

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of General Sessions

The Honorable George C. James, Jr., Circuit Court Judge

Case No.: 2012-GS-45-0285

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SC Court of Appeals

The State, ...Respondent,

v.

Willie Marion Brown, ...Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF WILLIAMSBURG

IN THE COURT OF GENERAL SESSIONS
THIRD JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA

2012-GS-45-0285

V.

WILLIE MARION BROWN,

Defendant

ORDER RULING ON POST-TRIAL MOTIONS

This matter is before the court upon the defendant's motions for new trial and for reconsideration of sentences. The defendant is represented by G. Wells Dickson, Jr., Esq., Lionel S. Lofton, Esq., and William H. Waring, III, Esq. Kimberly V. Barr, Esq. represents the State.

The defendant was tried before a Williamsburg County jury and was convicted of two counts of CSC with a minor, 1st Degree and one count of Lewd Act on a Minor. He was sentenced to 35 years on the CSC counts and 15 years on the Lewd Act count, with all sentences to run concurrently.

NEW TRIAL MOTION

1. Did the court err in admitting the testimony of a Rule 404 (b) witness regarding other bad acts committed by the defendant against her?

The victim (hereinafter referred to as "Victim") in this case is now nineteen years old. She testified that the defendant began dating her mother in 2001 when Victim was six years old. Her mother and the defendant married in 2002 when Victim was seven. She testified that when she was around eight years old, the defendant took her to the "pond house" in Nesmith, S.C. This was a block house owned by the defendant with a few rooms. The defendant brought a cucumber and a condom and told her he was going to show her how to "do it."

A CERTIFIED TRUE COPY

Sharon W. Stagers
SHARON W. STAGGERS
CLERK OF COURT
WILLIAMSBURG COUNTY

know how and her twin sister would not. The defendant put the condom on the cucumber and proceeded to maneuver her body into different sexual positions. He told her about how sex worked with the penis going in and explained the different positions. No lewd touching or sexual contact occurred, and this incident was not an indicted event. She did not tell her mother.

Victim testified that when she, her twin sister, her mother, and the defendant were living at a residence in Kingstree on Clearview St., the defendant took her to his farm house, where they all had lived before moving to Clearview. She testified she was about nine years old and they went alone. The defendant took her to her mother's old room and had her sit on a mattress. She or he took her pants off, and he put his mouth on her vagina. He touched her vagina with his fingers but did not penetrate her. He offered to show his penis to her at that time, but she told him no. She did not tell her mother. This was an indicted offense.

Victim testified that on a later occasion when she was around nine or ten years old, she was doing some yard work at home on Clearview St. She was having pain in her vagina and told the defendant about it. He took her into his bathroom and sat her on the counter. He stuck his fingers inside her vagina. She did not tell her mother. This was an indicted offense.

Victim initially testified that on either the occasion at the pond house or at the farm house, the defendant took pictures of her vagina and explained to her the different parts. She then testified this must have occurred at the farm house, because on the one occasion they went to the pond house, she did not take her clothes off. On one occasion at the farm house, she was in the tanning bed in the bathroom in only her panties and the defendant came into the bathroom, sat on the toilet, and took pictures of her.

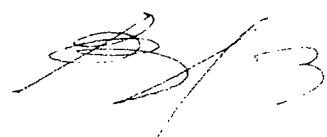
Victim was the first witness to testify in front of the jury. She testified that her mother and the defendant started dating when she was six, married on April 20, 2002 when she was seven, and moved to the defendant's farm house in Cades on McCutcheon Rd. They lived at the farm

house for approximately two years and then moved to the defendant's house on Clearview St. in the town of Kingtree. She recounted the above-mentioned incidents to the jury. In addition, she testified that in her bathroom on Clearview St., the shower curtain was always clear and that the defendant would frequently pop in and say, "Hi". When the curtain was switched for a glass door, the defendant had a clear door installed. She further testified that there was a downstairs half-bath and that if she was using that bathroom, the defendant would always come in "accidentally", so she developed the habit of going into the bathroom, locking the door, and turning off the light so he would not know she was in there. She testified that when she was around ten years old, she found a brown bag on her bed with a vibrator inside. She wrote "I do not want this!" on the bag, took the bag to the defendant's room and put it on his bed. The defendant later asked her if she was using the vibrator.

The lewd act conviction arose from an incident when Victim driving a four-wheeler when she was nine or ten years old. The defendant was sitting behind her with his arms around her. She testified that he reached and grabbed her breast area and said "honk honk" or something to that effect. The court refused to admit evidence of the defendant committing the identical act upon Victim's twin sister, as the court concluded the evidence of the act against Amanda was not clear and convincing.

Victim testified the abuse stopped when she reached her teen years. She testified that she reported the abuse on November 11, 2011, after she and the defendant got into a verbal altercation at the farm house when the defendant would not let her go to a football game.

The 404 (b) witness (hereinafter referred to as "Witness") testified *in camera* and in front of the jury as well. She is now twenty-four years old. She testified she was born in 1990 and that her mother and the defendant began dating in 1997. Her mother was in school at night and the defendant was her primary babysitter. Initially, the defendant would be present in the



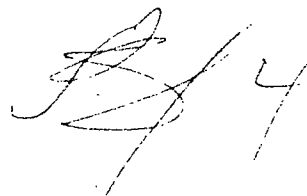
bathroom when she was bathing in the tub. Though she was old enough to bathe herself, the defendant eventually began bathing her and touching her vagina and rear end while doing so. This activity escalated when the defendant and Witness's mother married in May 2008. At that time, they moved to the farm house in Cades. She testified that it got to the point where every time she took a bath when her mother was at school, the defendant would touch her while bathing her and drying her off with a towel. She testified she could bathe herself and dry herself off, but the defendant wanted to do it. She testified there was a little digital penetration when he would dry her off.

Witness testified that on occasion, after her bath, the defendant would take her to his bed and lay her on it. He would have her spread her legs so he could "check her for infection". He would penetrate her vagina with his fingers and ask her if it hurt or felt good. He would smell his fingers. His face would get very close to her vagina but there was never any contact with his mouth. This activity started at her house while her mother and the defendant were dating, and continued when they moved to the farm house after the marriage. She never went inside the pond house.

Witness further testified that when she began to take showers, the defendant changed the shower curtain from opaque to clear and that he always came into the bathroom when she was showering and would open the curtain. She said he did that numerous times.

Witness also testified that the defendant would frequently tickle her in the areas of her ribs, stomach, and lower body. This would be in the den and her mother would be present and take pictures. There was no illicit touching on these occasions.

Witness's mother and the defendant separated when Witness was nine years old. She had no further contact with the defendant.



The State sought to introduce the acts perpetrated upon Witness under State v. Lyle, 125 S.C. 406, 118 S.E. 803 (1923) and under Rule 404 (b), SCRE. Relevant case law stands for the proposition that evidence of other bad acts may not be admitted to prove criminal propensity. However, Rule 404 (b) and case law allow for the admission of other bad acts to prove a common scheme or plan, intent, motive, or absence of mistake or accident. If the other act did not result in a conviction, the fact that the other act occurred must be proven by clear and convincing evidence.

The proffered other bad act must be relevant, must be proven by clear and convincing evidence, and there must be a close degree of similarity between the other bad act and the crime charged indicating the existence of a common scheme or plan. The proponent of the evidence bears the burden of establishing the foregoing. If this burden is met, the opponent of the evidence must establish, pursuant to Rule 403, SCRE, that the probative value of the other act is substantially outweighed by the danger of unfair prejudice, misleading the jury, or confusion of the issues. See Rule 404 (b); State v. Clasby, 385 S.C. 148, 682 S.E. 2d 892 (2009); State v. Wallace, 384 S.C. 428, 683 S.E. 2d 275 (2009); State v. Scott, 405 S.C. 489, 748 S.E. 2d 236 (Ct. App. 2013).

After hearing in camera testimony from Victim and Witness, and after carefully considering the arguments of counsel and relevant case law, the court concluded Witness's testimony was admissible. A proper limiting instruction was given to the jury during the court's charge on the law. The defendant's first ground in support of his motion for a new trial is that the evidence was improperly admitted.

In Scott, the Court of Appeals observed:

Evidence of other crimes or wrongs is admissible to show a common scheme or plan when such evidence has a "close degree of similarity" to the crimes charged. Wallace, 384 S.C. at 433-34, 683 S.E.2d at 278; see Rule 404(b), SCRE (allowing evidence of a bad act to demonstrate a common

scheme or plan). A close degree of similarity exists when the “similarities outweigh the dissimilarities.” Wallace, 384 S.C. at 433, 683 S.E.2d at 278. In conducting this similarity review, a trial court “should consider all relevant factors.” State v. Taylor, 399 S.C. 51, at 59, 731 S.E.2d 596, at 601 (Ct. App. 2012) (citing Wallace, 384 S.C. at 433–34, 683 S.E.2d at 278). Additionally, in the context of a sexual abuse case, the following factors are pertinent: (1) the age of the victims at the time of abuse; (2) the relationship between the victims and the perpetrator; (3) the location where the abuse occurred; (4) the use of coercion or threats; and (5) the manner of the occurrence. Wallace, 384 S.C. at 433–34, 683 S.E.2d at 278; Taylor, 399 S.C. at 59–60, 731 S.E.2d at 601. When a review of all pertinent factors establishes a “close degree of similarity,” no further analysis is necessary; the evidence is admissible. Wallace, 384 S.C. at 434, 683 S.E.2d at 278. Finally, in making this similarity determination, focus is upon whether each particular proffer of bad act evidence is sufficiently similar to the crimes charged, not whether multiple proffers are sufficiently similar to each other. See *id.* at 433–34, 683 S.E.2d at 278 (holding bad act evidence must be sufficiently similar to the crimes charged).

Scott, 405 S.C. at 500.

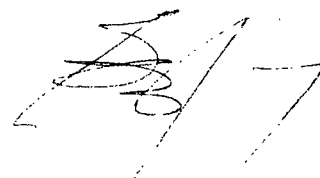
The Wallace Court stated, “Rule 404 (b) allows the admission of evidence of a common scheme or plan. Such evidence is relevant because proof of one is strong proof of the other. When determining whether evidence is admissible as common scheme or plan, the trial court must analyze the similarities and dissimilarities between the crime charged and the bad act evidence to determine whether there is a close degree of similarity. State v. Parker, 315 S.C. 230, 433 S.E.2d 831 (1993). When the similarities outweigh the dissimilarities, the bad act evidence is admissible under Rule 404(b).” Wallace, 384 S.C. at 433.

The Wallace Court set forth the factors the trial court must consider in reaching its determination as to whether there is a close degree of similarity between the bad act and the crime charged: (1) the age of the victims when the abuse occurred; (2) the relationship between the victims and the perpetrator; (3) the location where the abuse occurred; (4) the use of coercion or threats; and (5) the manner of the occurrence, for example, the type of sexual battery. The Court emphasized “that these factors are set out merely for guidance and that other factors may be relevant in weighing the similarities and the dissimilarities between the crime charged and the bad act evidence.” 384 S.C. at 434.

This court concluded at trial and continues to conclude that the State proved by clear and convincing evidence that the defendant committed the acts against Witness. The process of analyzing the admissibility of evidence of the other bad acts perpetrated against Witness continues with Rule 401, SCRE, which provides that relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Wallace, 384 S.C. at 433. Rule 404 (b) evidence of a common scheme or plan "is relevant because proof of one is strong proof of the other." *Id.* The court concluded at trial and still concludes that the evidence of the acts committed against Witness are relevant, in that proof of those acts tends to prove the acts against Victim. The State must also establish that there is a close degree of similarity between the acts involving Witness and the acts involving Victim. In the instant case, the above five factors are examined as follows:

1. The defendant began dating Witness's mother when Witness was six years old. He began dating Victim's mother when Victim was six years old. The defendant began sexually assaulting Witness when she was seven years old and began assaulting Victim when she was eight or nine years old; the incident with the cucumber and the condom occurred when Victim was eight years old. The defendant's abuse of both girls continued for approximately two years, perhaps a little longer for Victim, as Witness's mother and the defendant separated when Witness was nine, and the defendant had not further contact with Witness after that.

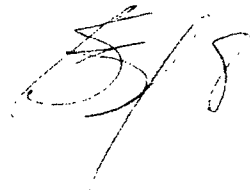
2. The defendant married Witness's mother when Witness was eight years old and married Victim's mother when Victim was seven years old. Therefore, he was stepfather to both girls. He assumed the role of caregiver to both girls and was the source of financial security for both families. Both Witness and Victim were enrolled in Williamsburg Academy when the defendant married their mothers, and he paid their tuition.



3. Both girls were abused at the farm house on McCutcheon Road in Cades. Victim was abused at the family home in Kingtree on Clearview St. Witness was abused at her mother's house on Gilland St. in Kingtree.

4. Physical and mental coercion were not used by the defendant with either girl, except to the extent that both girls were essentially defenseless because of their very young age and small size.

5. (a) Witness's mother was divorced with no male children and Witness was six years old when the defendant and Witness's mother began their relationship and had just turned eight when they married. The defendant began sexually abusing Witness when her mother was at night school and he was babysitting her at her mother's house on Gilland Street in Kingtree. Witness was seven when the abuse began. The defendant would be present in the bathroom when Witness was finished bathing and he would state that he needed to dry her off, though she was perfectly able to dry herself off. While he was bathing her with a washcloth, the defendant's hands would "slip" off the washcloth and his hands would rub over her breasts, vagina, and buttocks. There would be "a little" digital penetration. The touching escalated when her mother and the defendant married and they and Witness moved to the farm house in Cades. The activity progressed to the point where the defendant would bathe Witness using Dawn dishwashing liquid and would then have Witness lie on his bed and spread her legs so he could "check for infection", in his words. He would penetrate her with his fingers and make her smell his fingers. His mouth would get very close to her vagina but his mouth never touched her vagina. Witness testified the shower curtain in her bathroom was clear and that the defendant would frequently come into the bathroom when she was taking a shower and open the curtain. The defendant gave explicit explanations to Witness when she was approximately seven years old about how to have sex, how the man's penis would get erect, the vagina would get wet, and that was what allowed intercourse, and that it felt good.



(b) Victim's mother was also divorced with no male children, though Victim had a twin sister who also lived in the household. Victim was six years old when the defendant and Victim's mother began their relationship. Victim was seven when her mother and the defendant married. The defendant also spoke to Victim about sex when she very young; when Victim was around eight years old, the defendant took her to his pond house in Nesmith, sat her on a mattress, and demonstrated how to put a condom on a cucumber and maneuvered her into different sexual positions, e.g., missionary and doggy style, so she would know how to have sex. He took pictures of her vagina and showed them to her and explained the various parts of the vagina. When Victim was nine years old, the defendant sexually assaulted her after taking her to his farm house. He put her on a mattress in his mother's old bedroom, took her pants off. and put his mouth on her vagina. He touched her vagina with his fingers but did not penetrate with his fingers. He offered to show her his penis but she refused. On another occasion, at the house on Clearview St. in Kingstree, after Victim complained of pain in her vaginal area while working in the yard, the defendant took her inside the house, sat her on the counter in his bathroom and stuck his fingers inside her vagina, ostensibly to check for the source of pain.

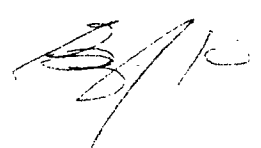
The shower curtain in Victim's bathroom was clear and the defendant would repeatedly come into the bathroom when she was showering and say, "Hi." When her bathroom was remodeled, the defendant had a clear glass shower door installed. She also testified that the defendant would "always" come into the downstairs half bathroom when she was using that bathroom.

The foregoing summaries evidence clear similarities insofar as the five Wallace factors are concerned. The defendant began relationships with both mothers when the girls were of about the same very young age. He assumed the role of caregiver and paid the girls' private school tuitions. The specific abuse consisted of the defendant digitally penetrating the girls' vaginas

when they were about the same age. The incidents of digital penetration of both girls occurred under the guise of the defendant "helping" the girls, i.e., checking Witness for infection, and checking Victim for the source of her vaginal pain. The defendant gave explicit "sex-education" talks to the girls, and while the talks were not identical, they involved very explicit descriptions of sex, given the very young ages of the girls. Both girls were abused at the farm house in Cades and at houses in Kingstree. Both girls describe the defendant repeatedly coming into the bathroom when they were showering and him either looking through the clear curtain or pulling it back.

The defendant maintains that the manners of occurrence of the acts perpetrated against Witness bore no close degree of similarity to the specific crimes the defendant is alleged to have committed against Victim.¹ The defendant asserts that the alleged inappropriate touching about which Witness testified did not involve oral sex, grabbing of the breasts (four-wheeler incident complained of by Victim), or digital penetration of the nature described by Victim. Victim testified the defendant placed his mouth on her vagina. Witness said he did not do that to her but that when the defendant abused her, his mouth was close enough to her vagina that he could make contact if he wanted. The grabbing of Victim's breasts on the four-wheeler was the basis for the lewd act charge and has no real bearing upon the analysis as it pertains to the CSC charge. In addition, the fact that the defendant may have never ridden a four-wheeler with Witness does not necessarily require a finding of dissimilarity. The defendant did this with Victim when she was ten or eleven years old, while Witness had no contact with the defendant after the age of nine. The court disagrees with the defendant's contention that the nature of digital penetration

¹ It should be noted that the "manners of occurrence" factor is but one of the five factors to be examined by the court in determining whether there is a close degree of similarity.



was not the same between the two girls; the fact remains that both girls described digital penetration, and he digitally penetrated them under the guise of checking them for a problem.

To continue with the defendant's claims of dissimilarities, the defendant correctly points out that Witness testified she was abused in a babysitting setting when her mother was at school, and specifically when the defendant would bathe Witness in the evening. The defendant did not bathe Victim. However, Victim's mother did not attend night or day school, so the same window of opportunity was not present for bathing Victim at age seven as it was for bathing Witness at that age. Victim claims the defendant took pictures of her vaginal area, while Witness was not aware of him taking pictures of her vagina. Concerning the sex-education talks with the girls, the evidence is that Witness's mother asked the defendant to take on that role with Witness, while there is no such evidence insofar as Victim's mother was concerned. Also, Victim testified that the incident involving the cucumber and the condom occurred at the pond house in Nesmith, while Witness said the defendant never took her inside that building. However, this dissimilarity is inconsequential, as both the pond house and farm house were isolated locations under the possession and control of the defendant, which is the more compelling similarity.

In my view, an examination of the foregoing five factors and all other relevant factors compels the conclusion that the similarities far outweigh the relevant dissimilarities.

The defendant claims the probative value of Witness's testimony is substantially outweighed by the danger of unfair prejudice. In his memorandum in support of the instant motion, the defendant states that the concerns about unfair prejudice expressed by Justice Pleicones in his dissent in Wallace have "proven true with respect to [the defendant's] criminal trial, because even though similarities existed in the bad acts alleged in [Victim's] and [Witness's] testimonies, the lack of specific similarities between the [Witness] bad acts and the crimes charged lessened the probative value of the propensity evidence." (See page 10 of

defendant's memorandum). The defendant further claims that the "mere presence of similarities" between the Witness's testimony regarding uncharged bad acts and Victim's testimony regarding other uncharged bad acts was "textbook propensity evidence" that unfairly prejudiced the defendant and should have been excluded. The defendant points to the testimony about the clear shower curtain as an example. The court first notes that there was no specific objection to the shower curtain testimony as improper propensity evidence in and of itself; rather, there was an objection to all of Witness's testimony on the ground that it did not survive a Wallace-Lyle-404 (b) analysis. Even so, the court respectfully disagrees with the defendant's contention as to the shower curtain evidence. Case law allows for the admission of such evidence to show similarities if the probative value is not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. Witness's testimony about the shower curtain was obviously prejudicial, but the court concludes the testimony was not unfairly prejudicial to the defendant, the testimony did not confuse the issues, and the testimony was not misleading to the jury. Further, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice, etc. Simply because the jury asked to rehear the testimony pertaining to the shower curtain does not render the testimony improper.

There is no doubt that Witness's testimony, as a whole, was prejudicial to the defendant, but that is not the proper inquiry. The relevant inquiry under Rule 403, SCRE, is whether the evidence created the danger of unfair prejudice, confusion of the issues, or misleading the jury, and if so, whether the probative value of the evidence was substantially outweighed by any of these three dangers. I conclude the introduction of the evidence did not create the danger of unfair prejudice, confusion of the issues, or misleading the jury, but that even if it did create such danger, the danger did not substantially outweigh the probative value of the evidence.

2. Did the court err in allowing Gaye Allen Cook to testify she met with Victim?

Ms. Cook was qualified as an expert in the areas of child sex abuse and trauma. She did not vouch for Victim's credibility in any way, and none of her testimony created any inference that she believed what Victim testified to was true. Ms. Cook testified about how sex offenders groom their victims, how the absence of a biological parent can play a role in the grooming process, and how a victim can fill that void with a close relationship to a step-parent. Ms. Cook also offered her opinions regarding delayed reporting by child victims of sexual abuse. She testified she met with Victim in November 2011. The defendant claims that when Ms. Cook testified she met with Victim in November 2011, the only reasonable inference the jury could draw from her testimony was that she believed Victim, as that was when Victim reported the abuse to law enforcement, at which time the defendant was arrested.

The defendant claims the admission of Ms. Cook's testimony permitted the State to improperly bolster Victim's testimony and cites State v. McKerley, 397 S.C. 461, 725 S.E. 2d 139 (Ct. App. 2012) as support for this proposition. However, the relevant facts of McKerley and the instant case are obvious insofar as rape trauma evidence is concerned. In McKerley, the expert testified that she found both interviews with the victim "to be compelling for sexual abuse", and the Court of Appeals cited nine other excerpts of the expert's testimony that amounted to improper vouching for the victim's credibility. There was no such testimony from Ms. Cook in the instant case, and none of her testimony remotely approached the level rejected in McKerley.

Sexual abuse trauma evidence remains admissible in South Carolina. See State v. Schumpert, 312 S.C. 502, 435 S.E. 2d. 859 (1993) ("[B]oth expert testimony and behavioral evidence are admissible as rape trauma evidence to prove a sexual offense occurred where the probative value of such evidence outweighs its prejudicial effect."). Testimony such as that offered by Ms. Cook is relevant to prove the elements of sex crimes, as the testimony makes it

more probable that the offense occurred. Schumpert, 312 S.C at 506, citing State v. Alexander, 303 S.C. 377, 410 S.E. 2d 146 (1991). The probative value of Ms. Cook's testimony outweighed the danger of unfair prejudice to the defendant. She did not vouch for Victim's credibility and offered no comparisons between Victim's situation and the general testimony about grooming, late reporting, etc. The simple fact that comparisons were inferable does not make her testimony inadmissible.

MOTION FOR RECONSIDERATION OF SENTENCING

The minimum sentence for CSC with a minor, first degree is twenty-five years. The maximum is life. The court imposed thirty-five year sentences on the CSC counts. The court imposed the maximum fifteen year sentence on the lewd act conviction, with all three sentences to run concurrently. The defendant submits that he has fourteen documented medical conditions for which he takes nine different medications; this evidence was submitted at the time of sentencing. The defendant submits that his health will decline more rapidly while he is incarcerated and that he will eventually need around the clock medical care. He contends that no useful purpose will be served by the defendant serving a thirty-five year sentence and requests that the court impose the minimum twenty-five year sentence on the CSC conviction. Assistant Solicitor Barr advised the court that she has consulted with the victim and that the State does not oppose the motion.

The defendant is now in his mid to late fifties and he must serve 85% of any sentence imposed. The court has carefully considered the defendant's argument, and concludes the motion should be granted. The court sentences the defendant to three concurrent prison terms as follows: Twenty-eight (28) years on both CSC convictions and fifteen (15) years on the lewd act conviction.

CONCLUSION

For the foregoing reasons, the defendant's motion for a new trial is denied. The defendant's motion for reconsideration of sentencing is granted, and the defendant is hereby committed to the Department of Corrections for terms of twenty-eight (28) years on the CSC with a minor, 1st Degree, convictions, and a term of fifteen (15) years on the lewd act on a minor conviction. All sentences shall be served concurrently, and the defendant shall receive credit for time served on these charges, to be calculated by the Department of Corrections and any local detention facility that housed the defendant.

AND IT IS SO ORDERED.

July 21, 2014



George C. James, Jr., Circuit Judge

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG)

INDICTMENT FOR

Criminal Sexual Conduct with Minor, Victim Under 11
 Years of Age - First Degree (x2); Lewd Act on a Minor

At a Court of General Sessions, convened on October 25, 2012 the Grand Jurors of WILLIAMSBURG County present upon their oath:

COUNT ONE - CRIMINAL SEXUAL CONDUCT WITH A MINOR - FIRST DEGREE

That in Williamsburg County, South Carolina, between the dates of 2004 and 2006, the Defendant, Willie Marion Brown, date of birth [REDACTED], 1956, did commit a sexual battery upon a minor who was less than eleven years of age, to wit: [REDACTED], date of birth, [REDACTED] 1995, defendant engaged in a sexual battery by performing oral sex on victim, in violation of Section 16-3-655, Code of Laws of South Carolina, 1976, as amended.

COUNT TWO - CRIMINAL SEXUAL CONDUCT WITH A MINOR - FIRST DEGREE

That in Williamsburg County, South Carolina, between the dates of January 2005 and January 2006, the Defendant, Willie Marion Brown, date of birth [REDACTED] 1956, did commit a sexual battery upon a minor who was less than eleven years of age, to wit: [REDACTED], date of birth, [REDACTED] 1995, defendant engaged in a sexual battery by digitally penetrating the victim, in violation of Section 16-3-655, Code of Laws of South Carolina, 1976, as amended.

COUNT TWO - LEWD ACT ON A MINOR CHILD

That Willie Marion Brown, his date of birth being [REDACTED] 1956, did in Williamsburg County between the dates of January of 2005 and January of 2007, willfully and lewdly commit a lewd or lascivious act upon or with the body of a child, less than sixteen (16) years of age, to wit: [REDACTED], date of birth, [REDACTED] 1995, with the intent of arousing, appealing to, or gratifying the lust or passions or sexual desires of said defendant or of the victim, including but not limited to: fondled the victim's breasts, in violation of Section 16-15-0140, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Solicitor

CLERK OF COURT
 WILLIAMSBURG COUNTY
 12 OCT 25 PM 12:55
 WILLIAMSBURG, S.C.

A CERTIFIED TRUE COPY
Sharon W. Staggers
 SHARON W. STAGGERS
 CLERK OF COURT
 WILLIAMSBURG COUNTY

CSCMR1

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Williamsburg
STATE VS.

019

INDICTMENT/CASE#: 2012-GS-45-0285

A/W#: M686688

Date of Offense: 4/20/2002

S.C. Code § : 16-03-0655(A)(1)

CDR Code #: 0385

AKA:

Race: Sex: Age:

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Criminal Sexual Conduct with a Minor - 1st Degree Ct. #1in violation of § 16-3-655(A) of the S.C. Code of Laws, bearing CDR Code # 0385☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Kimberly V. Barr
Barr, Kimberly V.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 35 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: All other convictions ready☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: Sex Offender Registry☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

COUNTY OF Williamsburg
STATE VS.

Willie Marion Brown

AKA:

Race: Sex: Age:

DOB: SS#:

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Criminal Sexual Conduct with a Minor - 1st Degree Ct # 2in violation of § 16-3-655(A) of the S.C. Code of Laws, bearing CDR Code # 0385☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST

Barr, Kimberly V

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 35 months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012-GS-45-0287-0285A/W#: M686689Date of Offense: 4/20/2002S.C. Code § : 16-03-0655(A)(1)CDR Code #: 0385

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

w/minor 1st or Lewd Act)

(defendant's initials)

Recommendation by the State.

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 35 months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

021

COUNTY OF
STATE

Williamsburg

VS.

Willie Marion Brown

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Sex / Lewd Act, committing or attempting lewd act upon child under 16 (June 4, 1996)

INDICTMENT/CASE#: 2012-GS-45-0285

A/W#: ~~M68668~~ DIRECT PRESENTMENT

Date of Offense: 4/20/2002

S.C. Code § : 16-15-0140

CDR Code #: 2468

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-15-0140

of the S.C. Code of Laws, bearing CDR Code #

2468

☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS(CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTORNEY:

Barr, Kimberly V

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of 15 days/months/years or☐ under the

Youthful Offender Act

not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of

_____ days/months/years and/or payment

of \$ _____; plus costs and assessments as applicable*; the balance is suspended with

probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code by the State Department of Corrections.☒ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code

§17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF WILLIAMSBURG) FOR THE THIRD JUDICIAL CIRCUIT
) INDICTMENT NO.: 2012-GS-45-0285

STATE OF SOUTH CAROLINA,)
))
versus) **MOTION IN LIMINE TO**
) **EXCLUDE TESTIMONY OF**
WILLIE MARION BROWN,) **ASHLEY GARDNER**
))

Defendant.)

COMES NOW the Defendant, WILLIE MARION BROWN, by and through his undersigned attorneys, G. Wells Dickson, Jr., and Lionel S Lofton, and moves this Honorable Court to exclude the testimony of Ashley Gardner on the following grounds:

- (1) Pursuant to Rule 401, SCRE, Miss Gardner's testimony is not admissible because it is irrelevant to the issues at trial.
- (2) Even if Miss Gardner's testimony was deemed relevant by the Court, it should be excluded pursuant to Rule 404(b), SCRE. First, the testimony contains information regarding alleged prior bad acts of sexual abuse that is impermissible character evidence, and the state cannot show such testimony to be otherwise admissible because the prior bad acts are not sufficiently similar to the bad acts alleged in this case. See State v. Wallace, 683 S.E.2d 275, 278, 384 S.C. 428, 433-34 (2009) (providing factors for determining whether there is a close degree of similarity between the prior bad act and the crime charged.) Also, the alleged prior bad acts to which Miss Gardner will testify occurred at least five years prior to the allegations in the instant case; therefore, the prior bad acts are inadmissible because they occurred too remote in time to the alleged bad acts in the instant case. See State v. Fonsesca, 681 S.E.2d 1, 5, 383 S.C. 640, 649 (Ct. App. 2009) (finding that a two-year gap between a prior bad act and the crime charged could render the evidence of the prior bad act inadmissible because the former was too remote.).

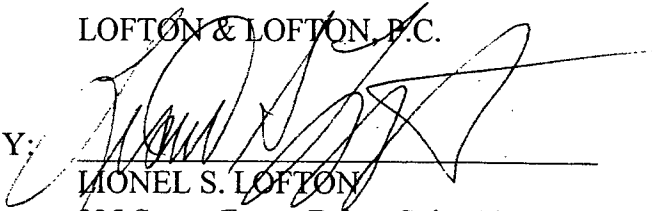
- (3) Even if Miss Gardner's testimony was deemed relevant by the Court, it should be excluded pursuant to Rule 403, SCRE, because any probative value of the evidence contained in such testimony is substantially outweighed by the danger of unfair prejudice to the defendant.

Respectfully submitted,

G. WELLS DICKSON, JR.
124 S. Academy Street
Post Office Box 819
Kingstree, SC 29556
Telephone: 843-354-5519

LOFTON & LOFTON, P.C.

BY:


LIONEL S. LOFTON
225 Seven Farms Drive, Suite 109
Charleston, SC 29492
Telephone: (843) 722-6319

Charleston, South Carolina

May 1, 2014

Certificate of Service

The undersigned hereby certifies that a true copy of the foregoing pleading has been served upon opposing counsel by mailing a copy properly addressed with sufficient postage affixed thereto this 1st day of May, 2014.


Terri R. Ackerman, Paralegal
Lofton & Lofton, P.C.

STATE OF SOUTH CAROLINA)
COUNTY OF WILLIAMSBURG) GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)

STATE,)

v.)

TRANSCRIPT OF RECORD
12-GS-45-0285

WILLIE MARION BROWN,)

DEFENDANT.)

May 19, 2014
Kingstree, South Carolina

B E F O R E :

THE HONORABLE GEORGE C. JAMES, JR., JUDGE;
AND JURY

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

KIMBERLY V. BARR, ESQ.
Assistant Solicitor

G. WELLS DICKSON, JR., ESQ.
LIONEL S. LOFTON, ESQ.
WILLIAM H. WARING, III, ESQ.
Attorneys for Defendant

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter

1 to say that the witnesses who they'll call in their
2 case will be likewise sequestered; but I did not
3 hear the jury, examine the jury pool, regarding
4 whether or not there were any defense witnesses who
5 would testify.

6 THE COURT: I asked for a witness list and
7 they told me there wasn't one.

8 MR. LOFTON: That's correct, Judge. The
9 only way there would be witness other than defendant
10 would be something maybe in reply.

11 THE COURT: Okay, all right. But the jury
12 would still have to be examined if you call that
13 witness.

14 MR. LOFTON: I understand.

15 THE COURT: Okay. All right, Ms. Barr.

16 MS. BARR: The State calls Ashley Gardner.

17 THE CLERK: Place your left hand on the
18 Bible raise your right hand.

19 WHEREUPON,

20 **ASHLEY O. GARDNER,**
21 having been duly sworn by the Clerk, testified as
22 follows:

23 MS. BARR: May it please the Court.

24 THE COURT: Yes, ma'am.

25 **PROFFER EXAMINATION**

SW - A. GARDNER - PROFFER

- 1 BY MS. BARR:
- 2 Q Ashley, state your full name for me.
- 3 A Ashley Olivia Gardner.
- 4 Q All right. And Ashley, how old are you?
- 5 A Twenty-four.
- 6 Q Okay. And what's your birth date?
- 7 A [REDACTED] 90.
- 8 Q And at some point you were the defendant's
- 9 stepdaughter?
- 10 A Yes.
- 11 Q When did — and who is your mother?
- 12 A Mary Gardner.
- 13 Q Okay. When did she and the defendant begin
- 14 dating?
- 15 A In 1997.
- 16 Q All right. And of course you understand that
- 17 you're called here to testify as a witness regarding
- 18 allegations of the defendant's sexual abuse of you?
- 19 A Yes.
- 20 Q You recall giving a statement to law enforcement
- 21 back in November of 2011?
- 22 A Yes.
- 23 Q All right. And in that statement you reference,
- 24 made allegations that the defendant had in fact and
- 25 molested you after he and your mom began dating?

SW - A. GARDNER - PROFFER

1 A Yes.

2 Q Tell us about the first incident, what you
3 remember, how old you were, and where the abuse took
4 place?

5 A It was whenever my mother would go to school at
6 night at Williamsburg Tech he would babysit me, and
7 it started with him bathing me and sitting in while
8 I was taking a bath.

9 Q All right. Now where were you living at the time
10 when your mom and the defendant were just simply
11 dating?

12 A That was on Gilland Avenue.

13 Q Is that here in Kingstree?

14 A Yes.

15 Q All right. And you would have been, I believe
16 you said, seven years old?

17 A Yes.

18 Q Okay, all right. I believe your testimony was
19 that they'd been dating in 1997; is that correct?

20 A Yes.

21 Q And you would have turned seven in May of 1997?

22 A Yes.

23 Q Okay. Now tell us about the first instances you
24 said that he began when he would bathe you?

25 A Yeah.

SW - A. GARDNER - PROFFER

1 Q All right. Tell us about that please.

2 A It started with him just being present while I
3 took a bath which at that time in my life no one was
4 helping me take baths except for him, and then it
5 just gradually progressed to touching and actually
6 bathing me. And it later after I moved, after they
7 were married and moved in to his place is when it
8 started getting a lot more — that's when it
9 escalated.

10 Q Now you've indicated that they began dating in
11 1997. When did they get married?

12 A In I think it was 2 — or 1998.

13 Q Okay, 1998?

14 A May.

15 Q May 1998?

16 A 30th.

17 Q So May of 1998 and you would have been eight
18 years old, right?

19 A Yes, I would have just turned eight.

20 Q Just turned eight, all right. And you said you
21 moved into his house, which house did you move into?

22 A The house out in Cades. I think it's McCutcheon
23 Road is the name of the road.

24 Q Now when you describe it progressing tell the
25 Court very specifically what did it progress to,

SW - A. GARDNER - PROFFER

1 what did he do?

2 A It eventually got to the point where every time I
3 took a bath I would then -- he would make my baths
4 and put Dawn dish washing liquid in the bath to make
5 bubbles. And after I would get out the bath he was
6 there bathing me, touching me while I was taking a
7 bath and then he would dry me off, and it was sort
8 of like a playful thing but it was like skin to skin
9 touching me. And then it got to where I would go
10 and lay on the bed in his room and he would ask me
11 to spread my legs all the way, and he would then
12 look at me and check me out. And the reason that he
13 said he needed to do that was to make sure that I
14 wasn't gonna get some sort of infection from the
15 bubbles, and it got to the point where I -- he would
16 make me like smell his fingers and things of that
17 nature while doing that.

18 Q All right. Now during these times where would
19 your mother be?

20 A I think that she was still in school. She was
21 not there when this happened. Like, she might have
22 been in the house somewhere, but she was never there
23 like in the room at all.

24 Q All right. And you said that the incidences as
25 they progressed, they became more physical and you

SW - A. GARDNER - PROFFER

1 said that those instances would occur inside his
2 bedroom, the defendant's bedroom?

3 A Yes.

4 Q Would it be the same bedroom that he shared with
5 your mom, Mary?

6 A Yes.

7 Q And when he would wash you and dry you off would
8 he wash you with a wash cloth?

9 A It started probably — I think it started with
10 wash cloth, but it did eventually like, you know,
11 the towel would slip and, like, it would be skin to
12 skin contact.

13 Q What part of his skin or body would touch what
14 part of your body?

15 A It would be his hands and it would be on my
16 privates, my butt, my vagina.

17 Q Okay, all right. And would this be in the
18 context of him bathing you?

19 A Most of that was more so like a drying off thing
20 when I got out. And then whenever I would be in his
21 room laying on the bed that was when he would get
22 down on his knees right in front of me and make me
23 hold my legs open.

24 Q Make you hold your legs open?

25 A Yeah.

SW - A. GARDNER - PROFFER

1 Q Do you know whether or not during these times he
2 would have you on the bed, make you hold your legs
3 open, whether or not he was clothed?

4 A Yeah, he was.

5 Q He was, okay. What would he say to you when he
6 would have your legs open and he would put his
7 fingers in your private areas, any of your private
8 areas?

9 A He would ask me if it hurt or if it felt good and
10 he would ask me to like smell his hands while he was
11 doing it, and he would smell it and he would get
12 like close up to it and smell it.

13 Q Okay. Now at any point in time while you were
14 staying with the defendant did you all have
15 conversations about sex or sexual activities?

16 A Yes.

17 Q Tell us about those conversations.

18 A I had -- this was before they were married and we
19 were still living on Gilland Avenue in Kingstree.

20 I'd asked my mom something just kind of curious
21 about it and was asking her about it, and she told
22 me to ask him about it, he could explain it to me
23 better.

24 Q What were you curious about? What was the
25 general topic of your curiosity at that point?

SW - A. GARDNER - PROFFER

1 A I just wanted to know what it was. I think it
2 was probably the first time as a kid I ever, like,
3 inquired about it, like what is sex, and you know,
4 what happens.

5 Q Okay.

6 A And she just kind of didn't really have words and
7 so she told me to ask him and I did. And this was
8 after I had a bath one night and we were in my
9 bedroom, and he was telling me, like, you know, that
10 a penis will get hard and go into a woman and that
11 she would get wet and that it would feel really good
12 and told me about, like, what it's like when you
13 lose, you know, your virginity the first time and
14 all that. It was very like detailed and he would
15 point on him like where the male private part is and
16 then point, like, on me. This is through clothes
17 all the time, both of us, and but would point to me
18 and him and show where parts went.

19 Q So during this particular incident you were still
20 living in your mom's house on Gilland Avenue,
21 correct?

22 A Yes.

23 Q So you would have been approximately?

24 A I was seven then, yeah.

25 Q About seven years old?

SW - A. GARDNER - PROFFER

1 A Yep.

2 Q Okay. And during this incident he was clothed?

3 A Yes.

4 Q And you were clothed?

5 A Yes.

6 Q And you said on both times y'all had a
7 conversation about sex education the whole time?

8 A That was just, that was a one time thing.

9 Q Okay, all right. And you also indicated that he
10 would point on his body when he was talking about
11 himself and what would happen with the penis?

12 A Uh-huh.

13 Q Is that a yes?

14 A Yes.

15 Q And he would also point on your body when he was
16 talking about what?

17 A He would — he just pointed to me where, you
18 know, like where I peed that there's, you know, a
19 vagina there and that it would get wet and that that
20 would, you know, make the — like it was very
21 detailed like this will make — it's easier for the
22 two, for penetration like, all of those types of
23 things were said.

24 Q Now during this conversation what were you doing?
25 Were you seated on the bed, standing up, what were

SW - A. GARDNER - PROFFER

1 —

2 A We were both seated on the bed.

3 Q Both seated on the bed. Did you all ever change
4 those positions during the course of that
5 conversation?

6 A No, I think that whenever that — when that
7 conversation was over then I just went to bed and
8 that was the end of it.

9 Q Okay. In one part of your statement you're
10 referencing, you reference the allegation that
11 defendant would tickle you a lot. Do you remember
12 telling Investigator Wrenn that?

13 A Yes.

14 Q Tell the Court about times that would happen.

15 A That happened a lot at the beginning. That's
16 kind of where the touching started, was just kind of
17 an innocent like, playful tickling thing. And then
18 it got to be where the, you know, he was tickling me
19 places, you know, just touching me kind of
20 everywhere. And he would like lay on top of me, his
21 whole body on top of me and like tickle me and it
22 was supposed to be just, like, it was supposed to be
23 a fun, playful thing I guess and that's kind of how
24 it began. It's like the touching before it even
25 started was like that.

SW - A. GARDNER - PROFFER

1 Q Can you be more specific, if you remember, where
2 specifically on your body he would touch you, or
3 tickle you I should say?

4 A A lot on my ribs, like, even like up close to my
5 chest. I remember he used to always count my ribs.

6 Q Okay.

7 A And that was — that started. And then it just
8 got to be where the tickling was, just kind of like
9 it really was just all over.

10 Q Okay. Did he ever touch you on your chest area?

11 A Yeah.

12 Q On your breasts, near your breasts?

13 A Yes.

14 Q What about near your stomach?

15 A Yes.

16 Q To near your vagina?

17 A Yes.

18 Q In terms of the times where you talk about that
19 he would touch your vagina and he would ask you to
20 smell his fingers after he did that, all of those
21 instances happened where?

22 A It started on Gillland Avenue but it would like,
23 it would just be for a minute or something, like it
24 wasn't a long drawn out thing. And then it was once
25 we moved into his house is when it kind of was like

SW - A. GARDNER - PROFFER

1 almost like a routine. We did it every single time
2 and it like felt like I was there for like maybe
3 like 10, 15 minutes whenever that would be going on.

4 Q Okay. Did he ever penetrate you or your vagina
5 with his fingers during this time?

6 A Not that I know of.

7 Q Okay. Did he ever have his fingers in or near
8 your, the opening of your vagina?

9 A Yeah. I feel like they were kind of like maybe
10 just, like, slightly inside but nothing like, not
11 like an entire finger or anything like that.

12 Q Okay. Now when these, when those particular
13 incidents happened where he actually put his fingers
14 on your vagina were you clothed or unclothed?

15 A I was completely naked.

16 Q And this was always after a bath?

17 A Yes.

18 Q Was anyone else in the room when these instances
19 would happen or in the bathroom when he would bathe
20 you?

21 A No.

22 Q I believe you also mentioned in your statement to
23 Sheriff's Officer Wrenn about something about a
24 shower curtain?

25 A Yes.

SW - A. GARDNER - PROFFER

1 Q Tell the Court about that.

2 A The -- well, I did get to a point where I wanted
3 to take showers and then he'd be like, well, I
4 already got your bath going. And but then he ended
5 up like changing the shower curtain out where it was
6 clear shower curtain so that he would just come in,
7 you could see all, like, into the shower, just
8 clear.

9 Q Did he ever have a practice or habit of doing
10 that, coming into the bathroom?

11 A Yes, he would come into the bathroom a lot
12 whenever I was showering. And he then, like,
13 opening the curtain and like asking me just -- it
14 was like it was a casual thing I was supposed to be
15 comfortable with.

16 Q Okay. How many times do you think he did that,
17 came into the bathroom when you were in there just
18 casually to check up on you?

19 A I mean, like, fifty times I guess. I lived there
20 for a year so I took a lot of showers, a lot of
21 baths.

22 Q When did his abuse or molestation abuse stop?

23 A It stopped when we moved out.

24 Q Okay.

25 A It stopped when we moved out and they were

SW - A. GARDNER - PROFFER

1 separated, and he was still around but nothing ever
2 happened after that, after we moved out.

3 Q Do you remember about when it was that you and
4 your mom moved out?

5 A I think it was August 9th. It would have been —
6 I think it was, I'm not sure the, like, year that
7 would be but.

8 Q All right. You testified that your mom and
9 Mr. Brown married in May of 1998 I believe is your
10 testimony?

11 A Yes.

12 Q How long did they stay married?

13 A They stayed married for a year I believe.

14 Q Okay. So they separated in August?

15 A Yeah, they would have been separated in August
16 of, or 1999.

17 Q 1999?

18 A Yeah.

19 Q So the instances of abuse with you happened
20 between the ages of seven and nine?

21 A Yes, like it would have been like three months
22 into my ninth year.

23 Q Okay. Do you have any siblings?

24 A I have half siblings.

25 Q Okay. Did you have any siblings on your mother's

SW - A. GARDNER - PROFFER

1 side?

2 A Not on my mother's side, all on my dad's side.

3 Q So just you?

4 A Yes, ma'am.

5 Q Okay. And have your parents ever been married to
6 each other?

7 A Yes.

8 Q Okay. And I'm assuming that they were divorced
9 by the time your mom met and began dating?

10 A Yes, they divorced when I was four.

11 Q Did he ever penetrate or attempt to penetrate you
12 by putting his penis in your vagina or in your
13 buttocks?

14 A No.

15 Q Other than being in the shower at the house on
16 Gilland Avenue and being in the bedroom and shower
17 or tub at the house on McCutcheon Road were there
18 sexual assaults committed against you by the
19 defendant at any other location?

20 A No. Well, there was the time his mother saw us
21 in the hot tub; but that wasn't, that was just a
22 really inappropriate situation. It wasn't like what
23 happened at home.

24 Q Okay. Tell me about that.

25 A That was when they were dating we were living on

SW - A. GARDNER - PROFFER

1 Gilland. His mom had a hot tub in her house and she
2 had gone out of town, and he came over and picked us
3 up. And they — he and my mom were both naked in
4 the hot tub and I was wearing a bathing suit. And
5 that was — I just remember like him having an
6 erection and he just kind of playing not knowing
7 that any — that it was inappropriate at the time.
8 And my mom was there and it was, everything was, it
9 was just a really inappropriate situation. He was
10 wanting me to — he was like, it was very playful,
11 see if you can hold your breath, see how you can
12 hold your breath under water and, you know, sitting
13 on his knee kind of a thing but no like actual
14 touching me really.

15 Q One other question, Ashley. Prior to your
16 testimony here today did you review any statements
17 given by either Lauren Goodman or Amanda Goodman?

18 A No.

19 MS. BARR: Beg the Court's indulgence.

20 BY MS. BARR:

21 Q Ashley, approximately how many times was it
22 that — and I'm not talking incidences where you
23 were tickled or the incident in the hot tub — but
24 the times where he would, he would either bathe you
25 or dry you and he would touch either your breast or

SW - A. GARDNER - PROFFER

1 your genitals, how many times did that happen?

2 A Like 20 plus, like, I mean, it was all the time.

3 Q All the time?

4 A Yeah.

5 Q That's all the questions I have. Please answer
6 any questions that the Court or Defense counsel may
7 have for you, okay.

8 MR. LOFTON: If the Court pleases.

9 THE COURT: Yes, sir.

10 **CROSS-EXAMINATION**

11 BY MR. LOFTON:

12 Q Ms. Gardner, as I understand your testimony Will
13 and your mother Mary, I believe her name is,
14 correct?

15 A Mary, yes, that's right.

16 Q They began dating around 1997?

17 A Yes.

18 Q And did you say what month? If you did I missed
19 it.

20 A It was in, I think I remember their first date
21 was in April.

22 Q Okay. And during that time your mother was
23 attending night school I believe?

24 A Yes.

25 Q And was that at Williamsburg Tech?

SW - A. GARDNER - PROFFER

1 A Yes.

2 Q And y'all were living on Gilland Street?

3 A Gilland Avenue.

4 Q Yes.

5 THE COURT: Somebody spell that for us.

6 MS. BARR: G-I-L-L-A-N-D.

7 THE COURT: G-I-L-L-A-N-D?

8 MS. BARR: Yes, sir.

9 BY MR. LOFTON:

10 Q And that's here in the town of Kingstree?

11 A Yes.

12 Q And when your mother would go to school in the
13 evening she would ask Will to come over and babysit?

14 A Yes.

15 Q Okay. And you were seven-ish when they started
16 dating?

17 A I had just turned — I turned seven right after
18 their first date.

19 Q Okay. And one of the things that your mother
20 asked Will to do was to make sure that you got
21 bathed at night, correct?

22 A Yes.

23 Q Okay. And so it was your mother's idea?

24 A Well, I'm not sure that my mother ever asked him
25 to bathe me. I just know that it happened every

SW - A. GARDNER - PROFFER

1 time and that he made me think that it, yeah, that
2 she wanted me bathed, to bathe me.

3 Q Well, did you ever, did you ever ask your mother
4 is Will supposed to be bathing me?

5 A I did not.

6 Q Okay. So on those evenings when he would come
7 over to babysit how often, how many days a week did
8 your mother go to school?

