JEANIE N. ARNTS - CROSS/MR. DUKES

1 A. THAT'S PART OF WHAT WE DO IN TERMS OF SORT OF CAN
2 WE VALIDATE WHAT THE CHILD SAID.

3 Q. OKAY. AND YOU SAID GIVE CONTEXTUAL DETAILS. IS
4 THAT A PART OF VALIDATING AN ALLEGATION?

5 A. YES; SO THEY CAN TALK ABOUT WHO WAS IN THE HOME;
6 SORT OF WHAT WAS HAPPENING AROUND A CERTAIN TIME;
7 WHAT WAS SAID TO THEM; AND PARTICULARLY IF THE
8 CHILD CAN DESCRIBE EXPLICIT DETAILS OF SEXUAL
9 KNOWLEDGE THAT A CHILD WOULD NORMALLY BE EXPECTED
10 TO HAVE. SO THOSE ARE ALL THINGS THAT WE WOULD
11 LOOK FOR IN TERMS OF VALIDATING. OR THE WORD WE
12 USE IN TERMS OF THE DIAGNOSIS IS CONFIRMING THAT
13 SEXUAL ABUSE DID OCCUR.

14 Q. DID YOU LOOK FOR THOSE IN THE SPECIFIC CASE WE'RE
15 DISCUSSING TODAY WITH ^{Minor}

16 A. YES; OF COURSE.

17 Q. DID YOU FIND THEM?

18 A. YES.

19 Q. I DON'T HAVE ANY MORE QUESTIONS, MR. ARNTS. PLEASE
20 ANSWER MR. DUKES' QUESTIONS.

21 A. OKAY.

22 CROSS-EXAMINATION

23 BY MR. DUKES:

24 Q. MRS. ARNTS, YOU MET WITH ^{Minor} AND HER MOTHER?

25 A. YES, SIR.

JEANIE N. ARNTS - CROSS/MR. DUKES

1 Q. ON 10/17 OF '96?

2 A. YES.

3 Q. AND YOU TALKED WITH THEM IN YOUR OFFICE?

4 A. IN OUR CLINIC. IT PROBABLY WASN'T DIRECTLY IN MY
5 OFFICE; BUT WE HAVE ROOMS IN OUR CLINIC WHERE WE
6 MEET WITH PARENTS AND MEET WITH CHILDREN.

7 Q. BOTH OF THEM WERE PRESENT?

8 A. NO, SIR. I TALKED WITH ^{Minor} MOTHER FIRST
9 INDIVIDUALLY WHILE ^{Minor} WAS IN THE WAITING
10 AREA. WE HAVE TOYS, AND USUALLY HAVE A PERSON IN
11 THE WAITING AREA STAYING WITH THE CHILDREN SO THAT
12 WE CAN TALK WITH THE PARENTS INDIVIDUALLY. AND
13 THEN THE PARENT GOES OUT, AND THEN WE TALK WITH THE
14 CHILD INDIVIDUALLY. THE PARENT IS OUT IN THE
15 WAITING AREA MEETING INDIVIDUALLY WITH THE CHILD.

16 Q. YOU TALKED WITH THEM SEPARATELY?

17 A. YES, SIR.

18 Q. DID YOU LEARN THAT THERE HAD BEEN SOME CUSTODY
19 FIGHTS OVER THIS CHILD?

20 A. YES, SIR.

21 Q. IS THAT A SIGNIFICANT FACTOR TO YOU?

22 A. THAT IS -- YOU KNOW, IT'S ALWAYS SOMETHING THAT WE
23 WOULD WANT TO LOOK AT AND SEE IF THAT COULD HAVE
24 HAD, YOU KNOW, ANY IMPACT ON WHAT WAS GOING ON.

25 Q. YOU JUST TALKED WITH THEM ON THIS ONE DAY? HAVE

JEANIE N. ARNTS - CROSS/MR. DUKES

1 YOU TALKED WITH THEM ANY SINCE THEN?

2 A. NOT FORMALLY. I HAD SEEN THE CHILD IN A PUBLIC
3 SETTING AND JUST SORT OF INQUIRED HOW SHE WAS DOING
4 AND WHAT HER PLANS WERE; BUT NOT ANY KIND OF FORMAL
5 INTERVIEW SINCE THAT TIME.

6 Q. SO YOUR FINDING IS REALLY BASED ON A ONE DAY
7 INTERVIEW?

8 A. YES.

9 Q. AND THAT WAS IN OCTOBER OF 1996?

10 A. YES.

11 Q. AND YOU HAVEN'T FOLLOWED UP ON ANYTHING OR CHECKED
12 INTO ANYTHING SINCE THEN?

13 A. WELL, YOU KNOW, WE FOLLOWED UP ON EFFORTS TO GET
14 THE CHILD INTO THERAPY. BUT OTHER THAN THAT, NO.
15 YOU KNOW, WE MADE RECOMMENDATIONS -- AS YOU KNOW,
16 THE TEAM MADE RECOMMENDATIONS FOR THE CHILD'S
17 MEDICAL TREATMENT. WE FOLLOWED UP ON EFFORTS TO
18 GET THE CHILD INTO THERAPY, BUT THERE HASN'T BEEN
19 FURTHER FOLLOW-UP; NO.

20 Q. YOU NEVER WENT OUT TO THE HOUSE WHERE THEY LIVED?

21 A. NO, SIR. THE DEPARTMENT OF SOCIAL SERVICES WAS
22 DOING AN INVESTIGATION. AND THAT IS WITHIN THEIR
23 ROLE TO GO TO THE CHILD'S HOME.

24 Q. YOU NEVER TALKED WITH RODNEY ELLIOTT?

25 A. NO, SIR.

JEANIE N. ARNTS - CROSS/MR. DUKES

1 Q. YOU SAY THE FACT THAT SOMEBODY LIKES TO LIGHT FIRES
2 MEANS THEY'VE BEEN SEXUALLY ABUSED?

3 A. I DON'T THINK I SAID THAT. MAY I EXPLAIN MY
4 ANSWER?

5 Q. YES, MA'AM.

6 A. IT IS TRUE THAT THERE ARE ARTICLES THAT ASSOCIATE
7 FIRE SETTING WITH CHILDHOOD SEXUAL ABUSE. I MEAN,
8 THAT PART IS TRUE. I DID NOT STATE THAT. WHAT I
9 WAS BASING THIS ON WAS SPECIFICALLY WHAT C.J.
10 HAD SAID ABOUT HER EXPERIENCES WITH FIRE SETTING
11 AND HER -- THE DIFFERENCE IN HER AFFECT WHEN SHE
12 TALKED ABOUT THE FIRE SETTING; AND THAT SHE HAD
13 RELATED THAT TO THE SEXUAL ABUSE EXPERIENCES AND
14 FEELINGS THAT SHE HAD AS A RESULT OF THOSE
15 EXPERIENCES.

16 Q. HER MOTHER DID TELL YOU THAT SHE HAD OTHER PEOPLE
17 LIVING IN THE HOUSEHOLD WITH HER, DIDN'T SHE?

18 A. YES; SHE SAID SHE HAS -- SHE HAS TWO YOUNGER SONS
19 AND; SHE HAD A MALE BOARDER IN THE HOME.

20 Q. SHE TOLD YOU THAT SHE LIKED TO WALK AROUND NAKED IN
21 THE HOUSE?

22 A. YES, SIR.

23 Q. DID SHE INDICATE SHE KNEW SOMETHING ABOUT DRUGS?

24 A. DID THE CHILD?

25 Q. YES, MA'AM.

JEANIE N. ARNTS - CROSS/MR. DUKES

1 A. YES, SHE DID. WOULD YOU LIKE ME TO TELL YOU WHAT
2 SHE INDICATED?

3 Q. YES, MA'AM.

4 A. SHE SAID THAT SHE WAS CONCERNED ABOUT HER FATHER
5 USING DRUGS, AND THAT SHE KNEW THAT HE WAS DOING
6 SOMETHING IN THE ROOM; AND THAT SHE SAW LITTLE
7 PLASTIC BAGS WITH SOME WHITE STUFF IN IT AND SOME
8 GREEN STUFF IN IT THAT SHE SAID WAS CALLED WEED.

9 Q. SHE KNEW WHAT WEED WAS?

10 A. YES, SIR.

11 Q. DID HER MOTHER EVER TELL YOU THAT SHE HAD BEEN
12 TREATED FOR MENTAL PROBLEMS?

13 A. MAY I REFER TO MY NOTES?

14 Q. YES, MA'AM.

15 A. BECAUSE, I MEAN, THAT'S A STANDARD QUESTION THAT WE
16 ASK. DID THE MOTHER EVER TELL ME THAT THE MOTHER
17 HERSELF HAD BEEN TREATED FOR MENTAL PROBLEMS?

18 (WITNESS REVIEWS NOTES.) YES. THE MOTHER SAID
19 THAT WHEN SHE WAS FIFTEEN YEARS OLD, SHE WAS A
20 RUNAWAY; AND SHE DESCRIBED HERSELF AS A REBELLIOUS
21 CHILD, AND THAT SHE HAD HAD A HOSPITALIZATION IN
22 SOUTHERN PINES WHEN SHE WAS FIFTEEN.

23 Q. THANK YOU VERY MUCH.

24 THE COURT: ANYTHING FURTHER?

25 RE-DIRECT EXAMINATION

JEANIE N. ARNTS - CROSS/MR. DUKES

BY MS. MCDONALD:

1
2 Q. MR. DUKE ASKED YOU ABOUT CUSTODY FIGHTS THAT WERE
3 GIVEN AS A PART OF HER HISTORY. AND I THINK YOU
4 WERE TOLD THAT THERE WERE SOME CUSTODY CONFLICTS
5 OVER THIS CHILD; IS THAT RIGHT?

6 A. YES.

7 Q. AND HE ASKED YOU IF THAT WAS A SIGNIFICANT FACTOR
8 IN THE CHILD'S TALE OF SEXUAL ABUSE, I GUESS WAS
9 THE QUESTION. BUT I DIDN'T HEAR AN ANSWER, AND I'D
10 LIKE TO KNOW IF YOU HAVE AN ANSWER.

11 A. MY UNDERSTANDING OF THE QUESTION -- I MAY HAVE BEEN
12 WRONG -- WAS THAT I WAS BEING ASKED MORE GENERALLY
13 IF WE CONSIDER WHEN A HISTORY OF CUSTODY ISSUES IS
14 PRESENTED IF WE CONSIDER THAT AS PART OF OUR
15 EVALUATION PROCESS. AND I SAID, YES THAT WE DID
16 CONSIDER THAT.

17 Q. IN THIS CASE, DID YOU COME TO ANY OPINION AS TO
18 WHETHER OR NOT ^{Minor} HISTORY OF SEXUAL ABUSE
19 WAS DRIVEN BY SOME CUSTODY MOTIVE ON SOMEONE ELSE'S
20 PART?

21 A. THERE WAS NO INDICATION EITHER FROM SPEAKING WITH
22 THE MOTHER OR SPEAKING WITH THE CHILD THAT THAT WAS
23 AN ISSUE. ALTHOUGH THERE HAD BEEN CUSTODY ISSUES
24 IN THE PAST, THE PARENTS HAVE CONTINUED TO SHARE
25 CUSTODY OF THIS CHILD, YOU KNOW, AT THE TIME WE MET

VIVIAN MORRIS - DIRECT/MS. MCDONALD

1 THE CHILD.

2 Q. SO NO INDICATION THAT THAT WAS A MOTIVATING FACTOR
3 BEHIND AN OUTCRY OF SEXUAL ABUSE OR ANYTHING?

4 A. NO.

5 Q. I DON'T HAVE ANY MORE QUESTIONS. THANK YOU.

6 THE COURT: ANYTHING FURTHER?

7 MR. DUKES: THAT'S ALL THE QUESTIONS I HAVE.

8 THE COURT: THANK YOU. CAN SHE BE EXCUSED?

9 MS. MCDONALD: YES, YOUR HONOR.

10 THE COURT: HOW LONG IS YOUR NEXT WITNESS?

11 MS. MCDONALD: I HAVE TWO, PROBABLY RATHER
12 SHORT WITNESSES, LEFT.

13 THE COURT: WELL, LET'S SEE IF WE CAN GET ONE
14 OF THEM.

15 MS. MCDONALD: MRS. MORRIS; VIVIAN MORRIS.

16 - - - - -

17 WHEREUPON,

18 VIVIAN BERNADETTE JOHNSON MORRIS, WHO
19 AFTER BEING FIRST DULY SWORN TO TELL THE
20 TRUTH, TESTIFIED AS FOLLOWS:

21 DIRECT EXAMINATION

22 BY MS. MCDONALD:

23 Q. MRS. MORRIS, WHERE DO YOU LIVE?

24 A. IN DURHAM, NORTH CAROLINA.

25 Q. YOU'RE GOING TO HAVE TO SPEAK UP.

VIVIAN MORRIS - DIRECT/MS. MCDONALD

1 THE COURT: TURN THAT MICROPHONE UP A LITTLE
2 BIT.

3 A. DURHAM, NORTH CAROLINA.

4 Q. HOW OLD ARE YOU NOW?

5 A. THIRTY-ONE (31).

6 Q. SO HOW OLD WERE YOU WHEN ^{Minor} WAS BORN?

7 A. EIGHTEEN.

8 Q. AND WHO IS ^{Minor} FATHER?

9 A. RODNEY ELLIOTT.

10 Q. I CAN'T EVEN HEAR YOU.

11 A. RODNEY ELLIOTT.

12 Q. OKAY. HOW LONG HAD YOU KNOWN HIM WHEN YOU HAD A
13 CHILD WITH HIM?

14 A. WHEN I GOT PREGNANT, WE WENT TO SCHOOL TOGETHER;
15 BUT WE WERE BOYFRIEND AND GIRLFRIEND FOR SIX MONTHS
16 BEFORE I GOT PREGNANT; FIVE OR SIX MONTHS.

17 Q. WHEN YOU SAY YOU WENT TO SCHOOL TOGETHER; WAS THAT
18 HIGH SCHOOL?

19 A. WE WENT TO MIDDLE SCHOOL TOGETHER.

20 Q. WHERE ARE YOU FROM ORIGINALLY?

21 A. CHARLESTON.

22 Q. WHERE IS HE FROM? WHAT MIDDLE SCHOOL WAS THAT?
23 WHAT PART OF TOWN WAS THAT?

24 A. WEST ASHLEY. I CAN'T REMEMBER.

25 Q. AFTER WAS BORN -- AND THAT WAS IN ;

VIVIAN MORRIS - DIRECT/MS. MCDONALD

1 RIGHT?

2 A. YEAH.

3 Q. WHAT WERE YOU DOING IN TERMS OF EDUCATION OR A
4 JOB? WERE YOU WORKING OR DOING ANYTHING AT
5 EIGHTEEN?

6 A. I STOPPED SCHOOL, AND I WORKED OUT AT AMOCO
7 CHEMICAL COMPANY.

8 Q. DID YOU AND MR. ELLIOTT EVER LIVE TOGETHER AS A
9 FAMILY WITH ^{Minor}

10 A. NO.

11 Q. DO YOU HAVE PARENTS THAT WERE STILL ALIVE WHEN YOU
12 WERE EIGHTEEN?

13 A. YES.

14 Q. WERE THEY SUPPORTIVE OF YOUR DECISION TO HAVE THIS
15 CHILD OR NOT?

16 A. THEY ACCEPTED IT.

17 Q. THEY ACCEPTED IT?

18 A. YES.

19 Q. AND WHO WAS ORIGINALLY GIVEN CUSTODY OF ^{Minor}
20 WHEN SHE WAS BORN? I KNOW THERE WERE FAMILY COURT
21 PROCEEDINGS.

22 A. RODNEY AND HIS MOTHER.

23 Q. WHAT'S HIS MOTHER'S NAME?

24 A. HAZEL NOWELL.

25 Q. AND ^{Minor} LIVED WITH RODNEY'S MOTHER, MRS.

VIVIAN MORRIS - DIRECT/MS. MCDONALD

1 NORWOOD, UNTIL SHE WAS HOW OLD?

2 A. UP UNTIL SHE WAS -- HE WAS BACK AND FORTH IN AND
3 OUT OF HIS MOTHER'S HOUSE. SO---

4 Q. I KNOW. BUT HOW LONG DID ^{Minor} LIVE -- DID SHE
5 LIVE WITH THE GRANDMOTHER ALL THE TIME, AND HE CAME
6 AND WENT? OR HOW DID IT GO?

7 A. SHE STAYED WITH HIM. IT DEPENDED -- SHE WOULD BE
8 WITH HER GRANDMOTHER -- THE MAJORITY OF THE TIME
9 SHE'D BE WITH HER GRANDMOTHER.

10 Q. AND WHERE DID ^{Minor} GO TO KINDERGARTEN? DO YOU
11 REMEMBER WHAT TOWN OR WHAT STATE SHE WAS LIVING IN
12 WHEN SHE WAS IN KINDERGARTEN?

13 A. SHE WENT IN NORTH CHARLESTON. SHE WAS LIVING WITH
14 MRS. NOWELL.

15 Q. AND WHERE DID SHE GO THE EARLY PART OF ELEMENTARY?
16 DO YOU REMEMBER?

17 A. THEY WERE STILL IN NORTH CHARLESTON; AND SHE WAS
18 STILL LIVING IN THE HOUSE WITH MRS. NOWELL.

19 Q. DIDN'T SHE GO TO FLOWER TOWN ELEMENTARY AT ONE
20 POINT?

21 A. YES. THAT WAS SORT OF LIKE BACK AND FORTH BETWEEN
22 RODNEY AND HIS MOTHER.

23 Q. AND THEN BY THIRD GRADE SHE WAS GOING TO CLAY HILL;
24 IS THAT RIGHT?

25 A. THAT'S WHEN SHE WAS LIVING WITH HIM; AND I BELIEVE

LAGER 0100A FUMER PMU

THE WATTS 1 000000 1 000000 0000

VIVIAN MORRIS - DIRECT/MS. MCDONALD

1 HE GOT MARRIED AT THAT TIME. AND ONCE HE GOT
2 MARRIED, ^{Minor} WENT TO STAY WITH---

3 Q. DO YOU KNOW WHAT YEAR HE GOT MARRIED IN?

4 A. NO.

5 Q. OKAY. BUT HE MARRIED THE LADY IN THE COURTROOM
6 TODAY; GERALDINE?

7 A. YES.

8 Q. AND AFTER THAT, ^{Minor} LIVED WITH GERALDINE AND
9 RODNEY?

10 A. YES.

11 Q. AND WHEN DID SHE -- DURING THOSE YEARS WHEN SHE WAS
12 LIVING WITH FIRST RODNEY AND HIS MOTHER AND THEN
13 RODNEY AND GERALDINE, DID SHE EVER COME VISIT WITH
14 YOU?

15 A. YES.

16 Q. WHERE WERE YOU LIVING DURING THOSE YEARS?

17 A. IN CHARLESTON.

18 Q. OKAY. DURING WHEN SHE WAS A LITTLE GIRL?

19 A. YES.

20 Q. AND DID YOU GO SOMEWHERE FROM CHARLESTON?

21 A. TO ROANOKE. SHE ALSO STILL HAD THE SAME
22 VISITATION. I WOULDN'T SEE HER AS MUCH ON THE
23 WEEKENDS BECAUSE WE LIVED IN VIRGINIA. BUT THE
24 SUMMER SHE WOULD COME AND STAY WITH US.

25 Q. OKAY. AND AFTER YOU LIVED IN ROANOKE, DID

VIVIAN MORRIS - DIRECT/MS. MCDONALD

Minor

EVER COME LIVE WITH YOU IN ROANOKE

FULL-TIME?

A. YES.

Q. WHEN WAS THAT?

A. WHEN SHE WAS IN THE FOURTH GRADE; THE '93 SCHOOL YEAR.

Q. OKAY. SO SHE LIVED WITH YOU IN ROANOKE FOR THE FOURTH GRADE?

A. FOR HALF OF THE FOURTH GRADE. RODNEY CAME UP AND TOOK HER OUT OF SCHOOL IN THE MIDDLE OF THE SCHOOL YEAR.

Q. AND BROUGHT HER BACK DOWN HERE. SO SHE WOULD HAVE DONE A SPLIT YEAR FOR SOME OF THE FOURTH GRADE?

A. YES.

Q. AND IN THE FIFTH GRADE, YOU HAD HER BACK FOR PART OF THE SCHOOL YEAR WITH YOU, BUT YOU WERE IN NEW YORK; IS THAT RIGHT?

A. YES. SHE WENT WITH ME THAT WHOLE SCHOOL YEAR; FOR THE WHOLE FIFTH GRADE. SHE WENT IN AMITYVILLE, NEW YORK.

Q. AND THIS TRANSFER BETWEEN FOURTH AND FIFTH GRADE WHEN SHE WENT WITH YOU FOR THE FIFTH GRADE; DID HER FATHER CONSENT TO THAT?

A. HE CONSENTED; YEAH.

Q. SO HAVE YOU EVER SNATCHED HER?

VIVIAN MORRIS - DIRECT/MS. MCDONALD

- 1 A. NO.
- 2 Q. TAKEN HER AWAY?
- 3 A. NO.
- 4 Q. SO YOU GUYS HAVE ALWAYS MANAGED TO WORK IT OUT?
- 5 A. YES.
- 6 Q. AND THEN I ASSUME FOR THE SIXTH GRADE WHEN SHE CAME
- 7 BACK TO SOUTH CAROLINA WITH MR. ELLIOTT, YOU
- 8 CONSENTED TO THAT; RIGHT?
- 9 A. YES.
- 10 Q. AND THEN YOU GOT HER BACK FOR THE SUMMER AFTER THE
- 11 SIXTH GRADE; IS THAT RIGHT?
- 12 A. YES.
- 13 Q. AND THEN SHE WAS WITH YOU FOR THE SEVENTH?
- 14 A. YES.
- 15 Q. AND EIGHTH?
- 16 A. AND EIGHTH.
- 17 Q. AND SHE'LL BE DOING THE EIGHTH AGAIN THIS FALL?
- 18 A. SHE SURE WILL.
- 19 Q. AND YOU HAVE TWO OTHER CHILDREN; ISN'T THAT RIGHT?
- 20 A. YES.
- 21 Q. WHAT ARE THEIR NAMES?
- 22 A. AND
- 23 Q. AND THEY'RE TEN AND NINE?
- 24 A. YES.
- 25 Q. AND THEIR FATHER IS DECEASED; IS THAT RIGHT?

VIVIAN MORRIS - DIRECT/MS. MCDONALD

1 A. YES.

2 Q. HE WAS YOUR HUSBAND?

3 A. YES.

4 Q. WHEN ^{Minor} CAME TO LIVE WITH YOU IN THE SUMMER
5 -- RIGHT AFTER THE SIXTH GRADE WHEN YOU PICKED HER
6 UP AND TOOK HER BACK TO NORTH CAROLINA, DID YOU
7 NOTICE ANY BEHAVIORS THAT WERE DIFFERENT THAN THE
8 YEAR BEFORE WHEN YOU HAD HER?

9 A. YES. AND THE BEHAVIOR WHEN I WENT TO GO AND GET
10 HER BECAUSE SHE CALLED ME. AND WHEN SHE CALLED,
11 SHE WANTED ME TO COME AND GET HER RIGHT THEN.

12 Q. DID YOU COME AND PICK HER UP?

13 A. RIGHT THEN.

14 Q. OKAY. AND, THEN, DID YOU OBSERVE ANYTHING, ANY
15 BEHAVIOR THAT ^{Minor} WAS EXHIBITING THAT SEEMED
16 TO BE DIFFERENT FROM THE WAY SHE WAS BEFORE?

17 A. SHE WASN'T OUTSIDE AS MUCH. SHE WOULD BE IN THE
18 HOUSE SLEEPING A LOT. SHE WOULD PLAY WITH MATCHES
19 AND CANDLES.

20 Q. NOW, I DON'T WANT TO INTERRUPT YOU, BUT SHE DID
21 MORE THAN PLAY WITH MATCHES, DIDN'T SHE?

22 A. YES; SHE BURNED THINGS.

23 Q. WHAT WAS SHE DOING?

24 A. SHE BURNED THINGS.

25 Q. AND HAD YOU EVER KNOWN HER TO BURN THINGS BEFORE

VIVIAN MORRIS - DIRECT/MS. MCDONALD

1 THAT SIXTH GRADE YEAR?

2 A. NO.

3 Q. DID YOU EVER HAVE A -- WHO WAS

4 A. AT THAT TIME IESHA AND HER MOTHER AND HER -- SHE
5 HAD ANOTHER DAUGHTER, A MINOR -- LIVED ACROSS THE
6 STREET. WE LIVED IN AN APARTMENT COMPLEX, AND THEY
7 LIVED ACROSS THE STREET FROM US. AND LATER ME AND
8 MRS. PERCEL BECAME ROOMMATES. AND HER AND
9 Minor WERE BEST FRIENDS. THEY STILL ARE.

10 Q. OKAY. DID YOU EVER HAVE A CONVERSATION WITH
11 ----- I THINK HER LAST NAME IS PURCELL; ISN'T
12 THAT RIGHT?

13 A. YES.

14 Q. THAT CAUSED YOU CONCERN FOR YOUR DAUGHTER?

15 A. YES.

16 Q. AND YOU CAN'T TELL US WHAT TOLD YOU, BUT YOU
17 CAN TELL US WHAT YOU DID AS A RESPONSE OR REACTION
18 TO THAT CONVERSATION.

19 A. AFTER ME AND ----- HAD A CONVERSATION, I THEN HAD A
20 CONVERSATION WITH Minor ABOUT WHAT ALL TOOK
21 PLACE AND WHAT HAPPENED. THAT'S WHEN SHE TOLD ME
22 THAT SHE WAS MOLESTED BY HER FATHER.

23 Q. MRS. MORRIS, DO ME A FAVOR AND DON'T TELL US WHAT
24 ANYBODY TOLD YOU OUTSIDE THE COURTROOM. YOU CAN
25 ONLY TELL US WHAT EXACTLY YOU DID AS A RESULT OF

VIVIAN MORRIS - DIRECT/MS. MCDONALD

- 1 THE CONVERSATION. AND THAT INCLUDES Minor I
2 JUST NEED TO CLARIFY THAT.
- 3 A. I CALLED THE POLICE IN DURHAM.
- 4 Q. WHAT DID THEY TELL YOU TO DO?
- 5 A. TO CONTACT THE SOCIAL WORKERS IN DURHAM.
- 6 Q. AND AT SOME POINT DID YOU CONTACT THE SHERIFF'S
7 DEPARTMENT DOWN HERE IN DORCHESTER COUNTY IN SOUTH
8 CAROLINA?
- 9 A. AFTER I HAD TALKED WITH THE SOCIAL WORKERS AND
10 FOUND OUT WHAT COULD BE DONE, THEY THEN CONTACTED
11 DETECTIVE MARSHALL.
- 12 Q. AND YOU TOOK Minor TO THE DUKE UNIVERSITY CHILD
13 PROTECTION TEAM TO THE INTERVIEW. YOU'VE ALREADY
14 HEARD TESTIMONY ABOUT THE INTERVIEW?
- 15 A. YES.
- 16 Q. AND YOU ALSO FOLLOWED UP ON THE LASER SURGERY,
17 DIDN'T YOU?
- 18 A. YES.
- 19 Q. YOU DIDN'T FOLLOW UP ON THE COUNSELING, THOUGH, DID
20 YOU? why
not
- 21 A. Minor DOESN'T SEE A PSYCHIATRIST IN A CLINIC.
22 Minor SEES HER THERAPY IN KERRINGTON.
23 KERRINGTON HAS---
- 24 Q. SO SHE TALKED TO SOMEBODY AT THE SCHOOL?
- 25 A. YES; SHE HAS A THERAPIST IN SCHOOL, AND SHE ALSO

VIVIAN MORRIS - CROSS/MR. DUKES

1 SPEAKS WITH HER PASTOR.

2 Q. HAVE YOU EVER, BEFORE TODAY OR ANY PART OF THE
3 INVESTIGATION OF THIS CASE, TOLD ^{Minor} ANY
4 PARTICULARS OR THINGS THAT SHE SHOULD TELL PEOPLE
5 ABOUT HER FATHER?

6 A. ONLY TO TELL THE TRUTH.

7 Q. HAVE YOU EVER TRIED TO TURN ^{Minor} AGAINST HER
8 FATHER?

9 A. NO.

10 Q. WOULD IT SURPRISE YOU IF ^{Minor} SAID SHE LOVED
11 HER FATHER?

12 A. NO; BECAUSE THAT'S WHAT THE BIBLE SAYS SHE SHOULD
13 DO ALL THE DAYS OF HER LIFE REGARDLESS OF HOW MUCH
14 HE MIGHT HAVE HURT HER.

15 Q. BUT DO YOU KNOW THAT ^{Minor} DOES LOVE HER
16 FATHER?

17 A. YES.

18 Q. I DON'T HAVE ANY MORE QUESTIONS FOR YOU RIGHT NOW,
19 MRS. MORRIS. PLEASE ANSWER MR. DUKES' QUESTIONS.

20 CROSS-EXAMINATION

21 BY MR. DUKES:

22 Q. MRS. MORRIS, WHEN THIS CHILD WAS ABOUT TWO MONTHS
23 OLD, YOU TOOK HER TO MRS. NOWELL OVER THERE AND
24 LEFT HER THERE?

25 A. NO; ^{Minor} WAS A YEAR-AND-A-HALF OLD; AND YES, I

VIVIAN MORRIS - CROSS/MR. DUKES

1 DID TAKE HER TO MRS. NOWELL; AND I DID NOT LEAVE
2 HER.

3 Q. YOU LEFT HER WITH MRS. NOWELL?

4 A. YES; I LEFT HER IN MRS. NOWELL'S CARE.

5 Q. AND SHE AND RODNEY RAISED THIS CHILD, DIDN'T THEY?

6 A. WITH MY HELP ALSO.

7 Q. UNTIL SHE WAS IN ABOUT THE FOURTH GRADE, SHE
8 COMPLETELY DEPENDED UPON THESE TWO PEOPLE, THOUGH?

9 A. NO; I WAS ALSO A PART OF HER LIFE.

10 Q. AND YOU CAME AND GOT HER. ALSO, DO YOU REMEMBER
11 BEING SERVED WITH THESE PAPERS?

12 MS. MCDONALD: LET ME SEE THEM BEFORE SHE---

13 MR. DUKES: SURE. (AT THIS TIME COUNSEL
14 REVIEWS DOCUMENT.) (WITNESS EXAMINES
15 DOCUMENT.)

16 Q. DO YOU REMEMBER THIS COURT ACTION YOU WENT TO IN
17 COURT IN CHARLESTON?

18 A. YES.

19 Q. THIS WAS AN ACTION THAT MR. ELLIOTT BROUGHT AGAINST
20 YOU FOR CUSTODY OF THE CHILD?

21 A. YES.

22 Q. AND HE WAS AWARDED CUSTODY OF THE CHILD?

23 A. HE AND HIS MOTHER WERE AWARDED CUSTODY OF THE
24 CHILD.

25 MR. DUKES: I'D LIKE TO INTRODUCE A COPY OF IT

VIVIAN MORRIS - CROSS/MR. DUKES

1 INTO THE RECORD, YOUR HONOR.

2 THE COURT: ANY OBJECTION?

3 MS. MCDONALD: NO, YOUR HONOR.

4 DEFENDANT'S EXHIBIT NO. 1

5 ADMITTED AS EVIDENCE

6 Q. SOME TIME AFTER THAT, SAY THE FOURTH GRADE OR SO,
7 YOU AND THE CHILD MOVED TO NEW YORK?

8 A. YES.

9 Q. AND HOW LONG DID YOU STAY THERE?

10 A. WE STAYED IN NEW YORK FOR EIGHT MONTHS.

11 Q. EIGHT MONTHS?

12 A. YES.

13 Q. AND WHERE DID YOU LIVE IN NEW YORK?

14 A. AMITYVILLE; LONG ISLAND.

15 Q. WHO ALL DID YOU LIVE WITH?

16 A. I LIVED WITH MY BROTHER-IN-LAW, MY SISTER-IN-LAW
17 AND THEIR TWO CHILDREN.

18 Q. WAS ANYBODY ELSE IN THAT HOUSE?

19 A. ME, MY SONS, AND ^{Minor}

20 Q. HOW MANY CHILDREN DO YOU HAVE?

21 A. I HAVE THREE.

22 Q. THREE?

23 A. YES.

24 Q. ARE ALL OF THEM WITH YOU?

25 A. YES.

VIVIAN MORRIS - CROSS/MR. DUKES

1 Q. AND YOU'VE RAISED ALL OF THEM?

2 A. YES.

3 Q. YOU MOVED FROM -- WHERE DID YOU MOVE FROM -- WHEN
4 YOU MOVED FROM NEW YORK, WHERE DID YOU GO?

5 A. I WENT TO DURHAM, NORTH CAROLINA.

6 Q. DID YOU GO TO ROANOKE IN THE MEANTIME?

7 A. FOR VISITS; YES.

8 Q. YOU NEVER LIVED IN ROANOKE, VIRGINIA?

9 A. I LIVED IN ROANOKE FOR SEVEN YEARS.

10 Q. WHERE?

11 A. BEFORE I WENT TO NEW YORK, I LIVED IN ROANOKE,
12 VIRGINIA.

13 Q. WHEN YOU WENT TO NEW YORK -- YOU LIVED IN ROANOKE
14 BEFORE YOU WENT TO NEW YORK?

15 A. YES.

16 Q. WHO ALL LIVED WITH YOU IN ROANOKE?

17 A. ME AND MY CHILDREN.

18 Q. ANYBODY ELSE?

19 A. NO. I HAD -- AS ^{Minor} SAID, FAMILY WAS STILL
20 COMING TO CHECK ON ME. I MOVED BACK THERE AFTER MY
21 HUSBAND PASSED AWAY. AND FAMILY AND FRIENDS WOULD
22 STILL COME AND STAY WITH ME ON OCCASIONS. AND AT
23 TIMES THEY WOULD COME AND STAY AND VISIT WEEKENDS
24 AND HOLIDAYS; BUT NO ONE LIVED THERE.

25 Q. BUT A NUMBER OF PEOPLE STAYED THERE?

VIVIAN MORRIS - CROSS/MR. DUKES

A. YES.

Q. THEN AFTER THAT YOU MOVED TO NORTH CAROLINA?

A. NO; I MOVED TO NEW YORK.

Q. NEW YORK?

A. YES.

Q. FROM ROANOKE TO NEW YORK?

A. YES.

Q. THEN BACK FROM NEW YORK TO NORTH CAROLINA?

A. TO NORTH CAROLINA.

Q. HOW MANY TIMES DID YOU MOVE IN THE NORTH CAROLINA AREA?

A. I'VE MOVED THREE TIMES SINCE I'VE BEEN IN NORTH CAROLINA.

Q. THREE TIMES IN NORTH CAROLINA?

A. YES.

Q. DID MR. MAGWOOD COME WITH YOU?

A. NO. MR. MAGWOOD IS -- WHEN I CAME FROM NEW YORK TO NORTH CAROLINA, I MOVED INTO AN APARTMENT WITH MR. MAGWOOD.

Q. YOU MOVED INTO HIS APARTMENT?

A. YES.

Q. AND HOW LONG DID YOU LIVE THERE?

A. MR. MAGWOOD LIVED THERE FOR EIGHT MONTHS BEFORE HE PURCHASED HIS HOUSE. AND HE MOVED OUT, AND WE KEPT THE APARTMENT.

Who were some
of the people who
stayed/visited there?

Where is
Mark Magwood?

VIVIAN MORRIS - CROSS/MR. DUKES

1 Q. AND THEN IT WAS DURING THE SIXTH GRADE THAT THE
2 CHILD CAME BACK TO LIVE WITH RODNEY?

3 A. YES.

4 Q. AND SHE SPENT THE WHOLE SIXTH GRADE DOWN HERE?

5 A. YES.

6 Q. THEN YOU CAME AND GOT HER IN JUNE OF '96?

7 A. YES.

8 Q. AND Y'ALL ENTERED INTO AN AGREEMENT, DIDN'T YOU?

9 A. WE SURE DID.

10 Q. DO YOU RECOGNIZE THIS? (WITNESS EXAMINES
11 DOCUMENT.)

12 A. I SURE DO.

13 Q. THAT'S IN YOUR HANDWRITING?

14 A. THAT'S IN MY HANDWRITING.

15 Q. CAN YOU PLEASE TELL US WHAT IT SAYS?

16 A. IT SAYS "TO WHOM ALL CONCERNED; Minor ELLIOTT
17 WILL BE RELEASED TO THE CHILD'S MOTHER, VIVIAN J.
18 MORRIS, ON THE CONDITIONS BELOW. RODNEY ELLIOTT IS
19 ALLOWED VISITATION OF SAID CHILD AT WILL. THERE
20 WILL BE NO LEGAL MATTERS HANDLED BETWEEN EITHER
21 PARENTS. Minor NAME WILL REMAIN ELLIOTT.
22 CUSTODY WILL STILL REMAIN IN THE LAST DECISION SET
23 IN THE COURT CASE. WHILE C.J. IS IN TEMPORARY
24 CUSTODY OF VIVIAN J. MORRIS WHO WILL PROVIDE ALL
25 FINANCIAL RESPONSIBILITY FOR SAID CHILD. SENIOR

VIVIAN MORRIS - CROSS/MR. DUKES

1 YEAR, THE CHILD'S EDUCATION WILL BE HANDLED AT THE
2 CHILD'S FATHER'S REQUEST WITH NO EXPECTATIONS."
3 Q. AND HE IS AGREEING TO PAY FOR HER COLLEGE EDUCATION
4 ON THERE?

5 A. NO, HE WAS NOT. THAT SAYS HER HIGH SCHOOL YEAR.
6 IT SAYS NOTHING ABOUT COLLEGE.

7 Q. HER SENIOR YEAR.

8 MR. DUKES: HAVE YOU SEEN THIS?

9 MS. MCDONALD: NO. (AT THIS TIME MS. MCDONALD
10 REVIEWS DOCUMENT.)

11 DEFENDANT'S EXHIBIT NO. 2
12 ADMITTED AS EVIDENCE

13 Q. YOU STILL LIVE IN NORTH CAROLINA?

14 A. YES.

15 Q. AND ^{Minor} STILL LIVES WITH YOU?

16 A. YES.

17 Q. DOES ANYONE ELSE LIVE AT THAT ADDRESS?

18 A. NO. MY SONS.

19 Q. HOW MANY CHILDREN DO YOU HAVE?

20 A. I HAVE THREE CHILDREN.

21 Q. YOU AND THE THREE CHILDREN LIVE IN NORTH CAROLINA?

22 A. YES.

23 Q. DID YOU CALL MR. ELLIOTT TO COME TO VIRGINIA?

24 A. EXCUSE ME?

25 Q. DIDN'T YOU CALL MR. ELLIOTT TO COME TO VIRGINIA?

VIVIAN MORRIS - CROSS/MR. DUKES

1 A. EXCUSE ME?

2 Q. DID YOU CALL MR. ELLIOTT TO COME TO VIRGINIA?

3 A. NEVER.

4 Q. DID ^{Minor} CALL HIM?

5 A. NEVER.

6 Q. NOBODY CALLED HIM? DIDN'T HE COME UP THERE AND---

7 A. OH, SHE DID CALL HIM; BUT NEVER TO ASK HIM TO COME

8 UP THERE BECAUSE WHEN HE DID COME UP THERE HE SAID

9 IT WAS HIS MOTHER'S REQUEST THAT ^{Minor} BE

10 RETURNED BACK TO SOUTH CAROLINA; THAT SHE HAD NO

11 IDEA THAT SHE WAS THERE. AND HIS MOTHER WAS

12 PUTTING UP A FIT. AND AT THAT TIME HE TOOK

13 ^{Minor} KICKING AND SCREAMING OUT OF MY HOUSE.

14 SHE WAS ON THE CHEERLEADING TEAM; INSIDE PLENTY OF

15 CLUBS AND ACTIVITIES. AND HE TOOK HER OUT OF MY

16 HOUSE KICKING AND SCREAMING. AND IT WAS NOT AT HER

17 WILL OR MINE THAT SHE LEAVE.

18 Q. SO THAT WAS AGAINST HER WILL?

19 A. YES.

20 Q. BUT IT WAS UNDER THE COURT ORDER THAT HE HAD

21 CUSTODY?

22 A. YES, IT WAS. BUT WE ALSO MADE AGREEMENT BEYOND

23 CUSTODY RULES WHERE HE WOULD HAVE HER, I WOULD HAVE

24 HER. AND AT THAT TIME RODNEY AND HIS WIFE SAT DOWN

25 WITH ME AND DECIDED THAT ^{Minor} COULD SPEND A

VIVIAN MORRIS - CROSS/MR. DUKES

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1 YEAR IN SCHOOL WITH ME IN VIRGINIA. AND SHE WENT
2 TO SCHOOL FROM AUGUST TO OCTOBER. AND IN OCTOBER,
3 WHICH IS NOT EVEN LIKE A TRANSITIONAL HOLIDAY OR
4 ANYTHING, IN MID-TERM OF SCHOOL, HE CAME UP SAYING
5 THAT HIS MOTHER DID NOT KNOW WHERE ^{Minor} WAS
6 AND SHE WANTED HER RETURNED TO THE STATE OF SOUTH
7 CAROLINA, AND HE HAD TO COME AND GET HER BECAUSE OF
8 HIS MOTHER. AND HE TOOK ^{Minor} OUT OF MY HOUSE.

9 Q. BUT SHE CAME BACK TO SOUTH CAROLINA WITH THEM?

10 A. WELL, SHE HAD NO CHOICE BECAUSE HE DOES HAVE
11 CUSTODY OF HER. SO SHE HAD NO CHOICE.

12 Q. HE HAD CUSTODY AT THAT TIME?

13 A. YES; SHE HAD NO CHOICE.

14 Q. DO YOU HAVE CUSTODY OF YOUR CHILDREN?

15 A. YES, I DO.

16 Q. THANK YOU. THAT'S ALL THE QUESTIONS I HAVE.

17 THE COURT: ANYTHING FURTHER?

18 MR. MCDONALD: I HAVE NOTHING FURTHER, YOUR
19 HONOR.

20 THE COURT: ALL RIGHT. YOU CAN COME DOWN.
21 THANK YOU. IT'S TIME TO GO TO LUNCH. DO I
22 HAVE SOME KIND OF HEARING AT LUNCH?

23 MR. ROBBINS: YES, SIR, WE DO, YOUR HONOR.

24 THE COURT: ALL RIGHT. I'M GOING TO AIM FOR
25 2:15. IT MIGHT BE A LITTLE LATER, AND Y'ALL

*> where are they now? why are they
living w/ their grandparents*

VIVIAN MORRIS - CROSS/MR. DUKES

1 MIGHT BE A LITTLE LATE. BUT LET'S TRY TO BE
2 BACK AT 2:15. REMEMBER DON'T TALK ABOUT IT
3 WITH ANYBODY. AND I'LL SEE YOU AT 2:15.

4 (AT THIS TIME JURY IS EXCUSED FOR LUNCH.)

5 THE COURT: ALL RIGHT. THIS CASE IS RECESSED.

6 (LUNCH RECESS.)

7 - - - - -

8 THE COURT: HOW MANY MORE WITNESSES DO YOU
9 HAVE?

10 MS. MCDONALD: YOUR HONOR, I HAVE ONE MORE
11 WITNESS.

12 THE COURT: ALL RIGHT. HOW MANY DO YOU HAVE?

13 MR. DUKES: THREE.

14 THE COURT: ALL RIGHT. BRING THE JURY IN.

15 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

16 THE COURT: I MIGHT ASK YOU TO NOTE YOUR
17 MOTIONS AT THE END OF THE STATE'S CASE AND
18 JUST GO ON AND FINISH -- I DON'T BELIEVE WE'RE
19 GOING TO BE ABLE TO SEND THEM OUT TONIGHT. IT
20 LOOKS LIKE TO ME WE OUGHT TO ARGUE AND CHARGE
21 IN THE MORNING. WHAT DO YOU THINK?

22 MR. DUKES: I THINK THAT WILL BE FINE.

23 THE COURT: ALL RIGHT. MR. FOREMAN AND
24 MEMBERS OF THE JURY, I HOPE YOU HAD A GOOD
25 LUNCH. CALL YOUR NEXT WITNESS.

THOMAS MARSHALL - DIRECT/MS. MCDONALD

MS. MCDONALD: TOM MARSHALL.

THE COURT: COME RIGHT AROUND.

- - - - -

WHEREUPON,

THOMAS MILES MARSHALL, WHO AFTER BEING
FIRST DULY SWORN TO TELL THE TRUTH,
TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION

BY MS. MCDONALD:

Q. WHAT DO YOU DO FOR A LIVING?

A. I'M A DETECTIVE WITH THE DORCHESTER COUNTY
SHERIFF'S DEPARTMENT.

Q. HOW LONG HAVE YOU BEEN A DETECTIVE WITH DORCHESTER
COUNTY?

A. I'M GOING ON FIVE YEARS NOW.

Q. AND BEYOND THE FIVE YEARS THAT YOU'VE SPENT WITH
DORCHESTER COUNTY, HOW LONG HAVE YOU BEEN IN LAW
ENFORCEMENT?

A. I'VE BEEN IN LAW ENFORCEMENT FOR 25 YEARS.

Q. WILL YOU TELL US THE OTHER JURISDICTIONS THAT
YOU'VE WORKED IN?

A. I STARTED OFF MY LAW ENFORCEMENT WITH THE CITY OF
CHARLESTON. SUBSEQUENTLY THERE I WENT TO
CHARLESTON COUNTY SHERIFF'S DEPARTMENT. FROM THERE
I WENT TO FOLLY BEACH PUBLIC SAFETY DEPARTMENT

THOMAS MARSHALL - DIRECT/MS. McDONALD

1 WHERE I WAS THEIR ACTING CHIEF FOR SEVERAL
2 DIFFERENT OCCASIONS AND THE CHIEF INVESTIGATOR OVER
3 THERE. FROM THERE I WENT TO BERKELEY COUNTY AND
4 STARTED MY JUVENILE CAREER OVER THERE; AND THEN
5 CAME OVER TO THE DORCHESTER COUNTY SHERIFF'S
6 DEPARTMENT WHERE I'VE BEEN WITH THEM FOR THE LAST
7 FIVE YEARS.

8 Q. DO YOU HAVE A CERTAIN AREA OF CRIME THAT YOU
9 INVESTIGATE AT DORCHESTER COUNTY?

10 A. YES. I'M THE -- THE MAIN THING THAT I DO IS
11 CRIMINAL SEXUAL CONDUCT CASES; CHILD MOLESTATION
12 CASES; AND ALSO JUVENILE CASES; I HANDLE ALL OF
13 THOSE.

14 Q. WHEN YOU SAY JUVENILE CASES; YOU MEAN WHERE THE
15 DEFENDANT IS A JUVENILE?

16 A. WHERE THE DEFENDANT IS A JUVENILE AND BEEN ARRESTED
17 FOR A CRIME OR CHARGED WITH SOMETHING.

18 Q. AND DURING THE COURSE OF YOUR EMPLOYMENT WITH THE
19 DORCHESTER COUNTY SHERIFF'S DEPARTMENT, HAVE YOU
20 HAD THE OCCASION TO INVESTIGATE THIS DEFENDANT IN
21 THIS TRIAL, RODNEY ELLIOTT FOR CRIMINAL SEXUAL
22 CONDUCT WITH A MINOR?

23 A. YES, I HAVE.

24 Q. HOW DID IT COME TO YOUR ATTENTION THAT THERE WAS A
25 CASE THAT NEEDED LOOKING INTO IN YOUR JURISDICTION?

Lt. Hartline was not interviewed

THOMAS MARSHALL - DIRECT/MS. MCDONALD

1 A. LT. HARTLINE HAD TAKEN AN INTERIM BOARD VIA THE
2 TELEPHONE. THE NEXT MORNING HE GOT IN TOUCH WITH
3 ME AND SHOWED ME THE INCIDENT REPORT. AND
4 SUBSEQUENTLY FROM THERE I GOT IN CONTACT WITH THE
5 VICTIM'S MOTHER AND OPENED UP THE INVESTIGATION.

6 Q. THE INCIDENT REPORT THAT YOU'RE REFERRING TO; THAT
7 WAS ABOUT A FOUR SENTENCE SUMMARY OF WHAT HE WAS
8 TOLD ON THE TELEPHONE BY D.S.S. IN NORTH CAROLINA?

9 A. THAT'S CORRECT.

10 Q. AND HE DIDN'T DO ANYTHING BUT WRITE IT DOWN AND
11 GIVE IT TO YOU; RIGHT?

12 A. THAT'S CORRECT.

13 Q. AND ONCE YOU GOT THE INCIDENT REPORT, YOU CONTACTED
14 MRS. MORRIS WHO TESTIFIED EARLIER IN THIS
15 PROCEEDING?

16 A. THAT'S RIGHT. I GOT IN TOUCH WITH MRS. MORRIS AND
17 THEN WENT FROM THERE.

18 Q. AND ALSO DID YOU USE IN YOUR INVESTIGATION THE
19 REPORTS THAT WERE GENERATED BY DR. GUTMAN AND MRS.
20 ARNTS WHO HAVE ALSO TESTIFIED IN THIS PROCEEDING?

21 A. YES. I WAS IN CONTACT WITH THEM; ALSO MRS.
22 PEMBROOK WITH THE D.S.S. HAD TOLD ME ABOUT THE DUKE
23 UNIVERSITY TEAM AND MRS. GUTMAN AND MRS. ARNTS; AND
24 I GOT THEIR REPORT AT THE END OF THE INTERVIEW.

25 Q. DID YOU RELY ON THEIR WORK IN FORMING YOUR OPINIONS

THOMAS MARSHALL - DIRECT/MS. MCDONALD

1 ABOUT WHAT THE VICTIM IN THIS CASE WOULD HAVE TO
2 SAY ABOUT THE CASE?

3 A. YES. I RELIED TOTALLY ON THE THEIRS AND THE
4 CONVERSATION OVER THE PHONE WITH BOTH OF THEM.

5 Q. AS A LAW ENFORCEMENT OFFICER WHO DEALS WITH CASES
6 WITH CHILDREN FREQUENTLY, DO YOU HAVE OTHER TRAINED
7 PROFESSIONALS WHO INTERVIEW CHILDREN OTHER THAN
8 DOING IT YOURSELF?

9 A. YES; THAT'S CORRECT.

10 Q. SO IT'S NOT UNUSUAL, THEN, FOR YOU TO RELY ON
11 REPORTS OF CLINICAL SOCIAL WORKERS AND MEDICAL
12 DOCTORS?

13 A. NOT UNUSUAL AT ALL. I RELY ON THEM HEAVILY.

14 Q. DETECTIVE MARSHALL, THE VICTIM WAS IN ANOTHER
15 JURISDICTION; IS THAT CORRECT? SHE WAS IN NORTH
16 CAROLINA?

17 A. THAT'S CORRECT.

18 Q. AND ON THIS END, YOU DID A LITTLE INVESTIGATION
19 ABOUT THE DEFENDANT PRIOR TO ARRESTING HIM; IS THAT
20 RIGHT?

21 A. YES; THAT'S CORRECT.

22 Q. DID YOU ASCERTAIN WHETHER OR NOT THE DWELLING OF
23 THE ADDRESSES THAT YOU WERE GIVEN AS SITES OF THE
24 CRIME WERE WITHIN YOUR JURISDICTION?

25 A. YES. I VERIFIED THAT BOTH SITES WERE WITHIN THE

THOMAS MARSHALL - DIRECT/MS. MCDONALD

1 JURISDICTION OF DORCHESTER COUNTY, AND I ALSO
2 VERIFIED THAT BOTH THE SCHOOLS WERE IN DORCHESTER
3 COUNTY, AND THE CHILD HAD GONE TO THE SCHOOLS DOWN
4 HERE DURING THE TIME FRAME.

5 Q. WHAT TIME FRAME WERE YOU INVESTIGATING?

6 A. I HAD FROM 1995 TO 1996; THE END OF 1996 -- WELL,
7 NOT THE END OF IT. JUNE, 1996 WAS THE LAST TIME.

8 Q. WERE YOU AWARE THAT DURING THAT TIME FRAME, THE
9 CHILD HAD A BIRTHDAY THAT CHANGED THE STATUTE UNDER
10 WHICH THE DEFENDANT WAS CHARGED?

11 A. YES.

12 Q. SO DID YOU MAKE CHARGING DECISIONS ACCORDINGLY?

13 A. BASED ON HER AGE IN 1995, AND BASED ON WHEN SHE
14 CHANGED AND BECAME ELEVEN; THEN I MADE THE CHARGES
15 APPROPRIATELY FOR THAT, TOO.

16 Q. IN READING THE REPORTS THAT YOU WERE GIVEN BY THE
17 HEALTH CARE PROFESSIONALS WHO HAVE ALREADY
18 TESTIFIED, DID IT COME TO YOUR ATTENTION THAT THE
19 VICTIM IN THIS CASE HAD BEEN DIAGNOSED WITH GENITAL
20 WARTS?

21 A. YES; THAT'S CORRECT.

22 Q. AND WHAT WAS YOUR DECISION ABOUT HOW TO HANDLE THAT
23 ASPECT OF THE INVESTIGATION?

24 A. WELL, BASED ON THAT, THERE'S ANOTHER DOCTOR DOWN
25 HERE THAT I USE THAT WE COMMONLY GO TO, OR DOWN

THOMAS MARSHALL - DIRECT/MS. MCDONALD

1 HERE AT THE LOW COUNTRY CHILDREN'S CENTER IS DR.
2 BETSY BAKER. AND I CALLED HER UP TO ASK HER ABOUT
3 THE GENITAL WARTS AND HOW THEY'RE TRANSMITTED AND
4 WHAT THEY'RE LIKE AND INFORMATION ON THAT; AND SHE
5 GAVE ME SOME INFORMATION.

6 Q. DID YOU DECIDE WHETHER OR NOT YOU WANTED TO GET A
7 SEARCH WARRANT TO LOOK FOR THE DEFENDANT?

8 A. WELL, BASED ON THE INFORMATION SHE GAVE ME WHICH
9 SHE WAS TELLING ME THAT THE GENITAL WARTS -- THAT
10 THE POSSIBLE PERPETRATOR COULD POSSIBLY NOT BE
11 SHOWING ANY LESIONS OR ANYTHING DUE TO THE FACT
12 THAT THEY WERE ALSO A VIRUS MORE THAN ANYTHING
13 ELSE; THAT THERE IS A GOOD POSSIBILITY THAT THEY
14 WOULD NOT BE SEEN AND WOULD NOT BE SHOWING ON
15 THERE. AND ALSO IF THEY WERE, THERE WAS NO WAY TO
16 TEST OR ANYTHING FOR THEM.

17 Q. SO WHAT DID YOU DECIDE TO DO?

18 A. BASED ON THAT INFORMATION, THAT'S WHY HE WAS NOT
19 TESTED FOR ANY -- TO SEE IF HE HAD---

20 Q. SINCE THERE'S NO TEST, DETECTIVE MARSHALL, DO YOU
21 MEAN HE WASN'T EXAMINED?

22 A. THAT'S RIGHT; HE WASN'T EXAMINED FOR THAT AT ALL.

23 Q. DO YOU NEED TO REFER TO YOUR FILE TO GIVE ME THE
24 AREAS THAT YOU WERE LOOKING AT IN TERMS OF
25 JURISDICTION?

THOMAS MARSHALL - DIRECT/MS. MCDONALD

1 A. YES. I'VE GOT IT WRITTEN.

2 Q. JUST FOR THE RECORD; IF YOU'LL TELL THE COURT YOUR
3 AREA IN GERMANTOWN AND THE RIDGEVILLE---

4 A. WHAT I HAD IS ON THE 13TH OF 1996, I CALLED UP
5 ALSTON MIDDLE SCHOOL AND SPOKE WITH THE GUIDANCE
6 COUNSELOR OVER THERE AND FOUND OUT THAT ^{Minor}

7 AT THAT TIME HAD BEEN AT THE SCHOOL IN
8 1995. AND THEN SHE LEFT FROM THERE AND WENT TO
9 CLAY HILL ELEMENTARY SCHOOL AND STAYED THERE FROM
10 JANUARY THE THIRD, 1996, UNTIL 6/10/1996. THEY
11 WERE UNABLE TO GIVE ME THE ADDRESSES UP THERE. BUT
12 FROM WHAT I UNDERSTAND THROUGH MY INVESTIGATION,
13 SHE HAD AN ADDRESS OVER ON SIMMONS STREET IN WHAT
14 THEY CALL GERMANTOWN; AND IT WAS A RIDGEVILLE
15 ADDRESS WHICH WAS ON CAMPBELL THICKET ROAD WHICH IS
16 AT THE ENTRANCE TO LIEBER CORRECTIONAL INSTITUTE.
17 AND I VERIFIED THE HOUSE SITTING ON THE CORNER
18 THERE AS BEING MR. RODNEY ELLIOTT'S HOUSE WHERE
19 THEY LIVED.

20 Q. BOTH OF THOSE AREAS ARE IN DORCHESTER COUNTY?

21 A. THAT'S CORRECT. BOTH OF THOSE AREAS ARE IN
22 DORCHESTER COUNTY WITHIN MY JURISDICTION TO
23 INVESTIGATE.

24 Q. I DON'T HAVE ANY MORE QUESTIONS FOR YOU, DETECTIVE
25 MARSHALL. PLEASE ANSWER ANY OF MR. DUKES'

THOMAS MARSHALL - CROSS/MR. DUKES

QUESTIONS.

CROSS-EXAMINATION

BY MR. DUKES:

Q. WHAT WAS THE ADDRESS OF THOSE HOUSES?

A. I DID NOT HAVE THE ONE FOR THE ONE IN GERMANTOWN.

THE ONE FOR RIDGEVILLE WAS CAMPBELL THICKET
ROAD WHICH IS THE HOUSE RIGHT THERE ON THE CORNER
OF AND CAMPBELL THICKET ROAD.

Q. DID YOU GO TO THAT HOUSE?

A. YES, SIR. I'VE BEEN TO THE HOUSE. THEY WERE NOT
THERE WHEN I WENT TO THE HOUSE. THEY HAD MOVED
OUT.

Q. DID YOU ASCERTAIN WHO LIVED IN IT?

A. I ASCERTAINED FROM THE NEIGHBORS THAT RODNEY
ELLIOTT AND HIS NEW WIFE WERE LIVING THERE AND THAT
HE HAD MOVED OUT SOME TIME PRIOR TO ME COMING
THERE.

Q. AND THE OTHER ADDRESS WAS WHAT?

A. SOMEWHERE IN GERMANTOWN. I DID NOT HAVE THE EXACT
STREET ADDRESS.

Q. SO YOU HAVE NOT BEEN TO THAT HOUSE?

A. NO, I HAVE NOT.

Q. BUT SOMEWHERE IN GERMANTOWN?

A. YES.

Q. YOU SAY THAT SHE CHANGED AGES DURING THIS PERIOD OF

THOMAS MARSHALL - CROSS/MR. DUKES

1 INVESTIGATION?

2 A. YES, SIR. WHEN SHE WAS DOWN HERE, HER BIRTHDAY;
3 WHEN SHE WENT FROM TEN TO ELEVEN YEARS OF AGE.

4 Q. THAT WAS IN ?

5 A. YES.

6 Q. AUGUST WHAT?

7 A. HER BIRTHDAY WAS THE . AND SHE
8 WAS AT THE SCHOOL IN AUGUST. THEY GAVE ME A DATE.

9 Q. WHAT TIME DID SCHOOL START IN AUGUST?

10 A. THE BEGINNING DATE OF AUGUST THE EIGHTH OF WAS
11 ONE OF THE BEGINNING DATES WHEN SHE WAS AT ALSTON
12 MIDDLE SCHOOL. AND I VERIFIED THAT SHE WAS AT
13 ALSTON MIDDLE SCHOOL WHICH WOULD HAVE VERIFIED HER
14 BEING IN THE GERMANTOWN OR SIMMONS STREET AREA.

15 Q. SCHOOL STARTED AUGUST THE EIGHTH?

16 A. I DIDN'T ASK HER EXACTLY WHAT TIME SCHOOL STARTED.
17 SHE JUST GAVE ME THAT AS A STARTING DATE, AUGUST
18 THE EIGHTH.

19 Q. WHO GAVE YOU THAT?

20 A. THE GUIDANCE COUNSELOR, MR. SANDERS, AT THE ALSTON
21 MIDDLE SCHOOL. I SPOKE TO HIM. AND HE SAID THAT
22 SHE STARTED ON AUGUST THE EIGHTH OF 1995.

23 Q. SCHOOL GENERALLY STARTS IN AUGUST, DOESN'T IT?

24 A. YES; THAT'S CORRECT.

25 Q. A LITTLE LATER THAN THAT; AND HER BIRTHDAY WAS

THOMAS MARSHALL - CROSS/MR. DUKES

1 T THE ?

2 A. THAT'S CORRECT.

3 Q. SO ON AUGUST THE 17TH OF , SHE WOULD HAVE BEEN
4 ELEVEN YEARS OLD?

5 A. THAT'S CORRECT.

6 Q. SHE STARTED THAT SCHOOL YEAR IN THE ALSTON SCHOOL?

7 A. THAT'S WHAT THEY GAVE ME.

8 Q. AND THEN AFTER CHRISTMAS SHE TRANSFERRED TO CLAY
9 HILL WHICH IS IN THE CAMPBELL THICKET AREA?

10 A. IN 1996 THEN SHE WENT UP TO CLAY HILL ELEMENTARY
11 SCHOOL.

12 Q. DID YOU EVER TALK WITH RODNEY ELLIOTT?

13 A. WHEN HE WAS ARRESTED I CAME UP HERE TO ST. GEORGE
14 TO THE JAIL; READ HIM HIS RIGHTS; AND HE INFORMED
15 THAT HE DID NOT WANT TO TALK TO ME; THAT HE WANTED
16 AN ATTORNEY.

17 Q. SO YOU DIDN'T DO ANY EXAMINATION OF HIM OR
18 ANYTHING?

19 A. THAT WAS THE EXTENT. ONCE HE SAID HE WANTED AN
20 ATTORNEY, I HAD TO TERMINATE MY INTERVIEW.

21 MR. DUKES: EXCUSE ME ONE SECOND.

22 Q. THANK YOU. THAT'S ALL THE QUESTIONS I HAVE.

23 THE COURT: ANYTHING FURTHER?

24 MS. MCDONALD: NO. I DON'T HAVE ANY FURTHER
25 QUESTIONS.

5 THE COURT: ALL RIGHT. NOW, MR. FOREMAN AND
6 MEMBERS OF THE JURY; ALL THE TESTIMONY IS IN
7 FOR THE STATE. AND SO NOW IT BECOMES TIME --
8 I'LL NOTE YOUR MOTIONS, MR. DUKES. IT NOW
9 BECOMES TIME FOR THE DEFENSE TO PUT UP THEIR
0 WITNESSES. ALL RIGHT. CALL YOUR FIRST
1 WITNESS.

12

14 HAZEL LEE ELLIOTT NOWELL, WHO AFTER BEING
15 FIRST DULY SWORN TO TELL THE TRUTH,
16 TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION

18 BY MR. DUKES:

25 Q. AND YOU'RE MARRIED?

HAZEL NOWELL - DIRECT/MR. DUKES

- 1 A. YES, I AM.
- 2 Q. AND YOUR HUSBAND LIVES THERE, TOO?
- 3 A. YES, HE DOES.
- 4 Q. ARE YOU EMPLOYED?
- 5 A. YES, I AM.
- 6 Q. WHAT TYPE OF WORK DO YOU DO?
- 7 A. I'M IN THE JANITORIAL BUSINESS. I TAKE CARE OF THE
- 8 CHARLESTON COUNTY SCHOOL DISTRICT, DISTRICT TEN.
- 9 Q. ARE YOU SELF-EMPLOYED?
- 10 A. NO I'M NOT. I'M EMPLOYED BY ARROWMONT.
- 11 (PHONETICALLY SPELLED.)
- 12 Q. AND HOW MANY CHILDREN DO YOU HAVE?
- 13 A. FOUR.
- 14 Q. AND WHAT ARE THEIR NAMES AND AGES?
- 15 A. KEITH; HIS AGE IS 35; RODNEY, JOHN, AND LATESHA.
- 16 Q. NOW, RODNEY. YOU'RE TALKING ABOUT RODNEY ELLIOTT;
- 17 RIGHT?
- 18 A. RODNEY ELLIOTT; YES.
- 19 Q. AND---
- 20 A. JOHN IS 29; LATISHA IS 22.
- 21 Q. AND RODNEY IS HOW OLD?
- 22 A. RODNEY IS 33, I BELIEVE.
- 23 Q. OKAY. AND HE WAS YOUR SECOND CHILD?
- 24 A. EXCUSE ME?
- 25 Q. HE WAS YOUR SECOND CHILD?

HAZEL NOWELL - DIRECT/MR. DUKES

- 1 A. YES, HE WAS.
- 2 Q. AND DID HE SUBSEQUENTLY HAVE A CHILD?
- 3 A. YES, HE DOES.
- 4 Q. HOW MANY CHILDREN DOES HE HAVE?
- 5 A. HE HAS THREE GIRLS AND ONE BOY WHICH IS FOUR.
- 6 Q. HE'S GOT AN OLDER DAUGHTER?
- 7 A. YES, HE DOES.
- 8 Q. THAT DOESN'T LIVE WITH HIM?
- 9 A. RIGHT.
- 10 Q. AND HE'S GOT A DAUGHTER THAT'S HERE?
- 11 A. Minor
- 12 Q. AND THEN HE HAS TWO LITTLE CHILDREN THAT LIVES WITH
- 13 HIM NOW?
- 14 A. YES.
- 15 Q. DO YOU REMEMBER WHAT THE CIRCUMSTANCES WERE AROUND
- 16 Minor BIRTH?
- 17 A. WELL, RODNEY AND VIVIAN WAS GOING TOGETHER; AND SHE
- 18 GOT PREGNANT. YOU KNOW, VIVIAN WAS AT MY HOUSE
- 19 MOST OF THE TIME BECAUSE, YOU KNOW, THAT'S THE WAY
- 20 IT WAS. RODNEY WAS STILL IN HIGH SCHOOL DURING
- 21 THAT TIME; AND AT THAT TIME I DON'T KNOW WHETHER
- 22 VIVIAN WAS IN SCHOOL OR NOT. BUT SHE GOT PREGNANT;
- 23 AND WHEN SHE HAD THE BABY AND EVERYTHING; AND AFTER
- 24 THAT SHE STARTED WORKING. AND SHE GOT AN APARTMENT
- 25 OR A HOUSE, OR WHATEVER IT WAS. AND AT THAT TIME

HAZEL NOWELL - DIRECT/MR. DUKES

1 SHE WANTED RODNEY TO MARRY HER. WELL, THEY DIDN'T
2 GET MARRIED FOR WHATEVER REASON. AND I WAS WORKING
3 AT THE CITADEL AT THE TIME. AND I WORKED THE NIGHT
4 SHIFT. AND I CAME HOME FROM WORK, AND I WENT TO
5 BED. AND AFTER I GOT TO BED, THE DOORBELL RANG.
6 THE DOORBELL RANG. AND MY DAUGHTER WAS STILL HOME
7 BECAUSE THEY WERE GETTING READY TO GO TO SCHOOL AT
8 THAT PARTICULAR TIME. SO SHE WENT AND ANSWERED THE
9 DOOR. AND VIVIAN CAME IN. I WAS IN BED AT THAT
10 PARTICULAR TIME. WHEN SHE CAME IN, SHE HAD THE
11 BABY IN HER HAND. I REMEMBER IT CLEARLY. SHE HAD
12 ON THE WHITE T-SHIRT; HAD ON PAMPERS. AND VIVIAN
13 HAD A GALLON OF MILK IN HER HAND AND A DIAPER BAG.
14 AND SHE SAID, "MS. ELLIOTT -- AT THAT TIME I WAS
15 NOT MARRIED -- SHE SAID, "THIS IS YOUR SON'S CHILD;
16 I AM TOO YOUNG TO BE RAISING A CHILD; IT'S YOURS."
17 AND AT THAT TIME I SAID "AM I DREAMING?" SO SHE
18 JUST LEFT HER ON THE BED. AND AT THAT TIME

Minor

19 WAS THREE MONTHS OLD. WELL, I REALLY
20 THOUGHT SHE WAS JUST KIDDING. AND I PUT Minor
21 IN THE BED BY ME AND SHE'D LIE DOWN; I'D GIVE HER
22 THE BOTTLE. AND I SAID, SHE'LL BE BACK LATER WHEN
23 SHE COOLS OFF. WELL, SHE DIDN'T COME BACK. SO A
24 COUPLE OF WEEKS PASSED; AND IT WAS GETTING TO BE
25 VERY HECTIC WITH ME WITH THE SHIFT THAT I WORK AND

HAZEL NOWELL - DIRECT/MR. DUKES

1 WITH LATESHA BEING IN SCHOOL AND RODNEY BEING IN
2 SCHOOL. AND I TOLD RODNEY; I SAID, "HEY, WE'VE GOT
3 TO DO SOMETHING ABOUT THIS." SO I WENT TO HER
4 MOTHER'S HOUSE TRYING TO FIND OUT HER LOCATION AND
5 WHAT WAS GOING ON. SO I WENT AND I SPOKE WITH HER
6 MOTHER. HER MOTHER SAID AT THAT PARTICULAR TIME
7 VIVIAN WAS LIVING IN ATLANTA. I SAID, "WHAT? I
8 SAID, "WELL, DO YOU KNOW VIVIAN LEFT THIS BABY WITH
9 ME; AND I REALLY CAN'T TAKE CARE OF THIS BABY THE
10 WAY I WORK." I SAID, " I NEED SOME HELP WITH THIS
11 BABY." SO I ASKED HER; I SAID, "WELL, ARE YOU ABLE
12 TO HELP ME?" SHE SAID, "NO." SHE SAID, "I CAN'T
13 HELP YOU BECAUSE MY LIFE IS NOT ORGANIZED FOR
14 THAT." IT WAS A DISASTER. SO I WOUND UP FINDING A
15 BABY SITTER TO TAKE CARE OF THIS BABY DURING THE
16 DAY WHILE I WAS WORKING AT NIGHT. AND AT NIGHT I
17 HAD TO -- RODNEY USED TO WORK, TOO. WE GOT
18 INBETWEEN HIS SHIFT WORKING WHERE HE WOULD TAKE
19 CARE OF THE BABY BECAUSE HE WOULD GO TO WORK AFTER
20 SCHOOL. I DIDN'T GO TO WORK UNTIL ELEVEN O'CLOCK
21 AT NIGHT. SO WHEN I'D GO TO WORK, HE WOULD TAKE
22 CARE OF THE BABY. MAYBE ABOUT TWO OR THREE MONTHS
23 LATER, I CALLED HER MOTHER AND ASKED HER MOTHER,
24 YOU KNOW, "HAVE YOU HEARD FROM VIVIAN?" NO
25 RESPONSE. I SAID, "WELL, YOU KNOW, THIS IS OUR

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1 GRANDCHILD; BOTH OF US; AND I FEEL LIKE YOU SHOULD
2 SHARE SOME OF THE RESPONSIBILITY, TOO, BECAUSE THIS
3 IS A LITTLE HARD ON ME. I DON'T MIND TAKING CARE
4 OF HER; BUT WE NEED TO TAKE TURNS. WELL, IT NEVER
5 CAME TO THAT. SO RODNEY CONTINUED GOING TO SCHOOL;
6 RODNEY CONTINUED TO WORK; I CONTINUED TO WORK; I
7 HAD TO ALTER EVERYTHING AROUND ^{Minor} BECAUSE
8 SHE WAS A BABY. SHE WAS THREE MONTHS OLD. I
9 RAISED HER FROM THREE MONTHS UNTIL SHE TURNED FIVE
10 YEARS OLD. SHE WAS LIVING UNDER MY ROOF. ALL
11 RIGHT. I DON'T REMEMBER OR RECALL THE TIME, BUT I
12 REMEMBER VIVIAN COMING TO THE HOUSE ONE AFTERNOON
13 AFTER A PERIOD OF TIME. AND IT WAS HER AND THE
14 YOUNG MAN THAT SHE GOT MARRIED TO. SO SHE KNOCKED
15 ON THE DOOR. SHE RANG THE DOORBELL, RATHER; AND
16 SHE CAME IN THE HOUSE; AND I INVITED HER AND THE
17 YOUNG MAN IN; COME ON IN. AND SHE SAID AT THAT
18 PARTICULAR TIME THIS WAS A COUSIN OF HERS AND SHE
19 JUST CAME BY TO SEE ^{Minor} I SAID, "VIVIAN,
20 WHY DID YOU UP AND JUST LEAVE ^{Minor} AND DIDN'T
21 SAY ANYTHING?" I SAID, "YOU KNOW, I REALLY THOUGHT
22 YOU WERE TEASING WHEN YOU BROUGHT THE BABY BY."
23 SHE SAID, "OH, RODNEY CAN TAKE CARE OF HER." SHE
24 STAYED FOR ABOUT FIVE OR TEN MINUTES, AND SHE LEFT.
25 THE NEXT TIME I HEARD FROM VIVIAN OR SEEN VIVIAN,

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1 WE WAS IN COURT GETTING LEGAL CUSTODY OF
2 Minor NOW, Minor HAS BEEN LIVING WITH ME,
3 LIVING WITH RODNEY. SHE MOVED WITH RODNEY AFTER
4 RODNEY GOT MARRIED. YOU KNOW, I AGREED THAT
5 Minor CAN GO LIVE WITH RODNEY AFTER HE GOT
6 MARRIED, AFTER GERALD WANTED TO HELP TAKE CARE OF
7 HER, TOO. SO I AGREED; AND THIS WAS HIS CHILD.
8 RODNEY IS A GOOD PERSON. HE IS A GOOD FATHER. I
9 MEAN, HE HAS TAKEN HER TO THE DAY CARE CENTER WHEN
10 I PUT HER IN THE DAY CARE WHEN SHE STARTED GOING TO
11 HEADSTART BECAUSE SHE'S BEEN IN HEADSTART, YOU
12 KNOW, FROM THE BEGINNING. SHE STARTED GOING TO
13 HEADSTART. HE WOULD TAKE HER ON HIS BICYCLE DOWN
14 THERE. EVERYBODY JUST LOVED Minor SO WE GOT
15 A LOT OF HELP WITH Minor WHEN RODNEY GOT
16 MARRIED, LIKE I SAY, Minor MOVED WITH RODNEY;
17 BUT Minor WAS ALWAYS BACK AND FORTH TO MY HOUSE
18 ON THE WEEKEND OR WHATEVER; THE SUMMER TIME. SHE
19 WOULD SPEND THE SUMMER TIME WITH ME. Minor HAS
20 NEVER BEEN DEPRIVED FROM HER MOTHER. WE NEVER TOOK
21 HER AWAY FROM VIVIAN. I RAISED Minor AND I
22 RAISED HER WHEN SHE WAS CALLING ME MOTHER, MAMMA; I
23 TOLD HER, I TAUGHT HER "I'M NOT YOUR MOTHER; I'M
24 YOUR GRANDMOTHER; YOU DO HAVE A MOTHER." I WOULD
25 SHOW HER VIVIAN'S PICTURE BECAUSE I WANTED HER TO

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1 KNOW HER MOTHER. I WOULD SHOW HER VIVIAN'S
2 PICTURE. I HAVE NEVER SAID VIVIAN LEFT YOU OR ONE
3 BAD THING ABOUT HER. I NEVER DID THAT. WHEN
4 VIVIAN DECIDED THAT SHE WANTED TO VISIT ^{Minor}
5 SHE WAS ALWAYS WELCOME. I ALWAYS HAD A QUESTION OF
6 WHERE ^{Minor} IS GOING; HOW LONG ^{Minor} IS
7 GOING TO BE; BECAUSE I WAS CONCERNED. THIS IS A
8 YOUNG LADY THAT HAS PROBLEMS. AND I KNOW SHE HAS
9 PROBLEMS. I HAVE WITNESSED HER PROBLEMS. YOU
10 KNOW. I MEAN, VIVIAN HAS DONE SOME VERY STRANGE
11 THINGS. AND I'M NOT TELLING YOU SOMETHING THAT---

12 MS. MCDONALD: YOUR HONOR, I'M GOING TO OBJECT
13 TO THIS OPEN-ENDED SPEECH AT THIS POINT. IT'S
14 NON RESPONSIVE TO THE QUESTION ABOUT THE
15 CIRCUMSTANCES SURROUNDING ^{Minor} BIRTH.
16 AND I WOULD JUST ASK THAT HE MOVE---

17 THE COURT: SEE IF YOU CAN CONDUCT YOUR
18 CROSS-EXAMINATIONS.

19 MRS. NOWELL: OKAY.

20 A. WHAT ELSE DO YOU WANT TO KNOW?

21 Q. HOW LONG DID SHE LIVE WITH YOU?

22 A. ^{Minor} WAS WITH ME FROM THREE MONTHS UNTIL SHE
23 TURNED THE AGE OF FIVE.

24 Q. AND SHE'S BEEN WITH YOU SINCE THEN?

25 A. YES, SHE WAS. IN FACT BEFORE VIVIAN PICKED HER UP

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1 TO TAKE HER TO NORTH CAROLINA THIS LAST TIME,
2 Minor WAS LIVING WITH ME.

3 Q. HAS SHE EVER CALLED YOU TO COME AFTER HER?

4 A. YES, SHE HAS.

5 Q. WILL YOU TELL US ABOUT THAT?

6 A. OKAY. STARTING FROM THE TIME WHEN SHE WAS IN
7 VIRGINIA -- VIVIAN SAID THAT, YOU KNOW, Minor
8 WAS LIVING WITH HER IN VIRGINIA; AND I OBJECT TO
9 IT. THAT WAS NOT TRUE. I NEVER OBJECTED TO ANY
10 PLACE SHE WENT WITH HER MOTHER. YES, RODNEY DID GO
11 TO GET Minor BUT I GOT A CALL FROM Minor
12 AFTER TWELVE THAT NIGHT---

13 MS. McDONALD: OBJECTION, YOUR HONOR. THAT'S
14 HEARSAY.

15 THE COURT: NO, MA'AM; I'LL ALLOW THAT.

16 Q. I GOT A CALL FROM Minor FROM VIRGINIA TELLING
17 ME "GRANDMA, I WANT YOU TO COME AND GET ME." I
18 SAID, "(Minor WHAT'S WRONG?" "I CAN'T STAY HERE
19 ANY MORE; I CAN'T TAKE IT ANY MORE." THIS WAS HER
20 WORDS. I MEAN, SHE WAS TOTALLY UPSET. I SAID,
21 "WELL, Minor WHAT'S WRONG?" IT WAS THE
22 PROBLEM BETWEEN HER AND HER LITTLE BROTHERS; THE
23 PROBLEM WITH VIVIAN'S HUSBAND; THE PROBLEM WITH
24 OTHER PEOPLE COMING IN AND OUT. SHE DOESN'T GET
25 ANY REST. THIS IS SOMETHING Minor TOLD ME. I

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1 WAS NOT THERE. I, IN RETURN, GOT ON THE PHONE, AND
2 I CALLED RODNEY. I SAID, "RODNEY, THERE IS A
3 PROBLEM IN VIRGINIA WITH ^{Minor} I WANT YOU TO
4 GO AND GET ^{Minor} WHICH HE DID. HE WENT TO
5 VIRGINIA; HE GOT ^{Minor} WHEN HE BROUGHT
6 ^{Minor} BACK HOME, ^{Minor} CAME TO ME. AND I
7 TALKED TO HER. I SAID, "^{Minor} WHAT IS THE
8 PROBLEM?"

9 THE COURT: ALL RIGHT, NOW. THAT'S FAR
10 ENOUGH.

11 MRS. NOWELL: OKAY.

12 Q. YOU CAN'T TELL WHAT SHE TOLD YOU?

13 A. OKAY.

14 Q. YOU CAN TELL WHAT YOU DID AS A RESULT OF IT.

15 A. OKAY. WELL, SHE CAME AND SHE LIVED WITH ME, AND
16 SHE STAYED WITH ME FOR A WHILE BECAUSE GENERALLY
17 THAT'S WHAT SHE DOES.

18 Q. HAS SHE LIVED WITH YOU OFF AND ON?

19 A. SHE'S BEEN LIVING WITH ME OFF AND ON SINCE

20 ^{Minor} WAS BORN.

21 Q. WHAT KIND OF RELATIONSHIP DO Y'ALL HAVE?

22 A. I FEEL LIKE WE'VE GOT A BEAUTIFUL RELATIONSHIP. I
23 LOVE MY GRANDDAUGHTER. NOT ONLY HER; I LOVE ALL MY
24 GRANDCHILDREN. I TALK ABOUT THEM. I BRAG ABOUT MY
25 CHILDREN. MY MAIN CONCERN IS MY GRANDCHILDREN; THE

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1 WAY THEY ARE RAISED AND TO MAKE SURE THAT THEY ARE
2 BEING TREATED RIGHT.

3 Q. HAVE YOU TALKED WITH HER LATELY?

4 A. YES, I HAVE. Minor CALLED ME A COUPLE OF TIMES
5 FROM NORTH CAROLINA. OF COURSE I KNOW HER MOTHER
6 DIDN'T KNOW THIS BECAUSE SHE DIDN'T WANT HER MOTHER
7 TO KNOW; AND I DIDN'T MAKE AN EFFORT TO LET HER
8 KNOW THAT Minor CALLED ME. AND WHEN SHE CALLED
9 ME, HER CONCERN WAS HOW HER SISTER AND BROTHER WAS
10 DOING; HOW HER DADDY WAS DOING. SHE WAS READY TO
11 COME HOME. I SAID, "WELL, Minor I SAID, "IS
12 YOUR MOTHER THERE?" SHE SAID, "NO, MOMMY IS NOT
13 HERE." THOSE WERE HER WORDS. SHE WAS SOMEWHERE
14 DOWNSTAIRS OR WHEREVER. SHE CALLED ME AGAIN. HE
15 DON'T KNOW THE EXACT DATE. THEY HAD A -- VIVIAN'S
16 PARENTS HAD A FAMILY REUNION. I DON'T REMEMBER THE
17 EXACT MONTH. I WANT TO SAY A COUPLE OF MONTHS
18 AGO. I COULD BE WRONG. BUT Minor CALLED ME
19 FROM THERE WHICH WAS NOT WEST OF THE ASHLEY; BUT
20 HER MOTHER LIVES ON JOHNS ISLAND WHICH IS IN
21 CHARLESTON. I WAS SURPRISED. SHE CALLED ME, AND
22 SHE WAS WHISPERING. I SAID, "WELL, WHY ARE YOU
23 WHISPERING?" SHE SAID, "BECAUSE MOMMY IS IN THE
24 NEXT ROOM AND I DON'T WANT HER TO KNOW I'M TALKING
25 TO YOU." SO I SAID, "OKAY; I LOVE YOU" LIKE I

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1 ALWAYS TELL HER. I ASKED HER IF SHE WAS ALL
2 RIGHT. SHE TOLD ME SHE WAS ALL RIGHT. I SAID,
3 "ARE YOU GOING TO COME BY AND SEE ME THIS TIME?"
4 SHE SAID, "I'M GOING TO TRY TO GET MOMMY TO BRING
5 ME BY, BUT I DON'T KNOW; I'LL TALK TO HER."

Minor

6 AND HER MOTHER VISITED ME JANUARY,
7 FEBRUARY, SOMEWHERE AROUND THERE OF THIS YEAR.
8 THEY CAME BY THE HOUSE BECAUSE THEY WAS IN TOWN.
9 AND SHE BROUGHT Minor OVER; AND SHE AND A
10 COUPLE OF OTHER PEOPLE THAT WAS RIDING WITH HER,
11 THEY BROUGHT Minor OVER. I GAVE Minor SOME
12 CLOTHES BECAUSE MY DAUGHTER OUTGREW THE CLOTHES.
13 SO I GAVE IT TO Minor YOU KNOW, TO TAKE BACK
14 WITH HER. AND WE SAT AND WE TALKED. I ASKED HER
15 IF EVERYTHING WAS ALL RIGHT, HOW THINGS WERE
16 GOING. AND I MADE IT A POINT TO ASK HER
17 "Minor TELL ME THE TRUTH; I'M YOUR
18 GRANDMOTHER; I WILL LOVE YOU REGARDLESS OF WHAT;
19 DID YOUR FATHER -- OH, I'M NOT ALLOWED TO SAY THAT.
20 THIS IS SOMETHING

Minor

SAID.

22 Q. OKAY.

23 MS. MCDONALD: YES; I OBJECT TO HEARSAY, YOUR
24 HONOR,

25 THE COURT: SHE'S NOT GOING TO SAY IT.

HAZEL NOWELL - DIRECT/MR. DUKES

1 A. ANYWAY; AT THAT POINT I KNEW THAT Minor WAS
2 BEING COACHED, YOU KNOW, FROM WHAT SHE SAID TO ME.
3 I DIDN'T SAY WHAT SHE SAID.

4 Q. DO YOU THINK SHE'S THE TYPE OF CHILD THAT CAN BE?

5 A. OH, YES; OH, YES. Minor LIVES IN A LITTLE
6 FANTASY WORLD. I RAISED HER, SO I KNOW. Minor
7 DOES IMITATE OTHER THINGS, OTHER PEOPLE, WHAT THEY
8 DO, WHAT SHE SEES, OR WHAT HAPPENS. SHE'S ALWAYS
9 BEEN THAT WAY. SHE'S A FANTASY PERSON THAT LIKES
10 TO IMITATE THINGS. AND IF YOU TELL HER SOMETHING,
11 THEN SHE TRIES TO ACT IT OUT LIKE SHE IS THAT, YOU
12 KNOW. SHE WATCHED ME DRESS AND PUT ON MY CLOTHES;
13 AND THEN SHE WOULD WANT TO DO THE SAME THINGS THAT
14 I DO, YOU KNOW. AND I'VE ALWAYS TRIED TO SEPARATE
15 LITTLE GIRLS FROM GROWING UP, BUT THAT'S JUST
16 Minor WAY. Minor IS A VERY SWEET
17 PERSON. SHE IS A FINICKY PERSON. YOU KNOW, SHE
18 DOESN'T SIT STILL VERY LONG. SHE CAN'T STAY ON A
19 CONVERSATION WITHOUT JUMPING FROM ONE CONVERSATION
20 TO THE NEXT CONVERSATION. YOU CAN BE TALKING TO
21 HER ABOUT ONE THING, AND SHE'LL SAY IT FOR A
22 MINUTE, AND THEN SHE'S ON SOMETHING ELSE AND THEN
23 SOMETHING ELSE AND THEN SOMETHING ELSE. VIVIAN GOT
24 UP HERE AND SAID THAT SHE HELPED WITH Minor
25 SHE NEVER HELPED WITH Minor AND I WOULD NOT

HAZEL NOWELL - DIRECT/MR. DUKES

1 SIT HERE AND LIE ON HER BECAUSE I HAVE NEVER HOLD
2 ANYTHING AGAINST VIVIAN, AND TO THIS DAY I STILL
3 DON'T. YOU KNOW, SHE HURTED MY FEELINGS A WHILE
4 AGO WHEN SHE TOLD ^{Minor} NOT TO SPEAK TO ME.
5 BUT, YOU KNOW, I DO NOT HOLD ANYTHING AGAINST HER.
6 SHE'S BEEN IN MY HOUSE NUMEROUS OF TIMES AND WAS
7 ALWAYS WELCOME; WITH HER HUSBAND, WITHOUT HER
8 HUSBAND; EVEN HER KIDS, THE OTHER KIDS. I LOVE
9 THEM ALL. I'VE TREATED ALL OF THEM WITH THE UTMOST
10 RESPECT. AS FAR AS THE SITUATION HERE WHEN I SPOKE
11 WITH DETECTIVE -- I CAN'T REMEMBER HIS NAME --
12 RIGHT HERE. (INDICATING.)