9 A I'm not sure how many days a week she went to
10 school.

11 Q Okay. But on each of those occasions Will would
12 come over and babysit you?

13 A That was when he would babysit me. I don't know
14 that it was every single time that she went to
15 school; but yeah, he babysat me when she went to
16 school.

17 Q Okay. And do you recall how long, how long that
18 period that went on for?

19 A I'm not sure how long she was in school. I'm not
20 sure how long she was in school for.

21 Q Okay. Did you have any other family members in
22 town that were available babysit for you during this
23 time period?

24 A. Yes.

25 Q Okay. Did your mother ever ask any of those

SW - A. GARDNER - PROFFER

1 family members to babysit you?

2 A Yeah, I stayed with other family members a lot,
3 but whenever, whenever they started dating he was
4 the, mostly the one that was there —

5 Q Okay.

6 A —keeping me.

7 Q Okay. So when they started dating he was the one
8 that was your primary babysitter when momma wasn't
9 available?

10 A When she went to school.

11 Q Went to school?

12 A At night.

13 Q At night?

14 A Yep.

15 Q Okay. Now you've indicated that one of the
16 things or what Will did was he gave you a bubble
17 bath?

18 A Yes.

19 Q Okay. And these bubble baths occurred on each
20 occasion that he babysat you when your mother was at
21 school?

22 A Yes.

23 Q Okay. And it was during this time period that
24 you had a question for your mother about something
25 to do with sex and your first —

SW - A. GARDNER - PROFFER

1 A Yes.

2 Q —questions dealing with sex, correct?

3 A Yes.

4 Q And your mother told you, well, when Will comes
5 over you talk to him about that?

6 A She attempted to explain it to me and was a
7 little flustered, and she said that he would be
8 better at explaining it to me.

9 Q Okay. So your mother suggested that Will explain
10 —

11 A Yes.

12 Q —sex to you?

13 A Yes.

14 Q So were you present when your mother said, Will,
15 I want you to talk to Ashley and explain sex to her?

16 A No.

17 Q Okay. When that evening came about when Will
18 explained sex to you, who initiated the
19 conversation, you or Will?

20 A He did.

21 Q Okay. And what did he say to you?

22 A He told me that sex was something that felt good
23 and was fun to do and explained and pointed on
24 himself how a penis would get hard and be able to
25 penetrate a woman and that he pointed on me where a

SW - A. GARDNER - PROFFER

1 vagina is how it would get wet and that was how a
2 penis would be able to go into it.

3 Q And did he tell you that he was explaining all of
4 this to you at the request of your mother?

5 A No.

6 Q Okay. So he just started this conversation, I'm
7 gonna tell you about sex?

8 A It was just understood that that, we were gonna
9 have that conversation. Like, I don't, I wasn't
10 there when my mom talked to him about it but I know
11 that, like I knew that she was like, she told me
12 that he was gonna explain it to me.

13 Q Okay, so she did tell you that —

14 A Yeah.

15 Q —Will is going to explain this to you?

16 A Yeah.

17 Q And he did exactly what your mother asked him to
18 do?

19 A I guess.

20 Q Okay. Now I believe that prior to Will and your
21 mother getting married you indicated that there was
22 an incident in a hot tub over at Will's mother's
23 house?

24 A Yes.

25 Q And that was when your mother and Will were

SW - A. GARDNER - PROFFER

1 dating?

2 A Yes.

3 Q And according to what you've told us, Will, and
4 what you've said in a previous statement, Will and
5 your mother were in the hot tub naked?

6 A Yes.

7 Q Okay. And your mom invited you to get in the tub
8 with her?

9 A Yeah, she told me that he was — his mom was gone
10 and we were gonna go over and get in the hot tub
11 that night. I remember us leaving the house. I was
12 excited to go get into the hot tub.

13 Q Okay. And when you got over to Will's mother's
14 house was he already in the hot tub?

15 A No, he picked us up.

16 Q Oh, he picked you up, okay. And so you and your
17 mother and Will rode over to his mother's house?

18 A Yes.

19 Q Okay. And just describe the events that led up
20 to all of you getting in the hot tub.

21 A I don't remember the events of us, of them
22 getting naked. I just remember them being naked. I
23 remember him picking me up and putting me into the
24 hot tub.

25 Q And you were not naked?

SW - A. GARDNER - PROFFER

1 A No.

2 Q So you had on a swim suit?

3 A Yes.

4 Q So before you left home, obviously since you were
5 going to get in the hot tub the plan was for you to
6 be in a swim suit?

7 A Yes.

8 Q Okay. And then you told us about these various
9 tickling incidents, correct?

10 A Yes.

11 Q And one specific tickling incident that you
12 talked about in your statement was when Will was
13 laying on top of you on the couch tickling you?

14 A Yes.

15 Q Do you remember that?

16 A Yeah.

17 Q And you were fully clothed?

18 A Uh-huh.

19 Q He was fully clothed?

20 A Yes.

21 Q And your momma was there taking pictures?

22 A Yes.

23 Q Okay. Now in your statement that you gave
24 earlier you also indicated that Will walked around
25 the house naked. Do you remember that?

SW - A. GARDNER - PROFFER

1 A Yes.

2 Q And was that before they were married, after they
3 were married, or both?

4 A That was after they were married and we were
5 living out at his house.

6 Q Okay, and that was a farmhouse?

7 A Yes.

8 MR. LOFTON: Your Honor, bear with me just
9 one moment please.

10 THE COURT: Yes, sir.

11 BY MR. LOFTON:

12 Q Now when the Solicitor was asking you some
13 questions a minute ago you were talking about
14 tickling and where his hands were and where they
15 were you had indicated on your ribs and part of the
16 game was counting your ribs and that sort of stuff.
17 You remember that?

18 A Yep.

19 Q Now he never actually touched your breasts during
20 those tickles, did he?

21 A Oh, I didn't have breasts really but it was just
22 kind of my whole upper body. It wasn't like
23 specifically on my breast, but they were like, it
24 was more so than where my breasts would be. It was
25 more so just my ribs and my stomach and like my

SW - A. GARDNER - PROFFER

1 lower body.

2 Q Okay. Now Will also had a place out in Nesmith,
3 correct, the Nesmith property?

4 A Is that where the pond is?

5 Q The pond.

6 A Yes.

7 Q And y'all used to go out there a lot; did you
8 not?

9 A Yeah, we did.

10 Q Okay. Did y'all fish or just have picnics, what
11 did you do?

12 A We went fishing.

13 Q Okay. And would it be just you and Will or would
14 it be you, Will, and your mother?

15 A It was always all three of us.

16 Q All three of you. And was there any kind of
17 house or any kind of building out there?

18 A I think there was a — there was like a little
19 tiny house with a little dock, but I don't think
20 I've ever even been in it.

21 Q Okay. And did anything inappropriate ever occur
22 out on the Nesmith property?

23 A No. Besides just the normal, just touching all,
24 you know. Nothing like what happened at the house.
25 It was just more of the playful, you know, tickling,

SW - A. GARDNER - PROFFER

1 let me put you in the boat, sit on my lap. It was
2 just, just things like that.

3 Q And all of that was in the presence of your
4 mother?

5 A Correct.

6 Q Okay. And as I understood your testimony earlier
7 there was no digital penetration during any of these
8 encounters with Will?

9 A I would say that there was probably a little bit
10 of digital penetration just right in like barely
11 inside around it; but it wasn't -- I do not ever
12 remember an entire finger or anything like that. It
13 was more touching and like petting.

14 Q Well, earlier in your statement didn't you
15 indicate it was just around the lip area as opposed
16 to being any kind of penetration?

17 A I did not say that. It was all around and inside
18 as well.

19 Q Okay. And I understood your testimony earlier
20 about the smelling of the finger and that sort of
21 stuff. Did Will ever kiss you in any of your
22 private parts?

23 A He got close enough where he could have; but no,
24 I did not remember him ever doing that.

25 Q Okay.

SW - A. GARDNER - PROFFER

1 MR. LOFTON: Your Honor, bear with me just
2 one moment please.

3 THE COURT: Yes, sir.

4 BY MR. LOFTON:

5 Q Did Will ever, or do you contend that Will ever
6 took any inappropriate pictures of you?

7 A Not that I'm aware of.

8 MR. LOFTON: Just a second please.

9 BY MR. LOFTON:

10 Q One final question, did Will ever ask you if you
11 wanted to view his penis?

12 A No, but I have seen it plenty of times.

13 Q Okay. But he never asked you if you wanted to
14 see it?

15 A No.

16 Q Okay. And the plenty of times that you're
17 talking about that you've seen it, that would be
18 when you caught him masturbating?

19 A I've seen it then and just when he would parade
20 around the house naked all the time.

21 Q As you testified earlier?

22 A Yes.

23 MR. LOFTON: Judge, that's all I have.

24 THE COURT: Redirect?

25 MS. BARR: No, Your Honor.

SW - A. GOODMAN - PROFFER

1 Q Okay. All right, that's all the questions I
2 have. Thank you.

3 THE COURT: Anything else, Mr. Lofton?

4 MR. LOFTON: No, Your Honor, thank you.

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

7 MS. BARR: We call Lauren Goodman.

8 THE CLERK: Place your left hand on the
9 Bible, raise your right hand.

10 THE COURT: Was she still sequestered as
11 far as this witness is concerned? After she
12 finishes, if she testifies in front of the jury,
13 after she's finished she could stay?

14 MS. BARR: Yes, sir.

15 THE COURT: All right.

16 WHEREUPON,

17 **LAUREN C. GOODMAN,**
18 having been duly sworn by the Clerk, testified as
19 follows:

20 THE CLERK: Have a seat in the witness box
21 please.

22 **PROFFER EXAMINATION**

23 BY MS. BARR:

24 Q Lauren, good afternoon. State your full name for
25 us.

SW - L. GOODMAN - PROFFER

1 A Lauren Christine Goodman.

2 Q Okay. Of course, you were in court when your
3 sister testified about the birthday and so forth.
4 All of that in terms of biographical information was
5 correct?

6 A True.

7 Q Now do you have a recollection independent of
8 your sister as to when your mom started dating
9 Mr. Brown and when the two of them married?

10 A They started dating in the beginning of 2004
11 because my grandmother was in the hospital —

12 Q 2004?

13 A I mean, sorry, 2001. 'Cause she was in the — she
14 passed away February of 2001, and I remember he
15 showed up at the hospital while she was there to
16 visit my mother.

17 Q And when did they marry?

18 A They married, I believe, April 20th of 2002.

19 Q 2002. And at that time you would have been seven
20 years old?

21 A Right.

22 Q Okay. Now do you have any brothers?

23 A No.

24 Q Okay. Your mom just have you and your sister?

25 A Yes. She's the first, I'm the last.

SW - L. GOODMAN - PROFFER

1 Q I got you. Now was your mom married before? Was
2 she married to your dad?

3 A She was.

4 Q And they were divorced by the time she met and
5 started dating Mr. Brown?

6 A I believe they were divorced before we were born.

7 Q Okay. All right, and Lauren, you gave a forensic
8 interview to the Care House in Florence just as your
9 sister did?

10 A Yes, ma'am.

11 Q And in that forensic interview you outlined and
12 alleged a certain act of sexual abuse committed
13 against you by the defendant. Can you tell us about
14 one of the first ones that you remembered, where it
15 happened, when it happened?

16 A Once of the first incidents was when Will, my
17 step-dad, took me to the pond house in Nesmith. It
18 was just me and him. It was, I believe, sometime in
19 the fall because I remember leaves. And there was
20 a — it was like a block house out there, just a few
21 rooms in it. And he took me to one of the bedrooms
22 and he brung a cucumber and a condom and pulled out
23 the condom and showed me how to put a condom on a
24 cucumber. He opened it and then rolled it on the
25 cucumber teaching me how to do it saying that I

SW - L. GOODMAN - PROFFER

1 would be able to do it one day and Amanda wouldn't.

2 Q And Amanda wouldn't be able to do it?

3 A Uh-huh.

4 Q All right now, where were you living at this
5 time?

6 A It's hard to say. I honestly don't know.

7 Q Okay, all right. When your mom married Will
8 where were y'all living, right after she got
9 married?

10 A Right after she got married we all moved into the
11 farmhouse in Cades on McCutcheon Road.

12 Q And how long did you live there?

13 A We lived there for — let's see, they got married
14 in 2004.

15 Q Got married in?

16 A I mean, sorry, they got married in 2002. I
17 believe we moved in the townhouse on Clearview
18 Street early 2004.

19 Q Early 2004, okay. All right. So if you moved to
20 the townhouse here in Kingstree early 2004, based on
21 your birthday you would have been around nine?

22 A Yes, ma'am.

23 Q Okay, all right. What do you know, if anything,
24 about how the conversation came about where he was
25 trying to teach you how to put a condom on? How did

SW - L. GOODMAN - PROFFER

1 that whole thing come about?

2 A I have absolutely no idea. I never even inquired
3 about the subject. I guess he just thought it was a
4 duty as a dad to teach me how to do that.

5 Q Okay.

6 A I guess he thought he was teaching me how to —
7 he was teaching me, I guess, sex ED 'cause he also
8 like, he made me get on the bed and he would use his
9 hands to guide me into different positions. Both of
10 our clothes were on. And he never got into bed with
11 me, but he would guide me showing me different
12 positions.

13 Q All right. Let me — and we'll get to that in
14 just a moment. Let me go back to the incident at
15 the pond house. Okay, he tells you, he gives you
16 the cucumber?

17 A This was the same incident.

18 Q It was the same incident, okay. Well, which came
19 first, him guiding you or him putting the condom on
20 the cucumber, and did he do that or did he have you
21 to do that?

22 A I don't remember which one came first — it was
23 all the same trip at the pond house — but he put
24 the condom on the cucumber.

25 Q I'm sorry?

SW - L. GOODMAN - PROFFER

1 A He put the condom on the cucumber.

2 Q Okay. And you said that he would guide you.

3 Tell me what you mean by that.

4 A And then he would say, you know, get on your

5 hands and knees. And the guy would come from behind

6 you in this one position and that would be doggy

7 style where then another instance he'd say, lay

8 down, and the guy would be on top of you and this

9 would be missionary and he would, you know, kind of

10 like use his hands to like lower my back saying, you

11 know, like, get in this position and stuff like

12 that.

13 Q Okay, all right. How old were you when that

14 incident happened?

15 A That was when — I believe that was one of the

16 first instances so it had to be probably about

17 eight.

18 Q Probably about eight or so?

19 A Uh-huh.

20 Q Okay. If you were around the age of eight do you

21 believe then that this would have happened while you

22 were living at the farmhouse?

23 A I think so.

24 Q All right. You also described in the forensic

25 interview about a time in which he performed oral

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1 sex on you. Can you tell us about that?

2 A This was -- we were living in the house on
3 Clearview Street.

4 Q Okay.

5 A And he had taken me to the farmhouse, just me and
6 him, and he took me into what was his mom's old
7 bedroom. And there was, I believe, a box spring and
8 a mattress still on the floor. And he -- I don't
9 know if the bed was -- anyway, there was like a
10 mattress and he told me to sit on it. And he told
11 me to take my pants off and -- or I don't know if he
12 took them off; I can't remember. But my pants did
13 come off, and he was -- he told me to spread my legs
14 and he was looking down there and then --

15 Q Down where, in your vagina?

16 A Yes, ma'am.

17 Q Okay.

18 A And then he put his mouth on my vagina.

19 Q Okay. Where was your mom and your sister, if you
20 know?

21 A They should have been the house on Clearview
22 Street.

23 Q Okay. It was just the two of you when this
24 incident occurred?

25 A Yes, ma'am.

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1 Q What about the prior incident that you described
2 where you went to the pond house?

3 A Just me and him.

4 Q Just you?

5 THE COURT: So there's a pond house and a
6 farmhouse and a Clearview house?

7 MS. BARR: Yes, sir.

8 THE COURT: All right.

9 BY MS. BARR:

10 Q And where is the pond house located, if you know?

11 A In Nesmith.

12 Q In Nesmith, okay. How old were you when that
13 incident happened?

14 A The incident at the farmhouse?

15 Q Yes, where he put his mouth on your vagina?

16 A I'm not quite sure.

17 Q If you let's say — you've testified previously
18 that you all moved to Clearhouse — Clearview Street
19 in the early part of 2004?

20 A Uh-huh.

21 Q And as I understand your testimony this happened
22 after you all moved to Clearview Street, correct?

23 A Yes.

24 Q All right. So you would have had to have been at
25 least nine. Would you agree with me on that?

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1 A Yes, ma'am.

2 Q Okay.

3 A I believe it was around my second, going on my
4 second year to camp and so I was around nine years
5 old.

6 Q When did you start camp? How old were you when
7 you started camp?

8 A I was eight years old.

9 Q And so, let's see, let's do the math. So in 2003
10 you turned eight?

11 A Yes, ma'am.

12 Q And that's the first summer you went to summer
13 camp?

14 A Yes, ma'am.

15 Q And I said summer, I don't want to put words in
16 your mouth. Was that during the summer months you
17 went to camp?

18 A Yes, ma'am.

19 Q All right. So if the first time that you went to
20 summer camp was in when you were eight years old,
21 that would have been in 2003, correct?

22 A Yes, ma'am.

23 Q And this incident where he performed oral sex on
24 you happened in your second or more year, you would
25 have had to have been around nine?

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1 A Yes, ma'am.

2 Q Okay. Now was there ever a point in time where
3 the defendant Will Brown either showed you his penis
4 or offered to show you his penis?

5 A He did offer the time that oral sex occurred but
6 I said no.

7 Q Okay. All right, you've told us about instances
8 that happened at the pond house, incidents that
9 happened at the farmhouse. Were there, if any,
10 incidents that happened at the home near Kingstree?

11 A Yes, ma'am.

12 Q All right, tell us about those.

13 A On one occasion, it was probably the year we
14 moved in and -- or the year of or within the first
15 two years we lived at the house there was yard work
16 going on outside so I kind of remember it was around
17 that time. And I had, I think I'd gone to him with
18 a problem saying I was hurting down there, or
19 somehow because I'd gone to upstairs to where his
20 bathroom is upstairs and so he had me sit on the
21 counter on the sink counter ad --

22 Q Slow down for me. When you told him you were
23 hurting down there where do you mean when you say
24 you were hurting down there?

25 A My vagina.

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1 Q Okay, all right. And you said this was in the
2 first two years after you all moved to Clearview?

3 A Yes.

4 Q Okay. Please continue.

5 A He sat me up on the counter and looked around and
6 then stuck his fingers inside of my vagina.

7 Q Okay. And did he offer you an explanation as to
8 why he was putting his fingers inside your vagina,
9 or did you understand or believe that there was a
10 reason why he was putting his fingers inside your
11 vagina?

12 A If there was a reason I don't understand.

13 Q Fair enough. And this was after you told him
14 that you were hurting down there?

15 A I believe I told him I was hurting down there and
16 that's why he was examining me, but I just remember
17 there was pain and that his fingers were inside me.

18 Q Okay. Now I know this is difficult, Lauren,
19 you're doing fine. When you were in the bathroom
20 during that incident tell me where you were seated
21 in the bathroom.

22 A I was seated on the counter of the sink.

23 Q Okay. And where was he in relation to where you
24 were seated?

25 A Standing right in front of me.

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1 Q Okay. And did he try to look in your vaginal
2 area to see if there was a problem there?

3 A I don't remember him looking. I just remember him
4 putting his fingers inside.

5 Q Okay. All right, you were in court when your
6 sister testified about the incident on the four
7 wheeler with her. Were there any other similar
8 incidents with you where the defendant touched you
9 on your chest area inappropriately?

10 A Uh-huh. We moved on the four wheeler and he also
11 did the same thing to me. I was riding in the front
12 steering the four wheeler and he was behind me and
13 he would hold on to us. And at times he would reach
14 around and grab our breasts and say honk, honk.

15 Q He did? He actually did that to you? I mean —

16 A (Nods.)

17 Q Is that a yes?

18 A Yes, ma'am.

19 Q How many times would that happen then?

20 A I can really only remember one.

21 Q Okay. And how old were you when that happened,
22 where were you living?

23 A I would say I was nine.

24 Q About nine years old?

25 A Yes, ma'am.

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1 Q Could you have been older?

2 A It's hard to say because I think that we were
3 living on Clearview Street at the time. I think he
4 purchased the four wheeler not while we were living
5 at the farm house so I would say about nine or ten.

6 Q Okay. And let me just ask you, I hate to go back
7 to this particular point but I want to get
8 clarification from you. The incident that happened
9 at the farmhouse where he put his mouth on your
10 vagina, did he ever touch your vagina with his hands
11 on that incident?

12 A Yes, ma'am, because he was looking down there.
13 He was kind of, you know, asked me to spread my
14 legs. And he reached down with his fingers and
15 face, but he never actually put his fingers inside
16 of me. It was just his mouth and that type.

17 Q The incident that happened on the four wheeler
18 with you where was your mom at the time?

19 A At the house on Clearview.

20 Q Okay.

21 THE COURT: The house where?

22 THE WITNESS: I believe it was the house
23 on Clearview.

24 THE COURT: All right.

25 BY MS. BARR:

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1 Q Was there ever a point in time where the
2 defendant did something inappropriate in the
3 presence of your mother?

4 A No, ma'am, other than the fact that he would grab
5 us like around our like, hip area, like right at the
6 house, he would always squeeze our sides. I do
7 recall sometimes being in our house where, or
8 distinctly one time. I think he tried to do it a
9 couple other times, but he would always kiss us on
10 the mouth. One time we were in the kitchen in
11 Clearview and he kissed me, but it was more than
12 just like a peck and it was like a uncomfortable
13 moment and she didn't see it 'cause she was in the
14 kitchen.

15 Q Okay.

16 THE COURT: You said your mother was
17 present?

18 THE WITNESS: She was in the kitchen.

19 THE COURT: Where were you?

20 THE WITNESS: Well, we have two
21 refrigerators and we were behind one of them like to
22 the side of them to where her visual had been
23 blocked and he kissed me there.

24 THE COURT: Okay.

25 BY MS. BARR:

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1 Q Did he ever attempt to put his penis inside of
2 your vagina or your butt?

3 A No, ma'am.

4 Q Now Lauren, I think at one point you shared that
5 it took you a while to get out of the habit of
6 turning off the bathroom light when you went in a
7 bathroom. Why were you in the habit of turning off
8 the bathroom light when you went into the bathroom?

9 A I would use the smaller bathroom under the
10 stairs. It was just a toilet and a sink. I would
11 go in to use the bathroom. And of course, you go
12 in, you turn the light and close the door, you use
13 the bathroom and it—

14 Q It's okay.

15 A So you turn on the light and close the door and
16 use the bathroom. And there were several instances
17 in which my step-dad would walk in on me while I was
18 using the bathroom underneath the stairs. It was
19 always an accident, it was what he would say. And
20 it just always happened so I'd gotten —

21 Q It's okay.

22 A So I'd got into the habit of closing the door and
23 locking it and turning off the bathroom light and
24 still do that to this day sometimes.

25 Q You sometimes still do that to this day?

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1 A And it took me a while to realize why I did it.
2 And I think one of my friends was with us at my
3 house one time and she asked me, she said, why do
4 you close the light when you go into the bathroom.
5 And I said, you know, I didn't know and then, you
6 know, I eventually I figured out why.

7 Q Lauren, you were present in the courtroom when
8 your sister testified about finding a video camera
9 by either herself or you coming out of the shower.
10 Did you hear her when she testified about that
11 incident?

12 A Yes, ma'am.

13 Q Do you have any independent recollection of the
14 defendant knowingly videotaping you while you were
15 coming out of the shower?

16 A No, ma'am, not to my knowledge.

17 Q Now the house on Clearview, does it have a
18 jacuzzi?

19 A It does.

20 Q Do you know who lived in that house before y'all
21 moved in?

22 A My grandmother, or Will's mother, Betty Brown.

23 Q You call her your grandmother?

24 A I do.

25 Q And used to call the defendant your dad?

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1 A Uh-huh.

2 Q Is that a yes?

3 A Yes, ma'am.

4 Q What kind of shower curtain did you have when the
5 defendant was living there in the house?

6 A We always had clear shower curtains. Even when
7 they renovated the bathroom at the farmhouse it was
8 a door, it was a clear door, and then we always had
9 clear shower curtains.

10 Q Okay.

11 A And occasionally he would come in and just kind
12 of push it back and say, hey, you know.

13 Q While you were in the shower?

14 A Uh-huh.

15 Q Is that a yes?

16 A Yes, ma'am.

17 Q When did it stop, Lauren?

18 A All of it or?

19 Q All of it?

20 A Probably about the time I was...

21 Q Let me ask you this, how old were you when it was
22 reported to law enforcement and the defendant was
23 arrested?

24 A It was my junior year of high school so 16.

25 Q You were 16 years old. And I'm assuming it

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1 didn't happen up until the point where you reported
2 it?

3 A No, ma'am, it did not.

4 Q How many years had you gone by -- it was years or
5 months or weeks or days -- how much period of time
6 had gone by between the time you reported it and the
7 time the incident last happened?

8 A I don't remember when the last incident occurred,
9 but I do remember every day just remembering that
10 this thing to myself since the initial incident that
11 I'd been keeping the secret for six or seven years.

12 Q For six or seven years and you'd been keeping it
13 secret?

14 A (No response.)

15 MS. BARR: Beg the Court's indulgence.

16 THE COURT: Yes, ma'am.

17 BY MS. BARR:

18 Q Lauren, do you have a recollection of your school
19 offering sex education classes?

20 A Yes, ma'am. It was kind of like a road path into
21 the fifth grade to be taught by Ms. Ellen Bass the
22 birds and the bees.

23 Q Okay. Did you have that discussion with your
24 mom?

25 A Not to my recollection.

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1 Q Okay, what about with Will?

2 A The time he did take me to the pond house he told
3 me about sex, and he saying that a penis goes into
4 the woman's vagina and then told me how to put the
5 condom on and the different positions.

6 Q Okay. Now during the time where he took you to
7 the farmhouse —

8 A It should have been the fall of the fourth grade.

9 Q Say again?

10 A It should have been the fall of the fourth grade
11 so before we got to fifth grade.

12 Q Okay. Do you — were there any occasions where
13 he took any video recordings of you or any pictures
14 of you?

15 A Yes, ma'am.

16 Q Okay, tell us about that incident.

17 A He did take pictures of my vaginal area. I'm not
18 sure when, but he had me open my legs. I'm not sure
19 if this was at the pond house — I believe it was
20 within time at the pond house where he did have me
21 open up my legs and he took a picture right in my
22 area. And then later he showed me like, you know,
23 he was kind of like teaching me like, here's the
24 vagina, like these are the lips, like here's your
25 hymen, and just saying that, you know, and your

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1 hymen's broken whenever you have sex. Whenever you
2 have sex the first time it's not going to be there
3 anymore.

4 But then there was another time when I
5 was, he took me to the farm house 'cause he had a
6 tanning bed. I got in the tanning bed. I believe I
7 was naked except maybe I had underwear on, and I
8 believe once he took pictures of me there also while
9 he sat on the toilet 'cause I remember hearing the
10 camera go off.

11 Q You remember hearing the camera go off?

12 A Uh-huh.

13 Q So this happened at the farmhouse. Where, what
14 room would the tanning bed have been in?

15 A The tanning bed was in the, mine, my mom and
16 Megan's bathroom.

17 Q Your mom and Amanda, your bathroom?

18 A Yes, ma'am.

19 Q Okay. Now was this the same incident where he
20 took pictures of your vagina and showed you where
21 the hymen was and all that, or was that something, a
22 separate occasion that he did that?

23 A I want to say it was a separate occasion, but I
24 believe they both happened at the farmhouse because
25 I don't remember taking my clothes off over at the

1 pond house.

2 Q Okay. Those are all the questions I have.

3 Please answer any questions that the Court or

4 Mr. Lofton may have for you.

5 MR. LOFTON: Your Honor, if I may have
6 just a minute please.

7 THE COURT: Yes, sir.

8 MR. LOFTON: Your Honor, I don't have any
9 questions at this time.

10 THE COURT: All right. Thank you, ma'am.
11 You may step down. Additional witnesses?

12 MS. BARR: No additional witnesses, Your
13 Honor.

14 THE COURT: Will the defendant be offering
15 any witnesses on the issue?

16 MR. LOFTON: No, Your Honor.

17 THE COURT: We'll take about five minutes.
18 Now any — the motions that we have remaining will
19 there be any testimony for those, Ms. Barr?

20 MS. BARR: No, sir. I tried to add in the
21 testimony regarding those matters in with this
22 hearing too so we won't offer any additional
23 testimony.

24 THE COURT: Okay. I'm looking, just so
25 you'll know, I'm looking specifically at the defense

1 motion to exclude evidence their 1, 2, 3, 4
2 notations, audio/video recordings and photographic
3 images contained on two computers, videotaped
4 interviews of the alleged victim taken at the Care
5 House, audio/video recordings or photographic images
6 on VHS tapes, camera, cell phones, floppy disks,
7 flash drives, or items seized from the defendant by
8 the State. And they're all referenced in exhibit A.
9 Do you want to get into that as well?

10 MS. BARR: Yes, sir, Judge, I'd like to be
11 heard on those motions.

12 THE COURT: Okay, let's take five minutes
13 or so and I'll come back in.

14 (WHEREUPON, a recess was taken from the
15 proceedings.)

16 THE COURT: Anything else on the Lyle
17 matter from the State of testimony or other
18 evidence?

19 MS. BARR: No, sir.

20 THE COURT: Do you want to be heard on the
21 Defense motion to exclude those four points that I
22 mentioned earlier?

23 MS. BARR: I would like to be heard on
24 those.

25 THE COURT: Okay.

1 MS. BARR: May it please the Court, Your
2 Honor, I believe under the authority that's in the
3 State versus Scott, there's a recent South Carolina
4 Court of Appeals opinion petition for rehearing was
5 denied September 20th of 2013. The cite for the
6 case is 405 SC 4089 and 2013 case. Judge, we would
7 just submit that the evidence that was presented to
8 the Court in the form of testimony by Amanda
9 Goodman, Lauren Goodman, and Ashley Gardner clearly
10 establish that that testimony is relevant. In terms
11 of one of the second hurdles that the State has to
12 overcome, in other words demonstrating that the
13 testimony of the prior bad acts was strikingly
14 similar to the acts that are the subject of the
15 current indictment, Judge, we would just outline
16 several instances in which the crimes are in fact
17 similar.

18 Judge, the first and foremost, we have the
19 victims in the case who are the defendant's
20 stepdaughters. Their mothers were divorced and
21 single moms. Neither one of those victims had any
22 male siblings. In other words, the victims in this
23 case of the defendant in this case chose to marry
24 divorced, single mothers who only had female
25 children. The evidence is clear that at the time

1 the defendant either began dating the mother of
2 Ashley and the mother of Lauren and Amanda the girls
3 were seven to eight years old at the time.

4 THE COURT: At the time of the act?

5 MS. BARR: They were six years old when
6 they began dating. Both Ashley was seven years old,
7 or eight years old when they married. Lauren was
8 seven years old when they married. The sexual
9 assault of Ashley occurred when she was seven, eight
10 and nine years old. The sexual assault —

11 THE COURT: Now Ashley is the first
12 witness?

13 MS. BARR: Yes, sir. The sexual assault
14 of Lauren occurred when she was eight, nine, ten
15 years old according to the testimony. The defendant
16 began the sexual assaults by engaging in seemingly
17 harmless playful acts. I believe that both victims
18 talked about how he started off tickling them and
19 grabbing them and touching them on their chest and
20 on their legs. There was also testimony by Amanda
21 and Lauren that the defendant would grab them in the
22 chest area while they were riding the four wheeler
23 and then he would use the term toot toot. There was
24 testimony by both Ashley and Lauren that the
25 defendant spoke with them about sex education

1 matters, showed them about different sexual
2 positions and what happens when a man engages in sex
3 with a woman. There was similar testimony between
4 the victims as to the defendant constantly coming
5 into the shower into the bathroom while they were in
6 the shower in the tub. I believe that Ashley
7 testified that he would do it all the time and would
8 pretend like it was accidental.

9 THE COURT: Well, she said that was when
10 she was using the bathroom.

11 MS. BARR: Using the bathroom, correct?

12 THE COURT: And I think the first witness
13 said when she was taking a bath.

14 MS. BARR: Correct.

15 THE COURT: It's two different things
16 though, I mean, both in the bathroom.

17 MS. BARR: Both in the bathroom, correct.
18 Your Honor, there was also testimony from Ashley
19 that the defendant had clear shower curtains up so
20 that he could see who was in the shower. There was
21 similar testimony by Lauren that he always had clear
22 shower curtains up or clear shower door. Judge,
23 there was testimony about the defendant checking
24 Ashley to make sure she didn't have any infections
25 or anything after he put the bubble bath into her

1 bath and bathed her; that he would tell her to hold
2 her legs open while he would touch her in her
3 vaginal area. There was similar testimony from
4 Lauren as it related to the incident where he
5 performed oral sex on her that he had her spread her
6 legs out and he put his mouth, hands and mouth on
7 her vagina. It was clear that in all of the
8 instances that happened with Ashley and with Lauren
9 that it was times when no one else in parental
10 authority or no other witnesses were around when the
11 molestation occurred. Your Honor, based on the
12 testimony from Ashley the abuse happened over a two
13 year time frame. And Your Honor, as it relates to
14 the abuse that occurred with Lauren, that happened
15 over two to three year time frame.

16 And Judge, we would submit that based on
17 all of those things it's clear that the crimes that
18 were committed against Ashley bear a striking
19 resemblance to the crimes that were committed
20 against Lauren. In terms of the locations where it
21 occurred, Judge, there was testimony by Ashley that
22 she was assaulted not, sexually assaulted not only
23 at her house, her mother's house, where she lived
24 prior to her marriage or mother's marriage to the
25 defendant, but also primarily at the farm house

1 that's on McCutcheon Road. That's when the sexual
2 assaults escalated, not only in intensity but also
3 in frequency. And also there was testimony of
4 multiple instances of sexual assault committed by
5 the defendant against Lauren at the farmhouse
6 on McCutcheon Road. And so, Your Honor, we would
7 just simply ---

8 THE COURT: Well, there were two instances
9 that she testified to -- by that I mean Lauren -- at
10 the farmhouse, correct?

11 MS. BARR: Judge, there was the incident
12 where he performed oral sex on her and I believe it
13 was always the incident where he put his finger
14 inside her so I think you are correct, Your Honor.

15 THE COURT: Okay, I'll find that in my
16 notes.

17 MS. BARR: And Judge, I believe also there
18 was the incident where he touched her breasts while
19 on the four wheeler at the farmhouse, but it was
20 obviously outside the house itself.

21 THE COURT: All right.

22 MS. BARR: But Judge, we would submit that
23 based on the relationships that the defendant had to
24 these victims, the age that they were when it
25 happened, the fact that their mothers were both

1 divorced mothers, had no male children, and also
2 based on how the sexual assaults took place and this
3 process by which he would groom the victims, if you
4 will, we think that that is enough to establish that
5 the defendant had a common scheme or plan as it
6 related to sexually assaulting his stepdaughters.

7 Now the third analysis, of course, the
8 Court has to make is whether or not the probative
9 value of this evidence would outweigh or
10 substantially outweigh its, any unfair presence.

11 THE COURT: Actually it's the reverse of
12 that. The Defense would have to prove the probative
13 value —

14 MS. BARR: Is outweighed?

15 THE COURT: Well, that's one of the
16 confusing things about State versus Wallace. The
17 Court, and as Mr. Lofton did in his motion correctly
18 quotes the rule. The rule is — that's 403 —
19 although relevant evidence may be excluded if its
20 probative value is substantially outweighed by the
21 danger of unfair prejudice, confusion of the issue,
22 so on and so forth. The Supreme Court quotes that
23 rule and then the body of the opinion got it
24 backwards. It says the probative value must
25 substantially outweigh the danger of unfair

1 prejudice so that's not — it sounds the same but
2 that's not what the rule says, but anyway.

3 MS. BARR: I understand.

4 THE COURT: The Defense would have to
5 establish that any probative value is substantially
6 outweighed by the danger of unfair prejudice, so
7 forth, and so on. I first have to find that the
8 evidence of the events of described by Ashley and
9 Amanda have been established by clear and convincing
10 evidence. I first have to find that.

11 MS. BARR: Yes, sir.

12 THE COURT: And then I go into the rest of
13 it. Now are you seeking — I'm not sure though that
14 there's a pending motion to get in to exclude or to
15 have admitted whoever would be the one moving or
16 objecting, to get in other incidents complained of
17 by Lauren that are not the basis for any indicted
18 charge?

19 MS. BARR: Yes.

20 THE COURT: So we'll have to get into that
21 separately because I want to keep my mind focused on
22 one thing at a time. Do you have anything else to
23 add other than those, I think it's about 12 or so
24 areas of similarity?

25 MS. BARR: No other information to add

1 about the similarities between the two or three,
2 yes, sir.

3 THE COURT: Okay.. All right, I'll come
4 back to you in just a moment.

5 Mr. Lofton, do you have any response to
6 her arguments on those issues?

7 MR. LOFTON: If the Court pleases. Judge,
8 the first thing we would ask you to consider is that
9 there was a five year gap between the two alleged
10 sets of allegations.

11 THE COURT: You're talking between talking
12 about Ashley and ---

13 MR. LOFTON: Lauren.

14 THE COURT: Lauren, okay.

15 MR. LOFTON: If the — and Ashley, there's
16 an indictment involving Ashley, Judge, and the time
17 frames in that indictment are 1997 to 1999. And of
18 course, in the current indictment it's 2004 to
19 January of 2007.

20 THE COURT: Okay.

21 MR. LOFTON: Judge, the dissimilarities we
22 believe are striking and they're as follows. First
23 of all, Ashley testifies about a babysitting
24 situation which her mother instigated which involved
25 Will bathing her in bubble bath and touching her

1 with his hands. There's no allegations at all from
2 Lauren about any such bathing or anything of that
3 nature.

4 The things that are very striking from the
5 standpoint of Ashley's testimony I would submit to
6 Your Honor is, that when the question of sex
7 education comes up Ashley's mother defers to Will to
8 explain sex to her daughter. And Judge, this goes
9 back to when prior to the time that they were even
10 married you heard Ashley testify that Will picks
11 them up, they go over to Will's mother's house.
12 They, the three of them, Mary, Ashley, and Will end
13 up in the hot tub together, and Mary and Will are
14 naked. Of course, Ashley has on a bathing suit.
15 There's nothing about anything such as that going on
16 in the Lauren world with Marsha, Lauren, or Amanda.

17 We get into this area of the touching on
18 behalf of Ashley, Judge, and she starts talking
19 about the tickling and all those sorts of things and
20 where he's touching and where he's not touching.
21 And we learn that once again, the mother's playing a
22 very important part in all of this playful activity.
23 Will is laying on top of Ashley on the couch
24 tickling her while Mary, the mother, is actually
25 taking pictures of it. Ashley also talked about how

1 Will walked around the house naked all the time
2 because if you will recall, I asked her that
3 specifically and she said yes. And then I asked her
4 if Will ever asked you if you wanted to see his
5 penis and she said, well, he didn't have to ask me
6 because I saw it all the time when he walked around
7 naked. There's nothing to indicate based on Ashley,
8 I mean, based on Lauren or Amanda's testimony that
9 Will was ever nude around the house when they were
10 together. I think it's also very important, Judge,
11 that while Lauren talks about this first incident
12 happens out on the Nesmith property where the pond
13 is and she describes that area in the little house
14 and the rooms and so forth, Ashley, while she
15 admitted that they were out there a number of times
16 nothing, nothing ever happened out at the Nesmith
17 property.

18 Likewise, Judge, Lauren said that Will put
19 his mouth on her private part, vagina. Ashley said
20 he didn't, said he was down there close and looked
21 at it but he never licked it or kissed it. There's
22 an issue from the standpoint of Lauren claiming
23 digital penetration and Ashley not claiming digital
24 penetration. Her statement that she gave originally
25 talked about he put his finger around the lips.

1 Today she carried it just a little bit further and
2 said maybe just a little bit could have been inside.
3 Lauren talked about taking pictures, Will taking
4 pictures of her. Ashley said she was never aware
5 that or believed that any pictures were taken of
6 her.

7 THE COURT: Said she wasn't aware of any.

8 MR. LOFTON: That's correct. And I
9 believe her testimony was even —

10 THE COURT: Actually Lauren wasn't aware
11 of it either; that was Amanda. Wait a minute.

12 MR. LOFTON: No, it was Lauren, Judge.
13 Lauren said he took pictures of her.

14 THE COURT: Of her — in what state? Let
15 me see. Okay, I see, I've got that in my notes.

16 MR. LOFTON: Okay. Judge, I think because
17 of the dissimilarities, because of the difference in
18 time, and you know, the Solicitor says Will was
19 looking for unmarried women that only had daughters,
20 there were no males in the family, and those are the
21 people that he selected to go after. I think that's
22 pretty much a stretch.

23 THE COURT: Well, most women who are gonna
24 be dating somebody are gonna be
25 single/separated/divorced.

1 MR. LOFTON: Correct.

2 THE COURT: Ms. Barr, one of the points
3 she made there were no male siblings around.

4 MR. LOFTON: Correct.

5 THE COURT: Obviously I think it would be
6 stretching it by saying all the women he dated
7 didn't have boyfriends or husbands. That's
8 typically true.

9 MR. LOFTON: Right.

10 THE COURT: Okay. Her point, I took it to
11 mean, that there were no male children.

12 MR. LOFTON: Well, maybe I misunderstood,
13 I apologize.

14 THE COURT: Well, I think she said it both
15 ways.

16 MS. BARR: I did, Judge.

17 MR. LOFTON: So Judge, we believe, first
18 of all, that because of the gap in time and because
19 of the dissimilarities that the prejudicial effect
20 would certainly outweigh any probative value that
21 the addition of this testimony would have.

22 THE COURT: Now what — I'll come back to
23 you, Mr. Lofton. One, Ms. Barr, I'll let you
24 respond to what he said first because I really don't
25 know who the moving party is because you both have

1 moved so I'm gonna hear y'all fully to make sure the
2 record is complete. Mr. Lofton is pointing out the
3 dissimilarities using specific dissimilarities. You
4 have pointed out similarities using some relatively
5 general similarities. I respectfully disagree with
6 Mr. Lofton that the five year gap is truly a factor;
7 but you know, it remains to be seen what I
8 ultimately rule on that. But what I'm concerned
9 about is the account given by Ashley. She said this
10 happened in conjunction with her bathing 20 some odd
11 times. I think that was the number she put on it.
12 At one point she said just about every time. It was
13 always in conjunction with bathing. Lauren's
14 testimony was in no way related to bathing which is
15 equally disturbing, if you will, but it was not
16 connected with bathing. So that's a specific
17 dissimilarity.

18 The — he made a point sex education talks
19 where Ashley's mother actually said, I don't want to
20 talk about it, talk to the defendant about it and
21 then the tickling, the first incident with Lauren
22 being at the pond house, with Ashley nothing
23 happened at the pond house. Lauren, there was oral
24 touching; Ashley, no. Lauren, digital penetration,
25 she said, I think she said.

1 MS. BARR: She did.

2 THE COURT: And Ashley no actual
3 penetration, then she said maybe just a little. So
4 tell me what you think about what Mr. Lofton has
5 said about the dissimilarities.

6 MS. BARR: Judge, as I recall the first
7 dissimilarity that was discussed by Defense was the
8 fact that the defendant was babysitting Ashley and
9 that was not a role that he played as relates to
10 Lauren or to Amanda; but certainly he came into
11 contact with this young lady as a result of him
12 dating her mother. And so he was in a parental
13 role, if you will, because he was involved with care
14 taking for her while her mother was at school. And
15 so certainly the fact that he came into contact with
16 her in a parental type of caregiver type role would
17 make that more a similarity than a dissimilarity in
18 my view. Judge, the fact that he was given
19 permission, if that's in fact the case, certainly
20 imply if he was given permission by Ashley's mother
21 to give sex education talks to Ashley that doesn't
22 negate the fact that he gave those talks in explicit
23 detail to a seven year old.

24 THE COURT: But that's not illegal.

25 MS. BARR: It's not.

1 THE COURT: Okay, but see what — I've got
2 to focus my analysis not only on overall
3 circumstances but on — the way I take the cases is
4 that you're entitled to get into evidence things you
5 prove by clear and convincing evidence that were
6 substantial, and excuse me, similar, substantially
7 similar illegal acts; isn't that right? I realize
8 that the surrounding components of time and age and
9 where, all those aren't actually illegal. It's not
10 illegal to be at a farmhouse. It's not illegal to
11 be at a pond house. It's not illegal to be around a
12 seven year old. But don't they all — don't have to
13 look into conjunction of what was illegal? Are you
14 just saying having sex talks with a seven year old,
15 even though not illegal, is another check mark
16 similarity?

17 MS. BARR: That would be my argument, Your
18 Honor.

19 THE COURT: Okay, I understand.

20 MS. BARR: Yes, sir. And certainly to the
21 extent that he got into the level of detail that he
22 got into, I don't know necessarily that the fact
23 that the mother gave her consent for him to talk to
24 her child is enough to overcome that. You know, the
25 jury could certainly find that it's a prior bad act

1 in terms of the level of detail explicitness of the
2 talks. And I agree with Your Honor that certainly
3 every act that creates the basis of a similarity
4 doesn't have to be an illegal act.

5 THE COURT: Right.

6 MS. BARR: Your Honor, so in terms of the
7 sex education and it being, the defendant being
8 given permission by Ashley's mother, again, I don't
9 know that I would, I believe that necessarily is a
10 dissimilarity because I don't think that that's a
11 material dissimilarity if the Court calls it a
12 dissimilarity. Your Honor, the next dissimilarity
13 that I believe was noted was that Ashley said the
14 defendant walked around all time nude with no
15 clothes on and that neither Lauren or Amanda offered
16 any such testimony. I'll agree that's a
17 dissimilarity. The fact that there was no testimony
18 by Ashley, I believe, with her being sexually
19 assaulted at the pond house I believe is a
20 dissimilarity; I'll concede that point.

21 But Judge, when you look at the true
22 number of dissimilarities that defense counsel
23 outlined to the Court they pale in comparison to the
24 number of similarities. And in the Scott case I
25 believe that there were nine similarities that were

1 noted by the court. In here, I counted 11. And so
2 I guess this is the part that the Court has to have
3 this balancing test; but certainly, I would submit
4 that in the Scott opinion the court has determined
5 that when the court weighs and conducts its
6 balancing test you have to find that the unfair
7 prejudice means that there would be an undue
8 tendency on the part of the jury to make a decision
9 just based solely on that evidence. And Judge, I
10 certainly don't think that's the case here. I know
11 that in every case that you prosecute, you know,
12 that I prosecute in which there's, whether it's
13 pictures or prior bad acts, it's always going to be
14 prejudicial. And I think that the question that the
15 Court has to answer is whether or not it, the
16 probative value substantially outweighs the unfair
17 prejudice. And Judge, I would submit that that
18 analysis was conducted in the Scott opinion and I
19 don't know if Your Honor has a copy of it.

20 THE CLERK: I do. I have two copies.

21 MS. BARR: And the court noted in that
22 opinion that the similarities were not only numerous
23 but extremely high level of continuity existed
24 between the 404(b) witnesses and the victims in the
25 case. And they counted nine similarities and they

1 determined that such continuity is highly probative
2 and they determined that the probative effect did
3 outweigh any unfair prejudice. And so Judge, we
4 would just simply submit that when you look at the
5 dissimilarities between Ashley's case, Amanda's
6 case, and Lauren's case, that again they pail in
7 comparison in terms of similarity that are between
8 those three victims. And we would ask that Your
9 Honor grant our motion to allow the Lyle evidence in
10 and deny their motion to exclude it.

11 And Judge, I don't believe that Ashley
12 testified any differently today than she gave
13 statements in her interview with the investigator.
14 She talked about the same as she did today, that she
15 does not recall the defendant's finger going
16 completely inside of her vagina but that she
17 remembers it being in the opening of her vagina
18 which is clearly that's, in fact, the case that's
19 another similarity. It's evidence of genital
20 penetration she experienced at the hands of the
21 defendant as well as, which is strikingly similar to
22 the type of digital penetration that Lauren
23 experienced at the hand of the defendant. So Your
24 Honor, we would submit that based upon where the
25 instances of sexual assault occurred, the

1 relationship between the defendants and the victims,
2 the ages in which the sexual abuses occurred in all
3 of the victims and the levels of similarity in terms
4 of how they were carried out; we believe it's
5 appropriate that the jury hear that information and
6 give it whatever real weight they feel it's entitled
7 to receive.

8 THE COURT: Okay, Mr. Lofton.

9 MR. LOFTON: Judge, the only thing I would
10 add to you is that the specific bad acts are not in
11 and of themselves similar, and I think that's where
12 all of this has to go off the track because the
13 specific bad acts — forget about the surroundings
14 and the similarities — but the specific bad acts
15 themselves are not similar.

16 THE COURT: Well, and that's why I
17 mentioned earlier, the State in any given case, in
18 just about every one of those cases talks about
19 general similarities if there are any, such as ages,
20 locations, single mother, that type of thing, and
21 specific similarities if any exist. And the
22 defense, as you're doing now, will point out the
23 specifics of the bad acts aren't similar enough and
24 you would tend to point away from the overall
25 general similarities and that's what all these cases

1 get into and that's the — you know, it's a jigsaw
2 puzzle. I understand exactly what both sides are
3 saying. Let me ask you, you can stay standing up.

4 MS. BARR, how about Amanda's testimony,
5 what has she added to this 404 or Lyle equation
6 except for the four wheeler instance? I assume that
7 would only be relevant to the lewd act. Is that
8 what the lewd act is based on?

9 MS. BARR: Yes, sir.

10 THE COURT: Okay. So is there anything
11 else about Amanda's testimony that you think is
12 probative in any way on the issues of CSC? I don't
13 recall, as far as Lyle evidence is concerned.

14 MS. BARR: As far as Lyle evidence, no,
15 Your Honor.

16 THE COURT: Okay. So the similarities on
17 Amanda and Lauren concerning the lewd act would be
18 the four wheeler only?

19 MS. BARR: Yes, sir.

20 THE COURT: Okay. Mr. Lofton, and I don't
21 want to interrupt you and throw you off track on the
22 other argument you might want to make, you could
23 address that if you like.

24 MR. LOFTON: All I say in that regard,
25 Judge, is if you will remember Amanda's testimony

1 she said it was a joke, and that is an uncharged
2 act. He hadn't been indicted for that.

3 THE COURT: Uncharged as to Amanda?

4 MR. LOFTON: Uncharged as to Amanda.

5 THE COURT: But it doesn't have to be
6 charged to be Lyle evidence.

7 MR. LOFTON: It doesn't have to be
8 charged. I just, since Lauren and, I mean, Ashley
9 is charged I want the Court to note this is
10 uncharged effect.

11 THE COURT: I see, okay.

12 MR. LOFTON: We don't believe, we don't
13 believe that does anything, Judge, other than get
14 into the character of the defendant. It just, it
15 really doesn't have any bearing. And quite frankly,
16 today was the first time that I had heard and it was
17 not in her original statement that Amanda was taken
18 to the position that he had done the same thing to
19 her on the four wheeler. Now I may be wrong but I
20 don't — Lauren, I'm sorry. I don't believe that
21 was in the statement, but I could have missed it.
22 But I read it several times and I don't believe that
23 was in her statement that she gave to the Care
24 House.

25 THE COURT: Talking about Lauren?

1 MR. LOFTON: Lauren.

2 THE COURT: Is that in Lauren's?

3 MS. BARR: It's in the indictment though.

4 THE COURT: Is it in the statement? I
5 would assume he could either cross-examine her with
6 it now or at some other time, but the lewd act is
7 solely the four wheeler incident. That's what
8 you're committing to right now, Ms. Barr?

9 MS. BARR: Yes, sir.

10 THE COURT: All right, anything else on
11 the Amanda testimony?

12 MR. LOFTON: I think that covers it,
13 Judge.

14 THE COURT: Is there anything else you'd
15 like to point out on the other matters pertaining to
16 Lyle and Ashley and Lauren?

17 MR. LOFTON: Bear with me just one minute,
18 let me see.

19 THE COURT: All right.

20 MR. LOFTON: The other thing, Judge, I
21 add, I just don't believe they have shown by clear
22 and convincing evidence anything about Amanda in
23 this four wheeler incident that would make it
24 probative, relevant, and not just highly
25 prejudicial.

1 THE COURT: Y'all don't leave until I can
2 make sure I can watch it.

3 MS. BARR: I know.

4 THE COURT: I don't know, all I know is
5 how to put that round thing in the side and slide it
6 in.

7 (Court's Exhibit Numbers 1 through 4 were
8 marked and made a part of the record.)

9 THE COURT: If everybody can be here at
10 9:30 in the morning just to make sure that we
11 resolve any unresolved issues, and I'll email my
12 rulings. Hopefully I'll stay as long as the
13 deputies let me.

14 (WHEREUPON, the proceedings were concluded at 5:00
15 p.m. and reconvened on May 20, 2014 and State
16 Exhibits Nos. 1, 2, 3 were marked for identification
17 only.)

18 THE COURT: Okay. We're back on the
19 record now in the State versus Willie Marion Brown,
20 got to go through issues concerning yesterday's
21 presentation. Are there any — there aren't any
22 jurors here, are there? Are they coming a up
23 different way?

24 THE BAILIFF: They are coming up this way.

25 THE COURT: Are there any additional

1 arguments from the State? I know you sent me an
2 email. Do you have a photo copy of that?

3 MS. BARR: Yes, sir, Your Honor.

4 THE COURT: Anything additional, Ms. Barr?

5 MS. BARR: No, Your Honor.

6 THE COURT: Mr. Lofton?

7 MR. LOFTON: Your Honor, the only thing
8 additional, and I'm sure Your Honor has it, but I
9 don't think you referenced the Hubner case
10 yesterday.

11 THE COURT: Which case?

12 MR. LOFTON: Hubner, H-U-B-N-E-R.

13 THE COURT: I've seen reference to it in
14 some of the opinions, but I do not have a copy of
15 it.

16 MR. LOFTON: Let me get you a copy.

17 THE COURT: All right.

18 MR. LOFTON: May I approach, Your Honor.

19 THE COURT: Yes, sir. Any comments you
20 want to make on this case?

21 MR. LOFTON: Judge, the only thing that I
22 would refer Your Honor over to page 7 of the
23 opinion.

24 THE COURT: Bottom number?

25 MR. LOFTON: Bottom number, yes, sir.

1 THE COURT: All right.

2 MR. LOFTON: And over on the second
3 paragraph where it begins, we are especially
4 mindful.

5 THE COURT: Yes, sir.

6 MR. LOFTON: And that's just the area
7 where that we think that this case falls into that
8 cautionary holding as set forth in Hubner.

9 THE COURT: Well, as I indicated
10 yesterday, the rule is very simple. It's sad. It's
11 just difficult, extremely difficult to apply. And I
12 think during the next few minutes what I want to go
13 through is my thought process on the similarities
14 and the dissimilarities. And as I pointed out
15 yesterday, the similarities pointed out by the State
16 are general similarities. You have a single mother
17 with children, female children ages 6 to 7 when they
18 started to date, 7 or 8 when they married. He, at
19 least in the first instance concerning Ashley — and
20 I'll use their first names because they're frankly
21 easier for me to remember. I don't mean any
22 disrespect by that. Her mother pretty much put on
23 the defendant the role of counseling an eight year
24 old or a seven year old on sex education which is
25 somewhat unusual for various reasons. There were

1 also similarities that the abuse occurred either at
2 a pond house or the farm house when the defendant
3 and the girl were alone; but that's typical in any
4 case of abuse as they're not going to do it in front
5 of a bunch of people. I'll go over those
6 similarities in just a moment, but similarities are
7 there. Dissimilarities are there. I don't think
8 that courts intend for us to add up similarities and
9 add up dissimilarities and if there are 12
10 similarities and 11 dissimilarities you cleared that
11 up, the State clears that hurdle.

12 Frankly, what I am more concerned about is
13 the third prong that we didn't get to yesterday.
14 The first thing I have to determine is whether or
15 not I believe by clear and convincing evidence what
16 Ashley said is true, and I find by clear and
17 convincing evidence that it is so the State has
18 cleared that hurdle about the 20 some odd instances
19 of abuse when she was taking a bath. I found her
20 testimony to be compelling. In other words, clear
21 and convincing evidence. The definition, the loose
22 definition is, that the fact is not only probable
23 but it's highly probable. So I find that the State
24 has established as far as Ashley's testimony is
25 concerned that she by clear and convincing evidence

1 the defendant committed those acts against her.

2 The next thing I have to go through is to
3 determine whether or not between Ashley and Lauren
4 the instance of abuse bear a close degree of
5 similarity. After I make that determination I have
6 to determine whether or not under 403, whether any
7 probative value is substantially outweighed by its
8 danger of unfair prejudice. That's pretty much what
9 State versus Scott talks about. It's really the
10 only case that really talks about it in detail and
11 gives us guidance or trial courts guidance on how to
12 examine. In all of these instances, all of these
13 cases that are reported are pretty much all over the
14 map between similarities and dissimilarities and
15 probative value and prejudicial, undue prejudice.

16 One of the things you brought up
17 yesterday, Mr. Lofton, was the fact that the
18 instances allegedly involving Ashley occurred five
19 years before the instances allegedly involving
20 Lauren. As Scott points out, temporal remoteness is
21 not in and of itself dispositive. As a matter of
22 fact, and I agree with this observation, evidence of
23 bad acts occurring many years before the charge
24 crime, charged crime, is often admissible to
25 demonstrate a common scheme or plan. In other

1 words, to me — and this is just the way I think
2 about it. To me it indicate — it's stronger
3 evidence because he according to the State abused
4 Ashley when she was in the seven, eight year old
5 time frame and then when that marriage broke up when
6 Ashley's mother and the defendant, somebody else
7 came along with a — with two little girls the same
8 age and according to the State the activity started
9 again. So I respectfully reject your argument that
10 temporal remoteness is just a slam dunk route to
11 inadmissibility under Fonseca because I think that
12 Scott adequately distinguishes the six so that's
13 gets up to Hubner which I have not read in detail; I
14 just read the references so. Is there anything else
15 you like, anything you like to say about Hubner or
16 is that a remoteness case?

17 MR. LOFTON: Well, Judge, when you get
18 down to the final analysis —

19 THE COURT: Yes, sir.

20 MR. LOFTON: And then the last sentence —
21 it's not the last sentence, about the middle of the
22 paragraph, the court, the court quotes from State v.
23 Riddles. And it says in the context of sexual
24 assault cases the rationale for this rule is talking
25 about the extraneous criminal transactions

1 overwhelmingly result in admitting unconnected
2 sexual relationship is to establish an abused
3 character to engage alleged sexual conduct as a
4 basis for inferring that he committed the charged
5 crime, and I think that's exactly what we've got in
6 this case, Judge. When you look at all of the
7 factors that we talked about and I understand Your
8 Honor's ruling on the ---

9 THE COURT: I hadn't ruled yet.

10 MR. LOFTON: I know. I understand your
11 interpretation of the remoteness issue. I do think
12 it's an issue and I respectfully understand Your
13 Honor's.

14 THE COURT: It is on prejudice, not on
15 close degree of similarity. It's an issue more, I
16 think, on whether or not probative value is
17 substantially outweighed by the danger of unfair
18 prejudice. The appellate courts have given us that
19 checklist.

20 MR. LOFTON: Right.

21 THE COURT: And I think temporal
22 remoteness is, while not dispositive, is a factor on
23 similarity to me more so on the analysis under 403.

24 MR. LOFTON: Right.

25 THE COURT: And what Ms. Barr is gonna

1 have to explain to me in just a moment, even though
2 we do have these general similarities, ages,
3 locations, authority relationships, some basic, or
4 excuse me, some arguably similar touching, she's
5 gonna have to explain to me about the prejudice
6 because that's what I'm concerned about, the undue
7 prejudice. And that's why it's — I've struggled
8 with this so much. As I mentioned, I haven't gotten
9 to Amanda's testimony yet, but I do — I think
10 Ashley's testimony is quite compelling. It's clear
11 and to me it's convincing. Of course I'm not gonna
12 tell the jury that if I let it in. But when you
13 have 21 instances, or 20 plus instances of sexual
14 abuse when she's getting out of the shower or close
15 in time getting out of the bath tub, and then five
16 years later you have another girl pretty much the
17 same age with instances of sexual abuse that are
18 frankly different, very different, only occurred
19 twice, once with the cucumber and the condom and the
20 next with the pain that the little girl said she was
21 experiencing and Mr. Brown was in the position of
22 trying to explain to her or find out what was wrong.
23 Ms. Barr is gonna have to explain to me how the
24 dissimilarities, the specific dissimilarities, will
25 not result in the probative value being

1 substantially outweighed by the danger of unfair
2 prejudice. That's what I'm focusing on. I think
3 I'm comfortable in finding that there are the second
4 prong there is a close degree of similarity, and I'm
5 gonna put that all on the record in just a minute,
6 but what I'm terribly concerned about is the 403.

7 MR. LOFTON: And I think that's the reason
8 I handed up Hubner, Judge. I really think that's
9 Hubner interpreting Lyle and the dangers of undue
10 prejudice so.

11 THE COURT: Okay. Ms. Barr, your memo
12 that you sent did aptly set forth the similarities
13 and I'll review those. Both are stepdaughters of
14 the defendant and were living with him at the time
15 of the abuse. That's not entirely true as to Ashley
16 because I think some of it occurred before the
17 parents were actually, or the mother and father were
18 actually -- excuse me, the defendant and the mother
19 were actually married. Both of the victims' mothers
20 were divorced, mothers who had no male children;
21 that's true. But what we want to stay away from is
22 the fact, for example, both lived in Williamsburg
23 County, both lived in state of South Carolina, not
24 being facetious but we can't be too general to
25 become similar. The assaults on Ashley occurred

1 primarily between the ages of seven to nine; that is
2 true. Comparatively, Lauren was assaulted between
3 the ages of eight and eleven. I frankly thought it
4 was maybe a little bit younger than eight; but I, my
5 review of the evidence was eight and nine primarily.
6 The defendant began dating Ashley's mother in
7 April 1997 when Ashley was six, and they married a
8 year later when Ashley was eight. The defendant
9 began dating Lauren, Lauren's mother, when Lauren
10 was six, and they married when she was seven. The
11 period of courtship for one mother was 13 months and
12 the other 14 months. I think that might be similar
13 but it's not probative of anything. The defendant
14 took the role of giving sexual education talks to
15 both girls closely in time when the assaults began.
16 The discussions included very explicit and graphic
17 language from the defendant to these girls about
18 male and female genitalia and various sexual acts
19 and positions. That latter part I don't think was
20 true as to Ashley. Was there any testimony as to
21 Ashley about that as to various positions?

22 MS. BARR: Judge, as I recall her
23 testimony she talked about how he instructed her
24 that the male part would go into the female part and
25 the male part would be hard and that sort of thing.

1 THE COURT: But no specific positions?

2 MS. BARR: That'd be fair to say, yeah.

3 THE COURT: Okay. Both girls were abused
4 at the farm house on McCutcheon Road in the town
5 home on Clearview Street. I don't think that Lauren
6 ever lived on Clearview Street.

7 MS. BARR: Judge, Lauren lives on
8 Clearview Street now.

9 THE COURT: Oh, excuse me, Ashley didn't
10 live on Clearview Street.

11 MS. BARR: Judge, the only reason why that
12 was placed into the memorandum is because Ashley
13 mentioned that the defendant and her mother had gone
14 there and —

15 THE COURT: That's the hot tub.

16 MS. BARR: In the hot tub.

17 THE COURT: That was not abuse. That's
18 just, just foolish. It wasn't, it wasn't sexual —
19 it is a fact.

20 MS. BARR: Yes, sir.

21 THE COURT: But I don't know whether it
22 adds — I don't know whether it's Lyle evidence.

23 MS. BARR: And Judge, we would submit that
24 it wasn't a crime; but in my purview, it certainly
25 was a bad act or wrong that should not have taken

1 place.

2 THE COURT: By both of them.

3 MS. BARR: Yes, sir.

4 THE COURT: Both parents. Both indicated
5 inappropriate touching by innocuous interaction.
6 Ashley indicated the touching started when the
7 defendant tickled her and the touching progressed to
8 more private areas. I thought that she said that it
9 occurred, the first instances were bathing related.
10 But whatever the case is, I thought the testimony
11 came out that Ashley said the tickling would occur
12 in the presence of her mother. All right, Lauren
13 indicated the defendant grabbed her breasts while
14 she was riding a four wheeler and uttered the word
15 toot toot; I think she said honk honk. And Amanda
16 testified that the defendant grabbed her breasts
17 while she was riding a four wheeler and used similar
18 words.

19 All right, both girls, that's Ashley and
20 Lauren, were digitally penetrated by the defendant
21 at similar ages and under circumstances where he was
22 seemingly helping them. I didn't recall — I
23 recalled scant evidence of digital penetration
24 test— I recall scant digital penetration testimony
25 from Ashley. She said — I think she may have

1 wavered based upon who was asking the questions and
2 how the question was asked and maybe there was a
3 little penetration. As it relates to Ashley, the
4 defendant placed his finger in her vagina while
5 checking her to see if she had an infection. I'll
6 have to check my notes to see if I have that down.
7 Was that the testimony, Ms. Barr?

8 MS. BARR: Judge, and candidly there were,
9 there were parts of her testimony and I'm not sure
10 if I was relying completely on her testimony or her
11 statements to the interviewer; but there was
12 portions where Ashley said that he would put Dawn
13 dish washing liquid into her bath. He would check
14 her for infections based on putting the dish washing
15 liquid in her bath.

16 THE COURT: Okay. She said a little
17 penetration all around and inside a little. Okay,
18 that was Ashley. You state that the defendant
19 isolated both girls from other people and their view
20 to perpetrate his crimes. I would dare say that
21 would be the common course of the conduct for anyone
22 who is abusing a child, but it is similar but it's a
23 terribly general similarity. Again, as I think you
24 already mentioned, or at least I did, he was in a
25 position of parental or familial authority over both

1 girls and assumed the role of a caregiver and that
2 would be relative but he was given some parental
3 responsibilities, if you will. Both girls testified
4 the defendant had a clear shower curtain in the
5 bathroom so that he could see who was in the tub or
6 shower. I don't recall any testimony from Lauren,
7 Ms. Barr, that he ever came in the bathroom when she
8 was in the shower. She said he came in the bathroom
9 when she was using the bathroom. That was never
10 clarified as to what she meant, but I took that to
11 mean that when she was using the toilet. So I
12 didn't hear anything, testimony from Lauren, except
13 that they did have a clear shower curtain and then
14 when a door was installed it was clear. The
15 defendant had a habit or repeatedly and accidentally
16 coming into the bathroom when they would be in there
17 and otherwise expecting privacy when showering or
18 using the restroom. Both girls were abused over a
19 two to three year time period. I believe the
20 evidence does pretty much establish that.

21 All right, Ms. Barr, tell me about the
22 specific similarities between the specific acts as
23 far as Ashley and Lauren, specific.

24 MS. BARR: And Judge, you've outlined the
25 majority of them. I would ask the Court to note,

1 however, that you have to look at the cases
2 involving Ashley and involving Lauren in total. For
3 example, Your Honor, Ashley's mother was only
4 married to the defendant for about a
5 year-and-a-half. I believe the testimony from her
6 was they married in May of 1998 and they separated
7 in August of 1999. And so to the extent that
8 defense counsel cites specific instances of
9 dissimilarity between the two victims, particularly
10 as it relates to the fact that the defendant is
11 never alleged to have committed oral sex on Ashley,
12 Judge, if you look at that in its totality, it is
13 because he was only had access to Ashley for a
14 limited period of time.

15 THE COURT: But she said he abused her 20
16 plus times and one time she said happened every time
17 he was around when she took a bath.

18 MS. BARR: And Judge, I think that quite
19 frankly you, the Court may hear testimony from
20 expert witness in the field of sexual, children
21 which have been sexually abused, sexually assaulted,
22 talks about this notion of grooming. It requires
23 that the defendant build a certain level of trust
24 with a child before the acts can be progressed to
25 more volitive acts, if you will. And so, giving the

1 fact that the defendant had limited access to Ashley
2 by virtue of the disintegration of his marriage to
3 Ashley's mother, you're not gonna see the same level
4 of abuse that you would see in the acts that he
5 committed against Lauren because he had access to
6 Lauren for a longer period of time. Judge, you may
7 recall that the testimony was that he began dating
8 Lauren's mother in 2001. Well, Judge, as we stand
9 here today they're still married and it was not
10 until this, these instances were reported to law
11 enforcement of November, in November of 2011.
12 Judge, that's a ten year period of time. Although
13 obviously the period of abuse was not the entire ten
14 year period of time, but it was longer than what you
15 had in terms of the marriage, of defendant's
16 marriage to Ashley's mother and so it allowed the
17 defendant to more time to gain the trust and
18 confidences of Lauren as opposed to Ashley. So he
19 wouldn't, I would submit to you, he probably
20 wouldn't have felt as comfortable in committing an
21 act of oral sex against Ashley as he did against
22 Lauren. And so that's why I ask the Court to look
23 at the cases in their totality.

24 I think Scott stands for the proposition
25 that once the court finds that the evidence or the

1 testimony of the purported witness or victim in the
2 case as it relates to this case being Ashley, that
3 once the court finds that her testimony is
4 compelling and clear and convincing, then the court
5 in effect is saying that it's that, that testimony
6 is highly probative.

7 THE COURT: No, I'm just saying I believe
8 it.

9 MS. BARR: Yes, sir.

10 THE COURT: That's just one part. It has
11 nothing to do with probative value. You — and I
12 use extreme. You could have somebody come in here
13 and testify in camera that they were robbed at a
14 store and I would find that's clear and convincing
15 but that doesn't mean it's probative of anything in
16 a CSC case. So I do disagree with you there.

17 MS. BARR: Well —

18 THE COURT: It's probative of something
19 but it has to be probative of something involving
20 this case where Lauren is the alleged victim.

21 MS. BARR: And Judge, when you look at the
22 fact scenario that's in the Scott case — and Your
23 Honor, you correctly noted one of the similarities
24 cited by the State in the brief was the fact that
25 the defendant isolated the victims. Well, Judge, in

1 the Scott opinion one of the elements of similarity
2 that the court found in there was that the appellant
3 in that particular case was the only supervising
4 adult. And yes, you would imagine that if a
5 defendant is going to sexually assault a child he
6 wouldn't do it with an audience, but that was one of
7 the similarities that was noted in the Scott
8 opinion.

9 But Judge, we would submit that when you
10 look at the facts of the case in their totality and
11 not just necessarily deal with prior crimes, but you
12 deal with the — and I guess I want to put how
13 inappropriate the contact began and how that contact
14 with each child progressed slowly over time to where
15 the defendant became more than just touchy feely, at
16 that point sexually violated the children after
17 seemingly having innocuous conduct with them. And
18 when you look at how those relationships progressed
19 I think clearly it becomes apparent that this is the
20 defendant's modus operandi, if you will. This is
21 how he goes about sexually assaulting children. And
22 Judge, even when you look at the cases in isolation
23 you talk about how, okay, the defendant married
24 these women who were divorced who had young
25 daughters, who didn't have sons, Judge, I think it's

1 clear that this fact alone does not necessarily make
2 the testimony of Ashley probative. But when you
3 couple that with all of the other facts in the case,
4 about the similarities, about where it occurred, and
5 judge, it's clear where you look at location,s, when
6 you look at the relationships between the defendant
7 and the victims, the locations where these sexual
8 assaults occurred, that's something that the court
9 in Scott has said that Your Honor has the right to
10 do when you're conducting the balance test.

11 THE COURT: There's no question about it.
12 There's no question. But the — I asked you to talk
13 to me about specific similarities. There's no
14 evidence that the defendant ever did anything with
15 Lauren around bath time.

16 MS. BARR: Yes, sir.

17 THE COURT: On the other hand, with Ashley
18 that was the complete focus on his part. With
19 Lauren -- with Ashley it happened 20 something times
20 according to her, and then Lauren testified it
21 essentially happened twice. Totally different
22 circumstances, totally different approaches, if you
23 will. So that's what I want you to tell me about
24 because I think that's where the prejudicial issue
25 comes in.

1 MS. BARR: And Judge, I think candidly as
2 it relates to just to the sexual assaults on Ashley
3 occurring around bath time that, Judge, that's a
4 dissimilarity between the two cases. But the Scott
5 opinion, the court in Scott opinion stated that the
6 few dissimilarities do not result in the danger of
7 unfair prejudice substantially outweighing the
8 immense probative value that still remains. Your
9 Honor, again, the fact that there was digital
10 penetration with both girls, the fact that there was
11 in my humble opinion very inappropriate sexual
12 discussions with very young girls, it appears that
13 the defendant was trying to make them more
14 comfortable with the sexual assaults that were about
15 to take place by virtue of the fact he's telling
16 them something for their benefit presumably. But
17 Judge, out of all the sexual assaults that have
18 occurred the only two dissimilarities that have been
19 advanced to the court are the fact that the
20 defendant never performed oral sex on Ashley, which
21 I would submit to you that's because he didn't, he
22 didn't have access to her long enough.

23 THE COURT: Well, but she said it started
24 when she was seven when her mother was dating him
25 and it escalated when they got married.

1 MS. BARR: Yes, sir.

2 THE COURT: So that was between seven and
3 nine, ages seven and nine.

4 MS. BARR: That's correct.

5 THE COURT: So that roughly the same
6 availability. Okay, now let's talk quickly about
7 Amanda.

8 MS. BARR: Yes, sir.

9 THE COURT: I do not find by clear and
10 convincing evidence that anything about images on a
11 camera, I'm not gonna allow that to come in. I
12 don't find that that evidence is clear and
13 convincing to me, okay.

14 MS. BARR: Yes, sir.

15 THE COURT: So that will not come in. You
16 don't clear the first hurdle. What is there — what
17 pattern is there about the four wheeler. What is —
18 that's a one time event on the lewd act count, and
19 you want to get in Amanda saying that happened.

20 MS. BARR: Yes, sir.

21 THE COURT: I know, I would assume that
22 that lewd act charge is not the focus of your
23 prosecution. That is an extremely weak case. In
24 other words, if that's all you had and you didn't
25 have CSC allegations I don't know if we'd be here in

1 the exercise of your prosecutorial discretion. I
2 might be wrong about that. But tell me where --
3 obviously they're similar --

4 MS. BARR: Yes, sir.

5 THE COURT: --if I were to determine that
6 Amanda's testimony was clear and convincing.
7 Obviously they're similar; they're identical. What
8 does it prove? Excuse me, going back to the plan,
9 what is the common scheme or plan that is in place
10 here?

11 MS. BARR: One, Judge, that the defendant
12 begins these sexual assaults by seemingly innocuous
13 behavior. Two, because lewd act is a specific
14 intent crime it goes to the absence of mistake or
15 accident as contemplated by Rule 404 which -- and
16 clearly, when defense counsel argued on yesterday
17 that the defendant, if you believe that the
18 defendant actually touched Amanda or touched Lauren
19 on the four wheeler that there was testimony that he
20 did and he uttered the words honk honk or toot toot
21 or words to that effect, that it was just playful
22 and so they could very well argue to the jury that
23 that there was there was no intent on his part to
24 appeal to the lewd or lascivious nature to have
25 either himself or the children and so that would

1 speak to that whole issue.

2 THE COURT: Well, one of the cases that
3 knocks the prosecution back on intent is deals with
4 when defendants have actively said, you know, that
5 didn't even happen so intent was not an issue. I
6 haven't heard from the Defense and nor would I
7 expect it necessarily at any given time whether or
8 not the defendant denies the four wheeler incident
9 period, or whether or not he would say, well, that
10 was just something stupid I did and I didn't mean
11 anything by it. And you're saying if that's the
12 case that if he's done it twice it would be an
13 absence of mistake or accident.

14 MS. BARR: Correct.

15 THE COURT: Who did it happen to first?

16 MS. BARR: I'm sorry, Judge?

17 THE COURT: Who did he do that to first?
18 There's no way for us to know.

19 MS. BARR: There's no way.

20 THE COURT: The girls don't know. They
21 don't have any way of knowing that.

22 MS. BARR: Right, that's true.

23 THE COURT: Mr. Lofton, how about the four
24 wheeler matter or Amanda's testimony? The camera
25 stuff is not coming in so you don't need to talk

1 about that.

2 MR. LOFTON: Yes, sir. Judge, the four
3 wheeler matter, you know, Ms. Barr argues that was
4 just part of the grooming process, but if you -- as
5 I recall the testimony the testimony was that
6 occurred when they were around ten years old so that
7 would have been at the end of the cycle as opposed
8 to the beginning of the cycle. And I think that's
9 logical and reasonable because there aren't too many
10 seven year olds out riding four wheelers, at least
11 there shouldn't be. So I really believe, Judge --

12 THE COURT: Amanda said she was ten or
13 eleven.

14 MR. LOFTON: Yes, sir.

15 THE COURT: So obviously Lauren would have
16 been ten or eleven.

17 MR. LOFTON: That's correct. So I think
18 that in and of itself is significant because it
19 simply wasn't part of any grooming process, and
20 Amanda testified she considered it a joke. It
21 wasn't anything or it didn't make any impression on
22 her that it was any kind of inappropriate touching.
23 And I think that is significant because she didn't
24 see it as being inappropriate. I mean, this is --
25 in the overall scheme of things, Judge, this is a

1 father, stepfather, out teaching young girls to ride
2 four wheelers. They are driving; he's sitting on
3 the back. And they are in playful atmosphere. I
4 just don't see how that rises to the level of
5 anything except being extremely prejudicial in
6 trying to prove that Will Brown is some kind of a
7 pervert. I mean, that's what it's all about. If
8 Amanda didn't think it was anything out of the
9 ordinary, then I don't think the Court should think
10 it's out of the ordinary.

11 THE COURT: Well, I think it's out of the
12 ordinary.

13 MR. LOFTON: Well, it may be —

14 THE COURT: I think —

15 MR. LOFTON: —out of the ordinary, but
16 not rising to the level of a sexual assault.

17 THE COURT: Well, that would be a direct
18 verdict argument. I'm trying, I'm talking about
19 Lyle right now but I'm gonna go ahead and say this,
20 while I believe Amanda's testimony that that
21 happened, she said it happened when she was 10 or 11
22 years old. There's no grooming going on. According
23 to the State's position all of the integral criminal
24 acts against Lauren occurred when she was 7, 8 or 9
25 so that was way after the fact. I don't think it

1 is — even though the rule doesn't say prior bad
2 acts it says other bad acts, I just don't see how
3 Lauren's — excuse me, Amanda's incident is
4 probative of anything. Again, we don't know who he
5 did it to first so absence of mistake or accident
6 would be I think a good argument if we had some
7 timeline there. So I'm not — while I do find that
8 that testimony has been established or that fact has
9 been established by clear and convincing evidence
10 from Amanda, I don't think it amounts to anything
11 that would be admissible under 404, and I think if
12 we get past that point it would be very confusing to
13 the jury as to what happened when and what are we
14 supposed to use this for. So I'm gonna respectfully
15 deny your request to put that in.

16 Now on these Court's exhibits that I
17 painfully watched yesterday, number one was some
18 three hours long. All it was was a blank camera. I
19 never saw the defendant. Now what do these add to
20 anything, Ms. Barr? I mean, the pornographic
21 video — and just so the record will be clear, it's
22 entitled Gang Bang Orgy. I assume that's some
23 commercial film; it was disgusting. But what does
24 this long video have to do with this case?

25 MS. BARR: And Your Honor, what I

1 anticipated doing on yesterday was just simply as a
2 part of the Court's deciding whether or not to admit
3 that evidence is simply going straight to the part
4 of those respective DVDs that show the defendant
5 adjusting the camera or show him clearly to
6 establish he had knowledge of cameras in his own
7 home.

8 THE COURT: But this one shows a bunch of
9 actors.

10 MS. BARR: I'm sorry, Judge, it shows
11 what?

12 THE COURT: A bunch of actors.

13 MS. BARR: And Judge —

14 THE COURT: I assume they're actors.

15 MS. BARR: Your Honor, just so you know,
16 one of the reasons why this case has taken so long
17 to prosecute is because we had to actually go
18 through all of the tapes because in some of them
19 they were clearly commercial videos; but at some
20 point during those videotapes, what happened was it
21 appeared that the cameras or the film was spliced in
22 some form of fashion.

23 THE COURT: Let's do this, don't mention
24 these in your opening statement. And if at some
25 point arises you can point to me exactly what you

1 want to put in front of the jury, then I'll know.
2 But this was, one of them it was an hour or two
3 looking at a couch and a lady walked back, a lady
4 walked the other way, a lady walked — I could tell
5 from the hairdos this is '80s or '90s.

6 MS. BARR: Yes, sir.

7 THE COURT: So I'll — these will stay
8 marked as Court exhibits but let's not mention those
9 during your opening.

10 MS. BARR: Yes, sir. And Judge, just so
11 you to know, the State would not have sought to
12 introduced videos in their entirety, only the
13 portions of video that purport to have the defendant
14 in the video.

15 THE COURT: You told me that yesterday.

16 MS. BARR: Yes, sir, and it related to
17 just the notion about Amanda finding a video in the
18 defendant's bedroom that had either herself or her
19 sister depicted as coming out of the shower. Judge,
20 we've also marked State's Exhibit Number 3, which
21 I'll show Your Honor, and the Defendant has objected
22 to it but it bears on this issue. But it is a — it
23 appears to be an image of the defendant's current
24 wife and two minor girls, Amanda and Lauren in the
25 bathroom at the farmhouse and they are all three of

1 them are standing up at the sink so it went to that
2 whole issue about the defendant having —

3 THE COURT: Who took this picture?

4 MS. BARR: Judge —

5 THE COURT: Is this a photograph or off of
6 a film?

7 MS. BARR: Judge, it's a photograph.

8 THE COURT: Who took the photograph?

9 MS. BARR: Ms. Brown did not and the
10 children did not so.

11 THE COURT: Who took it?

12 MS. BARR: We don't know, Judge. We
13 assume it was the defendant based on Amanda's
14 testimony—

15 THE COURT: Well, that's the defendant
16 there; isn't it? Who does this photograph show?

17 MS. BARR: It shows the two minor girls
18 and their mother.

19 THE COURT: Okay.

20 MS. BARR: Yes, sir.

21 THE COURT: All right.

22 MS. BARR: And Judge, we would assume that
23 based on Amanda's testimony that she found the
24 camera with the video either herself or her sister
25 comes out of the shower that it was inappropriate of

1 the issue about the defendant and taking the
2 inappropriate pictures of the children or more
3 specifically of the children. I guess would be
4 nothing wrong with him taking pictures of his own
5 wife but of the children.

6 THE COURT: Well, is somebody going to
7 testify that the defendant took it?

8 MS. BARR: Judge, I don't think anybody
9 can testify that he took it. They can identify who
10 is in the picture and they can identify about where
11 the picture was taken.

12 THE COURT: But they can't — if somebody
13 can — the first hurdle you have to clear is he took
14 the photo or had it taken.

15 MS. BARR: Yes, sir.

16 THE COURT: Okay. Mr. Lofton, your
17 position on State's Number 3 for I.D.

18 MR. LOFTON: We object, Your Honor,
19 because they cannot establish who took the photo,
20 when it was taken.

21 THE COURT: If they could establish that
22 he took it or orchestrated its taking.

23 MR. LOFTON: We would still object.

24 THE COURT: And the basis would be?

25 MR. LOFTON: Would be it's not relevant to

1 the charges in the indictment and it's highly
2 prejudicial in the fact that —

3 THE COURT: It's supposed to be
4 prejudicial, it's just got to be unduly prejudicial.

5 MR. LOFTON: We think it's unduly
6 prejudicial because it, you know, depicted these
7 three nude women in a bathroom. And again, even if
8 someone comes in and says this is momma and two
9 daughters, again, we have no way of knowing when it
10 was taken, the circumstance under which it was taken
11 and who took it.

12 THE COURT: All right, and you'll have to
13 lay a foundation for that.

14 MS. BARR: And Judge, I will say that I
15 recollect, Investigator Wrenn reminded me, that
16 subsequent to the defendant being arrested and
17 indicted when the State provided discovery responses
18 to Defense counsel that included that photograph,
19 the defendant had a conversation with Ms. Brown, the
20 mother of Amanda and Lauren and tried to get her to
21 say don't you remember when I took that picture of
22 you and the girls at the sink? She told me no, and
23 I don't remember any of things like that happening,
24 so he admitted to her that he took the picture.

25 THE COURT: I guess my question is, I

1 don't know whether this factors into probative value
2 or undue prejudice is why would any person do that.
3 Why?

4 MS. BARR: Because they were sexually
5 assaulting the child.

6 MR. LOFTON: Well, Judge, that doesn't
7 have anything to do with an alleged sexual assault
8 on a child.

9 THE COURT: And that's why I'm talking
10 about the probative issue. It's probative of some
11 serious problems going on in somebody's head, but
12 what is the probative value of criminal sexual
13 conduct on a minor or lewd act?

14 MS. BARR: Judge, that's the same type of
15 evidence and that's the same type of — we take the
16 position, the same type of facts that relate to just
17 like with the camera. The clock, the alarm clock
18 that's in Lauren's room had a camera in it. Why
19 would somebody do that? Because they're sexually
20 assaulting this child.

21 THE COURT: Well, you're gonna have to
22 show that he put the camera in the clock. You know,
23 at some point you're gonna have to decide how far
24 you want to push the envelope with some of these
25 things and that's always a problem —

1 MS. BARR: Yes, sir.

2 THE COURT: —where you have to stop.

3 And primary cases are autopsy photos or photos of a
4 murder victim, you got to know when to stop. And
5 photos showing this are alarming, but you'll have to
6 lay a foundation during a proffer of that before I
7 let that in. Now my ruling — yes, sir, Mr. Lofton.

8 MR. LOFTON: I was just going to say —
9 it's just more Nelson stuff. And I understand your
10 concerns about maybe somebody's got problems but we
11 —

12 THE COURT: No, no, I'm not concerned
13 about — I'm concerned about confusion on the jury's
14 part, misleading the jury. The prejudicial value is
15 what I'm talking about. The jury can't convict him
16 because he's not charged with being a voyeur. He's
17 not charged with being a peeping tom. These photos
18 are disturbing because that's what it shows if he
19 took them, if he took the pictures.

20 MR. LOFTON: Well, they're also disturbing
21 in the sense why would those three women be standing
22 nude in a bathroom with the door open.

23 THE COURT: Well, two of them are little
24 girls.

25 MR. LOFTON: They don't appear little in

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF WILLIAMSBURG) THIRD JUDICIAL CIRCUIT

State of South Carolina,)

vs.)

A CERTIFIED TRUE COPY)

Indictment No.: 2012-GS-45-0285

SHARON W. STAGGERS)
 Willie Marion Brown)
 CLERK OF COURT)

WILLIAMSBURG COUNTY)
 Defendant.)

**MEMORANDUM ON BEHALF OF THE STATE
 IN SUPPORT OF MOTION TO ADMIT
 LYLE EVIDENCE**

COMES NOW, THE STATE OF SOUTH CAROLINA, by and through its Williamsburg County assistant solicitor, Kimberly V. Barr, moving that this Court admit certain prior crimes, wrongs or other bad acts testimony pursuant to State vs. Lyle, 125 S.C. 406, 118 S.E. 803 (1923) and Rule 404(b), South Carolina Rules of Evidence. Specifically, the State moves to admit the testimony of Ashley Gardner and Amanda Goodman, both of who are alleged victims of the defendant, and who were abused in a similar manner as Lauren Goodman, the victim in the instant case. The State also seeks to admit testimony of Lauren Goodman concerning other, unindicted illicit sexual acts inflicted on her by the defendant that fall within a common scheme or plan as to what is alleged in this indictment. This memorandum of law that follows is offered to support the State's position.

I. THIS COURT SHOULD ADMIT THE TESTIMONY OF ASHLEY GARDNER AND AMANDA GOODMAN.

South Carolina case law supports the position that the testimony of both Ashley Gardner and Amanda Goodman should be admitted as evidence of prior bad acts under a "common scheme or plan" analysis. Our appellate courts most recently addressed this issue in the matter of State v. Scott, 405 S.C. 489, 748 S.E.2d 236 (S.C. Ct. App. 2013) and outlined the test for admission Lyle evidence. In Scott, the Court held that:

“[i]n order to admit evidence of bad acts not resulting in conviction, the trial court must, “[a]s a threshold matter, ... determine whether the proffered evidence is relevant.” *Clasby*, 385 S.C. at 154, 682 S.E.2d at 895; *see State v. Wallace*, 384 S.C. 428, 433, 683 S.E.2d 275, 277 (2009). “If the trial judge finds the evidence to be relevant, the judge must then determine whether the bad act evidence [is admissible under the terms] of Rule 404(b)” to show, *inter alia*, the existence of a common scheme or plan. *Clasby*, 385 S.C. at 154, 682 S.E.2d at 895. If the testimony is relevant and proffered for a permissible purpose, the trial court must next conduct a balancing test, pursuant to Rule 403; where the testimony's probative value is substantially outweighed by the danger of unfair prejudice, the trial court may exclude it. *See State v. Gillian*, 373 S.C. 601, 611, 646 S.E.2d 872, 877 (2007); *see also* Rule 403, SCRE (“[E]vidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice ...”).”

Scott, at 497-498, 241. When analyzing the testimony of both Ashley Gardner and Amanda Goodman in comparison to that of Lauren Goodman, along with the legal arguments of the State, this Court should admit the testimony.

a. The proffered evidence is relevant.

Willie Marion Brown is currently charged with two counts of criminal sexual conduct with a minor in the first degree, and one count of lewd act on a minor in indictment number 2012-GS-45-0285, and all pertaining to one victim, that being his stepdaughter, Lauren Goodman. The general allegations against the defendant are that he sexually assaulted Lauren on numerous occasions after he married her mother, beginning around the age of 8 and ending when she was approximately 10 or 11 years old. More specifically, the two criminal sexual conduct charges pertain to (count one) him performing oral sex on the victim and (count two) him digitally penetrating the victim's vagina. The third count of the indictment for lewd act on a minor child alleges that he fondled the victim's breasts while riding a four wheeler prior to her reaching her sixteenth birthday.

Comparatively, the testimony proffered on May 19, 2014 by Ashley Gardner and Amanda Goodman equally alleges that they were sexually molested by the defendant when they

were between the ages of 7 and 11 years old, and while the defendant was married to their mothers. Ashley testified that the defendant digitally penetrated her vagina while purportedly checking her for an infection. Amanda, who is Lauren's twin sister, testified that the defendant fondled her breasts while riding a four wheeler when she was approximately twelve years old. The allegations made by Ashley Gardner and Amanda Goodman both deal with molestations committed by the defendant in a similar fashion as to that done to Lauren. This is highly relevant to the issues involved in this case, and the Court should therefore move to the analysis of whether a common scheme or plan existed.

b. The evidence does establish a common scheme or plan pursuant to Rule 404(b).

When the Scott Court addressed the second part of the test, it provided that '[a]lthough evidence of other crimes, wrongs, or acts is inadmissible to prove bad character and, in turn, action in conformity therewith, such evidence may be admissible to show a common scheme or plan. Rule 404(b), SCRE; State v. Taylor, 399 S.C. 51, 59, 731 S.E.2d 596, 600-01 (Ct.App.2012). In order for bad act evidence to be admissible for this limited purpose, the trial court must find that the evidence: (A) is clear and convincing and; (B) bears a close degree of similarity to the crimes charged. State v. Clasby, 385 S.C. at 155, 682 S.E.2d at 895-96 (2009). Id. at 498, 241. It is therefore the State's burden to establish that the evidence is clear and convincing, and that there is a close degree of similarity between the crimes charged and the bad acts.

i. The prior bad act evidence is clear and convincing.

An appellate court will be bound by this court's factual findings as to whether the testimony was clear and convincing unless the decision was clearly erroneous. (Id. at 498-499). After hearing the testimony by all three victims, the State would offer that the testimony

provided met both of these standards. This Court heard from each victim as they provided testimony and answers. The testimony provided by Lauren and Amanda are consistent with statements they gave to the forensic examiner at the Care House of the Pee Dee in Florence. The Court had an opportunity to judge their demeanor and credibility while they were on the witness stand. The level of detail provided by the witnesses was indicative of truth rather than fiction. They each conceded facts that were favorable to the defense, and did not embellish their stories. The State submits that the testimony of each of these young women was forthright and candid.

Ultimately, it is the court's determination as to whether their testimony was clear and convincing, but the State would offer that each of these young women clearly met that standard and surpassed it. If the Court chooses to find similarly, it would then be the Court's responsibility to move on to the similarities between the crimes charged and the bad acts.

ii. A close degree of similarity exists between the crimes charged and the bad acts.

When comparing the testimony of Lauren to that of Amanda and Ashley, it is clear that the method by which the defendant molested all three girls bears striking similarities, meriting the admission of Ashley and Amanda's testimony in the trial of the sexual assaults inflicted upon Lauren. The courts have held that "[a] close degree of similarity exists when the 'similarities outweigh the dissimilarities.'" *Id.* at 500, 242 (citing State v. Wallace, 384 S.C. at 433, 683 S.E.2d at 278.). The court found that all relevant factors should be considered, and in the context of a sexual abuse case, certain factors are pertinent. Those are as follows: "(1) the age of the victims at the time of abuse; (2) the relationship between the victims and the perpetrator; (3) the location where the abuse occurred; (4) the use of coercion or threats; and (5) the manner of the occurrence." *Id.* (citing Wallace, 384 S.C. at 433–34, 683 S.E.2d at 278).

In the current case, there were extensive similarities shared between the victims.

Beginning with the comparison of Ashley Gardner and Lauren Goodman:

1. Both were stepdaughters to the defendant and were living with him at the time of the abuse.
2. Both of the victims' mothers were divorced mothers who had no male children.
3. The assaults on Ashley Gardner occurred primarily between the ages of seven (7) to nine (9) years of age. Comparatively, Lauren Goodman was assaulted between the ages of eight (8) and eleven (11).
4. The defendant began dating Ashley's mother in April 1997 when Ashley was six (6) years old, and married Ashley's mother on May 30, 1998 when Ashley was eight (8) years old. Concomitantly, the defendant began dating Lauren and Amanda's mother in February 2001 when they were six (6) years old, and married their mother on April 20, 2002 when they were seven (7) years old. The period of courtship between the defendant and the mothers of Ashley and Lauren was thirteen (13) months and fourteen (14) months, respectively.
5. The defendant actively took the role of giving sexual education talks to both girls closely in time to when the sexual assaults began. These discussions included very explicit and graphic language from the defendant to very young girls about male and female genitalia and various sexual acts and positions. The defendant explained and demonstrated sex to both victims as follows:
 - a. To Ashley, he explained how to have sex, what parts go where, how it feels good, and he would touch her to show her where it would feel good. Also, he explained to her that the penis would get erect, and the vagina would get wet, and that would be what allowed the intercourse;
 - b. To Lauren, he demonstrated how to put on a condom using a cucumber, and also laid her down on the bed to demonstrate various sexual positions (including the missionary position and "doggy style").
6. Both girls were abused at the farm house on McCutchen Road and the town home on Clearview Street (Note: Ashley also testified about abuse that occurred on Gilland Avenue in Kingstree and Lauren testified about abuse that occurred at the pond property in Nesmith).
7. Both indicated inappropriate touching through otherwise innocuous interactions. Ashley indicated the touching started with the defendant tickling her and the touching progressed to more private areas. Lauren indicated that the defendant grabbed her breasts while she was riding the four-wheeler and uttered the words "toot toot." Amanda testified that the defendant also grabbed *her* breasts while she was riding the four wheeler with him and uttered the words "toot toot."

8. Both girls were digitally penetrated by the defendant at similar ages and under circumstances where he was seemingly 'helping' them. As it relates to Ashley, the defendant placed his finger in her vagina while "checking" her to see if she had an infection from the dish washing liquid he put in her bath water. For Lauren, she testified that the defendant digitally penetrated her while "checking" her after she complained of vaginal pain.
9. The defendant isolated both girls from other people and their view to perpetrate his crimes.
10. The defendant was in a position of parental /familial authority over both girls, and assumed the role of caregiver.
11. Both girls testified that the defendant had a clear shower curtain in the bathroom so that he could see who was in the tub/shower. Lauren also testified that when their home was remodeled, the defendant had a glass shower door installed in the bathroom.
12. Both girls testified that the defendant had a habit of repeatedly and "accidentally" coming into the bathroom when they would be in there and otherwise expecting privacy (i.e., when showering or using the restroom).
13. Both girls were abused over a two to three year time period (for Ashley, from 1997 to 1999; and for Lauren, from 2004 to 2007).

As is clear, the similarities between the abuses of the two girls are extensive. To be fair, the defense did cite dissimilarities. Specifically, the defense argued that all allegations of sexual abuse of Ashley occurred while the defendant was bathing her or shortly thereafter while there were no allegations of the defendant bathing Lauren or Amanda. While Ashley testified about repeated episodes of the defendant walking around the house nude, there were no such allegations made by Lauren. Lauren testified that the defendant performed oral sex on her, but Ashley testified that he did not perform oral sex on her. She however stated that the defendant's face was so close to her vagina that he could have performed oral sex on her. That being said, the State submits that the similarities in this case not only outweigh, but actually *greatly* outweigh the dissimilarities, which would therefore lend the testimony to move to a prejudicial versus probative analysis. The State offers that the evidence is clear as to the similarities of

Ashley and Lauren's testimony, and under a 404(b) analysis, should be admitted.

The State also contends that the testimony of Amanda Goodman should be admitted as having a close degree of similarity. The State will concede at the outset that Amanda Goodman, by all accounts, was not sexually assaulted to the same degree as Ashley Gardner and Lauren Goodman. That said, the assault that she was subjected to goes directly to corroborating the testimony of Lauren under the third count of the indictment under a similar scheme or plan. This testimony tends to make it more likely than not that when the defendant grabbed Lauren's breasts on the four wheeler, it was not a mistake or an accident. It goes to the very heart of the element of intent, a necessary element of the offense of lewd act.

As was done in comparing the testimony of Ashley and Lauren, the State will compare the testimony of Amanda and Lauren. Because Lauren and Amanda are sibling, similarities between the facts are apparent from the outset, such as the defendant's relationship to the victims, the age of the victim at the time of the assaults, and the marital status of their mother prior to meeting the defendant. There are also other similarities between the assaults on the Lauren and Amanda that give rise to similarities.

1. Both girls testified that they were touched by the defendant when riding four wheelers at the farm, and that the touching occurred on their breasts.
2. The defendant uttered the words "toot toot" after fondling them on the four wheeler.
3. Both girls indicated that the touching was done when other family members were not present to witness the touching.
4. Both girls indicated that this occurred when they were between the ages of ten (10) and twelve (12) years of age.

When all similarities are taken into account, it is the State's position that the similarities between the girls' testimony outweigh the dissimilarities, especially when viewed specifically

toward the third count of the indictment for lewd act on a minor. Therefore, the Court should conduct an analysis of whether the prejudicial effect outweighs the probative value.

iii. The allegations do not present a temporal remoteness that merits not allowing the testimony.