13 Q. DETECTIVE MARSHALL?

14 A. RIGHT. THIS IS HOW I FOUND OUT ABOUT THE
15 SITUATION. YOU KNOW, I SPOKE WITH HIM BECAUSE HE
16 CALLED MY HOUSE. AND I SPOKE WITH HIM. AND HE WAS
17 THE ONE THAT RELATED TO ME THAT RODNEY HAD ABUSED
18 HIS DAUGHTER. AND IT WAS A TOTAL SHOCK TO ME.

19 ^{Minor} AND I TALK ALL OF THE TIME. AND, YOU
20 KNOW, WHEN ^{Minor} WAS NINE YEARS OLD SHE WAS AT
21 VIVIAN'S DURING THAT TIME AND SHE HAD JUST STARTED
22 HER PERIOD -- OR AT LEAST THIS IS WHAT HER MOTHER
23 TOLD ME. YOU KNOW, THEY WERE SO EXCITED. AND SHE
24 TOLD HER "WELL, WE'RE GOING TO STAY HOME TODAY AND
25 CELEBRATE THE FIRST DAY OF HER PERIOD AND THEN I'M

HAZEL NOWELL - DIRECT/MR. DUKES

180

1 GOING TO TAKE^{Minor} TO THE DOCTOR FOR A
2 CHECK-UP." AND THIS IS WHAT THEY DID. ^{Minor}
3 AND I ALWAYS KEPT IN TOUCH. VIVIAN AND I KEPT IN
4 TOUCH. I MEAN, THIS IS HOW I GOT THE TELEPHONE
5 NUMBER, YOU KNOW, BECAUSE SHE CALLED.

6 Q. THERE HAS BEEN SOME ANIMOSITY AMONG THE FAMILY?

7 A. EXCUSE ME?

8 Q. THERE HAS BEEN SOME ANIMOSITY AMONG THE FAMILY;
9 HARD FEELINGS?

10 A. AMONG VIVIAN AND I, OR RODNEY AND VIVIAN?

11 Q. BETWEEN ANY OF THEM?

12 A. WELL, BETWEEN RODNEY AND VIVIAN. THERE'S BEEN A
13 WHOLE LOT OF THAT, YOU KNOW.

14 Q. HAVE Y'ALL BEEN TO COURT?

15 A. YES, WE HAVE.

16 Q. YOU GOT A COURT ORDER?

17 A. YES. MY MAIN CONCERN IS^{Minor} THAT'S ALWAYS
18 BEEN MY MAIN CONCERN. IF I SEEM LIKE I WAS OVERLY
19 PROTECTIVE OF^{Minor} IT'S BECAUSE I WAS. NOT
20 ONLY^{Minor} ALL MY GRANDCHILDREN. I TELL MY
21 CHILDREN DAY BY DAY, EVERY DAY, THESE KIDS DID NOT
22 ASK TO COME INTO THIS WORLD; YOU WILL TAKE CARE OF
23 YOUR CHILDREN. I TOOK CARE OF THEM; AND THEY WILL
24 TAKE CARE OF THEIR CHILDREN.

25 Q. WHAT KIND OF FATHER IS RODNEY?

THOMAS MARSHALL - CROSS/MS. MCDONALD

1 A. RODNEY IS AN EXCELLENT FATHER. HE LOVES HIS
2 CHILDREN; AND HIS CHILDREN LOVE HIM; ALL OF THEM.
3 AND THEY THINK THEIR DADDY IS THE UTMOST; I MEAN---

4 Q. DO YOU THINK HE'D DO ANYTHING TO HURT THEM?

5 A. LORD IN HEAVEN KNOWS WHEN I FIRST HEARD THIS ABOUT
6 RODNEY, I WAS TOTALLY SHOCKED, YOU KNOW, TOTALLY
7 SHOCKED BECAUSE MY SON MAY DO A LOT OF THINGS, BUT
8 I KNOW HE WOULD NOT DO ANYTHING TO HURT ANY OF HIS
9 CHILDREN; ^{Minor} OR NOBODY ELSE. YOU KNOW, HE
10 HAS A DAUGHTER THAT'S FIFTEEN YEARS OLD, AND SHE
11 SPENDS TIME WITH HIM. AND THEY LOVE EACH OTHER.
12 THE CHILDREN LOVE EACH OTHER BECAUSE THEY WERE
13 RAISED UP WITH EACH OTHER.

14 Q. ALL RIGHT. ANSWER ANY QUESTIONS MS. MCDONALD MIGHT
15 HAVE FOR YOU.

16 CROSS-EXAMINATION

17 BY MS. MCDONALD:

18 Q. MRS. NOWELL, ARE YOU SURE ABOUT THAT THREE MONTH
19 OLD AGE THAT YOU SAID THAT ^{Minor} CAME TO LIVE
20 WITH YOU?

21 A. YES, I AM.

22 Q. DESPITE THE FACT THAT THERE'S A FAMILY COURT ORDER
23 THAT'S SIGNED AS A MATTER OF FACT THAT SHE WAS ONE
24 YEAR OLD WHEN SHE CAME TO LIVE WITH YOU?

25 A. WELL, I THOUGHT IT WAS THREE. I SAID THREE

THOMAS MARSHALL - CROSS/MS. MCDONALD

1 MONTHS. I DIDN'T SAY THREE YEARS OLD.

2 Q. NO; I SAID ONE YEAR?

3 A. OH, NO. Minor WAS NOT A YEAR WHEN SHE CAME TO
4 LIVE WITH ME.

5 Q. EVEN THOUGH THE FAMILY COURT SAYS THAT AT ONE YEAR
6 OF AGE AND A MONTH SHE WAS DROPPED OFF BY THE
7 PETITIONER---

8 A. NO. THIS IS WHEN WE WENT TO COURT AFTER A YEAR
9 WHEN SHE WAS ONE YEAR. BUT SHE WAS DROPPED OFF TO
10 MY HOUSE. Minor WAS NOT EVEN CRAWLING WHEN SHE
11 CAME TO THE HOUSE. SHE LEARNED HOW TO WALK IN MY
12 HOUSE WHEN SHE WAS A YEAR OLD. AND SHE WAS SO
13 LITTLE, EVERYBODY USED TO LOOK AT HER LIKE SHE WAS
14 A LITTLE DOLL BABY. SHE WAS NOT A YEAR; SHE WAS
15 THREE MONTHS OLD.

16 Q. SO IF JUDGE GASKAY IN CHARLESTON FAMILY COURT FINDS
17 AS A MATTER OF FACT THAT IN SEPTEMBER OF 1986 THAT
18 FOR THE FIRST YEAR OF HER LIFE THE MINOR CHILD WAS
19 IN THE CUSTODY OF VIVIAN JOHNSON, AND FOUND FURTHER
20 THAT DURING THIS TIME THE PETITIONER, RODNEY
21 ELLIOTT, CONTRIBUTED SOME CLOTHING AND DIAPERS FOR
22 THE CHILD AND DID VISIT WITH THE CHILD, OR THAT
23 THERE'S NO EVIDENCE THAT HE CONTRIBUTED ADEQUATELY
24 TO THE SUPPORT OF THE CHILD DURING THIS FIRST YEAR;
25 THAT'S INCORRECT, THEN?

THOMAS MARSHALL - CROSS/MS. MCDONALD

1 A. THAT'S INCORRECT. SHE WAS IN MY HOUSE WHEN SHE WAS
2 THREE MONTHS OLD.

3 Q. THANK YOU. YOU TESTIFIED -- DOES ^{Minor} GET
4 CONFUSED ABOUT WHO HER FATHER IS?

5 A. I DON'T THINK SO.

6 Q. DOES SHE KNOW WHO HER FATHER IS?

7 A. YES, SHE DOES.

8 Q. SHE'S KNOWN THAT HER WHOLE LIFE?

9 A. SHE'S KNOWN THAT HER WHOLE LIFE.

10 Q. AND SHE'S BEEN FAMILIAR WITH -- THERE WAS NEVER A
11 QUESTION AS TO WHO HER PATERNITY WAS; RIGHT---

12 A. EXACTLY.

13 Q. --IF SHE MET FIVE OR SIX MEN AND WERE TOLD THEY
14 WERE HER FATHER?

15 A. I'VE NEVER HEARD THAT.

16 Q. SO FATHER TO ^{Minor} MEANS---

17 A. IS RODNEY.

18 Q. RODNEY ELLIOTT?

19 A. RIGHT.

20 Q. YOU SAID YOU LOVED ^{Minor} A LOT?

21 A. YES, I DO.

22 Q. AND YOU LOVE RODNEY, TOO?

23 A. I LOVE THEM ALL. I LOVE ALL OF MY CHILDREN AND ALL
24 OF MY GRANDCHILDREN, AND OTHER PEOPLE'S CHILDREN,
25 TOO.

THOMAS MARSHALL - CROSS/MS. MCDONALD

1 Q. IS IT HARD FOR YOU TO PICK SIDES, THEN, IN THIS
2 CONTROVERSY?

3 A. NO.

4 Q. AND WHY IS THAT?

5 A. BECAUSE I TOLD RODNEY THAT IF HE COMMITTED THAT
6 CRIME, THEN HE SHOULD BE PUNISHED. BUT I KNOW THAT
7 HE DIDN'T.

8 Q. AND HE SAID "I DIDN'T DO IT;" AND YOU BELIEVE HIM?

9 A. WELL, I BELIEVE ^{(Minor}

10 Q. OKAY. IN SPITE OF THE FACT THAT SHE---

11 A. I BELIEVE HIM. BUT WHEN I SPOKE WITH ^{Minor}

12 WHEN ^{Minor} CALLED ME, SHE CONVINCED ME THAT
13 THAT WAS NOT TRUE.

14 Q. DO YOU KNOW HOW ^{Minor} CAME TO GET VENEREAL
15 DISEASE?

16 A. NO, I DON'T.

17 Q. DO YOU KNOW HOW SHE CAME TO HAVE THE PHYSICAL
18 DAMAGE TO HER VAGINA THAT DR. GUTMAN FROM DUKE
19 UNIVERSITY HAS TESTIFIED THAT SHE HAD?

20 A. THIS IS THE FIRST TIME I'VE HEARD IT.

21 Q. OKAY. SO WHEN YOU MADE YOUR DECISION ABOUT WHETHER
22 OR NOT SHE HAD BEEN SEXUALLY ABUSED, YOU DIDN'T
23 KNOW WHAT THE DOCTORS AND THE EXPERTS KNOW, DID
24 YOU?

25 A. NO, I DIDN'T.

THOMAS MARSHALL - CROSS/MS. MCDONALD

1 Q. OKAY. WHERE DID YOU GO TO MEDICAL SCHOOL?

2 A. OH, I HAVE NEVER BEEN TO MEDICAL SCHOOL.

3 Q. WHERE DID YOU GET YOUR CLINICAL COUNSELING DEGREE
4 THAT MADE YOU DECIDE THAT THIS CHILD HAD BEEN
5 COACHED?

6 A. OH; I DIDN'T SAY THAT SHE WAS NOT ABUSED. THAT WAS
7 NEVER MY WORD. I SAID SHE CONVINCED ME THAT IT
8 WASN'T HER FATHER.

9 Q. THAT'S CONVENIENCE, ISN'T IT, FOR YOU TO SAY NOW?

10 A. I'M ONLY TELLING YOU THE TRUTH.

11 Q. ISN'T IT TRUE THAT YOU'VE HEARD ONE OR TWO PLACES
12 THAT IT WASN'T RODNEY ELLIOTT; AND THAT'S FROM
13 RODNEY ELLIOTT AND HIS WIFE, GERALDINE?

14 A. EXCUSE ME?

15 Q. ISN'T IT TRUE THAT THE ONLY PLACE THAT YOU'VE EVER
16 HEARD THAT THIS DIDN'T HAPPEN IS FROM RODNEY
17 ELLIOTT AND HIS WIFE, GERALDINE?

18 A. NO. I HEARD IT FROM ^{Minor}

19 Q. ARE YOU AWARE THAT ^{Minor} CAN BE RE-CALLED TO
20 TESTIFY AS TO THE STATEMENT YOU JUST MADE?

21 A. YES, I AM.

22 Q. YOU'RE WILLING TO PIT YOUR WORD AGAINST YOUR TWELVE
23 YEAR OLD GRANDCHILD?

24 A. YES, I AM.

25 Q. ALL RIGHT. THANK YOU, MRS. NOWELL. I DON'T HAVE

GERALDINE ELLIOTT - DIRECT/MR. DUKES

1 ANY MORE QUESTIONS.

2 A. SURE.

3 THE COURT: YOU CAN COME DOWN. CALL YOUR NEXT
4 WITNESS.

5 - - - - -

6 WHEREUPON,

7 GERALDINE LAMBRIGHT ELLIOTT, WHO AFTER
8 BEING FIRST DULY SWORN TO TELL THE TRUTH,
9 TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MS. MCDONALD:

12 Q. WHERE DO YOU LIVE?

13 A. RIGHT NOW I LIVE AT LANE BOULEVARD, LADSON;
14 COLLEGE PARK AREA. I PRESIDE THERE NOW.

15 Q. AND YOU'RE MARRIED TO RODNEY ELLIOTT?

16 A. YES, SIR.

17 Q. WHEN DID Y'ALL GET MARRIED?

18 A. MAY THE FIFTH, 1990.

19 Q. MAY FIVE, 1990?

20 A. YES, SIR.

21 Q. AND WHERE DID YOU LIVE THEN?

22 A. WHERE DID WE LIVE THEN?

23 Q. YES.

24 A. WE LIVED AT CENTRAL AVENUE WHEN WE FIRST
25 GOT MARRIED.

GERALDINE ELLIOTT - DIRECT/MR. DUKES

1 Q. CENTRAL AVENUE?

2 A. YES.

3 Q. AND THAT'S IN SUMMERVILLE?

4 A. IN SUMMERVILLE; YES.

5 Q. AND DID ANYBODY LIVE THERE WITH YOU?

6 A. THE ONLY PERSON THAT LIVED THERE WAS ^{Minor} AND
7 I WAS PREGNANT WITH MY SON.

8 Q. WHO?

9 A. ^{Minor} LIVED WITH US. AND THE ONLY PERSON -- I
10 WAS PREGNANT WITH MY SON AT THE TIME. SHE LIVED
11 WITH US FOR A LITTLE WHILE, YOU KNOW; AND THEN SHE
12 WENT WITH HER GRANDMOTHER, TOO. SHE WAS JUST BACK
13 AND FORTH BETWEEN US AND THERE.

14 Q. I'M HAVING A HARD TIME HEARING YOU.

15 A. SHE WAS BACK AND FORTH BETWEEN US AND HER
16 GRANDMOTHER.

17 Q. DURING THIS PERIOD OF TIME?

18 A. YES.

19 Q. AND YOU HAVE TWO CHILDREN?

20 A. YES, I DO.

21 Q. WHAT ARE THEIR NAMES?

22 A. MY OLDEST SON'S NAME IS AND
23 MY LITTLE GIRL'S NAME IS

24 Q. AND HOW OLD ARE THEY?

25 A. MY SON IS SIX, AND MY DAUGHTER IS FIVE.

GERALDINE ELLIOTT - DIRECT/MR. DUKES

1 Q. AND THEY LIVE WITH YOU?

2 A. YES.

3 Q. ARE YOU EMPLOYED?

4 A. YES, I AM.

5 Q. WHO DO YOU WORK FOR?

6 A. I'M EMPLOYED WITH SULLIVAN STAFFING. AND I'M LENT
7 OUT TO CLASSIC LABORATORY RIGHT NOW.

8 Q. HOW LONG HAVE YOU BEEN WORKING WITH THEM?

9 A. ALMOST EIGHT MONTHS; A LITTLE OVER EIGHT MONTHS.

10 Q. WHEN Y'ALL MOVED TO CENTRAL, WHERE DID YOU
11 MOVE?

12 A. WHEN WE MOVED FROM THERE, WE MOVED -- WE LEFT
13 THERE, AND WE MOVED TO RIDGEVILLE FOR A LITTLE
14 WHILE. AND THEN WE MOVED TO JAMES ISLAND TO HIS
15 MOTHER'S HOUSE WHERE SHE LEFT US THE HOUSE. AND
16 THEN WE MOVED FROM THERE TO SUMMERVILLE. AND THEN
17 WE LEFT SUMMERVILLE AND WE MOVED TO RIDGEVILLE.
18 AND THEN WE MOVED FROM RIDGEVILLE BACK TO
19 SUMMERVILLE.

20 Q. THAT'S WHERE YOU'VE BEEN THROUGHOUT YOUR MARRIED
21 LIFE?

22 A. YES, SIR.

23 Q. SO YOU'VE ALWAYS BEEN IN THE SUMMERVILLE AREA?

24 A. YES.

25 Q. DO YOU REMEMBER THE '95/'96 SCHOOL YEAR, WAS IT?

GERALDINE ELLIOTT - DIRECT/MR. DUKES

- 1 A. THE SCHOOL YEAR OF 1995, ^{Minor} WAS -- WELL, SHE
2 WAS NOT WITH US. WE WERE STAYING IN -- '95 WAS
3 SIMMONS AVENUE. AND THEN WE MOVED FROM THERE
4 WHICH IS RIGHT -- WELL, IT WAS . AND THEN WE
5 MOVED RIGHT DOWN THE STREET TO SIMMONS
6 AVENUE.
- 7 Q. DID ^{Minor} COME LIVE WITH YOU IN '95?
- 8 A. ^{Minor} WAS WITH HER MOTHER IN '95 BECAUSE WHEN
9 WE MOVED TO SIMMONS AVENUE, SHE WAS NOT WITH
10 US; SHE WAS WITH HER MOTHER.
- 11 Q. OKAY. WHEN DID SHE COME TO LIVE WITH YOU?
- 12 A. SHE CAME -- IT WAS AFTER SCHOOL STARTED IN AUGUST.
- 13 Q. AFTER SCHOOL STARTED?
- 14 A. YES; BECAUSE WHAT HAPPENED IS WE WAS GETTING IN
15 TOUCH WITH HER MOTHER. HER MOTHER SAID THAT SHE
16 WOULD HAVE ^{Minor} HERE IN TIME FOR SCHOOL TO
17 START. BUT ^{Minor} DIDN'T START THE FIRST DAY OF
18 SCHOOL. ^{Minor} STARTED LIKE THE SECOND OR THIRD
19 DAY OF SCHOOL BECAUSE I REMEMBER THAT.
- 20 Q. AND THAT WAS OVER IN AUGUST?
- 21 A. YES.
- 22 Q. AND WHERE WERE YOU LIVING THEN?
- 23 A. WE WAS STAYING AT SIMMONS AVENUE.
- 24 Q. OKAY. AND SHE WENT TO WHAT SCHOOL?
- 25 A. SHE WENT TO ALSTON.

GERALDINE ELLIOTT - DIRECT/MR. DUKES

- 1 Q. AND THE OTHER TWO CHILDREN WERE THERE WITH YOU,
2 TOO?
3 A. YES.
4 Q. AND DID Y'ALL MOVE AGAIN?
5 A. YES. WE MOVED FROM SIMMONS AVENUE TO
6 CAMPBELL THICKET.
7 Q. AND WHEN DID YOU MOVE THERE?
8 A. THAT WAS IN DECEMBER BECAUSE IT WAS AROUND
9 CHRISTMAS TIME; AROUND DECEMBER.
10 Q. SHE STARTED SCHOOL AFTER CHRISTMAS?
11 A. IN DECEMBER. SHE WAS ATTENDING ALSTON; BUT WE WERE
12 STAYING IN RIDGEVILLE UNTIL -- SHE WAS TRANSPORTED
13 BACK AND FORTH TO ALSTON BY SOMEBODY WHO LIVES IN
14 THE NEIGHBORHOOD. HER KIDS WERE GOING TO THAT
15 SCHOOL. I DIDN'T WANT TO TAKE HER OUT OF SCHOOL AT
16 THE TIME. THEN WHEN THEY FOUND OUT THAT SHE WAS IN
17 THE RIDGEVILLE AREA, THEY SAID THAT SHE HAD TO GO
18 TO CLAY HILL ELEMENTARY. SO I TRANSFERRED HER
19 RECORDS OUT OF ALSTON AND MOVED HER TO CLAY HILL.
20 AND THAT'S WHERE SHE ATTENDED, AT CLAY HILL.
21 Q. SHE STAYED WITH YOU UNTIL JUNE OF THAT YEAR?
22 A. YES.
23 Q. WELL---
24 A. BUT IN MARCH -- EXCUSE ME.
25 Q. GO AHEAD. I'M SORRY.

GERALDINE ELLIOTT - DIRECT/MR. DUKES

- 1 A. IN MARCH, SHE WENT WITH VIVIAN FOR SPRING BREAK
2 BECAUSE A FRIEND OF VIVIAN'S CAME AND ASKED IF SHE
3 COULD GET ^{Minor} FOR THE SPRING BREAK, AND WE
4 TOLD HER IT WAS OKAY. BUT VIVIAN POPPED UP AND
5 CAME, YOU KNOW, TO OUR HOUSE AND SAID SHE WANTED
6 ^{Minor} FOR THE SPRING BREAK. WE TOLD HER -- HER
7 FRIEND, MANDY, WANTED ^{Minor} SO WE DECIDED,
8 WELL, YOU KNOW, LET HER GO WITH HER MOTHER DURING
9 SPRING BREAK. AND SHE WENT THE WHOLE SPRING BREAK
10 WITH HER MOTHER; AND HER MOTHER BROUGHT HER BACK
11 WHEN SCHOOL STARTED.
- 12 Q. SPRING BREAK OR---
- 13 A. NO; EASTER; SPRING BREAK.
- 14 Q. THAT WOULD HAVE BEEN '96?
- 15 A. YES; IN '96.
- 16 Q. WERE YOU WORKING DURING THIS PERIOD OF TIME?
- 17 A. YES, I WAS.
- 18 Q. WHERE WERE YOU WORKING?
- 19 A. IN '96 I WAS WORKING FOR MARTIN ENGINEERING.
- 20 Q. WHAT WERE YOUR HOURS THERE?
- 21 A. IT WAS FROM 7:00 TO 5:30.
- 22 Q. WAS YOUR HUSBAND WORKING?
- 23 A. YES.
- 24 Q. WHAT WAS HE DOING?
- 25 A. HE WAS WORKING WITH AN ELECTRICIAN. BUT HE WAS

GERALDINE ELLIOTT - DIRECT/MR. DUKES

1 WORKING FOR CULLUM MECHANIC.

2 Q. WOULD HE BE HOME DURING THE DAYTIME?

3 A. NO, HE WASN'T.

4 Q. DO YOU KNOW WHAT DAYS OF THE WEEK HE WORKED?

5 A. HE WORKED FROM 7:00 TO 3:30 OR 7:00 TO 5:30;
6 WHICHEVER THE SHIFT CALLED FOR. BUT MOST OF THE
7 TIME IT WAS 7:00 TO 5:30. HE WORKED A TEN HOUR
8 SHIFT SOMETIMES.

9 Q. [REDACTED]

10 A. [REDACTED]

11 Q. [REDACTED]

12 A. [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 Q. WHERE DOES YOUR SISTER LIVE?

16 A. SHE LIVES IN CAMPBELL THICKET.

17 Q. AND WHAT IS HER NAME?

18 A. VENNIE LAMBRIGHT.

19 Q. SHE WAS A LAMBRIGHT?

20 A. YES; SHE'S A HUSSEY NOW.

21 Q. YOU AND YOUR HUSBAND WERE LIVING TOGETHER DURING
22 THIS PERIOD OF TIME, WEREN'T YOU?

23 A. YES.

24 Q. I MEAN, Y'ALL DIDN'T SEPARATE OR NOTHING, DID YOU?

25 A. NO.

GERALDINE ELLIOTT - CROSS/MS. MCDONALD

1 Q. Y'ALL HAVE A NORMAL MARRIAGE, DON'T YOU?

2 A. YES.

3 Q. HAVE YOU EVER GOTTEN A VENEREAL DISEASE FROM YOUR
4 HUSBAND?

5 A. NO; I NEVER DID.

6 Q. HAVE YOU EVER HAD A SEXUAL DISEASE?

7 A. NO; NEVER.

8 Q. DID YOU HAVE A CHANCE TO OBSERVE HIM AS A FATHER?

9 A. YES, I HAVE. HE'S BEEN A GOOD FATHER TO THE KIDS.
10 I'VE NEVER SEEN ANYTHING THAT'S INDICATED THAT HE
11 HAS BEEN A BAD FATHER. HE LOVES HIS KIDS.

12 Q. DID ANY OF THEM EVER COMPLAIN ABOUT HIM ABUSING
13 THEM?

14 A. NO. NONE OF THEM HAVE.

15 Q. HE HAS HOW MANY CHILDREN?

16 A. HE HAS FOUR CHILDREN.

17 Q. AND DID ^{Minor} EVER SAY ANYTHING TO YOU?

18 A. SHE NEVER DID.

19 Q. THANK YOU. ANSWER ANY QUESTIONS THAT MS. MCDONALD
20 MIGHT HAVE.

21 CROSS-EXAMINATION

22 BY MS. MCDONALD:

23 Q. MRS. ELLIOTT, YOU WORKED AT THE WINN-DIXIE DELI.

24 A. IN '95.

25 Q. IN '95?

GERALDINE ELLIOTT - CROSS/MS. MCDONALD

- 1 A. YES.
- 2 Q. AND WHAT TIME DOES THE DELI CLOSE?
- 3 A. THE DELI CLOSES AT NINE.
- 4 Q. Y'ALL TRY TO DO ALL THE CLEAN UP WORK AND
- 5 EVERYTHING SO YOU CAN CLOSE RIGHT AT NINE; OR DO
- 6 YOU SOMETIMES---
- 7 A. I SOMETIMES GET OUT OF THERE AT 8:35 OR 8:40.
- 8 Q. SOMETIMES YOU GET OUT A LITTLE AFTER NINE IF YOU
- 9 HAVE TO CLEAN UP?
- 10 A. YES; IF WE HAVE TO. IF IT'S SLOW, YOU RARELY GET
- 11 OUT OF THERE AT 8:30. BUT IF IT'S FAST IN PACE, I
- 12 USUALLY GET OUT OF THERE AT 9:15 BECAUSE YOU START
- 13 BREAKING DOWN EVERYTHING AROUND 8:00 OR 8:30;
- 14 SOMETHING LIKE THAT.
- 15 Q. OKAY. SO IF YOU GET EVERYTHING CLEANED UP ON TIME,
- 16 YOU GET OFF AROUND NINE?
- 17 A. YES.
- 18 Q. AND WHEN YOU WERE WORKING AT THE WINN-DIXIE IN
- 19 1995, YOU WERE LIVING ON---
- 20 A. SIMMONS AVENUE.
- 21 Q. AND THAT WAS THE WINN-DIXIE ON TROLLEY OUT TOWARDS
- 22 OAKBROOK?
- 23 A. NO. THAT WAS WINN-DIXIE IN NORTH MAIN IN
- 24 SUMMERVILLE.
- 25 Q. OH; THE WINN-DIXIE BY I-26?

GERALDINE ELLIOTT - CROSS/MS. MCDONALD

1 A. YES.

2 Q. THE BIG ONE?

3 A. YES.

4 Q. ISN'T THAT THE ONE THAT'S BIGGER THAN THE ONE THAT
5 WAS ON TROLLEY?

6 A. I DON'T KNOW NOTHING ABOUT THE ONE ON TROLLEY. I
7 JUST DEALT WITH THE ONE IN---

8 Q. OKAY. AND YOU WOULD GO HOME, HOW; LIKE GOING DOWN
9 NORTH MAIN STREET?

10 A. YES.

11 Q. AND ABOUT HOW LONG WOULD IT TAKE YOU TO GET HOME?

12 A. IT WOULD USUALLY TAKE ME ABOUT FIFTEEN TO TWENTY
13 MINUTES.

14 Q. DO YOU HAVE YOUR OWN CAR?

15 A. YES, I DO.

16 Q. AND MR. ELLIOTT HAS HIS OWN CAR, TOO?

17 A. MR. ELLIOTT DOESN'T HAVE HIS OWN CAR; NO.

18 Q. OKAY. SO THERE IS ONE FAMILY CAR?

19 A. YES.

20 Q. AND SO YOU WOULD TAKE IT TO WORK WITH YOU?

21 A. YES.

22 Q. AND HE WOULD BE AT HOME OR WITHOUT A CAR WHEREVER
23 HE WAS?

24 A. HE WAS HOME. BUT WHEN SOME OF MY SHIFT CALLS ME TO
25 COME IN FROM ONE TO NINE, SOMETHING LIKE THAT; THEY

GERALDINE ELLIOTT - CROSS/MS. MCDONALD

1 WOULD BE WITH A BABY SITTER. AND THEN WHEN I GET
2 OFF OF WORK, I USED TO GO AND PICK THEM UP.

3 Q. OKAY. AND SOMETIMES HE HAD THEM AT HOME WITH HIM?

4 A. YES; SOMETIMES HE WOULD.

5 Q. Minor NEVER TOLD YOU ANYTHING THAT HAD BEEN
6 GOING ON WITH HER AND HER FATHER?

7 A. SHE NEVER INDICATED IT TO ME; NO.

8 Q. AND THEN Minor LEFT. SHE WENT TO SPRING BREAK
9 WITH HER MOM; RIGHT?

10 A. YES.

11 Q. AND THEN SHE CAME BACK AND FINISHED OUT THE SCHOOL
12 YEAR?

13 A. YES.

14 Q. AND SHE WAS AT THAT TIME BACK AT CLAY HILL?

15 A. YES.

16 Q. OKAY. AND THEN FOR THE SUMMER SHE WENT BACK TO
17 NORTH CAROLINA, AND THEN DID SEVENTH GRADE IN NORTH
18 CAROLINA?

19 A. YES; THERE WITH HER MOTHER.

20 Q. AND THEN---

21 A. HER MOTHER CAME AND -- OH, EXCUSE ME.

22 Q. HER MOM CAME AND GOT HER?

23 A. YEAH. SHE CAME AND GOT HER BEFORE THE JUNE -- SHE
24 CAME -- I THINK IN JULY SHE CAME AND GOT HER AGAIN
25 BEFORE THAT. AROUND THE FOURTH OF JULY HOLIDAY SHE

GERALDINE ELLIOTT - CROSS/MS. MCDONALD

1 CAME AND GOT HER FOR THAT WEEKEND OR FOR THAT TIME.
2 AND THEN SHE COULD BRING HER BACK. AND ^{Minor}
3 YOU KNOW, WENT TO SCHOOL. BUT SHE HAD ^{Minor}
4 YOU KNOW, BEFORE---

5 Q. THE SUMMER BEFORE SIXTH GRADE?

6 A. RIGHT. SHE HAD ^{Minor} -- SHE GOT ^{Minor} THE
7 SUMMER OF JUNE FOR THE SUMMER AND THEN FOR THE
8 ENTIRE YEAR.

9 Q. I KNOW JUNE TO SUMMER. BUT WHAT YEAR ARE WE
10 TALKING ABOUT?

11 A. OF '96.

12 Q. NINETY-SIX?

13 A. YES.

14 Q. AFTER THE SIXTH GRADE?

15 A. SHE WAS IN THE SIXTH GRADE IN JUNE OF '96. SHE WAS
16 GOING TO THE SEVENTH GRADE.

17 Q. RIGHT. AND SHE STARTED SEVENTH GRADE IN NORTH
18 CAROLINA?

19 A. WITH HER MOTHER; YES.

20 Q. SO WHERE WAS SHE THAT SUMMER BREAK IN BETWEEN?

21 A. WITH HER MOTHER.

22 Q. SO SHE WAS IN NORTH CAROLINA FROM LIKE JUNE OR
23 EARLY JULY ON UNTIL SHE STARTED---

24 A. FROM JUNE ON TO THIS DATE.

25 Q. UNTIL THIS DATE. OKAY; THE SUMMER BEFORE IN '95?

GERALDINE ELLIOTT - CROSS/MS. MCDONALD

1 A. SHE WAS NOT WITH US. SHE WAS WITH HER MOTHER.

2 Q. WHEN DID SHE COME?

3 A. SHE CAME BACK WITH US LIKE, I THINK -- SCHOOL
4 STARTED LIKE JUNE THE, I THINK, THE 21ST OR TWENTY
5 SOMETHING LIKE THAT. SHE CAME LIKE AUGUST THE
6 23RD; I THINK LIKE TWO DAYS AFTER SCHOOL STARTED.

7 Q. OKAY. WHAT DID Y'ALL GIVE HER FOR HER BIRTHDAY
8 THAT YEAR?

9 A. WE TOOK HER OUT TO EAT THE YEAR THAT -- HER
10 BIRTHDAY.

11 Q. SO YOU TOOK HER OUT TO EAT AROUND SUMMERVILLE?

12 A. YES.

13 Q. OKAY. SO YOU TOOK HER OUT TO EAT FOR HER BIRTHDAY?

14 A. YES; BECAUSE MY DAUGHTER'S IS THE SAME EXACT DAY AS
15 HER BIRTHDAY.

16 Q. AND YOU CELEBRATED THEIR BIRTHDAYS---

17 A. ON HER BIRTHDAY; YES.

18 Q. SO THAT WOULD HAVE BEEN AUGUST THE 17TH?

19 A. YES. THE TH? Minor WASN'T HERE IN
20 '95. THE -- WE DIDN'T CELEBRATE HER
21 BIRTHDAY BECAUSE SHE WAS AT HER MOTHER'S.

22 Q. WELL, WHAT YEAR DID YOU TAKE HER OUT TO EAT?

23 A. IT WAS IN OR I CAN'T REMEMBER
24 EXACTLY. IN OF SHE WAS NOT WITH
25 US.

GERALDINE ELLIOTT - CROSS/MS. MCDONALD

1 Q. WELL, IN AUGUST OF 1995; IF THE SCHOOL RECORDS ARE
2 THAT SHE STARTED SCHOOL AROUND AUGUST THE---

3 A. I CAN'T REMEMBER THE EXACT DATE THE SCHOOL
4 STARTED. ALL I KNOW IS SHE CAME LIKE TWO DAYS
5 AFTER SCHOOL. IF SCHOOL STARTED LIKE AUGUST THE
6 18TH OR SOMETHING LIKE THAT, OR AUGUST THE 20TH;
7 SHE STARTED LIKE TWO DAYS AFTER.

8 Q. SO YOU DON'T THINK SHE STARTED ON THE VERY FIRST
9 DAY?

10 A. NO; BECAUSE I TALKED TO THE GUIDANCE COUNSELOR --
11 THE COUNSELOR AT ALSTON -- BECAUSE I WENT AND GOT
12 SOME RECORDS. AND SHE WAS SAYING THAT PERIOD
13 BETWEEN THAT TIME WAS A SLACK, YOU KNOW. IT WAS
14 NOT RIGHT, YOU KNOW; IT WAS SLACK. IT WAS NOT
15 RIGHT BECAUSE IT WAS SHOWING THAT SHE WAS NOT AT
16 THE SCHOOL, BUT IT WAS SHOWING A PERIOD IN THAT
17 TIME. I GUESS THEY WAS TRYING TO GET THE SCHOOL
18 RECORDS SQUARED OFF; WHATEVER THE CASE MAY BE, YOU
19 KNOW; SOMETHING SHE WAS SAYING. I CAN'T
20 UNDERSTAND, BUT THAT'S WHAT SHE WAS SAYING.

21 Q. SO HOW MUCH TIME DID SHE MISS?

22 A. SHE ONLY MISSED THE TWO DAYS. SCHOOL STARTED LIKE
23 THE 18TH OR 19TH. SHE STARTED THAT SCHOOL THAT
24 FOLLOWING TWO DAYS AFTER THAT.

25 Q. OKAY. AND THAT WAS IN AUGUST -- SOME TIME? YOU

GERALDINE ELLIOTT - CROSS/MS. MCDONALD

- 1 DON'T KNOW WHAT DAY, BUT IT WAS IN EARLY OR MID
2 AUGUST, 1995?
- 3 A. YEAH; SOMEWHERE AROUND THERE; YEAH.
- 4 Q. SO FOR SURE WE KNOW SHE WAS THERE BY AUGUST OF
5 1995?
- 6 A. YES.
- 7 Q. AND THEN SHE WAS THERE FOR THE WHOLE SIXTH GRADE?
- 8 A. SHE WASN'T THERE FOR THE SIXTH GRADE BECAUSE IN THE
9 SIXTH GRADE SHE STARTED IN '96; AUGUST THE 17TH.
10 IN 1996 SHE WAS IN THE SIXTH GRADE.
- 11 Q. NO, MA'AM. SIXTH GRADE SHE STARTED IN 1995.
12 THAT'S ALREADY BEEN PRETTY WELL ESTABLISHED.
- 13 A. IN AUGUST THE 17TH, 1996, SHE WOULD HAVE BEEN IN
14 THE SIXTH GRADE. IN FIFTH GRADE SHOULD HAVE BEEN
15 IN '95 THE FIFTH GRADE WAS '95. '96 IS SIXTH GRADE.
- 16 Q. NO, MA'AM. SIXTH GRADE AT ALSTON MIDDLE SCHOOL,
17 SHE STARTED IN 1995. THAT WAS THE 1995/'96 SCHOOL
18 YEAR. AND SHE WENT TO ALSTON AND CLAY HILL?
- 19 A. I DON'T RECALL THAT.
- 20 Q. WHERE WAS SHE IN THE SEVENTH GRADE?
- 21 A. WITH HER MOTHER.
- 22 Q. WHERE WAS SHE IN FIFTH GRADE?
- 23 A. WITH HER MOTHER.
- 24 Q. WHERE WAS SHE IN SIXTH GRADE?
- 25 A. WITH US.

GERALDINE ELLIOTT - CROSS/MS. MCDONALD

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- 1 Q. OKAY. SO WE CAN AGREE, THEN, THAT THE SIXTH GRADE
2 YEAR WAS WHEN SHE WAS WITH Y'ALL AND SHE ATTENDED
3 TWO SEPARATE SCHOOLS DURING THAT ONE SCHOOL YEAR?
4 A. UH-HUH (INDICATING YES.)
5 Q. BECAUSE YOU GUYS MOVED FROM SUMMERVILLE TO
6 RIDGEVILLE?
7 A. YES.
8 Q. OKAY.
9 A. AND HER RECORDS STILL SHOW THAT SHE WAS STILL AT
10 ALSTON.
11 Q. WHY DID YOU GUYS MOVE FROM SUMMERVILLE TO
12 RIDGEVILLE?
13 A. WHY DID WE MOVE FROM SUMMERVILLE TO RIDGEVILLE?
14 Q. YES.
15 A. BECAUSE WE HAD A BETTER HOUSE.
16 Q. DID YOU FIND ANOTHER BETTER HOUSE A FEW MONTHS
17 LATER?
18 A. FROM---
19 Q. SO CAMPBELL THICKET WAS BETTER THAN SIMMONS?
20 A. CAMPBELL THICKET? YES. THE HOUSE WAS BIGGER.
21 Q. AND THAT WOULD HAVE BEEN THE HOUSE ON SIMMONS?
22 A. YES.
23 Q. AND THEN WHERE DID YOU MOVE FROM CAMPBELL THICKET?
24 A. FROM CAMPBELL THICKET, WE MOVED TO ELAINE
25 BOULEVARD.

GERALDINE ELLIOTT - CROSS/MS. MCDONALD

1 Q. WHERE IS THAT?

2 A. THAT'S WHERE I RESIDE NOW; IN LADSON; THE COLLEGE
3 PARK AREA.

4 Q. OKAY. DO YOU RECALL MAKING AN AGREEMENT THAT'S
5 ALREADY IN EVIDENCE WITH VIVIAN MORRIS?

6 A. NO.

7 Q. LOOK AT THIS PIECE OF PAPER. (WITNESS EXAMINES
8 PAPER.)

9 A. NO. I NEVER MADE AN AGREEMENT WITH VIVIAN. MY
10 SIGNATURE IS NOWHERE ON THAT PAPER; SO I NEVER MADE
11 AN AGREEMENT. THE AGREEMENT WAS BETWEEN VIVIAN
12 MORRIS AND MY HUSBAND.

13 Q. BUT WAS IT YOUR IDEA THAT VIVIAN WOULD PAY FOR
14 EVERYTHING?

15 A. NO.

16 Q. WELL, DID YOU HAVE A PROBLEM WITH RODNEY SENDING
17 MONEY TO THE CHILD WHEN SHE WASN'T STAYING WITH
18 Y'ALL?

19 A. NO. I DIDN'T HAVE A PROBLEM WITH THAT.

20 Q. IT DIDN'T BOTHER YOU AT ALL?

21 A. NO, IT DIDN'T.

22 Q. AND YOU DON'T RECALL HAVING A FAMILY COURT ORDER
23 ADDRESS THE FACT THAT YOU WOULD DENY MRS. MORRIS
24 VISITATION WITH HER CHILD WHEN SHE WAS IN TOWN?

25 A. NO; NO; THAT WAS VIVIAN SAYING THAT.

RODNEY ELLIOTT - DIRECT/MR. DUKES

1 Q. SO, AGAIN, A FAMILY COURT JUDGE'S FINDINGS OF FACT
2 ARE INCORRECT?

3 A. A FAMILY COURT JUDGE MADE A DECISION THAT AS OF ME
4 NOT TO HAVE ANYTHING TO SAY IN CONCERN WITH VIVIAN
5 AND RODNEY'S DECISION.

6 Q. RIGHT.

7 A. HE SAID TO LEAVE YOUR WIFE OUT OF THE
8 DECISION-MAKING CONCERNING ^{Minor} THAT WAS HIS
9 SAYING WHEN HE SAID THAT TO ME. I DIDN'T EVEN TAKE
10 NO STAND OR NOTHING. I WAS SITTING DOWN IN THE
11 HALL.

12 Q. BUT A FAMILY COURT JUDGE RULED AS A MATTER OF FACT
13 THAT YOU WERE NO LONGER TO DENY VISITATION TO MRS.
14 MORRIS; ISN'T THAT CORRECT?

15 A. HE DID NOT DENY THAT TO ME; NO. I'M SORRY, HE DID
16 NOT SAY NOTHING TO ME ABOUT THAT.

17 Q. OKAY. I DON'T HAVE ANY MORE QUESTIONS.

18 MR. DUKES: I HAVE NO FURTHER QUESTIONS.

19 THE COURT: YOU CAN COME DOWN. CALL YOUR NEXT
20 WITNESS.

21 MR. DUKES: RODNEY ELLIOTT.

22 - - - - -

23 WHEREUPON,

24 RODNEY ELLIOTT, WHO AFTER BEING FIRST
25 DULY SWORN TO TELL THE TRUTH, TESTIFIED

RODNEY ELLIOTT - DIRECT/MR. DUKES

AS FOLLOWS:

DIRECT EXAMINATION

BY MR. DUKES:

1 Q. MR. ELLIOTT, WHERE DO YOU LIVE?

2 A. RIGHT NOW WE LIVE AT ELAINE BOULEVARD. IT'S A
3 TRAILER PARK IN LADSON.

4 Q. HOW OLD ARE YOU?

5 A. I'M THIRTY-THREE.

6 Q. WHERE WERE YOU BORN?

7 A. CHARLESTON COUNTY MEDICAL UNIVERSITY.

8 Q. THIS IS YOUR MOTHER SEATED OVER HERE WITH YOU?

9 A. YES, SIR, IT IS.

10 Q. AND WHERE DID YOU GO TO SCHOOL?

11 A. I WENT TO SCHOOL AT MIDDLETON HIGH SCHOOL FOR MY
12 HIGH SCHOOL DAYS; AND I DID A YEAR-AND-A-HALF OF
13 TECHNICAL TRAINING AT C.C.P.C. WHICH IS CAROLINA
14 CONSTRUCTION TRAINING COUNSEL FOR APPRENTICESHIP
15 FOR ELECTRICIANS.