The defense also argued that the sexual assaults were so remote in time that they should not be admitted and relied heavily upon State v. Fonseca (383 S.C. 640 (2009)) to support their conclusion. The court in Scott was faced with the same question, as well as the defense relying upon the same case in addressing the admission of 404(b) evidence which occurred some eleven to twenty years prior to the indicted crime. It found that “a trial court does not necessarily err when it admits testimony about a bad act occurring many years before the crimes charged ... [and] evidence of bad acts occurring many years before the charged crime is often admissible to demonstrate a common scheme or plan.” Scott, at 504. The court went on to find that there was no set time frame as to what does constitute evidence being too remote. (Id.) The court then went on to analyze the Fonseca opinion where a two year gap was ruled “remote in time,” but dismissed the defendant’s position because the court’s ultimate holding was that the bad acts evidence contained too many dissimilarities to the crime charged. In other words, Fonseca is not based on a remoteness in time, but instead a 404(b) reversal, and should not be relied upon to determine remoteness.

When comparing the legal precedent set by Scott to the current case, this court should find that the five years between the assaults on Ashley Gardner and Lauren Goodman were not, in fact, remote, and should therefore not preclude the evidence from being admitted based on that analysis.

a. The probative value is not substantially outweighed by unfair prejudice.

When dealing with the testimony of both Ashley Gardner and Amanda Goodman, the

probative value of this evidence would not be substantially outweighed by the danger of unfair prejudice. This court should compare not only the remoteness of the offenses, but also the similarities and dissimilarities to make the finding as to whether the probative value would be outweighed by the prejudicial effect. The State would respectfully ask this court to consider the entire record, as is outlined in State v. Scott, and examine the probative value offered by each victim's testimony. Without a doubt, the defendant would be prejudiced by the testimony of each victim, but the probative value from this evidence would be well beyond the scope of that prejudice. The State would show, in its case in chief, that those acts committed against these girls were the common scheme and plan of the defendant. The method and means by which he selects his victims is exactly the same, where the defendant chooses to marry single divorced mothers with daughters around the age of 6 to 7 and no male children. The State would show the similarity in the ages at which the assaults begin. The State would show that the means by which the defendant began grooming the victims, teaching them about sexual education, and then progressing to more frequent and more intrusive acts to further that education. The State would show that the defendant systematically isolated the victims away from other people to commit his crimes. The State would show that the defendant often turned innocuous interactions into sexual assaults. The State would show how the defendant used his farmhouse and town home to assault these girls. The State would further show the defendant's propensity to "accidentally" walk in on the victims when they were unclothed. And the State would show the defendant's willingness to digitally penetrate minor children. In short, the State would show Willie Marion Brown for whom he is, and the common scheme and plan by which he operates to take advantage of young girls. It is for this and all of the other reasons stated above that the State requests that this Court admit the testimony of Ashley Gardner and Amanda Goodman so that

the jury is given the opportunity to consider all of the relevant facts, including that the methods used by the defendant were those which he had used in the past.

iv. THIS COURT SHOULD ADMIT THE TESTIMONY OF LAUREN GOODMAN WHICH ALLEGES OTHER BAD ACTS THAT WERE NOT SPECIFICALLY INDICTED PURSUANT TO STATE V. CLASBY.

The State would also seek to admit testimony from Lauren Goodman concerning illicit or inappropriate acts for which the defendant has not been charged, but which the State believes goes to the issues of the case at bar. Specifically, the State would seek to allow Lauren to testify regarding (1) the defendant showing her how to put a condom on a cucumber; (2) the defendant kissing the victim on the mouth; (3) the defendant requiring the victim to expose her breasts to him in exchange for him purchasing a locket for her; and (4) any other general testimony that would otherwise be characterized as grooming.

The case which the State would rely on to support its position as to the admissibility of this testimony would be State v. Clasby, 385 S.C. 148; 682 S.E.2d 892 (S.C. 2009). In Clasby, the appellate court found that the trial court did not err in admitting four prior incidents of uncharged sexual misconduct against the victim. The court found that a similar analysis should be done in admitting these prior incidents as is done in the cases that followed Lyle. Specifically, the court should find whether the evidence is relevant, whether it is clear and convincing, whether there is a close degree of similarity between the indicted charges and the evidence being offered, and whether the probative value would be substantially outweighed by the unfair prejudice.

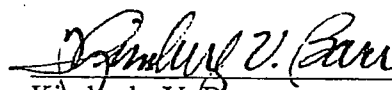
This court has already heard the substantial portions of the testimony which the State seeks to introduce, and would ask at the forefront that this court find that the evidence is both relevant as well as clear and convincing for the same reasons outlined in the first portion of this

memorandum of law. As it specifically pertains to the close degree of similarity, the State would contend that these allegations are clearly similar to the allegations which have been charged in the indictment. All of them deal with the sexual in nature relationship sought and advanced by the defendant. Without belaboring the point, the State contends that the allegations in the indictment are wholly caused by the unindicted, but still equally important testimony which Lauren Goodman is prepared to give to the court and to the jury. The State firmly believes and offers that these actions, in no uncertain terms, are the foundation by which the defendant gained the victims' trust and allowed him to move closer and closer to offenses which led to the indictment. The jury should be permitted to hear this evidence as it goes directly to the same ultimate fact – that the defendant methodically groomed and prepared the victim, Lauren Goodman, with the ultimate intent and successful completion of sexually assaulting her. The State believes that this goes directly to similarities of the testimony, and also bears directly on the probative value which greatly outweighs any prejudicial effect. For this reason, the State respectfully requests that this Court allow the *full* testimony of Lauren Goodman.

v. CONCLUSION

For the above stated reasons, the State requests that this court admit the testimony outlined above over the objection of the defense.

**OFFICE OF THE SOLICITOR
THIRD JUDICIAL CIRCUIT**



Kimberly V. Barr
Williamsburg County Assistant Solicitor

This, the 19th day of May, 2014

Kingstree, South Carolina

1 those photographs, Judge.

2 THE COURT: Well, I see — all that's
3 gonna have to be, all that's gonna have to be —
4 they separated when they were ten or eleven so
5 they're little in my mind. So Ms. Barr is gonna
6 have to establish something. We're going to have
7 probably a long argument over that. The State is
8 gonna have to decide whether or not that's something
9 they want to push; and if she does, I'll rule on it.

10 Now my ruling on the testimony of Ashley
11 Gardner, I've already concluded that, at least to
12 me, the acts that she complains of have been
13 established by clear and convincing evidence. In my
14 view the similarities are that the victim Ashley was
15 a stepdaughter, Lauren was a stepdaughter. There
16 were no male siblings. The defendant and the
17 mothers began relationships when Ashley and Lauren
18 were either six to seven, or seven to eight years
19 old. And I do also find that he began his conduct,
20 if the jury concludes that he committed it in
21 seemingly harmless acts, first of all with Ashley in
22 the context of her taking a bath some 20 some odd
23 times, and with Lauren in taking her on an outing to
24 the pond house or the farmhouse where they would
25 just have some alone time. He spoke to both girls

1 about sexual matters; and evidently either was
2 assigned by Ashley's mother, or took it upon himself
3 with Lauren, to be the point man on discussing with
4 them the specifics of sexual activity when they were
5 seven or eight years old. I do find also that the
6 acts as far as Ashley and Lauren were concerned,
7 even though not as frequent with Lauren, where
8 Lauren was concerned, involved him touching them on
9 or about their private parts, specifically their
10 vaginas. The abuse of Ashley occurred over roughly
11 a two year time frame that began before her mother
12 married the defendant, and with Lauren I think the
13 time frame was roughly the same where the two acts
14 occurred.

15 Ashley was assaulted at her mother's house
16 but primarily at the farmhouse when they moved out
17 to McCutcheon Road. Lauren was assaulted on one or
18 perhaps two occasions at the farm house and once at
19 the pond house involving the cucumber. I don't
20 think the cucumber was actually used. Now Ms. Barr,
21 was that an act of CSC at the pond house?

22 MS. BARR: No, sir.

23 THE COURT: It was just —

24 MS. BARR: Sex education.

25 THE COURT: —purporting evidence?

1 MS. BARR: Yes, sir.

2 THE COURT: The dissimilarities were
3 actually Ashley's abuse occurred in a baby sitting
4 situation during bath time. Lauren, there was never
5 any bathing. The sex education talks were somewhat
6 different because in Lauren's situation the
7 defendant evidently took it upon himself to talk
8 about that; and according to Ashley, her mother,
9 quite surprisingly to me deferred the defendant
10 because she didn't feel comfortable talking to her
11 seven year old about it. She said, well, go ask —
12 I don't know what they called him, Will or whatever
13 they may have been calling. There were no tickling
14 episodes with Lauren; there were with Ashley. And
15 the mother with Ashley was there taking pictures of
16 the tickle. Ashley said the defendant walked around
17 naked all the time. Lauren said he was never nude
18 around her. Lauren said that her first incident at
19 least with the cucumber occurred at the Nesmith pond
20 house, and Ashley said she'd never even been in that
21 block house. She said she saw it, but never went in
22 it. Lauren said that the defendant touched her
23 vagina with his mouth and Ashley said no. Lauren
24 said that there was digital penetration on both
25 occasions at the farm house, and Ashley said maybe

1 just a little.. And Lauren said the defendant took
2 pictures of her vaginal area, and Ashley was not
3 aware of any pictures being taken.

4 Based on my analysis, and I've gone
5 through it quite painfully as I believe that there
6 is a close degree of similarity or connection
7 between the two of, the two sets of occurrences and
8 that supports the admissibility under the common
9 scheme or plan exception. I respectfully reject the
10 Defense's position that remoteness between the two
11 girls' sexual assaults is a dispositive factor under
12 the 404 analysis. All right, now that gets us to
13 the decision I have to make as to whether or not the
14 defendant has established and I interpret it's the
15 defendant's burden, whether or not the probative
16 value is substantially outweighed by the danger of
17 unfair privilege. Unfair prejudice is defined as an
18 undue tendency to suggest a decision on an improper
19 basis.

20 I think that certainly the State wants to
21 introduce the evidence as far as Ashley is concerned
22 because it is prejudicial, and that's not the key.
23 It's got to be unduly prejudicial, confusing,
24 misleading, or otherwise inappropriate under Rule
25 403. I have to take into account, again, the

1 dissimilarities and the similarities in determining
2 whether or not I find that the probative value is
3 substantially outweighed by the danger of unfair
4 prejudice, at least that's what State versus Scott
5 says. And all in all I do not think that the
6 probative value is substantially outweighed by the
7 danger of unfair prejudice. I assume that pending
8 upon the outcome of the trial appellate court will
9 tell us whether I'm right or wrong. But I believe
10 that the fact that the ages of the girls were the
11 same, the familial relationship was the same, there
12 were- that they occurred in instances where the
13 defendant made it such that he was alone with these
14 two girls, the acts that occurred even though much
15 more frequent with Ashley, involved him touching of
16 Lauren and her on the vagina and there was digital
17 penetration. The temporal remoteness as the case
18 calls it, I do not think would make it such that the
19 probative value is substantially outweighed by its
20 danger of unfair prejudice, if anything, at least it
21 could be argued that that is diminished. The
22 probative value is higher because he moved from one
23 wife to another who had children of a certain age
24 and that necessarily took some time. There is some
25 prejudice there, but the key is whether or not the

1 probative value is substantially outweighed by the
2 danger of unfair prejudice. When I read these cases
3 over and over and over again, I found myself
4 changing my mind. And initially, my inclination
5 until I read everything in detail was that the
6 similarities were not significant enough; but as I
7 mentioned, I do find that the similarities are
8 sufficient to survive a 404 analysis.

9 Now Mr. Lofton, as you know, you can
10 object when the testimony is offered because once I
11 hear evidence that comes in before the evidence from
12 Ashley is allowed, I may change my mind.

13 And Ms. Barr, as I mentioned, an in limine
14 ruling is in limine ruling and you can reference
15 what you think you're going to prove during your
16 opening statement but in limine ruling is always
17 subject to a change.

18 MS. BARR: Yes, sir.

19 THE COURT: I'm not going to allow the
20 photograph or the image testimony from Amanda, and
21 I'm not going to allow her four wheeler testimony.
22 Now if the defendant in cross-examination or
23 presentation of other evidence tries to paint a
24 picture that, oh, this only happened one time and he
25 was just mistaken, if you can establish some time

1 you their spin on the facts, and again, it will be
2 your responsibility to make the decision as to
3 whether or not the State has met its burden of proof
4 and proved guilt beyond a reasonable doubt.

5 As I said, this is Will Brown's day in
6 court. He selected you as the people that he wanted
7 to hear his case. We have all faith and confidence
8 that y'all will listen attentively, that you will
9 give him a fair trial. And as I said, at the end of
10 the day we do not believe that the State will meet
11 its burden of proof and that you will return a
12 verdict of not guilty on all these charges. For
13 your patience for your presence and for your
14 attentiveness, we're most appreciative and we look
15 forward to working with y'all during the course of
16 the trial. Thank you.

17 THE COURT: Ms. Barr.

18 MS. BARR: The State calls Lauren Goodman.
19 WHEREUPON,

20 **LAUREN C. GOODMAN,**
21 having been duly sworn by the Clerk of Court,
22 testified as follows:

23 THE CLERK: You may have a seat in the
24 witness box.

25 MS. BARR: May it please the Court.

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1 THE COURT: Yes, ma'am.

2 **DIRECT EXAMINATION**

3 BY MS. BARR:

4 Q Lauren, good morning.

5 A Good morning.

6 Q State your full name for me.

7 A Lauren Christine Goodman.

8 Q All right. And Lauren, how old are you?

9 A 19.

10 Q And tell us your birthday.

11 A [REDACTED] 1995.

12 Q Okay. And your mother's name is?

13 A Marsha Graham.

14 Q Okay. And she is married and separated from the
15 defendant Willie Marion Brown?

16 A Yes, ma'am.

17 Q All right. So the defendant is your stepfather?

18 A Yes, ma'am.

19 Q All right. Do you have any brothers or sisters?

20 A I have one twin sister.

21 Q Okay. And her name is?

22 A Amanda Goodman.

23 Q Now who is the oldest of the two of you?

24 A She is by 30 minutes.

25 Q She likes to brag about that? Okay. Now Lauren,

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1 tell us about when it was that you remember your
2 mother first dating the defendant?

3 A As far as I can recollect it was the beginning of
4 2001. That's as far as I can remember when they
5 started dating because my grandmother passed away in
6 February of 2001, and when she was in the hospital I
7 remembered that Will came to visit my mom at the
8 hospital.

9 Q Okay. I need you to make sure you speak up nice
10 and loud for me. You're a little soft spoken. Make
11 sure you keep your voice up for me, okay. Now
12 Lauren, do you have a relationship with your
13 biological father?

14 A No, ma'am.

15 Q Have you ever had a relationship with your
16 biological father?

17 A Never.

18 Q Okay. Now I noted today that during your
19 testimony you refer to the defendant as Will; is
20 that correct?

21 A Yes, ma'am.

22 Q Prior to November of 2011 how did you address
23 him?

24 A Dad.

25 Q Okay. You testified that as far as you can

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1 remember he began dating your mother in February of
2 2001. How old would you have been at that time?

3 A Six years old.

4 Q Six years old, okay. And how long did they date?

5 A Roughly a year or more because they got married
6 April 20th of 2002.

7 Q April 20th of 2002. Okay. So by that point you
8 would have been seven years old?

9 A Yes, ma'am.

10 Q Okay. During the period of time in which your
11 mom would have simply been dating the defendant
12 where did you all live? Where did you and your
13 sister and your mother live?

14 A We lived in Florence.

15 Q Okay. Now were your biological parents ever
16 married to each other?

17 A I believe they were, and then they divorced
18 before my sister and I were born.

19 Q Okay, all right. Now after your mom married the
20 defendant where then did your mom, you, and your
21 sister live?

22 A We moved to the farmhouse in Cades on McCutcheon
23 Road.

24 Q You all lived in the farmhouse in Cades
25 on McCutcheon Road. Whose -- and I need you to make

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1 sure you give verbal responses. Whose house was
2 that?

3 A The defendant's.

4 Q Okay. Now during the time when your mom was
5 dating the defendant and within a year or so after
6 the two of them married, how did you and Amanda get
7 along with him?

8 A You said before they were married?

9 Q Yes, before the move.

10 A I mean, good. We all got along well. We'd go
11 out to eat and/or just hang out at the house so it
12 was good.

13 Q Okay. And how long did you and your mom, your
14 sister, remain at the farmhouse with the defendant?

15 A Probably a year-and-a-half to two years we lived
16 in the farm house.

17 Q Do you remember when you all moved from the
18 farmhouse?

19 A The beginning of 2004.

20 Q Okay. And where did you all move to at the
21 beginning of 2004?

22 A In the townhouse near Kingstree on Clearview
23 Street.

24 Q All right.

25 (WHEREUPON, State Exhibit No. 4 was marked

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1 for identification only.)

2 BY MS. BARR:

3 Q State's Exhibit Number 4, do you recognize what's
4 depicted in that photograph?

5 A Farm house.

6 Q That's the farm house on McCutcheon Road?

7 A Yes, ma'am.

8 MS. BARR: Judge, we would move State's
9 Exhibit Number 4 into evidence at this time.

10 MR. LOFTON: No objection, Your Honor.

11 THE COURT: 4 is in.

12 (WHEREUPON, State Exhibit No. 4
13 was admitted into evidence.)

14 MS. BARR: Move to publish.

15 THE COURT: All right.

16 BY MS. BARR:

17 Q And Lauren, this is the house that you referenced
18 on McCutcheon Road in Cades; is that correct?

19 A Yes, ma'am.

20 Q Now I'm gonna hand you what's been marked as
21 State's Exhibits 5 and 6 for identification purposes
22 and ask if you recognize what's depicted in those
23 photos?

24 A The townhouse that we lived in Kingstree, 308
25 Clearview Street.

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1 Q 308 Clearview Street?

2 A Yes, ma'am.

3 MS. BARR: I move to admit State's 5 and
4 6, Your Honor.

5 THE COURT: They're in.

6 (WHEREUPON, State Exhibits Nos. 5 and 6 were marked
7 for identification and admitted into evidence.)

8 BY MS. BARR:

9 Q Publishing State's Exhibit Number 5. This is the
10 front of the home that you and your mom and your
11 sister moved into at the beginning of 2004?

12 A Yes, ma'am.

13 Q Okay. Can you kind of describe that home to me
14 please?

15 A It's a brick two-story house with five bedrooms,
16 two-and-a-half bath.

17 Q How many bedrooms?

18 A About five.

19 Q Okay.

20 A And two-and-a-half bathrooms.

21 Q Okay. Now once you all moved at the beginning of
22 2004 to this property address you would have been
23 how old then? Let's assume you moved there in
24 January or February of 2004, how old would you have
25 been then?

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1 A 8 or 9.

2 Q Okay, if you moved before your birthday on the
3 26th you would have been 8. If it was after your
4 birthday, 26th of January, you would have been 9?

5 A Yes, ma'am.

6 Q Where were you going to school?

7 A Williamsburg Academy.

8 Q What kind of school is Williamsburg Academy?

9 A A very small private school.

10 Q Okay, all right. And did you graduate from high
11 school?

12 A I did, last year.

13 Q And are you in school now?

14 A Yes, ma'am, I attend the College of Charleston.

15 Q Okay. Now in terms of the move to the townhome
16 in Kingstree beginning of 2004 how were you getting
17 along with the defendant shortly after the move?

18 A Pretty well. He tendered to favor me more so
19 than my sister so instances where we'd go to the
20 farm house or to the pond house, typically they will
21 split us up. I would go with dad and then Amanda
22 would go with my mom.

23 Q Okay, all right. Now Lauren, of course you know
24 why we're here. You made a disclosure in November
25 of 2011 that your dad, or your step-dad, sexually

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1 assaulted you. Tell us about the first instance
2 where that happened.

3 A I can't necessarily remember the very first
4 instance; but one of the first memories that I have
5 is when the defendant took me to the pond house,
6 just he and I.

7 Q All right. Now slow down just a moment, I'm
8 sorry. The pond house is where?

9 A In Nesmith.

10 Q In Nesmith. So it's different from the farm
11 house in Cades and different from the townhouse near
12 Kingstree?

13 A Yes, ma'am.

14 Q All right. Please continue.

15 A It was the fall because I remember the leaves.
16 And the pond house is just a small block house with
17 a few bedrooms and a deck on the pond. He took me
18 into one of the bedrooms and took it upon himself to
19 teach me sex ed in which case he...

20 Q It's okay.

21 A He pulled out a cucumber and a condom and pushed
22 it to show me how to put a condom on a cucumber.

23 Q Why was he showing you how to put a condom on a
24 cucumber?

25 A I guess he felt that I needed to know that.

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1 Q Okay. How old were you, if you remember, or age
2 range if you will, at that time?

3 A 8 or 9 years old.

4 Q Okay, all right. He pulled out a cucumber, put a
5 condom on a cucumber. Did he do or say anything
6 else?

7 A He then had me sit on the bed and proceeded to
8 guide me into different positions with our clothes
9 still on. For instance, he told me to get on my
10 hands and my knees and that a guy would come from
11 behind me and that would be doggy style.

12 Q Okay.

13 A Another instance is...

14 Q Take your time.

15 A Sorry. He told me to lay on my back and the guy
16 would be on top of me and that would be missionary.
17 Nothing happened, it was just -- he never like, it
18 was never sit on bed contact, but he just did use
19 his hands to guide me into these positions.

20 Q Okay. And you testified that you were both
21 clothed at this time?

22 A Yes, ma'am.

23 Q And this happened at the pond house?

24 A Yes, ma'am.

25 Q Okay. Now you also disclosed an incident that

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1 happened at the farm house. Can you tell the ladies
2 and gentlemen of the jury about that.

3 A It was another instance.

4 Q In the incident that happened at the farm house
5 you're about to tell us about, tell us where you
6 were living at the time that that took place?

7 A We had already moved into the house on Clearview
8 Street.

9 Q Okay.

10 A So he and I went out to the farm house, just me
11 and him, and he took me in to what was my mom's old
12 bedroom. He had me sit on the bed and took my pants
13 off, had me spread my legs, and then he put his
14 mouth on my vagina.

15 Q Okay. Lauren, how old were you when he put his
16 mouth on your vagina?

17 A Probably about 9.

18 Q Okay.

19 A 9 or 10.

20 Q Okay. Did he ever put his hands in anywhere near
21 your vagina when he performed oral sex on you?

22 A Probably around but never in.

23 Q Okay. How old is your step-dad?

24 A Around 50.

25 Q Okay. Were there any other acts that took place

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1 at the farm house?

2 A There was another instance in which we had a
3 tanning bed in the bathroom. At this time we were
4 still living in the house on Clearview Street and
5 there was a tanning bed in the bathroom at the farm
6 house. And there — I got in the tanning bed —

7 Q Slow down just a moment for me. You said that
8 you all are still living on Clearview Street?

9 A Yes, ma'am.

10 Q Is that where, I know you testified that you were
11 in college. Is that where your mother lives now
12 still?

13 A Yes, ma'am.

14 Q All right. So you had gone back to the farm
15 house; is that right?

16 A Yes, ma'am.

17 Q Who took you back to the farm house?

18 A Will.

19 Q Okay. Was anyone else with you other than Will
20 when you went back on this occasion that you're
21 talking about?

22 A I don't believe on this occasion.

23 Q All right. Tell us what happened in the tanning
24 bed.

25 A I got into the tanning bed and he took pictures

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1 of me, or I assume he took pictures of me while I
2 was in there. I was naked except for, I believe I
3 didn't have underwear on. And he sat — he sat at
4 the end where the toilet was at, and I remember
5 hearing the camera go off and a flash.

6 Q You remember hearing a camera go off? What else?

7 A I remember hearing a camera go off and a flash.

8 Q Okay.

9 A But then again, you know, I got the tanning bed
10 on so. And I remember seeing the camera sitting on
11 the back of the toilet when I got out of the tanning
12 bed.

13 Q Okay, all right. Were there any pictures taken
14 of you at this time?

15 A I never had the courage to look at the camera.

16 Q Okay.

17 A But I can't remember if it was in this particular
18 instance, but he did another — either at this time
19 or another time did take a close-up picture of my
20 vagina and for educational purposes to show me what
21 it looked like, you know, point out like the lips
22 and you know, like there's your hymen and when you
23 have sex the first time it will break.

24 Q That your hymen would break when you had sex the
25 first time?

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1 A Uh-huh.

2 Q And that's what the defendant told you?

3 A Uh-huh.

4 Q And again, when he made those statements about
5 how old were you?

6 A Anywhere between 8 to 10.

7 Q Okay.

8 A 8.

9 Q All right. Now were there ever any instances
10 where he sexually assaulted you at the house on
11 Clearview Street?

12 A Yes, ma'am.

13 Q Tell the jury about that.

14 A We were currently living in that house on
15 Clearview. It was sometime in the summer, spring or
16 summer. We were building a deck outside so I
17 remember that. There was yard work going on
18 outside. And one day he was — he went up to his
19 bathroom upstairs, and I believe I had complained to
20 him or come to him saying that I was not feeling
21 well in my private area.

22 Q Okay.

23 A And he sat me on the counter.

24 Q On the counter where?

25 A In the bathroom.

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1 Q Okay.

2 A And proceeded to look around and —

3 Q Look around where, Lauren?

4 A On my vaginal area and inserts his fingers, for
5 reasons I don't know why, but I guess he thought he
6 was trying to help.

7 Q He inserted his fingers where?

8 A Into my vagina.

9 Q Did it hurt when he did that?

10 A Yes, ma'am.

11 Q Okay. And you all were living in Clearview —

12 A Yes, ma'am.

13 Q —Street home? Okay. How old were you when
14 this happened?

15 A 10.

16 Q 10 years old. When you were living in the
17 Clearview Street home what types of accessories
18 would you all have in the bathroom?

19 A What do you mean?

20 Q I mean like towels, curtains, and that sort of
21 thing.

22 A Well, we always had clear curtains, in the
23 bathroom clear shower curtains, in which case
24 sometimes Will would come in to the bathroom and
25 sometimes he would kind of push the shower curtain

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1 aside and just basically pop in and say hey.

2 Q While you were in the shower?

3 A Yes, ma'am.

4 Q Okay, all right. And he would just do that to
5 say hi?

6 A Yes, ma'am.

7 Q All right. Did the bathroom at some point
8 undergo remodeling?

9 A The bathroom at the farmhouse did. I believe we
10 remodeled it, but I assume before we moved in. And
11 there we also had, we had a shower door but it was
12 also clear.

13 Q Okay. Did he ever come into the bathroom while
14 you were in the shower at the farm house?

15 A Not that I can recollect.

16 Q Okay. How many times do you think that he would
17 have come into the shower or into the bathroom while
18 you were in the shower at the Clearview Street
19 address?

20 A I honestly don't remember.

21 Q Okay, just don't remember. Do you ever recall an
22 incident, or you did you ever see an incident where
23 the defendant did that to your sister or he came
24 into the bathroom while she was in the shower? If
25 you don't, that's fine.

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1 A Not that I remember.

2 Q As a result of the defendant doing that did you
3 then take any precautions when you would go in the
4 bathroom?

5 A Not whenever I took a shower because I believe he
6 just eventually stopped coming to the shower. I
7 think he felt that we were uncomfortable with that.
8 But I used to use the bathroom downstairs. There's
9 a small bathroom underneath the stairs at our house.

10 Q Is that like a powder room?

11 A That's just a toilet and a sink, just a half
12 bath. But I would go in there to use the bathroom
13 and which, you know, go in, you turn the lights on,
14 close the door and see, use the bathroom. And he
15 would always come in like accidentally, accidentally
16 come into the bathroom while I was using it. So I
17 got in the habit of going in and got in the habit of
18 going in and locking the door and turning the lights
19 off to use the bathroom.

20 Q Okay. Lauren, tell us about the incident with
21 the vibrator.

22 A One time I came into my room —

23 Q Your room where?

24 A In Clearview on the house in Clearview Street and
25 on the bed there was a little brown bag, and I

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1 opened it up and inside I assumed it was a vibrator.
2 and —

3 Q How did you know it was a vibrator?

4 A I don't know. I just, it was just, I don't — I
5 don't know. There was a button, and you know, you
6 push the button and it turns on.

7 Q Sorry, I'm losing you sweetie.

8 A It vibrated.

9 Q Okay.

10 A So that's all I know. And I as soon as I opened
11 it and found out what it was I put it back in the
12 bag and got a pen and wrote, I do not want this, and
13 two exclamation points, and put it, run it
14 downstairs and put it on the bed in his room.

15 Q All right. You wrote on the bag, I do not want
16 this, and two exclamation points, you put it on the
17 bed in his bedroom?

18 A Yes, ma'am.

19 Q Okay. Did he ever say anything to you about the
20 vibrator after you did that?

21 A No, ma'am, but I was — the same day I had come
22 down the stairs and he asked me if I was using it.

23 Q Okay.

24 A And I said no.

25 Q Okay. And Lauren, how old were you when that

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1 happened?

2 A I believe 10.

3 Q 10 years old?

4 A Yes, ma'am.

5 Q Okay. Lauren, I'm gonna hand you what's been
6 marked as State's Exhibit Number 2.

7 MS. BARR: Judge, I believe this is
8 without objection by the defendant.

9 THE COURT: Mr. Lofton?

10 MR. LOFTON: I'm sorry, no objection, Your
11 Honor.

12 THE COURT: Okay.

13 MS. BARR: Move to admit State's Exhibit
14 Number 2.

15 THE COURT: All right.

16 (WHEREUPON, State Exhibit No. 2
17 was admitted into evidence.)

18 BY MS. BARR:

19 Q Lauren, at my request did you bring me this
20 locket?

21 A Yes, ma'am.

22 Q All right. Lauren, tell the ladies and gentlemen
23 of the jury how it is that you got this locket.

24 A It was one Christmas when we were living at the
25 house on Clearview Street. We had gone — I think

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1 my mother and my mom and I had gone to Belk to do
2 some shopping, and I remember seeing a locket that I
3 really liked on one of the tables there at Belk.
4 And I remember coming home, and I don't know if it
5 was the same day, but later that night it was at
6 night 'cause it was dark. He and my mom were
7 leaving to go Christmas shopping I believe and I
8 believe I told Will that I saw a locket and that I
9 really, really wanted it for Christmas, that it was
10 a heart and that it was silver and that it had a
11 rose on it in front. And in which case he asked me,
12 you know, how bad do you want this locket, and I
13 said, well, I like it a lot. So I wanted the locket
14 really bad in which case he, I guess, bargaining
15 with me that if he got me the locket he asked to see
16 me naked so many times just to —

17 Q He wanted to see you naked in exchange for
18 getting you the locket?

19 A Yes, ma'am. He said, you know, just whenever you
20 went out the shower just — 'cause we, my mom,
21 Amanda and I shared the bathroom downstairs right
22 off the master bedroom. And at this time he was in
23 the upstairs bathroom, and he said, you know, just
24 whenever you get out the shower just come in my room
25 and I want to see you naked.

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1 Q Okay.

2 A So, and I agreed to do that.

3 Q Okay. What did you agree to do?

4 A I agreed to -- I would let him see me naked. I
5 think it was, I think about three times he saw me
6 naked so it was like, you know, I did like the first
7 one and then I think after that I was just really
8 uncomfortable with it so I didn't want to do it
9 anymore and then I just didn't do it anymore.

10 Q What part of your body did you expose to him in
11 exchange for the locket?

12 A All of it.

13 Q Okay. And how long after that had you did that,
14 did you get the locket?

15 A I got the locket for Christmas so I don't know.
16 It's like I already had the locket so it was like
17 expected of me.

18 Q Expected of you to do what?

19 A Since I already had the locket that it was
20 expected of me to do that, like almost like a debt.

21 Q How old were you then?

22 A Probably 10, 10 or 11.

23 Q Lauren, tell me about the incident on the four
24 wheeler.

25 A Well, he eventually purchased a four wheeler.

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1 Q When you say "he," who are you talking about?

2 A Will.

3 Q Where were you living at the time you purchased
4 the four wheeler?

5 A I believe that we had already moved into the
6 house on Clearview Street, and he would take us out
7 there and Amanda and I and we'd all go riding on the
8 four wheeler, sometimes the three of us. Sometimes
9 it would just be two at a time. We'd — and in this
10 instance I was sitting in front of steering the four
11 wheeler and he was sitting behind me and he would
12 like hold on to us, and he took his hands around our
13 breasts and said honk honk.

14 Q Okay. And you moved your hands in a grabbing
15 motion?

16 A He grabbed my breasts.

17 Q Okay. And about how old were you when that
18 happened?

19 A Probably 10.

20 Q Okay. Now the instance where that happened when
21 he grabbed your breasts on the four wheeler was your
22 mom around?

23 A No, ma'am.

24 Q Okay. Were there any other adults around?

25 A No, ma'am.

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1 Q What about the instance where he asked you to
2 flash him, was your mother around?

3 A No, ma'am.

4 Q Were there any other adults around?

5 A No, ma'am.

6 Q The instance where he's in the bathroom and
7 inserts his finger into your vagina, was your mom
8 around?

9 A No, ma'am.

10 Q Were there any other adults around?

11 A No, ma'am.

12 Q The instance where he performs oral sex on you
13 was your mother around?

14 A No, ma'am.

15 Q Were there any other adults around?

16 A No, ma'am.

17 Q Lauren, did you ever at any point in time tell
18 your mother what was going on?

19 A Never.

20 Q Why not?

21 A I felt like I was protecting her.

22 Q Why did you feel like you were protecting her?

23 A At first I didn't tell her during because I
24 didn't know if it was really wrong. But when I got
25 older I started to realize that that's not — what

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1 happened wasn't right. And I didn't tell her
2 because partly because I was ashamed and
3 embarrassed, and I didn't want her to know that that
4 had happened under her nose. I didn't want her to
5 feel like she was a bad mom.

6 Q Okay. Was your mother working during the times
7 these sexual assaults would occur? Does she work
8 outside the home?

9 A Sometimes she did and sometimes she didn't. She
10 was — whenever we first moved to the farm house she
11 was working in Florence for a podiatrist, and I
12 think shortly after we moved I believe she — to the
13 farm house — honestly I don't really remember her
14 work history.

15 Q That's fine. That's fine. Now you told us
16 already that the farm house belonged to the
17 defendant?

18 A Yes, ma'am.

19 Q What about the house on Clearview Street, who did
20 that belong to, if you know?

21 A Well, it was my grandmother's originally or —

22 Q It was your grandmother's?

23 A Betty Brown's house.

24 Q Betty Brown is Will Brown's mother?

25 A Yes, ma'am.

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1 Q And you call her your grandmother?

2 A Yes, ma'am.

3 Q You still do?

4 A (No verbal response.)

5 Q Okay. It was originally her home?

6 A Yes, ma'am.

7 (WHEREUPON, State Exhibit No. 7 was marked
8 for identification only.)

9 MR. LOFTON: Your Honor, may we approach.

10 THE COURT: Yes, sir.

11 (WHEREUPON, counsel approached the Bench
12 for an off-the-record discussion.)

13 THE COURT: Ladies and gentlemen, if you
14 will please step to your jury room. You may not
15 discuss the case in any way at all. I'll have you
16 back out shortly.

17 (WHEREUPON, the jury was removed from the
18 courtroom at 11:33 a.m., and the following
19 proceedings commenced in open court.)

20 THE COURT: What we'll do is we'll take a
21 recess. We haven't taken one since 9:30. We'll do
22 that first. Ma'am, you may not discuss your
23 testimony with anyone at all, anyone, period, okay?
24 That will make it easy.

25 I'll give some thought to a couple of

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1 things that Mr. Lofton talk -- Ms. Barr, how much
2 longer do you think you'll have with the witness?
3 Of course, you're gonna do a proffer on this
4 exhibit. In your estimation how much longer will
5 your direct take?

6 MS. BARR: Probably about 15, Judge.

7 THE COURT: Mr. Lofton, I'll let you
8 decide whether or not you would like to
9 cross-examine her immediately and conclude it before
10 lunch or whether or not you'd like to wait. Just be
11 thinking about that.

12 MR. LOFTON: Thank you, Your Honor.

13 THE COURT: Let's take five minutes and
14 then we'll come back in. Five or ten minutes and
15 then we'll come back and deal with this issue.

16 (WHEREUPON, a recess was taken from the
17 proceedings.)

18 THE COURT: Ms. Barr, you can question the
19 witness. Has that been marked for I.D.?

20 MS. BARR: It has..

21 **P R O F F E R E X A M I N A T I O N**

22 BY MS. BARR:

23 Q Lauren, I'm gonna hand you what's been marked for
24 identification purposes State's Exhibit Number 7.
25 Do you recognize this item?

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1 A Yes, ma'am.

2 Q All right. Tell us what it is, how it is that
3 you recognize it?

4 A It's an alarm clock that used to be in my room.

5 Q In your room where?

6 A At least in Clearview. I do remember a similar
7 clock being at the farm house if it wasn't the same
8 one but just do remember this one myself using it at
9 the, I mean at the town house on Clearview Street.

10 THE COURT: What number?

11 MS. BARR: Number 7, I believe, Judge.
12 State's number 7.

13 THE COURT: 7 for I.D., okay.

14 BY MS. BARR:

15 Q And where did you get that from?

16 A Will gave it to me.

17 Q Okay. Now when you were living — do you
18 remember, recall whether or not he gave it to you
19 while you were living at the farm house, while you
20 were living at Clearview?

21 A I don't remember but I know he gave it to me, and
22 I know I used it in Clearview.

23 Q Okay. In the bedroom that you had at Clearview
24 was that a bedroom that you shared with your sister
25 Amanda or was that your own separate bedroom?

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1 A It was my own separate bedroom.

2 Q Okay, all right. And you indicated that you know
3 what that particular item is, State's Exhibit Number
4 7. How is it that you recognize that item? Tell
5 the Court what it is about this that you recognize
6 this as being a clock in your bedroom at some point?

7 A Well, lift the tape I distinctly remember all the
8 buttons. I remember the round curvature of the
9 speaker on the top, the radio, and I remember the
10 empty battery pack and the cord.

11 Q Empty battery pack here?

12 A Uh-huh.

13 Q Is that a yes?

14 A Yes, ma'am.

15 Q And you said you remember the cord. Which cord
16 do you remember?

17 A I mean both.

18 Q Okay. Do you remember the plug that goes with
19 the outlet?

20 A Yes, ma'am.

21 Q And you remember this gray wire here?

22 A Yes, ma'am, I assume was for the radio.

23 Q Okay, all right. And what did you eventually do
24 with this clock?

25 A I eventually ran to my room a whole lot being a

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1 teenager, and I eventually think I just put that in
2 a box. I put this locket in a box and put it under
3 the hockey table and continued to use another clock
4 I had.

5 Q All right now there appears to be in this
6 particular exhibit a red button that's inside. Do
7 you recall ever seeing this red button that appeared
8 to be some sort of power button?

9 A Yes, ma'am. I would often turn the clock over
10 and try to figure out why there was an empty battery
11 pack, especially if it was run by a cord and you
12 know, what I was supposed to do with it. It didn't
13 look like batteries supposed to go in it and trying
14 to figure out what the switch did, but every time I
15 did I could never figure it out. I didn't see
16 anything being done whenever you flip the switch.

17 Q All right.

18 MS. BARR: All right, Judge, and I think
19 that from this point on the witness's mother would
20 kind of testify that she gave this to law
21 enforcement?

22 THE COURT: Okay. And what's the ultimate
23 deal with the camera. What is it?

24 MS. BARR: That this is an alarm clock
25 that contains a hidden camera.

1 THE COURT: All right, and who is going
2 to testify to that?

3 MS. BARR: Law enforcement.

4 THE COURT: All right. Mr. Lofton, first
5 of all, do you have any questions of the witness?

6 MR. LOFTON: No, Your Honor.

7 THE COURT: And your objection?

8 MR. LOFTON: Yes, sir. Judge, first of
9 all it would be relevancy. Second would be all of
10 the things that we talked about when we talked about
11 Nelson, the Nelson case. Judge, I think it's a 403
12 problem. He's, you know, he's not being tried
13 being, as you mentioned earlier, a voyeur or
14 pervert. The other main question though is she
15 testified there's this empty battery pack. Well,
16 the empty battery pack, then if the battery was
17 required to activate the camera, that there's
18 nothing. I know of no evidence in this case that
19 would indicate that if in fact this is a camera,
20 number one, was it working at the time. Number two,
21 were any photographs ever taken and if they were,
22 where are they. So you know, this is as the cases
23 say, Judge, he's on trial for what he did, not for
24 what he is. And whether we think he's strange,
25 perverted, or whatever you may think about, it

1 doesn't have anything to do with these charges.

2 It's totally irrelevant. And all it does is, again,
3 tries to put his character in issue.

4 THE COURT: All right. Ms. Barr, is
5 there — would there be testimony about the
6 interworkings of the camera insofar as there not
7 being a battery? Was there an issue as far as
8 whether or not the camera was operable? In other
9 words, if you plug it in right now will it work as a
10 camera if you flip that switch?

11 MS. BARR: Judge, that I don't know.

12 THE COURT: Of course the witness
13 testified that at all times that she recalled that
14 battery pack was empty. So you don't know or you
15 don't have any evidence that you know of to show
16 that absent a battery or with a battery that the
17 camera actually worked?

18 MS. BARR: I don't.

19 THE COURT: Could it be possibly just as
20 legitimate to say that, I think somebody said that
21 he was in the military and had cameras and pins and
22 coat hangers or towel hangers, could it be that it
23 was an inoperable camera that he just gave it to his
24 step-daughter to use as an alarm clock?

25 MS. BARR: And Your Honor, I think that

1 certainly goes to the weight of the evidence and not
2 its admissibility. I think the Defense is free to
3 argue that. But I certainly think that the jury
4 could find that the defendant, when he favored the
5 victim over her twin sister that this is a part of
6 that process of doing that. And Judge, this is
7 where all the evidence of the hidden cameras at work
8 and hidden cameras at the farm house comes in
9 because it proves that the defendant didn't just
10 simply get some alarm clock that had a hidden camera
11 that didn't work. It tends to prove that he gave
12 the victim an alarm clock that had a camera in it
13 because it did because he intended to spy on her.

14 THE COURT: Was it a working camera?

15 MS. BARR: Judge, that I do not know.

16 THE COURT: Okay. I'm gonna sustain the
17 objection for the time being. Of course, if the
18 landscape changes you can certainly re-call this
19 witness to establish something. But right now,
20 absent evidence that the camera in her room was in a
21 working condition in the state it was in which she
22 described an empty battery pack with the switch
23 switched on or off, I don't think it has any
24 relevance. If it does I think it's scant, and I
25 think that the danger of unfair prejudice is

1 certainly overwhelming in probative value. And I
2 think it will confuse the jury too at least at this
3 stage.

4 MS. BARR: Yes, sir.

5 THE COURT: All right.

6 MS. BARR: And Your Honor, if in fact the
7 State can lay the necessary foundation to establish
8 the workings of the clock and the camera, the Court
9 will grant me leave to re-call the witness just to
10 identify that this was, in fact, the camera that was
11 in her room at one point?

12 THE COURT: Yeah, and I'm sure Mr. Lofton
13 will have some similar objections to, especially
14 under Nelson in that stage. And we'll get -- if you
15 think you get to the point where you can try again
16 to lay a foundation through other witnesses we can
17 revisit it. For now it's sustained.

18 MS. BARR: Thank you.

19 MR. LOFTON: Just one other thing. In
20 reference to that, in addition to the battery pack
21 and I haven't examined it, but if it's a camera
22 there's got be some sort of chip or something that
23 goes in it to record the pictures I'm assuming and
24 that's just -- I just wanted to say that --

25 THE COURT: I have no idea.

1 MR. LOFTON: I don't either.

2 THE COURT: Cameras, I guess, can be
3 wireless. They can be internal storage pieces for
4 their own images. I don't know.

5 MR. LOFTON: I don't either.

6 THE COURT: All I know is from what I see
7 in the movies and that means nothing. Okay.

8 MR. LOFTON: I'm with you on that.

9 THE COURT: Are you ready, Ms. Barr?

10 Mr. Lofton, what is your flavor going to
11 be about cross-examination?

12 MR. LOFTON: Judge, I don't think I'm
13 going to be very long. I'll go with whatever the
14 Court.

15 THE COURT: I'll leave it up to you.

16 MR. LOFTON: How about let's see how long
17 it takes her to finish.

18 THE COURT: Then you can decide.

19 MR. LOFTON: I don't want to inconvenience
20 the Court or the jury from the standpoint of lunch
21 break, okay.

22 THE COURT: You can make that
23 determination and we can just talk about it after
24 she finishes direct.

25 Are you ready for the jury, Ms. Barr?

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1 MS. BARR: I am, Your Honor.

2 THE COURT: Okay.

3 (WHEREUPON, the jury was returned to the
4 courtroom at approximately 11:57 a.m., and
5 the following proceedings commenced in
6 open court.)

7 THE COURT: Yes, ma'am, Ms. Barr.

8 MS. BARR: Thank you, Your Honor.

9 BY MS. BARR:

10 Q Lauren, when you and your sister and your mother
11 were living with the defendant at the farm house did
12 you have a separate bedroom in that house from your
13 sister, or did you all share a room?

14 A My sister and I shared a room together. Right
15 across the hall was the master bedroom.

16 Q And that's where your mother and the defendant
17 slept?

18 A Yes, ma'am.

19 Q At the farmhouse?

20 A Yes, ma'am.

21 Q All right. Now what about at the house on
22 Clearview Street?

23 A Amanda and I had separate rooms upstairs and the
24 master bedroom was downstairs.

25 Q Okay, all right. Now during these times when the

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1 defendant would sexually assault you you indicated
2 and you testified that your mother was not around
3 when these things happened. Was there ever a point
4 in time where the defendant did anything to you that
5 was in your mind inappropriate while your mother was
6 around?

7 A Yes, ma'am. Well, one thing that made me
8 uncomfortable, he would always punch or grab at our
9 sides and he would — I can't speak for my sister
10 but with me he would typically kiss me on the mouth.

11 Q Okay.

12 A One time we were in the kitchen, I believe it was
13 like a family, and my mom was cooking. I'm not sure
14 where Amanda was. But the way the kitchen is set up
15 like, here's the stove and then here's the
16 refrigerator. Here's another refrigerator. I can't
17 remember which refrigerator it was, and it was like
18 a hallway. But we had, somehow he had stopped me
19 behind one of the refrigerators and kissed me on the
20 mouth but it was more than a peck, and it was really
21 uncomfortable.

22 Q Okay.

23 A But it was out of the sight of my mom.

24 Q You talked a little bit about your mom's
25 schedule. When the defendant would do these things

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1 to you was it at night, was it on the weekend? Kind
2 of tell me, give me a little idea what his schedule
3 was like during this time.

4 A What his schedule was like?

5 Q Right. Well, first of all, tell me the instances
6 where he abused you. Was it primarily at night, on
7 the weekends or was it during the day, or did it
8 vary?

9 A It varied, but I was always out of school of
10 course, and it either happened on the weekends or
11 Fridays because he had Fridays off. I think
12 whenever -- I'm pretty sure he had Fridays off. I
13 don't know where he was working at the time.

14 Q Okay.

15 A But it would happen in daylight.

16 Q Okay. When did you ultimately disclose this to
17 somebody and who was the first person you told?

18 A You mean like ever?

19 Q Yes.

20 A I told my youth leader, Ms. Laura Hunley.

21 Q Ms. Laura Hunley, she's your youth leader?

22 A Yes, ma'am.

23 Q Youth leader where?

24 A Well, she's the youth leader at my church at
25 Williamsburg Presbyterian; but then there was also

SW - L. GOODMAN - DIRECT

1 Kingstree Community Youth in which she and

2 Ms. Josett (ph) led youth together.

3 Q Okay. At the presbyterian church, how long were

4 you — were you a member of that church?

5 A I did join my sophomore year.

6 Q Okay.

7 A That's when.

8 Q Was this before or after you disclosed what had

9 happened to you?

10 A That I —

11 Q After you joined the church?

12 A I disclosed after I joined the church.

13 Q Okay. Do you know the day of the week that it

14 was when you finally told your youth leader about

15 what had happened?

16 A It was Friday.

17 Q Did you then tell your mom?

18 A No, ma'am, I didn't want to tell her.

19 Q Now Lauren, one last question, series of

20 questions I should say. Do you know Ashley Gardner?

21 A Yes, ma'am.

22 Q Okay. Have you ever read anything that Ashley

23 might have said or written?

24 A As in like her, like, testimony?

25 Q Any statement she might have gave. Have you ever

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1 read anything about that prior to your testimony in
2 court?

3 A No, ma'am.

4 Q Beg the Court's indulgence. Lauren, that's all
5 the questions that I have. Please answer any
6 questions the Court or defense counsel has for you.

7 THE COURT: Mr. Lofton.

8 MR. LOFTON: Thank you. If the Court
9 please.

10 **CROSS-EXAMINATION**

11 BY MR. LOFTON:

12 Q Miss Goodman, as I understand your testimony
13 these allegations that you've made against your
14 stepfather Will, that report was made to your youth
15 leader on November the 11th, 2011, correct?

16 A I believe so.

17 Q Okay. And the time frame of when these
18 allegations occurred according to your testimony was
19 back in the 2006, 2007 time frame?

20 A Yes, sir.

21 Q Okay. Now over, over the last few years your
22 mother and Will Brown have been having some marital
23 problems; haven't they?

24 A Yes, sir.

25 Q And as a matter of fact, they're now in the

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1 middle of a divorce?

2 A My mother sought to seek divorce after I had come
3 out about this, yes, sir.

4 Q But prior to the time that you made the
5 allegations in November of 2011 your mother and Will
6 were having serious marital problems?

7 A Yes, sir.

8 Q Okay. And you and your sister Amanda were aware
9 of those problems?

10 A Yes, sir.

11 Q And just before you made these allegations in
12 November of 2011 you and Will had gotten into a
13 fight; had you not?