16 Q. IS THAT WHAT YOUR PROFESSION IS?

17 A. YES, SIR.

18 Q. ABOUT THE TIME YOU WERE GRADUATING FROM HIGH
19 SCHOOL, DID YOU BECOME A FATHER?

20 A. YES, SIR. I WAS A FATHER PRIOR TO MY HIGH SCHOOL
21 DAYS.

22 Q. AND DO YOU HAVE ANOTHER CHILD?

RODNEY ELLIOTT - DIRECT/MR. DUKES

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1 A. YES, SIR.

2 Q. AND DID YOU ACKNOWLEDGE THAT CHILD?

3 A. YES, SIR.

4 Q. DID YOU GO TO THE HOSPITAL WHEN THE CHILD WAS BORN?

5 A. YES, SIR; I WAS THERE.

6 Q. AND YOU'VE ALWAYS ACKNOWLEDGED THAT AS BEING YOUR
7 CHILD?

8 A. YES, SIR; NEVER DENIED ANY OF MY KIDS.

9 Q. AND YOU'RE MARRIED?

10 A. YES, SIR, I AM.

11 Q. AND THIS IS YOUR WIFE OVER HERE? (INDICATING.)

12 A. YES, SIR.

13 Q. TO YOUR RIGHT?

14 A. YES, SIR.

15 Q. AND Y'ALL WERE MARRIED WHEN?

16 A. IN 1990; MAY THE FIFTH.

17 Q. AND AT THAT PARTICULAR TIME YOU AND YOUR WIFE

18 STARTED LIVING TOGETHER, AND ^{Minor} LIVED WITH
19 YOU?

20 A. THAT'S CORRECT.

21 Q. AND Y'ALL HAVE SINCE HAD TWO OTHER CHILDREN, HAVE
22 YOU NOT?

23 A. YES, SIR.

24 Q. AND THEIR NAMES AND AGES ARE WHAT?

25 A. EXCUSE ME?

RODNEY ELLIOTT - DIRECT/MR. DUKES

1 Q. YOUR CHILDREN'S NAMES AND AGES?

2 A. MY OLDEST DAUGHTER IS

3 Minor

4 AND

5 Q. THEY RESIDE WITH YOU?

6 A. THAT'S CORRECT, SIR.

7 Q. ARE YOU EMPLOYED?

8 A. YES, SIR, I AM.

9 Q. WHERE DO YOU WORK?

10 A. I'M AFFILIATED WITH INTERNATIONAL BROTHERHOOD OF
11 ELECTRICAL WORKERS WHICH I DO ELECTRICAL WORK FOR A
12 POWER STATION OUT AT SCE&G IN WATEREE, SOUTH
13 CAROLINA.

14 Q. DO YOU REMEMBER WHERE YOUR DAUGHTER, C.J.
15 WENT TO SCHOOL? WHERE DID SHE START SCHOOL AT?

16 A. WHEN SHE FIRST WENT TO SCHOOL?

17 Q. YES.

18 A. STARTING OUT?

19 Q. YES, SIR.

20 A. AS I COULD BEST REMEMBER, Minor STARTED SCHOOL
21 AT A HEAD-START. WE STARTED HER OUT AT A
22 HEAD-START; AND MAMIE FIELDS' DAY CARE CENTER WHICH
23 THEY HAD A HEAD-START AND A DAY CARE. AND AFTER
24 THAT, SHE WENT TO SCHOOL WITH -- I THINK IT WAS
25 EITHER NEWINGTON OR EITHER FLOWER TOWN. THESE ARE

RODNEY ELLIOTT - DIRECT/MR. DUKES

1 TWO SCHOOLS THAT ARE WITHIN EACH OTHER, TWO
2 ELEMENTARY SCHOOLS SIDE BY SIDE. AND I THINK THERE
3 WAS LIKE FIRST AND SECOND IN ONE SCHOOL AND THIRD
4 AND FOURTH IN ANOTHER. SO THAT'S WHERE SHE WENT TO
5 SCHOOL AS FAR AS THE ELEMENTARY SCHOOL DAYS.

6 Q. WHO DID SHE LIVE WITH DURING THIS PERIOD OF TIME?

7 A. SHE LIVED WITH ME AND MY WIFE GERALDINE.

8 Q. DID SHE EVER GO STAY WITH YOUR MOTHER?

9 A. SHE LIVED WITH MY WIFE AND MY MOTHER ALSO DURING
10 HER EARLY HEAD-START DAYS, AND A LITTLE BIT OF HER
11 ELEMENTARY SCHOOL DAYS ALSO.

12 Q. WHO PROVIDED HER MEANS OF SUPPORT?

13 A. WE BOTH DID; MY MOTHER AND I AS WELL AS MY WIFE.

14 Q. WHICH WIFE? YOUR WIFE?

15 A. MY WIFE. MY WIFE I HAVE NOW, GERALDINE.

16 Q. ALL RIGHT, SIR. AND THEN AFTER THAT WHERE DID SHE
17 GO TO SCHOOL?

18 A. THEN SHE WENT TO SCHOOL AS SHE WAS GETTING OLDER IN
19 THE FOURTH OR FIFTH GRADE, SHE'S BEEN GOING BACK
20 AND FORTH TO SCHOOL UNDER MY ROOF AS WELL AS HER
21 MOTHER'S ROOF. BUT THE SCHOOLS UP THERE, I
22 COULDN'T TELL YOU EXACTLY THE NAMES WITHOUT LOOKING
23 AT THE TRANSCRIPT. AND THE SCHOOLS DOWN THERE WAS
24 -- I THINK SHE STARTED OUT AT ALSTON, BUT SHE
25 NEVER GRADUATED FROM THERE. SHE LEFT FROM THERE;

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1 WENT UP A SHORT PERIOD OF TIME WITH HER MOTHER.
2 AND IN BETWEEN THAT TIME BEING WITH HER MOTHER, SHE
3 CAME BACK TO LIVE WITH US. AND THAT'S WHERE THE
4 WHOLE FIASCO STARTS IN WHERE WAS SHE AND WHAT TIME
5 WAS SHE THERE. BUT AS WE WAS LIVING IN RIDGEVILLE,
6 SHE WAS NOT WITH US. SHE WAS LIVING WITH HER
7 MOTHER. AND THEN WHEN SHE CAME BACK, WE WAS
8 LETTING HER GO TO SCHOOL IN ALSTON; AND WHEN THEY
9 FOUND OUT THAT SHE WAS NOT IN THE RIGHT DISTRICT,
10 THAT'S WHEN WE HAD TO TRANSFER HER TO CLAY HILL.
11 BUT SHE NEVER DID GRADUATE FROM THERE. SHE WAS
12 WITH HER MOTHER IN '95 AND PARTS OF '96.

13 Q. DID YOU EVER TO GO COURT OVER YOUR CHILD?

14 A. YES, SIR, I DID.

15 Q. HAVE WE BEEN TO COURT MORE THAN ONCE?

16 A. YES, SIR. I HAVE BEEN TO COURT MORE THAN ONCE.

17 Q. AND YOU'RE FAMILIAR WITH THIS COURT ORDER?

18 (INDICATING.)

19 A. YES, SIR, I AM.

20 Q. AND YOU INITIATED THIS ACTION?

21 A. I SURE DID. CAN I LOOK AT THAT BEFORE I ANSWER? I
22 KNOW I'VE ALREADY ANSWERED, BUT--- (DEFENDANT
23 EXAMINES DOCUMENT.) YES. THIS IS THE ONE THAT I
24 INITIATED.

25 Q. AND THAT GAVE YOU CUSTODY?

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1 A. THIS IS CORRECT.

2 Q. SHE DIDN'T LIVE WITH YOU DURING THE '95/'96 SCHOOL
3 YEAR?

4 A. PART OF THE TIME. '95/'96 SCHOOL YEAR; YES.

5 Q. DO YOU REMEMBER WHERE YOU WERE WORKING DURING THAT
6 PERIOD OF TIME?

7 A. I WAS STILL ALSO EMPLOYED WITH CULLER MECHANICAL
8 WHICH IS ALSO AN ELECTRICAL FIRM.

9 Q. HOW DID YOU GET BACK AND FORTH TO WORK?

10 A. WELL, I HAD A HUMBLE FATHER-IN-LAW; AS GRACIOUS AS
11 HE HAS BEEN TO ME OVER THE YEARS; I'VE LOST MY
12 DRIVER'S LICENSE. SO HE'S BEEN ABLE TO PICK ME UP
13 FROM THE HOME WHERE WE LIVED. HE'D COME OUT, GIVE
14 ME A RIDE; AND THEN I'D GET A BUDDY BUDDY SYSTEM OR
15 TRY TO SHARE RIDES WITH SOMEBODY IN THE AREA, OR
16 CLOSE TO THE AREA WHERE I LIVE; AND THEN MY WIFE
17 WOULD MEET ME IF HER TIME WOULD RUN CLOSE TO THAT
18 WHERE SHE CAN MEET ME. AND THAT'S HOW I'D GET
19 HOME; BACK AND FORTH. IT SEEMED LIKE FOREVER. FOR
20 THE LAST FIVE YEARS, I KNOW THIS.

21 Q. HAVE YOU WORKED REGULARLY?

22 A. YES, SIR.

23 Q. ARE YOU EVER HOME DURING THE DAYTIME?

24 A. MOST OF THE TIME I'M WORKING IN THE DAYTIME. AND
25 THERE ARE TIMES WHEN WE'RE ON CALL ON THE WEEKENDS,

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1 BUT THAT'S NOT VERY OFTEN. THEN SOMETIMES WE ARE
2 ON CALL ON THE WEEKENDS. BUT MOST OF MY TIME IS
3 7:00 TO 3:30 UNLESS THEY CHANGE IT TO A 5:30 SHIFT
4 WHICH GIVES US FOUR TENS.

5 Q. HAVE YOU EVER HAD TO GO GET YOUR DAUGHTER?

6 A. YES, SIR. I RECALL AN INCIDENT UP IN VIRGINIA,
7 ROANOKE, VIRGINIA. AS A MATTER OF FACT, I HAD JUST
8 GOT HOME FROM WORK AND, I WAS TIRED; JUST A NORMAL
9 WORKING DAY; KIND OF A LITTLE FRUSTRATED. BUT I
10 GOT IN THE HOUSE AND THERE WAS A PHONE CALL FROM MY
11 MOTHER SAYING ^{Minor} IS CALLING; I THINK YOU
12 NEED TO CHECK ON THIS CHILD. AND I WAS LIKE
13 "GERALDINE, MAN!; HERE WE GO AGAIN." AND I GOT ON
14 THE PHONE -- I CALLED HER BACK. SHE SAID "RODNEY,
15 I DON'T KNOW WHAT'S WRONG BUT ^{Minor} IS CALLING
16 SAYING SHE WANTS YOU TO COME AND GET HER; AND I
17 THINK YOU NEED TO CHECK ON YOUR DAUGHTER." AT THAT
18 TIME I SAID OKAY; AND I PICKED UP THE TELEPHONE. I
19 TRIED TO GET IN TOUCH WITH MRS. MORRIS BUT I WAS
20 UNABLE TO AT THE TIME BECAUSE I WAS GOING TO CALL
21 HER AND ASK HER DIRECTIONS ON HOW TO GET THERE.
22 THAT WAS MY FIRST VISIT TO VIRGINIA. AND I DIDN'T
23 GET AN ANSWER AT FIRST. THEN I TRIED AGAIN AS WE
24 WERE PREPARING OURSELVES FOR THE ROAD. I DID GET
25 THROUGH AND I SAID -- WELL, ^{Minor} ANSWERED THE

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1 TELEPHONE. I SAID, "WHAT'S WRONG?" SHE SAID,
2 "WELL, DADDY, I'M SO TIRED; SO MUCH THINGS ARE
3 GOING ON." I SAID, "WHAT DO YOU MEAN? I THOUGHT
4 YOU WAS HAPPY; I THOUGHT YOU WANTED TO GO TO SCHOOL
5 AND BE AROUND YOUR OTHER TWO BROTHERS FOR A LITTLE
6 WHILE." AND SHE SAID, "YEAH." AND THEN I SAID,
7 "YOU CALL GRANDMAMMA AND SEE IF SHE WANTS YOU TO
8 COME HOME." AND SHE SAID, "YEAH; I'M TIRED." AND
9 SHE KEPT RANTING AND RAVING. BUT SHE WOULDN'T
10 REALLY SAY EXACTLY WHY SHE WANTED TO COME. I JUST
11 KNEW THAT. I COULD TELL IT IN HER VOICE "COME AND
12 GET ME, DADDY." AND THAT'S ALL I THOUGHT WAS TO GO
13 AND GET MY DAUGHTER. AND I ASKED MY WIFE, " I
14 SAID, HONEY, LET'S GET IN THE CAR AND FILL IT UP;
15 AND LET'S GO ON TO ROANOKE." AT THIS TIME WE WENT
16 TO ROANOKE. A SOON AS I GOT INTO TOWN -- I DIDN'T
17 EVEN KNOW THE DIRECTIONS WERE THAT CLOSE AFTER SHE
18 TOLD ME HOW TO GET THERE ON THE PHONE. I WAS LIKE
19 TWO BLOCKS AWAY FROM THE HOUSE, AND I DIDN'T EVEN
20 KNOW THAT. BUT WHEN I CALLED BACK ON THE PHONE I
21 SAID, "VIVIAN?" AND SHE WAS LIKE "YES." I SAID,
22 "I'M RIGHT DOWN THE STREET FROM YOU." SHE SAID
23 "WHAT?" AND I SAID, "YES; I'M IN VIRGINIA." I
24 SAID, Minor WANTED US TO COME PICK HER UP."
25 AND SHE WAS KIND OF SURPRISED; BUT SHE STILL GAVE

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1 ME DIRECTIONS ON HOW TO GET TO THE HOUSE. AND IT
2 WAS SO EASY BECAUSE I ONLY WAS TWO BLOCKS AWAY. I
3 CAME RIGHT TO THE HOUSE. BUT LO AND BEHOLD, WHEN I
4 GOT THERE, HERE COMES EVERYBODY RUSHING ME OUT THE
5 DOOR; OTHER PEOPLE; I DON'T KNOW THEM. THE FAMILY
6 MEMBERS, THE ONLY ONE THAT I CAN RECALL, IS VIVIAN,
7 MY DAUGHTER, ^{Minor} AND THERE WAS SOME OTHER
8 GIRLS AND A COUPLE OF OTHER FELLOWS THAT SEEMED
9 LIKE THEY HAD CONTROL OF THE HOUSE. AND I WAS
10 BLOWN AWAY JUST BY THAT. SO I KIND OF HELD BACK
11 AND SAID "WELL, YOU KNOW, DON'T START NOTHING; THIS
12 IS HER AREA; FIND OUT WHAT'S GOING ON WITH YOUR
13 DAUGHTER." AND I STOOD RIGHT THERE PATIENTLY UNTIL
14 I COULD SEE ^{Minor} AND I SAID, "VIVIAN;" I
15 SAID, "THIS IS NOT A SUITABLE ATMOSPHERE FOR
16 ^{Minor} AT THIS TIME SHE WAS LAYING DOWN ON
17 THE FLOOR, AND SHE DID NOT HAVE ANY BEDS, WHAT I
18 WOULD CALL BEDS, TO SLEEP IN. SHE WAS LAYING ON A
19 MAT. AND I ASKED HER; I SAID, "WHAT'S GOING ON?" I
20 SAID, "I'M NOT COMING HEAR TO TRY TO JUDGE YOUR
21 HOUSE; I'M JUST SAYING THAT ^{Minor} CALLED ME AND
22 SAID SHE'S PRETTY UPSET; SHE CALLED HER GRANDMAMMA
23 AND SAID SHE WANTED TO COME HOME; AND THAT'S WHY
24 I'M HERE" BECAUSE I WANTED TO STAY OUT. I WANTED
25 TO GIVE THEM SOME TIME TO BE AROUND EACH OTHER

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1 BECAUSE ALL THE COURT STUFF THAT WE'VE BEEN
2 THROUGH; I DIDN'T WANT Minor TO GROW UP AS A
3 CHILD FEELING LIKE SHE DIDN'T KNOW HER MOTHER OR
4 HER FATHER WAS ONE WAY, OR SOMETHING LIKE THAT.
5 AND I ALWAYS TAUGHT Minor TO LOVE HER MOTHER,
6 RESPECT HER MOTHER. Minor DOESN'T KNOW
7 ANYTHING BAD FROM ME TO HER MOTHER. I'VE NEVER
8 TRIED TO PUT HER MOTHER DOWN IN HER FACE OR
9 NOTHING. I'VE ONLY GIVEN HER UTMOST RESPECT.
10 UNLESS THERE WAS A SITUATION THAT I WALKED UP ON
11 THAT I DIDN'T THINK WAS SUITABLE FOR MY CHILD, THEN
12 I WOULD COME IN OUTRAGE AND TELL HER "I DON'T LIKE
13 THIS; I DON'T THINK THIS IS FAIR." SO WE'VE ALWAYS
14 HAD THAT KIND OF BATTLE. BUT RIGHT NOW IF YOU WERE
15 TO PUT Minor BACK ON THIS STAND, AS GOD IS MY
16 WITNESS, YOU CAN ASK THIS CHILD "WHAT HAS YOUR
17 DADDY EVER TAUGHT YOU;" AND THE FIRST THING SHE'D
18 COME OUT WITH AND SAY IS THAT EDUCATION IS THE
19 KEY. AND THAT'S ALL I'VE EVER PUT IN HER MIND WAS
20 TO TRY TO DO THE BEST AND TO NOT LIE; TELL THE
21 TRUTH. AND MY CHILD RIGHT NOW, I KNOW SHE WANTS TO
22 COME BACK AND BE WITH US, AND I WANT TO TAKE CARE
23 OF HER. IT'S NOT FAIR. IN MY HOUSE, MY KIDS, MY
24 WIFE, MY MOTHER; I DON'T HAVE NO FEAR FROM VIVIAN
25 OTHER THAN THE FACT THAT RIGHT NOW SHE'S UNSTABLE.

RODNEY ELLIOTT - DIRECT/MR. DUKES

1 WE'RE BUYING OUR HOUSE. IT'S NOT MUCH; BUT WE'RE
2 BUYING. WE'RE TRYING TO MAKE A DIFFERENCE. WHEN
3 Minor NOT TAKEN BACK THERE, I GAVE HER FREE,
4 WILLINGLY, BECAUSE I WANTED HER TO HAVE SOME TIME.
5 FOUR YEARS. IF I FELT LIKE THERE WAS ANY PRESSURE
6 OR ANYTHING THAT I WAS GOING TO DO WRONG, I WOULD
7 HAVE NEVER MADE AN AGREEMENT LIKE THAT. SHE SIGNED
8 IT. SHE WAS WILLING TO ACCEPT Minor THROUGHOUT
9 THE REST OF HER MIDDLE SCHOOL, HIGH SCHOOL, AND
10 WHENEVER SHE BECAME A GRADUATE AT THE 12TH GRADE;
11 THEN, YES, WE WERE GOING TO GET TOGETHER AND SAY
12 "WELL, HEY; DO WE THINK WE'RE GOING TO LET HER GO
13 TO COLLEGE OR WHATEVER THE FUTURE LOOKED LIKE FOR
14 HER AT THAT TIME. BUT THAT WAS---

15 THE COURT: JUST A MINUTE.

16 MS. MCDONALD: YOUR HONOR, HE'S ANSWERED IN
17 THE FORM OF A RAMBLING DISSERTATION.

18 THE COURT: JUST A MINUTE. YES, MA'AM?

19 MS. MCDONALD: I'M OBJECTING AGAIN TO THE FORM
20 OF A RAMBLING DISSERTATION.

21 THE COURT: SEE IF YOU CAN CONDUCT AN
22 EXAMINATION.

23 Q. DID YOU MOLEST YOUR DAUGHTER?

24 A. NEVER.

25 Q. HAVE YOU IN ANY WAY TOUCHED HER INAPPROPRIATELY?

RODNEY ELLIOTT - CROSS/MS. MCDONALD

1 A. NEVER HAVE. I'VE ONLY GIVEN MY CHILD LOVE BY HUGS;
2 THAT'S IT. I'VE PICKED EACH AND EVERY ONE OF THEM
3 UP JUST LIKE NORMAL PARENTS DO. THAT'S ABOUT IT.

4 Q. HAVE YOU EVER HAD V.D.

5 A. NEVER.

6 Q. ANY VENEREAL WARTS?

7 A. NEVER.

8 Q. THANK YOU. ANSWER ANY QUESTIONS MS. MCDONALD MIGHT
9 HAVE FOR YOU.

10 CROSS-EXAMINATION

11 BY MS. MCDONALD:

12 Q. MR. ELLIOTT, ARE YOU FAMILIAR WITH THE TERM CHILD
13 SUPPORT?

14 A. YES, MA'AM, I AM.

15 Q. AND YOU WOULD AGREE WITH ME THAT IT IS AN AMOUNT OF
16 MONEY THAT A PARENT WHO TEMPORARILY OR PERMANENTLY
17 DOESN'T HAVE CUSTODY OF A CHILD SENDS TO THE
18 CUSTODIAL PARENT OF THE CHILD, AND ALL THIS IS DONE
19 IN THE BEST INTEREST OF THE CHILD; ISN'T THAT
20 RIGHT?

21 A. YES, MA'AM.

22 Q. AND HOW MUCH CHILD SUPPORT HAVE YOU BEEN SENDING TO
23 NORTH CAROLINA SINCE 1996 WHEN YOU SAID ^{Minor}
24 WENT UP THERE TO LIVE WITH HER MOTHER?

25 A. FOR THIS LAST PERIOD?

RODNEY ELLIOTT - CROSS/MS. MCDONALD

1 Q. EVER SINCE 1995, OR 1996 WHEN SHE LEFT AFTER THE
2 SIXTH GRADE SCHOOL YEAR. HOW MUCH MONTHLY MONEY DO
3 YOU SEND TO SUPPORT YOUR CHILD?

4 A. WHENEVER SHE ASKS FOR ANYTHING, I'M THERE FOR HER.

5 Q. HOW MUCH MONEY HAVE YOU SENT A MONTH?

6 A. WE NEVER AGREED ON AN AMOUNT OF MONEY. SO THERE
7 WAS NEVER A TIME THAT I COULD JUST SEND OUT A
8 DOLLAR OR TWO. BUT IF SHE ASKED OR IT, I WAS THERE
9 FOR HER.

10 Q. YOU COULDN'T SEND OUT ANY MONEY?

11 A. I COULD. I SAID SHE NEVER ASKED ME FOR ANYTHING.

12 Q. WHO ASKED FOR---

13 A. VIVIAN. SHE NEVER ASKED ME.

14 Q. OKAY. AND YOU NEVER THOUGHT THAT IT MIGHT BE A
15 GOOD THING TO DO TO HELP YOUR CHILD TO JUST GO
16 AHEAD AND SEND SOME MONEY FOR THE CHILD?

17 A. OF COURSE.

18 Q. HOW MUCH WERE YOU SENDING?

19 A. I'D SEND MONEY IF I KNEW WHERE SHE WAS STAYING.
20 MOST OF THE TIME SHE WAS NOT STABLE IN ONE SPOT.

21 Q. YOU DIDN'T KNOW THE ADDRESSES WHERE SHE LIVED IN
22 DURHAM? AND YOU KNOW FROM YOUR ATTORNEY'S
23 CROSS-EXAMINATION OF THESE WITNESSES, YOU KNOW
24 SHE'S LIVED IN ROANOKE. YOU KNOW SHE'S LIVED IN
25 DURHAM. YOU KNOW SHE'S LIVED IN NEW YORK?

RODNEY ELLIOTT - CROSS/MS. MCDONALD

1 A. RIGHT.

2 Q. YOU DIDN'T KNOW HER ADDRESS?

3 A. YES. I KNEW THE ADDRESSES. BUT AS FAR AS SENDING
4 MONEY, VIVIAN AND I AGREED THAT IF SHE NEEDED
5 ANYTHING SHE WOULD ASK ME. BUT SHE SIGNED THE
6 PAPERS SAYING THAT SHE WAS NOT WORRIED ABOUT ANY
7 FINANCIAL RESPONSIBILITIES BECAUSE SHE WAS GETTING
8 MONEY FROM A PREVIOUS MARRIAGE. AND SHE WAS
9 RECEIVING MONEY FROM SOMEBODY ELSE.

10 Q. BUT THAT DEAD MAN, MR. MORRIS, IS NOT^{Minor}
11 FATHER; IS HE?

12 A. THIS IS CORRECT.

13 Q. SO YOU'RE^{Minor} FATHER; RIGHT?

14 A. THAT'S TRUE.

15 Q. OKAY. AND YOU MADE AN ARRANGEMENT THAT YOU WOULD
16 BE FREE AND CLEAR? WHILE SHE WAS LIVING WITH HER
17 MOTHER, YOU DIDN'T SEND A DIME UP THERE?

18 A. NO. I DIDN'T MAKE THAT ARRANGEMENT.

19 Q. YOU JUST SAID THAT WE AGREED THAT WHILE SHE WAS
20 WITH HER MOTHER I WOULDN'T SEND ANY MONEY?

21 A. I DON'T MIND EVER SENDING MONEY TO MY CHILD NO
22 MATTER WHERE SHE GOES OR WHO SHE'S WITH. BUT ALL
23 I'M SAYING IS THE PAPER; THE PAPER THAT YOU HAVE---

24 Q. RIGHT.

25 A. THERE WAS JUST AN UNDERSTANDING FOR VIVIAN AND I TO

RODNEY ELLIOTT - CROSS/MS. MCDONALD

1 HAVE SOME TYPE OF AN AGREEMENT BECAUSE WE'VE BEEN
2 THROUGH SO MUCH COURT FIASCO. SOMEBODY BE TELLING
3 ME HOW TO RAISE MY DAUGHTER, OR SOMEBODY WOULD BE
4 TELLING ME "WELL, THIS IS THE PROPER WAY." AND I
5 DIDN'T WANT TO GO THAT WAY.

6 Q. RIGHT. BECAUSE A FAMILY COURT JUDGE MIGHT HAVE
7 TOLD YOU TO PAY CHILD SUPPORT; ISN'T THAT CORRECT?

8 A. WELL, HE FELT LIKE I WAS A LEGITIMATE ADULT TO TAKE
9 CARE OF MY CHILD. THAT'S WHY HE AWARDED ME
10 CUSTODY. AND I'VE BEEN DOING THE BEST I COULD.

11 Q. RIGHT. AND THEN YOU WENT TO FAMILY COURT AND
12 AGREED ON THE RECORD "WE HAVE AN AGREEMENT, JUDGE;
13 WE WANT TO CHANGE TEMPORARILY THE CUSTODY" AND
14 SHE'S GOING TO GO STAY WITH HER MOTHER FOR A YEAR,
15 DON'T YOU THINK THE ODDS ARE THAT THAT FAMILY COURT
16 JUDGE WOULD HAVE SAID "ALL RIGHT, MR. ELLIOTT, THEN
17 YOU NEED TO SEND, WHATEVER THE FORM IS, THE SCALED
18 AMOUNT IS FOR ONE CHILD WHILE YOUR DAUGHTER IS
19 STAYING WITH MRS. MORRIS? WOULDN'T THAT HAVE BEEN
20 THE RIGHT THING FOR YOU TO DO?

21 A. WHAT ARE YOU ASKING ME?

22 Q. I'M ASKING YOU WHY YOU DIDN'T GO TO FAMILY COURT
23 WHEN YOU MADE THIS ARRANGEMENT. YOU'RE NO STRANGER
24 TO FAMILY COURT?

25 A. WELL, THIS IS MY OPINION. I MEAN, VIVIAN BASICALLY

RODNEY ELLIOTT - CROSS/MS. MCDONALD

1 FELT THE SAME WAY. WE DIDN'T NEED THE COURTS TO
2 TELL US HOW TO RAISE OUR DAUGHTER. IT WAS NOT AN
3 ISSUE---

4 Q. WELL, WAIT A MINUTE. ARE YOU SURE YOU DIDN'T NEEDED
5 THE COURTS TO TELL YOU HOW TO RAISE YOUR DAUGHTER?

6 A. AT THIS POINT SHE WANTED SOME TIME WITH HER
7 DAUGHTER, AND I FELT THAT IT WAS THE LEGITIMATE
8 THING TO DO BECAUSE IF THE SHOE WAS ON THE OTHER
9 FOOT, I WOULD HAVE WANTED TO SPEND SOME TIME WITH
10 MY DAUGHTER. AND I HAD HER FOR A WHILE, AND SHE
11 HAD HER FOR A WHILE. MY MOTHER HAS HAD HER AND
12 RAISED HER. AND I THOUGHT THAT VIVIAN WAS GETTING
13 BETTER; THINGS WERE LOOKING BETTER FOR HER. BUT
14 EVIDENTLY THEY WASN'T, NOT AFTER SHE WENT THIS LAST
15 TIME AND THE PREVIOUS TIMES WHEN SHE'S BEEN IN
16 VIRGINIA. I TOOK A BIG CHANCE ON SENDING C.J.
17 THIS TIME THINKING THAT SHE WOULD HAVE BEEN ALL
18 RIGHT.

19 Q. KNOWING THAT -- YOUR POSITION WAS THAT SHE HADN'T
20 DONE A VERY GOOD JOB IN THE PAST? BUT "I'M GOING
21 TO SEND YOU UP THERE; BUT I'M GOING TO MAKE A
22 LITTLE AGREEMENT FIRST THAT I'M NOT GOING TO SEND
23 ANY MONEY ALONG WITH YOU?"

24 A. BECAUSE SHE WOULD WANT ME TO GO COURT. EVERY TIME
25 SHE THOUGHT I WOULD BE DOING SOMETHING THAT WASN'T

RODNEY ELLIOTT - CROSS/MS. MCDONALD

1 UP TO HER STANDARDS, SHE'D BE TRYING TO TAKE ME TO
2 COURT TO PROVE THAT I'M AN UNFIT FATHER.

3 Q. WAIT A MINUTE. EVERYBODY STAYED OUT OF COURT. AND
4 YOU'RE THE ONE WHO BENEFITTED, RIGHT, BECAUSE YOU
5 DIDN'T PAY ANY MONEY UNDER THIS ARRANGEMENT FOR
6 THAT CHILD; ISN'T THAT CORRECT?

7 A. THAT'S NOT CORRECT.

8 Q. THIS STATEMENT SAYS "MRS. MORRIS WHO WILL PROVIDE
9 ALL FINANCIAL RESPONSIBILITY FOR SAID CHILD WHILE
10 C.J. IS IN TEMPORARY CUSTODY OF VIVIAN J.
11 MORRIS." THAT'S WHAT THIS SAYS. CAN WE AGREE ON
12 THAT; ON THIS WRITTEN DOCUMENT THAT YOUR ATTORNEY
13 PUT IN EVIDENCE?

14 A. CAN I SEE THAT?

15 Q. SURE. (DEFENDANT EXAMINES DOCUMENT.) RIGHT HERE;
16 THAT SECOND TO LAST PARAGRAPH.

17 A. THIS PAPER RIGHT HERE THAT WE WROTE TOGETHER; AND
18 SHE SIGNED IT -- AND ANOTHER GIRL SHE HAD WITH HER
19 WHEN SHE CAME INTO TOWN SIGNED IT ALSO -- WAS ONLY
20 SO THAT SHE COULD CARRY ^{Minor} AND DIDN'T HAVE
21 TO WORRY ABOUT ME, YOU KNOW, SAYING "WELL, RODNEY
22 -- SHE THOUGHT I WOULD COME UP THERE AND GET
23 ^{Minor} AGAIN. AND THE ONLY REASON WHY I CAME UP
24 THERE TO GET ^{Minor} FROM VIRGINIA IS BECAUSE SHE
25 CALLED AND ASKED FOR HER FATHER. BUT SHE WAS

RODNEY ELLIOTT - CROSS/MS. MCDONALD

1 FRIGHTENED; SHE WAS SCARED.

2 Q. THAT'S NOT MY QUESTION.

3 A. THAT'S WHY THIS WAS WRITTEN. SHE KNOWS THAT. YOU
4 CAN ASK HER THE SAME QUESTION.

5 THE COURT: HOLD ON JUST A MINUTE, NOW.

6 A. YOU CAN ASK HER THE SAME QUESTION.

7 THE COURT: JUST A MINUTE. SHE'S GOING TO ASK
8 YOU A QUESTION. YOU CAN ANSWER YES, OR I
9 DON'T KNOW, AND THEN YOU CAN EXPLAIN IT.

10 Q. I UNDERSTAND, MR. ELLIOTT, WHY THIS DOCUMENT WAS
11 WRITTEN. BUT I'M ASKING YOU TO ACKNOWLEDGE THE
12 WRITTEN WORD---

13 A. THE FINANCIAL PART OF IT?

14 Q. THAT YOU DON'T GIVE ANY MONEY DURING THE OPERATION
15 OF THIS DOCUMENT. THAT'S WHAT IT SAYS; AM I
16 CORRECT?

17 A. IT SAYS THAT VIVIAN WOULD TAKE RESPONSIBILITY OF
18 Minor

19 Q. FINANCIAL RESPONSIBILITY?

20 A. IF SHE WANTED TO BUY HER SOMETHING OR WHOEVER, THAT
21 WAS FINE. I WAS JUST TRYING TO BACK OFF FROM HER
22 LETTING HER BE---

23 Q. HOW MUCH MONEY DID YOU WRITE A CHECK FOR EVERY
24 MONTH AND MAIL OFF TO YOUR DAUGHTER WHILE SHE WAS
25 LIVING IN NORTH CAROLINA?

RODNEY ELLIOTT - CROSS/MS. MCDONALD

1 A. SHE NEVER ASKED FOR ANYTHING.

2 Q. AND YOU DIDN'T GET---

3 A. WHEN SHE LEFT, SHE LEFT WITH CLOTHES THAT WE BOUGHT
4 FOR HER; EVERYTHING ADEQUATE FOR HER TO GO TO
5 SCHOOL WITH.

6 Q. FOR A YEAR?

7 A. IF THAT YEAR RAN OUT, WE WOULD HAVE SUPPLIED MORE.

8 Q. DID YOU SEND A TRUCKLOAD OF GROCERIES UP THERE WITH
9 HER? WHAT ABOUT HER FOOD?

10 A. THAT'S OUTRAGEOUS. I MEAN, THAT'S HER MOTHER.
11 THAT'S HER MOTHER. ALL I DID WAS TRY TO GIVE HER
12 MOTHER TIME TO SPEND WITH HER DAUGHTER. THAT'S ALL
13 I DID. AND I TRIED TO BACK OFF AWAY FROM THAT.
14 THE FINANCIAL PART OF IT; SHE SAID SHE WAS FINE.
15 SHE WAS RECEIVING FOOD STAMPS OR RECEIVING MONEY
16 FROM SOME OTHER SOURCE.

17 MS. MCDONALD: YOUR HONOR, WOULD YOU INSTRUCT
18 THE WITNESS TO ANSWER THE QUESTION?

19 THE COURT: ASK THE QUESTION.

20 MS. MCDONALD: I HAVEN'T ASKED A QUESTION IN
21 FIVE MINUTES BECAUSE HE HASN'T BEEN
22 RESPONSIVE.

23 Q. DO YOU REMEMBER BEING SERVED WITH AN ORDER FROM
24 FAMILY COURT IN CHARLESTON DATED MAY THE 27TH,
25 1992?

RODNEY ELLIOTT - CROSS/MS. MCDONALD

1 A. YES, MA'AM.

2 Q. OKAY. LET ME HAVE THIS MARKED.

3 STATE'S EXHIBIT NO. 3

4 MARKED FOR IDENTIFICATION

5 Q. AND YOU JUST READ THE CAPTION OF THIS, DIDN'T YOU?
6 WOULD YOU LOOK AT THIS TO FAMILIARIZE YOURSELF WITH
7 IT? (DEFENDANT REVIEWS DOCUMENT.)

8 A. OKAY.

9 Q. THIS CAPTION HAS YOU AND YOUR MOM AS DEFENDANTS,
10 DOESN'T IT?

11 A. YES.

12 Q. SO THAT MEANS THAT MRS. MORRIS WENT TO THE FAMILY
13 COURT AND STARTED THIS ACTION; ISN'T THAT RIGHT?

14 A. I'M NOT SURE IF THAT'S WHAT SHE PUSHED OR WHAT.
15 ALL I KNOW IS WE WERE THERE AND TO ANOTHER FAMILY
16 COURT HEARING.

17 Q. RIGHT. AND IF YOU'LL LOOK AT THIS; AND IF YOU'LL
18 AGREE WITH ME; THAT THIS ORDER WAS GENERATED
19 BECAUSE YOUR WIFE HAD DENIED MRS. MORRIS VISITATION
20 UNDER A PRIOR ORDER?

21 A. NO; I WOULDN'T AGREE TO THAT.

22 Q. OKAY. I WANT YOU TO READ PARAGRAPH THREE.
23 (DEFENDANT REVIEWS DOCUMENT.)

24 THE COURT: DO YOU WANT HIM TO READ IT, OR DO
25 YOU WANT IT OUT LOUD?

RODNEY ELLIOTT - CROSS/MS. MCDONALD

1 MS. MCDONALD: I WANT HIM TO READ IT OUT LOUD.

2 A. YOU SAID MY MOTHER OR MY GRANDMOTHER?

3 Q. YOUR WIFE.

4 A. DENIED WHO?

5 THE COURT: JUST READ THE PARAGRAPH, PLEASE.

6 A. YOU WANT ME TO READ HERE, MA'AM? (INDICATING.)

7 Q. PARAGRAPH THREE; ONE, TWO, THREE.

8 A. "IT APPEARS THAT THE VISITATION WAS REFUSED BY THE
9 DEFENDANT'S PRESENT WIFE AND THAT ALTHOUGH THE
10 PLAINTIFF ATTEMPTED SEVERAL TIMES TO CONTACT THE
11 OTHER DEFENDANT, HAZEL NOWELL, THE CHILD'S
12 GRANDMOTHER OVER A TWO-AND-A-HALF WEEK PERIOD,
13 VISITATION WAS UNABLE TO BE ARRANGED. I DO NOT
14 FIND THAT THE DEFENDANTS ARE IN WILLFUL CONTEMPT.
15 I FIND THAT THE PAST ORDERS OF THE COURT ARE NOT
16 ADEQUATE TO DEAL WITH THE CURRENT CUSTODIAL
17 SITUATION OF THE MINOR CHILD. THE VISITATION
18 NECESSARY FOR THE MOTHER TO EFFECTIVELY VISIT THE
19 CHILD."

20 Q. OKAY. SO BECAUSE THE PRIOR ORDERS WEREN'T WORKING,
21 AND BECAUSE YOUR WIFE HAD DENIED VIVIAN MORRIS THE
22 VISITATION THAT SHE WAS SUPPOSED TO HAVE WITH HER
23 DAUGHTER WHO WAS IN YOUR CUSTODY, Y'ALL HAD TO GO
24 BACK TO FAMILY COURT; YOU WERE RULED BACK INTO
25 FAMILY COURT IN 1992. DO YOU REMEMBER THAT?

RODNEY ELLIOTT - CROSS/MS. MCDONALD

1 A. YES.

2 Q. AND THE FAMILY COURT, ONCE AGAIN, WROTE DOWN ALL
3 THE VISITATION THAT MRS. MORRIS WAS SUPPOSED TO
4 HAVE; IS THAT CORRECT?

5 A. I BELIEVE WE GOT SOMETHING ELSE THAT SHE WAS
6 SUPPOSED TO GO BY; SOME TYPE OF GUIDELINE OR
7 SOMETHING. BUT---

8 Q. WELL, IT'S IN HERE. IT'S PART OF THE ORDER.

9 A. OKAY.

10 Q. ONE THROUGH -- ONE AND TWO. BUT THERE WERE SEVERAL
11 THANKSGIVING TYPE VISITATION RIGHTS?

12 A. YES, MA'AM.

13 Q. BECAUSE IN 1992 THERE WERE SOME PROBLEMS WITH THE
14 VISITATION; ISN'T THAT RIGHT?

15 A. I DON'T KNOW; UNLESS YOU TELL ME WHAT THE PROBLEM
16 WAS.

17 Q. THE FAMILY COURT JUDGE SAID THAT GERALDINE WAS PART
18 OF THE PROBLEM. SO HE GAVE SPECIFIC INSTRUCTIONS
19 FOR HOW YOU TWO, YOU AND MRS. MORRIS, WERE SUPPOSED
20 TO HANDLE THIS VISITATION; ISN'T THAT RIGHT?

21 A. SHE'S NEVER HAD A PROBLEM GETTING^{Minor}

22 Q. AND IN 1996 YOU TURNED^{Minor} OVER TO HER MOTHER
23 BUT DIDN'T GO BACK TO FAMILY COURT, AND SO DIDN'T
24 MAKE ANY ARRANGEMENTS TO PAY THE CHILD SUPPORT;
25 ISN'T THAT RIGHT? YOU JUST DID THIS KIND OF

RODNEY ELLIOTT - CROSS/MS. MCDONALD

1 INFORMAL THING THAT YOUR ATTORNEY PUT IN THE
2 RECORD? WOULD YOU AGREE WITH THAT OR DISAGREE WITH
3 THAT?

4 A. I'M DISAGREEING WITH THE PART THAT YOU'RE TELLING
5 ME ABOUT THE FINANCIAL RESPONSIBILITY AS FAR AS THE
6 COURT ORDER SAYING SO.

7 Q. RIGHT. IT'S NOT A COURT ORDER. I AGREE WITH YOU.

8 A. RIGHT; OKAY.

9 Q. I'M SAYING IT'S AN INFORMAL AGREEMENT?

10 A. WE WERE JUST MAKING AN AGREEMENT JUST TO TRY AND
11 KEEP THINGS GOING AS THEY WERE ALL ALONG.

12 Q. AND THAT WAS DATED JUNE, 1996?

13 A. (NO RESPONSE.)

14 Q. AND THAT WAS SEVERAL MONTHS BEFORE THE SEXUAL ABUSE
15 THAT YOUR DAUGHTER SUFFERED WAS REPORTED AND
16 INVESTIGATED; ISN'T THAT CORRECT?

17 A. THIS COURT ORDER, OR THE LAST PAPER RIGHT THERE?

18 Q. IN THE LAST STATEMENT?

19 A. YES, MA'AM; YOU'RE RIGHT.

20 Q. AND THAT WAS SEVERAL MONTHS BEFORE THIS STUFF ALL
21 CAME TO LIGHT?

22 A. I BELIEVE YOU'RE RIGHT ON THAT AS FAR AS THE DATE.

23 Q. WHO RAPED YOUR DAUGHTER?

24 A. I DON'T KNOW.

25 Q. WOULD YOU AGREE THAT, BASED ON WHAT YOU'VE HEARD IN

RODNEY ELLIOTT - CROSS/MS. MCDONALD

1 THIS COURTROOM, THAT THERE IS SOMETHING WRONG WITH
2 HER VAGINA?

3 A. I BELIEVE THAT---

4 Q. IT IS DAMAGED IN SOME WAY?

5 A. I DON'T KNOW. I'M NOT A MEDICAL DOCTOR.

6 Q. BASED ON WHAT YOU'VE HEARD IN THE COURTROOM, WOULD
7 YOU AGREE THAT YOUR DAUGHTER HAS BEEN SEXUALLY
8 VIOLATED?

9 A. I THINK THAT SOMEBODY MIGHT HAVE DONE SOMETHING TO
10 HER; YES.

11 Q. OKAY. BUT IT WASN'T YOU?

12 A. NO, MA'AM.

13 Q. AND YOU'VE CONVINCED YOUR MOTHER AND YOUR WIFE OF
14 THIS?

15 A. I'M CONVINCED. I KNOW I WOULDN'T TOUCH MY DAUGHTER
16 LIKE THAT.

17 Q. RIGHT.

18 A. I NEVER HAVE DISCUSSED THAT WITH THEM; BUT WE HAVE
19 TALKED ABOUT IT, THE SITUATION BECAUSE I WAS BEING
20 ACCUSED OF THIS.

21 Q. HAS C.J. ALWAYS KNOWN WHO HER FATHER IS?

22 A. YES, MA'AM.

23 Q. NEVER ANY QUESTION IN HER MIND ABOUT WHO HER DADDY
24 IS?

25 A. NO, MA'AM.

RODNEY ELLIOTT - RE-DIRECT/MR. DUKES

1 Q. I DON'T HAVE ANY MORE QUESTIONS.

2 MR. DUKES: I JUST HAVE ONE QUESTION IN REPLY.

3 RE-DIRECT EXAMINATION

4 BY MR. DUKES:

5 Q. DID MRS. MORRIS EVER PAY YOU CHILD SUPPORT WHILE
6 YOU HAD CUSTODY OF THE CHILD?

7 A. NO.

8 Q. THANK YOU. THAT'S ALL THE QUESTIONS I HAVE.

9 THE COURT: ALL RIGHT. YOU CAN COME DOWN.
10 CALL YOUR NEXT WITNESS.

11 MR. DUKES: THAT'S THE DEFENDANT'S CASE, YOUR
12 HONOR.

13 THE COURT: ANYTHING IN REPLY?

14 MS. MCDONALD: POSSIBLY, YOUR HONOR, IF THE
15 COURT WOULD GRANT A FEW MINUTES RECESS.

16 THE COURT: SURE. LET'S TAKE ABOUT TEN
17 MINUTES, MR. FOREMAN. LET ME KNOW WHEN YOU'RE
18 READY. COURT'S IN RECESS.

19 (BRIEF RECESS.)

20 - - - - -

21 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

22 THE COURT: THE STATE, BY LAW, HAS THE
23 OPPORTUNITY TO PUT UP REPLY WITNESSES. SO THE
24 STATE, I THINK, HAS ONE WITNESS; AND THEN
25 AFTER THAT I'M GOING TO SEND YOU HOME BECAUSE

Minor

- DIRECT/MS. MCDONALD

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1 I HAVE THE SUMMATIONS OF THE ATTORNEYS AND
2 SOME INSTRUCTIONS. SO WE OUGHT TO BE ABLE TO
3 FINISH THAT EARLY IN THE MORNING. ALL RIGHT.
4 CALL YOUR WITNESS.

5 MS. MCDONALD: Minor

6 THE COURT: JUST COME ON AROUND, MS. JOHNSON,
7 AND HAVE A SEAT. YOU'VE ALREADY BEEN SWORN.

8 - - - - -
9 WHEREUPON,

Minor

WHO AFTER BEING

PREVIOUSLY SWORN TO TELL THE TRUTH,

TESTIFIED AS FOLLOWS:

DIRECT EXAMINATIONBY MS. MCDONALD:

- 14 Q. Minor CAN YOU REMEMBER GOING TO VISIT YOUR
15 GRANDMA?
16 A. YES.
17 Q. LAST JANUARY OR FEBRUARY SOME TIME?
18 A. YES.
19 Q. YOU NEED TO SPEAK UP. TALK SO I CAN HEAR YOU.
20 A. YES.
21 Q. WHO DID YOU GO VISIT HER WITH?
22 A. MY MOTHER AND MY BEST FRIEND, HER MOTHER.
23 Q. THAT'S YOUR BEST FRIEND,
24 A. YES; AND HER SISTER AND MY TWO BROTHERS.

Minor

- DIRECT/MS. MCDONALD

- 1 Q. SO THE WHOLE GROUP WENT OVER THERE?
- 2 A. YES.
- 3 Q. AND CAN YOU REMEMBER WHAT YOU AND YOUR GRANDMAMMA
- 4 TALKED ABOUT?
- 5 A. WE TALKED ABOUT COMING AND LIVING WITH HER. WE
- 6 TALKED ABOUT MY FATHER AND HOW MUCH HE MISSES ME.
- 7 AND SHE SAW MY BROTHER AND MY SISTER AND MY OLDER
- 8 SISTER.
- 9 Q. SO DID SHE GIVE YOU SOME FAMILY NEWS WHAT THEY WERE
- 10 UP TO?
- 11 A. YES.
- 12 Q. WHEN YOU SAY YOU TALKED ABOUT YOUR FATHER, DID YOU
- 13 TELL YOUR GRANDMOTHER THAT YOUR FATHER HAD NEVER
- 14 TOUCHED YOU IN YOUR PRIVATE PARTS?
- 15 A. NO. I SAID THAT -- WELL, SHE SAID THAT, YOU KNOW,
- 16 YOUR FATHER DID NOT MEAN TO DO THAT. SHE SAID, "I
- 17 CAN'T BELIEVE HE WOULD DO SOMETHING LIKE THAT."
- 18 Q. SHE TOLD YOU SHE COULDN'T BELIEVE HE WOULD DO IT?
- 19 A. YES.
- 20 Q. DID YOU TELL HER HE DIDN'T DO IT?
- 21 A. NO; I DID NOT TELL HER THAT.
- 22 Q. ARE YOU CONFUSED ABOUT WHAT HAPPENED TO YOU?
- 23 A. NO, I'M NOT.
- 24 Q. ARE YOU CONFUSED ABOUT WHO TOUCHED YOU IN YOUR
- 25 PRIVATE PARTS?

Minor

- CROSS/MR. DUKES

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1 A. NO.

2 Q. YOU ALSO TALKED TO YOUR GRANDMAMA ON THE PHONE A
3 COUPLE OF TIMES?

4 A. YES.

5 Q. YOU CALLED HER FROM NORTH CAROLINA?

6 A. YES.

7 Q. AND DURING ANY OF THOSE PHONE CALLS, DID YOU TELL
8 HER THAT YOUR DAD WAS NOT THE ONE WHO HAD TOUCHED
9 YOU?

10 A. NO.

11 Q. HAVE YOU EVER TOLD YOUR GRANDMA THAT ANYBODY OTHER
12 THAN RODNEY ELLIOTT RAPED YOU?

13 A. NO.

14 Q. Minor WHO DID TOUCH YOU ON YOUR PRIVATE PARTS?

15 A. MY FATHER.

16 Q. DO YOU HAVE ANY OTHER FATHERS EXCEPT FOR HIM?

17 A. YES. I HAVE A STEPFATHER.

18 Q. WHO IS DEAD?

19 A. YES.

20 Q. DID HE EVER TOUCH YOU?

21 A. NO.

22 Q. I DON'T HAVE ANY MORE QUESTIONS.

23 CROSS-EXAMINATION

24 BY MR. DUKES:

25 Q. DO YOU REMEMBER HAVING A CONVERSATION WITH YOUR

Minor

- CROSS/MR. DUKES

1 GRANDMOTHER?

2 A. YES; BUT NOT ALL OF IT.

3 Q. MA'AM?

4 A. YES; BUT NOT ALL OF THE CONVERSATION.

5 Q. YOU DON'T REMEMBER ALL OF IT?

6 A. RIGHT.

7 Q. SO YOU'RE SAYING YOU CAN'T REMEMBER ALL OF THE
8 CONVERSATION YOU HAD?

9 A. RIGHT.

10 Q. THANK YOU.

11 THE COURT: ALL RIGHT. YOU CAN COME DOWN.
12 ANYTHING FURTHER, SOLICITOR?

13 MS. MCDONALD: NO, YOUR HONOR.

14 THE COURT: NOW, MR. FOREMAN AND MEMBERS OF
15 THE JURY; AS I TOLD YOU, I'M GOING TO SEND YOU
16 HOME NOW. YOU BE BACK HERE IN THE MORNING AT
17 NINE O'CLOCK. CAN YOU MAKE IT AT NINE? WE
18 GET STARTED AT NINE; AND THEN WE'LL BE THROUGH
19 WITH THIS THING AND YOU'LL BE ABLE TO GET HOME
20 BEFORE TWELVE. REMEMBER DON'T TALK TO ANYBODY
21 IN THE MORNING. SHE'LL STILL HAVE THOSE
22 LITTLE SNACKS FOR YOU. SO HAVE A GOOD NIGHT.
23 SEE YOU TOMORROW MORNING AT NINE O'CLOCK.

24 (AT THIS TIME JURY IS EXCUSED FOR THE DAY.)

25 THE COURT: ALL RIGHT. NOW, MR. DUKES, I

1 APPRECIATE YOU PUTTING ON THE RECORD THINGS
2 THAT I MARKED HEARD AT THE END OF THE STATE'S
3 CASE. SO GIVE ME YOUR MOTIONS THAT YOU WOULD
4 HAVE MADE AT THE END OF THE STATE'S CASE.

5 MR. DUKES: YOUR HONOR, WE WOULD MAKE A MOTION
6 FOR A DIRECTED VERDICT ON GROUNDS THAT THE
7 EVIDENCE USED IN THE LIGHT MOST FAVORABLE TO
8 THE STATE IS NOT ENOUGH TO PROCEED WITH THE
9 CASE; THAT A VERDICT, A DIRECTED VERDICT OF
10 INNOCENCE, SHOULD BE GRANTED.

11 THE COURT: I DENY THE MOTIONS, THE SAME
12 MOTIONS AT THE END OF ALL THE TESTIMONY AND
13 THE SAME RULING.

14 MR. DUKES: THE MOTION WOULD BE FOR A DIRECTED
15 VERDICT ON THE GROUNDS THAT EVIDENCE VIEWED IN
16 THE LIGHT MOST FAVORABLE LIGHT TO THE STATE
17 WAS NOT ENOUGH TO
18 PROCEED WITH THE CASE. A DIRECTED VERDICT OF
19 INNOCENT SHOULD BE GRANTED.

20 THE COURT: THANK YOU. I DENY THE MOTION. I
21 THINK IT'S A JURY QUESTION. NOW, THE SAME
22 MOTION AT THE END OF ALL THE TESTIMONY?

23 MR. DUKES: CORRECT, YOUR HONOR.

24 THE COURT: AND THE SAME RULING.

25 MR. DUKES: THANK YOU.

Minor

- CROSS/MR. DUKES

1 THE COURT: NOW, THE CHARGE IS PRETTY SIMPLE.
2 I'LL BE GLAD TO GIVE YOU ANYTHING YOU WANT.
3 BUT AS I TELL YOU ALL AS ALWAYS, I DON'T HAVE
4 A SECRETARY OR A LAW CLERK. THE ONLY THING I
5 SEE TO CHARGE IS MY GENERAL CHARGE WHICH
6 YOU'RE BOTH FAMILIAR WITH; A CHARGE ON
7 EXPERTS; CSC WITH A MINOR IN THE FIRST DEGREE
8 AND SECOND DEGREE. FIRST, IN THE BEGINNING OF
9 THE CASE, I THOUGHT PERHAPS THE CHARGE WOULD
10 BE APPROPRIATE ON CIRCUMSTANTIAL EVIDENCE; BUT
11 I DON'T REALLY KNOW OF ANY CIRCUMSTANTIAL
12 EVIDENCE THAT WE HAVE. DO WE HAVE ANY
13 CIRCUMSTANTIAL EVIDENCE? BECAUSE EVEN THE
14 WARTS THEMSELVES IS DIRECT EVIDENCE AND WOULD
15 JUST BE A KEY IN THE CHAIN. DO YOU KNOW OF
16 ANY CIRCUMSTANTIAL EVIDENCE?
17 MR. DUKES: NO, SIR, I DON'T,
18 THE COURT: DO YOU KNOW OF ANY, SOLICITOR?
19 MS. MCDONALD: I'M NOT SURE I WOULD CALL IT
20 CIRCUMSTANTIAL. I'D CALL IT CORROBORATING
21 EVIDENCE.
22 THE COURT: THAT'S MORE -- SO NOT THAT HE DID
23 IT BUT THAT SHE HAD BEEN MOLESTED. BUT ALL OF
24 THAT IS DIRECT EVIDENCE. CAN YOU THINK OF
25 ANYTHING ELSE, SOLICITOR? AND ALSO I'LL GIVE

*Don't did not
propose any
jury charges*

Minor

- CROSS/MR. DUKES

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1 YOU A CHARGE ON DATES, TIMES. THERE'S A
2 CHARGE THAT SHOWS THAT IT WOULDN'T MAKE ANY
3 DIFFERENCE WHETHER THE DATES WERE THE EXACT AS
4 ALLEGED IN THE INDICTMENT SO LONG AS ONE OF
5 THE CHARGES SHE WAS TEN YEARS OLD AND ONE OF
6 THE INDICTMENTS SHE WAS ELEVEN YEARS OLD.

7 MS. MCDONALD: I WOULD ALSO ASK, YOUR HONOR,
8 FOR 16-3-657. IT'S SHORT. IT JUST SAYS THE
9 TESTIMONY OF THE VICTIM NEED NOT BE
10 CORROBORATED.

11 THE COURT: THAT'S IN MY GENERAL CHARGE.

12 MS. MCDONALD: OKAY. THAT'S THE ONLY SPECIAL
13 THING I HAVEN'T ASKED FOR, YOUR HONOR.

14 THE COURT: ALL RIGHT. CAN YOU THINK OF
15 ANYTHING ELSE, SOLICITOR?

16 MR. ROBBINS: NOTHING.

17 THE COURT: ANYTHING ELSE, MR. DUKES?

18 MR. DUKES: NOT NOW, YOUR HONOR.

19 THE COURT: ALL RIGHT. COURT'S IN RECESS
20 UNTIL TOMORROW MORNING AT NINE O'CLOCK.

21 (WHEREUPON AT 5:00 P.M. COURT WAS ADJOURNED FOR THE
22 DAY.)
23
24
25

FRIDAY, JULY 24, 1998

THE COURT: ANYTHING FROM THE STATE?

MS. MCDONALD: NOTHING FROM THE STATE, YOUR HONOR.

THE COURT: ALL RIGHT. BRING THE JURY IN.

(AT THIS TIME JURY RETURNS TO OPEN COURT.)

THE COURT: ALL RIGHT, NOW. MR. FOREMAN AND MEMBERS OF THE JURY; REMEMBER ON YESTERDAY I TOLD YOU EVERYTHING IS COMPLETED EXCEPT THE SUMMATION BY THE ATTORNEYS. NOW, I DON'T LET ANYBODY COME IN OR GO OUT WHILE THEY'RE TALKING TO YOU BECAUSE IF YOU ALL ARE LIKE I AM, IF SOMEONE COMES IN, I'VE GOT TO TURN AROUND AND SEE WHO IT IS. BUT I DO LET THEM -- WHEN THEY SIT DOWN, I LET PEOPLE COME IN OR GO OUT. THAT DOESN'T APPLY TO YOU ALL. IF FOR ANY REASON DURING THE SUMMATION BY THE ATTORNEYS OR MY INSTRUCTIONS WHICH WILL BE BRIEF, FEEL FREE TO TELL ME AND WE'LL TAKE A BREAK ANY TIME YOU WANT TO. NOW, BECAUSE THE STATE HAS THE BURDEN OF PROVING THEIR CASE, THEY HAD TO PUT UP THEIR WITNESSES FIRST. BY THE SAME TOKEN THEY GET TO TALK TO YOU LAST. SO AT THIS TIME MR. DUKES WILL MAKE HIS

CLOSING ARGUMENT BY MR. DUKES

PRESENTATION FOLLOWED BY THE SOLICITOR. MR.
DUKES?

MR. DUKES: MAY IT PLEASE THE COURT?

THE COURT: YES, SIR.

CLOSING ARGUMENT

BY MR. DUKES

LADIES AND GENTLEMEN, GOOD MORNING.

PROBABLY THE MOST OVER-ESTIMATED PART OF A TRIAL IS THE
CLOSING ARGUMENTS BY ATTORNEYS, BUT IT'S A JOB THAT WE
ALL DO. WE ALL ACCEPT IT TO BE PART OF THE ATTORNEY'S
JOB. SO THE JUDGE WILL EXPLAIN TO YOU THE LAW. HE'S
THE JUDGE OF THE LAW. YOU'RE THE JUDGES OF THE FACTS.

MS. MCDONALD AND I ARE ADVOCATES.

IN OTHER WORDS, WE'RE PREJUDICED. WE'RE ON SIDES. AND
THAT'S RIGHT. SHE REPRESENTS THE STATE OF SOUTH
CAROLINA; THE PEOPLE WHICH IS AN AWESOME RESPONSIBILITY
BECAUSE THAT INCLUDES ALL OF US. I REPRESENT RODNEY
ELLIOTT, THE DEFENDANT; AND THAT'S AN AWESOME
RESPONSIBILITY BECAUSE HE'S ON TRIAL.

NOW, I'VE HEARD A MANY A LAWYER SAY
"THIS IS HIS DAY IN COURT." NOW, WHAT DOES THAT
MEAN? I'VE SAID IT MANY TIMES MYSELF, AND I DON'T KNOW
WHETHER I REALLY KNOW WHAT I WAS TALKING ABOUT. BUT
IT'S A DAY IN COURT BECAUSE IF YOU LIVE IN THIS
COUNTRY, UNDER OUR SYSTEM OF LAW, YOU HAVE A RIGHT TO A

CLOSING ARGUMENT BY MR. DUKES

1 TRIAL BY A JURY IF YOU'RE ACCUSED OF A CRIME. HE IS
2 TODAY EXERCISING THAT RIGHT.

3 IF YOU'LL READ THE FIRST TEN
4 AMENDMENTS OF THE CONSTITUTION, YOU'LL FIND OUT WHAT
5 OTHER RIGHTS YOU HAVE, NOT ONLY TO A TRIAL BY JURY, BUT
6 A JURY OF YOUR PEERS. THAT MEANS US, PEOPLE THAT WE
7 LIVE WITH, PEOPLE THAT COME FROM OUR SAME CIRCUMSTANCES
8 AND STYLE OF LIFE FROM OUR COMMUNITY. YOU HAVE A RIGHT
9 TO CONFRONT YOUR WITNESSES AGAINST YOU. AND WHAT DOES
10 THAT MEAN? THAT MEANS I HAVE THE RIGHT TO
11 CROSS-EXAMINE THE PEOPLE THAT TESTIFIED FOR THE STATE
12 JUST AS MS. MCDONALD HAD THE RIGHT TO CROSS-EXAMINE THE
13 PEOPLE THAT TESTIFIED FOR THE DEFENDANT. AND THEN WE
14 ALSO -- I DON'T THINK YOU'LL FIND IT IN THE FIRST TEN
15 AMENDMENTS. BUT IT'S A BASIC PART OF OUR SYSTEM OF
16 LAW, A RIGHT TO PROVEN GUILTY BEYOND A REASONABLE
17 DOUBT. NOW, WHAT DOES THAT MEAN? THE JUDGE WILL
18 DECIDE IT. AND I'M SURE MOST ALL OF US THAT HAVE EVER
19 THOUGHT ABOUT COURT AND ALL HAS TRIED TO FIGHT IT. BUT
20 WHAT'S A SIMPLE WAY OF DOING IT? I DON'T KNOW. I'VE
21 HEARD SOME PEOPLE TELL ALL KINDS OF WAYS. IF THEY WANT
22 TO KNOW WHICH WAY THE WIND IS BLOWING, THE OUTSIDE;
23 LOOK UP THERE AT A TREE AND YOU CAN SEE WHICH WAY THE
24 LEAVES ARE GOING. THAT STILL DOESN'T TELL ME NOTHING
25 BECAUSE I DON'T KNOW WHERE NORTH AND SOUTH IS

CLOSING ARGUMENT BY MR. DUKES

1 SOMETIMES.

2 BUT IT'S A FAIR ILLUSTRATION OR
3 DEMONSTRATION, OR WHATEVER YOU WANT TO CALL IT, BECAUSE
4 IT'S TELLING YOU A LOT OF TIMES TO LOOK AT THE LITTLE
5 THINGS BECAUSE THE STEM IS NOT GOING TO BE MOVING. THE
6 LEAVES ARE MOVING. BUT THE STEMS ARE NOT MOVING. AND
7 THE LEAVES ARE DEFINITELY MOVING IN THE DIRECTION IN
8 WHICH THE WIND IS BLOWING; AND WE KNOW THAT. YOU KNOW,
9 I LIKE TO WATCH TELEVISION, TOO; AND ONE OF MY FAVORITE
10 SHOWS ON TELEVISION IS MATLOCK. AND I LIKE TO SEE IT
11 -- I THINK I SAW THIS SHOW WHEN THIS HAPPENED; AND I
12 THINK THEY USE IT A LOT OF TIMES NOW IN PROMOS FOR THE
13 SHOW. AND WHEN HE STARTS TALKING TO THE JURY, NOW HE
14 SAYS "MY CLIENT DIDN'T DO IT, BUT THE MAN WHO DID IT IS
15 COMING IN THAT FRONT DOOR RIGHT NOW." HE SAID, "YOU
16 KNOW, NOBODY CAME BUT;" HE SAID "YOU WERE LOOKING,
17 WASN'T YOU; YOU WERE THINKING?"

18 WHAT DO YOU NEED TO THINK ABOUT
19 SOMETIMES? I DON'T KNOW! COMMON SENSE. THAT'S WHAT!
20 THE FACTS OF THE MATTER. THE FACTS OF THE MATTER MEANS
21 THIS CASE IS SIMPLE. WE HAVE A YOUNG LADY, A YOUNG
22 GIRL. SHE WAS SUPPOSED TO HAVE BEEN ELEVEN OR TWELVE
23 AT THE TIME. NOW WHATEVER TIME; BORN THE
24 I BELIEVE, SO YOU CAN FIGURE UP WHAT THE AGE
25 IS. SOME TIME DURING '94 -- I'M SORRY -- '95/'96

CLOSING ARGUMENT BY MR. DUKES

1 SCHOOL YEAR, I THINK I KNOW WHERE SHE WAS LIVING AT
2 THAT TIME. I THINK SHE WAS LIVING AT -- THEY WERE
3 LIVING IN THE LOWER DORCHESTER COUNTY AREA BECAUSE THE
4 FIRST PART OF THE YEAR SHE WENT TO ALSTON SCHOOL. THE
5 SECOND PART OF THE YEAR SHE WENT TO CLAY HILL SCHOOL.
6 THEY'RE BOTH IN DORCHESTER COUNTY.

7 AFTER THAT SCHOOL YEAR, IN JUNE OF
8 THAT YEAR, SHE WENT BACK TO LIVE WITH HER MAMMA.
9 BEFORE THAT -- AND THE JUDGE IS GOING TO TELL YOU THAT
10 WHAT I SAY AND WHAT MS. MCDONALD SAYS ARE NOT FACTS;
11 THAT WE SIMPLY ARGUE; WE SIMPLY ADVOCATE. SO IF I SAY
12 SOMETHING WRONG OR SHE SAYS SOMETHING WRONG, TAKE IT
13 FROM THE WAY YOU HEARD IT RIGHT THERE BECAUSE THAT'S
14 THE ONLY PULPIT THAT YOU CAN LISTEN TO IN THIS
15 COURTROOM. FROM THE WITNESS STAND; THE TESTIMONY FROM
16 THE WITNESS STAND; AND THE EVIDENCE, THE DOCUMENTS
17 THAT'S IN EVIDENCE. THAT'S IT. THAT'S ALL Y'ALL HAVE
18 GOT LEFT IS THESE DOCUMENTS THAT THREE OR FOUR HAVE
19 BEEN INTRODUCED, AND WHAT YOU HEARD FROM THAT WITNESS
20 STAND. THAT AIN'T A WHOLE LOT. IT'S BEEN A SHORT
21 TRIAL, BUT IT'S A VERY DIFFICULT TRIAL BECAUSE OF THE
22 NATURE OR THE SUBSTANCE, AND WHO DO YOU BELIEVE, AND
23 WHAT DO YOU BELIEVE?

24 YOU HEARD TESTIMONY -- AND I'M NOT
25 GOING TO TRY TO GO BACK OVER IT. BUT BASICALLY

CLOSING ARGUMENT BY MR. DUKES

1 SOMETIMES THE BEST, IN MY OPINION; WE HAVE A YOUNG
2 CHILD THAT MAYBE -- AND I DON'T KNOW THIS; AND MAYBE
3 THIS CAN'T EVER BE TRUE -- MAYBE SHE CARED ABOUT TOO
4 MUCH. SHE SPENT PART OF THE TIME WITH HER GRANDMAMMA,
5 PART OF THE TIME WITH HER FATHER, PART OF THE TIME WITH
6 HER MOTHER. SHE MOVED FROM PLACE TO PLACE. SHE'S BEEN
7 OVER EVERYWHERE. SHE'S JUST A YOUNG CHILD.

8 SHE SAYS HER FATHER MOLESTED HER.
9 HE DENIES IT. THAT'S THE QUESTION; THE WHOLE
10 QUESTION. BUT HOW DO YOU GO ABOUT FIGURING OUT WHAT TO
11 BELIEVE? WELL, ONE OF MY FAVORITE STORIES -- AND MY
12 DADDY TOLD ME ABOUT IT WHEN I WAS A LITTLE BOY. WE
13 LIVED IN A HOUSE THAT WE DIDN'T EVEN HAVE ELECTRICITY
14 BACK THEN. WE HAD ONE BIG ROOM, AND FOUR OF US, MY
15 MAMMA AND MY DADDY, AND ME AND MY SISTER SLEPT IN A BIG
16 ROOM, ESPECIALLY IN THE WINTER TIME WHEN IT WAS COLD
17 BECAUSE WE HAD A HAD FIREPLACE IN THERE, AND WE PUT
18 FIRE IN THE FIREPLACE. AND WE'D ALWAYS GO TO BED KIND
19 OF EARLY BECAUSE THAT WAS THE ONLY LIGHT YOU HAD OTHER
20 THAN YOUR LAMP OR YOUR LIGHT YOU'D CARRY AROUND WITH
21 YOU. SO WE DID A LOT OF TALKING IN THE BED. AND ONE
22 OF THE THINGS THAT STUCK OUT MOST IN MY MIND HAS ALWAYS
23 BEEN THIS: AND BASICALLY IT SAYS ONE DAY TWO
24 PROSTITUTES CAME AND PRESENTED THEMSELVES BEFORE KING
25 SOLOMON. ONE OF WOMEN SAID "YOUR MAJESTY, I LIVE IN

CLOSING ARGUMENT BY MR. DUKES

1 THE SAME HOUSE WITH THIS WOMAN, AND I GAVE BIRTH TO A
2 BABY BOY, AND SHE GAVE BIRTH TO ONE, TOO. THEY WERE
3 THE ONLY TWO IN THE HOUSE; AND THOSE ARE THE ONLY TWO
4 CHILDREN. THEN ONE NIGHT SHE ACCIDENTLY ROLLED OVEP
5 HER BABY AND SMOTHERED IT. SHE GOT UP DURING THE
6 NIGHT, TOOK HER SON FROM HER SIDE WHILE I WAS SLEEPING
7 AND CARRIED HIM TO HER BED. THEN SHE PUT THE DEAD
8 CHILD IN MY BED. THE NEXT MORNING WHEN I WOKE UP AND
9 WAS GOING TO NURSE MY BABY, I SAW THAT IT WAS DEAD. I
10 LOOKED AT IT MORE CLOSELY AND SAW THAT IT WAS NOT MY
11 CHILD. BUT THE OTHER WOMAN SAID, "NO, THE LIVING CHILD
12 IS MINE AND THE DEAD IS YOURS." THE FIRST WOMAN
13 ANSWERED BACK "NO, THE DEAD CHILD IS YOURS AND THE
14 LIVING ONE IS MINE." AND THEY WENT BEFORE KING SOLOMON
15 AND PRESENTED THAT ARGUMENT. I THINK YOU PROBABLY
16 REMEMBER WHAT HE DID. HE SENT ONE OF HIS MEN OFF TO
17 GET A SWORD. AND HE CAME BACK. AND HE SAID, "CUT THE
18 BABY IN HALF AND GIVE HALF TO EACH ONE. AND ONE WOMAN
19 SAID, "NO; GIVE THE WHOLE BABY TO HER." AND KING
20 SOLOMON LOOKED AT THAT WOMAN AND SAID, "GIVE THE BABY
21 TO HER BECAUSE SHE CARES ABOUT THE LIVING CHILD; NOT
22 ABOUT HALF OF A DEAD CHILD."

23 IN JUST A FEW MINUTES YOU'RE GOING
24 TO DELIBERATE ON MY CLIENT'S LIFE. HIS FUTURE IS IN
25 FRONT OF HIM; HIS PAST IS BEHIND HIM. YOU'RE GOING TO

CLOSING ARGUMENT BY MS. MCDONALD

1 DECIDE HIS GUILT OR INNOCENCE. ALL WE CAN ASK OF YOU
2 THIS MORNING IS THAT YOU, LADIES AND GENTLEMEN, USE
3 YOUR COLLECTIVE WISDOM TO TRY TO FIND THE TRUTH IN THIS
4 MATTER AS BEST AS YOU CAN TELL AND DELIVER A VERDICT
5 THAT WILL SPEAK THE TRUTH. AND IN THIS CASE, WE
6 HONESTLY BELIEVE THAT HE IS NOT GUILTY. AND WE ASK YOU
7 TO RETURN WITH THAT VERDICT. THANK YOU.

8 THE COURT: SOLICITOR?

9 MS. MCDONALD: IF IT PLEASE THE COURT? MR.
10 DUKES?

11 - - - - -
12 CLOSING ARGUMENT

13 BY MS. MCDONALD

14 IT SEEMS ACTUALLY TO ME LIKE A LONG
15 TIME SINCE I ADDRESSED YOU -- I THINK IT WAS WEDNESDAY
16 AFTERNOON -- IN MY OPENING STATEMENT WHEN I PROMISED
17 YOU SOME THINGS IN MY OPENING ABOUT THIS CASE. I
18 PROMISED YOU THAT YOU WERE GOING TO HEAR FROM THE ONLY
19 LIVING WITNESS OF A CRIME, AND YOU DID. AND I PROMISED
20 YOU THAT YOU WERE GOING TO HEAR MEDICAL EVIDENCE THAT
21 WAS PRETTY DEFINITE ABOUT WHETHER OR NOT A CHILD HAD
22 BEEN SEXUALLY ABUSED, AND YOU DID. AND THANKS TO DR.
23 GUTMAN WHO IS, AS SHE TOLD YOU, ONE OF THE LEADING
24 EXPERTS IN THE COUNTRY IN HER FIELD, YOU NOW KNOW MORE
25 ABOUT GENITAL WARTS THAN ANY FOURTEEN PEOPLE IN

CLOSING ARGUMENT BY MS. MCDONALD

1 DORCHESTER COUNTY PROBABLY EXCEPT FOR A DOCTOR. AND
2 THAT'S ONE OF THE TWO PIECES OF COMPELLING EVIDENCE YOU
3 WERE GIVEN ABOUT ^{Minor} WHEN SHE WAS SEEN.
4 AND I ASKED YOU TO KEEP IN MIND THAT WHEN SHE WAS SFEN
5 BY THOSE DOCTORS AND BY MRS. ARNTS, THAT WAS TWO YEARS
6 AGO. THAT WAS IN THE FALL OF 1996. SHE WAS NOT THE
7 SAME GIRL THAT YOU SAW YESTERDAY. NOW SHE'S 13. SHE'S
8 A BIGGER GIRL THAN SHE WAS. SHE'S A LOT OLDER; ELEVEN
9 AND THIRTEEN IS SOME BIG YEARS WHEN YOU'RE AN
10 ADOLESCENT. YOU GROW A LOT. YOU CHANGE. YOUR BODY
11 CHANGES.

12 SO TRY TO REMEMBER THAT THE CHILD
13 THAT YOU SAW YESTERDAY WAS MUCH YOUNGER IN APPEARANCE
14 THAN SHE WAS WHEN YOU SAW HER. I JUST ASK YOU TO KEEP
15 THAT IN MIND BECAUSE I THINK SOME PEOPLE CAN BE LED
16 ASTRAY BY, "WELL, SHE LOOKS LIKE A BIG GIRL." BUT SHE
17 WASN'T. SHE WAS ELEVEN AND TEN WHEN THESE ACTS WERE
18 BEING COMMITTED ON HER YOUNG BODY. AND I HOPE THAT
19 EVERYTHING THAT I PROMISED YOU IN MY OPENING WAS
20 DELIVERED. I LIKE TO THINK THAT I KNEW MY CASE
21 BEFOREHAND. AND I SUBMIT TO YOU THAT EVERY PROMISE
22 THAT I MADE TO YOU IN MY OPENING WAS BROUGHT FORTH.

23 MR. DUKE WAS RIGHT; THIS WAS A SHORT
24 CASE. THERE ARE NOT A WHOLE LOT OF WITNESSES IN A CASE
25 OF THIS NATURE BECAUSE THERE ARE NO PEOPLE THAT SAW

CLOSING ARGUMENT BY MS. McDONALD

1 SOMEBODY RUNNING DOWN THE STREET OR A CAR WITH A
2 LICENSE PLATE PULLING OUT OF THE BANK AT HIGH SPEED.
3 THIS IS AN INTIMATE CRIME, IF YOU WILL. IT'S A CRIME
4 THAT'S COMMITTED BETWEEN TWO PEOPLE. AND TWO PEOPLE
5 ALONE KNOW WHAT HAPPENED.

6 DOCTORS CAN LOOK AT A CHILD'S BODY
7 AND SOMETIMES DETERMINE, YES, THIS IS DIAGNOSTIC; SHE
8 HAS BEEN SEXUALLY ABUSED; SHE HAS A SEXUALLY
9 TRANSMITTED DISEASE. SHE HAS A GIANT NOTCH IN HER
10 HYMEN. AND I SAY GIANT BECAUSE DR. GUTMAN WAS CLEAR,
11 THIS IS SIGNIFICANT. THIS IS A NORMAL -- THE DIAGNOSES
12 SHE DREW OF A NORMAL CHILD OF ^{Minor} AGE; VAGINAL
13 STRUCTURES WITH A NORMAL HYMEN THAT COVERS MOST OF THE
14 VAGINAL OPENING THAT IS LONGER THAN IT IS WIDE, IF YOU
15 REMEMBER. AND THEN THESE WERE THE FINDINGS WHEN SHE
16 LOOKED AT ^{Minor} VAGINA BACK IN OCTOBER OF 1996.
17 (INDICATING.)

18 THERE WAS A NOTCH AT FOUR O'CLOCK
19 THAT GOES ALL THE WAY DOWN. AND THEN THERE'S AN
20 OPENING WHICH THERE IS VIRTUALLY NO HYMEN LEFT THERE AT
21 THE BOTTOM. AND THEN, OF COURSE, THE LESIONS CAUSED BY
22 THE VIRUS THAT CAUSED THIS HUMAN TO HAVE GENITAL
23 WARTS. THESE HAD TO BE REMOVED, REMEMBER, BY LASER
24 SURGERY.

25 MR. DUKE TOLD YOU THE KING SOLOMON

*warts
were
removed
by laser
surgery*

CLOSING ARGUMENT BY MS. MCDONALD

1 STORY. THE KING SOLOMON STORY IS ABOUT A MOTHER'S
2 LOVE. AND THE LOVE OF A MOTHER IS THE REASON THAT THIS
3 CASE TOOK THE APPEARANCE THAT IT TOOK. VIVIAN MORRIS
4 LOVED HER DAUGHTER AND SUPPORTED HER, AND TESTIFIED ON
5 HER SIDE AND TOLD YOU WHAT SHE KNEW. SHE DIDN'T KNOW
6 EXACTLY WHAT HAPPENED OR HOW IT HAPPENED OR WHERE IT
7 HAPPENED BECAUSE SHE WASN'T THERE. SHE KNOWS WHEN HER
8 DAUGHTER CAME BACK FROM A YEAR WITH HER FATHER THAT SHE
9 WAS SETTING FIRES, DEPRESSED, SLEEPING A LOT. SHE DID
10 NOT KNOW WHAT IT MEANS. SHE'S NOT A THERAPIST. SHE
11 DIDN'T MAKE ANY DIAGNOSIS. BUT WHEN THE DAUGHTER TOLD
12 HER WHAT HAD HAPPENED, SHE SUPPORTED, SHE BELIEVED, AND
13 SHE PROTECTED. SHE DID ALL THE APPROPRIATE THINGS.
14 AND SHE TOOK HER FOR HELP. AND THANK HEAVEN SHE DID
15 BECAUSE WHAT IF SHE HADN'T BELIEVED? WHAT IF SHE HAD
16 BEEN LIKE THE GRANDMOTHER OR THE STEPMOTHER? DO YOU
17 THINK SHE WOULD HAVE TAKEN HER FOR HELP? DO YOU THINK
18 SHE WOULD HAVE SEEN A MEDICAL DOCTOR AND GOTTEN THE
19 TREATMENT THAT SHE NEEDED FOR THIS VENEREAL DISEASE IF
20 SHE HADN'T? WHAT IF SHE HADN'T BEEN BELIEVED? SHE'D
21 STILL BE WALKING AROUND PROBABLY WITH MORE LESIONS THAN
22 SHE HAD TWO YEARS AGO. THE CHILD NEEDED MEDICAL
23 ATTENTION. AND THANKS TO HER MOTHER BELIEVING HER, SHE
24 GOT IT. THAT'S WHAT THE KING SOLOMON STORY IS ABOUT;
25 WHAT'S BEST FOR THE CHILD.

*Child was setting
fires, depressed, etc.*

CLOSING ARGUMENT BY MS. McDONALD

1 DID MR. ELLIOTT'S TESTIMONY SOUND
2 LIKE WHAT'S BEST FOR THE CHILD? DO YOU THINK IT HELPS
3 Minor TO KNOW THAT NOT ONLY DID HER FATHER DO THIS
4 TO HER, BUT HE WON'T EVEN TAKE ACCOUNTABILITY? DID HIS
5 TESTIMONY SOUND LIKE HE EVEN CARED WHO DID IT? I DON'T
6 KNOW WHO DID IT, BUT IT WASN'T ME. JUST SO LONG AS
7 Y'ALL DON'T THINK IT WAS ME BECAUSE IT WASN'T ME.
8 AND ANOTHER MOTHER APPEARED IN THIS
9 CASE, TOO; HAZEL NOWELL, RODNEY ELLIOTT'S MOTHER. AND
10 HER MOTHER'S LOVE IS SUCH THAT SHE DOESN'T BELIEVE HER
11 SON IS CAPABLE OF DOING THIS. AND SHE TOLD YOU THAT
12 SHE MADE HER MIND UP ABOUT THIS CASE, THAT HE DIDN'T DO
13 IT, BEFORE SHE KNEW THAT Minor HAD BEEN INJURED;
14 HAD V.D.; AND HAD THIS DAMAGED HYMENAL STRUCTURE. SHE
15 DIDN'T KNOW ANYTHING ABOUT THAT WHEN SHE MADE HER MIND
16 UP. SHE CAME IN; AND SHE SAID, "HE JUST DIDN'T DO IT."
17 OH Minor TOLD ME HE JUST DIDN'T DO IT. AND
18 Minor TOLD YOU WHAT REALLY HAPPENED DURING THAT
19 CONVERSATION. AND IT SOUNDED A LOT MORE LIKE THE
20 TESTIMONY THAT YOU HEARD UNDER OATH IN THIS COURTROOM;
21 THE GRANDMOTHER TOLD Minor "I JUST DON'T BELIEVE HE
22 DID IT" WHICH IS EXACTLY WHAT SHE TOLD YOU. IT WAS 100
23 PERCENT WITH THE SWORN TESTIMONY EXCEPT THE GRANDMOTHER
24 TOLD YOU "WELL, Minor TOLD ME." AND Minor SAID
25 "NO; SHE TOLD ME HE DIDN'T DO IT."

CLOSING ARGUMENT BY MS. MCDONALD

1 AND EVERY PERSON WHO TESTIFIED
2 BEFORE YOU WITHIN THE LIMITS OF THE LAW -- AND KEEP IN
3 MIND THERE ARE LIMITS ON THE AMOUNT OF HEARSAY THAT
4 SOMEONE CAN TESTIFY TO. MRS. MORRIS CAN'T TELL YOU
5 EVERYTHING ^{Minor} TOLD HER. MRS. ARNTS CAN'T TELL
6 YOU EVERYTHING THAT ^{Minor} TOLD YOU DURING THAT
7 THERAPEUTIC FORENSIC INTERVIEW. DR. GUTMAN CAN'T TELL
8 YOU EVERYTHING THAT ^{Minor} TOLD HER ABOUT THE
9 PARTICULARS OF THE ASSAULTS BECAUSE SHE HAS ONLY EVER
10 NAMED ONE PERSON AS THE PERPETRATOR OF THE SEXUAL ABUSE
11 THAT SHE SUFFERED; HER FATHER, RODNEY ELLIOTT; HER
12 FATHER. SHE'S KNOWN HIM SINCE SHE WAS A TINY CHILD;
13 HER FATHER.

14 ~~THE~~ THE FACTS IN THIS CASE POINT
15 CONCLUSIVELY TO ONE PERSON HAVING ACCESS TO THE CHILD
16 FOR AN ENTIRE SCHOOL YEAR AND THE ABILITY TO BE ALONE
17 WITH THE CHILD FREQUENTLY. AND YESTERDAY I SUPPOSE THE
18 DEFENSE IS -- PART OF WHAT I GOT OUT OF THEIR TESTIMONY
19 WAS THAT HE WASN'T ALONE WITH THE KIDS THAT MUCH; BUT
20 HE DIDN'T HAVE A CAR. GERALDINE WORKED UNTIL NINE AT
21 NIGHT SOMETIMES AT THE DELI. AND WE KNOW THAT EVERY
22 FATHER IS ALONE WITH HIS CHILDREN, AND SHOULD BE. IT'S
23 GOOD FOR CHILDREN TO BE ALONE WITH THEIR DAD. IT'S AN
24 IMPORTANT PART OF BEING IN A FAMILY AND JUST SPENDING
25 QUALITY TIME WITH BOTH PARENTS OF BOTH SEXES. AND IT

CLOSING ARGUMENT BY MS. MCDONALD

1 WOULD BE INSULTING, I THINK, TO MOST MEN TO BE TOLD
2 "YOU CAN'T BE ALONE WITH YOUR KID; YOU MIGHT DO
3 SOMETHING." BUT UNFORTUNATELY RODNEY ELLIOTT DID
4 SOMETHING. AND ^{Minor} WHO IS A LIVING WITNESS,
5 TOLD YOU WHAT HAPPENED TO HER.