14 A Yes, sir, we did.

15 Q And that fight occurred as a result of an
16 incident that happened out at the farm?

17 A Yes, sir.

18 Q And the fight occurred because you had basically
19 wrecked Will's truck?

20 A The fight had occurred because Will would always
21 do something nice for us and in return Amanda and I
22 always had to — whether he took us out to dinner,
23 the next day we'd go to the farm house and work on
24 the farmhouse. Or it was just he would always do
25 something nice, then he'd go, well, I did this so I

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1 need you guys to come work on the farm house. So
2 that day we had gone to go pick pecans at the farm
3 house and —

4 Q Let me interrupt you. That was you and Amanda
5 and Will?

6 A Yes, sir. All of us had gone to the farm house
7 to pick up pecans, and I was not happy because I
8 had — or I was a little emotional because I had
9 just broken up with my boyfriend and tempers were
10 high because we had spent the night with, all the
11 cheerleaders had spent night at one of the
12 cheerleader's house. We just wanted to stay there
13 and have breakfast with everyone to just hang out
14 with everybody before the big game that night and;
15 but no, Will decided otherwise and he took us to the
16 farm house to work instead. And so we were mad
17 because we didn't get to stay with everybody else
18 and I was emotional, just broke up with my boyfriend
19 and, and every time we're together just really
20 hostile and aggressive. And there's just a lot of
21 tension. Emotions are just always running high when
22 it's the three of us. And this particular time we
23 were leaving and I — we would always have to go
24 close the gate whenever we entered or exited so
25 nobody would have access to the front. And I had —

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1 it was rather windy and overcast, and I went to go
2 close one side of the gate and have to walk to the
3 other side of the road and get the other side of the
4 gate so you can lock it, and I had — I went to go
5 close one side of the gate and made it there, but it
6 went, blew it back and when I went to go close this
7 side of the gate I slung it too hard and hit his
8 bumper of his truck. And he got mad and came out
9 and said that I did it just because I was in a bad
10 mood and because I just wanted to wreck his truck,
11 in which case he hit me and I told him never to hit
12 me again and that I would tell my mom. And I was
13 just really upset 'cause he hit me in the face, and
14 I just wanted to walk home but he wouldn't let me.
15 So I got in the truck and we went back to the house
16 and he left and I went in front, waited for him to
17 leave. And I walked to my youth leader's house
18 across town to tell her because I was tired of being
19 a victim.

20 Q So it was after this incident at the farm when
21 you got mad at Will and you went over to your youth
22 leader's house and you made these allegations, okay.
23 And that was in November of 2011?

24 A Yes, sir. After that fight I went to the youth
25 leader's house and told her the truth.

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1 Q Now when — you turned 14 in 2009; did you not?

2 Does that sound right?

3 A Fourteen in 2009?

4 Q Right.

5 A No, sir.

6 Q Well tell me when you turned 14. Maybe my math
7 is bad.

8 A My math is bad too. I'm real bad at math. 2009
9 I would have been like — yeah, I guess it would be
10 right because 2005 I was 9. No, 2005 I was 10.

11 You're right, 2009 I would have been 14.

12 Q Okay. And when you turned 14 y'all were living
13 in the house on Clearview?

14 A Yes, sir.

15 Q And when you and your sister Amanda turned 14
16 your mother and Will decided that they ought to do
17 something special or y'all ought to do something
18 special for your 14th birthday. Well, isn't it a
19 fact that when you and Amanda each turned 14 we
20 started — y'all started a family tradition of going
21 off for the weekend, will taking each one of you
22 individually on trips to the beach shopping?

23 A To shop, yes, sir.

24 Q Okay. So it started when you turned 14?

25 A Yes, sir.

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1 Q Okay. And so when you turned 14 your mother and
2 Will had decided that each girl ought to have a
3 special time, dad and daughter day out or weekend
4 out?

5 A Yes, sir, I went but I don't think he ever took
6 my sister Amanda.

7 Q Okay. So when you turned 14 you and Will went to
8 the beach together and y'all stayed in the motel or
9 hotel?

10 A Yes, sir.

11 Q Will took you shopping?

12 A Yes, sir.

13 Q Went out to dinner?

14 A Yes, sir, I assume so. I can't really remember.

15 Q Wasn't the Melting Pot your favorite restaurant?

16 A Actually, yes, it was. We did go to the Melting
17 Pot.

18 Q Okay. And so y'all did father/daughter stuff for
19 your 14th birthday, just you and Will?

20 A I believe so.

21 Q And you don't allege that anything inappropriate
22 happened during that weekend, do you?

23 A No, sir.

24 Q And the same thing happened when you turned 15.

25 Y'all went back to the beach, went shopping, went

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1 back to the Melting Pot because that was your
2 favorite restaurant?

3 A. Well, I'd only been to the Melting Pot twice.
4 One time was with Will, Amanda and I, and the second
5 time I believe it was just Will and I. I don't
6 remember going on a second trip. All I remember is
7 one.

8 Q So you don't remember going to the beach on your
9 14th birthday for a trip, your 15th birthday and
10 your 16th birthday?

11 A No, sir.

12 Q Okay. And you don't remember Amanda going on
13 trips on all of those occasions except for the
14 first?

15 A I only remember one trip and from what Amanda
16 tells me she said she never went on a trip.

17 Q You can't go into anything she said, but that's
18 okay.

19 THE COURT: You can't talk about what she
20 said to you.

21 THE WITNESS: Okay.

22 BY MR. LOFTON:

23 Q Now that wasn't — that wasn't the only time that
24 you and Will went out of town together for an
25 overnight weekend, was it?

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1 A No, sir. One time he took me to a volleyball
2 tournament while my mom decided to go with Amanda to
3 the softball tournament.

4 Q And that would have been when you were 15 or 16?

5 A Yes, sir.

6 Q Okay. And so what happened on that occasion was
7 you had a volleyball tournament in Simpsonville I
8 believe?

9 A Yes, sir.

10 Q And Amanda had a softball tournament down at the
11 beach?

12 A Yes, sir.

13 Q And so Will and your mom say, well, we both can't
14 go to both places so one of us has got to take one
15 and the one has got to take the other, correct?

16 A Yes, sir.

17 Q Okay. And so you and Will, y'all went to
18 together to Simpsonville, correct?

19 A Yes, sir. I really wanted my mom to go with me
20 because I didn't want Will to go with me; but for
21 the sake of the family and not having to argue and
22 not having to put my mom in a bad position I told
23 her to go ahead to take Amanda to her tournament in
24 Sumter and for Will to take me to mine in
25 Simpsonville.

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1 Q So you and Will went to Simpsonville. Once
2 again, it was an overnight trip?

3 A Yes, sir.

4 Q Once again, y'all stayed in a motel and you
5 played volleyball?

6 A Yes, sir.

7 Q Okay. And you don't contend anything
8 inappropriately happened on that trip, do you?

9 A No, sir.

10 Q And you've told Ms. Barr, she asked you if you
11 ever told your mother about any of these allegations
12 that you made and you indicated that you didn't and
13 you gave your reasons?

14 A Yeah.

15 Q And you and your twin sister, y'all were very
16 close, correct?

17 A No, sir.

18 Q You're not close to your twin sister?

19 A No, sir.

20 Q Even though at the farm house y'all shared a
21 bedroom together?

22 A No, we fight like cats and dogs.

23 Q Fight like cats and dogs. And so you never
24 shared any of these allegations with your twin
25 sister either, did you?

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1 A Never.

2 Q And you have a lawyer, a civil lawyer, that's
3 planning on filing a civil lawsuit against Will;
4 isn't he?

5 A I have no lawyer. At this moment I'm represented
6 by the State.

7 Q Okay. Mr. McKenzie who is seated here in the
8 courtroom, he's your mother's lawyer?

9 A He is.

10 Q And you and your mother and Mr. McKenzie have
11 discussed the filing of a civil lawsuit against
12 Will?

13 A Not to my knowledge.

14 Q Okay. And you know that if a civil lawsuit is
15 filed and he gets convicted in this case, of course
16 it makes it easier for you to collect money in a
17 civil suit; doesn't it?

18 A I guess if that's what a civil suit does; I'm not
19 really aware.

20 Q Okay. So you think Mr. McKenzie is just sitting
21 here because he didn't have anything else to do this
22 week?

23 MS. BARR: Objection, Your Honor.

24 THE COURT: That's -- Mr. Lofton -- the
25 objection is based on what?

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1 MS. BARR: It's argumentative.

2 MR. LOFTON: No problem, Your Honor.

3 THE COURT: You can rephrase it.

4 BY MR. LOFTON:

5 Q So you don't know why Mr. McKenzie is sitting
6 here in the courtroom and was here for jury
7 selection yesterday?

8 A I know that whenever I came out as a minor in
9 2011 because I was under the age 18, and he did
10 represent my sister and me and my mother and that he
11 is handling their divorce case as well.

12 Q Okay.

13 MR. LOFTON: Bear with me just one minute,
14 Your Honor, please.

15 THE COURT: Yes, sir.

16 BY MR. LOFTON:

17 Q And these clear shower curtains you talked about
18 in the bathroom, first of all you indicated that the
19 farm house had been remodeled and a glass shower
20 door had been put in there; and then when you moved
21 to Clearview, plastic or clear shower curtains were
22 used in y'all's bathroom?

23 A Yes, sir.

24 Q And Will's the one that made the decision as to
25 what kind of shower curtain's y'all should have in

SW - L. GOODMAN - REDIRECT

1 your bathroom?

2 A Yes, sir.

3 Q Okay, thank you very much.

4 THE COURT: Redirect.

5 MS. BARR: Just a couple of questions.

6 **REDIRECT EXAMINATION**

7 BY MS. BARR:

8 Q Lauren, the incident that you described on
9 cross-examination about the defendant hitting you in
10 the face, how did it make you feel when he hit you
11 in the face?

12 A Really scared.

13 Q Okay. Did you tell your mom that he hit you in
14 the face?

15 A I did. Whenever I had gotten to my youth
16 leader's house my phone had died so I used hers to
17 call mom and let her know where I was at and told
18 her that Will and I had gotten into a big fight,
19 that he hit me, and then I came over to her house.

20 Q Okay. Now Lauren, you testified that made you
21 scared. You did not want to go to the farm house to
22 pick pecans, you wanted to be with your cheerleader
23 friends, correct?

24 A Yes, ma'am.

25 Q But you didn't tell your mother at that instance,

SW - L. GOODMAN - REDIRECT

1 even though you were upset, even though you were
2 scared, you didn't tell her at that instance he had
3 been sexually abusing you when you were young?

4 A No, ma'am. I just went straight to my youth
5 leader's house and tell her everything. After that
6 I believe we met with -- she then got in contact
7 with the DSS worker or sexual case worker, and she
8 talked to me and the whole time I told them I didn't
9 want to tell my mom. I wasn't ready to tell my mom.
10 I just didn't want to, I just didn't want to break
11 her heart and I wasn't ready for that.

12 Q Okay. Now you testified that there were
13 instances where the defendant took you out of town
14 or took you, I think you said to Simpsonville, and
15 where you stayed overnight and you testified that on
16 those trips nothing inappropriate happened?

17 A Yes, ma'am.

18 Q Okay. Now what I'm trying to figure out is, do
19 you remember the last incident that happened in
20 terms of something inappropriate happening with the
21 defendant?

22 A I remember right after the incident in which we
23 were at the farm house.

24 MR. LOFTON: I'm gonna object. This is
25 not in response to cross-examination.

SW - L. GOODMAN - REDIRECT

1 THE COURT: Ms. Barr.

2 MS. BARR: Judge, he asked her on
3 cross-examination about the fact nothing
4 inappropriate happened. I'm trying to determine
5 when the last time something inappropriate would
6 have happened.

7 THE COURT: Objection is overruled.

8 THE WITNESS: We were coming back from the
9 farm house after he performed oral sex on me and we
10 were -- we had just pulled on to Clearview and he
11 asked me, I guess he could feel my discomfort
12 because after, after he performed that on me he
13 asked me if I wanted to see his penis in which I
14 said no. On the way -- and I guess, I don't know, I
15 was just really uncomfortable after it happened.
16 And we were coming back and we pulled on to
17 Clearview and still in the car and he was just
18 saying, you know, I'm just doing this -- he said, I
19 don't mean to make you uncomfortable or anything and
20 he was just, it was like he was trying to like,
21 smooth over the situation or he was just, like, I
22 don't want to make you uncomfortable when I do these
23 things. I guess he thought he was teaching me.
24 Q All right. And that was the last incident that
25 you remember happening, one of the last incidences

SW - L. GOODMAN - REDIRECT

1 that you remember happening?

2 A I don't know what happened last. I don't -- I
3 can't recall a chronological order of any of these
4 events.

5 Q Okay. That's all the questions I have.

6 MS. BARR: Thank you, Your Honor.

7 THE COURT: Mr. Lofton?

8 MR. LOFTON: Nothing further, Your Honor.

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

11 Ms. Barr, any additional witnesses before
12 lunch?

13 MS. BARR: Judge, we'd ask to break for
14 lunch now, Your Honor.

15 THE COURT: Okay. Ladies and gentlemen of
16 the jury, we're going to break for lunch at this
17 time. Of course, as I told you, I would tell you
18 numerous times you may not discuss this case at all
19 amongst yourselves or with anyone else. You cannot,
20 nor make or do any research or gather any
21 information about it. Also, I don't know if any of
22 you are on Facebook or any other social media, you
23 are not permitted to post any messages or comments
24 about this case or anything involving your jury
25 service in any of that. I can tell you that will

1 certainly be discoverable if you do. I know you
2 won't do it, but please don't. I don't know how to
3 do it, but you can't do that. Can't do Facebook.
4 You can't do any of, any other blogs or posts about
5 any of your service in this particular case.-

6 If you would please be back in your jury
7 room at 2:00 we'll begin at that time. It's a
8 little over an hour-and-a-half from now so be back
9 in your jury room according to that clock at 2:00.
10 Thank you.

11 (WHEREUPON, the jury was removed from the
12 courtroom at 12:24 p.m., and the following
13 proceedings commenced in open court.)

14 THE COURT: Anything from the State before
15 we break?

16 MS. BARR: No, Your Honor.

17 THE COURT: From the Defense?

18 MR. LOFTON: No, Your Honor.

19 THE COURT: If everybody can be back five
20 minutes until two we'll find out if we have to do
21 anything before we resume. Thank you.

22 MR. MCKENZIE: Your Honor, just one
23 clarification for me and my client with regards
24 to — I still cannot discuss the case with her
25 because I think you have ruled she may testify

1 again?

2 THE COURT: She may take — she may have
3 to take the stand again, that's right.

4 MS. BARR, make sure she understands that
5 she can't talk about her testimony with anybody else
6 either.

7 MS. BARR: Yes, sir, I will make sure.

8 THE COURT: Sequestered witnesses and
9 everybody in the courtroom cannot go to other
10 witnesses who have not testified and tell those
11 witnesses what has been said in the courtroom. If
12 that happens, then that witness may be prohibited
13 from testifying.

14 (WHEREUPON, a lunch break was taken.)

15 THE COURT: All right, Ms. Barr, anything
16 before we resume?

17 MS. BARR: No, sir, Your Honor.

18 THE COURT: Mr. Lofton?

19 MR. LOFTON: Your Honor, I don't know who
20 her next witness is, but if it's gonna be Ashley,
21 then I'd be sending — I'd be asking to send the
22 jury back out so I can renew my motion. I have some
23 additional — I just don't know where we are.

24 THE COURT: Ms. Barr.

25 MS. BARR: The next witness will be Laura

1 Hunley.

2 THE COURT: Ma'am?

3 MS. BARR: Laura Hunley.

4 THE COURT: Laura Hunley?

5 MS. BARR: Yes, sir.

6 THE COURT: Okay. Anything else,

7 Mr. Lofton?

8 MR. LOFTON: Your Honor, Ms. Hunley as I
9 understand it, is the youth director?

10 THE COURT: I believe so. That's what
11 I've heard.

12 MR. LOFTON: Yes, sir. I just want to
13 make sure that we're all on the same page about what
14 she can testify to, time and place, and not get into
15 the details.

16 THE COURT: On direct I believe that's
17 correct. You agree, Ms. Barr?

18 MS. BARR: I do.

19 THE COURT: Okay.

20 MR. LOFTON: Just want to make sure.

21 THE COURT: Time, place, no identification
22 of the perpetrator, nor any details.

23 MS. BARR: Yes, sir.

24 THE COURT: Okay.

25 MR. LOFTON: Thank you, Your Honor.

1 THE COURT: All right. We're ready for
2 the jury.

3 (WHEREUPON, the jury was returned to the
4 courtroom at approximately 2:00 p.m., and
5 the following proceedings commenced in
6 open court.)

7 THE COURT: We are ready to move forward,
8 ladies and gentlemen, and I believe the only issue
9 we had was making sure these microphones work. In
10 the new courtroom the microphones are battery
11 powered so we had to change some batteries. If
12 anybody has trouble hearing because of that or any
13 other reason just make sure you raise your right
14 hand.

15 Ms. Barr, you can call your next witness.

16 MS. BARR: May it please the Court, the
17 State calls Laura Hunley.

18 THE CLERK: Place your left hand on the
19 Bible and raise your right hand.

20 WHEREUPON,

21 **LAURA HUNLEY,**
22 having been duly sworn by the Clerk of Court,
23 testified as follows:

24 THE CLERK: You may take your seat in the
25 witness box.

SW - L. HUNLEY - DIRECT

DIRECT EXAMINATION

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BY MS. BARR:

Q Ma'am, state your name for the record.

A Laura Hunley.

Q And Ms. Hunley, you reside in Williamsburg County?

A I do.

Q Okay. Do you know Lauren Goodman?

A I do know Laura Goodman.

Q How long have you known her?

A I have known her since she was probably 10 or 11. She is — I'm her youth director. I'm also her Sunday school teacher and she babysit both my children while she was in high school. She babysat for them many numerous times.

Q Which church do you attend?

A We attend Williamsburg County Presbyterian.

Q And do you know her mother, Marsha Brown?

A I do.

Q How long have you known Marsha, same period of time?

A Yes.

Q All right. And you know the defendant Will Brown?

A I do.

SW - L. HUNLEY - DIRECT

1 Q Is the defendant a member of your church as well?

2 A No, ma'am.

3 Q Has he ever been?

4 A He has attended.

5 Q All right. Now we're gonna go specifically to a
6 night, Friday night back in November 2011 when you
7 had a conversation with Lauren. I'm sure you recall
8 that?

9 A Yes, ma'am.

10 Q Where was Lauren coming from?

11 A She was walking from her house and she called me
12 on her cell phone and I could tell by her voice that
13 she was a little frantic. I didn't know if she was
14 out of breath from walking, but she seemed upset
15 just on the phone and asked if I was home. Of
16 course I was so I told her to come on, come straight
17 to my house. That was not odd for her to come to my
18 house. You know, she babysat a lot too.

19 Q Now would this have been from the house on
20 Clearview Street?

21 A Yes, ma'am.

22 Q How great a distance is the house on Clearview
23 Street from your home?

24 A I live right across the highway from Clearview so
25 maybe about a ten minute walk, eight minute walk,

SW - L. HUNLEY - DIRECT

1 something like that.

2 Q Do you recall specifically the approximate time
3 of day that she came to your home?

4 A It was later in the afternoon, probably 4'ish,
5 5'ish, something like that.

6 Q Do you have a recollection of the day of week it
7 was?

8 A It was Friday.

9 Q Okay, all right. Tell the jurors how she
10 appeared when she came to your home, what was her
11 demeanor?

12 A She was very shaky, she was upset. I could tell
13 she was upset. She wasn't really crying at that
14 time, but I could just tell she just was very
15 nervous about something, very upset.

16 Q Okay, all right. Now Ms. Hunley, I have to
17 obviously be careful in the way that I ask you
18 specific questions; but as it relates to the
19 conversation that you had with Lauren that day, that
20 Friday in November, did she make a disclosure to you
21 of being sexually assaulted?

22 A She did.

23 Q All right. And did she indicate to you a general
24 time frame in which the sexual assaults occurred?

25 A She did. She told me it had not been recent,

SW - L. HUNLEY - DIRECT

1 that it had happened more or less like 10, 11 years
2 old.

3 Q Okay, all right. Now, and you can't mention
4 anything about any identity or anything, but did she
5 ever disclose to you in that conversation the
6 locations where the sexual assaults occurred?

7 A She did. She mainly talked of their farmhouse.

8 Q Okay. And during the time that you had the
9 conversation with Lauren did she receive any calls
10 from either her mother or her sister?

11 A She did. Well, you know, teenagers text so they
12 were -- I think her sister texted and maybe called a
13 few times and her momma called as well 'cause she
14 was at my house. Of course, like a normal teenager
15 at first I thought maybe boyfriend problems,
16 problems with sister, something like that; but the
17 conversation obviously got more in depth so we were
18 kind of in a very personal conversation and she did
19 not answer the call though.

20 Q Laura, you mentioned that Lauren went to your
21 church and she babysat for your children. Did her
22 sister Amanda attend your church as well?

23 A She did attend.

24 Q Okay, all right. Who would typically drop --
25 would they typically come to church together?

SW - L. HUNLEY - DIRECT

- 1 A Amanda and Lauren would come to church together.
- 2 Q How would they get there?
- 3 A Usually their mom or stepfather would drop them
- 4 off for Sunday School and church before they were
- 5 able to drive.
- 6 Q Okay, all right. Now while she was there — and
- 7 don't tell what anybody said, while she was there
- 8 did she ever take the phone call from her mother or
- 9 her sister?
- 10 A Not until after the conversation was over and I
- 11 told her her mother was probably a little worried
- 12 about her 'cause we had not answered the phone and
- 13 we needed to take her mom's phone call.
- 14 Q And did she, in fact, do it at that point?
- 15 A She did.
- 16 Q Okay, all right. And after the phone call where
- 17 did Lauren go?
- 18 A Marsha actually came and picked her up from my
- 19 house.
- 20 Q Okay, all right. Did you disclose to Marsha what
- 21 Lauren told you?
- 22 A I did not.
- 23 Q Okay. In your presence did Lauren disclose to
- 24 Marsha what she told you?
- 25 A She did not.

SW - L. HUNLEY - DIRECT

1 Q Okay. And when Marsha came to pick her up do you
2 know where they went after they left you?

3 A I don't.

4 Q Okay. Do you know whether or not she stayed in
5 the home that Friday night or Saturday night or
6 Sunday night?

7 A She did. She stayed in the home. Before she
8 left my house I made sure she was gonna be safe
9 going home. I would never have sent her home
10 knowing anything might have happened over the
11 weekend, but she reassured she was safe at home and
12 I ---

13 MR. LOFTON: Objection, Your Honor.

14 THE COURT: Yes, sir. Stay away from ---

15 MS. BARR: Yes, sir.

16 THE COURT: Make sure the answer is
17 responsive to the question. The jury will disregard
18 that last statement.

19 BY MS. BARR:

20 Q All right. What did you do as a result of the
21 information that you received from Lauren?

22 A Well, I prayed about it.

23 Q Yes, ma'am.

24 A And thought about it a lot over the weekend. And
25 I knew that what had happened was something we

SW - L. HUNLEY - DIRECT

1 needed to deal with, and I reassured Lauren that
2 over the weekend she was going to be taken care of.

3 Q All right. And on that Monday morning did you
4 make a phone call to the Department of Social
5 Services or ---

6 A We did.

7 Q Okay. And did you used to work for DSS?

8 A I did.

9 Q Okay, all right. Ms. Hunley, thank you. I
10 believe that that's all the questions I have.

11 THE COURT: Mr. Lofton.

12 MR. LOFTON: No questions, Your Honor.

13 THE COURT: Thank you, Ms. Hunley. You
14 may step down.

15 MS. BARR: Judge, we call Marsha Brown.

16 (Pause.)

17 MS. BARR: Judge, may counsel and I
18 approach the Bench.

19 THE COURT: Yes, ma'am.

20 (WHEREUPON, counsel approached the Bench
21 for an off-the-record discussion.)

22 THE COURT: Come around there and be
23 sworn please, ma'am.

24 THE CLERK: Place your left hand on the
25 Bible, raise your right hand.

SW - M. BROWN - DIRECT

1 WHEREUPON,

2 **MARSHA G. BROWN,**

3 having been duly sworn by the Clerk of Court,
4 testified as follows:

5 THE CLERK: You may take your seat back
6 around.

7 **DIRECT EXAMINATION**

8 BY MS. BARR:

9 Q Ms. Brown, state your full name for me.

10 A Marsha Goodman Brown.

11 Q All right. And Ms. Brown, of course you are
12 Lauren's mother?

13 A Correct.

14 Q And you are the wife of the defendant Willie
15 Marion Brown?

16 A Correct.

17 Q And what's the status of your marriage right now?

18 A We're in separation.

19 Q Okay, all right. Now we heard testimony about
20 Lauren's birthday being January of 1995; is that
21 correct?

22 A That's correct.

23 Q All right. And do you have any other biological
24 children aside from Lauren and Amanda?

25 A No.

SW - M. BROWN - DIRECT

1 Q And no other adopted children?

2 A No.

3 Q Okay. Now who is the father of Lauren and
4 Amanda?

5 A John Douglas Odiorne.

6 Q Okay. Spell that last name for me.

7 A O-D-I-O-R-N-E.

8 Q And were you ever married to their father?

9 A Yes.

10 Q All right. And when did the two of you divorce?

11 A Actually it was March 7th, 1997.

12 Q Okay. And does he have a relationship with your
13 daughters?

14 A Never.

15 Q Okay. He's never had a relationship?

16 A Never.

17 Q Okay. When was it that you met the defendant?

18 A August 2000.

19 Q Okay. And when did the two of you marry?

20 A April 20th, 2002.

21 Q Okay. Now Ms. Brown, tell me what kind of work
22 you did throughout the marriage.

23 A First started I was with Carolina Health Care. I
24 was with the insurance department.

25 Q Yes, ma'am.

SW - M. BROWN - DIRECT

1 A From there I went to Stewart Podiatry.

2 Q Okay.

3 A She was one of the doctors that branched out.

4 Q Okay.

5 A Then from there I came local and worked for Sue
6 Cox Jewelry here in town.

7 Q How long did you work there? How many years did
8 you work there in Williamsburg?

9 A Gosh, that's hard to say. I want to say it was
10 like 2005 to 2006.

11 Q Okay.

12 A To roughly 2009, somewhere there.

13 Q Where do you work now?

14 A I just left my other job at ABC Office Supply.

15 Q And what did you do at ABC Office Supply.

16 A I was sales. I was inside sales.

17 Q Okay. Now what about the kind of work the
18 defendant did during the marriage?

19 A He always did human resources. He was working
20 for Crenlo in Florence.

21 Q Okay.

22 A And then he went to work for Honda over in
23 Timmons ville and then he went to Williamsburg
24 Technical College.

25 Q In terms of the incomes who was the primary bread

SW - M. BROWN - DIRECT

1 winner for the family when you were married to the
2 defendant?

3 A Will.

4 Q Okay. Do you know whether or not he'd ever
5 served in the military?

6 A Yes.

7 Q Okay. And was he in the military during his
8 marriage to you, or was he already retired?

9 A He was already retired.

10 Q Okay. How old is he and what's his birth date,
11 do you recall?

12 A 10/16/1956.

13 Q Okay.

14 THE COURT: 1956?

15 THE WITNESS: Yes, sir.

16 BY MS. BARR:

17 Q So that would make him 57 now; is that right?

18 A Yeah.

19 Q All right. Now we've also heard testimony about
20 a farmhouse, a pond house, and a town house. Are
21 you familiar with those properties?

22 A Yes, I am.

23 Q Who owned the farmhouse?

24 A Will did.

25 Q Who owned the pond house in Nesmith?

SW - M. BROWN - DIRECT

1 A Will and his brother and cousin.

2 Q And who owned the townhouse on Clearview?

3 A Will does.

4 Q Okay. Now all of these properties located in
5 Williamsburg County?

6 A That's correct.

7 Q Okay. When you began -- when you and Will
8 married tell me, where did you all first live as
9 husband and wife?

10 A At the farmhouse.

11 Q Okay. And how long did you all live in that
12 home?

13 A Roughly two years.

14 Q Okay. During the time in the years after your
15 marriage to the defendant, how did he get along with
16 Lauren and with Amanda?

17 A Good.

18 Q Good?

19 A Very good.

20 Q How did he treat them?

21 A Like his own.

22 Q All right. And how did they refer to him? What
23 did they call him.

24 A As dad.

25 Q Okay. Was he the only father figure they had

SW - M. BROWN - DIRECT

1 ever known?

2 A Yes.

3 Q Now in terms of how they got along, did that
4 change at some point?

5 A Yeah.

6 Q Okay. And I believe in one of your statements
7 you indicated that there was a time the defendant
8 seemed to favor Lauren?

9 A Correct.

10 Q Tell us about that.

11 A It was very distinctive. She could get away with
12 anything she wanted. If she wanted to lay around
13 the house and do nothing instead of outside helping
14 us do work and stuff it was pretty easy.

15 Q Okay.

16 A Amanda was always the worker. She was always
17 used as the worker because she always was a pleaser
18 so. But Lauren seemed to get away with a lot of
19 stuff.

20 Q Okay. What about in terms of him buying the
21 girls gifts or presents and so forth, did he treat
22 them equally in that regard?

23 A Somewhat.

24 Q Okay. Why don't you qualify it?

25 A He would always want to give, give one of them

SW - M. BROWN - DIRECT

1 something but he would say, well, I got to get
2 something for the other one so, you know, he like, I
3 want to give this one one, but I need to make it
4 equal so I'll give the other one something else.

5 But it made a difference in what he gave them.

6 Q All right. Now were there times that he, the
7 defendant, took trips with Lauren?

8 A Yes.

9 Q What kind of trips would he take and why?

10 A Well, other than like sports events that she had
11 to go to I couldn't make it, he took her. He
12 offered shopping trips. He arranged for -- he
13 wanted to take each girl just one weekend at a time
14 to make a very special weekend, take them to the
15 beach, go shopping, and it was overnight thing so
16 they would go down like Saturday night and then go
17 out to dinner, take them shopping and come back
18 Sunday.

19 Q Okay.

20 A He did that with Lauren twice.

21 Q Okay. How many times with Amanda?

22 A None, she didn't want to go.

23 Q Okay. Now the disclosure came out in November of
24 2011. Prior to that time how were you and the
25 defendant getting along in your marriage?

SW - M. BROWN - DIRECT

1 A Not well.

2 Q Were you all sleeping in the same bed during this
3 time?

4 A No.

5 Q Okay. Were the children aware that there was
6 some discord in the marriage?

7 A Most definitely.

8 Q Okay. And of course you have since filed for
9 divorce?

10 A That's correct.

11 Q And I believe that Mr. McKenzie, Attorney
12 McKenzie, is handling that divorce action for you?

13 A That's correct.

14 Q All right. Who was paying for Lauren and
15 Amanda's private school tuition?

16 A Will.

17 Q Okay. Could you afford the private school
18 tuition without his income?

19 A No.

20 Q Tell me how you became aware that a disclosure
21 had been made about from Lauren. How did you find
22 that out?

23 A I came home and found the policeman in my front
24 yard.

25 Q What day of the week was that?

SW - M. BROWN - DIRECT

1 A A Monday.

2 Q Okay. Was there any other governmental agency
3 with you?

4 A DSS showed up shortly after.

5 Q Okay. Now Ms. Brown, tell me, did you and your,
6 and the defendant, ever have any discussions about
7 sex education and teaching the girls about sex
8 education?

9 A Yes.

10 Q Tell us about those conversations.

11 A I've always felt pretty open to be with girls. I
12 always felt like it's my job as a parent to teach
13 the girls, and he agreed as well. When the girls
14 were entering sex education 'cause it was something
15 they had at school they had to take, at that point I
16 took leeway and said, okay, let's go over some of
17 the stuff you're going to go over in class. I
18 brought home pamphlets, booklets, you know, stuff to
19 give them reading material. So we were pretty open
20 about it and, you know, I knew in class they were
21 going to use the medical terms and we went over some
22 of the slang terms that they have already been heard
23 by the school and other students. But there was --
24 but we had -- Will and I had had our own discussions
25 about what they should and should not be learning in

SW - M. BROWN - DIRECT

1 sex class.

2 Q Okay. Did Will ever express to you any concerns
3 that he had with regard to Lauren and teaching her
4 sex education?

5 A I'm not following that.

6 Q Yes, ma'am. Did he ever at any point in time
7 tell you about anything that he observed about
8 Lauren that caused him some concerns about any
9 relation to sex education?

10 A He thought she was a little bit more advanced
11 than Amanda.

12 Q I'm sorry?

13 A That Lauren was more advanced than Amanda ---

14 Q Okay.

15 A ---and in sexual education wise in learning. He
16 felt that some things maybe she was -- he felt that
17 there were some things that needed to be
18 additionally taught to the girls and I didn't
19 approve.

20 Q Okay. What did he believe that should be
21 additionally taught to the girls?

22 A One of the things he was, he had mentioned to me
23 was do you think they'll teach them how to put a
24 condom on a cucumber in class and I was like, no.

25 Q Okay, all right. Did he express a belief to you

SW - M. BROWN - DIRECT

1 that's something they should know how to do?

2 A Correct, yes.

3 Q Okay, all right. Was there ever an instance
4 where the defendant gave you a vibrator?

5 A The defendant gave me a vibrator? Yes, I mean,
6 during our course of marriage.

7 Q Where were you living at the time?

8 A Out at the farmhouse.

9 Q Okay. Do you recall a specific conversation that
10 you had with Lauren the Friday before the police
11 came to your house?

12 A Yes.

13 Q Okay. Where did you go to get her that day or
14 that evening I should say?

15 A Once we found her. She was at Laura Hunley's
16 house.

17 Q At Laura Hunley's house?

18 A Yeah.

19 Q And did she tell you about being struck in the
20 face by the defendant?

21 A She -- yes. When she told me that she was not
22 actually hit, that he went to go slap her but she
23 moved back.

24 Q Okay.

25 A But she also told me that he pushed her.

SW - M. BROWN - DIRECT

1 Q Okay, all right. Did she tell you that or did he
2 tell you that?

3 A Actually Amanda told me that.

4 Q Amanda told you that, okay. All right. When you
5 went to go pick up Lauren from Laura Hunley's house
6 where did you take her back to?

7 A Back to our house.

8 Q Okay. And where did she stay that Friday night?

9 A At the house I believe.

10 Q Where did she stay that Saturday night?

11 A At the house.

12 Q Where did she stay that Sunday night?

13 A At the house.

14 Q And after the police and DSS showed up at your
15 house that Monday, did you and Lauren — well,
16 strike that. When did you and the defendant
17 separate?

18 A That Monday night. You're actually talking about
19 through court wise or just physical?

20 Q Physically, stop living together?

21 A Monday night.

22 Q Monday night. When the police showed up at your
23 house on that Monday did they take anything from the
24 house at that time? Just yes or no.

25 A No. Well, they didn't take it, I gave it.

SW - M. BROWN - DIRECT

1 Q Okay. And how much time went by between the date
2 that the police showed up and the defendant being
3 arrested?

4 A Couple of weeks.

5 Q Okay. During that time did he, he being the
6 defendant, still have access to the house?

7 A Yes.

8 Q Okay. Your Honor, may we approach the Bench.

9 THE COURT: Yes, ma'am.

10 WHEREUPON, counsel approached the Bench
11 for an off-the-record discussion.)

12 THE COURT: Go ahead, Ms. Barr.

13 MR. LOFTON: Thank you, Your Honor.

14 BY MS. BARR:

15 Q Ms. Brown, you testified that you were separated
16 from the defendant and you filed divorce proceedings
17 against him?

18 A That's correct.

19 Q And are you currently receiving or have you
20 currently filed any type of lawsuit against the
21 defendant for the allegations or the acts that were
22 discussed in court?

23 A No.

24 Q Okay. And to the best of your knowledge has
25 either one of your daughters filed any type of

SW - M. BROWN - DIRECT

1 lawsuit against the defendant?

2 A No.

3 MS. BARR: Beg the Court's indulgence.

4 THE COURT: Yes, ma'am.

5 BY MS. BARR:

6 Q Ms. Brown, that's all the questions that I have.

7 Please answer any questions -- well, I'm sorry, hold

8 on just a minute. One quick question. How did the

9 whole conversation come about with the defendant

10 where he asked you whether or not the school was

11 going to teach her or teach your children about how

12 to put a condom on by using a cucumber? How did

13 that whole conversation come about?

14 A I think it was just kind of in jest because we

15 knew the class was coming up, and at the time the

16 teacher who was supposed to be teaching it was

17 pregnant. We kind of thought that was kind of

18 funny, ironic, but and I think it kind of led into

19 that. Well, you know, it's part of this process

20 gonna be using a cucumber showing them how to use a

21 condom to prevent pregnancy.

22 Q All right. In one of your statements you

23 indicate that the defendant told you he saw Lauren

24 engaging in some inappropriate behavior. Do you

25 remember that?

SW - M. BROWN - DIRECT

1 A In referring to herself?

2 Q Yes.

3 A Yes.

4 Q Tell us about that.

5 A He came to the room one Sunday morning.

6 Q And where were y'all living at the time?

7 A Oh, we were at the farm house.

8 Q Okay.

9 A And their bedroom is across from ours.

10 Q Okay.

11 A And he came back to the bedroom that morning and
12 told me that he believed Lauren was self-gratifying
13 herself.

14 Q Masturbating?

15 A Yes. And I said, no, you're crazy, she's way too
16 young, doesn't have a clue, you know, he's dreaming
17 this up. And that was kind of the start of it.

18 Q Okay, all right. Did the defendant ever have any
19 sex talks, sex education conversations with Lauren
20 in your presence?

21 A Not that I recall.

22 Q Now Ms. Brown, did you ever have any
23 communications with your daughters about sex?

24 A Yes.

25 Q Okay. Did you ever give the defendant permission

SW - M. BROWN - CROSS

1 to have communications with your daughter about sex
2 education?

3 A Not really, I mean, never gave him permission but
4 never asked to have permission.

5 Q That's all the questions that I have. If you
6 will, please answer any questions defense counsel or
7 the Court may have.

8 MR. LOFTON: If the Court please.

9 THE COURT: Mr. Lofton.

10 **CROSS-EXAMINATION**

11 BY MR. LOFTON:

12 Q Ms. Brown, as I understand your testimony, prior
13 to November of 2011 you and Will Brown were having
14 some pretty serious marital problems?

15 A That's correct.

16 Q And that was pretty common knowledge in your
17 household?

18 A That's correct.

19 Q And in November of 2011 just prior to these
20 allegations being made, Lauren and Will had gotten
21 into a fight out at the farm; had they not?

22 A That was my understanding, yes, sir.

23 Q You weren't present?

24 A No, sir.

25 Q But you understood that's what happened?

SW - M. BROWN - CROSS

1 A Yes, sir.

2 Q Okay. And you understood too that according to
3 Amanda Will never struck Lauren?

4 A Not that she, she didn't see it.

5 Q Okay. And there isn't any question, is it,
6 Ms. Brown, that you have discussed with Mr. McKenzie
7 the filing of a civil lawsuit against Will Brown?

8 A Maybe eventually.

9 Q You have discussed it?

10 A Uh-huh.

11 Q Okay. And you know that if Will Brown is
12 convicted in this criminal case it'd make it a lot
13 easier for you to collect money in your civil case?

14 A That I don't know.

15 Q Okay. Mr. McKenzie hadn't told you that?

16 A As — honestly, no. I mean, we've discussed it
17 but you're assuming variations.

18 Q Okay. Now you've told us that you and Will were
19 married in April of 2002?

20 A That's correct.

21 Q And you started out y'all were living out at the
22 farmhouse?

23 A Yes, sir.

24 Q And then in 2005 I believe it was y'all actually
25 moved into the city, correct?

SW - M. BROWN - CROSS

1 A That's correct.

2 Q And when y'all moved into the city had the girls
3 already started attending Williamsburg Academy?

4 A Right after we did, yes, sir.

5 Q And of course, Will took care of all those bills
6 and expenses in connection with the private
7 schooling?

8 A That's correct.

9 Q And then when the girls, the twins Amanda and
10 Lauren, turned 14 you and Will decided that there
11 ought to be some special weekend trips for
12 father/daughter weekends, especially for shopping,
13 etc., especially on their 14th birthday?

14 A Not we decided no.

15 Q We did decide?

16 A No.

17 Q Will decided?

18 A That's correct.

19 Q And did you think that was a good idea?

20 A If that was going to be a bonding? I didn't see
21 a problem there were no issues.

22 Q There wasn't any issue; there wasn't any problem.

23 A No.

24 Q And the first year was the year that they turned
25 14, correct?

SW - M. BROWN - CROSS

- 1 A Probably, yes.
- 2 Q Okay.
- 3 A Around there.
- 4 Q And on that, in that time period and because of
- 5 schedules and all, it didn't always happen exactly
- 6 on their birthday?
- 7 A No.
- 8 Q It may have been a month or two later, but it was
- 9 all part of a birthday deal?
- 10 A Correct.
- 11 Q Okay. And so on that 14th birthday, the first
- 12 one, the first trip out of town dealing with
- 13 birthdays, Will took Amanda, I mean, I'm sorry,
- 14 Lauren to Myrtle Beach?
- 15 A Yes.
- 16 Q And they spent the weekend together at the beach?
- 17 A Uh-huh.
- 18 Q And when they came back you learned they'd been
- 19 shopping?
- 20 A Uh-huh.
- 21 Q They'd been to the movies?
- 22 A Yes.
- 23 Q They'd been out to dinner?
- 24 A Uh-huh.
- 25 Q And they had a nice weekend?

SW - M. BROWN - CROSS

1 A Yes.

2 Q Okay. And then when it became Amanda's turn you
3 didn't want Amanda to go?

4 A No.

5 Q Because all Amanda wanted was the money because
6 Will always gave her money to go shopping?

7 A Huh-uh.

8 THE COURT: You need to say either yes or
9 no.

10 THE WITNESS: No, I'm sorry, no, sir.

11 BY MR. LOFTON:

12 Q No, sir?

13 A No, sir.

14 Q So, well did Amanda and Will go?

15 A No, they did not.

16 Q And who decided that Amanda and Will wouldn't go?

17 A Amanda.

18 Q Amanda?

19 A That's correct.

20 Q And you and Will ended up taking Amanda, I
21 believe, to Tanger and gave her the same hundred
22 dollars Will had let Lauren spend?

23 A On a trip down there together, yes.

24 Q Okay. And as a matter of fact, she lost the
25 money before she had a chance to spend it; didn't

SW - M. BROWN - CROSS

- 1 she?
- 2 A That's correct.
- 3 Q And these birthday weekends, bonding weekends,
- 4 whatever you want to call them, they occurred for a
- 5 couple of years; did they not?
- 6 A Two.
- 7 Q Two. And the second year, same type of routine?
- 8 A That's correct.
- 9 Q Myrtle Beach was the trip?
- 10 A Yes, sir.
- 11 Q Shopping was the idea?
- 12 A Yes, sir.
- 13 Q Movie, dinner?
- 14 A I assume so.
- 15 Q Bonding time?
- 16 A Correct.
- 17 Q Both Amanda and Lauren went on the next year?
- 18 A No, sir.
- 19 Q Pardon?
- 20 A No, sir.
- 21 Q Did not?
- 22 A No, sir.
- 23 Q Just Lauren?
- 24 A That's correct.
- 25 Q Okay. And she came back and she told you she had

SW - M. BROWN - CROSS

1 a good time?

2 A Yes, sir.

3 Q And they went to the movies, they shopped, went
4 out to dinner?

5 A Yes.

6 Q Everything was fine?

7 A To my knowledge, yes.

8 Q Okay. Amanda didn't go the second time?

9 A I'm sure. I'm sure, yeah.

10 Q Okay. How about the third time?

11 A No third.

12 Q No third. Did y'all take Amanda shopping so she
13 could be treated equally and spend her hundred
14 dollars?

15 A Honestly I can't remember.

16 Q Okay. And that wasn't — those trips down to
17 Myrtle Beach aren't the only trips that Amanda, Will
18 and Lauren went on together when you weren't
19 present, were they?

20 A I believe so. I don't remember any other.

21 Q Okay. Well, how about, how about the trip that
22 Lauren and Will took to Simpsonville for the
23 volleyball tournament?

24 A Right, that was a sporting event.

25 Q That was a sporting event?

SW - M. BROWN - CROSS

1 A Uh-huh.

2 Q And that was a weekend away?

3 A Overnight I believe.

4 Q Overnight?

5 A Uh-huh.

6 Q And once again Will and Lauren were together in a
7 motel?

8 A That's correct.

9 Q Okay. And she played in a volleyball tournament?

10 A Uh-huh, she did.

11 Q And you took Amanda, I believe, to a softball
12 tournament?

13 A That's correct.

14 Q And when that volleyball tournament was over
15 Amanda came -- Lauren came home and everything was
16 fine?

17 A Yes, sir.

18 Q Okay.

19 MR. LOFTON: Bear with me just one minute,
20 Judge.

21 THE COURT: All right.

22 BY MR. LOFTON:

23 Q And so as we sit here today, Ms. Brown, your
24 current status with reference to Will is that y'all
25 are separated?

SW - M. BROWN - REDIRECT

1 A Yes, sir.

2 Q Divorce proceedings, have they been started?

3 A No, sir. Well, yes, I guess.

4 Q They have?

5 A The motions, yes, sir.

6 Q And the lawsuit hadn't been filed yet?

7 A No, sir.

8 Q Thank you.

9 MR. LOFTON: That's all I have, Judge.

10 THE COURT: Redirect?

11 **REDIRECT EXAMINATION**

12 BY MS. BARR:

13 Q Ms. Brown, how old was Lauren by the time that
14 the defendant would take her on these overnight
15 trips out of town to the beach for sporting events?

16 A It was before they could drive so 13, 14.

17 Q Teenager?

18 A Yes, sir — yes, ma'am.

19 Q And how old was Lauren when you all moved to the
20 house here in the town of Kingstree?

21 A Nine.

22 Q That's all the questions I have. Thank you.

23 THE COURT: Mr. Lofton, anything else?

24 MR. LOFTON: No, thank you, your Honor.

25 THE COURT: Thank you, ma'am. You may

1 step down.

2 Do y'all have something you need to take
3 up?

4 MS. BARR: Yes, sir.

5 THE COURT: Ladies and gentlemen of the
6 jury, if you would please go to your jury room. Of
7 course you may not discuss the case.

8 (WHEREUPON, the jury was removed from the
9 courtroom at 2:43 p.m., and the following
10 proceedings commenced in open court.)

11 THE COURT: Just to put on the record, at
12 Bench conference, at the Bench conference Ms. Barr
13 asked if I would permit a question of the last
14 witness about whether or not she observed the
15 defendant removing a hard drive from the house
16 during the two weeks time police arrived during the
17 time police arrested. I — Mr. Lofton indicated he
18 would object to that question, and I up here at
19 least sustained the objection depending upon what
20 else may develop during questioning of Ms. Brown —
21 excuse me, Ms. Goodman. She goes by Goodman Brown,
22 Ms. Brown, or any other witness who might ultimately
23 testify. Also, if Mr. Lofton alluded during
24 questioning of a witness as to nothing being found
25 of the search in the home I indicated I might allow

1 Ms. Barr to re-call the witness to testify to that.
2 I just wanted to put on the record what we
3 discussed.

4 All right, there's something you, one or
5 both of you wanted to say before the next witness is
6 called?

7 MR. MCKENZIE: Your Honor, I'm assuming
8 that Ms. Brown needs to probably still be
9 sequestered since the video evidence is not in.

10 THE COURT: Okay. I'm not really sure
11 because obviously I don't know what all the evidence
12 is.

13 But Ms. Barr, if you think there is a
14 potential for the witness being re-called she still
15 needs to be sequestered. Are you going to need her
16 today?

17 MS. BARR: No, sir, not today.

18 THE COURT: So, ma'am, you can stay back
19 up in that room where you were or you can go.

20 Of course, Ms. Barr, you might need some
21 contact information if you don't already have it.

22 MS. BARR: She'll probably want to stay,
23 Judge.

24 THE COURT: All right. Okay, Mr. Lofton.
25 Who is your next witness so we can make sure

1 we're — is your next witness —

2 MS. BARR: Amanda Goodman, Your Honor.

3 THE COURT: Amanda Goodman?

4 MS. BARR: I'm sorry, Ashley Gardner. I
5 was looking back. Is she in the courtroom? She's
6 here.

7 THE COURT: Yes, sir.

8 MR. LOFTON: Your Honor, I want to renew
9 my motion to exclude the testimony of Ashley
10 Gardner. Judge, we now — and I want to, if I can
11 just adopt all the arguments we made previously in
12 the motion limine. But in addition to that, we now
13 have the benefit of Ashley's testimony — I'm sorry,
14 Lauren's testimony — I'm having as much trouble as
15 Ms. Barr. We now have the benefit of Lauren's
16 testimony before the jury; and Judge, what we have
17 is we have three specific acts of alleged —

18 MR. DICKSON: Your Honor, I apologize.

19 THE COURT: That's all right.

20 (Defense attorneys confer.)

21 MR. LOFTON: I understand that Ms. Gardner
22 is in the courtroom. I just ask she be —

23 THE COURT: Okay. I don't know where you
24 were. Ms. Gardner, you'll have to go.

25 Mr. Jarrett, could you take her out.

1 Sorry about that, it's not your fault.

2 (Defense attorneys confer.)

3 THE COURT: Okay.

4 MR. LOFTON: As I was indicating, Judge,
5 we now have the benefit of Lauren's testimony. And
6 Judge, she testified concerning three specific acts:
7 Oral sex, digital penetration, and the grabbing of
8 the breast on the four wheeler.

9 THE COURT: Right.

10 MR. LOFTON: Specific acts of sexual
11 misconduct. Judge, based on the proffer that was
12 made yesterday, Ms. Gardner will not testify to any
13 of those three acts occurring to her.

14 THE COURT: Digital penetration.

15 MR. LOFTON: Well, and that's a little
16 shaky. I don't —

17 THE COURT: It's there. She said may be a
18 little.

19 MR. LOFTON: May be a little and I don't
20 know exactly what that means but. I really believe,
21 Judge, that because of the undue, unduly prejudicial
22 effect of her testimony and the fact that now we're
23 talking about acts unrelated because if the Court
24 remembers — and you take better notes than anybody
25 I've seen in a long time — all of the allegations

1 dealing with Ashley basically centered around the
2 bath, the bathing. Any improper or illegal or
3 inappropriate sexual acts all centered around the
4 bathing aspects. None of that, none of that was
5 involved with Lauren. There was no bathing at all.
6 And the acts were totally different. So we really
7 believe, Judge, and you know, we talked about Scott
8 and we talked about that Hubner case and I really
9 believe in Hubner, this is exactly what the court is
10 talking about because everybody knows once you let
11 in these unconnected sexual relationships it goes to
12 the character and you just — you're inferring —
13 and that is what we're not supposed to do. You're
14 inferring that because he did these other sex acts
15 or these other inappropriate touchings then he must
16 be guilty of this. And I just think that it's so
17 highly prejudicial that that highly prejudicial
18 aspect outweighs any possible probative value that
19 it could have other than to show that give the
20 inference that he committed these other crimes.

21 THE COURT: All right. Ms. Barr.

22 MS. BARR: Your Honor, I think that the
23 404 analysis doesn't necessarily encompass prior
24 crimes necessarily but —

25 THE COURT: Ma'am?

1 MS. BARR: It doesn't necessarily require
2 that the defendant commit prior crimes or other
3 crimes. It specifically references crimes or other
4 acts or wrongs I believe is how the rule reads.

5 THE COURT: And the case is called that
6 generically bad acts evidence.

7 MS. BARR: Correct. But we certainly
8 don't take a position that in order for Lyle
9 evidence to come in that the State has to prove that
10 the defendant committed prior crimes against a
11 similar victim. Judge, and again to reiterate, one
12 of the things that became more clear to me during
13 the testimony of Lauren and couple that with
14 Lauren's mother was that, one, the ages of the girls
15 when the defendant started dating their mother was
16 the same, that the ages where the sex talks was the
17 same. Marsha testified on the stand that the
18 defendant suggested to her that perhaps when they
19 were living on the, in the farmhouse — and Judge
20 during that time based on what we know about when
21 they moved from the farmhouse to the townhouse
22 Lauren had to have been less than 9 years old, which
23 is consistent in terms of the age of Ashley when
24 those similar sex talks occurred, and so that is a
25 common similarity that is shared between the two.

1 The ages are shared between the two. The
2 relationship of the defendant to each victim is
3 shared between the two.

4 Judge, the CSC with a minor statute
5 encompasses digital penetration, and it specifically
6 references any intrusion into the opening of the
7 victim's vaginal area or anal area or in her mouth
8 or his mouth no matter how slight and so while
9 counsel can argue that when Ashley testified that it
10 was slight, if at all, intrusion into her vaginal
11 wall by the defendant the statute and the case law
12 cover instances where there is minor — or what they
13 would submit to the court is a minor intrusion. And
14 so clearly, Judge, that's still evidence of digital
15 penetration which is, again, a common similarity
16 that's found in the testimony of Lauren. Judge,
17 after having listened to the testimony of Lauren
18 there's a commonality about the clear shower
19 curtain. There's a commonality about the defendant
20 always seeming to accidentally come into the
21 bathroom when Lauren was there, and that's clearly
22 what was testified to by Ashley.

23 THE COURT: I don't remember Ashley saying
24 that; I certainly stand to be corrected. But I do
25 not remember Ashley saying that he would come in the

1 bathroom by accident. He would just being there
2 when she was taking a bath and she was 7 or 8. Was
3 there testimony from her that he would pull back
4 shower curtain and say hello?

5 MS. BARR: Judge, I believe the testimony
6 by her was that he would always come into the
7 bathroom accidentally when she was in the shower is
8 my recollection of the testimony.

9 THE COURT: But she can't read his mind.
10 She doesn't know what, whether he was coming
11 pretending to come in by accident or truly came in
12 by accident or just barged in knowing she was there.

13 MS. BARR: And Judge, I think that that
14 obviously goes to the weight of the evidence
15 weighing its admissibility, but I specifically
16 recollect — and counsel may want to defer to the
17 court reporter for specific portions of Ashley's
18 testimony when she talks about that — but my memory
19 is that she talks about the defendant used to always
20 come in the bathroom when she was in there. There
21 was —

22 THE COURT: Here's what I wrote down.
23 When she wanted — of course, when she changed from
24 taking a bath to a shower, he changed the shower
25 curtain to clear. He always came in. He would open

1 the shower curtain and he did that fifty plus times.
2 That is similar to what I believe Lauren said today
3 was he would just open the shower curtain and say
4 hello. I think I'm correct about that.

5 MS. BARR: And Judge, there's also the
6 similarity where Ashley describes that he would
7 tickle her all the time, and he made it like a
8 playful thing is how she described it. There was
9 testimony by Lauren that the defendant would
10 constantly touch her on her stomach or on her legs,
11 and that's a similar common trait between the two.

12 THE COURT: She said that today?

13 MS. BARR: Yes, sir.

14 THE COURT: Okay.

15 MS. BARR: And there's also the locations
16 where the specific inappropriate sexual behavior
17 occurred being at the farmhouse and at the house on
18 Clearview. So Judge, we would just submit to the
19 Court that based upon all of those numbered
20 similarities, that this is the type of evidence that
21 is contemplated in the Scott opinion and it's a
22 matter that should be given whatever weight the jury
23 deems appropriate. But I think they should be
24 permitted to hear it based on all these, all the
25 similarities.

1 THE COURT: Okay, all right. Anything
2 else, Mr. Lofton?

3 MR. LOFTON: Judge, just the problem is
4 Scott was an entirely different case, and I
5 understand the rulings in Scott but this is what the
6 court said in Scott. For the following reasons,
7 three reasons, the total probative value of the bad
8 acts evidence in the instant matter was great, and
9 as a result not substantially outweighed by the
10 danger of unfair prejudice. And then they say,
11 first, the similarities were not only numerous but
12 an extremely high level of continuity existed
13 between both. And they're talking about specific
14 acts in my — that's what I believe they're talking
15 about.

16 THE COURT: That's what I was talking
17 about earlier today.

18 MR. LOFTON: That's what I believe it is.

19 THE COURT: She wants to talk more about
20 generalities; you want to talk more about specifics.
21 Cases talk about both.

22 MR. LOFTON: Well, but Scott specifically
23 I believe talks about the specifications.

24 THE COURT: It does.

25 MR. LOFTON: And then secondly, they said

1 secondly, high level of continuity extended to even
2 the most specific acts of abuse. And then third, of
3 course they get into the temporal remoteness issue.
4 So I just believe, Judge, that the prejudice here is
5 so great that it far outweighs any probative value.

6 THE COURT: All right. I'll just
7 repeat — hopefully I can make it clear for the
8 record and for y'all. Under Wallace the Court, the
9 Supreme Court said, although not a complete list in
10 this type of case the trial court should consider
11 the following factors when determining whether
12 there's a close degree of similarity between the bad
13 act and the crime charged. That's not having
14 anything to do with prejudice yet. Number one, the
15 age of the victims when the abuse occurred. I do
16 not think anyone can argue that whatever category
17 the abuse would fall in, these victims Ashley and
18 Lauren were practically the same age. When he met
19 their mother, when he began dating their mother and
20 when he married their mother and when he began what
21 they allege he began to do, what they allege he did.

22 Number two, the relationship between the
23 victims and the perpetrator. I've covered that
24 already. There was a familial or authority
25 relationship where he was the authority figure as to

1 both. Dating the mother with the small girl and
2 then marrying the mother with a small girl, and he
3 was the bread winner, so forth and so on. Number
4 three, the location where the abuse occurred. That
5 would be in the context of Ashley primarily at the
6 farm house, and I don't know whether she said
7 anything happened on Gilland Street. Did she say
8 that, Ms. Barr?

9 MS. BARR: She did during the time he was
10 bathing her.

11 THE COURT: So one farmhouse and at the
12 house in town. Lauren, farmhouse twice, pond house
13 with the cucumber, or nothing criminal happened and
14 then at the house on Clearview. Number four, the
15 use of coercion or threats, there's no evidence in
16 any in any instances here that that happened. And
17 number five, where the court begins to get more
18 specific, the manner of the occurrence. For
19 example, the type of sexual battery. That's what I
20 struggled with on the similarity prong. Vaginal
21 touching either overt or slight penetration from one
22 to the other and one where he used his mouth. The
23 manner or the type of sexual battery was fondling or
24 penetrating the vaginal area. So the type of sexual
25 battery was pretty much the same if the jury

1 believes that any of this happened.

2 The manner of the occurrence which is used
3 in conjunction with the type of sexual battery is
4 what I struggled with because Ashley said it
5 happened 20 plus times, and Lauren said it happened
6 a maximum of maybe three, two or three. But all and
7 all, and I, of course the cases say that I can take
8 into account anything else in determining similarity
9 and I think I've already covered that for the record
10 so I cleared that hurdle.

11 And now we move, as Mr. Lofton has pointed
12 out, to the third prong and the most important prong
13 is whether or not the probative value is
14 substantially outweighed by the danger of unfair
15 prejudice. And what I have to do is reconsider the
16 similarities and dissimilarities as well as temporal
17 remoteness and other factors to ascertain the total
18 probative value and subsequently compare that to the
19 danger of unfair prejudice. That is the big
20 struggle. And what I ruled previously was that the
21 similarities to me are sufficient to also clear the
22 403 hurdle. There was not a high level of
23 continuity from one victim to the other because
24 there was a five year lapse. In other words, he was
25 not doing this to a bad act witness and a indictment

1 victim witness at the same time; they weren't
2 overlapping.

3 The lack of specific things that he was
4 doing to both, I do not think is the be-all and
5 end-all. The temporal remoteness, I don't think
6 it's significant even though the cases do say or a
7 case does say that the temporal remoteness serves to
8 reduce the overall probative value. I still
9 believe, Mr. Lofton, I think you've stated your
10 position very admirably and very thoroughly and I
11 may be wrong, but I think you have not established
12 or that the facts do not establish that the
13 probative value of evidence is substantially
14 outweighed by the danger of unfair. I do not think
15 the probative value is — I do not think — and this
16 is where I get confused because the court say it
17 different ways. The probative value is not
18 substantially outweighed by the danger of unfair
19 prejudice. I say that knowing that certainly
20 reasonable and more brilliant minds than mine might
21 differ, but I respectfully reject your argument at
22 this point. Okay, anything else?

23 MR. LOFTON: That's all I have, Your
24 Honor. Thank you.

25 THE COURT: Anything else, Ms. Barr?

1 MS. BARR: No, Your Honor.

2 THE COURT: Thank you. Anybody in the
3 courtroom need to take a break?

4 MR. DICKSON: May we have a short break,
5 Your Honor?

6 THE COURT: Yes, sir.

7 (WHEREUPON, a recess was taken from the
8 proceedings.)

9 THE COURT: Are you ready for the jury?

10 MS. BARR: State's ready.

11 THE COURT: Mr. Lofton?

12 MR. LOFTON: Yes, sir.

13 THE COURT: Okay. And of course you're
14 familiar with the preservation rules. I think the
15 trial courts have been told we don't get to make
16 call as to whether or not it's preserved. I would
17 feel safe in assuming that since she's calling the
18 witness immediately after you make your objection
19 and it's ruled upon that you don't have to object,
20 but I'm gonna let you use your own judgment with
21 regard to that.

22 MR. LOFTON: Well, do you want me to wait
23 till the jury comes in and do it? I felt like it
24 was covered but.

25 THE COURT: Oh, I think it is too but —

1 MR. LOFTON: I'm like you, I don't know
2 what the appellate courts are gonna do.

3 THE COURT: Judge Cooper from Camden got
4 reversed when he told a lawyer I think you're
5 covered.

6 MR. LOFTON: Right.

7 THE COURT: I can tell you that, but it
8 means nothing.

9 MR. LOFTON: Well, when she calls the
10 witness when the jurors are here I'm just going to
11 stand up and say, Judge, I'm gonna renew my last
12 objection.

13 THE COURT: Okay. And if anything new
14 comes up, of course you can object as you see fit.

15 MR. LOFTON: Right. Thank you, Your
16 Honor..

17 THE COURT: You ready, Ms. Barr?

18 MS. BARR: Yes, sir.

19 THE COURT: Okay.

20 (WHEREUPON, the jury was returned to the
21 courtroom at approximately 3:11 p.m., and
22 the following proceedings commenced in
23 open court.)

24 THE COURT: All right, ready to go
25 forward, Ms. Barr? You can call your next witness.

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1 MS. BARR: Thank you, Your Honor. May it
2 please the Court, the State calls Ashley Gardner.

3 THE CLERK: Place your left hand on the
4 Bible, raise your right hand.

5 WHEREUPON,

6 **ASHLEY OLIVIA GARDNER,**
7 having been duly sworn by the Clerk of Court,
8 testified as follows:

9 THE CLERK: You make take your seat in the
10 witness box.

11 MR. LOFTON: If the Court please.

12 THE COURT: Yes.

13 MR. LOFTON: Your Honor, just for the
14 record I'd like to renew the objection I made while
15 the jury was out. I renew that for the record.

16 THE COURT: Yes, sir, thank you.

17 Ms. Barr.

18 MS. BARR: May it please the Court.

19 THE COURT: Yes, ma'am.

20 **DIRECT EXAMINATION**

21 BY MS. BARR:

22 Q Good afternoon, Ashley. State your full name for
23 us.

24 A Ashley Olivia Gardner.

25 Q And Ashley, how old are you?

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1 A I'm 24.

2 Q And what's your birth date?

3 A 5/590.

4 Q 5/5/1990. And who is your mother?

5 A Mary Gardner.

6 Q All right. And at some point your mother
7 married, was married to the defendant Will Brown?

8 A Yes, ma'am.

9 Q All right. Do you recall when it was that your
10 mom began dating Mr. Brown?

11 A It was at the end of April in 1997. It was right
12 before I turned 7 years old.

13 Q And how do you remember that particular date?

14 A I remember their first date I was staying with my
15 grandmother and I fell and skinned my face and then
16 there's still — my birthday was just like two weeks
17 after and there's still scabs still on my face from
18 when that happened.

19 Q I'm gonna show you what's been admitted as
20 State's Exhibit Number 1. Is that the picture that
21 you've talked about from your birthday party with
22 the scab on your face?

23 A Yes, ma'am.

24 Q All right.

25 MS. BARR: Move to publish or move to

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1 admit and publish State's Exhibit Number 1.

2 MR. LOFTON: No objection.

3 THE COURT: That's in.

4 (WHEREUPON, State Exhibit No. 1
5 was admitted into evidence.)

6 THE COURT: Witness said what year?

7 BY MS. BARR:

8 Q 1997. Ashley, you were a brunette back then,
9 right?

10 A Yes, ma'am.

11 Q You mentioned that at that time you had a little
12 mark on your face? Is it visible from the
13 photograph?

14 A Yes, ma'am.

15 Q All right. Can you kind just point from where
16 you're seated there to where the marking on your
17 face would be?

18 A It's right here on my right cheek.

19 Q All right. Now when your mom and the defendant
20 began dating where were you and your mom living?

21 A We were living in Kingstree on Gilland Avenue.

22 Q And was your mom working at the time?

23 A She was working and she had just started going
24 back to school.

25 Q Okay. What was she going back to school for?

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1 A Nursing.

2 Q All right. And how long did your mother and the
3 defendant date before they married?

4 A It was about a year.

5 Q Okay. Do you remember when they were married?

6 A It was May 30th, 1998.

7 Q Okay. When they began dating you were six years
8 old, about to turn 7?

9 A Yes.

10 Q And so by the time the two of them married you
11 would have been?

12 A I would have just turned 8 that same month.

13 Q Okay. Now Ashley, you've given a statement to
14 law enforcement about certain things that happened
15 with you while your mom was married to the
16 defendant, correct?

17 A Yes, ma'am.

18 Q All right. And I believe that you testified that
19 the defendant would babysit for you or for your
20 mother while she was at school?

21 A Yes, ma'am.

22 Q Tell us about any type of inappropriate conduct
23 that the defendant committed against you and tell us
24 where you were living and what age you were when it
25 began?

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1 A Okay. I was 7 years old and it started as kind
2 of a playful, fun like tickling but it became very
3 inappropriate and touching just kind of escalated.
4 And whenever I would, whenever my mom would go to
5 school at night he would bathe me and sit in the
6 bathroom with me while I would bathe, and he would
7 put dawn dish washing liquid in the bath tub to make
8 bubbles and then —

9 Q Okay, slow down just a minute for me. This is
10 when you — and specifically talking about when you
11 would bathe, would you bathe at the sink, in the
12 shower or in the tub during those instances?

13 A In the tub.

14 Q And the defendant would sit in the bathroom while
15 you bathed in the tub?

16 A Yes, ma'am.

17 Q All right. Now at that particular age were you
18 old enough to wash yourself?

19 A Yes, I was taking like showers by myself before
20 that.

21 Q Okay. And did you ask the defendant to help you
22 bathe?

23 A No.

24 Q Tell us about — and I cut you off when you said
25 he would put Dawn dish washing liquid in the tub to

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1 make bubbles. Tell us about that.

2 A He would use the Dawn dish washing liquid and
3 then whenever I would get out of the bath tub —
4 well, when I was in bath at first he wasn't really
5 helping me bathe, but over time it started where he
6 was kind of bathing me and touching me while I would
7 be showering or bathing. And then whenever I would
8 get out it was kind of like a playful toweling me
9 off and the towel would slip and there would be skin
10 to skin contact. And then I would go into my room
11 and he would want me to lay down on the bed and
12 check out my privates to see if there were any
13 bubbles or if I was getting an infection from the
14 Dawn that he was putting in the tub.

15 Q Okay. Where would you be he would have, he would
16 check your privates to see if there were any bubbles
17 or any infections? Where would you physically be in
18 wherever you was, whatever building you were in?

19 A I was at my house on Gilland Avenue laying on my
20 bed like I would come out with a towel from the
21 bathroom, go into my room, undo the towel, lay down
22 on the bed —

23 Q Okay.

24 A —on my back.

25 Q All right. And where was your mother when these

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1 things would happen?

2 A She wasn't there; she was at school.

3 Q All right, and did you have any male siblings?

4 A No.

5 Q Okay. Did you have any other siblings?

6 A I do have siblings on my dad's side; but on my
7 mother's, I'm only child so I lived just me and my
8 mom.

9 Q During the time in which the defendant dated and
10 married your mother, were any of your brothers or
11 sisters on your dad's side, did any of those
12 siblings ever live with you?

13 A No.

14 Q Okay, all right. And when the defendant dated
15 and married your mother, what kind of relationship
16 did you have with your biological father?

17 A At that point in time I was going to stay with my
18 dad like every other weekend and that was just stay
19 every other weekend with him.

20 Q Okay. Now you indicated that your mom and the
21 defendant married, got married on May 30th of 1998.
22 Where did you all live after your mom and the
23 defendant got married?

24 A After they were married we moved out to his house
25 that was out in Cades where the farm was.

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1 Q Okay. Is that the home on McCutcheon Road?

2 A Yes, ma'am.

3 Q All right. Prior to the move to the farm house
4 on McCutcheon Road did the defendant ever talk with
5 you about sex or sex education?

6 A Yes, ma'am.

7 Q How did that whole conversation come about?

8 A I had asked my mother about, just kind of casual,
9 it was probably the first time I ever asked about
10 sex, and she said that he would be good, that he
11 would explain it to me well better than she could.
12 And it was -- I wasn't there when they talked about
13 the fact that he was gonna explain it to me but I
14 knew that night and it was just understood that we
15 were gonna talk about it. And after I had a bath
16 that night we were both sitting in my bed and he
17 explained it to me.

18 Q What did he explain to you about sex, and how old
19 were you then.

20 A I would have been 7.

21 Q Okay. What did he explain to you about sex?

22 A He explained where a man's private part is and he
23 would point on himself where that is and tell me how
24 a penis would get hard and then he showed me where a
25 woman's private was. He would point to it on me.

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1 And explained how it would get wet and that that
2 would be how you would be able to have sex. And he
3 told me about whenever you lose your virginity, kind
4 of explained a little bit about that.

5 Q Okay?

6 A And he told me that how it would feel good when
7 if you had sex, you know, it would hurt the first
8 time and about when if you lost your virginity.

9 Q Now during this sex talk with you were you
10 clothed?

11 A Yes.

12 Q Was he clothed?

13 A Yes.

14 Q Okay. Did he touch, ever touch your body in any
15 way when he was talking to you about sex?

16 A Yes.

17 Q Okay. How did he touch your body?

18 A He just pointed like with his hand with his
19 finger.

20 Q Okay. During the course of that sex talk with
21 you did he ever point to his penis?

22 A Yes, ma'am.

23 Q All right, did you see his penis?

24 A The way he was sitting I could kind of see it
25 through his pants; but I mean, he had pants on.

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1 Q Okay. Now Ashley, of course now you are an
2 adult. Do you have a recollection as to whether or
3 not at the time he gave this discussion to you,
4 whether or not his penis was erect?

5 A Yes, ma'am, it was.

6 Q Did he ever touch you underneath your clothes or
7 ever had you to remove your clothes during the sex
8 talk?

9 A No.

10 Q Okay. Now you were telling me about an incident
11 where he actually touched your vagina?

12 A Yes, ma'am.

13 Q All right. Tell me where you were when that
14 happened, again how old you were, and what
15 specifically he did on that occasion.

16 A When it had first started when we were on Gilliland
17 Avenue and I would be in my bed like after we get
18 out — I would get out the bath tub and I would lay
19 on my bed, he would — at that point he wasn't
20 touching me a lot but just he would like hold my
21 legs open and kind of look and kind of like —

22 Q Look where?

23 A Look at my vagina, pull it apart and look at it.

24 Q Okay, all right. Did at any point in time did he
25 ever try to put his penis in your vagina?

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1 A No, ma'am.

2 Q Did he ever at any point in time put his fingers
3 in your vagina?

4 A Yes, ma'am.

5 Q Tell us about that incident. What did he do?

6 A I wouldn't say that it was like all the way in
7 there, but he would have his hands all in like
8 around and inside of it and just — I wouldn't say
9 that there was like a full digital penetration but a
10 little bit of his finger did penetrate.

11 Q Your vagina?

12 A Yes, ma'am.

13 Q Okay. Did he ever perform oral sex on you?

14 A No, ma'am, but he would get very, get — have his
15 face very close up to it and he would smell it.

16 Q Okay. Smell what is it?

17 A He would smell my privates.

18 Q Your vagina?

19 A Yes, ma'am.

20 Q What would he do after he would — after he
21 placed his fingers near your — on your vagina, what
22 would he do after he would smell it?

23 A He would put his fingers up to my nose and want
24 me to smell it.

25 Q During these times was your mother ever home when

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1 these incidents occurred d?

2 A No, ma'am.

3 Q Okay. Now specifically the incident where he put
4 his fingers up to your nose and asked you to smell
5 his fingers and after he had your his fingers on
6 your vagina, where were you living at that time?

7 A That was on McCutcheon Road at the farm.

8 Q Okay. How long did you and your mom live with
9 the defendant at the farmhouse?

10 A About a year I believe. Yes.

11 Q Okay. Do you recall — what caused you and your
12 mom to no longer live with the defendant at the
13 farmhouse?

14 A I remember one — they were getting separated
15 because of, I'm not sure exactly the details about
16 that, but I know that I just remember the one
17 morning packing up all my stuff and my grandmother
18 came to pick me up and I never went back out there.

19 Q Did —

20 A I did go out there later but...

21 Q Do you remember approximately when that was when
22 you packed up all of your things?

23 A That was August. It was August of 1999 I
24 believe.

25 Q August 1999?

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1 A Yes.

2 Q All right. And you would have been, at that
3 point would have been?

4 A Yeah, that's right. I would have just turned, I
5 was three months into my 9th year.

6 Q Okay, so you would have been 9 years, plus 3
7 months?

8 A Yeah.

9 Q And did any inappropriate conduct or behavior
10 happen between you and the defendant after that
11 point, August of 1999?

12 A No, ma'am.

13 Q Okay. Now you've talked about how things got
14 progressively more sexual — my words not yours —
15 after your mom and the defendant got married and you
16 all moved into the farm house. Tell me about the
17 portion of your statement when you talk about the
18 shower curtains and being in the bathroom and that
19 sort of thing.

20 A As I got a little bit older and I wanted to take
21 showers he would come into the bathroom and kind of
22 pull the curtain open and, you know, ask me random
23 questions just kind of like it was an accident or
24 whatever; but then the shower curtain then that
25 replaced where it was clear so you didn't have to

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1 pull the curtain back anymore. You can just walk in
2 the bathroom and see whoever was in the shower.

3 Q How many times were you either in the shower, in
4 the tub, or in the bathroom when the defendant would
5 come in while you were in there?

6 A I mean, at least like 15 times probably or more.

7 Q Okay. When he would bathe you while you were
8 talking a bath or shower did he use a wash cloth?

9 A Yeah, he would use a wash cloth, but it would
10 kind of slip or there was always skin to skin
11 contact usually.

12 Q Okay. Did he ever at any point in time try to
13 wash -- you wouldn't have breasts back then
14 obviously, but the area where your breasts were, did
15 he ever try to wash that area?

16 A Yes, ma'am.

17 Q Did he ever try to wash your vagina then?

18 A Yes, ma'am.

19 Q What about your buttocks?

20 A Yes, ma'am.

21 Q Would he do that with a wash cloth and soap?

22 A That's when -- yeah, that -- yeah, he would be
23 using a wash cloth but that's whenever when he would
24 get to my private areas is when all of a sudden the
25 wash cloth slips or there, that would be when there

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1 would be skin to skin contact.

2 Q What part of his skin would then touch what part
3 or what you describe to be your private parts?

4 A His hands would touch my vagina and in, all in
5 between my legs and my butt.

6 Q Did you ever tell your mom what happened to you
7 while she was married to the defendant?

8 A Not while she was married to him.

9 Q At any point in time was anyone else in the house
10 where these instances where he would touch your
11 private parts occurred?

12 A No one else was ever there.

13 Q Now after your mom and the defendant got married
14 was your mom still going to school or had she
15 started working as a nurse?

16 A She was still going to school.

17 Q Okay.

18 A She didn't start working as a nurse until after
19 they were divorced.

20 Q Until after they were divorced?

21 A (No verbal response.)

22 Q Is that a yes?

23 A Yes, ma'am.

24 Q Okay. If you know, how were the bills paid in
25 your home if your mother was going to school full

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1 time?

2 A She was working as well.

3 Q Okay.

4 A But I'm not sure of those kind of details.

5 Q Sure. How many times was it that he touched your
6 private parts while trying to bathe you?

7 A It was at least 20 plus times.

8 Q Ashley, have you ever had a conversation with
9 Lauren Goodman or Amanda Goodman about what happened
10 to you?

11 A No, ma'am.

12 Q Okay. Other than seeing them in court as a
13 result of this case, have you ever seen them after
14 your mom divorced the defendant?

15 A I saw them at school in passing but I've never
16 spoken to them.

17 Q Okay. Have you ever read any statements or seen
18 any interviews that Lauren might have made or given?

19 A No, ma'am.

20 Q Okay. And during Lauren's testimony were you in
21 court?

22 A No, ma'am.

23 Q Did you hear her testimony?

24 A No, ma'am.

25 Q There was a point in time where either Lauren or

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1 Amanda tried to reach out to you on Facebook. Do
2 you remember that?

3 A I vaguely remember that, yes.

4 Q Did you respond to that?

5 A I, I remember that I typed a message to who --
6 I'm not even sure which one of them it was that sent
7 me the request. I remember typing out a message and
8 I don't know if I sent the message or not or if I
9 just ignored the request. I did not respond to it.

10 Q Why?

11 A I was -- I had them and Will and his wife blocked
12 on Facebook before they ever reached out to me
13 because I didn't want him to be able to look at my
14 information or pictures or anything. And whenever I
15 got that request I went ahead and blocked both of
16 them as well because I was afraid that it might have
17 been him on one of their Facebook pages.

18 Q Okay. When you say that you had already blocked
19 Will and his wife from your Facebook page are you
20 talking about Marsha Brown?

21 A Yes, ma'am.

22 Q Okay. Ashley, you have filed a civil suit
23 against the defendant?

24 A Yes, ma'am.

25 Q All right. And your lawyers in that case are

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1 who?

2 A Billy Jenkinson.

3 Q Okay. And Mr. Jenkinson is in the courtroom with
4 you?

5 A Yes, ma'am.

6 Q All right. Ashley, why was it that you did not
7 tell your mom initially what was going on with you?

8 A I — she asked me one time if anybody was doing
9 anything to me and all I said was that my words were
10 Will is very clever. But I never did tell her what
11 was going on because I was a — I just, I kind of
12 felt like it was okay what was happening because it
13 was someone that was in that kind of, in our family
14 basically and I didn't — he made me think that my
15 mom knew and that everything was even though I
16 obviously felt uncomfortable I thought that it was
17 okay. And I didn't really realize until later on
18 like, I felt like it was, I felt like shame from
19 what was going on and didn't want to acknowledge it.

20 Q Okay. Now you talked about things that happened
21 at the house in Gilland Drive and you talked about
22 things that happened at the farmhouse. Did any
23 other inappropriate behavior happen between you and
24 the defendant in any other location?

25 A Yes, ma'am.

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1 Q Tell us about that.

2 A When we were still living on Gilliland when they
3 were dating his mother went out of town and she had
4 a hot tub at her house and he came and picked me and
5 my mom up and went over to her house. This was at
6 night and no — she wasn't there. And I was in a
7 bathing suit in the hot tub; but both he and my mom
8 were completely naked in the hot tub.

9 Q Okay. What happened after you got into the hot
10 tub?

11 A He was — he had an erection in the hot tub I
12 remember.

13 Q How do you know that?

14 A How do I know that? I saw it.

15 Q Okay. When he — before he got, the defendant
16 got into the hot tub, do you have a memory of him
17 picking you up from anywhere?

18 A I remember him pick— he picked us up from the
19 house and then when we would get, like, he picked me
20 up and physically put me in the hot tub when we got
21 there.

22 Q When that happened, when he picked you up and
23 physically put you in the hot tub did he have an
24 erection at that point?

25 A I don't recall.

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1 Q Okay. When is it that you remember him having an
2 erection?

3 A I remember seeing him sitting down and seeing
4 like through the water with the lights on in the hot
5 tub that he had an erection.

6 Q Beg the Court's indulgence. Thank you, Ashley.
7 Please answer any questions that the Court or
8 Defense counsel may have for you.

9 THE COURT: Mr. Lofton.

10 MR. LOFTON: Bear with me just one minute
11 please, Your Honor.

12 THE COURT: Yes, sir.

13 MR. LOFTON: Your Honor, can we have a
14 brief recess?

15 THE COURT: Yes, sir. We'll take a few
16 minutes, ladies and gentlemen, perhaps five or ten.
17 You may not discuss the case any way at all. Thank
18 you.

19 (WHEREUPON, the jury was removed from the
20 courtroom at 3:39 p.m., and the following
21 proceedings commenced in open court.)

22 THE COURT: Ms. Gardner, you can step down
23 if you like or you can stay seated there. The only
24 thing I want to make sure you understand is you
25 cannot talk to anyone at all about this case while

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1 we're on this break, okay?

2 THE WITNESS: Yes, sir.

3 (WHEREUPON, a recess was taken from the
4 proceedings.)

5 THE COURT: Okay, bring in the jury.

6 (WHEREUPON, the jury was returned to the
7 courtroom at approximately 3:51 p.m., and
8 the following proceedings commenced in
9 open court.)

10 THE COURT: Mr. Lofton.

11 MR. LOFTON: If the Court pleases.

12 **CROSS-EXAMINATION**

13 BY MR. LOFTON:

14 Q Ms. Gardner, you didn't know Will Brown before
15 your mother started dating him; is that correct?

16 A Yes, sir.

17 Q Pardon?

18 A Yes, sir, that's correct.

19 Q And based on what you told the ladies and
20 gentlemen of the jury your mother started dating
21 Will. While she was dating Will she was also going
22 to school?

23 A Yes, sir.

24 Q And your mother made arrangements for Will to
25 come over and babysit you while she was going to

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1 school?

2 A Yes, sir.

3 Q And part of those babysitting duties involved
4 making sure that you got supper at night 'cause she
5 was in night school, correct?

6 A Yes, sir, it was night school.

7 Q So Will was responsible for feeding you?

8 A Yes, sir.

9 Q And taking care of you till your mother got home?

10 A Yes, sir.

11 Q Okay. Now you told the ladies and gentlemen of
12 the jury that at some point in time when you were
13 around 7 years of age you asked your mother to
14 explain sex to you or talk to you about sex?

15 A Yes, sir, I asked her what it was.

16 Q Asked her what it was. And she told you that she
17 would rather Will explain it to you?

18 A She seemed kind of fragile, like she couldn't
19 really find the words and she said that he would be
20 better at explaining it to me, yes.

21 Q Okay. And you indicated that obviously your
22 mother and Will had had some sort of conversation
23 because he, in fact, did what she said he was going
24 to do and explained sex to you?

25 A Yes, sir.

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1 Q Okay. And then you told the ladies and gentlemen
2 of the jury also about this incident that occurred
3 in the hot tub over at Will's mother's house?

4 A Yes, sir.

5 Q Now this was all prior to your mother and Will
6 getting married?

7 A Yes, sir.

8 Q And they were dating?

9 A Yes, sir.

10 Q And Will came over one evening and picked you and
11 your mother up?

12 A Yes, sir.

13 Q And momma told you to pack a bathing suit?

14 A I wore it over there.

15 Q Okay. And got over to Will's mother's house?

16 A Yes, sir.

17 Q And Will and your mother got naked?

18 A Yes, sir.

19 Q And they got in the hot tub?

20 A Yes.

21 Q And you got in the hot tub with them?

22 A Yes, sir.

23 Q Okay. And you told the ladies and gentlemen of
24 the jury Will had an erection?

25 A Yes, sir.

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1 Q Your momma was in the hot tub naked?

2 A Yes, sir.

3 Q Right? And then we talked about, we talked about
4 these tickling episodes where Will would tickle you
5 and touch you and all those sorts of things. You
6 remember that?

7 A Yes, sir.

8 Q And one of the examples of one of those tickling
9 episodes occurred on the couch in the living room,
10 right?

11 A Yes, sir.

12 Q And Will was laying on top of you tickling you?

13 A Yes, sir.

14 Q And you were fully clothed?

15 A Yes, sir.

16 Q He was fully clothed?

17 A Yes, sir.

18 Q And your momma was taking pictures?

19 A Yes, sir.

20 Q Now these allegations of sexual misconduct that
21 you've told the ladies and gentlemen of the jury
22 about, according to your testimony occurred in 1997,
23 1999 time frame?

24 A Yes, sir.

25 Q And on November the 21st you gave a statement to

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1 the Williamsburg County Sheriff's Department
2 outlining these alleged events?

3 A Yes, sir. I don't recall the exact date but I
4 did give a statement.

5 Q Okay. You would agree with me that it was
6 November of 2011?

7 A Yes, sir, I believe so.

8 Q Okay. And would you agree with me that that was
9 ten days after Lauren Goodman gave a statement to
10 the Williamsburg County Sheriff's Department?

11 A I know that it was after she had given a
12 statement. I don't know how many days it had been.

13 Q Okay. And after you gave that statement on
14 November 21st, 2011, you then filed a civil lawsuit
15 on February 14th, 2012, against Mr. Brown; didn't
16 you?

17 A I did file a civil suit. I'm not certain of the
18 exact date.

19 Q If the document reflects —

20 A It wasn't in February.

21 Q Okay. And your lawyers, your lawyers as well as
22 there are some other lawyers have been — your
23 lawyers Mr. Jenkinson and Mr. Jarrett, they been in
24 the courtroom ever since we started jury selection;
25 haven't they?

SW - A. GARDNER - REDIRECT

1 A Yes, sir.

2 Q And they're sitting right back here right now;
3 aren't they?

4 A Yes, sir.

5 Q And you know because they've told you that if you
6 can get Will Brown convicted in this case you're
7 gonna get a bunch of money; aren't you?

8 A They did not put anything to me like that, no.

9 Q Thank you much.

10 THE COURT: Redirect.

11 **REDIRECT EXAMINATION**

12 BY MS. BARR:

13 Q Ashley, you were asked on cross-examination about
14 whether or not Mr. Jarrett is your lawyer. Do you
15 remember that question?

16 A Yes, ma'am.

17 Q Are you also related to Mr. Jarrett?

18 A I am.

19 Q How are you related to Mr. Jarrett?

20 A He is my cousin.

21 Q Okay. Ma'am, do you believe that what the
22 defendant did was wrong?

23 A Yes, ma'am.

24 THE DEFENDANT: Objection, Your Honor.

25 THE COURT: Does it matter what this

SW - A. GARDNER - REDIRECT

1 witness thinks? I'll sustain the objection.

2 BY MS. BARR:

3 Q Let me ask you this question. You were asked
4 about the lawsuit and whether or not you were told
5 that if the defendant is convicted you'd get a lot
6 of money. You remember him asking you that
7 question?

8 A Yes, ma'am.

9 Q All right. Ashley, would you prefer a bunch of
10 money in this case or would you prefer that justice
11 be rendered in this case?

12 MR. LOFTON: Objection, Your Honor.

13 THE COURT: Yes, sir.

14 MR. LOFTON: I don't think that's an
15 appropriate question.

16 THE COURT: Please rephrase the question.
17 I think you can ask it properly, but I'll sustain
18 that objection.

19 BY MS. BARR:

20 Q Ashley, if the defendant, if the defendant is
21 convicted and there's a possibility that you would
22 get a bunch of money, is that the reason why you're
23 testifying here today?

24 A No, ma'am.

25 Q Okay. What would you want -- what is the reason

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1 why you're testifying here today?

2 A I do not want this to happen to anybody else.)

3 Q Can you tell us why you filed the civil suit?

4 A I filed it in February, and I had like three more
5 months where when I would have turned 21 it'd be 3
6 years after 18 and you can't file after you turn 21.

7 Q That's all the questions that I have.

8 THE COURT: Anything further, Mr. Lofton?

9 MR. LOFTON: Nothing further, Your Honor.

10 THE COURT: You may step down, ma'am.

11 MS. BARR: The State calls Mary Gardner.

12 WHEREUPON,

13 **MARY GARDNER,**

14 having been duly sworn by the Clerk of Court,
15 testified as follows:

16 THE CLERK: Have a seat up there in the
17 witness box.

18 MS. BARR: May it please the Court.

19 THE COURT: Yes, ma'am.

20 **DIRECT EXAMINATION**

21 BY MS. BARR:

22 Q Ms. Gardner, please state your full name.

23 A Mary Olivia Gardner.

24 Q And, ma'am, how is it that you know the defendant
25 Will Marion Brown?

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1 A We were married.

2 Q From when to when?

3 A I think May 30th of '98 to -- we separated August
4 of '99 I think.

5 Q Okay. Now we've heard testimony that Ashley is
6 your only biological child; is that correct?

7 A Correct.

8 Q All right. And during the period of time that
9 you would have dated the defendant and would have
10 been married to him was it just you and Ashley
11 living in the home on Gilland Avenue?

12 A Yes.

13 Q All right. When you began dating the defendant
14 when you working anywhere?

15 A At Kingstree Federal Savings and Loan.

16 Q Okay. And Ashley was school age during this
17 time?

18 A Yes.

19 Q Where was the defendant living at this time?

20 A In his home on McCutcheon Road.

21 Q Is that -- Is that known as the farm house about
22 thee?

23 A In Cades, yeah.

24 Q I'm gonna publish State's Exhibit Number 4.

25 THE COURT: That's already in, right?

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1 MS. BARR: Yes.

2 BY MS. BARR:

3 Q Is that the home we're talking about?

4 A That's it, yes.

5 Q Okay. All right now, when you were attending
6 school did the defendant babysit Ashley on occasion?

7 A Yes.

8 Q And if you remember, I know it's been some time
9 ago, but if you remember, what were your hours of
10 school during this time?

11 A I think I went two nights a week like Tuesday and
12 Thursday until — I think I was taking one class at
13 night maybe. I think it was just one class each
14 time. I was working full time.

15 Q And during the day I'm assuming Ashley would be
16 in school?

17 A Yes.

18 Q Okay. So what are the hours that the defendant
19 would have had access to your daughter while you
20 were in school during this time?

21 A I took evening classes so it would have been for
22 a couple of hours one or two nights a week, and it
23 wasn't every week but it was often.

24 Q And when you got in from school what then would
25 you do in terms of Ashley's care?

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1 A Sometimes, I mean, you know, she would be — she
2 would have already had a bath and was ready for bed
3 and sometimes she would not and I would, you know,
4 have her get her bath and get ready for bed and get
5 it would be about time for her to get ready to go to
6 bed.

7 Q Do you recall the first instance where you and
8 Ashley would have had a discussion about sex
9 education?

10 A No, I mean, not sex education, no.

11 Q Okay. What about sex?

12 A I remember an incident when Ashley asked me a
13 question and I don't know what the question was
14 exactly but referring to sex and I didn't know how
15 to answer her.

16 Q Okay.

17 A And I remember making the comment, well, maybe he
18 can answer that better than me.

19 Q Who is he?

20 A Will.

21 Q Okay. And why did you believe that Will could be
22 able to answer Ashley's questions better than you?

23 A Well, at the time we were married and parenting
24 her and it was — I thought Ashley was too young to
25 be asking me anything about sex and I don't even

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1 know the question was about sex or of the
2 specifically what it was about, but it was — it
3 needed to be — I just didn't think she was old
4 enough to be talked to about specifically about sex
5 and to try to do it in a ginger way to just kind of
6 dismiss it and let her, you know, not — I don't
7 know exactly how to answer that, but it was kind of
8 an innocent parenting way that, you know, help me
9 with this, you know, maybe he could just answer that
10 better. I don't know. I do remember that one
11 incident.

12 Q All right. Did you as a result of that
13 conversation with Ashley then have a conversation
14 with the defendant about talking with Ashley about
15 sex?

16 A Absolutely not. He never had my permission to
17 teach her anything about sex or about her genitalia
18 or anything.

19 Q Okay. During the point in time after you and the
20 defendant got married were you still working at the
21 bank?

22 A Before we got married I, I was working at
23 Kingstree Federal Savings and Loan; and then before
24 we got married I got a job at the Bank of
25 Greeleyville so I was working at the Bank of

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1 Greeleyville when we got married.

2 Q As between you and the defendant who would have
3 been the primary bread winner in the family?

4 A He would have been.

5 Q Okay. And as between the defendant and Ashley's
6 biological father who would have had more contact
7 with her?

8 A He would.

9 Q Okay. Ashley's biological father is named?

10 A Ronald Gardner.

11 Q Okay. And were you married to him?

12 A Yes.

13 Q All right. And when did the two of you divorce?

14 A I left the home on December 28th of 1994.

15 Q Okay. And so Ashley would have been?

16 A Four.

17 Q Four years old at the time? Ms. Gardner, let me
18 as you this, is there any particular reason why, for
19 example, if you needed someone to watch Ashley while
20 you went to school why you didn't ask her biological
21 father?

22 A He lived in Latta which is like 70 something
23 miles from here in Dillon County.

24 Q Okay. Now, ma'am, since being separated and
25 divorced from the defendant you have come to learn

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1 of statements that Ashley has given about what the
2 defendant did to her.

3 A Yes.

4 Q During the course of your marriage to the
5 defendant were you aware that these things were
6 going on?

7 A No.

8 Q Okay. Do you remember the approximate time frame
9 when you became aware that these things were going
10 on?

11 A Yes, it was around September or late September,
12 early October of 2004.

13 Q Okay. And don't tell me specifically what was
14 said, but how did you come to learn that these
15 things had happened to her?

16 A I took her to a counselor because I was having
17 disciplinary problems with her.

18 Q Where was the counselor's office located?

19 A Florence, South Carolina. I want to say it was
20 on Dargan Street.

21 Q On Dargan Street?

22 A I think it was.

23 Q Do you know the name of the counselor?

24 A Yes, if you hadn't asked me. Randy Hiatt,
25 H-I-A-T-T.

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1 Q Okay. As a result of learning what the defendant
2 had done to your daughter did you have an occasion
3 after that to see the defendant and confront him
4 about that?

5 A Yes. For a long time, you know, we just avoided,
6 you know, didn't have just because prior, you know,
7 I would, if we saw him in public I would, you know,
8 make her speak and be nice and I scolded her on many
9 occasions for being disrespectful in public, you
10 know, not speaking.

11 Q To the defendant?

12 A Prior to me finding that out, yeah.

13 Q Okay.

14 A And but afterwards, no, she never, we never had
15 anymore contact with him again until she broke her
16 arm or her hand playing powder puff football the
17 following football season I think in '05; and he
18 approached us at the football game, approached her,
19 and that was —

20 Q The football game?

21 A The next contact that I had with him after
22 finding out and the only contact I've had with him
23 since.

24 Q Okay. What, if anything, did you say when he
25 approached Ashley at the football game?

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1 A Well, he walked up and asked her, you know, what
2 happened, and she jerked her arm away and ran off
3 and I just turned around and just let him have it.
4 I said don't you ever approach me or my daughter
5 ever again and don't you ever put your filthy nasty
6 hands on my child ever again. And he said, well, I
7 haven't bothered her. And I said, you see that you
8 don't. And that was it.

9 Q And that was in 2005?

10 A Yeah, it was right after she broke her hand,
11 yeah, in '05.

12 Q Was there ever a incident in a hot tub?

13 A Yes.

14 Q And ever occasion where you, the defendant, and
15 Ashley were in a hot tub together?

16 A Yes.

17 Q When did that happen and were you married to the
18 defendant at the time?

19 A Yes, we were, we were. We were married. That
20 was kind of well into our marriage.

21 Q Okay.

22 A Probably about half way through maybe.

23 Q Where did it happen at?

24 A At the house on Clearview. It belonged to his
25 mother at the time.

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1 Q Is that State's Exhibit Number 5?

2 A That's it, yes.

3 Q Okay. All right, there was a hot tub at the
4 house on Clearview?

5 MS. BARR: Publish State's Number 5, Your
6 Honor?

7 THE COURT: Number 5?

8 MS. BARR: Yes, sir.

9 BY MS. BARR:

10 Q There was a hot tub at that house, Ms. Gardner?

11 A Yes.

12 Q All right. Tell us about that incident.

13 A We, you know, I mean can I say he said/she said,
14 you know, I mean.

15 Q You testify and if we need to stop —

16 A He was, you know, trying to get me to be a part
17 of, you know, or us to be part of a lifestyle where,
18 you know —

19 MR. LOFTON: Objection, Your Honor.

20 THE COURT: Ms. Barr, y'all can come up
21 please.

22 (WHEREUPON, counsel approached the Bench
23 for an off-the-record discussion.)

24 THE COURT: Ladies and gentlemen of the
25 jury, please step to your jury room. You may not

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1 discuss the case in any way.

2 (WHEREUPON, the jury was removed from the
3 courtroom at 4:14 p.m., and the following
4 proceedings commenced in open court.)

5 THE COURT: Ms. Barr, as soon as the door
6 closes you can ask the questions.

7 **PROFFER EXAMINATION**

8 BY MS. BARR:

9 Q Ms. Gardner, explain how it is that it came to be
10 that you and the defendant were nude inside a hot
11 tub with your daughter?

12 A He tried to make me want to be part of what he
13 called a life style where he said that I was
14 teaching Ashley to be ashamed of her body, that
15 being nude was natural and that by me there were
16 instances when he would, you know, go to the
17 bathroom not have a towel on or any clothes and we'd
18 argue about that and he'd say, you know, she's gonna
19 have psychological disorders and be in counseling
20 the rest of her life because of the way you're
21 raising her and —

22 THE COURT: Who said that to whom?

23 THE WITNESS: Will said that to me.

24 THE COURT: Okay.

25 THE WITNESS: You're teaching her to be

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1 ashamed of her body and you're governed by guilt;
2 and you know, he wanted, you know, us to -- he said
3 that there were families that, you know, just have
4 part of a nudist lifestyle, that he wanted to do
5 that. And so with much coaching into my dislike I
6 agreed that we would try that one time and if she
7 was uncomfortable she could get out and we'd never
8 have to do that again. And so we did. We went
9 there when his mother wasn't home and that did
10 happen and the incident.

11 Q All right.

12 MS. BARR: And Judge, that would be the
13 testimony that we proffer.

14 THE COURT: First of all, Mr. Lofton,
15 would you have any question of the witness on that
16 issue?

17 MR. LOFTON: No, Your Honor.

18 THE COURT: And your objection?

19 MR. LOFTON: The objection, Your Honor, is
20 now we're extending this bad act beyond the victim,
21 alleged victim Ashley. Now we're getting into
22 character evidence about lifestyle and things of
23 that nature which is really far, far removed from
24 where this case is supposed to be being tried on the
25 issues that he's been indicted for. And I don't

1 think there's any question that you're getting into
2 the character, the propensity arguments, the voyager
3 arguments, all of those areas where the courts have
4 said you need to stay away from that in these kinds
5 of case and certainly it could be very, very
6 prejudicial and probative value certainly is not
7 outweighed by its prejudicial effect.