6 THE MEDICAL EVIDENCE IN THIS CASE IS
7 OVERWHELMING. NOT ONLY DID SHE HAVE DAMAGE TO HER
8 BODY, BUT SHE ALSO HAD VENEREAL DISEASE. WHEN I WAS A
9 LITTLE KID, THEY HAD THESE COMMERCIALS ON THE T.V.
10 ABOUT THIS BRAND OF CLOTHING CALLED GERANIMALS, AND IT
11 WAS A GIRAFFE, AND A GIRAFFE MADE AN OUTFIT. AND THAT
12 WAY THE CHILD COULD LOOK AT THE TAGS IN HIS CLOTHES AND
13 NOT GO OUT LOOKING LIKE BOZO THE CLOWN, I GUESS, IF HE
14 WERE TRYING TO DRESS HIMSELF. AND I DON'T KNOW IF ANY
15 OF Y'ALL REMEMBER GERANIMALS, BUT IT WAS A WAY TO MATCH
16 UP CLOTHES. IT MADE A MATCH. AND IT WOULD BE NICE IF
17 IN THIS CASE WE HAD A GERANIMAL MATCH BETWEEN A CHILD
18 WITH V.D. AND A PERPETRATOR WITH THE SAME V.D. BUT
19 IT'S NOT POSSIBLE; AND DR. GUTMAN AND DETECTIVE
20 MARSHALL BOTH TOLD YOU WHY THAT'S NOT POSSIBLE. DR.
21 GUTMAN TOLD YOU THAT ADULTS HAVE STRONGER IMMUNOLOGICAL
22 DEFENSES TO THIS VIRUS THAN CHILDREN DO. CHILDREN WHO
23 ARE EXPOSED TO IT TEND TO NOT ONLY GET IT BUT HAVE A
24 PRETTY BAD CASE OF IT LIKE ^{Minor} DID. GROWN-UPS
25 MAY NEVER CATCH IT, OR THEY MAY NEVER KNOW THAT THEY

CLOSING ARGUMENT BY MS. McDONALD

1 HAD IT. SO MR. ELLIOTT MAY HAVE BEEN TELLING YOU THE
2 TRUTH WHEN HE SAID HE DIDN'T HAVE IT. ONLY HE HAD IT
3 AND HE DIDN'T KNOW IT. HE NEVER SAW THE LESIONS; HE
4 NEVER FELT ANY SIDE-EFFECTS; AND HE NEVER HAD ANY
5 TREATMENT FOR IT. HE NEVER WENT TO A DOCTOR AND HAD A
6 UROLOGIST OR AN M.D. SAY "YOU'VE GOT THESE BUMPS ON
7 YOUR PENIS; THAT'S NOT USUAL; LET'S TAKE THEM OFF."
8 THAT MAY HAVE NEVER HAPPENED. HE MAY HAVE BEEN
9 ABSOLUTELY STRAIGHT UP WHEN HE SAID IT; OR HE MAY HAVE
10 LIED. GROWN-UPS LIE. CHILDREN AREN'T THE ONLY PEOPLE
11 IN THE WORLD WHO LIE. GROWN-UPS LIE EVERY SINGLE DAY
12 OF THEIR LIVES ABOUT SOMETHING; MOST PEOPLE. I SAW
13 SOMETHING ON T.V. ABOUT PEOPLE LYING. THEY DO IT TO BE
14 NICE. THEY DO IT TO SPARE OTHER'S FEELINGS. THEY DO
15 IT TO MAKE THEMSELVES FEEL IMPORTANT. THEY DO IT TO BE
16 A BIG SHOT; OR THEY DO IT BECAUSE THEY'VE DONE
17 SOMETHING WRONG AND THEY WANT TO AVOID THE
18 CONSEQUENCES.

19 SOMEBODY IN THIS CASE LIED,
20 OBVIOUSLY. EITHER ^{Minor} LIED OR IS CONFUSED ABOUT
21 THE IDENTITY OF THE PERSON WHO INFLICTED THIS DAMAGE ON
22 HER BODY. OR MR. ELLIOTT LIED. AND ONE THING YOU'RE
23 GOING TO HAVE TO DO WHEN YOU GO BACK THERE IS SORT OUT
24 THE FACTS; GET TO THE TRUTH. THIS IS ABOUT THE TRUTH.
25 IT'S NOT ABOUT THE FAMILY SITUATION. THE FAMILY IS WAY



CLOSING ARGUMENT BY MS. MCDONALD

1 DYSFUNCTIONAL. IT'S^{Minor} REALITY. AND I
2 LEARNED A LONG TIME AGO -- OR THREE-AND-A-HALF YEAR AGO
3 WHEN I STARTED PROSECUTING CHILD SEXUAL ABUSE CASES --
4 THAT YOU HAVE TO ACCEPT REALITY. THERE'S NOTHING ANY
5 OF US CAN DO ABOUT THE FACT THAT SHE WAS BORN TO AN
6 EIGHTEEN YEAR OLD WHO THE FATHER WOULDN'T MARRY HER;
7 AND SHE TURNED THE CHILD OVER AT EITHER THREE MONTHS OR
8 A YEAR TO THE GRANDMOTHER TO RAISE FOR A TIME; AND THEN
9 GOT HER BACK, AND THE CHILD'S BEEN SHUTTLED. AND THERE
10 ARE FAMILY COURT ACTIONS. SOMETIMES HE'S THE
11 PLAINTIFF; SOMETIMES SHE'S THE PLAINTIFF. WE'VE GOT TO
12 GET THE VISITATION STRAIGHT, BECAUSE THEY CAN'T SEEM TO
13 GET IT STRAIGHT AMONG THEMSELVES.

14 THAT IS REALITY, AND THERE'S NOTHING
15 WE CAN DO. AND YOU CAN GO BACK IN THE JURY ROOM IF YOU
16 WANT TO AND TALK ABOUT WHAT PARENT IS MORE CULPABLE;
17 WHO'S THE WORSE PARENT; WHO'S THE BEST PARENT; WHO HAS
18 THIS ON THEIR SIDE; WHO HAS THAT ON THEIR SIDE. BUT
19 THAT'S NOT THE ISSUE IN THE CASE. THE ISSUE IS HOLDING
20 A MAN ACCOUNTABLE FOR VIOLATING THE SACRED BINDS
21 BETWEEN FATHER AND DAUGHTER. IT'S ABOUT HOLDING AN
22 INDIVIDUAL ACCOUNTABLE FOR COMMITTING A CRIME. NOWHERE
23 IN THE STATUTE THAT GOVERNS CRIMINAL SEXUAL CONDUCT
24 WITH A MINOR DOES IT SAY IT IS A CRIME FOR AN ACTOR TO
25 COMMIT A SEXUAL BATTERY ON A CHILD UNDER THE AGE OF

CLOSING ARGUMENT BY MS. MCDONALD

1 ELEVEN OR BETWEEN ELEVEN AND SIXTEEN UNLESS THERE'S A
2 PROBLEM IN THE FAMILY AND THERE'S A CUSTODY BATTLE
3 GOING ON IN WHICH CASE YOU JUST CAN'T DECIDE, AND WE
4 JUST HAVE TO ALL GO HOME.

5 THE LAW IS THE LAW, AND IT IS TO BE
6 APPLIED AS THE LAW, ESPECIALLY IN A CASE OF THIS
7 SEVERITY. ESPECIALLY WHERE A CHILD HAS BEEN INJURED.
8 CHILDREN CAN'T DECIDE FOR THEMSELVES WHAT'S BEST FOR
9 THEM, SO SOMETIMES GROWN-UPS HAVE TO DECIDE. AND

10 Minor TOLD YOU SHE LOVES HER FATHER. AND

11 Minor ACTIONS ARE VERY NORMAL ACCORDING TO A
12 WOMAN WITH SEVENTEEN YEARS IN THE FIELD OF CHILD SEXUAL
13 ABUSE. HER DISCLOSURE WAS NORMAL. SHE TOLD AN
14 ADOLESCENT FRIEND WHO, BY THE WAY, WAS UNAVAILABLE TO
15 COME; SO THAT'S WHY YOU DIDN'T HEAR FROM HER. BUT YOU
16 KNOW WHAT HER ROLE IN THIS SITUATION WAS. SHE WAS A GO
17 BETWEEN AND HELPED^{Minor} TELL HER MOTHER WHAT HAS
18 BEEN GOING ON DURING HER YEAR IN SOUTH CAROLINA WITH
19 HER FATHER. HER TESTIMONY COULDN'T ADD A WHOLE LOT.

20 AND^{Minor} AND HER MOTHER WERE ABLE TO TELL YOU WHAT
21 IESHA DID. SHE GOT THE INFORMATION FROM^{Minor}
22 BROKE THE NEWS TO VIVIAN MORRIS, AND ENCOURAGED

23 Minor TO TELL HER MOTHER. SO VIVIAN WAS PREPARED
24 AND WAS ABLE TO DO THE RIGHT THING AND GET THE HELP
25 THAT HER DAUGHTER NEEDED TO GET THAT LASER SURGERY TO

CLOSING ARGUMENT BY MS. MCDONALD

1 GET RID OF THOSE GENITAL WARTS.

2 WHO'S LYING? YOU'RE GOING TO HAVE
3 TO DECIDE. CREDIBILITY OF A WITNESS IS PART OF A
4 JUROR'S THOUGHT PROCESS. IT'S PART OF THEIR DECISION
5 PROCESS. WHAT HAS Minor GAINED BY CHANGING THE
6 NAME OF THE PERSON WHO DID THIS TO HER? IF, SAY, SOME
7 OTHER GUY; SAY THE BOARDER WHO LIVED WITH HER FOR EIGHT
8 MONTHS IS THE ONE WHO INFLICTED THIS DAMAGE ON HER.
9 NOT ONLY DID SHE WAIT A COUPLE OF YEARS BEFORE SHE
10 DISCLOSED; SHE ALSO LOSES HER FATHER, THE RELATIONSHIP
11 WITH HER FATHER. IF SHE LIES, WHY WOULD SHE DO THAT?
12 SHE LOVES HER FATHER. IT'S HARD FOR HER TO COME HERE
13 AND TELL YOU WHO DID THIS TO HER BECAUSE SHE LOVES
14 HIM.

15 ONE THING WE KNOW; EVERYBODY IN THIS
16 FAMILY PROFESSES TO LOVE EACH OTHER. AND I SUBMIT TO
17 YOU THAT Minor TELLING THE TRUTH ABOUT
18 EVERYTHING; BECAUSE SHE LOVES HIM THAT SHE HAS TO TELL
19 THE HARD TRUTH. AND SHE CAME DOWN FROM NORTH CAROLINA
20 TO DO THAT. WHAT DOES RODNEY ELLIOTT LOSE BY LYING BY
21 SAYING I DIDN'T DO IT? ZERO! HE LOSES NOTHING BY
22 COMING IN HERE AND SAYING I DIDN'T DO IT. EXCEPT FOR
23 WHATEVER PERIPHERAL INJURY HE INFLICTS ON HIS DAUGHTER
24 BY REFUSING TO ACKNOWLEDGE WHAT HE DID TO HER.

25 WHAT DOES HE GAIN BY LYING? WELL,

CLOSING ARGUMENT BY MS. MCDONALD

1 HE GAINS AVOIDING ACCOUNTABILITY FOR COMMITTING A
2 CRIME. AND HE AVOIDS SOCIAL STIGMA. BECAUSE YOU AND
3 I, AND EVERYBODY IN THIS ROOM, KNOWS THAT BEING A CHILD
4 MOLESTER IS NOT SOMETHING THAT YOU WANT YOUR NEIGHBOR
5 TO BE. IT'S NOT SOMETHING THAT YOU WANT TO KNOW ABOUT
6 A FAMILY MEMBER. IT'S A SERIOUS CHARGE. THE EVIDENCE
7 IN THIS CASE HAS BEEN SERIOUS. AND I SUBMIT TO YOU
8 THAT THE WEIGHT OF THE EVIDENCE FALLS ON ^{Minor}
9 SIDE. IT POINTS IN ONE DIRECTION; THAT HER FATHER HAD
10 A YEAR WITH HER. WHEN SHE RETURNED A FEW MONTHS LATER,
11 SHE DISCLOSED -- WHICH IS ABSOLUTELY TEXTBOOK NORMAL
12 CHILD SEXUAL ABUSE; THEY DON'T TELL RIGHT AWAY. SHE
13 DISCLOSED. SHE WENT TO THE DOCTOR. AND BOOM! YES!
14 THIS CHILD HAS IN FACT BEEN SEXUALLY ABUSED.

15 IT'S NOT A GIANT LEAP OF FAITH. IT
16 DOESN'T REQUIRE ANY BLIND TRUST THAT ^{Minor} KNOWS
17 WHO DID IT TO HER. MRS. ARNTS TESTIFIED THAT BY THREE
18 CHILDREN, THEY ARE DEVELOPMENTALLY CAPABLE OF
19 DISTINGUISHING BETWEEN INDIVIDUALS. THEY KNOW THE
20 DIFFERENCE BETWEEN STEPFATHER, FATHER, NEIGHBOR,
21 COUSIN, UNCLE, NEWSPAPER MAN, GUY AT THE GROCERY
22 STORE. THEY KNOW.

23 IT DOES NOT REQUIRE A WHOLE LOT OF
24 WORK ON YOUR PART TO GET TO THE INEVITABLE CONCLUSION
25 THAT NOT ONLY WAS ^{Minor} SEXUALLY ABUSED,

CLOSING ARGUMENT BY MS. MCDONALD

1 BUT HER FATHER DID IT. AND WE DON'T NEED TO HAVE
2 LOOKED AT HIS PENIS TO SEE WHETHER THERE ARE LESIONS
3 THERE OR NOT BECAUSE VERY LIKELY THERE WOULDN'T HAVE
4 BEEN BY THE TIME THIS CASE WAS BEING INVESTIGATED. SO
5 THEN WHAT WOULD YOU KNOW? THE SAME THING YOU KNOW
6 NOW. EVEN IF HE HAD OF, TEN PERCENT OF THE SEXUALLY
7 ACTIVE ADULT POPULATION HAS THEM. IT DOESN'T NARROW IT
8 DOWN. IT'S NOT EVEN A UNIQUE THING TO THIS ONE
9 PERSON. SO EVEN IF YOU KNEW THAT HE DID HAVE THEM, IT
10 WOULD MEAN THAT HE'S ONE OF 10 PERCENT OF THE
11 POPULATION THAT HAS THEM. A LOT OF OTHER PEOPLE DO,
12 TOO. YOU'RE STILL GOING TO HAVE TO GO WITH WHAT THE
13 CHILD WAS ABLE TO TELL YOU. AND AFTER YOU'VE ANALYZED
14 THE FACTS IN THIS CASE, AND AFTER YOU'VE THOUGHT ABOUT
15 WHAT YOU KNOW ABOUT ^{Minor} I SUBMIT TO YOU YOU'RE
16 GOING TO COME TO THE CONCLUSION THAT SHE KNOWS WHO DID
17 IT TO HER. AND THAT AS PAINFUL AS IT WAS FOR HER, AND
18 WITH AS MUCH AS SHE HAS TO LOSE, SHE TOLD YOU THE
19 TRUTH.

20 BRIEFLY, I WANT TO GO OVER THIS.
21 AND I KNOW I'VE BEEN TALKING FOR A LONG TIME. BUT IT'S
22 AN IMPORTANT CASE. LET ME GO OVER THIS ONE THING. THE
23 LAW -- AND I'VE TOLD YOU THIS PROBABLY A COUPLE OF
24 TIMES -- I'LL GO OVER IT ONE MORE TIME -- REQUIRES
25 THREE THINGS IN CRIMINAL SEXUAL CONDUCT WITH A MINOR.

CLOSING ARGUMENT BY MS. MCDONALD

1 (1) IT REQUIRES AN ACTOR; (2) IT REQUIRES SEXUAL
2 BATTERY. AND THAT IS BASICALLY INTERCOURSE, WHAT WE
3 CALL CUNNILINGUS, WHICH IS ORAL INTERCOURSE ON A WOMAN;
4 FELLATIO WHICH IS ORAL INTERCOURSE ON A MAN. ANAL
5 INTERCOURSE, OR ANY PENETRATION NO MATTER HOW SLIGHT
6 INTO THE GENITAL AREA OR THE ANAL OPENINGS OF ANOTHER.
7 SO RUBBING YOUR PENIS BETWEEN A CHILD'S LABIA OR
8 BETWEEN HER CHEEKS, ON HER RECTUM; THAT IS PENETRATION
9 UNDER THE LAW. AND IF YOU REMEMBER THE EVIDENCE IN
10 THIS CASE, ^{Minor} TESTIFIED THAT HE PUT IT IN SOME
11 OF THE WAY. SHE SAID HE NEVER GOT IT IN ALL THE WAY.
12 BUT HE GOT IT IN ENOUGH TO DO THIS DAMAGE TO HER
13 HYMEN. SO THAT'S BLUNT FORCE PENETRATED TRAUMA WHICH
14 THE DOCTOR'S CALL IT PENETRATION. THAT'S DIAGNOSTIC IF
15 THERE WAS PENETRATION. AND IN ADDITION, THE LESIONS
16 WERE ALL AROUND HERE INSIDE HER LABIA WHICH ARE THOSE
17 FLESHY PIECES THAT THE DOCTOR TOLD YOU SHE HAD TO PULL
18 OUT TO LOOK AT THESE STRUCTURES. SO THAT MEANS THAT
19 THE PENIS, WHEN IT WAS RUBBED ON HER, WAS RUBBED
20 BETWEEN HER VAGINAL LIPS AND BETWEEN HER BOTTOM CHEEKS,
21 I GUESS FOR LACK OF A BETTER TERM. THAT'S
22 PENETRATION. ALL THAT IS COVERED BY THIS DEFINITION
23 UNDER THE LAW OF SEXUAL BATTERY. AND (3); FOR CSC WITH
24 A MINOR, THERE'S AN AGE LIMIT. FIRST DEGREE IS UNDER
25 ELEVEN. WHEN ^{Minor} TURNED ELEVEN, THAT KICKED THE

CLOSING ARGUMENT BY MS. MCDONALD

1 CHARGE INTO SECOND DEGREE. AND THAT'S BASICALLY ELEVEN
2 TO FOURTEEN.

3 SO, ONCE AGAIN, DON'T BE CONFUSED BY
4 THOSE INDICTMENTS WHEN YOU GET THEM NOT HOLDING TO THE
5 DIFFERENT CONDUCTS THAT'S BEING ALLEGED. IT'S THE SAME
6 CONDUCT. IT'S THE PENETRATION AND THE RUBBING. THE
7 PENETRATION IS ALSO THE SEXUAL BATTERY. THOSE ARE THE
8 CONDUCTS THAT Minor TOLD YOU ABOUT THAT UNDER THE
9 LAW VIOLATES THIS STATUTE; ACTOR!

10 THIS IS NOT A WHO DONE IT. I SUBMIT
11 TO YOU THAT IF THIS WAS A CASE OF A CHILD BEING DRAGGED
12 OFF THE STREET; MR. ELLIOTT WENT AND TOOK A CHILD FROM
13 THE PLAYGROUND AND TOOK THEM BACK TO HIS HOUSE AND DID
14 THIS, YOU WOULDN'T HAVE ANY QUESTION. YOU THINK ABOUT
15 IT. IF YOU DO HAVE ANY QUESTION AS TO WHO DID THIS TO
16 Minor IT'S ONLY BECAUSE THIS IS JUST A FAMILY
17 SITUATION WHERE THERE'S A LOT OF GARBAGE AND A LOT OF
18 RED HERRINGS THAT HAVE THROWN INTO THIS PROCEEDING
19 ABOUT WHO HAD A WIN AND WHERE SHE WAS AND HOW SHE MOVED
20 AROUND. AND NONE OF THAT IS A CRIME. NONE OF THAT IS
21 RELATED TO THIS CASE. THIS CASE IS ABOUT SEX WITH A
22 CHILD. YOU WOULDN'T KNOW ANY OF THAT INFORMATION IF IT
23 WAS A STRANGER CASE BECAUSE THE DEFENSE WOULDN'T KNOW
24 WHERE MRS. MORRIS HAD BEEN FOR THE 13 YEARS; AND SHE
25 WOULDN'T KNOW WHERE THEY'VE BEEN.

CLOSING ARGUMENT BY MS. MCDONALD

1 AND YOU CAN GO BACK THERE IF YOU
2 WANT, LIKE I SAID BEFORE, AND TALK ABOUT HER MOVING ALL
3 OVER, AND THEM MOVING ALL OVER, AND UNSTABLE, AND CHILD
4 SUPPORT, AND ARRANGEMENTS, AND LIVING WITH
5 GRANDMOTHER. BUT THAT'S NOT WHAT THE CASE IS ABOUT.
6 IT'S ABOUT SEX WITH A CHILD. IT'S ABOUT VIOLATING THE
7 LAW. YOU KNOW WHO DID IT. AND THIS CASE IS ABOUT THE
8 TRUTH.

9 REASONABLE DOUBT. IT'S ABOUT
10 REASONABLE DOUBT AS TO GUILT. GUILT ALONE! NOT THE
11 PROBLEMS IN THE FAMILY, BUT WHETHER OR NOT HE DID IT.
12 DID HE DO IT? IF YOU THINK HE DID IT, THEN YOU GO BACK
13 THERE AND YOU VOTE GUILTY. REASONABLE DOUBT. IF YOU
14 THINK HE DID IT. IF YOU DON'T THINK HE DID IT, THEN
15 THE LAW REQUIRES THAT YOU LET HIM GO.

16 THIS CASE DESERVES A VERDICT. WHEN
17 YOU WERE ASKED IN VOIR DIRE -- AND WE DON'T HAVE A LOT
18 OF VOIR DIRE IN SOUTH CAROLINA. BUT YOU WERE ASKED IF
19 THERE WAS ANYTHING ABOUT THE NATURE OF THIS CASE THAT
20 WOULD KEEP YOU FROM BEING FAIR TO BOTH SIDES. NONE OF
21 Y'ALL STOOD UP. AND I KNOW THAT EACH AND EVERY ONE OF
22 YOU HAS IT IN YOU TO MAKE A DECISION IN THIS CASE.

23 Minor DESERVES TO BE BELIEVED. SHE DESERVES TO BE
24 HEARD. AND REGARDLESS OF WHAT YOU THINK ABOUT THE
25 SOCIAL SKILLS; IT'S NOT ABOUT THAT. IT'S NOT ABOUT

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1 WHAT YOU THINK IS ACCEPTABLE WITHIN A FAMILY UNIT.
2 IT'S ABOUT THE LAW. AND IF YOU CAN APPLY THE LAW AS I
3 TOLD YOU, AND AS THE JUDGE IS GOING TO TELL YOU IN
4 DETAIL, TO THE FACTS AS YOU'VE HEARD THEM IN THIS
5 TRIAL, THEN THE VERDICT THAT YOU SHOULD COME UP WITH
6 WOULD SPEAK THE TRUTH; THE TRUTH THAT ^{Minor} TOLD
7 YOU UNDER OATH WHEN SHE TOLD YOU THAT NOT ONLY WAS SHE
8 SEXUALLY ABUSED, BUT HER FATHER IS THE PERSON WHO DID
9 IT TO HER WHEN SHE WAS IN THE SIXTH GRADE BETWEEN THE
10 TIME SHE WAS TEN AND ELEVEN. SHE DOESN'T HAVE TO TELL
11 YOU EXACTLY WHEN AND ON WHAT DAY. THAT'S NOT WHAT THE
12 LAW REQUIRES, AND THE INDICTMENTS DON'T ALLEGE THAT.
13 BUT IF YOU CARE ENOUGH ABOUT YOUR COMMUNITY TO MAKE IT
14 THE KIND OF PLACE WHERE YOU WANT TO LIVE, THEN YOU'LL
15 REACH A VERDICT IN THIS CASE. AND I SUBMIT TO YOU THAT
16 THE EVIDENCE IN THIS CASE POINTS TO A GUILTY VERDICT.

17 I THANK YOU FOR YOUR TIME, YOUR
18 ATTENTION, AND YOUR SERVICE. I KNOW THERE ARE PLACES
19 THAT YOU WOULD RATHER BE. THERE MAY BE CASES THAT YOU
20 WOULD RATHER HEAR. BUT JURY SERVICE IS ABOUT THE MOST
21 IMPORTANT THING YOU CAN DO OTHER THAN SERVING FOR YOUR
22 COUNTRY IN A TIME OF WAR. SO THANKS FOR YOUR FIVE
23 DAYS.

24 * * * * *

25

CHARGE TO THE JURY

CHARGE TO THE JURY

MR. FOREMAN AND LADIES AND GENTLEMEN
OF THE JURY; IT NOW BECOMES MY DUTY TO CHARGE YOU.
WELL, THAT JUST MEANS TO INSTRUCT YOU ON THE LAW THAT
APPLIES TO THIS CASE. THIS IS A CASE IN WHICH THE
STATE CHARGES RODNEY ELLIOTT WITH TWO OFFENSES. THEY
ARE THE SAME THING BUT AT DIFFERENT TIMES. AND THAT'S
WHAT MAKES THEM TWO OFFENSES; THAT IS CRIMINAL SEXUAL
CONDUCT WITH A CHILD UNDER ELEVEN YEARS OLD AND ONE
MORE THAN ELEVEN YEARS OLD BUT LESS THAN FOURTEEN. TO
THESE INDICTMENTS, HE PLEADS NOT GUILTY. AND YOU
REMEMBER WHEN WE STARTED THIS CASE, I TOLD YOU THAT
SITTING AT THAT TABLE HE IS JUST AS INNOCENT AS YOU AND
I UNLESS AND UNTIL THE STATE CAN SATISFY TWELVE OF YOU
OF HIS GUILT BEYOND A REASONABLE DOUBT; BECAUSE IF YOU
HAVE A REASONABLE DOUBT, IT WOULD BE YOUR DUTY TO FIND
HIM NOT GUILTY.

1st charge
WELL, WHAT'S A REASONABLE DOUBT?

SOME OF THE ATTORNEYS TOLD YOU -- AND I BELIEVE I TOLD
YOU TO START OFF WITH -- I SAID, "WELL, IT'S SAID THAT
A REASONABLE DOUBT IS A DOUBT WHICH WOULD MAKE A
REASONABLE PERSON HESITATE TO ACT IN HIS OR HER MOST
IMPORTANT AFFAIRS. AND SO THE STATE MUST PROVE HIM
GUILTY BEYOND A REASONABLE DOUBT..

CHARGE TO THE JURY

1 NOW, SOME OF YOU MIGHT HAVE SAT ON
2 CIVIL JURIES. THAT'S WHERE PEOPLE SUE EACH OTHER FOR
3 MONEY OR LAND OR SOME SIMILAR TYPE THING. AND YOU WERE
4 TOLD THAT IT WAS ONLY NECESSARY TO PROVE THAT A FACT
5 WAS MORE LIKELY TRUE OR NOT. WELL, A REASONABLE DOUBT
6 IS MORE THAN THAT. IT'S MORE POWERFUL THAN THAT.
7 PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES
8 YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT.

9 NOW, WE ALL KNOW THAT THERE ARE VERY
10 FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE
11 CERTAINTY. AND IN CRIMINAL CASES THE LAW DOES NOT
12 REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF,
13 BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE
14 FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY, YOU MUST
15 FIND HIM GUILTY. ON THE OTHER HAND, IF YOU THINK THERE
16 IS A REAL POSSIBILITY THAT HE'S NOT GUILTY, THEN YOU
17 WOULD GIVE HIM THE BENEFIT OF THAT DOUBT AND FIND HIM
18 NOT GUILTY. AND I SUPPOSE YOU COULD SUM IT ALL UP BY
19 SAYING A REASONABLE DOUBT IS A DOUBT WHICH A JUROR CAN
20 GIVE WHEN THEY'RE EARNESTLY SEEKING TO FIND THE TRUTH;
21 BECAUSE JURORS DON'T HAVE TO PUNISH ANYONE. THEY DON'T
22 HAVE TO REWARD ANYONE. THEY JUST HAVE TO BRING IN A
23 VERDICT THAT SPEAKS THE TRUTH. AND WHEN THEY'VE DONE
24 THAT, THEY WILL HAVE LIVED UP TO THEIR OATH THAT THEY
25 GAVE AT THE BEGINNING OF THIS CASE.

CHARGE TO THE JURY

1 NOW, I TOLD YOU EARLIER, AND I SO
2 INSTRUCT YOU AT THIS TIME, THAT OUR CONSTITUTION MAKES
3 YOU THE JUDGES OF THE FACTS. REMEMBER, I TOLD YOU AS
4 JUDGES OF THE FACTS, YOU MUST OF NECESSITY DETERMINE
5 THE CREDIBILITY, THE BELIEVABILITY, OF THESE WITNESSES
6 WHO TESTIFY. WELL, HOW DO YOU DO THAT? YOU DO IT
7 EVERY DAY, AND YOU DO IT KIND OF UNCONSCIOUSLY. YOU
8 DON'T EVEN THINK ABOUT IT. FOR INSTANCE, SUPPOSE YOU
9 CAN'T SEE OUTSIDE AND SOMEBODY COMES IN THE DOOR BACK
10 THERE AND SAYS IT'S RAINING OUTSIDE. YOU'D LOOK AT
11 THAT PERSON, AND YOU'D THINK "WELL, WHAT DO I KNOW
12 ABOUT THAT PERSON; HOW DID HE SAY IT; HOW WAS IT WHEN I
13 LEFT MY JURY ROOM A FEW MINUTES AGO; WHAT DID THE
14 WEATHER MAN TELL ME THIS MORNING WHEN I GOT UP." AND
15 YOU'D FEED ALL THOSE IN YOUR MIND, AND YOU'D MAKE UP
16 YOUR MIND WHETHER OR NOT TO BELIEVE THEM OR NOT.
17 THAT'S WHAT WE CALL USING YOUR COMMON SENSE BECAUSE YOU
18 DON'T LEAVE YOUR COMMON SENSE AT HOME. YOU USE THOSE
19 SAME GUIDELINES THAT YOU USE EVERY DAY AND DON'T EVEN
20 THINK ABOUT IT. WELL, WHAT ARE SOME OF THEM? ONE OF
21 THEM, OF COURSE, IS WHAT I JUST MENTIONED; THE MAN WHO
22 CAME IN BACK THERE AND SAID IT'S RAINING OUTSIDE.
23 SOMETIMES WE REFER TO THAT AS THE Demeanor OF THE
24 WITNESS. WHAT WAS THE ABILITY OF THE WITNESS TO KNOW
25 ABOUT WHAT HE OR SHE TESTIFIED; WAS THE WITNESS'

CHARGE TO THE JURY

1 TESTIMONY MADE STRONGER BY OTHER EVIDENCE, OR WAS IT
2 MADE WEAKER? DID THE WITNESS HAVE SOMETHING TO GAIN OR
3 SOMETHING TO LOSE FROM THE WAY HE OR SHE TESTIFIED?
4 BUT YOU WOULDN'T DO IT BY COUNTING THE NUMBER OF
5 WITNESSES, OBVIOUSLY, BECAUSE YOU COULD BELIEVE
6 EVERYTHING THAT A WITNESS TESTIFIED TO OR NOTHING. YOU
7 COULD BELIEVE A SMALL PORTION AND DISREGARD THE LARGER
8 OR VICE VERSA. YOU COULD BELIEVE ONE WITNESS AGAINST
9 MANY OR MANY AGAINST ONE, ALWAYS KEEPING THOSE TWO
10 THINGS IN MIND I TOLD YOU ABOUT. ALWAYS GIVE THE
11 DEFENDANT THE BENEFIT OF EVERY REASONABLE DOUBT. YOU
12 DON'T HAVE TO PUNISH ANYONE. YOU DON'T HAVE TO REWARD
13 ANYONE. JUST BRING IN A VERDICT THAT SPEAKS THE TRUTH.

14 NOW, THAT SAME CONSTITUTION WHICH
15 MADE YOU THE JUDGE OF THE FACTS MADE ME THE JUDGE OF
16 THE LAW. AND IF I SAID ANYTHING OR RULED IN FAVOR OF
17 EITHER SIDE, OR FOR THAT MATTER HAD SOME KIND OF LOOK
18 ON MY FACE AND YOU'RE THINKING I'M TRYING TO TAKE YOUR
19 JOB AWAY FROM YOU, JUST DISABUSE IT FROM YOUR MINDS
20 BECAUSE I WOULD NOT HAVE INTENDED TO DO SO. YOU'RE THE
21 JUDGES OF THE FACTS. I'M THE JUDGE OF THE LAW.

22 NOW, WHAT'S THE LAW THAT I NEED TO
23 TELL YOU TO APPLY THE FACTS AS ONLY YOU CAN FIND? THE
24 DEFENDANT IS CHARGED WITH CRIMINAL SEXUAL CONDUCT IN
25 THE FIRST DEGREE AND CRIMINAL SEXUAL CONDUCT IN THE

CHARGE TO THE JURY

1 SECOND DEGREE. BEFORE I TELL YOU THAT, LET ME TELL YOU
2 ABOUT WITNESSES. WHEN WITNESSES GET UP HERE AND
3 TESTIFY, THEY GENERALLY TESTIFY THROUGH THEIR SENSES.
4 THEY COME UP HERE AND SAID "I HEARD THIS;" AND THEY
5 TELL YOU ABOUT IT. OR "I SAW THIS;" AND THEY COME UP
6 HERE AND TELL YOU ABOUT IT. AND THOSE PEOPLE GENERALLY
7 CANNOT GIVE YOU AN OPINION. BUT THERE ARE PEOPLE WHO
8 (2) THROUGH EDUCATION OR EXPERIENCE, OR A COMBINATION OF
9 BOTH, BECOME PROFICIENT IN DIFFERENT FIELDS; AND
10 THEY'RE CALLED EXPERTS, AND THEY CAN GIVE OPINIONS.
11 BUT I TELL YOU ABOUT EXPERTS JUST LIKE I WOULD TELL YOU
12 ABOUT ANY PERSON, LAYMEN OR OTHERWISE, WHO COMES TO
13 TESTIFY HERE. YOU GIVE THAT PERSON'S TESTIMONY
14 WHATEVER WEIGHT YOU FEEL IT DESERVES UNDER THE FACTS
15 AND THE CIRCUMSTANCES OF THIS CASE.

16 (3) NOW, WHAT IS CRIMINAL SEXUAL CONDUCT
17 WITH A MINOR IN THE FIRST DEGREE? BECAUSE THAT'S ONE
18 OF THE INDICTMENTS THAT HE'S CHARGED WITH. OUR LAW
19 STATES UNDER THAT SECTION THAT A PERSON IS GUILTY OF
20 CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE IF THE
21 ACTOR ENGAGES IN SEXUAL BATTERY WITH THE VICTIM WHO IS
22 LESS THAN ELEVEN YEARS OF AGE. NOW, ACTOR HAS BEEN
23 EXPLAINED TO YOU. IT JUST MEANS A PERSON ACCUSED OF
24 THE CRIMINAL SEXUAL CONDUCT. VICTIM JUST MEANS THE
25 PERSON ALLEGED TO HAVE BEEN SUBJECTED TO THAT CRIMINAL

CHARGE TO THE JURY

1 SEXUAL CONDUCT.

2 AND SEXUAL BATTERY FORMALLY MEANS
3 SEXUAL INTERCOURSE, CUNNILINGUS, FELLATIO, AND
4 INTERCOURSE OR ANY INTRUSION, HOWEVER SLIGHT, OF ANY
5 PART OF A PERSON'S BODY OR OF ANY OBJECT INTO THE
6 GENITAL OR ANAL OPENINGS OF ANOTHER PERSON'S BODY;
7 EXCEPT, OF COURSE, WHERE IT'S DONE FOR MEDICAL
8 REASONS. SO THEREFORE, IT BOILS DOWN TO SIMPLE NUMBERS
9 OF PROOF. THE STATE MUST PROVE BEYOND A REASONABLE
10 DOUBT AS THEY MUST PROVE EVERYTHING ELSE; NUMBER ONE,
11 THE VICTIM, THE CHILD, WAS A LESS THAN ELEVEN YEARS OF
12 AGE AT THE TIME OF THE OFFENSE. AND SECONDLY, THAT THE
13 DEFENDANT DID COMMIT A SEXUAL BATTERY ON THE VICTIM.
14 THAT'S CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE.

15 (4) NOW, HE'S CHARGED ALSO WITH CRIMINAL
16 SEXUAL CONDUCT IN THE SECOND DEGREE. AND THE
17 INSTRUCTIONS THAT I JUST GAVE YOU APPLIES TO CRIMINAL
18 SEXUAL CONDUCT IN THE SECOND DEGREE WITH THE EXCEPTION
19 THAT THE DEFENDANT DID COMMIT A SEXUAL BATTERY WITH A
20 CHILD MORE THAN ELEVEN YEARS OF AGE BUT LESS THAN
21 FOURTEEN YEARS OF AGE.

22 NOW, I TELL YOU MR. FOREMAN AND
23 MEMBERS OF THE JURY THAT IT'S NOT NECESSARY FOR THE
24 STATE TO PROVE THAT THE CHILD DID NOT CONSENT. IN
25 OTHER WORDS, IT MAKES NO DIFFERENCE WHATSOEVER WHETHER

CHARGE TO THE JURY

1 THE CHILD CONSENTED OR NOT BECAUSE THE LAW MAKES IT A
2 CRIME TO HAVE SEX WITH A CHILD LESS THAN ELEVEN YEARS
3 OF AGE REGARDLESS OF THE CIRCUMSTANCES OR BETWEEN
4 ELEVEN AND FOURTEEN REGARDLESS OF THE CIRCUMSTANCES.

5 (5) NOW, FINALLY MR. FOREMAN AND MEMBERS
6 OF THE JURY, I TELL YOU THAT WE HAVE A SECTION 16-3-657
7 WHICH SAYS THIS: CRIMINAL SEXUAL CONDUCT TESTIMONY OF
8 A VICTIM NEED NOT BE CORROBORATED.

9 NOW, YOU'VE BEEN CHOSEN AS FAIR AS
10 IMPARTIAL JURORS SWORN TO FAIRLY TRY THIS CASE. AND
11 WHEN YOU'VE DONE THAT, YOU DON'T HAVE TO APOLOGIZE TO
12 ANYONE. AND FINALLY, ONE THING THAT I FORGOT TO TELL
13 (6) YOU. I WANT TO TELL YOU THAT THE STATE IS NOT REQUIRED
14 TO PROVE THAT THE OFFENSE OCCURRED ON ANY EXACT DAY OR
15 ANY EXACT MONTH BETWEEN THE TIMES THAT THEY ARE
16 ALLEGED. THEY'RE JUST REQUIRED TO PROVE THAT IT
17 OCCURRED BEFORE THE CHILD WAS ELEVEN YEARS OF AGE AND
18 AFTER THE CHILD WAS ELEVEN YEARS OF AGE AS I'VE CHARGED
19 YOU.

20 NOW, THERE ARE JUST TWO POSSIBLE
21 VERDICTS ON EACH OF THESE INDICTMENTS. CONSIDER THEM
22 SEPARATELY. YOU COULD FIND HIM GUILTY OF BOTH. YOU
23 COULD FIND HIM NOT GUILTY OF BOTH. OR YOU COULD FIND
24 HIM GUILTY OF ONE AND NOT GUILTY OF THE OTHER. IT JUST
25 DEPENDS UPON YOUR VIEW OF THE EVIDENCE IN THE CASE.

CHARGE TO THE JURY

1 NOW, THESE ARE INDICTMENTS. IT CONTAINS THE CHARGES.
2 BUT IT'S NOT EVIDENCE. THEY'RE JUST PIECES OF PAPER
3 THAT GETS IT INTO COURT. AND ON HERE WHERE I'VE
4 HIGHLIGHTED IN YELLOW, MR. FOREMAN, IS A PLACE FOR YOU
5 TO WRITE YOUR VERDICT. CONSIDER EACH ONE OF THEM
6 SEPARATE. IF YOU FIND THE STATE HAS FAILED TO SATISFY
7 YOU OF HIS GUILT BEYOND A REASONABLE DOUBT, JUST SIGN
8 THIS, PUT THE WORDS "NOT GUILTY," AND SIGN YOUR NAME AS
9 FOREMAN. AND WHEN YOU'VE SIGNED, MR. FOREMAN, IT
10 INDICATES THAT ALL TWELVE OF YOU HAVE AGREED BECAUSE IT
11 TAKES ALL TWELVE OF YOU TO AGREE ON WHATEVER THE
12 VERDICT IS.

13 ON THE OTHER HAND, IF THE STATE HAS
14 SATISFIED YOU OF HIS GUILT BEYOND A REASONABLE DOUBT IN
15 EITHER OR BOTH INDICTMENTS, JUST WRITE THE WORD
16 "GUILTY" AND LIKewise SIGN YOUR NAME. I'M GOING TO
17 SEND YOU TO YOUR ROOM FOR JUST A MINUTE. IF WE'VE GOT
18 ANY SMOKERS, REMEMBER THAT YOU'RE IN CHARGE NOW OF THE
19 SMOKERS. BUT IF THE SMOKERS ARE OUT, YOU CANNOT TALK
20 ABOUT THE CASE. ALL OF YOU HAVE TO BE IN THERE AT THE
21 SAME TIME. I'LL BE SEPARATING MY ALTERNATES, AND I'LL
22 PUT YOU IN ANOTHER ROOM. BUT IF I BRING THEM OUT, YOU
23 ALL WILL COME OUT ALSO. AND ALSO IF YOU GET ANYTHING
24 TO MAKE YOU COMFORTABLE, WE'LL SEND THE SAME THING IN
25 TO YOU.

DELIBERATIONS

1 JUST FOLLOW THE BAILIFF FOR JUST A
2 MINUTE. DON'T TALK ABOUT THE CASE QUITE YET. I MIGHT
3 HAVE TO BRING YOU BACK. IF NOT, I'LL SEND YOU ALL
4 THESE EXHIBITS AND THESE, MR. FOREMAN.

5 (AT THIS TIME, JURY RETIRES TO JURY ROOM.)

6 THE COURT: ANY EXCEPTIONS OR ADDITIONS FROM
7 THE STATE?

8 MS. MCDONALD: NO, YOUR HONOR.

9 THE COURT: DEFENSE?

10 MR. DUKES: NONE, YOUR HONOR.

11 THE COURT: ALL RIGHT. TELL THEM TO BEGIN.
12 HOW ABOUT CHECK THE EXHIBITS?

13 (WHEREUPON AT 9:55 JURY BEGINS DELIBERATIONS.)

14 - - - - -

15 THE COURT: ALL RIGHT. SOLICITOR, HOW ABOUT
16 COME UP HERE JUST A MINUTE? AND WHERE IS MR.
17 DUKES? OKAY. COME UP HERE, AND YOU CAN BE
18 READING THIS. THEY WANT TO HEAR SOME
19 TESTIMONY.

20 (AT THIS TIME BENCH CONFERENCE IS HELD.)

21 THE COURT: ALL RIGHT, SOLICITOR. I'VE GOT A
22 REQUEST FROM THE JURY. I'M GOING TO
23 HAVE TO STOP COURT LONG ENOUGH FOR THE --
24 HERE, MADAM COURT REPORTER. THERE'S NOT MUCH
25 WE CAN BE DOING WHILE THE COURT REPORTER IS

DELIBERATIONS

1 TRYING TO GET THAT TESTIMONY.

2 (BRIEF RECESS.)

3 (AT THIS TIME JURY RETURNS TO OPEN COURT TO LISTEN TO
4 TESTIMONY.)

5 THE COURT: NOW, MR. FOREMAN AND LADIES AND
6 GENTLEMEN; IT TOOK US A LITTLE WHILE TO FIND
7 IT. SHE STARTED LOOKING FOR IT THE MINUTE
8 Y'ALL SENT THAT NOTE IN HERE. NOW, WHAT SHE'S
9 GOING TO DO IS SHE'S GOING TO TELL YOU FIRST
10 WHAT SHE'S GOING TO PLAY; AND THEN YOU LISTEN
11 TO IT. AND THEN YOU'RE GOING TO HAVE TO GIVE
12 HER A MINUTE OR TWO TO FIND THE NEXT ONE.
13 SHE'S GOT IT MARKED, SO IT WON'T TAKE VERY
14 LONG TO DO IT. AND THEN SHE'LL TELL YOU EACH
15 TIME WHAT IT IS. ALL RIGHT. WHAT'S THE FIRST
16 ONE?