8 THE COURT: Or is outweighed.

9 MR. LOFTON: Outweighed, yes, I'm sorry.

10 THE COURT: Ms. Barr.

11 MS. BARR: Your Honor, to the extent that
12 the witness would testify about the defendant wants
13 to be a part of some nudist colony, I think that's
14 probably, I would agree with defense counsel, that
15 we might be getting into area we shouldn't be
16 getting into. I do think that the witness'
17 testimony regarding the defendant stating that
18 you're teaching Ashley to be ashamed of her body,
19 nudity is natural, she's gonna have all these
20 psychological disorders with the way that you're
21 raising her, is appropriate testimony and
22 appropriate evidence to help explain that because in
23 a juror's mind they see the event of the hot tub in
24 isolation.

25 THE COURT: Well, you brought up the hot

1 tub during your direct of Ashley.

2 MS. BARR: Yes.

3 THE COURT: And I was thinking at the time
4 that I didn't know if it would help you or hurt you
5 so far as proving elements of any crime; and of
6 course Mr. Lofton didn't object so it came in. But
7 what does that have to do with any of the elements
8 of criminal sexual conduct or lewd act on a minor?
9 Your theory is that he would accomplish these things
10 when it was just he and Ashley or he and Lauren,
11 nobody else was around. So where are you, what are
12 you, what does this tend to prove to be relevant at
13 all?

14 MS. BARR: And Judge, I think that it goes
15 to the issue of grooming and how the defendant is
16 trying to make the victims more comfortable with
17 what it is he's about to do. You may recall that
18 during Lauren's testimony and during Ashley's
19 testimony, for a long time, Judge, they didn't think
20 that anything that had happened to them was wrong.
21 In their minds according to their testimony they
22 believed that what he was doing was okay. And so
23 certainly, Your Honor, if the defendant is telling
24 Ashley's mother that nudity is natural, that you
25 shouldn't teach her to be ashamed of her body, that

1 that certainly goes along with the notion of how
2 he's grooming them and trying to make them believe
3 that what he's doing with the victim is perfectly
4 natural and okay.

5 THE COURT: Mr. Lofton, anything else?

6 MR. LOFTON: Well, Your Honor, and I agree
7 it's totally irrelevant. We're talking about the
8 grooming and she's participating in the grooming
9 process.

10 THE COURT: Well, I don't know whether
11 she's participating, but she is in a way Ms. Barr
12 wants to present it as facilitator unintentionally.
13 2.

14 MS. BARR: Unintentionally.

15 THE COURT: Here's my ruling. My ruling
16 is the objection is sustained. I don't think it has
17 a tendency to prove anything; however, Mr. Lofton,
18 you will not be permitted to argue or otherwise
19 suggest or allude to the fact that any of the
20 alleged acts on the part of Mr. Brown that are
21 subject to the criminal count are the fault of the
22 mother.

23 MR. LOFTON: I understand that, Judge.

24 THE COURT: And I think you would probably
25 be cutting yourself if you did that anyway as far as

1 jury psychology.

2 But in any event, Ms. Barr, I will sustain
3 the objection.

4 MS. BARR: Yes, sir.

5 THE COURT: So there will be no testimony
6 about open life style or however else it may have
7 been characterized or them, or this witness needing
8 to teach Ashley not to be ashamed of her body, so
9 forth and so on, so that entire line of questioning
10 will be out of bounds. Okay. How much longer do
11 you think you'll need with the witness, Ms. Barr?

12 MS. BARR: Judge, I have one, maybe two
13 questions.

14 THE COURT: And Mr. Lofton, yes, sir.

15 MR. LOFTON: If you will give me one
16 minute, I won't be long. I want to indulge you
17 again, can you give me one minute.

18 THE COURT: Yes.

19 (Pause.)

20 MR. LOFTON: Thank you, Judge.

21 THE COURT: Okay, you ready for the jury,
22 Ms. Barr?

23 MS. BARR: Yes, sir, Your Honor.

24 THE COURT: Mr. Lofton?

25 MR. LOFTON: Yes, Your Honor.

SW - M. GARDNER - DIRECT

1 (WHEREUPON, the jury was returned to the
2 courtroom at approximately 4:23 p.m., and the
3 following proceedings commenced in open court.)

4 THE COURT: All right, Ms. Barr.

5 MR. LOFTON: One minute.

6 THE COURT: I'm sorry.

7 (Pause.)

8 MR. LOFTON: Your Honor, I don't have any
9 questions, thank you.

10 THE COURT: I don't think she's finished
11 yet. That's good.

12 MR. LOFTON: I'm sorry, I thought she was
13 through.

14 THE COURT: Go ahead, Ms. Barr.

15 MS. BARR: Thank you, Judge.

16 BY MS. BARR:

17 Q Ms. Gardner, when you found out what the
18 defendant did to your daughter did you ever attempt
19 to call law enforcement or social services?

20 A I called my brother who was a SLED agent.

21 Q What's your brother's name?

22 A Daniel Rucker (ph).

23 Q Okay, and he was employed by SLED at the time you
24 found out?

25 A Yes.

SW - M. GARDNER - DIRECT

1 Q And what happened as a result of your calling
2 him?

3 A He ---

4 MR. LOFTON: Objection to anything he may
5 have told her, Your Honor.

6 THE COURT: Ms. Barr, I think the
7 question, ma'am, is what happened, not what anybody
8 said. I know it's difficult to distinguish but.

9 THE WITNESS: Right. He gave me the name
10 of the lady, to detective, whatever she was, that
11 handles sexual crimes with SLED. Her name was
12 Valerie Williams, and I called her and talked to her
13 for, I don't know, an hour or two, about regarding
14 what had happened, that it was 7 years prior, and
15 you know, what we do and then ---

16 Q Well, let me ask you this, did you tell your
17 daughter the conversation you had with Ms. Williams?

18 A Yes.

19 Q And after you told your daughter about the
20 conversations that you had with Ms. Williams, was
21 she willing to ---

22 MR. LOFTON: Objection, Your Honor,
23 hearsay.

24 THE COURT: Sustained.

25 BY MS. BARR:

SW - M. GARDNER - DIRECT

1 Q Did she come forward at that point in time and
2 for the formal charges brought against the defendant
3 at that time?

4 A No, she refused to go forward.

5 THE COURT: Just answer no, okay.

6 THE WITNESS: No.

7 BY MS. BARR:

8 Q How old was Ashley in 2005?

9 A She would have been 15 in May of 2005.

10 Q All right. And, ma'am, of course, publishing
11 State's Exhibit Number 1, is this a picture that you
12 took of her on her birthday?

13 A Yes.

14 Q Okay. Whose writing on the back of this
15 particular exhibit is that?

16 A I'm not sure.

17 Q You're not sure who wrote that?

18 A No.

19 Q And for the record it says May 5th, 1997, age 7,
20 Ashley Gardner?

21 A Yep.

22 Q Ma'am, please answer any questions that the
23 Defense counsel may have or the Court.

24 MR. LOFTON: I still don't have any
25 questions, Your Honor. Thank you very much.

1 THE CLERK: Thank you, ma'am. You can
2 step down. Have a seat out there, whichever you'd
3 like to do.

4 Ms. Barr, anything else for today?

5 MS. BARR: Judge, we ask that we recess
6 for today and begin tomorrow.

7 THE COURT: Let me see y'all up here for
8 just a minute trying to find out what time we'll
9 start tomorrow.

10 (WHEREUPON, counsel approached the
11 Bench for an off-the-record discussion.)

12 THE COURT: Ladies and gentlemen, we're
13 gonna break for the day a little bit earlier than we
14 normally would break to make sure we do get started
15 on time tomorrow and I don't keep you in the jury
16 room unnecessarily. We will begin at 10:00. We'll
17 be here earlier than that to take care of any issues
18 we may need to take care of before you get here, but
19 please be in your jury room at 10:00. In the
20 meantime, I'm gonna tell you you cannot talk about
21 this case amongst yourselves or with anyone else.
22 Don't read or listen or watch anything involving
23 this case or any of the issues, parties, or lawyers.
24 Do not post anything on any social media about any
25 of your observations or anything involving this

1 case. Just put it out of your mind until you come
2 back tomorrow, and we'll begin at 10:00. Thank you
3 for your time and patience. We'll see you tomorrow.

4 (WHEREUPON, the jury was removed from the
5 courtroom at 4:29 p.m., and the following
6 proceedings commenced in open court.)

7 THE COURT: Okay. Mr. Lofton and
8 Mr. Dixon, I know that — I know what Ms. Barr said
9 she's got several witnesses left on the list that
10 she's indicated tomorrow, at least preliminarily up
11 here at the Bench that she would call in the morning
12 and I'm not gonna hold you to it, Ms. Barr. Would
13 there potentially be other witnesses, maybe, maybe
14 not?

15 MS. BARR: Judge, maybe only because of
16 the issue about the clock.

17 THE COURT: The reason I bring that up is
18 I want to make sure that you take the opportunity of
19 this evening or in the morning to talk to Mr. Brown
20 about the questions that I will ask him about
21 whether or not he will or will not testify. I will
22 leave it up to you. I can go over that with him now
23 to kind of preliminarily explain to him things about
24 that, or I can do it all, as is typically the case,
25 when the State rests. I'll leave that up to you.

1 MR. LOFTON: I think that will be
2 appropriate, Judge. We intend to go over all that
3 with him tonight and so if that would work for you
4 it will work for us.

5 THE COURT: And just to -- and also I want
6 to make sure that we do not waste any time. Of
7 course, presupposing that, assuming that there is no
8 directed verdict granted, I want to make sure that
9 all of you understand that if you want to present
10 any written jury charges or charge or requests to me
11 that you might want to go ahead and start compiling
12 those and make sure that I have a copy and the other
13 side has a copy. I can tell you that I do not
14 charge the fact that the State need not present any
15 corroborating -- that the testimony of the alleged
16 victim need not be corroborated; I do not charge
17 that. I know it's been some cases that have come
18 out recently; but I had -- as a matter of practice,
19 unless the State convinces me otherwise, I don't
20 charge that because I don't know of any witness'
21 testimony that has to be corroborated except for
22 coconspirator or something like that. But I just
23 give you a heads up, I do not charge that to a jury.

24 I also will be happy to give you my
25 reasonable doubt charge, circumstantial and direct

1 charge, and any other charges that you want; but I
2 do not give a written copy of the charge to the jury
3 because I really don't read it, I just go by it.
4 And I don't think it would be fair for me to give
5 them something in writing that is not exactly what I
6 said, okay. So if anyone has any — and I don't, I
7 know this is more prevalent in civil cases, I don't
8 want both sides saying, well, I'm gonna wait till
9 the last minute to give my charge 'cause I don't
10 want the other side to see it. Let's try to avoid
11 that. That's more in civil lawsuits where nobody
12 wants to give any to the court at all. So if
13 anybody has anything to give me in writing if I can
14 have that before noon or by noon tomorrow.

15 MR. LOFTON: Judge, what we have we have
16 given it to you in the morning, probably not
17 anything out of the ordinary. And if it's not, we
18 may not even give you just — the standard charge is
19 your standard charge and we understand that but.

20 THE COURT: And there is, there is a
21 limited charge on Lyle evidence that I do typically
22 give and sometimes on the request I'll give it right
23 after the Lyle witness testifies; but I do have that
24 in my book somewhere, and I'll be happy to give that
25 to you. In other words, it basically says you —

1 after you've heard testimony or evidence pertaining
2 to other acts the defendant may have committed that
3 were not the source of the criminal charge or
4 criminal conviction or criminal conviction; and if
5 you believe though that testimony, you can use it
6 only in an effort, only as to evidence of whether or
7 not there was a common scheme or plan and not as to
8 whether the defendant is guilty of the crimes
9 charged in this particular case. And it's more
10 artfully stated than that, but that's essentially
11 what it says.

12 MR. LOFTON: And we usually — the judges
13 usually give it at the end. That's why I didn't
14 request it.

15 THE COURT: And that's right. I'll give
16 it on request in the middle, but it really kind of
17 gets lost in the shuffle. All right, anything
18 before we break for the day that you can think of
19 that might logically come up that I can at least be
20 thinking about?

21 MR. LOFTON: Did you say 9:30 for us?

22 THE COURT: I would like — I'll be here
23 at around 9:30. The jury is coming in at 10. If
24 there are going to be some in-camera issues with
25 Ms. Cook we might want to start before 9:30, but you

1 won't know until you hear what she has to say.

2 MR. LOFTON: That's correct, Your Honor.

3 We'll start whenever you say, Judge, so.

4 THE COURT: Both sides are familiar with
5 Khroma. This is not a Khroma case.

6 MS. BARR: It's not.

7 THE COURT: It's no vouching. No — well,
8 she can't say what she believes when someone tells
9 her something, so forth and so on so. Do you have a
10 report from her?

11 MR. LOFTON: I don't have any knowledge
12 what she's gonna say.

13 THE COURT: Do you know — what's her
14 generic testimony going to be about?

15 MS. BARR: About delayed disclosure.

16 THE COURT: In general?

17 MS. BARR: In general. Specifically as it
18 relates to Lauren, how she wanted to keep the family
19 together, that sort of thing.

20 THE COURT: Okay. If the witness is
21 willing to talk to Mr. Lofton tomorrow before we
22 start, that's fine, I can't make her. But if she
23 will, that will be fine. I tell you what, I will be
24 here 20 after 9 and you said you hope she's here
25 tomorrow by 9?

1 MS. BARR: Yes, sir. We sent her an email
2 requesting her be here tomorrow at 9. I left my
3 cell phone for her to call me on the cell phone
4 number.

5 THE COURT: The court reporter and I will
6 be here by 9:20. Make sure that, Ms. Barr, that all
7 sequestered witnesses understand the law of the
8 land. You may not have any left that are, but just
9 in case somebody is re-called, they need to
10 understand what the ground rules are.

11 (Court was adjourned at 4:30 and resumed May 21,
12 2014.)

13 THE COURT: Ms. Barr, are you ready for
14 the jury?

15 MS. BARR: The State is ready, Your Honor.

16 THE COURT: And Mr. Lofton?

17 MR. LOFTON: Yes, ma'am, Your Honor.

18 THE COURT: What y'all have indicated or
19 what Ms. Barr has indicated is that — Ms. Barr has
20 indicated that there's a scheduling issue with a
21 witness from Florence and that the witness won't be
22 available until the morning and that she will call
23 Investigator Wrenn this morning and request to
24 adjourn for the day. Will the defendant have any
25 objection to that?

1 MR. LOFTON: No, Your Honor. We just want
2 to preserve our rights from the standpoint of our
3 objections to the witness tomorrow.

4 THE COURT: Okay. Ms. Barr, while we're
5 talking about this, I know that the witness makes
6 the decision as to whether or not she would make
7 herself available for Mr. Lofton to talk to her. I
8 know you don't have any direct control over that.
9 But when she does get here tomorrow morning, do make
10 sure she does get here by 9 so Mr. Lofton, if she
11 wants to, can talk to her.

12 MS. BARR: Absolutely, Your Honor.

13 THE COURT: And if there's any way that
14 she can make herself available by telephone. I'll
15 just leave that to you her and Mr. Lofton and that
16 may be too difficult to do. Okay, when the jury
17 comes in I will tell them that we'll have one
18 witness this morning and that in many instances
19 scheduling becomes an issue because witnesses have
20 their own businesses and affairs to tend to. And
21 that the witness tomorrow -- the witness scheduled
22 for today will not be able to be here until tomorrow
23 and that we'll take that witness up first thing in
24 the morning. I would assume that if we do have that
25 witness tomorrow morning, at the latest we'd be

1 going to the jury tomorrow or at least Friday.
2 There's no way this case is gonna go into the
3 weekend. Do you agree with that?

4 MS. BARR: I do, Your Honor.

5 THE COURT: Mr. Lofton?

6 MR. LOFTON: Yes, Your Honor, I do.

7 THE COURT: All right, you can bring in
8 the jury.

9 (WHEREUPON, the jury was returned to the
10 courtroom at approximately 10:06 a.m., and
11 the following proceedings commenced in
12 open court.)

13 THE COURT: Thank you for your patience,
14 ladies and gentlemen. I know we started a little
15 bit late. I want to let you know that what we're
16 gonna do this morning is the State is going to be
17 calling one witness this morning. And in many
18 instances it's not all together unusual, it's not
19 common but it's not all together unusual, that
20 another witness who might be in line to be called
21 may have conflicts that would prohibit that witness
22 from being called that day. I'm advised that, by
23 Ms. Barr of course — Mr. Lofton and Mr. Dixon are
24 advised of this too — the State's, I believe, last
25 witness or — is that correct, Ms. Barr?

1 MS. BARR: That's right, Your Honor.

2 THE COURT: Absolutely cannot be here
3 today so that witness will be called first thing in
4 the morning. After that the State will rest. So
5 what we're going to do today is the State will call
6 one witness this morning and then we'll break for
7 the day. That will be a long break. That may be
8 good news for you. That may be bad news. It may be
9 a mixture. But that's what we're going to do and
10 we'll proceed in that fashion.

11 All right, Ms. Barr, you can call your
12 next witness.

13 MS. BARR: We call Investigator Pamela
14 Jean Wrenn.

15 THE CLERK: Place your left hand on the
16 Bible, raise your right hand.
17 WHEREUPON,

18 **PAMELA JEAN WREN,**
19 having been duly sworn by the Clerk of Court,
20 testified as follows:

21 THE CLERK: Have a seat in the witness
22 box.

23 MS. BARR: May it please the Court.

24 THE COURT: Yes, ma'am.

25 **DIRECT EXAMINATION**

SW - P. WRENN - DIRECT

1 BY MS. BARR:

2 Q Investigator Wrenn, state your full name for the
3 record please?

4 A Pamela Wrenn.

5 Q All right. And ma'am, tell the ladies and
6 gentlemen of the jury where you are employed and
7 what you do.

8 A I work for the Williamsburg County Sheriff's
9 Office.

10 Q And how long have you been with the Williamsburg
11 County Sheriff's Office?

12 A Since 2007.

13 Q All right. And what is your position there?

14 A Criminal investigations.

15 Q All right. And did you have previous employment
16 in law enforcement prior to your coming with the
17 Sheriff's Office here?

18 A Yes, ma'am. I was with Berkeley County Sheriff's
19 Office from mid '90s to 2007, 2006.

20 Q And you are a certified police officer?

21 A Yes, I am.

22 Q And give the jury an example of the types of
23 duties and responsibilities you have as an
24 investigator?

25 A Once an initial report is made and there's a

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1 criminal issue such as a burglary, murder, alleged
2 child abuse, anything of that nature, then it's
3 turned over to criminal investigations.

4 Q All right. Prior to November of 2011 had you
5 investigated child abuse sexual assault cases
6 before?

7 A Yes, ma'am.

8 Q And tell us when you became notified about a
9 complaint in this case and how the sheriff's office
10 became involved and a complaint against the
11 defendant Willie Marion Brown?

12 A Okay. May I refer to my report?

13 Q Sure.

14 A We were first notified on November the 8th, 2011.

15 Q Okay. And how did that complaint come in?

16 A Through the Department of Social Services.

17 Q Okay. And as far as you know are employees of
18 the Department of Social Services required by law to
19 file a report for sexual cases of child abuse?

20 A Yes, ma'am.

21 Q All right. Who was the initial officer to
22 respond to that complaint by DSS?

23 A DSS was initially called, according to the
24 report, by an outside person.

25 Q Okay.

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1 A From that point DSS would notify the jurisdiction
2 that it falls under. In other words, the location
3 was 308 Clearview Street which is in the city limits
4 so.

5 Q The city limits of —

6 A Kingstree.

7 Q Yes, ma'am.

8 A Sot the initial call from Ms. McCray with DSS
9 went to Kingstree Police Department.

10 Q All right. And do you know whether or not a —
11 any action was taken by the Kingstree Police
12 Department relative to the call that came in from
13 DSS?

14 A Once the call from DSS went to Kingstree Police
15 Department and the call come in as a request for
16 assistance.

17 Q Okay.

18 A In other words, to accompany them over to the
19 residence which KPD, Kingstree Police Department,
20 did so. They simply assisted them in going, making
21 initial contact at the residence.

22 Q All right. Now in terms of work that was done by
23 the Williamsburg County Sheriff's Office, how many
24 locations were you looking at in terms of your
25 investigation into this case of child abuse? How

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1 many locations were you looking at?

2 A Well, it was determined after that initial
3 response was made by DSS and Kingstree Police
4 Departments through interviews with that's protocol
5 to interview whomever at the residence. And once
6 they did that, DSS and Kingstree Police Department
7 they determined that there were other residences
8 besides 308 Clearview, and the other two residences
9 were in Nesmith which throughout the investigation
10 was referred to as the pond house.

11 Q Yes, ma'am.

12 A And McCutcheon Road which throughout the
13 investigation was referred to as the farmhouse so
14 there were three different locations, two of which
15 were out in the county which would have been
16 Williamsburg County jurisdiction and the one within
17 Kingstree city Limits.

18 Q Okay. All right, of course that residence on
19 Clearview is also within Williamsburg County 'cause
20 it's located within Kingstree?

21 A Sure.

22 Q Okay, all right. Now you talked about the
23 residence on McCutcheon Road. What community is
24 that residence located in within Williamsburg
25 County?

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1 A That's in the Cades community.

2 Q Okay. All right now, after the initial report
3 was made to DSS I believe you said on the 8th of
4 November?

5 A That's correct.

6 Q All right. Of course, we know that the defendant
7 was ultimately charged and arrested. You were the
8 officer who signed the arrest warrants on the
9 defendant?

10 A That is correct.

11 Q All right. And when was, when was it that those
12 initial arrest warrants issued?

13 A 11/28/2011.

14 Q Between the time of the original complaint to DSS
15 and the date of the arrest. Can you tell me what
16 acts were done by either Kingstree Police
17 Department, if you know, or the Williamsburg County
18 Sheriff's Office to further the investigation and to
19 look into the allegation?

20 A Sure. On November the 8th, 2011, when DSS was
21 notified and initially responded to Clearview,
22 Kingstree Police Department assisted them in going
23 there. A report was not generated by Kingstree
24 Police Department. They were waiting to see what
25 DSS investigation revealed. So in the process of

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1 that, when the DSS worker Ms. McCray realized that
2 there were two ---

3 MR. LOFTON: I'm gonna object to
4 relevance.

5 THE COURT: Ms. Barr?

6 MS. BARR: Judge, we're simply outlining
7 the investigation involving the role she took in the
8 case.

9 THE COURT: All right come up please.

10 (WHEREUPON, counsel approached the Bench
11 for an off-the-record discussion.)

12 THE COURT: You can go ahead, Ms. Barr.

13 MR. LOFTON: Thank you, Your Honor.

14 BY MS. BARR:

15 Q Let me kind of make sure that I narrow your
16 testimony just a wee bit so we can stay on track.
17 After the initial investigation was made or the
18 initial report was made to DSS, did you talk with
19 Ashley Gardner?

20 A Yes, I did.

21 Q All right. And that interview was recorded?

22 A It was.

23 Q All right. And what about Lauren Goodman, tell
24 me what types of investigative tools you used with
25 regard to the things that she said the defendant

SW - P. WRENN - DIRECT

1 did?

2 A The one victim, Lauren Goodman, was referred to
3 the CareHouse which ---

4 Q Okay, what -- tell us what the CareHouse is?

5 A It's ---

6 MR. LOFTON: Object to relevancy.

7 THE COURT: Ms. Barr.

8 MS. BARR: Your Honor, obviously
9 Investigator Wrenn was the lead investigator on the
10 case and she's talking about her normal practice in
11 these type of cases of referring a child to a
12 forensic interview.

13 THE COURT: I'll allow the testimony; but
14 certainly, if any other objectionable issues arise,
15 Mr. Lofton, you can bring those up.

16 And you'll maintain proper focus,
17 Ms. Barr.

18 MS. BARR: Yes, sir, absolutely.

19 THE COURT: Go ahead, overruled.

20 BY MS. BARR:

21 Q Investigator Wrenn, I obviously don't want you to
22 say what Lauren said. I believe my last question
23 was you testified that she was referred for forensic
24 interview at the Care House?

25 A That's correct.

SW - P. WRENN - DIRECT

1 Q And my next question was what is a forensic
2 interview?

3 THE COURT: No, you said what is the Care
4 House.

5 BY MS. BARR:

6 Q I'm sorry, what is the Care House first of all?

7 A These are -- whether it's the Care House, Durant
8 Center, there are several; but they focus on child
9 interviews and they're trained in techniques of
10 speaking with children.

11 Q All right. And did you review anything
12 associated with this -- yes or no? Did you review
13 anything associated with that forensic interview
14 that Lauren gave?

15 A Yes.

16 Q All right. Now did you talk with Lauren's
17 mother?

18 A Yes.

19 Q Marsha Brown?

20 A Yes.

21 Q All right, did you speak with Ashley's mother?

22 A Yes.

23 Q All right. And did they give you any
24 investigation relevant to the case? Not what it
25 was, did both those women give you information

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1 relative to the case?

2 A Yes, ma'am.

3 Q All right. Now did you actually go out to the
4 residences on Clearview and McCutcheon Road?

5 A I did.

6 Q All right. And were any other members of the
7 Williamsburg County Sheriff's Office there with you
8 at that time?

9 A Yes, ma'am.

10 Q Okay. When you became involved in the case was
11 the defendant actually living in the residence
12 obviously prior to his arrest but after the initial
13 report was made to DSS?

14 A After the initial response by DSS I recall that
15 he was there; however, when I became involved, to my
16 knowledge he had moved in with his mother.

17 Q Okay. Now ma'am, as a result of information that
18 was obtained by Lauren and by Ashley, tell me what
19 the ultimate action was you took with regard to this
20 particular case.

21 A I'm sorry?

22 Q As relates to the information that was obtained
23 from Lauren and from Ashley, what action did you
24 take against the defendant as a result of that,
25 those interviews?

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1 A Based upon the interviews and the totality of the
2 investigation I met with the magistrate and warrants
3 were drawn.

4 Q Okay. Beg the Court's indulgence. Ma'am, do you
5 know the -- first of all, do you have a copy of the
6 forensic interview there with you?

7 A No, ma'am. And I have to correct myself.
8 Ms. McCrae with the Department of Social Service
9 actually scheduled the forensic. I was aware of it
10 but she scheduled the forensic interview.

11 MS. BARR: Judge, may I approach the
12 witness?

13 THE COURT: Yes, ma'am. Are you going to
14 show her -- show it to Mr. Lofton first.

15 BY MS. BARR:

16 Q What date, Investigator Wrenn, was the forensic
17 interview?

18 A Date of service 11/14/2011.

19 Q Investigator Wrenn, that's all the questions I
20 have. If you will please answer any questions
21 Defense counsel or the Court may have.

22 MR. LOFTON: I have no questions, Your
23 Honor.

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

1 Ms. Barr, anything else today?

2 MS. BARR: No, sir, Your Honor. Thank
3 you.

4 THE COURT: All right. Ladies and
5 gentlemen, as I mentioned, we're gonna break now for
6 the day. That means you can go on about your
7 business as you see fit. You may not under any
8 circumstances discuss this case with anyone; and if
9 that does happen, if you see or hear or watch or
10 some discussion is had in your presence of any kind,
11 please let a bailiff know that tomorrow morning when
12 we do come back. I'd like for you to do this, if
13 you will be back in your jury room at 9:30 tomorrow
14 morning.

15 I'm gonna let you, ladies and gentlemen,
16 select your own foreperson. The only folks who
17 cannot be foreperson are Mr. Fulton and Ms. Chatman,
18 Germanique Chatman. You're the only two who can't
19 be foreperson at this stage. Anyway, so what I'd
20 like you two folks to do is when — this is not a
21 political campaign or running for office or anything
22 like that. You two folks kind of coordinate the
23 discussion among yourselves or the rest of the jury
24 who is going to be the foreperson. That person will
25 be responsible ultimately for completing the verdict

1 form, and that person will be responsible for making
2 sure that the verdict that is reached is absolutely
3 unanimous. That means everybody has to agree. And
4 that person will also be responsible for during the
5 course of the deliberations and before relaying any
6 concerns to me. I will be telling the foreperson
7 and the whole jury during the jury charge that if
8 you have any questions you can write those down on a
9 piece of paper and pass those to the bailiff in the
10 hall and the plaintiff will bring that to me. So
11 that's essentially what the foreperson will do. The
12 foreperson does not have any greater authority than
13 any other juror, but the foreperson is the
14 spokesperson for the jury and will be responsible
15 for completing a verdict form at the conclusion of
16 the case.

17 So with those instructions, if you would
18 be back at 9:30 tomorrow morning. And then once you
19 have decided who your foreperson will be, one of
20 you, Ms. Chatman or Mr. Fulton, you can tap on the
21 door of the jury room and tell the bailiff who that
22 person is and then I'll take it from there. But
23 tomorrow morning at 9:30 if you'll be back in the
24 jury room. In the meantime don't read anything
25 about the case, listen, watch, or do anything

1 involving in case. Don't undertake to do any
2 research of your own and do not talk to anyone about
3 the case at all. Again, if you find yourself in a
4 position where someone does intentionally or
5 unintentionally refer to this case in your presence,
6 remove yourself from that situation and then
7 tomorrow morning let a bailiff know that that has
8 occurred. All right, we'll see you tomorrow morning
9 at 9:30. Thank you again for your time.

10 (WHEREUPON, the jury was removed from the
11 courtroom at 10:26 a.m., and the following
12 proceedings commenced in open court.)

13 THE COURT: Is there any matter or issue
14 that the State needs to bring up before we stop for
15 the day?

16 MS. BARR: No, sir, Judge.

17 THE COURT: Anything from the Defense?

18 MR. LOFTON: No, Your Honor. You want us
19 here at 9?

20 THE COURT: I think that'd be reasonable
21 just in case the witness sees fit to speak with you.

22 MR. LOFTON: That's fine.

23 THE COURT: I will request this, if the
24 Defense — I know, Ms. Barr, y'all have some other
25 business for me to do today?

1 MS. BARR: Yes, sir.

2 THE COURT: If the Defense will remain
3 behind, not — Mr. Brown doesn't need to be here
4 but — well, I guess he does. Remain behind the
5 next 30 to 45 minutes just in case something comes
6 up and we can make use of court time this morning to
7 take care of that, whether it be an evidentiary
8 issue that both of you know may arise tomorrow,
9 whether it involves jury charge or some other type
10 of issue that we can take care of it today without
11 having to use up time in the morning, okay. If you
12 can remain behind just in case something pops into
13 your head, Mr. Lofton, or pops into Ms. Barr's head.

14 MR. LOFTON: We'll still be in Mr.
15 Dickson's office, Your Honor.

16 THE COURT: Thank you.

17 (WHEREUPON, the proceedings were concluded
18 for the day and reconvened on May 22,
19 2014.)

20 THE COURT: Y'all speak with the witness?

21 MR. LOFTON: She's been kind enough to
22 speak with us. We've still got some objections so I
23 ask Your Honor to go ahead and hear in camera.

24 THE COURT: Ms. Barr.

25 MS. BARR: Gaye Allen-Cook.

1 THE COURT: Come on up please.

2 THE CLERK: Place your left hand on the
3 Bible, raise your right hand.

4 WHEREUPON,

5 **GAYE A. COOK,**

6 having been duly sworn by the Clerk of Court,
7 testified as follows:

8 THE CLERK: Have a seat up here in the
9 witness box.

10 MS. BARR: Your Honor, I'm not sure how
11 long you want me to go with her examination. I'm
12 not sure what's the nature of the objection.

13 THE COURT: I don't know.

14 MR. LOFTON: Your Honor, just to kind of
15 give you an idea where I'm coming from, I spoke with
16 Ms. Barr earlier. Even though I think that their —
17 our objection will be their entire line of testimony
18 is improper bolstering. One of the things that
19 Ms. Barr indicated she was going into was the fact
20 that Ms. Cook has had 11 counseling sessions with
21 Lauren, and I think that there's absolutely no
22 question my mind that then you really are getting
23 into some serious improper bolstering because that
24 in and of itself says, well, there was something
25 that she needed counseling for. And so, I — that's

1 going to be my primary objection. But the general
2 objection, overall objection, is the entire
3 testimony is improper.

4 THE COURT: Why all of the testimony about
5 sex abuse problem, rape, evidence inadmissible? Is
6 there any case that says that?

7 MR. LOFTON: Judge, I don't have a case
8 says that. I don't.

9 THE COURT: But there are cases that say
10 it is admissible.

11 MR. LOFTON: There are cases that say it
12 is admissible in certain circumstances, and I just
13 think that this is such -- particularly in this
14 case. This is such a close case, that any time you
15 get into an area such as this where you're doing
16 something to enhance the credibility of the victim,
17 then that becomes improper bolstering and I think it
18 could tip the scales in this case.

19 THE COURT: Okay. And I know that this is
20 absolutely no comparison at all, and I'm not trying
21 to say that it would be a factual or psychological
22 comparison; but in every personal injury case a
23 doctor will offer opinions about the condition of a
24 patient and the defendant may say, well, that person
25 is really not hurt and the doctor says, well, based

1 on my examination, yes, she is, and I think it was
2 because of this accident. Now those opinions are
3 obviously admissible assuming proper foundations
4 have been laid and, you know, you go down that
5 checklist for admissibility. So as an overall
6 proposition of inadmissibility period, what is the
7 basis for that?

8 MR. LOFTON: Well, first of all, Judge, I
9 think you've got to distinguish between a civil case
10 and a criminal case.

11 THE COURT: Well, I understand that — and
12 I'm saying it really wasn't a comparison — but
13 obviously there's a expert is qualified, foundation
14 is laid, and opinions are given. In this case, as I
15 told y'all yesterday, I am not gonna allow the
16 witness to testify in any way that would lead the
17 jury to believe that she believes Lauren at all.
18 I'm not gonna allow it.

19 MR. LOFTON: And I understand —

20 THE COURT: I'm not even gonna allow the
21 suggestion. I'm not gonna allow her to say that
22 Lauren's complaint were consistent with. Now some
23 may disagree that I'm not gonna allow it, but I
24 think the witness under the case law should be
25 allowed to testify as to what the characteristics of

1 abused people are. Now it will be up for Ms. Barr
2 to draw from the evidence any and argue any
3 connections.

4 MR. LOFTON: And I understand that, Your
5 Honor, and I understand what the cases say. My, as
6 indicated a minute ago, my biggest concern is if she
7 goes into this having been to 11 counseling
8 sessions.

9 THE COURT: Okay. Well, let's go through
10 it and see how we progress and I'll listen to both
11 of you afterwards. And, I as far as how far you
12 should go, I'll leave that up to you. But if things
13 come up live in front of the jury, if I allow her
14 testimony, that you didn't cover in-camera and there
15 are close questions, it's gonna be a little dicey.

16 MS. BARR: And Your Honor, just so you
17 know, my intent as far as this witness is concerned
18 would be to ask her about her qualifications as an
19 expert in her prior or whether or not she's been
20 qualified previously. I'll ask her about whether or
21 not she's in fact met Lauren Goodman and it was 7
22 sessions that she has, close to 11. And that will
23 be the extent of what I'll ask her as it relates to
24 Lauren just so that the jury will know that she's
25 actually met the young lady in this case.

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1 THE COURT: Well, go ahead and ask her
2 the questions.

3 PROFFER EXAMINATION

4 BY MS. BARR:

5 Q Ma'am, state your full name for the record?

6 A Gay Allen-Cook.

7 Q All right. And Ms. Cook, what do you do for a
8 living?

9 A I am a child family therapist specializing in
10 trama and abuse.

11 Q All right. And how long have you been employed
12 in that field?

13 A Fourteen years.

14 Q All right. And can you give a little information
15 about your educational background and your training?

16 A I have a bachelor's degree in early childhood
17 education from Francis Marion University. I have a
18 masters of counseling from Southeastern Baptist
19 College. I have post-graduate studies in trama and
20 abuse from Gardner Webb University. I have also
21 studied through the trama focused cognitive
22 behavioral therapy model, act as a supervisor in
23 that for the State of South Carolina. Every year I
24 have to continue, or every other year, I'm sorry, 40
25 hours of continuing education credits to keep my

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1 license in good standing. I am qualified on the
2 University of South Carolina's children's law center
3 list of expert witnesses, have been qualified in
4 numerous courts across this state and other states.

5 Q Okay. And in federal court as well?

6 A That's correct.

7 Q Has there ever been a time when a court denied
8 you the right to testify as an expert witness in the
9 field of child sexual abuse assessment and
10 counseling?

11 A No.

12 Q All right. Now ma'am, you have met Lauren
13 Goodman?

14 THE COURT: On that last question I think
15 the proper question would be has the court ever
16 found you not qualified, not allowed you to testify.
17 Just refine that for the future.

18 MS. BARR: Absolutely, Judge.

19 BY MS. BARR:

20 Q You have met Lauren Goodman?

21 A I have.

22 Q And when is it that you met her?

23 A In November of 2011.

24 Q All right. And how many sessions did you have
25 with her?

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1 A Seven.

2 Q All right. Now ma'am, you have previously
3 testified in this court as well?

4 A I have.

5 Q All right. And what is the field of expertise in
6 which you were qualified to testify?

7 A I've been qualified in the area of assessment,
8 diagnosis, and treatment of children who have had
9 allegations of abuse, encompass all areas of abuse,
10 not just sexual abuse. I've been qualified as far
11 as the model that we use to treat children and
12 families. I've been qualified as to symptomology of
13 children who've been abused and everything kind of
14 encompassing that.

15 Q All right. Ma'am, are you familiar with the
16 concept of grooming as it relates to assessing and
17 treating victims of child sex abuse?

18 A I am.

19 Q Tell us what that concept means?

20 A Grooming was used to kind of, the coin for the
21 term, it kind of explains how alleged perpetrators
22 enter into a relationship with their victim. It
23 talks about how they befriend this child, how
24 typically they have a very solid relationship with
25 this child, how they do certain things to get this

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1 child to trust them and to be comfortable with the
2 things that will happen in the future regarding sex
3 abuse.

4 Q Okay. And when you see practices of grooming are
5 there reward systems as it relates to that whole
6 process?

7 A There can be. I mean, there are cases where it
8 has been that way.

9 Q Okay. And tell us as it relates to the process
10 of grooming, how does an individual alleged
11 perpetrator then go about grooming a particular
12 victim in which he or she intends to sexually
13 assault?

14 A Typically what happens is the alleged offender
15 gets to know this child. It may be somebody that
16 this child greatly trusts. It could be, you know,
17 somebody who is in a caregiver mode. It can be
18 somebody who's in a parental capacity of that child.
19 And this person begins to talk to this child, get to
20 know this child, develop a bond with this child to
21 where this child becomes, begins to trust this
22 person, and then it's kind of one thing leads to
23 another. And it typically doesn't go from just
24 hanging out and having a good time to having sex.
25 It goes from hanging out, having a good time,

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1 forming a bond, and then we go into different parts
2 of sex abuse, and there may be touching, then there
3 may be kissing, there may be fondling. And it can
4 go as far as it can oftentimes. It can lead on to
5 intercourse.

6 Q All right. And you talked about the
7 establishment of trust as part of the grooming
8 process. Does isolation play a role in the process?

9 A It can.

10 Q Tell us about that.

11 A Oftentimes what you'll find is there you have a
12 an offender who has picked out a child that they
13 want to groom and they want to have that type of
14 relationship with. That child begins to feel like,
15 okay, this is the person that I can go to for
16 everything. This person is my confidant, this
17 person is my best friend, I don't need, you know,
18 boyfriends or girlfriends, I don't need outside
19 influences. If I have those influences, then it's
20 almost as if I'm betraying this person that I have
21 such a strong relationship with.

22 Q All right. And as it relates to your testimony
23 in that regard do you find that children who don't
24 have a substantial relationship with their father or
25 their mother in —

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1 THE COURT: That's leading, okay.

2 BY MS. BARR:

3 Q Let me rephrase it. How does the role of a child
4 who is being victimized, how does the role of a
5 parent in their lives play in that grooming process?

6 A Well, I think we have to think about all the
7 elements and how we all the desire to have
8 relationships with our mother and father figure.
9 Many children don't have a relationship with their
10 biological mother or father, and so oftentimes one
11 comes into that role via stepparent being a
12 boyfriend or girlfriend of the parent. And so what
13 you find is this child begins to develop a
14 relationship of trust, of you know, of authority
15 figure. This person is an authority figure in my
16 life, this person takes care of me financially, this
17 person is the reason that I have a house. You know,
18 this person is the reason that I have clothes on my
19 back. And what you find is that alleged offender
20 who is in that parental capacity role will use that
21 to control a child. And so what happens is when
22 something occurs, this child is much less likely to
23 come forward and say, hey, this is going on because
24 they realize whether they've been told or not, if I
25 come out and say this is going on my family is gonna

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1 to be disrupted, our finances are gonna be
2 disrupted, I may not have anywhere to live anymore
3 and you know, I've finally gotten a father figure, I
4 don't really want to mess that up and if I mess that
5 up I don't necessarily just mess that up for me. If
6 there are siblings involved, if there are
7 grandparents involved, the whole familial dynamic is
8 changed and this child is led to believe this is my
9 fault, I can't do this because this disrupts things
10 for everyone.

11 Q And I'm gonna get back to that area in just a
12 moment, but tell me how the notion of normalization
13 of sexual practices relates to the grooming process?

14 A Oftentimes what you find, especially when you
15 have an alleged offender who's in a parental
16 capacity role, as you have children who just
17 normally expect their mother and father figures to
18 do certain things for them. You know, I need help
19 with my bath, I need help getting dressed. You
20 know, I need help because maybe I'm having a problem
21 with a part of my body. And children are not --
22 they don't come into this world knowing that they
23 can't ask their parent that. They just know that
24 that's the one person they can go to for that. And
25 so, when they do that and the person that they're

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1 going to has tendencies to victimize a child, then
2 obviously we keep going and things happen and this
3 child may or may not even realize what's going on.

4 Perfect examples, bathing, children know
5 even when they're small that they need help washing
6 certain passer of their body. Children typically
7 are not at all upset by a parent walking into the
8 bathroom, you know, when they're showering or
9 changing clothes. Of course, we all get to that
10 point where that's not as comfortable as it used to
11 be. But when you're in that parental capacity
12 that's not abnormal for a child to think that it's
13 okay for a parent to help put cream on certain parts
14 of the body or a parent to look at certain parts of
15 a body that may be genitalia.

16 Q Now going back to your testimony regarding the
17 role of a individual who was related either by blood
18 or marriage to a victim and that victim being aware
19 that he or she is financially dependent on the
20 perpetrator, tell me how if at all, that plays into
21 the notion of delayed disclosure. Tell us what it
22 is and tell us how that dynamic plays into delayed
23 disclosure.

24 A Delayed disclosure is a term that describes when
25 a victim, whatever age, waits to tell what happened.

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1 Sometimes you find children who wait a week.
2 Sometimes you find children who wait six weeks, six
3 months, years, you know. I've seen cases where
4 children have waited until they got old enough to
5 get out of the home and then they were coming forth
6 and telling. Delayed disclosure often is more
7 typical in cases where there is a familial dynamic.
8 You know, if a stranger does something to a child or
9 any human being for that matter, we typically will
10 go and tell on that; but when it's somebody who is
11 in a parental capacity that we have a relationship
12 with, we don't want to think that what's going on is
13 wrong. We don't want to have a label. We don't
14 want to mess up any relationship that we have with
15 this person. We also have to stop and think that in
16 the familial dynamic we have children who are
17 dependent on this person, not just dependent
18 financially but dependent emotionally, and this is
19 somebody who may have been in a parental capacity
20 for years and in this child's life. And so it's
21 much easier just to sit back and say either this
22 isn't happening or this isn't as bad as I think it
23 is, or I'll just keep going and one day I'll be
24 strong enough to tell maybe when I'm out of the home
25 or when I don't need this person anymore.

1 Q All right.

2 MS. BARR: And Judge, that will
3 essentially be the kind of questions I will ask.

4 THE COURT: Mr. Lofton, first of all, any
5 questions of the witness?

6 MR. LOFTON: No, Your Honor.

7 THE COURT: All right. Your argument, Mr.
8 Lofton.

9 MR. LOFTON: Well, Your Honor, as I
10 indicated, first of all, I think it's improper
11 bolstering. But more than that, I think the
12 testimony that she has just offered is extremely
13 prejudicial and the prejudice greatly outweighs any
14 probative value. And I go to the specific points
15 Judge, that she talked about. The stepparent being
16 the offender, can't disrupt the family, needs help
17 bathing and washing parts of the body, not upset
18 walking in the bathroom, the delayed disclosure is
19 more typical in cases where there's a parental
20 capacity, child dependent. Judge, all of those
21 things I think really are extremely prejudicial. I
22 think they bolster not only the alleged victim in
23 this case, but they go to bolstering the testimony
24 of the other alleged victim, Ashley Gardner. And so
25 those would be our objections for the testimony.

1 THE COURT: Ms. Barr.

2 MS. BARR: And Judge, the reason why I
3 would respectfully submit this type of testimony is
4 admissible is because when you look at certain
5 patterns that children of abuse, sexual abuse,
6 display, it's those exact dynamics. Judge, just you
7 know, as Ms. Cook was testifying I was kind of
8 looking in one of our little prosecutor's notebooks
9 and it talks about delayed disclosure. And of
10 course, it gives you a guide in terms of the types
11 of questions you ask a witness as relates to those
12 matters. And one of the questions that's in the
13 book that we've been trained to ask these type
14 experts is what factors commonly play a role in
15 disclosure, and it's just as she said. The fact
16 that the perpetrator is in the family, present in
17 home, that the perpetrator had a strong influence on
18 the child or family, the perpetrator is an authority
19 figure or is loved by the child, the child wishes to
20 protect others such as a mother, sibling, or anyone
21 he or she perceives as being harmed by the
22 revelation, the child has a strong desire to keep
23 the family intact. So all of those things are not
24 just specific to this particular case. It's
25 specific to children who have been abused and who

1 have waited for some period of time regardless of
2 what period of time it is. But it is specific to
3 children who wait and who delay disclosing or
4 reporting what has happened to them, but it's
5 certainly not fact specific just to this case. It's
6 common. And that's the reason, that is exactly the
7 reason why her testimony should be admissible.

8 THE COURT: Mr. Lofton, anything else?

9 MR. LOFTON: No, Judge, I think I covered
10 it.

11 THE COURT: All right. First of all, as
12 far as the assessment, diagnosis, and treatment of
13 abused children is concerned, it certainly as the
14 appellate cases recognized it is extremely
15 unfortunate reality that exists. The witness can
16 testify as to the characteristics of an abused child
17 in her opinion; but as I listened to her testimony,
18 I saw many avenues of cross-examination. For
19 example, she may have just described everybody in
20 this room, a parent, stepparent, a person who is
21 looked to as somebody they love and they trust, they
22 need help bathing, they need help dressing, they
23 need help putting on medicine. She just described
24 everybody in this room who has a child so, and I
25 know that that's not the be-all end-all. But the

1 witness' testimony obviously, Ms. Barr, was tailored
2 in some respects and focused in on some very
3 specific accusations made by Lauren and Ashley, the
4 bathing, the gradual nature of it. The — somebody
5 that — he was somebody they depended on. There was
6 no testimony of — I don't think many of these young
7 ladies of isolation, but the bonding process between
8 a parent and child, I'm sure, may not be called
9 grooming but it's a process. So I recognize your
10 concerns and I have some practical questions that I
11 would ask her if I was gonna cross-examine her, but
12 it's an awfully big pigeon hole.

13 I think that under the rules that the
14 witness' testimony will assist the trier of fact in
15 determining a fact at issue. The witness will not
16 be able to testify, Ms. Barr, that she has seen her
17 seven times. She'll be able to say that she has met
18 with her.

19 MS. BARR: Yes, sir.

20 THE COURT: That's it. And that will
21 remove any suggestion or question in the jury's mind
22 that this witness has not had an opportunity to see
23 Lauren. You're not gonna ask her anything about
24 meeting with Ashley, are you?

25 MS. BARR: No, sir.

1 THE COURT: Okay. Has she met — have you
2 met with Ashley?

3 THE WITNESS: No, sir.

4 THE COURT: But the — I think the
5 testimony is admissible. It's obviously
6 prejudicial; that's why it's being offered. The
7 question is whether or not the probative value is
8 substantially outweighed by the danger of unfair
9 prejudice. I don't think it is; I'm sure it's not.
10 It's just an issue of the impact it would have on a
11 jury in the normal exchange of direct and
12 cross-examination. But as I mentioned, anybody in
13 this room who has a child, she's just described
14 them, except for the sex abuse. Okay. Thank you,
15 ma'am. You can step down.

16 THE WITNESS: Can we take a short break?

17 THE COURT: Yes, ma'am.

18 Anything else before we begin?

19 MS. BARR: Judge, may I run to my office
20 and get a notebook please? I left it in there.

21 THE COURT: We'll start in about five
22 minutes.

23 MS. BARR: Thank you.

24 (WHEREUPON, a recess was taken from the
25 proceedings.)

1 THE COURT: Mr. Lofton, I'll leave it to
2 your good judgment about objecting to any specific
3 questions or the witness' testimony in general. I
4 have my own interpretation of the appellate
5 preservation rule; but I can't bind the appellate
6 court on what I think, the same as we mentioned the
7 other day.

8 MR. LOFTON: I understand. It's just a
9 slippery slope, Judge.

10 THE COURT: Yes, sir. All right, anything
11 before we begin, Ms. Barr?

12 MS. BARR: No, Your Honor.

13 THE COURT: The jury has selected
14 Mr. Tanner as the foreperson so he'll be sitting in
15 that front seat. Okay, you can bring in the jury.

16 (WHEREUPON, the jury was returned to the
17 courtroom at approximately 9:56 a.m., and
18 the following proceedings commenced in
19 open court.)