17 THE COURT REPORTER: THE FIRST ONE IS THE
18 DOCTOR.

19 THE COURT: ALL RIGHT. GO AHEAD.

20 (AT THIS TIME TESTIMONY OF LAURA GUTMAN, M.D. AND HAZEL
21 ELLIOTT NOWELL IS PLAYED FOR THE JURY.)

22 (AT THIS TIME JURY RETIRES TO JURY ROOM.)

23 THE COURT: ANY EXCEPTIONS OR ADDITIONS FROM
24 THE STATE?

25 MS. MCDONALD: NOTHING FROM THE STATE, YOUR

MOTIONS

1 HONOR.

2 THE COURT: DEFENSE?

3 MR. DUKES: NOTHING FROM THE DEFENSE, YOUR
4 HONOR.

5 THE COURT: ALL RIGHT.

6 (BRIEF RECESS.)

7 (AT THIS TIME JURY SENDS NOTE OUT TO THE COURT.)

8 THE COURT: HERE. GET TOGETHER WITH GENE
9 DUKES. MR. DUKES, HOW ABOUT COME BACK HERE
10 AND GET TOGETHER WITH THE SOLICITOR BACK
11 THERE, AND SEE IF Y'ALL CAN AGREE WHERE THAT
12 CHILD WAS BETWEEN -- I CAN'T TELL WHAT MONTH
13 IT IS IN '95 AND THE 17TH OF AUGUST, '75. GO
14 BACK THERE AND SEE IF YOU AND THE SOLICITOR --
15 BECAUSE I DON'T WANT TO HAVE TO PLAY THAT
16 TESTIMONY UNLESS I HAVE TO. Y'ALL GO BACK
17 THERE AND USE MY OFFICE. SEE IF YOU CAN AGREE
18 ON IT.

19 (BRIEF RECESS.)

20 THE COURT: CAN Y'ALL AGREE?

21 MS. MCDONALD: ON WHAT?

22 THE COURT: WHATEVER THIS IS. IT SAYS

23 SUBJECT: WHEREABOUTS WAS ^{Minor} BETWEEN
24 ONE SOMETHING AND '95 AND THE 17TH OF AUGUST,
25 '95?

MOTIONS

1 MS. MCDONALD: THEY WANT TO KNOW WHERE SHE WAS
2 BEFORE---

3 THE COURT: I THINK THAT'S ALL THEY'RE ASKING.

4 MS. MCDONALD: YES; BUT THEY WANT TO KNOW FROM
5 THESE THREE PEOPLE WHERE THEY SAID SHE WAS.

6 THE COURT: IT DOESN'T MAKE ANY DIFFERENCE
7 WHAT THEY SAY. IF WE CAN AGREE ON WHERE SHE
8 WAS. WHERE WAS SHE DURING THAT TIME?

9 MS. MCDONALD: WE DON'T KNOW BECAUSE THE
10 TESTIMONY IS CONFLICTING. ^{Minor} SAYS SHE
11 THINKS SHE WAS WITH HER DAD. HER MOM SAID SHE
12 WAS WITH HER.

13 THE COURT: WELL, CAN Y'ALL AGREE WHAT THEY
14 TESTIFIED TO? HOW ABOUT YOU AND---

15 MS. MCDONALD: I DON'T KNOW. GENE SAID LET'S
16 PLAY IT.

17 THE COURT: BRING THEM HERE. I'M NOT GOING TO
18 PLAY ALL THAT TESTIMONY. BRING MR. DUKES IN
19 HERE. I'LL TAKE CARE OF IT. WHAT DIFFERENCE
20 DOES IT MAKE WHERE SHE WAS DURING THAT TIME?

21 MS. MCDONALD: BECAUSE THEY'RE WORKING ON THE
22 INDICTMENTS THAT CHARGE HIM WITH THAT; THE
23 CHARGE; BEFORE HER BIRTHDAY IN

24 THE COURT: OKAY. WHERE IS MR. DUKES?

25 MR. DUKES: HERE I AM.

MOTIONS

1 THE COURT: MR. DUKES, LOOK HERE A MINUTE.
2 WOULD YOU STEP IN THERE WITH THE SOLICITOR FOR
3 JUST A MINUTE AND GO IN MY OFFICE AND SEE IF
4 Y'ALL CAN DETERMINE WHERE EACH OF THOSE
5 WITNESSES SAID THEY WERE. I REMEMBER SHE SAID
6 SHE THOUGHT SHE WAS WHEREVER SHE THOUGHT SHE
7 WAS. BUT I DON'T REMEMBER WHAT THE OTHERS
8 SAID. SEE IF Y'ALL CAN AGREE ON WHERE EACH OF
9 THEM SAID SHE WAS.

10 MR. DUKES: ALL RIGHT, SIR.

11 (OFF-THE-RECORD DISCUSSION.)

12 THE COURT: ALL RIGHT. BRING THE JURY IN,
13 PLEASE.

14 (AT THIS TIME JURY RETURNS TO OPEN COURT.)

15 THE COURT: ALL RIGHT. I'M GOING TO LET THE
16 SOLICITOR TELL YOU WHERE ^{Minor} WAS THE
17 FIRST PART OF THE YEAR. I'M GOING TO LET THE
18 SOLICITOR TELL YOU WHERE THEY AGREE THAT SHE
19 WAS. GO AHEAD, SOLICITOR. CORRECT ME IF SHE'S
20 WRONG, MR. DUKES.

21 MS. MCDONALD: HE'S AGREED THAT FOR THE SECOND
22 HALF OF THE FIFTH GRADE TO THE FIRST HALF OF
23 THE CALENDAR YEAR, 1995, SHE WAS IN NORTH
24 CAROLINA.

25 THE COURT: JANUARY THE FIRST THROUGH THE

MOTIONS

1 SCHOOL YEAR, SHE WAS IN NORTH CAROLINA. NOW,
2 THESE TWO WITNESSES ARE REASONABLY SHORT.
3 WE'RE GOING TO FIRST LET YOU LISTEN TO THE
4 TESTIMONY OF MRS. MORRIS, HER MOTHER. WHEN
5 YOU GET TO THE POINT TO WHERE YOU'VE HEARD
6 ENOUGH, JUST LET ME KNOW. GO AHEAD.

7 (AT THIS TIME TESTIMONY OF MRS. VIVIAN MORRIS IS PLAYED
8 FOR THE JURY.)

9 (AT THIS TIME JURY RETIRES TO JURY ROOM.)

10 THE COURT: ANY ADDITIONS OR EXCEPTIONS FROM
11 THE STATE?

12 MS. MCDONALD: NOTHING FROM THE STATE.

13 THE COURT: DEFENSE?

14 MR. DUKES: NOTHING FROM THE DEFENSE, YOUR
15 HONOR.

16 THE COURT: ALL RIGHT. WE'RE IN RECESS.

17 (BRIEF RECESS.)

18 (WHEREUPON AT 2:20 JURY RETURNS TO OPEN COURT WITH
19 QUESTION.)

20 THE COURT: NOW, MR. FOREMAN AND LADIES AND
21 MEMBERS OF THE JURY; I'VE GOT THIS NOTE. IT
22 SAYS "WHERE WAS ^{Minor} AND IN WHOSE CUSTODY
23 DURING JUNE, JULY, AND AUGUST OF 1995 PRIOR TO
24 ENTERING THE SIXTH GRADE AT ALSTON MIDDLE
25 SCHOOL? P.S.; WE DO NOT NEED TO LISTEN TO

MOTIONS

1 TESTIMONY OF BOTH SIDES IF BOTH SIDES AGREE."
2 WELL, IT JUST HAPPENS THAT THE ATTORNEYS CAN'T
3 REMEMBER WHAT'S IN THE TESTIMONY. SO THEY
4 DON'T KNOW. SO YOU'LL HAVE TO TELL ME WHAT
5 TESTIMONY YOU WANT TO LISTEN TO.
6 THE FOREMAN: THE ISSUES RELEVANT TO THAT TIME
7 PERIOD; ONLY THAT QUESTION OF WHERE SHE WAS IN
8 THE SUMMER OF '95.
9 THE COURT: ALL RIGHT. DO YOU HAVE ANY IDEA
10 WHERE THAT IS?
11 MS. MCDONALD: I HAVE NOTES, YOUR HONOR. I
12 CAN TELL MADAM COURT REPORTER WHAT SURROUNDED
13 IT.
14 THE COURT: WELL, I WOULDN'T LET YOU TELL THAT
15 JURY WHAT YOUR NOTES SAY.
16 MS. MCDONALD: NO; I DON'T INTEND TO DO THAT.
17 THE COURT: BUT PERHAPS YOU COULD TELL ALONG
18 WHERE YOU ASKED THAT QUESTION. GO AHEAD AND
19 GET HER TESTIMONY.
20 MS. MCDONALD: I WAS GOING TO KIND OF TELL HER
21 IN A LOW VOICE.
22 THE COURT: OKAY.
23 (OFF-THE-RECORD DISCUSSION.)
24 (AT THIS TIME TESTIMONY OF^{Minor} IS PLAYED
25 FOR THE JURY.)

VERDICT

1 THE COURT: ALL RIGHT. COURT'S IN RECESS.

2

3 THE COURT: ALL RIGHT. THE JURY HAS A VERDICT
4 IN THIS CASE. I DON'T KNOW WHAT THE VERDICT
5 IS GOING TO BE; BUT REGARDLESS OF WHICH WAY IT
6 IS, I'M NOT GOING TO CONDONE ANY SERIOUS
7 EXPRESSION. SO JUST PLEASE BE CALM.

8 THE COURT: ALL RIGHT. BRING THE JURY IN.

9 (WHEREUPON AT 2:35 P.M. JURY RETURNS TO OPEN COURT WITH
10 VERDICT.)

11 THE COURT: ALL RIGHT, MADAM CLERK.

12 THE CLERK: LADIES AND GENTLEMEN OF THE JURY;
13 HAVE YOU AGREED UPON A VERDICT?

14 THE FOREMAN: YES, WE HAVE.

15 THE COURT: ALL RIGHT. YOU CAN GO AHEAD AND
16 PUBLISH IT.

17 THE CLERK: INDICTMENT NUMBER 97-GS-18-238;

18 THE STATE OF SOUTH CAROLINA VS. RODNEY

19 ELLIOTT, INDICTED FOR CRIMINAL SEXUAL CONDUCT
20 WITH A MINOR SECOND DEGREE; GUILTY.

21 INDICTMENT NUMBER 97-GS-18-239, THE STATE OF

22 SOUTH CAROLINA VS. RODNEY ELLIOTT, INDICTED

23 FOR CRIMINAL SEXUAL CONDUCT WITH A MINOR FIRST
24 DEGREE; NOT GUILTY.

25 THE COURT: WELL, ONE OF THEM IS SECOND

VERDICT

1 DEGREE. WHICH ONE?

2 THE CLERK: THE FIRST ONE WAS SECOND DEGREE.

3 THE COURT: ALL RIGHT.

4 THE CLERK: SECOND DEGREE IS GUILTY; AND THE
5 FIRST DEGREE IS NOT GUILTY.

6 THE COURT: ALL RIGHT.

7 THE CLERK: SIGNED BY WILLIAM SPAULDING. IF
8 THIS IS THE VERDICT OF YOU ALL, PLEASE RAISE
9 YOUR RIGHT HAND. (ALL JURORS RAISE HANDS.)

10 THE COURT: IT APPEARS TO BE IN ORDER.
11 ANYTHING FURTHER FROM THE STATE?

12 MS. MCDONALD: NOTHING FROM THE STATE, YOUR
13 HONOR.

14 THE COURT: FROM THE DEFENSE OTHER THAN ANY
15 MOTIONS?

16 MR. DUKES: NO, SIR.

17 THE COURT: I WANT TO TELL YOU HOW MUCH I
18 APPRECIATE IT, MR. FOREMAN AND MEMBERS OF THE
19 JURY. YOU KNOW I WATCHED YOU ALL CAREFULLY
20 DURING THE TRIAL, AND NOBODY SEEMED TO BE NOT
21 PAYING ATTENTION. AND YOU WERE POLITE TO THE
22 ATTORNEYS. YOU LISTENED TO MY INSTRUCTIONS.
23 YOU CAME BACK TO LISTEN AGAIN AND AGAIN AND
24 AGAIN. AND IN LISTENING, I REALIZE THE ONE
25 THAT YOU FOUND NOT GUILTY WHAT YOUR PROBLEM

VERDICT

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1 WAS. AND, SO; SEE, YOU FOLLOWED THE SYSTEM.
2 AND YOU DON'T HAVE TO APOLOGIZE TO ANYONE.
3 YOU HAD A DOUBT ABOUT THAT PARTICULAR ONE; AND
4 THAT'S WHAT THE LAW IS ALL ABOUT; TO GIVE THEM
5 THE BENEFIT OF THAT DOUBT. I WANT TO TELL YOU
6 HOW MUCH I APPRECIATE YOUR SERVICE. I'M GOING
7 TO LISTEN TO THE MOTIONS; AND I'M GOING TO
8 SENTENCE HIM IN A FEW MINUTES. FEEL FREE TO
9 STAY. IF YOU'D LIKE, YOU CAN STAY RIGHT
10 THERE, OR YOU CAN GO RIGHT OUT THIS DOOR OR
11 SIT IN THE COURTROOM. ALSO WE'RE GOING TO
12 MAIL YOU A CHECK, REMEMBER. AND IT WON'T BE
13 MUCH MONEY. REMEMBER I TOLD YOU THAT. AND IF
14 YOU NEED TO SHOW THAT YOU WERE IN COURT THIS
15 WEEK, FEEL FREE TO STOP DOWN WHEN YOU GO TO
16 THE CLERK'S OFFICE, AND THE CLERK WILL GIVE
17 YOU A SLIP THAT SHOWS YOU WERE IN COURT THIS
18 WEEK. ARE THERE ANY QUESTIONS THAT I COULD
19 ANSWER FOR YOU? (NO RESPONSE.) ON YESTERDAY
20 WHEN I GOT THAT JURY VERDICT, THAT OTHER JURY
21 TOLD ME THAT THOSE SEATS WERE AWFULLY HARD
22 SITTING THERE. SO YOU'LL BE INTERESTED IN
23 KNOWING WE GOT THE ADMINISTRATOR UP HERE AFTER
24 THAT, AND HE WAS VERY NICE ABOUT IT. SO HE'S
25 AUTHORIZED THE CLERK TO FIX SOME CUSHIONS FOR

VERDICT

1 YOU ALL SO YOU'LL HAVE NICE SOFT CUSHIONS THE
2 NEXT TIME YOU SERVE. NOW, IF YOU'RE DRAWN ON
3 A JURY IN THE NEXT THREE YEARS, YOU COULD
4 SERVE, BUT YOU DON'T HAVE TO, SO IF YOU'RE
5 DRAWN ON A JURY, ALL YOU'D HAVE TO DO IS CALL
6 THE CLERK AND THE CLERK WOULD TAKE YOU OFF. I
7 WANT TO TELL YOU HOW MUCH I APPRECIATE YOUR
8 SERVICE; AND YOU'RE DISCHARGED. THANK YOU SO
9 MUCH.

10 (AT THIS TIME JURY IS EXCUSED.)

11 THE COURT: ALL RIGHT. AS SOON AS THE JURY
12 LEAVES, I'LL HEAR YOUR MOTIONS, AND IF THEY
13 HAVE A SEAT, WHICHEVER.

14 MR. DUKES: YES, SIR. I WOULD MAKE A MOTION
15 FOR A JUDGMENT NOTWITHSTANDING THE VERDICT.
16 AND THAT WOULD BE ON THE BASIS OF, REALLY, THE
17 INCONSISTENCIES OF THE JURY VERDICT. THERE'S
18 NO DIFFERENCE IN THE TWO DEGREES OF WHAT
19 YOU'VE GOT TO DO. EVIDENTLY THEY DECIDED THAT
20 SOLELY BASED ON THAT AUGUST THE 17TH DATE.
21 THEY DIDN'T KNOW WHERE SHE WAS. I THINK IT
22 WAS A COMPROMISE VERDICT ALSO. AND THE JURY
23 DIDN'T KNOW WHERE SHE WAS. SO THEY WENT WITH
24 THE SECOND DEGREE INSTEAD OF A FIRST. I THINK
25 THERE WAS NO DIFFERENCE IN THE PROOF ON BOTH

VERDICT

279

1 OF THEM EXCEPT FOR AGE. WHAT YOU DO ON BOTH
2 OF THEM IS THE SAME, AND IT'S INCONSISTENT.
3 IT TAKES THE SAME FINDING ON ONE AS IT TAKES
4 ON THE OTHER ONE, BUT THEY FOUND ONE AND
5 DIDN'T FIND THE OTHER ONE. I'M JUST THINKING
6 OUT LOUD.

7 THE COURT: ANYTHING FURTHER?

8 MR. DUKES: AND I'D ASK FOR A NEW TRIAL ON
9 THAT BASIS, YOUR HONOR.

10 THE COURT: I DENY THE MOTION. IT WAS A JURY
11 QUESTION. AND, SEE, I THINK WHEN THE JURY
12 CAME OUT AND ASKED FOR THOSE FIRST QUESTIONS,
13 I THINK THEY HAD ALREADY FOUND A VERDICT OF
14 GUILTY ON THE ONE AND THEY WERE TRYING TO PIN
15 DOWN THE OTHER. BUT BE THAT AS IT MAY, THAT'S
16 JUST AN OBSERVATION. BUT THERE'S NO QUESTION
17 IT WAS JUST A JURY VERDICT. SO I DENY YOUR
18 MOTION. ALL RIGHT. BRING HIM AROUND AND
19 LET'S GET HIM SENTENCED. I BELIEVE THIS COMES
20 UNDER THE OLD STATUTE, DOES IT NOT, SOLICITOR?

21 MS. MCDONALD: NO, YOUR HONOR. NO; IT
22 OVERLAPS.

23 THE COURT: IT WILL COME UNDER THE NEW
24 STATUTE?

25 MS. MCDONALD: YES, SIR.

VERDICT

1 THE COURT: ALL RIGHT. I PRETTY WELL KNOW
2 EVERYTHING ABOUT HIS BACKGROUND AND
3 EVERYTHING. ANYTHING YOU WANT TO ADD,
4 SOLICITOR?
5 MS. McDONALD: I WOULD LIKE TO PUT HIS
6 CRIMINAL RECORD ON THE RECORD. THEY WERE NOT
7 IMPEACHABLE OFFENSES, YOUR HONOR, AT THE TIME;
8 BUT IN 1986 HE WAS CONVICTED OF SIMPLE
9 ASSAULT. HE WAS CONVICTED OF DAMAGE OF
10 PROPERTY THAT SAME DATE; JANUARY THE 8TH,
11 1986. AND ON OCTOBER THE 15TH, 1986, HE WAS
12 CHARGED WITH BURGLARY IN THE FIRST DEGREE AND
13 BREAKING AND ENTERING AN AUTO. THE CHARGES
14 WERE NEGOTIATED, AND HE WAS CONVICTED BY
15 GUILTY PLEA OF BREAKING AND ENTERING A MOTOR
16 VEHICLE WHICH HE GOT A FIVE YEARS' SUSPENDED
17 SENTENCE. HE WAS ALSO CONVICTED OF BURGLARY
18 THIRD DEGREE WHICH HE GOT A CONSECUTIVE FIVE
19 MONTHS SUSPENDED SENTENCE. THAT CONVICTION
20 WAS FROM A COURT DATE OF MARCH THE 23RD,
21 1987. IN DECEMBER OF 1991, HE WAS CHARGED
22 WITH CRIMINAL SEXUAL CONDUCT FIRST DEGREE.
23 THIS WAS A CASE WHICH WAS MADE ON AN ADULT
24 WOMAN WHO CLAIMED THAT MR. ELLIOTT RAPED HER
25 UNDER THE WACOO CUT (PHONETICALLY SPELLED)

VERDICT

281

1 BRIDGE. THE VICTIM LEFT THE STATE AND
2 DECLINED TO PROSECUTE. SO HE WAS NOT
3 CONVICTED OF THAT CHARGE, YOUR HONOR. BUT
4 SINCE IT WAS A SIMILAR TYPE CHARGE, I JUST
5 WANTED TO LET THE COURT KNOW ABOUT IT.
6 THE COURT: WELL, I WOULDN'T HOLD THAT AGAINST
7 HIM.
8 MS. MCDONALD: YES, SIR. I JUST THOUGHT I
9 WOULD TELL YOU. CONVICTED IN 1995 OF A CHECK
10 LOG VIOLATION. HE GOT THIRTY DAYS SUSPENDED
11 ON RESTITUTION AND COURT COSTS. AND IN MAY OF
12 1995, DRIVING UNDER SUSPENSION, FIRST DEFENSE;
13 THIRTY DAYS ON PAYMENT OF \$225 FINE. AND IN
14 1995 HE WAS CONVICTED OF DRIVING UNDER
15 SUSPENSION THIRD OR ABOVE; CONVICTED ON SIX
16 MONTHS; SUSPENDED ON NINETY DAYS, BALANCE
17 SUSPENDED ON ONE YEAR'S PROBATION. AND HE WAS
18 GIVEN CREDIT FOR THIRTY DAYS JAIL TIME.
19 THE COURT: ALL RIGHT. I'LL BE GLAD TO HEAR
20 FROM YOU.
21 MR. DUKES: YOUR HONOR, I WOULD LIKE TO NOTE
22 THAT HIS MOTHER IS HERE. SHE WASN'T PRESENT
23 AT THE LAST TRIAL. SHE DIDN'T KNOW ABOUT THE
24 LAST TRIAL. THE CONVERSATION THAT SHE HAD
25 WITH THE YOUNG CHILD TOOK PLACE AFTER THE LAST

Christian was with mom

SENTENCING

1 TRIAL; AND THAT'S WHY SHE'S HERE TODAY. HE'S
2 GOT A GOOD FAMILY. AND THE LITTLE GIRL -- THE
3 LITTLE GIRL WROTE A NOTE TO THE MAMMA---
4 THE COURT: OF COURSE. THESE THINGS HAPPEN
5 ALL THE TIME. AND EVEN THOUGH IT'S DONE, THE
6 CHILDREN STILL CAN'T HELP LOVING THE PARENTS.
7 OF COURSE THAT DOESN'T EXCUSE IT, YOU KNOW.
8 MR. DUKES: YES, SIR. I'M NOT TRYING TO
9 EXCUSE HIM BECAUSE I'VE REPRESENTED SIMILAR
10 THINGS BEFORE. BUT, WHAT I'M SAYING IS I
11 THINK THIS IS AN EXCEPTIONAL CASE. WE'VE
12 TRIED THIS CASE TWICE. AND EVEN THOUGH THE
13 JURY'S HAD DIFFICULTY REACHING A VERDICT; HIS
14 WIFE HAS BEEN HERE WITH HIM. AND AS I SAID,
15 HIS MOTHER WOULD HAVE BEEN HERE WITH HIM BOTH
16 TIMES IF ONLY SHE HAD KNOWN ABOUT IT TWICE.
17 AND HE IS A GOOD ELECTRICIAN. I'VE GOT A
18 NUMBER OF PEOPLE THAT HAVE TOLD ME THAT. I'VE
19 REPRESENTED HIM ON SOME OF HIS DRIVING
20 CHARGES. AND I THINK HE'S BEEN A GOOD DECENT
21 FELLOW THAT HAS ALWAYS TOLD ME THE TRUTH.
22 HE'S TOLD ME THROUGHOUT THAT HE'S NOT GUILTY.
23 AND WE WOULD ASK THAT THE COURT SHOW WHATEVER
24 MERCY THEY POSSIBLY COULD UPON THIS YOUNG MAN.
25 THE COURT: WELL, FOR WHAT IT'S WORTH TO YOU,

SENTENCING

1

I BELIEVE THE CHILD.

2

MR. DUKES: I KNOW THAT.

3

THE COURT: SENTENCE OF THE COURT IS THAT YOU,

4

RODNEY ELLIOTT, BE CONFINED TO THE SOUTH

5

CAROLINA DEPARTMENT OF CORRECTIONS FOR A

6

PERIOD OF TWENTY YEARS. GOOD LUCK.

7

MR. DUKES: THANK YOU.

8

9

10

* * *END OF TRANSCRIPT OF RECORD* * *

11

12

13

14

15

16

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18

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21

22

23

24

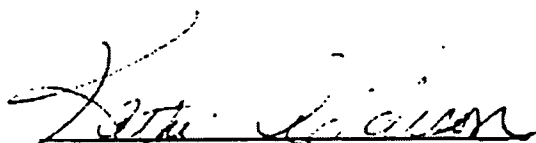
25

C E R T I F I C A T E

I, THE UNDERSIGNED KATHI W. ADDISON, OFFICIAL COURT REPORTER FOR THE FIRST 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 IN THE TRIAL OF THE CAPTIONED CASE IN THE COURT OF GENERAL SESSIONS IN DORCHESTER COUNTY, ON THE 22ND THROUGH THE 24TH DAYS OF JULY, 1998.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

DECEMBER 18, 1999


OFFICIAL COURT REPORTER

MY COMMISSION EXPIRES: 2/23/2008

FORM 5

STATE OF SOUTH CAROLINA

County of DorchesterRodney Elliott #251337

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2010CA-18-747

APPLICATION FOR

POST-CONVICTION RELIEF

CLERK OF COURT
DORCHESTER COUNTY

2010 MAR 16 PM 1:26

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Ridgeland Corr. Inst. P.O. Box 2039 SA-50
Ridgeland, S.C. 29936
2. Name and location of Court which imposed sentence Dorchester County
5200 East Jim Bilton Blvd. St. George, S.C. 29477
3. Name(s) of co-defendant(s) (if any) 11/0
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 97-GS-18-0238
 - (b) 97-GS-18-0239

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July-24-1998 (20) years
- (b) N/A
- (c) N/A
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty Yes
- (c) after a plea of nolo contendere ~~Yes~~ N/A RE.
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeal
- ii. Dorchester County Court of Common Plea RCR
- iii. South Carolina Supreme Court
- (b) the result in each such Court to which you appealed:
- i. AFFIRM
- ii. Dismissed
- iii. Certiorari Denied
- (c) the date of each such result:
- i. November 15, 2000
- ii. May 7, 2003
- iii. July 11, 2006
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion 2000-UG-684-(decided=10-4-2000)
- ii. 2001-Cp-18-903
- iii. 2001-GS-18-903
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: See (ADDENDUM) #1 Attached pag 4 of 10
- (a) _____
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10): SEE (ADDENDUM) #2 Attached page 5 of 10
- (a) _____
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Application Post-Conviction (PCR) Based on "D.N.A."
- ii. NO Appeal have been File
- iii. Counsel Suspended From Practice
- iv. Appointed Counsel Failer to File And Appeal
- (b) the name and location of the Court in which each was filed:
- i. Dorchester Co. Common Plea
- ii. " " " " " "
- iii. " " " " " "
- iv. _____

ADDENDUM (1)

This matter came before the Dorchester Court by the way of Applicant for a (P.C.R.) Post Conviction Relief (May 1, 2007) Respondent made its "Return and Motion to Dismiss" (Sept. 28, 2007) The Attorney General Office Appointed For Petitioner Joseph W. Ginn III... 6 Carriage Lane Suite A, Charleston, S.C. 29407 (843) 571-0766. August 7, 2007 Appointed Lawyer Joseph Ginn III informed Applicant that he was Appointed to represent him in his (P.C.R.) Application. Applicant supply to Mr. Ginn III all records of Files (for years) to help the Appointed Lawyer, Also sent a "Power of Attorney" to Allow his wife and his mother to help Applicants (P.C.R.) Attorney General Filed Conditional Order of Dismissal April 25, 2008 This was Filed by Dorchester Court House on May 14, 2008. This gave Applicant (twenty) 20 days From the day of Service of Order to reply this motion. Applicant request to know the (Stage) in Court of the Above mention motion. Applicant's wife and mother try to Contact Mr. Ginn III expecting to explain this Concern Mr. Ginn III never responded to Applicant. Exhibits of Record by Applicant Support the Above mention.

2010 MAR 16 PM 1:26
CLERK OF COURT
DORCHESTER COUNTY

~ ADDENDUM (2) ~

Applicant Alleges that after Writ of Certiorari was denied July 2006, Applicant Filed a Writ of Mandamus dated Oct. 19, 2006 requesting Proof of (DNA) Nov. 16, 2006 Applicant received (DNA) results from S.C. D.C. General Counsel David Tartorsky, Applicant Filed second 2nd (P.C.R.) dated April 24, 2007 this (P.C.R.) was based on - After Discovery - Applicant supplied to the Appointed Lawyer J. Ginn III all documents that was on his file Nov. 28, 2007. After never responding, Applicant wrote to his Appointed Lawyer concerning A) Stage in Court B) Copy of brief that was supposedly Filed by Mr. Ginn III C) Also Letter if he can do a motion to Compel? April 16, 2008. Applicant then sent a Letter April 15, 2009 to S.C. Supreme Court Att: Chief Justice, Seeking help in Contacting Appointed Lawyer, May 18, 2009 Applicant wrote (ABA), Concerning the Conflict with Mr. Ginn III, Applicant received case # 09-DEL-0569 June 10, 2009 Applicant supplied Letters to (ABA), August 12, 2009 Applicant wrote S.C. Supreme Court requesting Access to Court August 18, 2009 Supreme Court Acknowledge No Appeal was Filed in Applicant's behalf. Following Dismissal Filed Oct. 14, 2008 ... Oct. 23, 2009 Information was made Public in the Postand Courier, "Notice of Interruption of the Law Practice of Joseph L. Ginn III" This Order was issued by the S.C. Supreme Court Oct. 2, 2009. Letters were sent out to Lance S. Booser Attorney General Office, (ABA) American Bar Association, Att: Barbara Seymour, As to this date Applicant have yet to receive Notice or Legal Advice. This Application follows in The Regard.

ADDENDUM(3)

- A.) Applicant alleges that he was denied his Six Amendment Right to The Effective Assistance of Appointed Counsel and The Right to Present D.N.A.
- B.) Should the Attorney General Appoint Counsel to Assure The Access to Justice - Post - Conviction D.N.A. Sec. 1 Title 17- OF The 1976 Code is Amended by Adding Chapter 28, Article (1) 17-28-30 (13) Sec. 17-28-50 (2) ETC.
- C.) Applicant has his DNA by way of Order and Should be Allow to Present it as a matter OF Law: Not be denied simply because Counsel Fail to submit briefs or Applicants Rights to Due Process and violations of 6th (Six) Amendment Right to Counsel.

(c) the disposition thereof:

- i. Dismiss
- ii. Appointed Counsel did not Appeal.
- iii. Supreme Court (Order) Suspension
- iv. of Appointed Counsel

(d) the date of each such disposition:

- i. Oct 14 - 2008
- ii. Aug 18 - 2009 Supreme Court mention No Appeal
- iii. Filed."
- iv. Oct 23 - 2009 Supreme Court (Order) Suspension

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes. (Writ of Mandamus) 2010-11-11-169
2010-149-486

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. Due Process The Right to present (DNA)"
- ii. Due Process The Right to Appeal
- iii. Violation of Amendments Right by Appointed Counsel

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented.

(a) See (ADDENDUM) #3 Attached page 6 of 10

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? YES

(b) your trial, if any? YES

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

N/A Appointed Attorney was Suspended

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. Gene Dukes 100 Ridge St George SC 29477

ii. Robert Pachak SC Court of Appeal

iii. Vernida G. Hill P.L.R.
Aileen P. Claire Court of Appeal

(b) the proceedings at which each such attorney represented you:

i. Trial

ii. Direct

iii. P.L.R.
Petition For Writ of Certiorari

19. State clearly the relief you seek in filing this application:

Appointed Counsel in Violation For not
Appealing and Grant Evidentiary hearing

20. Are you now under sentence from any other court that you have not challenged?

N/A

STATE OF SOUTH CAROLINA

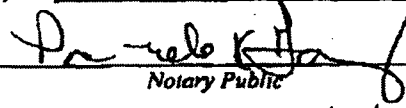
County of Dorchester

VERIFICATION

I, Rodney Elliott #251337 SA-50, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 24th
day of Feb 2010.

 (L.S.)
Notary Public

My Commission Expires: 2/5/2017

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, Rodney Elliott 251337, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
28th day of Feb 2010.


Notary Public

My Commission Expires: 2/5/2017

General Sessions
CASE HISTORY FOR CASE 1997GS1800239

The State of South Carolina VS Rodney Elliott

FILED DATE: 7/24/1998

CASE TYPE: GS

STATUS: Disposed

JUDGE: Brown, Luke N

CASE PARTIES:

Defendant Elliott, Rodney

ELAINE BLVD., SUMMERVILLE, SC 298430000

Defendant Attorney Dukes

Court Reporter Addison, Kathi W.

Hallsborough Drive, West Columbia, SC 291702434

Solicitor McDonald

CASE HISTORY FOR CASE 1997GS1800239

Elliott, Rodney
 ELAINE BLVD.

Age: 11
 DL#:

DOB:
 SSN: 000-00-0000

SUMMERVILLE, SC 298430000

CHARGE	VIOL. DATE	DISPOSITION	DISP. DATE
0385 Sex / Criminal sexual conduct with minor or attempt - victim under 11 yrs of age - First degree	1/1/1980	Trial Not Guilty	7/24/1998

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY

Total:

DATE	TIME	EVENT DESCRIPTION

General Sessions
CASE HISTORY FOR CASE 1997GS1800238

The State of South Carolina VS Rodney Elliott

FILED DATE: 7/24/1998

CASE TYPE: GS

STATUS: Disposed

JUDGE: Brown, Luke N

CASE PARTIES:

Defendant Elliott, Rodney

ELAINE BLVD., SUMMERVILLE, SC 294830000

Defendant Attorney Dukes

Court Reporter Addison, Kathi W.

Hallsborough Drive, West Columbia, SC 291702434

Solicitor McDonald

CASE HISTORY FOR CASE 1997GS1800238

Elliott, Rodney
 ELAINE BLVD.

Age: 11
 DL#:

DOB:
 SSN: 000-00-0000

SUMMERVILLE, SC 294830000

CHARGE		VIOL. DATE	DISPOSITION	DISP. DATE
0396	Sex / Criminal sexual conduct with minor, or attempt- victim 11 to 14 yrs of age inclusive - Second deg.	1/1/1980	Trial Guilty	7/24/1998
SENTENCING				

20 YRS20 YRS

COST	ORIGINAL	BALANCE DUE	DISBURSED	PAY PRIORITY

Total:

DATE	TIME	EVENT DESCRIPTION

Print Date: 03/18/2010
 Print Time: 9:08:34AM
 Requested By: COCKXM

CaseHistory.rpt

Page 1 of 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER	)	Case No.: 2010-CP-18-0747
	)	
Rodney Elliott, # 251337	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	(Request Appointment of Counsel for <u>Austin</u>
State of South Carolina,	)	Claim Only)
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed March 16, 2010, would respectfully show this Court:

I.

The records before this Court reflect that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. The Applicant was indicted at the May 1997 term of the Dorchester County Grand Jury for Criminal Sexual Conduct ("CSC") with a Minor in the First Degree (1997-GS-18-0239) and CSC with a Minor in the Second Degree (1997-GS-18-0238). He was represented by Gene Dukes, Esquire. The Applicant proceeded to a jury trial on July 22-24, 1998. He was found guilty of CSC with a Minor in the Second Degree but found not guilty of CSC with a Minor in the First Degree. The Honorable Luke N. Brown sentenced the Applicant to imprisonment for twenty (20) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. An Anders brief was submitted. The South Carolina Court of Appeals dismissed the appeal. State v. Elliott, Op. No. 2000-UP-684 (S.C. Ct. App. filed November 15, 2000). A Petition for Rehearing was denied on January 25, 2001, and the Remittitur was sent on March 8, 2001.

FILED - RECORDED
2011 APR 15 AM 11:39
CHERYL E. GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

Applicant subsequently filed an application for post-conviction relief on July 25, 2001 (C.A. No. 2001-CP-18-0903). In his application, Applicant set forth the following grounds for relief:

1. "Lack of jurisdiction over the subject matter and defendant."
2. "Improper venue, Insufficiency of process and service."
3. "Failure to state facts sufficient to constitute a cause of action."

An evidentiary hearing was convened at the Dorchester County Courthouse on October 14, 2002. Judge Goodstein denied and dismissed the application by Order dated April 25, 2003. This Court dismissed a prior appeal without prejudice due to an outstanding Rule 59 motion by Order dated July 1, 2003, and the Remittitur was sent on July 21, 2003. On April 27, 2005, Applicant's Rule 59(e) motion was denied. The South Carolina Court of Appeals denied applicant's Petition for Writ of Certiorari by Order dated July 11, 2006, and the Remittitur was sent on August 11, 2006.

Applicant then filed a second Application for Post Conviction Relief on May 1, 2007 (C.A. No. 2007-CP-18-0736). In his second Application, Applicant alleged that he is being held in custody unlawfully for the following reasons:

1. "The Applicant alleges that he was denied his Sixth Amendment right to the effective assistance of counsel where counsel failed to investigate and procure evidence that the Applicant did not have any sexually transmitted diseases which would have shown that he was not the perpetrator of the sexual offenses committed."
2. "The Applicant alleges that he should be permitted to raise this allegation in the present application where the evidence is after-discovered and if presented during trial, would have likely resulted in a verdict of not guilty."
3. "The Applicant alleges that he is entitled to raise this allegation in the present application based on an intervening decision by the United States Supreme Court which held that a criminal defendant is denied due process where forensic evidence discovered after trial would show that he is actually innocent of the crime which he is convicted."

The Honorable Diane S. Goodstein issued a Conditional Order of Dismissal dated April 25, 2008, and filed May 16, 2008. The Final Order of Dismissal was dated October 1, 2008, and filed October

14, 2008.

In the current application, Applicant has alleged that he is being held unlawfully for the following reasons:

- 1.) After Discovered Evidence; and
- 2.) Ineffective Assistance of PCR Counsel in his 2007 PCR.

For purpose of this Return, the Respondent incorporates the Dorchester County Clerk of Courts records, the South Carolina Department of Corrections' records, and the prior PCR records by reference. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

Except for Applicant's claim that he was denied an appeal from his first PCR application, the Court should summarily dismiss the current Application because it is successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any

new ground raised in a subsequent application is limited to those grounds that “could not have been raised . . . in the previous application.” [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, 274 S.C. 243, 262 S.E.2d 735 (1980).

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present any reasons why he could not have raised the current allegations in his previous post-conviction relief applications. Accordingly, Respondent moves for a summary dismissal of the application because it is successive.

IV.

Except for Applicant’s claim that he was denied an appeal from the denial of his first PCR application, the Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to –160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense(s) he challenges in this Application on July 24, 1998. The Remittitur was sent, after the Applicant’s unsuccessful appeal, on March 8, 2001. The Applicant was

therefore required to file his application on or before March 9, 2002. This Application was filed on March 16, 2010, which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

There is no constitutional right to appointed counsel for collateral review of a conviction. Pennsylvania v. Finley, 481 U.S. 551, 107 S.Ct. 1990, 95 L.Ed.2d 539 (1987). The Sixth Amendment right to effective assistance of counsel does not extend to state post-conviction relief actions. Coleman v. Thompson, 501 U.S. 722, 111 S.Ct. 2546, 115 L.Ed.2d 640 (1991). Therefore, "the contention that prior PCR counsel was ineffective is not *per se* a 'sufficient reason' warranting a successive PCR application under §17-27-90." Aice, 305 S.C. at 451, 409 S.E.2d at 394.

The only recognized exception to the rule barring claims of ineffective assistance of post-conviction relief counsel is found in Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). Austin recognizes a general exception to this rule where prior post-conviction relief counsel fails to appeal the denial of the application. Id. Austin "is limited to its particular factual situation" Aice, 305 S.C. at 452, 409 S.E.2d at 394. Pursuant to Austin, a post-conviction relief applicant may petition the South Carolina Supreme Court for discretionary review of the dismissal of their application.

Respondent requests an evidentiary hearing solely on the matter of the Applicant's entitlement to an Austin Review.

VI.

If the court permitted a hearing on the merits, a defendant requesting a new trial based on after discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

The legislature has also provided that applications relying upon newly discovered evidence are subject to a one-year statute of limitations. S.C. Code 17-27-45 (C) provides:

If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

The Applicant has not shown that the alleged evidence meets *any* of the requirements for after-discovered evidence. Accordingly, it is improper for Applicant to try to introduce this evidence nearly twelve (12) years later in order to overcome the statute of limitations. This application founded upon this "new evidence" is clearly not within the one-year time limit imposed by S.C. Code 17-27-45 (C) (2003). Applicant knew of or could have discovered by exercise of due diligence the evidence he now claims is "new." The Court should summarily dismiss this allegation as no new grounds exist which could not have been raised in the previous applications.

The Applicant has filed this application over twelve (12) years after he was convicted, more

than nine (9) years after the resolution of his direct appeal. The Respondent submits that the doctrine of laches bars the Applicant from raising these allegations in a post-conviction relief application. Absent some explanation or justification for the delay in seeking post-conviction relief, laches will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to refute the applicant's claims. McElrath v. State, 276 S.C. 282, 277 S.E.2d 890 (1981); Honeycutt v. Ward, 612 F.2d 36 (2nd Cir. 1979). Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002).

VII.

The Respondent denies each allegation not expressly admitted, qualified or explained.

VIII.

WHEREFORE, the Respondent moves to summarily dismiss the application, with a hearing to be held solely on Applicant's claim that he is entitled to a belated direct appeal.

[Signatures on next page.]

Respectfully submitted,

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Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

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By: 
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April 12, 2011

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

2010-CP-18-0747

RODNEY ELLIOTT, 251337,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

AFFIDAVIT OF SERVICE)

FILED - RECORDED
2011 APR 14 AM 11:38
CLERK OF COURT
DORCHESTER COUNTY

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return and Motion to Dismiss in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Rodney Elliott, #251337
Ridgeland Correctional Institution
Post Office Box 2039
Ridgeland, SC 29936**

DATED this 12th day of April, 2011

Lauren Meara
Lauren Meara, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
2 COUNTY OF DORCHESTER 2010-CP-18-0747

3

4 RODNEY ELLIOTT) TRANSCRIPT OF RECORD
)
5 VS.)
)
6) MAY 28, 2014
 STATE OF SOUTH CAROLINA) ST. GEORGE, SC

7

8

B E F O R E:

9

HONORABLE MAITÉ MURPHY

10

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

12 MARK L. ARCHER, ESQUIRE
 Attorneys for the Applicant

13

 MEGAN E. HARRIGAN, ESQUIRE
14 Attorneys for the State

15

16

Ruth L. Mott, RPR, CRR
Official Court Reporter

17

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1 MS. HARRIGAN: Your Honor, the next matter will be
2 Rodney Elliott, post conviction relief evidentiary hearing,
3 after-acquired evidence, motion to dismiss. May it please
4 the Court.

5 THE COURT: Yes, ma'am.

6 MS. HARRIGAN: Your Honor, this matter is Rodney Elliott
7 versus the State of South Carolina, Docket No.
8 2010-CP-18-0747. Mr. Elliott was indicted during the May
9 1997 term of the Dorchester County Grand Jury for criminal
10 sexual conduct with a minor in the first degree and criminal
11 sexual conduct with a minor in the second degree. He was
12 represented by Gene Dukes. He proceeded to a jury trial on
13 July 22nd through 24th, 1998, where he was found guilty of
14 criminal sexual conduct with a minor in the second degree but
15 found not guilty of criminal sexual conduct with a minor in
16 the first degree. The Honorable Luke N. Brown sentenced Mr.
17 Elliot to imprisonment for 20 years. A timely notice of
18 appeal was filed on Mr. Elliott's behalf and the appeal was
19 perfected. An Anders brief was submitted on his behalf, and
20 after review of his Anders brief the South Carolina Court of
21 Appeals dismissed the appeal by written order filed November
22 15th, 2000. A petition for re-hearing was denied on January
23 25th, 2001, and the remittitur was issued on March 8th, 2001.
24 Mr. Elliott subsequently filed his first application for
25 post-conviction relief on July 25th, 2001. In this

1 application he alleged he was being held in custody
2 unlawfully based on claims of a lack of subject matter
3 jurisdiction, improper venue, insufficiency of process and
4 service, and failure to state facts sufficient to constitute
5 a cause of action. An evidentiary hearing was convened at
6 the Dorchester County Courthouse on October 14th, 2002.
7 Judge Goodstein denied and dismissed the application by order
8 dated April 25th, 2003. Judge Goodstein, acting in her
9 capacity, dismissed a prior appeal without prejudice, due to
10 an outstanding Rule 59(e) motion on her order dated July 1st,
11 2003, and the remittitur was sent on July 21st, 2003. On
12 April 27th, 2005, Mr. Elliott's Rule 59(e) motion on the
13 denial of his first PCR was denied; and the South Carolina
14 Court of Appeals denied his petition for writ of certiorari,
15 challenging the denial of his first PCR application, by order
16 dated July 11th, 2006. The remittitur was sent on August
17 11th, 2006.

18 Mr. Elliott then filed a second application for post
19 conviction relief on May 1st, 2007. In his second
20 application he alleged that he was being held in custody
21 unlawfully for the denial of effective assistance of counsel,
22 where counsel failed to investigate and procure evidence that
23 he did not have any sexually transmitted diseases, which
24 would have shown he was not the perpetrator of the sexual
25 offenses committed, and that he was not permitted to raise

1 this allegation in his first application or trial. Judge
2 Goodstein issued a conditional order of dismissal dated April
3 25th, 2008, and filed on May 6th, 2008. A final order of
4 dismissal followed on October 1st, 2008, which was filed on
5 October 14th, 2008. No direct appeal was taken.

6 In his current and third application for post-conviction
7 relief Mr. Elliott has alleged that he is being held
8 unlawfully for the following reasons: After-discovered
9 evidence based on the DNA evidence to show that he did not
10 have any sexually transmitted diseases, which was raised in
11 his second application, as well as ineffective assistance of
12 PCR counsel against his 2007 PCR counsel on his successive
13 application Joseph Ginn. The State filed a return and motion
14 to dismiss and an amended return and motion to dismiss on
15 April 23rd, 2013, asking that this third application be
16 summarily dismissed as barred by the statute of limitations,
17 successive to his two prior PCR applications, barred by the
18 doctrine of laches, and for failure to state a claim upon
19 which relief can be granted, and those grounds are set forth
20 in the State's amended return and motion to dismiss that is
21 before Your Honor in her packet.

22 And Judge Dickson, acting in his capacity as Chief
23 Administrative Judge, signed a conditional order of dismissal
24 on April 29th, 2013; however, at His Honor's request, we are
25 here today for a hearing on the State's motion to dismiss,

1 and at this time the State would renew our motion to dismiss
2 for the grounds set forth in our amended return and motion to
3 dismiss filed April, 23rd, 2013.

4 THE COURT: Counsel?

5 MR. ARCHER: Your Honor, it's our position that in 2007,
6 no question there was an earlier PCR, but in 2007 Mr. Elliott
7 filed a new PCR, based in part upon newly discovered evidence
8 in which he attached copies of the evidence he was referring
9 to. The State filed a motion to dismiss as successive. Mr.
10 Ginn, Joseph Ginn, who represented him at that time, never
11 filed any return to that motion. Then, when it became final,
12 he never filed an appeal on it; and I believe that -- and
13 we'll be presenting the 2007 application -- that whether or
14 not he's entitled to it or not, but it reflects that he
15 received this evidence in like -- November of 2006 is when he
16 received the, quote, newly discovered evidence, and he files
17 his petition, new PCR, in April of 2007, within the year.

18 And, of course one exception to the successive
19 applications is newly discovered evidence; so, basically,
20 it's our position that on the face of this matter, on the
21 face of the petition, he was entitled to an evidentiary
22 hearing which he never got because his attorney never filed
23 the necessary objections to the conditional order of
24 dismissal, never filed an appeal to the final order, so that
25 basically he's never gotten his day in Court on this issue of

1 newly discovered evidence. Whereas, virtually, on the face
2 of the 2007 petition, it qualifies as having this petition
3 having been filed within a year of him receiving this
4 evidence; so that's basically our position, and I would say
5 that Mr. Ginn, during those periods of time, was suffering
6 from some severe depression, apparently, and in 2010 was
7 temporarily suspended from the practice of law, one of the
8 grounds being a complaint by Mr. Elliott against him for
9 failing to proceed with this matter.

10 So, basically, what we're looking at is, based on the
11 petition, at least the face of the petition, he was entitled
12 to an evidentiary hearing in 2007. He never got it because
13 his lawyer never made any sort of response to either the
14 conditional order of dismissal or the final order of
15 dismissal, and at this point in time he's either entitled to
16 that hearing straight out or to an Alston appeal of that 2007
17 order dismissing it.

18 MS. HARRIGAN: If the State could be heard briefly in
19 reply, the State's position and I think the case law supports
20 that you're not automatically entitled to an evidentiary
21 hearing on a successive application just because you allege
22 newly discovered evidence in your successive application. I
23 think you need to show that it meets the tenets of newly
24 discovered evidence pursuant to case law such as Clark v.
25 State -- and I have a copy for opposing counsel, and if I can

1 hand it up to the Court -- setting forth the five tenets of
2 newly discovered evidence. I think that the State was within
3 its bounds to move to dismiss this application as successive.
4 These are grounds that could have been brought up in his
5 first application. And I think a showing that you meet the
6 five tenets needs to be shown before you're entitled to a
7 hearing. So Mr. Elliott's assertion today that he was
8 entitled to a hearing in 2007 merely because he allegedly
9 discovered evidence is inaccurate and not supported by case
10 law.

11 In response to the assertion he's entitled to an Alston
12 review of his 2007 PCR, Alston is only pertaining to the
13 denial of your first PCR application. You are not entitled
14 by -- as a right, to an appeal of your successive PCR
15 applications. Additionally, in the order of dismissal it
16 said that he had 30 days to appeal this; and so the State
17 would argue that he's not entitled to an Alston appeal of his
18 successive PCR application. If you look at the case of
19 Alston v. State, it's dealing with an initial post-conviction
20 relief application and your right to one appeal from the
21 denial of your initial post-conviction relief application,
22 not a successive post-conviction relief application. So the
23 State would ask that you grant our motion to dismiss for the
24 grounds set forth in the amended return and motion to
25 dismiss.

1 And anything having to do with Mr. Ginn's alleged
2 ineffectiveness in PCR, our Court is also very clear that the
3 Martinez case law, which allows you to allege ineffective
4 assistance of counsel in federal habeas actions, is not
5 applicable to the State; and our Supreme Court has expressly
6 said that in Jason Kelly versus the State of South Carolina,
7 and I've got a copy for opposing counsel, and I'll pass a
8 copy up to Your Honor as well, stating that ineffective
9 assistance of PCR counsel is not a ground on which relief can
10 be sought through a successive application in South Carolina.
11 For those reasons we ask that this application be dismissed.

12 THE COURT: What I'll do is I'll take the time to review
13 the entire record and issue a ruling by writing to both
14 parties.

15 MR. ARCHER: Your Honor, I'd like to submit that there
16 is a case of State versus Odom, wherein there were successive
17 PCR's and the individual was granted an Alston appeal. I
18 don't know if you'd like a copy of that or not.

19 THE COURT: Sure, if you have an extra copy.

20 MR. ARCHER: Yes, ma'am, I do. We would like -- I
21 thought we were going to present some testimony today, but I
22 guess we're not.

23 THE APPLICANT: I'd like to address the Court if at all
24 possible.

25 MR. ARCHER: Just a minute.

1 THE APPLICANT: Ma'am, may I address the Court?

2 THE COURT: No, sir, not right now.

3 MR. ARCHER: I mean, I would like to establish, I mean,
4 unless we were willing to stipulate as to the facts of this,
5 that Mr. Ginn never responded to either the conditional order
6 of discharge -- dismissal or the final order.

7 MS. HARRIGAN: Your Honor, a complete packet of his
8 prior post-conviction relief applications and any filings in
9 those is included in Your Honor's packet. I've got the files
10 here today. I would like to look before I stipulate to that.
11 But regardless of whether or not he responded, I think under
12 Kelly versus State there's no action in a successive PCR for
13 ineffective assistance of PCR counsel. That's simply not a
14 ground that can be brought in a successive application in
15 South Carolina. The Supreme Court's been very clear on that.
16 The case law's been very clear on that. The State doesn't
17 think any testimony is needed from Mr. Ginn, and whether or
18 not he responded is, quite frankly, irrelevant based on Kelly
19 v. State.

20 THE COURT: Anything further?

21 MR. ARCHER: No, Your Honor. Did I hand up the Odom
22 case to you?

23 THE COURT: You did.

24 MR. ARCHER: Okay.

25 THE APPLICANT: Ma'am, may I address the Court?

1 THE COURT: Yes, sir, what do you need, Mr. -- is it Mr.
2 Elliott?

3 THE APPLICANT: Yes, ma'am.

4 THE COURT: Yes, sir.

5 THE APPLICANT: Yes, ma'am, I would like to address the
6 Court because this petition being dismissed is about
7 evidence. Whether it's old or new evidence, it's still
8 evidence; and this evidence points toward actual innocence,
9 which is also an amendment to this PCR. And I would ask that
10 the Court, if at all possible, take in consideration my
11 actual innocence that's amended to this PCR being that
12 she's -- the Attorney General is motioning to dismiss this
13 case based on the laws of a statute of limitation, which I
14 can prove that it's not no statute of limitation and an
15 actual innocence case. Also, I have case law that's amended
16 to the actual innocence case to this petition that shows that
17 there's a gateway in Schlup versus Delo and House versus Bell
18 that actual innocence can be raised at any time, and there's
19 no statute limitation for that, if the applicant, being that
20 I'm the applicant, the burden of proof is upon me to show my
21 burden of proof. So I would be unable to show my burden of
22 proof if I don't have offered testimony to go along with
23 documentation in support of my testimony to show that I am in
24 fact actually innocent, factually innocent, and I'm innocent
25 by documentation. So being that the Attorney General is

1 motioning to dismiss, she's not allowing me to meet by burden
2 of proof by testimony as well as documentation. Regardless
3 of what Mr. Ginn didn't present or preserve for the record, I
4 would not be able to have a record if I'm unable to make that
5 case of burden of proof.

6 THE COURT: I understand. I understand your position,
7 Mr. Elliott, and I have to consider what's before me and the
8 record in its entirety before you're allowed to present
9 testimony at an evidentiary hearing. What's before me is the
10 motion to dismiss. So, procedurally, I have to consider
11 everything that's before me; and I will take in
12 consideration, certainly, your argument of innocence and the
13 proper procedural steps.

14 THE APPLICANT: But, ma'am, prior to this Court I've had
15 the previous Court ask the Attorney General to produce the
16 documentation that the State is refusing to bring forth to
17 the Court in hindsight of my actual innocence.

18 THE COURT: Mr. Elliott, I understand your argument
19 and --

20 THE APPLICANT: There's no chain of custody --

21 THE COURT: -- I will consider that. Mr. Elliott, I've
22 got the entire record. I will read it. I will look through
23 everything to see that you're rights are protected pursuant
24 to the law and issue an order accordingly.

25 MR. ARCHER: Your Honor, if we're not going to take any

1 testimony today, I would like to make sure certain orders are
2 in the record.

3 THE COURT: Sure. I'll be happy for you to review
4 what's in the record and ensure that I have everything, or if
5 you have something that you think I need that may not be in
6 there, please share it with counsel.

7 MR. ARCHER: Even if it's a duplicate --

8 MS. HARRIGAN: If I can just see what they are because I
9 know that the issue of Mr. Ginn is not part of the record,
10 and the State would object to that coming in. I think it's
11 completely irrelevant to his PCR.

12 Yes, this all is in. This isn't, and I object to that
13 coming in because I think it's irrelevant.

14 MR. ARCHER: Apparently the three documents -- the
15 documents I have which are without objection are the
16 conditional order of dismissal of 2007, the order of
17 dismissal, his 2007 application for post-conviction relief in
18 which he sets out the documents, the newly discovered
19 evidence is attached thereto, and the order of dismissal of
20 his PCR of 2001, that being presented to show that there was
21 no -- that this issue that's raised in 2007 was not raised in
22 2001.

23 The document to which she objects is the disciplinary
24 proceeding against Mr. Ginn in which the Court cites Mr.
25 Elliott's complaint and states that from March 2008 until his

1 interim suspension from practice of law in October 2009
2 respondent did not work on the case or communicate with
3 client or his family. At the time client A filed his
4 grievance he did not know the status of his PCR action in
5 spite of several letters to the respondent. That's the
6 relevance of that particular -- that's a finding of the State
7 Supreme Court.

8 THE COURT: That's actually a matter of public record,
9 so I don't think it's prejudicial to the State for me to have
10 that because it's a matter of public record, so I'll allow
11 you to submit that for consideration.

12 MR. ARCHER: Yes, Your Honor.

13 MS. HARRIGAN: Your Honor, the other documents are
14 already part of the record and before Your Honor. They're
15 filed with our return.

16 THE COURT: Okay.

17 THE APPLICANT: Your Honor, may I please address the
18 Court again?

19 THE COURT: No, sir. We've heard the proper arguments
20 that are before me unless you have something --

21 THE APPLICANT: Ma'am, it's the same argument that my
22 attorney just talked to you about. I'm only wanting to add
23 to what he's saying about that because there's some evidence
24 that's not included in the record that should be included
25 from the board that -- the disciplinary board, letters of

1 correspondence.

2 THE COURT: I understand that, Mr. Elliott, and I
3 understand the fact that he was suspended partially based
4 upon your complaint that he was ineffective and didn't
5 communicate with you for your action. I will consider
6 everything that's properly before me. To introduce matters
7 outside of that I don't think is proper at this time, so I'm
8 not going to allow it; but I will consider everything that's
9 before me to ensure that your rights are protected, okay, Mr.
10 Elliott.

11 THE APPLICANT: But ma'am, the matters that you're
12 saying that's outside of it is the same matter that's dealing
13 with the disciplinary board.

14 THE COURT: But you also have to follow the proper
15 procedures to introduce evidence in a hearing.

16 THE APPLICANT: I have the evidence right here that I
17 want to have included with what he just pointed in. He
18 didn't give you enough of the evidence is what I'm saying. I
19 have the rest of it.

20 THE COURT: You're represented by counsel --

21 THE APPLICANT: But counsel --

22 THE COURT: Mr. Elliott, you're about to be out of
23 order. Counsel, please keep your client under control. If
24 there's something that you think, as an attorney, has not
25 been properly submitted, you let me know. But otherwise Mr.

1 Elliott needs to go.

2 THE APPLICANT: Madam Court, it's all right for me to
3 take a few minutes to discuss that with him and see if he
4 thinks that's feasible for the Court?

5 THE COURT: Yes, sir. You may stand down for a few
6 minutes and discuss that with your attorney. Then I'll be
7 happy to hear from your attorney, but you need to follow the
8 proper procedures in this Court. Do you understand?

9 THE APPLICANT: Yes, ma'am. Thank you, ma'am.

10 THE COURT: Counsel, do you need a few minutes?

11 MR. ARCHER: Need a few minutes. He wants to step out
12 of the courtroom to discuss this.

13 THE COURT: I think it would be appropriate for him to
14 step out of the courtroom to discuss it that way he'd have
15 privacy.

16 (Recess held.)

17 THE COURT: Are you ready to proceed?

18 MS. HARRIGAN: Yes, Your Honor, if it pleases the Court,
19 we're back on the record for Rodney Elliott versus the State
20 of South Carolina.

21 THE COURT: Mr. Archer, have you had an opportunity to
22 discuss this matter with your client, Mr. Elliott?

23 MR. ARCHER: I have, Your Honor.

24 THE COURT: And have you explained to him the procedures
25 before this Court and what's properly before this Court and

1 what is not?

2 MR. ARCHER: Yes, Your Honor.

3 THE COURT: And have you submitted everything that would
4 be properly before this Court?

5 MR. ARCHER: Yes, Your Honor, and I would like to make
6 sure that -- of what's on the record.

7 THE COURT: Yes, sir.

8 MR. ARCHER: There was a 2001 order dismissing his first
9 PCR.

10 THE COURT: Correct.

11 MR. ARCHER: There's the 2007 PCR application. There's
12 the conditional order dismissing that, the final order
13 dismissing that, and then the opinion on Mr. Ginn from the
14 Supreme Court. I believe that's the extent of what's in the
15 record.

16 THE COURT: Correct.

17 MR. ARCHER: All right.

18 THE COURT: All right. Thank you, gentlemen. Anything
19 further?

20 MS. HARRIGAN: Nothing further from the State. All
21 those documents, with the exception of the ODC action against
22 Mr. Ginn, are all part of the record before Your Honor.

23 THE COURT: And I allowed Mr. Archer to actually include
24 that, since that's a matter of pun record.

25 MS. HARRIGAN: Certainly, Your Honor.

1 THE COURT: And so certainly it's appropriate for the
2 Court to have. Thank you gentlemen.

3 MS. HARRIGAN: Thank you, Your Honor.

4 THE COURT: You may call your next case.

5 MR. ARCHER: Do we get the chance to make an argument or
6 statement, Your Honor?

7 THE COURT: You mean as far as a closing is concerned?

8 MR. ARCHER: Right.

9 THE COURT: Certainly. You can briefly do that.

10 MR. ARCHER: Well, I think it's pretty simple in that if
11 you look at the 2007 petition, he attaches the documents
12 which he says are the newly discovered evidence, along with
13 some of the correspondence he sent out trying to get it. It
14 reflects that he received it on November 17, 2006. He files
15 his petition in April of 2007, well within a year after
16 obtaining the newly discovered evidence. So, you know, my
17 position is that on the face of the petition, as pled, it
18 reflects the newly -- new evidence that he wanted to submit.
19 It reflects that he received it and filed within a year. So
20 he was entitled to a hearing, which he never got, because
21 what happened was Attorney General submits a request to
22 dismiss it. Judge issues a conditional order of dismissal.
23 Mr. Ginn, who's suffering depression and whatever, and in the
24 middle of his problems never responds to the order for --
25 conditional order of dismissal; and then when the final order

1 comes in, he never appeals. So he just never -- I think on
2 the face of the pleadings, if you take the pleadings
3 themselves, he was entitled to a hearing. I think that's
4 pretty clear. So he never got his bite at that apple. And
5 how do we fix it now? I mean, I guess the most -- to me the
6 most practical thing is simply order that he be entitled to a
7 hearing as a part of this action. The other option is an
8 Alston appeal, where he appeals to the State Supreme Court,
9 goes up, and I think the result, under these circumstances,
10 is fairly obvious, that he properly pled it, it was within
11 the year's period of time. They're going to send him back
12 and say he was entitled to a hearing. But I certainly would
13 say that we would ask the Court either for a hearing on the
14 merits in this particular case of these allegations or, at
15 worst, so to speak, order that he's entitled to an Alston
16 appeal of Mr. Ginn's failure to appeal to either respond to
17 the conditional order of dismissal or to appeal that. And I
18 got the same order in this case. The difference was I
19 responded.

20 THE COURT: I understand.

21 MR. ARCHER: And said, we need a hearing on it.

22 THE COURT: Yes, sir. Thank you, Mr. Archer.

23 MS. HARRIGAN: Your Honor, in the interest of time, my
24 closing comments are the same as I made before, when we
25 closed before we went off the record; and so, in the interest

1 of time, I would rely on those comments and ask you to deny
2 this case.

3 THE COURT: Thank you, ma'am. Again, I'll take the
4 matter under advisement to review the entire record and
5 notify you of a decision in writing.

6 MR. ARCHER: Thank you, Your Honor.

7 MS. HARRIGAN: Thank you, Your Honor.

8 --- END OF TRANSCRIPT OF RECORD ---

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1 CERTIFICATE OF REPORTER

2 STATE OF SOUTH CAROLINA

3 COUNTY OF DORCHESTER

4

5 I, the undersigned Ruth L. Mott, Official Court Reporter
6 for the State of South Carolina, do hereby certify that the
7 foregoing is a true, accurate and complete transcript of
8 record of all the proceedings had and evidence introduced in
9 the matter of the above-captioned case, relative to appeal,
10 in the 1st Judicial Circuit Court for Dorchester County,
11 South Carolina, on the 28th of May, 2014.

12 I further certify that I am neither related to nor
13 counsel for any party to the cause pending or interested in
14 the events thereof.

15 February 18, 2015

16

17 *Ruth L. Mott*

18 Official Court Reporter

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STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

CERTIFIED COPY IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
2014 AUG 28 AM 11:37

Rodney Elliott, #251337,

Case No. 2010-CP-18-0747

Applicant,

Cheryl Graham
CLERK OF COURT
DORCHESTER COUNTY

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL
FILED-RECORDED

8-27-14
Cheryl Graham
Clerk of Court
Dorchester County

This matter comes before this Court by way of an application for post-conviction relief filed March 16, 2010. Respondent filed its Return and Motion to Dismiss on April 12, 2011 and its Amended Return and Motion to Dismiss on April 23, 2013. In its Amended Return and Motion to Dismiss, Respondent requested the application be summarily dismissed as barred by the statute of limitations, successive to Applicant's two prior post-conviction relief actions, barred by the doctrine of laches, and for failure to state a claim upon which relief could be granted. The Honorable Edgar W. Dickson, acting in his capacity of Chief Administrative Judge for the First Judicial Circuit, signed a Conditional Order of Dismissal on April 29, 2013, provisionally dismissing the application but giving Applicant twenty days to respond. After receiving objection from Applicant, Judge Dickson requested a hearing be held on Respondent's Motion to Dismiss.

A hearing on Respondent's motion to dismiss was convened on May 28, 2014 at the Dorchester County Courthouse. Applicant was present and represented by Mark L. Archer, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan. After reviewing all pleadings and hearing arguments from counsel, this Court finds that there are no

constitutional deprivations or other grounds on which to grant relief and is denying and dismissing the application with prejudice.

PROCEDURAL HISTORY

Before this Court are the records of the Dorchester County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, appellate records, and records from Applicant's previous applications for post-conviction relief. Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. Applicant was true bill indicted during the May 1997 term of the Dorchester County Grand Jury for Criminal Sexual Conduct with a Minor – Second Degree (1997-GS-18-0238) and Criminal Sexual Conduct with a Minor – First Degree (1997-GS-18-0239). Applicant was represented by Gene Dukes, Esquire. On July 22-24, 1998, Applicant proceeded to a jury trial before the Honorable Luke N. Brown, where he was convicted of Criminal Sexual Conduct with a Minor – Second Degree and acquitted of Criminal Sexual Conduct with a Minor – First Degree. Judge Brown sentenced Applicant to confinement for a period of twenty years.

A notice of appeal was filed and an appeal perfected on Applicant's behalf. Following an Anders¹ review, the South Carolina Court of Appeals dismissed the appeal. State v. Elliott, Op. No. 2000-UP-0684 (S.C. Ct. App. filed November 15, 2000). Applicant's Petition for Rehearing was denied on January 25, 2001. The Remittitur was sent March 8, 2001.

Applicant subsequently filed an application for post-conviction relief on July 25, 2001 (C.A. No. 2001-CP-18-903). Applicant raised the following issues in his first application:

1. Lack of jurisdiction over the subject matter and jurisdiction;
2. Improper venue;

¹ Anders v. California, 386 U.S. 738 (1967).

3. Insufficiency of process and service; and
4. Failure to state facts sufficient to constitute a cause of action.

Respondent made its Return and Motion to Dismiss on or about April 24, 2002. An evidentiary hearing was convened on October 14, 2002, before the Honorable Diane S. Goodstein. Applicant was present and represented by Vernida Hill, Esquire. Judge Goodstein denied and dismissed the application with prejudice by written order dated April 25, 2003. A timely Notice of Appeal was filed, after which Applicant filed a *pro se* Rule 59(e), SCRCP, Motion on May 28, 2003. The South Carolina Supreme Court dismissed the appeal without prejudice on July 1, 2003 based on the pending motion. The Remittitur was issued on July 21, 2003. Applicant's Rule 59(e), SCRCP, motion was denied on April 27, 2005. Thereafter, Applicant filed a second Notice of Appeal. By Order dated July 11, 2006, the South Carolina Court of Appeals denied Applicant's Petition for Writ of Certiorari. The Remittitur was sent on August 11, 2006.

Applicant subsequently filed a second post-conviction relief application on May 1, 2007 (C.A. No. 2007-CP-18-736). Applicant alleged:

1. "The applicant alleges that he was denied his Sixth Amendment right to the effective assistance of counsel where counsel failed to investigate and procure evidence that the applicant did not have any sexually transmitted diseases which would have shown that he was not the perpetrator of the sexual offenses committed."
2. "The applicant alleges that he should be permitted to raise this allegation in the present application where the evidence is after-discovered and if presented during trial, would have likely resulted of not guilty."
3. "The applicant alleges that he is entitled to raise this allegation in the present application based on a intervening decision by the United States Supreme Court which held that a criminal defendant is denied due process where forensic evidence discovered after trial would show that he is actually innocent of the crime which he is convicted."

Respondent made its Return and Motion to Dismiss on September 28, 2007. Judge Goodstein, acting in her capacity as Chief Administrative Judge for the First Judicial Circuit, signed a

Conditional Order of Dismissal on April 25, 2008, provisionally denying and dismissing the application as successive and barred by the one-year statute of limitations. Applicant was given twenty days in which to respond. After receiving no response, Judge Goodstein denied and dismissed the application with prejudice by Final Order dated October 1, 2008, and filed October 14, 2008. No notice of appeal was filed.

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. After-discovered evidence; and
2. Ineffective assistance of post-conviction relief counsel in his 2007 post-conviction relief case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the arguments presented at the motions hearing. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Newly Discovered Evidence

Applicant alleges that he is entitled to a new trial based on newly discovered evidence. This Court finds that this allegation is without merit and must be dismissed. A defendant requesting a new trial based on newly or after discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983). Here, Applicant has failed to establish what his newly discovered evidence is or show that the alleged evidence meets *any* of the requirements for newly discovered evidence. Therefore, this Court finds that this

allegation must be denied and dismissed with prejudice as a matter of law.

Ineffective Assistance of 2007 Post-Conviction Relief Counsel

Applicant alleges that that he received ineffective assistance of counsel on his second post-conviction relief application, specifically alleging that counsel failed to respond to the Conditional Order of Dismissal and failed to file an appeal. However, the South Carolina Supreme Court has long held that an applicant cannot maintain a subsequent post-conviction relief action on the grounds that his counsel from his prior action was ineffective absent a narrow exception. See Odom v. State, 337 S.C. 256, 523 S.E.2d 753 (1999) (an applicant may maintain a subsequent action against prior post-conviction relief counsel for the narrow ground that prior counsel failed to file an appeal from the denial of his initial application). Here, Applicant is not seeking an appeal of his initial post-conviction relief action and Odom is not applicable. Rather, Applicant is seeking to maintain an action on the grounds that counsel for his second and subsequent post-conviction relief action was ineffective. This is not a ground on which relief can be provided and must be denied and dismissed with prejudice.

Additionally, this Court finds that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996).

The Applicant was convicted of the offense he challenges in this Application on July 24, 1998. This Application was filed on March 16, 2010, which is more than a decade after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (1985) authorizes the Court to grant a motion by either party for summary disposition of an application when it appears from the pleadings that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Therefore, this Court finds that this application must be denied and dismissed in total.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a Notice of Appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on an applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief shall be denied and dismissed with prejudice; and
2. The Applicant shall remain remanded to the custody of the State.

AND IT IS SO ORDERED this 18 day of August, 2014.

Maité Murphy
MAITÉ MURPHY
Presiding Judge
First Judicial Circuit

St. Mary South Carolina.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER	)	FOR THE FIRST JUDICIAL CIRCUIT
	)	
Rodney Elliott, SCDC # 251337,	)	Case No. 2010-CP-18-00747
Applicant,	)	
	)	RETURN TO APPLICANT'S
	)	"RULE 59(E) MOTION"
v.	)	
	)	
State of South Carolina,	)	
Respondent.	)	
	)	

Respondent, by and through undersigned counsel, making its Return to Applicant's "Rule 59(e) Motion" would respectfully show unto this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. Applicant was true bill indicted during the May 1997 term of the Dorchester County Grand Jury for Criminal Sexual Conduct with a Minor – Second Degree (1997-GS-18-0238) and Criminal Sexual Conduct with a Minor – First Degree (1997-GS-18-0239). Applicant was represented by Gene Dukes, Esquire. On July 22-24, 1998, Applicant proceeded to a jury trial before the Honorable Luke N. Brown, where he was convicted of Criminal Sexual Conduct with a Minor – Second Degree and acquitted of Criminal Sexual Conduct with a Minor – First Degree. Judge Brown sentenced Applicant to confinement for a period of twenty years.

A notice of appeal was filed and an appeal perfected on Applicant's behalf. Following an

Anders¹ review, the South Carolina Court of Appeals dismissed the appeal. State v. Elliott, Op. No. 2000-UP-0684 (S.C. Ct. App. filed November 15, 2000). Applicant's Petition for Rehearing was denied on January 25, 2001. The Remittitur was sent March 8, 2001.

Applicant subsequently filed an application for post-conviction relief on July 25, 2001 (C.A. No. 2001-CP-18-903). Applicant raised the following issues in his first application:

1. Lack of jurisdiction over the subject matter and jurisdiction;
2. Improper venue;
3. Insufficiency of process and service; and
4. Failure to state facts sufficient to constitute a cause of action.

Respondent made its Return and Motion to Dismiss on or about April 24, 2002. An evidentiary hearing was convened on October 14, 2002, before the Honorable Diane S. Goodstein. Applicant was present and represented by Vernida Hill, Esquire. Judge Goodstein denied and dismissed the application with prejudice by written order dated April 25, 2003. A timely Notice of Appeal was filed, after which Applicant filed a *pro se* Rule 59(e), SCRCF, Motion on May 28, 2003. The South Carolina Supreme Court dismissed the appeal without prejudice on July 1, 2003 based on the pending motion. The Remittitur was issued on July 21, 2003. Applicant's Rule 59(e), SCRCF, motion was denied on April 27, 2005. Thereafter, Applicant filed a second Notice of Appeal. By Order dated July 11, 2006, the South Carolina Court of Appeals denied Applicant's Petition for Writ of Certiorari. The Remittitur was sent on August 11, 2006.

Applicant subsequently filed a second post-conviction relief application on May 1, 2007 (C.A. No. 2007-CP-18-736). Applicant alleged:

1. "The applicant alleges that he was denied his Sixth Amendment right to the effective assistance of counsel where counsel failed to investigate and procure evidence that the applicant did not have any sexually transmitted diseases which would have shown that he was not

¹ Anders v. California, 386 U.S. 738 (1967).

- the perpetrator of the sexual offenses committed.”
2. “The applicant alleges that he should be permitted to raise this allegation in the present application where the evidence is after-discovered and if presented during trial, would have likely resulted of not guilty.”
 3. “The applicant alleges that he is entitled to raise this allegation in the present application based on a intervening decision by the United States Supreme Court which held that a criminal defendant is denied due process where forensic evidence discovered after trial would show that he is actually innocent of the crime which he is convicted.”

Respondent made its Return and Motion to Dismiss on September 28, 2007. Judge Goodstein, acting in her capacity as Chief Administrative Judge for the First Judicial Circuit, signed a Conditional Order of Dismissal on April 25, 2008, provisionally denying and dismissing the application as successive and barred by the one-year statute of limitations. Applicant was given twenty days in which to respond. After receiving no response, Judge Goodstein denied and dismissed the application with prejudice by Final Order dated October 1, 2008, and filed October 14, 2008. No notice of appeal was filed.

II.

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. After-discovered evidence; and
2. Ineffective assistance of post-conviction relief counsel in his 2007 post-conviction relief case.

Respondent filed its Return and Motion to Dismiss on April 12, 2011 and its Amended Return and Motion to Dismiss on April 23, 2013. In its Amended Return and Motion to Dismiss, Respondent requested the application be summarily dismissed as barred by the statute of limitations, successive to Applicant’s two prior post-conviction relief actions, barred by the doctrine of laches, and for failure to state a claim upon which relief could be granted. The

Honorable Edgar W. Dickson, acting in his capacity of Chief Administrative Judge for the First Judicial Circuit, signed a Conditional Order of Dismissal on April 29, 2013, provisionally dismissing the application but giving Applicant twenty days to respond. After receiving objection from Applicant, Judge Dickson requested a hearing be held on Respondent's Motion to Dismiss.

An initial hearing on Respondent's Motion to Dismiss was scheduled for November 1, 2013 before Judge Goodstein. Applicant was present and represented by Mark L. Archer, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan. At the start of the hearing, Applicant moved for a continuance of this matter, citing a possible conflict because Judge Goodstein presided over his initial post-conviction relief action. Respondent consented to Applicant's continuance motion. An Order continuing this matter to the next term of court was signed by Judge Goodstein on January 7, 2014.

A subsequent hearing on Respondent's motion to dismiss was convened on May 28, 2014 at the Dorchester County Courthouse. Applicant was again present and represented by Mark L. Archer, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan. After reviewing all pleadings and hearing arguments from counsel, the Court found that there were no constitutional deprivations or other grounds on which to grant relief and denied and dismissed the application with prejudice. An Order of Dismissal was signed by this Court on August 18, 2014 and filed on August 28, 2014. Respondent served this Order on Applicant on September 3, 2014.

On September 8, 2014, Applicant, through his counsel,² served a copy of his “Rule 59(e) Motion” on Respondent. This Return follows.

III.

In his “Rule 59(e) Motion,” Applicant asserts that the Court’s Order of Dismissal “fail[s] . . . to consider the incompetence of Applicant’s counsel for his 2007 post conviction relief hearing” and “fail[s] to consider the proceedings before the Honorable Diane Goodstein of November 2³, 2013.” Respondent submits that this Court’s Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRPC. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Respondent submits that this Court fully ruled on all issues properly presented at the motions hearing and that Applicant’s “Rule 59(e) Motion” should be denied. Respondent submits that the allegations regarding Applicant’s 2007 post-conviction relief counsel were fully considered and addressed by the Court in its Order of Dismissal. See Order of Dismissal p. 5. Additionally, Respondent submits that Applicant’s contention that the Court did not consider his November 1, 2013 hearing before Judge Goodstein is in error, as that hearing was solely a continuance motion and did not address the merits of any of Applicant’s claims.

Additionally, Respondent submits that Applicant is asking the Court to reconsider its ruling and grant Applicant post-conviction relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734

² Applicant has also submitted *pro se* filings to both the Dorchester County Clerk of Court and the South Carolina Supreme Court. As Applicant is represented by counsel, the South Carolina Supreme Court took no action on the *pro se* filing, citing: Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010); Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).

³ Respondent interprets this to be a scrivener’s error, as the hearing was held on Friday, November 1, 2013, not Saturday, November 2, 2013, as Applicant cites in his motion.

(1998) (noting the proper use of a Rule 59(c) motion is to preserve issues raised to but not ruled upon by the trial court). Respondent submits that this Court properly ruled on all issues after ample opportunity for Applicant to present all his issues and that this Motion should be denied in full.

IV.

WHEREFORE, having made its Return to the motion, the State requests that the relief requested in the Motion be denied and that said Motion be dismissed.

Respectfully submitted,

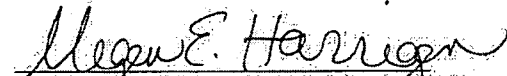
ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

BY:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

September 12, 2014

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

Rodney Elliott, SCDC # 251337,)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2010-CP-18-00747

**ORDER DENYING APPLICANT'S
"RULE 59(E) MOTION"**

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2014 OCT 17 PM 3:16
Clerk of Court
DORCHESTER COUNTY

This matter comes before this Court by way of Applicant's "Rule 59(e) Motion" asking this Court to alter or amend its Order of Dismissal denying Applicant post-conviction relief.

I.

The records before this Court show that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Dorchester County Clerk of Court. Applicant was true bill indicted during the May 1997 term of the Dorchester County Grand Jury for Criminal Sexual Conduct with a Minor – Second Degree (1997-GS-18-0238) and Criminal Sexual Conduct with a Minor – First Degree (1997-GS-18-0239). Applicant was represented by Gene Dukes, Esquire. On July 22-24, 1998, Applicant proceeded to a jury trial before the Honorable Luke N. Brown, where he was convicted of Criminal Sexual Conduct with a Minor – Second Degree and acquitted of Criminal Sexual Conduct with a Minor – First Degree. Judge Brown sentenced Applicant to confinement for a period of twenty years.

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2. Improper venue;
3. Insufficiency of process and service; and
4. Failure to state facts sufficient to constitute a cause of action.

Respondent made its Return and Motion to Dismiss on or about April 24, 2002. An evidentiary hearing was convened on October 14, 2002, before the Honorable Diane S. Goodstein. Applicant was present and represented by Vernida Hill, Esquire. Judge Goodstein denied and dismissed the application with prejudice by written order dated April 25, 2003. A timely Notice of Appeal was filed, after which Applicant filed a *pro se* Rule 59(e), SCRPC, Motion on May 28, 2003. The South Carolina Supreme Court dismissed the appeal without prejudice on July 1, 2003 based on the pending motion. The Remittitur was issued on July 21, 2003. Applicant's Rule 59(e), SCRPC, motion was denied on April 27, 2005. Thereafter, Applicant filed a second Notice of Appeal. By Order dated July 11, 2006, the South Carolina Court of Appeals denied Applicant's Petition for Writ of Certiorari. The Remittitur was sent on August 11, 2006.

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moved for a continuance of this matter, citing a possible conflict because Judge Goodstein presided over his initial post-conviction relief action. Respondent consented to Applicant's continuance motion. An Order continuing this matter to the next term of court was signed by Judge Goodstein on January 7, 2014.

A subsequent hearing on Respondent's motion to dismiss was convened on May 28, 2014 at the Dorchester County Courthouse before this Court. Applicant was again present and represented by Mark L. Archer, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan. After reviewing all pleadings and hearing arguments from counsel, this Court found that there were no constitutional deprivations or other grounds on which to grant relief and denied and dismissed the application with prejudice. An Order of Dismissal was signed by this Court on August 18, 2014 and filed on August 28, 2014. Respondent served this Order on Applicant on September 3, 2014.

On September 8, 2014, Applicant, through his counsel,² served a copy of his "Rule 59(e) Motion" on Respondent. Respondent made its Return to this motion on or about September 12, 2014.

III.

This Court's find that its Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRPC. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). In his "Rule 59(e) Motion," Applicant asserts that the Court's Order of Dismissal "fail[s] . . . to consider the incompetence of Applicant's counsel for his 2007 post conviction relief hearing" and "fail[s] to consider the proceedings before the Honorable Diane Goodstein of November 2³, 2013." This Court finds that its Order of Dismissal contains the required findings of facts

² Applicant has also submitted *pro se* filings to both the Dorchester County Clerk of Court and the South Carolina Supreme Court. As Applicant is represented by counsel, the South Carolina Supreme Court took no action on the *pro se* filing, citing: Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010); Jones v. State, 348 S.C. 13, 558 S.E.2d 517 (2002); State v. Stuckey, 333 S.C. 56, 508 S.E.2d 564 (1998); Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989). This Court agrees and will not consider these *pro se* filings.

³ This Court agrees with Respondent's interpretation that this is a scrivener's error, as the hearing was held on Friday, November 1, 2013, not Saturday, November 2, 2013, as Applicant cites in his motion.

and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRCP. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). This Court finds that it fully ruled on all issues properly presented at the motions hearing and that Applicant's "Rule 59(e) Motion" must be denied. This Court finds that the allegations regarding Applicant's 2007 post-conviction relief counsel were fully considered and addressed in the Order of Dismissal. See Order of Dismissal p. 5. Additionally, this Court finds that Applicant's contention that the Court did not consider his November 1, 2013 hearing before Judge Goodstein is in error, as that hearing was solely a continuance motion and did not address the merits of any of Applicant's claims.

Having carefully reviewed the entire record in this matter, this Court finds that there is no basis for altering or amending its prior ruling.⁴ Therefore, this Court hereby denies the Applicant's Motion in its entirety, and affirms the previous Order of Dismissal.

This Court notes that if Applicant desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order. Applicant is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 29 day of September, 2014


MAITÉ MURPHY
Presiding Judge
First Judicial Circuit

Columbia, South Carolina

⁴ The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRCP.

WITNESSES

Det. Marshall

DOCKET #: 97GS18-0239

THE STATE OF SOUTH CAROLINA
County of Dorchester

COURT OF GENERAL SESSIONS

Term: MAY, 1997

THE STATE

vs.

Rodney Elliott

ARREST WARRANT #:

97DOR13

Arrested on December 31, 1996

ACTION OF GRAND JURY

TRUE BILL

By: _____

Date: _____

Foreman: De Vltip 5/15/97
Grand Jury

VERDICT

Not Guilty " "

Guilty " "

Foreman: ✓

Petit Jury

Date: March 6, 1998.

INDICTMENT FOR

0159

CRIMINAL SEXUAL CONDUCT WITH MINOR

FIRST DEGREE (16-3-655)

Nato. P. 1200 ahead " " march in 1998 (1) 1200 ahead + 1200 ahead

STATE OF SOUTH CAROLINA)
County of Dorchester)

INDICTMENT #97GS18-0239

At a Court of General Sessions, convened on : May 15, 1997,
the Grand Jurors of Dorchester County present upon their oath:

COUNT: CRIMINAL SEXUAL CONDUCT WITH MINOR
FIRST DEGREE (16-3-655)

That Rodney Elliott did in Dorchester County between the dates of March 1,
1995 and August 17, 1995, wilfully and unlawfully engage in criminal sexual
conduct with a minor in the first degree in that Rodney Elliott engaged in
sexual battery with Minor who was 10 years of age.

Against the peace and dignity of the State, and contrary to the statute
in such case made and provided.

SOLICITOR

Margaret McDonald

WITNESSES

Det. Marshall

DOCKET #: 97GS18-0238

THE STATE OF SOUTH CAROLINA
County of Dorchester

COURT OF GENERAL SESSIONS

Term: May, 1997

THE STATE

vs.

Roaney Elliott

ARREST WARRANT #:

97DOR12

Arrested on December 31, 1996

ACTION OF GRAND JURY

TRUE BILL

By: _____

Date: _____

Foreman: Don Village 5/15/98
Grand Jury

VERDICT

Not Guilty " " "
Guilty " " "

Foreman: ✓

Petit Jury

Date: March 6, 1998

INDICTMENT FOR

0805

CRIMINAL SEXUAL CONDUCT WITH A MINOR

SECOND DEGREE — 16-3-655(2)

into: Please "check" "marks in one (1) space above and below... when

STATE OF SOUTH CAROLINA)
County of Dorchester)

INDICTMENT #97GS18-0238

At a Court of General Sessions, convened on May 15, 1997,
the Grand Jurors of Dorchester County present upon their oath:

COUNT: CRIMINAL SEXUAL CONDUCT WITH A MINOR
SECOND DEGREE — 16-3-655(2)

That Rodney Elliott did in Dorchester County between the dates of August
17, 1995 and June 1, 1996, wilfully and unlawfully engage in criminal sexual
conduct with a minor in the second degree in that Rodney Elliott engaged in
sexual battery with a Minor who was 11 years of age.

Against the peace and dignity of the State, and contrary to the statute
in such case made and provided.

SOLICITOR Margaret S. McDaniel