20 THE COURT: All right, ladies and
21 gentlemen, we're ready to move forward. Mr. Tanner,
22 you've been selected as foreperson of the jury. And
23 congratulations, that comes with greater
24 responsibility but absolutely no additional pay so
25 I'll be talking to you more specifically about your

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1 responsibilities. But for now, if anybody on the
2 jury has any concerns or specific questions during
3 the trial or even during deliberations, those will
4 be relayed to you and you'll write those down and
5 pass them to a bailiff.

6 All right, Ms. Barr.

7 MS. BARR: Thank you. The State calls
8 Gaye Allen Cook.

9 MR. LOFTON: Your Honor, at this time I'd
10 renew my objection that we previously heard in
11 connection with this witness.

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

13 THE CLERK: Ms.. Cook, place your left hand
14 on the Bible and raise your right hand.

15 WHEREUPON,

16 **GAYE ALLEN-COOK,**
17 having been duly sworn by the Clerk of Court,
18 testified as follows:

19 THE COURT: That's G-A-Y-E?

20 THE WITNESS: Yes.

21 THE COURT: A-L-L-E-N?

22 THE WITNESS: Yes. Dash, C-O-O-K.

23 THE COURT: All right.

24 **DIRECT EXAMINATION**

25 BY MS. BARR:

SW - G. COOK - DIRECT

1 Q Good morning, Ms. Cook.

2 A Good morning.

3 Q Ma'am, state your full name for us.

4 A Gaye Allen Cook.

5 Q And we see that you are kind of waddling up
6 there. You got a little one?

7 A I do.

8 Q All right. Please, if you will, introduce
9 yourself to the ladies and gentlemen of the jury.
10 Tell them where you work and what you do for a
11 living?

12 A Good morning. Gaye Allen Cook. I practice in
13 Florence. I'm a child family therapist specializing
14 in trauma and abuse. I'm in private practice in
15 Florence.

16 Q Okay. And how long have you been in this
17 particular field?

18 A Fourteen years.

19 Q All right. And if you would, kind of tell the
20 jurors a little bit about your educational
21 background and how it is that you came to do what
22 you're doing now?

23 A I have a bachelors degree in early childhood
24 education from Francis Marion University. I have a
25 Masters in clinical counseling from Southeastern

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1 Baptist College. I have post-graduate studies in
2 trama abuse from Gardner Webb University. I'm
3 licensed in the State of South Carolina to practice
4 as a therapist, previously licensed in the State of
5 North Carolina. I currently act as a supervisor in
6 South Carolina for the model that we use for trauma
7 and an abused children and that is trauma focused
8 cognitive behavioral therapy. We use that as the
9 accepted model because it has lots of data and
10 backup and that it's the appropriate way to treat
11 children who have been victimized.

12 I currently am listed on the University of
13 South Carolina's Children's Law Office list of
14 expert witnesses. I travel across the state and
15 have done some stuff in other states regarding trama
16 and abuse.

17 Q Okay. And how do you go about in making sure
18 that you are current on the law, current on any
19 changes that happen in terms of your area of
20 expertise. Tell us a little bit about any
21 educational training you do to update information
22 regarding those areas.

23 A Every other year I have to submit to my licensing
24 board that I've taken 40 hours of continuing
25 education work to renew my license, to keep my

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1 license in good standing. I try and attend as many
2 workshops as I can regarding various topics to keep
3 myself versed. I do lots of reading and research,
4 have some really good peers that do the same thing
5 that I do that we're able to do peer consultation,
6 discuss cases, things of that nature.

7 Q All right. And ma'am, prior to your testimony
8 here this morning have you ever been qualified as an
9 expert witness in this particular courtroom?

10 A I have.

11 Q Okay. And approximately how many times have you
12 overall been qualified as an expert witness?

13 A I've been qualified, I'll say around 300 times;
14 and that encompasses family court, criminal court,
15 civil court and have been qualified one time in
16 federal court.

17 MS. BARR: Your Honor, at this time we
18 would tender Ms. Cook as an expert in the field of
19 child sexual abuse assessment and counseling.

20 THE COURT: Any questions at this time,
21 Mr. Lofton?

22 MR. LOFTON: No, Your Honor.

23 THE COURT: All right, ladies and
24 gentlemen, the witness is qualified as an expert in
25 that particular field. If I can have your attention

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1 for just a moment. Typically in a case witness who
2 takes the stand and testifies cannot give opinions.
3 Those witnesses can just testify what they saw or
4 heard or smelled or touched. We call those lay
5 witnesses; they can't give opinions. There is an
6 exception in the rules of evidence for a category of
7 witnesses called expert witnesses. Those are
8 witnesses who are qualified in a particular art or
9 science or profession by education, training, or
10 experience. Those witnesses can give opinions, and
11 they can also testify to the reasons for those
12 opinions. That does not mean, however, that you are
13 bound by the testimony of the witnesses just because
14 it comes from an expert. As I'll instruct you more
15 closely at the end of the case, you can disregard
16 the expert's opinion entirely, accept it, or you can
17 accept part and reject the rest. Even though it
18 might be uncontradicted you cannot — you can elect
19 not to accept the witness' testimony in your mind as
20 true. Now the witness is qualified as an expert in
21 that particular field.

22 Ms. Barr, you can continue.

23 MS. BARR: Thank you, Your Honor.

24 BY MS. BARR:

25 Q Ms. Cook, explain to us what is meant by the

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1 process of grooming?

2 A The term grooming basically describes what
3 alleged offenders do to make their victims
4 comfortable. It can be spending time with a child.
5 It can be spending money on the child, buying the
6 child items, making sure that this child trusts this
7 person, making sure that this child knows that this
8 person is a very important part of this child's
9 life, laying the ground work where there is a very,
10 very strong bond and trust relationship.

11 Q Okay. And you mentioned that in grooming, the
12 offender attempts to gain the trust of a child. Can
13 you tell us whether or not the presence or absence
14 of a child's biological parents would play a role in
15 the grooming process by the offender?

16 A Well, we all have an innate desire to have a
17 relationship with a mother and father. Many
18 children don't get the luxury of having that
19 relationship with their biological mother and/or
20 biological father. And so oftentimes what happens
21 is, another person steps into that role. It could
22 be, you know, a cousin or an uncle or someone in the
23 church, someone who's very close to this person, to
24 this child. Or it could be a boyfriend or
25 girlfriend of the parent and then this person could

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1 turn into a stepparent.

2 Q Okay, all right. And if a child does not, a
3 child victim, does not have a close relationship
4 with his or her biological parents who does not live
5 in the home does that have any effect on the
6 grooming process by the offender?

7 A Well, like I said, we all have a desire to have
8 that relationship with a mother and father figure;
9 and so when children are not getting that within
10 their home they often can seek out to have that
11 elsewhere. And then sometimes what happens is, mom
12 or dad ends up remarrying so there's a stepparent
13 and that parent becomes that parental role for that
14 child, thus, developing a very positive
15 relationship, a bond to where this child looks at
16 this person as their mother or father figure.

17 Q Okay. Now does isolation play, isolation of a
18 child particularly, play a role in the grooming
19 process?

20 A It can. Sometimes what you'll find in children
21 is when an alleged offender is attempting to groom
22 this child they will keep this child away from other
23 people. This child will realize that the
24 relationship is so strong with this person that they
25 don't need boyfriends or girlfriends or play mates

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1 even, or anybody else, because they have such a
2 strong relationship with the person who is grooming
3 them.

4 Q Okay. Now tell us about the concept of
5 normalization.

6 A Normalization is where, just as it says, things
7 become normal. In sex abuse it can be various
8 things. It can be touching, or it can be
9 intercourse. It can be kissing, fondling, anything
10 of that nature. And what happens is this child
11 begins to think it's okay for things to occur but
12 typically wouldn't occur.

13 Q Like what for example, Ms. Cook?

14 A Well, all children obviously come into the world
15 very dependent on someone; and so what happens is,
16 as children we know that it's okay to have help with
17 a bath or okay to have help getting dressed, or you
18 know, if we have a booboo in a certain place on our
19 body it's okay to have this parental person,
20 parental figure, check this for us. Those are all
21 things that are normal; they're not abnormal for us.
22 And so when you have a parental figure who is
23 grooming a child that child may not even realize
24 what's going on because it's just the natural,
25 normal thing for this parent figure to do the things

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1 I just described. Now if you're grooming a child
2 and trying to make inappropriate things normal you
3 will obviously test the waters a little bit to say,
4 to see how far you can go with this child.

5 Q Okay, all right. And when we say grooming, when
6 an offender is grooming a child, are you
7 specifically refer to grooming as child to be
8 sexually abused?

9 A Yes.

10 Q Okay, all right. Now you are very familiar with
11 cases of delayed disclosure in your practice?

12 A I am.

13 Q Tell the jury what you mean when you say delayed
14 disclosure.

15 A Delayed disclosure has been something happens to
16 a child and they wait to tell. Oftentimes they may
17 wait a week, they may wait six weeks, they may wait
18 six months. I've had cases where children have
19 waited for years. Typically when they wait for
20 years it's because they know that they're in a
21 situation where they're dependent on this person and
22 so they would rather wait until maybe they're out of
23 the home or maybe they are in a position to be able
24 to fend for themselves, for lack of a better word,
25 and so they wait. And they keep the information to

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1 themselves and then finally something occurs with
2 them to where they go and they tell someone what's
3 happening.

4 Q Okay. You said that in some instances you have
5 situations where children wait until they are out of
6 the home or wait until they can fend for themselves.
7 Why is that? Why do they wait until they're outside
8 of the home or wait till they're old enough to fend
9 for themselves?

10 A Well, once again, all of us have, you know, an
11 innate desire to be taken care of; and so when you're
12 in a situation where your parent figure is one who's
13 taking care of you but the parent figure is also the
14 one who's sexually abusing you, this parent figure
15 is also the person who is taking care of you
16 financially, this person is making sure you have
17 clothes to wear. This person is making sure you
18 have food to eat, making sure that you have a house
19 to live in. You're pretty much dependent on this
20 person for what you will you need. And so to come
21 out and say that this person is doing something to
22 you that's not okay, obviously would have great
23 ramifications for you and maybe other people in your
24 family.

25 Q Okay. Now Ms. Cook, when you see in your

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1 practices with children you've treated have been
2 victims of sexual abuse, have you ever seen in those
3 instances children who also display inappropriate
4 sexual behaviors?

5 A Yes.

6 Q Tell us about that.

7 A What happens is when children have been sexually
8 abused, especially when they're young, they lose
9 that sense of what's appropriate and what's not
10 appropriate. Most children know that it's
11 inappropriate to touch themselves in public. You
12 know, most children know that it's inappropriate to
13 touch other children. However, when you had someone
14 do those things to you and you become victim of
15 that, that sense of normal and that sense of right
16 or wrong often goes away. And so all of us are
17 creatures of habit and all of us tend to repeat
18 things that have happened to us. So if you have a
19 child who is being sexually abused whether they're
20 being touched, whether intercourse is occurring,
21 whether kissing is occurring, whatever, that child
22 will often go and do that to someone else or go and
23 do things to themselves because it's an act of
24 pleasure. Sometimes we think that sex abuse hurts
25 children and it's awful and they don't want, you

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1 know, to continue. Well, that's not always the
2 case. When children have inappropriate touching
3 sometimes, sometimes it's not a bad thing for them.
4 It's a relationship with this person; it's a way
5 that they feel loved. And so they don't necessarily
6 know anything is wrong with it so they begin to
7 repeat it on other people.

8 Q Okay. Now Ms. Cook, have you ever met with
9 Lauren Goodman —

10 A I have.

11 Q —prior to your testimony?

12 A I have.

13 Q Okay. And just tell us specifically when it was,
14 around about, when it was the first time you met
15 with her?

16 A November of 2011.

17 Q Okay. And just a couple of follow-up questions.
18 When you're dealing with children and you're
19 treating them and assessing them, specifically
20 children who have been abused sexually, do they
21 automatically remember things in chronological order
22 as to when things particularly happened?

23 A I would say it's atypical for children to
24 remember things in chronological order based on
25 their age.

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1 Q Explain that to me please.

2 A Well, when you have a child who's been sexually
3 abused, children don't always have the best sense of
4 time. You know, we all know the child who maybe
5 went to Disney World six years ago and when you say
6 you went to Disney World, yes, we went yesterday,
7 when in reality it was six years ago. And so
8 children don't always have that concept of time so
9 thus, don't always have that concept of
10 chronological order. So what you may happen, have
11 happen in specifically disclosure, is the child may
12 come out and say, you know, these are the things
13 that happened; and they're kind of testing the
14 waters to see how you're going to respond to that.
15 And so the person that they are disclosing to has to
16 be real careful in the way that they respond because
17 if they respond inappropriately in that child's
18 opinion, the child is going to shut down. That
19 child is not gonna keep telling anything. That
20 child may wait another month, another two months,
21 another three months. They may not go back to that
22 same person; they may go to someone else. And then
23 when they tell the story it may not be in the same
24 exact order as it was the first time it happened.
25 It doesn't mean that these things didn't occur; it

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1 just means that that child can't necessarily
2 remember how, when, what time. Trauma affects the
3 memory. Trauma affects the psyche. Trauma affects
4 all of a person. And so when you've been through
5 trauma, when you're trying to explain things they
6 may not come out as if it was somebody explaining
7 something that had not been through a trauma.

8 Q I understand. Beg the Court's indulgence.

9 Ms. Cook, thank you. Please answer any questions
10 that Mr. Lofton or Mr. Dickson or the Court may have
11 for you.

12 A Okay.

13 MR. LOFTON: If the Court please.

14 THE COURT: Yes, sir.

15 **CROSS-EXAMINATION**

16 BY MR. LOFTON:

17 Q Good morning, Ms. Cook.

18 A Good morning.

19 Q We met earlier this morning and you assured me
20 you wouldn't have the baby today?

21 A I've got a little while to go.

22 Q Thank you, ma'am. Ms. Cook, when you were
23 testifying a moment ago and you were describing this
24 grooming process you talked about spending time with
25 a child, correct?

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1 A Yes, sir.

2 Q And that's what we as parents do all the time,
3 spend time with our children, isn't it?

4 A Correct.

5 Q And you talked about spending money on the child,
6 and we certainly spend money on our children; don't
7 we?

8 A We do.

9 Q And you talked about buying items. Of course,
10 that's spending money. We do that?

11 A Yes, sir.

12 Q We also develop trust. It's important that we
13 develop a bond and trust with our children; isn't
14 it?

15 A Yes, sir.

16 Q So all of the things that you talked about from
17 the standpoint of this grooming process are really
18 things that we as good parents do for our children?

19 A They are; but when we talk about grooming,
20 typically those good positive things that we do lead
21 to inappropriate things when we're dealing with
22 alleged offender.

23 Q But those same factors that you talked about are
24 the positive factors that we as parents, those of us
25 that try to be good parents try to adhere to?

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1 A That's correct.

2 Q Just because a person is a stepparent, that
3 doesn't make he or she any less of a parent figure,
4 correct?

5 A Definitely.

6 Q And those positive things that parents do good
7 stepparents do also?

8 A Yes, sir.

9 Q And you would agree with me, would you not, that
10 not all children always tell the truth?

11 A I would agree.

12 Q Thank you, ma'am.

13 THE COURT: Redirect.

14 MS. BARR: Just one question.

15 **REDIRECT EXAMINATION**

16 BY MS. BARR:

17 Q Ms. Cook, what differentiates a good parent who
18 cares for a child, who spends money on the child,
19 develops trust with a child, from a groomer? What
20 differentiates a groomer from a normal parent who
21 does all the things that we talked about, all the
22 good positive things?

23 A Well obviously, you know, good and not good
24 parents sometimes do some of the things we talked
25 about. A groomer will do those things; but what's

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1 different is an appropriate parent does those things
2 because they desire to, because they know that it's
3 the right thing to do, and they know how to take
4 care for their child. A groomer does those things
5 with the intent of then moving into an inappropriate
6 relationship with the child. I will buy you a new
7 car if you let me have sex with you. I will give
8 you five hundred dollars if you don't go and tell
9 your mother or your grandmother what you and I did
10 last night. And so what happens is, you have a
11 child who gets extremely confused because as I've
12 said, I want to reiterate, all of us come into the
13 world wanting a bond with a mother and a father, be
14 it a biological mother or father or be it a
15 nonbiological mother or father, we desire that. And
16 so when we get that, as children we don't use the
17 radar to say, okay, well this person is doing this
18 and now something bad is gonna happen. What we do,
19 we just learn to accept it, we learn to appreciate
20 it, and we're glad to have the things that the
21 parent is doing. And then before we realize it
22 something else is going on, fondling, kissing,
23 touching, even sexual intercourse.

24 Q Thank you, ma'am. I have no further questions.

25 THE COURT: Mr. Lofton.

1 MR. LOFTON: No, Your Honor.

2 THE COURT: Thank you, ma'am. You can
3 step down.

4 Ms. Barr.

5 MS. BARR: Your Honor, at this time the
6 State rests.

7 THE COURT: Ladies and gentlemen of the
8 jury, as you heard Ms. Barr indicate, the State has
9 rested which means the State has presented all the
10 evidence it's going to present in its case in chief.
11 Our procedural rules require me to take a recess at
12 this point. You may go to your jury room. You may
13 not discuss this case in any way whatsoever. We'll
14 have you back out shortly. Thank you.

15 (WHEREUPON, the jury was removed from the
16 courtroom at 10:20 a.m., and the following
17 proceedings commenced in open court.)

18 THE COURT: All right, Mr. Lofton, any
19 motions at this time?

20 MR. LOFTON: Your Honor, at this time we
21 would move for directed verdict as to each of the
22 three counts on the indictment. We don't believe
23 taking the evidence in a light most favorable to the
24 jury, to the State, that the case should be
25 submitted to the jury. That's the general motion,

1 real possibility that the defendant is not guilty
2 you must give him the benefit of the doubt and find
3 him not guilty.

4 Now in closing, ladies and gentlemen, a
5 reasonable doubt is the kind of doubt that would
6 leave an honest, sincere, and consciousness person
7 who is in search of the truth to hesitate to take
8 action. Now ladies and gentlemen, you have heard
9 testimony that the defendant committed an act not
10 the subject of a conviction other than the one for
11 which he is now or the acts for which he is now on
12 trial. This testimony of other acts, if you
13 conclude it is true, may only be considered by you
14 on the question of whether or not the defendant
15 engaged in a common scheme or plan and you may not
16 give that testimony any other weight and you may
17 consider it for no other reason or purpose. You
18 give that evidence of any other act the weight you
19 believe it deserves insofar as whether you find it
20 should have an impact on the issue of the existence
21 of a common scheme or plan. You must not consider
22 evidence of the commission of another bad act not
23 the subject of a conviction as proof of the
24 defendant's guilt of the charges you are considering
25 today.

1 MS. BARR: Yes, sir.

2 THE COURT: Mr. Lofton?

3 MR. LOFTON: Yes, sir.

4 (Jury deliberations began at 12:55 p.m.)

5 (Court's Exhibit Number 5 was marked
6 and made a part of the record.)

7 THE COURT: It says, excerpt from Lauren's
8 testimony about the shower curtain, the following
9 thing written is circled. He could tell we — the
10 word we is quoted — didn't like it. I don't know
11 exactly what they're asking for. I can assume —
12 and why don't y'all take a look at it. And this is
13 Court's exhibit number 5.

14 (Attorneys review Court's Exhibit No. 5.)

15 THE COURT: Did you show it to defendant?

16 (Note shown to the defendant.)

17 THE COURT: All right, Mr. Barr, first of
18 all, any preliminary comments about inquiry at all?

19 MS. BARR: No, Judge, I guess perhaps if
20 we can get clarification from the jury as to what
21 they're specifically asking to re-hear. I
22 understand the part that's encircled, but if he
23 could tell that we didn't like it. I'm not sure I
24 understand that.

25 THE COURT: Mr. Lofton.

1 MR. LOFTON: I'm kind of in the same boat,
2 Your Honor.

3 THE COURT: Well, I do know — and I
4 talked to Frances about this — that at 11:20 on
5 Tuesday there was testimony from Lauren, clear
6 shower curtain he would pop in and say hi. And
7 these are my paraphrase notes. He eventually
8 stopped that. Downstairs one half bath he would
9 always come in and, quotes, accidentally, closed
10 quote, he developed a habit of going in, locking the
11 door, turning off the light. My assumption from
12 that question is they may want to know what she
13 meant by the word we; I don't know. But that's just
14 poor assumption. I think you're both right that I
15 need to tell the jury or I need to bring them out
16 that if they have a specific question they want to
17 hear something that can be arranged, but I am not
18 going to answer any questions and say this is what
19 the witness said. Any problem with that, Ms. Barr?

20 MS. BARR: No, sir.

21 MR. LOFTON: No, Your Honor.

22 THE COURT: Mr. Lofton? Okay, you can
23 bring in the jury.

24 (WHEREUPON, the jury was returned to the
25 courtroom at approximately 1:17 p.m., and

1 the following proceedings commenced in
2 open court.)

3 THE COURT: All right, I do have your
4 note, Mr. Foreman, and obviously you know what it
5 says because you wrote it. It says excerpt from
6 Lauren's testimony about the shower curtain. And
7 then it has the following circled: He could tell,
8 quote, we, close quotes, didn't like it. Here's
9 what I wanted to ask. If you want — if you're
10 asking me to have testimony re-played for you we can
11 do that. But the generic nature of what you've
12 written down anything, what you want me to do. I
13 cannot recite myself what a witness said. It can
14 certainly be played back so I'm trying to figure
15 what, if anything, you want to re-hear. You
16 indicate that you, the jury wants to hear —

17 THE FOREMAN: The clear shower curtain,
18 questions concern a clear shower curtain.

19 THE COURT: Okay, and that would be
20 Lauren's testimony?

21 THE FOREMAN: Yes, sir.

22 THE COURT: Okay, here's what we're going
23 to do. We can find it in a matter of moments, but
24 I'm going to have send you back out. As soon as she
25 queues it up we'll bring you right back out and you

1 can listen to that. Is there anything else about
2 any of this note that want to clarify.

3 THE FOREMAN: That was the only question
4 we have, Your Honor.

5 THE COURT: Thank you. That will be done
6 very quick, within the next 30 seconds, minute or
7 two. You can continue deliberating and we'll bring
8 you back out when she gets it.

9 (WHEREUPON, the jury was removed from the
10 courtroom, and the following
11 proceedings commenced in open court.)

12 THE COURT: Any exceptions or other
13 matters from the State?

14 MR. LOFTON: No, Your Honor.

15 THE COURT: Any from Defense?

16 MR. LOFTON: No, Your Honor.

17 THE COURT: Okay. I know where my notes
18 reflect shower curtain testimony. Does the State
19 recall anything that Lauren said about the clear
20 shower curtain other than that exchange that I
21 mentioned a few minutes ago?

22 MS. BARR: Judge, I remember Lauren
23 testifying at one point they had a colored shower
24 curtain, and I think that I recall her saying he
25 didn't like it or something along those lines and

1 that's when they started getting the clear shower
2 curtain. And when the house on Clearview Street
3 underwent remodeling, then they had a clear shower
4 door installed.

5 THE COURT: Now Monday before we actually
6 started the trial during that two hours or so I know
7 that Lauren testified about a clear shower curtain.
8 Again, my notes reflect trial testimony in front of
9 the jury she talked about after you went through the
10 pond house incident, farmhouse incident, the tanning
11 bed incident, the Clearview incident where she
12 complained of pain, he checked it out, that's when
13 under my notes you went in, you started asking her
14 about the changing of the shower curtain. I didn't
15 write anything down about it being in conjunction
16 with remodeling but Frances can -- we'll go off the
17 record for a minute so she can find that.

18 And Mr. Lofton, do you have any comments
19 about the ---

20 MR. LOFTON: No, sir, what you remember is
21 what I remember.

22 THE COURT: Okay. Let's go off the record
23 for a minute and she can pull it up.

24 (Pause.)

25 (Court reporter reads back excerpt requested.)

1 THE COURT: Do you agree the read back is
2 good? We want — for her to read?

3 MS. BARR: I do.

4 THE COURT: Mr. Lofton?

5 MR. LOFTON: I think that's the testimony.

6 THE COURT: Okay. So we'll bring the jury
7 back in. The court reporter will read to the jury
8 exactly what she just. All right, you can bring in
9 the jury.

10 (WHEREUPON, the jury was returned to the
11 courtroom at approximately 1:25 p.m., and
12 the following proceedings commenced in
13 open court.)

14 THE COURT: Okay, ladies and gentlemen, I
15 believe we have queued up what we believe to be in
16 response to your inquiry. The court reporter is
17 actually gonna read the question and the answer, and
18 she'll, of course, say question before the question
19 and answer fore the witness's answer. All right.

20 (Court reporter reads back excerpt requested.)

21 THE COURT: I believe that covers the
22 inquiry. Mr. Foreman, ladies and gentlemen of the
23 jury, if you have additional questions either
24 regarding that or anything else, certainly I'll be
25 happy to receive those. Otherwise, you can continue

1 your deliberations. All right, thank you.

2 (WHEREUPON, the jury was removed from the
3 courtroom at 1:29 p.m., and the following
4 proceedings commenced in open court.)

5 THE COURT: Anything else from the State?

6 MS. BARR: No, Your Honor.

7 THE COURT: Defense?

8 MR. LOFTON: No, Your Honor.

9 THE COURT: All right, thank you.

10 (WHEREUPON, a recess was taken from the
11 proceedings.)

12 THE COURT: I understand the jury has a
13 verdict. And I know the lawyers are aware of this,
14 but anyone else please make sure that you understand
15 whatever the verdict is, that you receive it or
16 listen to it to and not have any type of reaction.
17 That means out loud or visible. If you don't, if
18 you think you can't follow that instruction I'll
19 certainly give you the opportunity to leave the
20 courtroom now, but I don't want any audible or
21 visible reaction to the verdict. Is the State
22 ready?

23 MS. BARR: The State's ready, Your Honor.

24 THE COURT: Defense ready?

25 MR. LOFTON: Yes, Your Honor.

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF WILLIAMSBURG) FOR THE THIRD JUDICIAL CIRCUIT
) INDICTMENT NO.: 2012-GS-45-0285

STATE OF SOUTH CAROLINA,)
))
)) **MOTION FOR NEW TRIAL**
v.)
))
WILLIE MARION BROWN,)
))
Defendant.)
_____)

COMES NOW the Defendant, Willie Marion Brown, by and through his undersigned counsel, and moves pursuant to Rule 29, SC.R. Crim. P., for a new trial in the above-referenced case.

As grounds for this motion, Defendant alleges and avers as follows:

- (1) That it was error to admit the testimony of Ashley Gardner; and
- (2) That it was error to admit the testimony of Gay Allen Cook.

Theses errors, more fully explained in Defendant's Memorandum in Support of Motion for New Trial, were prejudicial to the Defendant and materially affected the outcome of the action.

WHEREFORE, the Defendant respectfully requests that the Court grant his motion for a new trial.

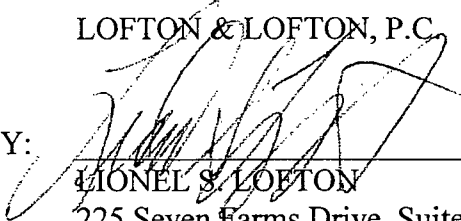
CERTIFIED TRUE COPY
Sharon W. Stagg
SHARON W. STAGG
CLERK OF COURT
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Respectfully submitted,

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May 30, 2014

STATE OF SOUTH CAROLINA)
)
 COUNTY OF WILLIAMSBURG) IN THE COURT OF GENERAL SESSIONS
) FOR THE THIRD JUDICIAL CIRCUIT
) INDICTMENT NO.: 2012-GS-45-0285

STATE OF SOUTH CAROLINA,)
)
)
 v.) **MEMORANDUM IN SUPPORT OF**
) **MOTION FOR NEW TRIAL**
)
 WILLIE MARION BROWN,)
)
)
 Defendant.)
 _____)

The Defendant, Willie Marion Brown, has filed a post-trial motion for a new trial in this action. For the reasons set forth below, the Defendant respectfully requests that the Court grant his motion.

BACKGROUND

On May 23, 2014, a Williamsburg County jury found Mr. Brown guilty of two (2) counts of first degree criminal sexual conduct with a minor and one (1) count of a lewd act with a minor. The evidence presented by the State at trial included the testimony of the alleged victim, [REDACTED], the testimony of an alleged former victim, Ashley Gardner, and the testimony of Gay Allen Cook, a child and family therapist who was qualified as an expert in child abuse and trauma. Defense counsel filed a pre-trial motion to exclude Ms. Gardner's testimony on the grounds that her testimony referred to alleged prior bad acts committed by Mr. Brown which were irrelevant to the issues at trial and were otherwise prohibited as impermissible character evidence. The trial court denied the motion, *in limine*, finding that Ms. Gardner's testimony was clear, convincing and

“compelling” evidence, the alleged bad acts committed by Mr. Brown against both Ms. Gardner and [REDACTED] shared close degrees of similarity and indicated a common plan or scheme, and that the probative value of Ms. Gardner’s testimony would not substantially outweigh the danger of unfair prejudice to the defendant. Subsequently, in overruling the renewed objections of defense counsel at trial, the trial court applied the analyses of our state supreme court in State v. Wallace, 683 S.E.2d, 384 S.C. 428 (2009) and our court of appeals in State v. Scott, 748 S.E.2d, 405 S.C. 489 (Ct. App. 2013) and admitted the testimony of Ashley Gardner regarding Mr. Brown’s alleged prior bad acts. Additionally, defense counsel objected at trial to the admission of the testimony of Gay Allen Cook on the grounds that her testimony would unduly bolster [REDACTED]’s testimony and would be extremely prejudicial to the defendant. The trial court disagreed and ruled to admit Ms. Cook’s testimony regarding delayed reporting by child abuse victims and a perpetrator’s “grooming” of child abuse victims. In its ruling, the trial court noted specifically that Ms. Cook could include in her testimony that she had previously met with [REDACTED] regarding the alleged sexual abuse by Mr. Brown.

ISSUES

- (1) Whether the trial court erred in admitting the testimony of Ashley Gardner regarding the alleged prior bad acts committed by the Defendant against her.
- (2) Whether the trial court erred in admitting the testimony of Gay Allen Cook regarding her meeting with [REDACTED] about the alleged sexual abuse by the Defendant.

BRIEF ANSWER

- (1) The trial court erred in admitting the testimony of Ashley Gardner because the alleged prior bad acts of Mr. Brown sexually abusing her and the charged offenses were not sufficiently similar for evidence of the prior bad acts to be admissible to show common scheme or plan, and the probative value of the bad act evidence substantially outweighed the danger of unfair prejudice to the defendant.
- (2) The trial court erred in admitting the testimony of Gay Allen Cook regarding her meeting with [REDACTED] about the alleged sexual abuse by the defendant because this testimony, along with Ms. Cook's other testimony regarding delayed reporting and grooming, improperly bolstered the credibility of [REDACTED].

LEGAL ARGUMENT

Issue #1

"Perhaps no tenet of evidence law in the context of 'prior bad acts' is more firmly established than the principle that propensity or character evidence is inadmissible to prove *the specific crime charged*." State v. Tuffour, 364 S.C. 497, 613 S.E.2d 814 (Ct. App. 2005) *vacated on other grounds* 371 S.C. 511, 641 S.E.2d 24 (2007) (emphasis added). As stated in State v. Lyle,

That contention is grounded upon the familiar and salutary general rule, universally recognized and firmly established in all English-speaking countries, that evidence of other distinct crimes committed by the accused may not be adduced merely to raise an inference or to corroborate the prosecution's theory of the defendant's guilt of the particular crime charged.

State v. Lyle, 125 S.C. 406, 118 S.E. 803, 807 (1923). The South Carolina Rules of Evidence provide very limited exceptions to the admission of evidence of other bad acts to prove a defendant's

guilt of a charged crime. See Rule 404(b), SCRE. Our state supreme court has eloquently noted the difficulty courts face in determining whether evidence of prior bad acts is admissible under one of these exceptions:

Whether evidence of other distinct crimes properly falls within any of the recognized exceptions noted is often a difficult matter to determine. The acid test is its logical relevancy to the particular excepted purpose or purposes for which it is sought to be introduced. If it is logically pertinent in that it reasonably tends to prove a material fact in issue, it is not to be rejected merely because it incidentally proves the defendant guilty of another crime. But the dangerous tendency and misleading probative force of this class of evidence require that its admission should be subjected by the courts to rigid scrutiny. Whether the requisite degree of relevancy exists is a judicial question to be resolved in the light of the consideration that the inevitable tendency of such evidence is to raise a legally spurious presumption of guilt in the minds of the jurors. Hence, if the court does not clearly perceive the connection between the extraneous criminal transaction and the crime charged, that is, its logical relevancy, the accused should be given the benefit of the doubt, and the evidence should be rejected.

Id. at 416-417, 807 (citations omitted). Recently, our state supreme court provided an analysis to guide trial courts in determining whether prior bad act evidence is admissible under the “common scheme or plan” exception in the context of a criminal sexual abuse trial. State v. Wallace, 384 S.C. 428, 683 S.E.2d 275 (2009) (Pleicones, J. dissenting). In order for evidence of sexual abuse of another victim to be admissible in a criminal sexual conduct trial, the proffered evidence must be deemed relevant, there must be a close degree of similarity between the bad act and the crime charged indicating a common scheme or plan, and the probative value of the proffered evidence must not substantially outweigh the danger of unfair prejudice to the defendant. Id. at 432-435, 277-279. Although the trial court applied the Wallace analysis in considering whether to admit the testimony of Ashley Gardner regarding her alleged child sexual abuse by Mr. Brown, the court’s ruling to admit Ms. Gardner’s testimony was in error.

The charged offenses were not sufficiently similar for evidence of the prior bad acts to be admissible to show common scheme or plan.

In Wallace, the court stated that a “close degree of similarity” establishes the required connection between the bad act and *the crime charged* and that the manner of occurrence, i.e., the type of sexual battery is a factor to consider in determining the existence of a close degree of similarity. Id. at 434, 278 (emphasis added). The Defendant in this case was charged with two counts of first degree criminal sexual conduct with a minor and one count of committing a lewd act on a minor. The specific acts for which Mr. Brown was charged, and to which the victim, Lauren Goodman testified at trial, were as follows:

- (1) On one occasion when Mr. Brown and [REDACTED] were at Mr. Brown’s farmhouse, Mr. Brown sat [REDACTED] on his bed, took off her pants, put his mouth on her vagina, and performed oral sex on her.
- (2) On one occasion when a deck was being built at Mr. Brown’s Clearview Street home, [REDACTED] went upstairs to Mr. Brown’s bedroom and told him that her vagina was hurting. Mr. Brown examined her vagina by placing his fingers inside of her vagina.
- (3) On one occasion at Mr. Brown’s farmhouse, [REDACTED] was steering a four-wheeler, and Mr. Brown was sitting behind her. Mr. Brown placed his hands on her breasts and said, “honk, honk.”

[REDACTED] also testified as to alleged bad acts committed by Mr. Brown that were *not specific* to the crimes for which he was charged. Those acts were:

- (1) Mr. Brown taught her about sex by placing a condom on a cucumber in front of her and then sitting her on a bed and demonstrating various sexual positions with their clothes on.
- (2) On one occasion at Mr. Brown's farmhouse, [REDACTED] was in a tanning bed when she heard a camera going off and assumed that Mr. Brown had taken a picture of her.
- (3) On one occasion, Mr. Brown sat [REDACTED] on a bed at his farmhouse and took her pants off. He had his fingers around the vagina area but never placed them inside.
- (4) Mr. Brown took a close up picture of her vagina and then explained to her what happened during sex.
- (5) There was a clear shower curtain in her bathroom, and Mr. Brown would come into the bathroom when she was in the shower.
- (6) Once there was a vibrator in a bag on her bed, and [REDACTED] wrote "I don't want this" on the bag and placed it on Mr. Brown's bed.
- (7) In exchange for the purchase of a locket for Christmas, Mr. Brown had [REDACTED] promise to let him see her naked for "so many times."

The specific bad acts to which Ms. Gardner was permitted to testify at trial were as follows:

- (1) Beginning when she was seven years old, Mr. Brown began playfully tickling Ms. Gardner while he was bathing her, and the tickling eventually developed into inappropriate touching of her private areas.

- (2) Mr. Brown started out bathing [REDACTED] with a washcloth, but this eventually developed into the washcloth "accidentally" falling and then him bathing her with his bare hands, touching her private areas.
- (3) The inappropriate touching during bathing occurred more than twenty times.
- (4) After being told by her mother that Mr. Brown could explain sex better than she could, Ms. Gardner had a discussion about sex with Mr. Brown, and she remembered that his penis was erect during the discussion.
- (5) On one occasion, Mr. Brown had his fingers "all around" Ms. Gardner's vagina and maybe "a little bit of his finger penetrated."
- (6) A clear shower curtain was hung in her bathroom.
- (7) On one occasion, Mr. Brown and Ms. Gardner's mother were in a hot tub, naked, and Ms. Gardner got into the hot tub with her bathing suit on. Mr. Brown had an erection.

The manners of occurrence of the alleged bad acts to which Ms. Gardner was permitted to testify bore no close degree of similarity to *the specific crimes* for which Mr. Brown was charged. The bad acts pertaining to Ms. Gardner did not involve oral sex, grabbing of the breasts, or digital penetration of the nature described by [REDACTED] in her testimony. The alleged "inappropriate touching" to which Ms. Gardner testified happened when Mr. Brown bathed her, began as playful tickling and advanced to skin to skin contact of her private areas, occurred over twenty times, and took place at least two years before the charged crimes allegedly took place. The oral sex, digital penetration, and breast-grabbing charges regarding [REDACTED] did not take place during bathing, did not begin as playful tickling, and each occurred one time. Furthermore,

neither Ms. Gardner's testimony regarding "inappropriate touching," nor her testimony regarding the hot tub incident bore any logical relevancy to the crimes for which Mr. Brown was charged. See Lyle, *supra*, at 416-417, 807. Accordingly, since the bad act testimony presented by Ms. Gardner contained no close degree of similarity to the charged crimes against Mr. Brown, the trial court's ruling to admit Ms. Gardner's testimony was erroneous.

The probative value of the bad act evidence submitted through the testimony of Ashley Gardner substantially outweighed the danger of unfair prejudice to the Defendant.

In his dissenting opinion in Wallace, Justice Pleicones stated: "our cases holding that evidence of other acts of sexual misconduct is admissible in a trial for criminal sexual conduct with a minor as a 'common scheme or plan' . . . ha[s], in effect, created an exception to the rule's exclusion of propensity evidence. Wallace (add pinpoint citation). Justice Pleicones admonished that "thorough scrutiny is warranted" because although our courts "have repeatedly held in non-sexual offense cases that, 'the mere presence of similarity only serves to enhance the potential for prejudice', . . . under the majority's view, similarity is the touchstone of admissibility in child sexual offense cases." Id. at 436, 279 (citations omitted). Justice Pleicones' statements in Wallace have proven true for nearly every appellate court decision regarding the admissibility of bad act evidence in criminal sexual conduct cases since the Wallace opinion was published¹, including State v. Scott, 405 S.C. 489, 748 S.E.2d 236 (Ct. App. 2013), which was cited by the trial court in this case in its decision to admit Ms. Gardner's testimony. See State v. Hubner, 384 S.C. 436,

¹ The only exception discovered during a review of the case law was State v. Fonseca, 393 S.C. 229, 711 S.E.2d 906 (2011), where in a majority opinion delivered by Justice Pleicones, the South Carolina Supreme Court affirmed the court of appeals' opinion reversing a conviction on the grounds that the State had provided no compelling argument of any similarities between a 2001 bad sexual act and the 2003 charged sexual act with the same victim. State v. Fonseca, 383 S.C. 640, 681 S.E.2d 1 (Ct. App. 2009).

683 S.E.2d 279 (2009) (Based on its decision in Wallace, the S.C. Supreme Court reversed the court of appeals' holding that a trial judge committed reversible error in admitting evidence of a prior sexual assault against a different victim.); State v. Clasby, 385 S.C. 148, 682 S.E.2d 892 (2009) (affirming the admission of a victim's testimony regarding four incidents of prior sexual abuse by the defendant against the victim as evidence of a common scheme or plan); State v. Scott, 748 S.E.2d 236 (Ct. App. 2013) (affirming the trial court's decision to admit evidence of the defendant's prior bad acts against other victims occurring eleven to twenty years prior to the crime charged because the related testimony was sufficiently similar to the crime charged, and was neither too remote nor was the testimony's probative value substantially outweighed by the danger of unfair prejudice); State v. McGaha, 404 S.C. 289, 744 S.E.2d 602 (Ct. App. 2013) (holding that the trial court acted within its discretion in joining for trial multiple sexual offense charges involving two child victims based on a finding in the record that evidence of the defendant's crimes against each victim would be admissible in a separate trial as to the other); State v. Petty, No. 2013-UP-144, 2013 WL 8507852 (Ct. App. Apr. 10, 2013) (finding no abuse of discretion in admitting evidence regarding defendant's molestation of a daughter during his trial for molestation of another daughter); State v. Taylor, 399 S.C. 51, 731 S.E.2d 522 (Ct. App. 2012) (affirming the trial court's decision to admit evidence of the defendant's other rape of the same victim as demonstrating a common scheme or plan); State v. Atieh, 397 S.C. 641, 725 S.E.2d 730 (Ct. App. 2012) (holding that the trial court did not abuse its discretion in admitting a witness's testimony regarding prior bad sexual acts by the defendant under the common scheme or plan exception); State v. Campbell, No. 2010-UP-228, 2010 WL 10079886 (Ct. App. Apr. 1, 2010) (affirming the trial court's admission of the sexual abuse of a different child under the common scheme or plan

exception to Rule 404(b)); State v. Nash, No. 2012-UP-075, 2012 WL 10830174 (Ct. App. Feb. 8, 2012) (affirming the admission of prior bad sexual acts under the common plan or scheme exception). More importantly, Justice Pleicones' dissent in Wallace has proven true with respect to Mr. Brown's criminal trial, because even though similarities existed in the bad acts alleged in [REDACTED]'s and Ms. Gardner's testimonies, the lack of specific similarities between the Gardner bad acts and the crimes charged lessened the probative value of the propensity evidence. This is distinguishable from the Scott decision, where the court of appeals determined the following in its Rule 403 analysis:

The bad act testimony was not only similar to the Victims' allegations, it relied upon *a high level of specificity that extended to even the most peculiar conduct alleged by Victims*, such as the bath time assaults, followed by area-focused drying and full-body motioning, "hunching," laughing following an incident of abuse, and a perverse version of hid-and-seek. This *high level of specificity regarding very peculiar conduct* further increases the already great probative weight.

Scott, 405 S.C. at 508, 745 S.E.2d at 247 (emphasis added). As mentioned above, the bad acts to which Ms. Gardner testified lacked the "high level of specificity regarding very peculiar conduct" with respect to the manners of occurrence of the charged crimes. Therefore, the probative value of the propensity evidence did not substantially outweigh the danger of unfair prejudice to the Defendant and should have been excluded.

Furthermore, the "mere presence of similarities" between Ms. Gardner's testimony regarding uncharged bad acts and [REDACTED]'s testimony regarding *other uncharged bad acts* has unfairly prejudiced the Defendant. This was most evident in the testimony regarding the clear shower curtain. At trial, [REDACTED] testified that there was a clear curtain for the shower in her bathroom on Clearview Street, and Mr. Brown would come into the bathroom when she

was in the shower. She could not recall how many times Mr. Brown had done this, but she remembers that he eventually stopped coming into the bathroom because he realized that she felt uncomfortable about it. Subsequently, Ms. Gardner testified that when she was old enough to begin taking showers, Mr. Brown replaced the shower curtain in her bathroom with a clear one.

This testimony, pertaining to similar bad acts between two different victims that were not specific to the crimes charged, was textbook propensity evidence. It served no other purpose than to confuse the jury as to the ultimate issue in the case, which was whether Mr. Brown was guilty of the acts against [REDACTED] for which he was charged. This was evidenced by the jury's request to review the testimony regarding the clear shower curtain after deliberations began. After the jury reviewed the shower curtain testimony, they resumed deliberations, and rendered a guilty verdict within a half hour. The only logical conclusion to be drawn from this is that based on the shower curtain testimony, the jury believed that Mr. Brown was a pervert who liked to peek at his naked, young step-daughters through the shower curtain, and because he committed this perverted act, he must be guilty of the three criminal charges for which he was being tried. Accordingly, since the probative value of Ms. Gardner's testimony did not substantially outweigh the danger of unfair prejudice to Mr. Brown, the trial court erred in admitting her testimony.

Issue #2

Our courts have clearly stated that "where credibility is the ultimate issue in a case, improper corroboration evidence that is merely cumulative to the victim's testimony is not harmless." State v. Jennings, 394 S.C. 473, 479, 94716 S.E.2d 91, 94 (2011) (citations omitted). Also, an expert witness cannot vouch for the credibility of a victim in his or her testimony. Id. at 480, 94. In this case, Mr. Brown exercised his right not to present a defense on his behalf;

therefore, an ultimate issue in the case was whether the jury believed the testimony of [REDACTED]. Over defense counsel's objection, the trial court ruled to admit the testimony of Gay Allen Cook, who was qualified as an expert in the area of child sex abuse and trauma, regarding delayed reporting of child sex abuse victims and grooming by perpetrators. Significantly, the court also ruled that Ms. Cook could testify regarding meeting with [REDACTED] about the alleged sexual abuse by the Defendant. The admission of Ms. Cook's testimony permitted the State in its case-in-chief to improperly bolster [REDACTED]'s testimony.

Although Ms. Cook never directly testified that she believed what [REDACTED] told her, her testimony permitted the jury to draw the inference that what [REDACTED] testified to was true. See State v. McKerley, 397 S.C. 461, 465, 725 S.E.2d 139, 142 (Ct. App. 2012) ("Smith [the forensic interviewer] never testified directly that she believed what the victim stated in her interviews or in her testimony. McKerley argues, however, that there is no way to interpret Smith's testimony other than as her opinion that the victim was telling the truth. We agree."). Ms. Cook testified that offenders groom their victims by making victims feel comfortable around them, build trust, and spend time and money on them. She further testified regarding how the absence of a biological parent can play a role in this grooming process, and the victim often fills that void with a close relationship to a step-parent who becomes the grooming offender. She also testified that the child does not realize she's being groomed and that the offender will often "test the waters." Additionally, Ms. Cook offered her expert opinion on delayed reporting by victims of child sex abuse. She stated that often victims will wait to report when they are no longer dependent on the offender for food, clothing, education, or housing. She concluded her testimony by stating that she had met with [REDACTED] in November of 2011.

Once Ms. Cook testified that she had met with [REDACTED] in November of 2011, which was the date that [REDACTED] testified that she reported the sexual abuse by the defendant, the only reasonable inference the jury could conclude was that [REDACTED] told the truth about the sexual abuse. Had [REDACTED] not disclosed her relationship with the victim to the jury, then her testimony would have been perceived as an expert commenting on the concepts of delayed reporting and grooming as they pertain in general to child sexual abuse victims. However, once she disclosed her relationship with the victim, the jury immediately deduced that a therapist was vouching for the credibility of her client by explaining the same characteristics of child sexual abuse victims that were evident in [REDACTED]'s prior testimony. As in many CSC cases, this case turned primarily on the veracity of the victim. Given the importance of [REDACTED]'s credibility to the jury, the trial court erred in the admission of Ms. Cook's testimony.

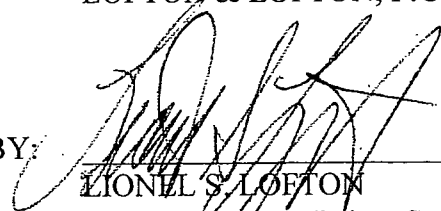
CONCLUSION

Based on the foregoing reasons, the defendant Willie Marion Brown, respectfully requests that this Court order a new trial in this matter.

Respectfully submitted,

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May 30, 2014

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY

Court of General Sessions

George C. James, Jr., Circuit Court Judge

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SC Court of Appeals

Case No.: 2012-GS-45-0285

The State, ...Respondent,

v.

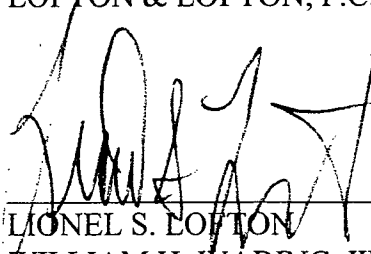
Willie Marion Brown, ...Appellant.

NOTICE OF APPEAL

Willie Marion Brown appeals his conviction and sentence in this case. The sentence was imposed by the Honorable George C. James, Jr. on May 23, 2014. This appeal is taken from the order of the Honorable George C. James, Jr., dated July 21, 2014, which denied appellant's motion for a new trial. Appellant received written notice of entry of this order on July 23, 2014.

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY

Court of General Sessions

George C. James, Jr., Circuit Court Judge

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SC Court of Appeals

Case No.: 2012-GS-45-0285

The State, ...Respondent,

v.

Willie Marion Brown, ...Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent, State of South Carolina, by depositing a copy of it in the United States Mail, postage prepaid, on July 29, 2014, addressed to its attorney of record, Kimberly V. Barr, Assistant Solicitor for the Third Judicial Circuit, Williamsburg County Courthouse, 125 West Main Street, Second Floor, Kingstree, South Carolina 29556.

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July 31, 2014

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY
Court of General Sessions

The Honorable George C. James, Jr., Circuit Court Judge

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY

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The Honorable George C. James, Jr., Circuit Court Judge

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PROOF OF SERVICE

I certify that I have served the Record on Appeal on the Respondent, State of South Carolina, by depositing a copy of it in the United States Mail, postage prepaid, on May 11, 2015, addressed to its attorney of record, Salley W. Elliott, Esquire, Senior Assistant Deputy Attorney General, Office of the Attorney General, Rembert C. Dennis Building, Post Office Box 11349, Columbia, SC 29211-1549.

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